THE WORKING METHODS OF THE UNITED NATIONS SECURITY COUNCIL: MAINTAINING THE IMPLEMENTATION OF CHANGE

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Abstract The United Nations Security Council is often described as an opaque body, closed in both membership and approach, and unaccountable for its conduct. For many years, this view has motivated calls for reform to the Council's working methods. This article aims to shine light on the Council's approach to process matters, recognizing the Council's preference for making change through developments in practice. The article reviews the efforts undertaken by the 'Small Five' group of States from 2005 to 2012, followed by the efforts since 2013 of the Accountability, Coherence and Transparency Group, while also acknowledging the contributions made by Japan. With some proposals having received some degree of Council support, the sustained implementation of change is identified as the key priority. The article argues for the contextual application of the key concepts of transparency, engagement and accountability, as well as prevention, to provide a principled basis for both the maintenance and development of working methods reform.

Keywords: accountability, conflict prevention, engagement, implementation, practice, procedure, reform, transparency, United Nations Security Council, working methods.

I. INTRODUCTION

Twenty years have passed since the publication in this journal of an article by Sir Michael Wood, then Legal Counsellor with the Foreign and Commonwealth Office (FCO), about the working methods of the United Nations Security Council.[1] The article is often cited, but there have been developments since,

  [1] MC Wood, 'Security Council Working Methods and Procedure: Recent Developments' (1996) 45 ICLQ 150–61. See also I Winkelmann, 'Bringing the Security Council into a New Era: Recent Developments in the Discussion on the Reform of the Security Council' (1997) 1 MaxPlanckYrbkUNL 35, esp 51–8, and SC Hulton, 'Council Working Methods and Procedure'

with the mid-1990s being the first of three periods of heightened interest in working methods reform. A second period of interest was encouraged by the adoption of the 2005 World Summit Outcome,[2] while the formation of the Accountability, Coherence and Transparency (ACT) Group of States in 2013 appears to mark a third. And yet, the Security Council continues to be described by many as an opaque body, closed in its approach to process, and unaccountable for its conduct. Over time, however, process changes have taken place, thanks in part to the continuous efforts of those outside the Council working with those within, both permanent and non-permanent, and to the efforts of the Council's Informal Working Group on Documentation and Other Procedural Questions created in 1993.[3] Many of these process changes have also been formalized through the adoption and publication of various presidential Notes,[4] which function as supplements to the Council's Rules of Procedure.[5] It is, however, the sustained implementation of working methods reform that remains the key concern.

This article has two main goals. It aims to trace the development of the Council's working methods, focusing on the Council and not its subsidiary bodies due to space constraints. In doing so, attention is paid to the rules of procedure as well as the Council's preference for initiating change through developments in practice. The article also provides an update to the existing literature by reviewing the efforts of the so-called 'Small Five' group of States from 2005 to 2012, followed by the coalition diplomacy efforts of ACT, while also acknowledging the contributions made by Japan. Relying primarily on primary sources,[6] including archival records, Council transcripts and mission websites,[7] the article demonstrates that Council practice is not static, although there remains no shortage of proposals for further reform. Indeed, it is the persistence and longevity of the calls for greater transparency, wider engagement, and improved accountability that leads to the article's second goal, which is to argue for greater clarity as to the meaning of these concepts and their contextual application, drawing support from the literature

in D Malone (ed), *The UN Security Council: From the Cold War to the 21st Century* (Lynne Rienner 2004) 237. For the leading work, see L Sievers and S Daws, *The Procedure of the U.N. Security Council* (4th edn, Oxford University Press 2014). See also the 'Repertoire of the Practice of the Security Council' at <http://www.un.org/en/sc/repertoire/>.

   [2] GA Res 60/1, adopted 16 September 2005, UN Doc A/RES/60/1 (24 October 2005) reprinted in UN GAOR, 60th Sess, Supp No 49, vol I at 3, UN Doc A/60/49 (2006).

   [3] *The Security Council: Working Methods Handbook* (United Nations 2012) 4.

   [4] At <https://www.un.org/sc/suborg/en/subsidiary/wgdocs/notes>.

   [5] *Provisional Rules of Procedure of the Security Council*, UN Doc S/96/Rev.7 (1983).

   [6] Others have written about Security Council reform using interviews with diplomats. See, for example, L Swart and E Perry (eds), *Governing and Managing Change at the United Nations: Reform of the Security Council from 1945 to September 2013* (Center for UN Reform Education 2013). A number of participants have themselves made useful contributions to the literature, which are referenced in this work.

   [7] The Mission of Switzerland to the United Nations in New York, for example, maintains a documentary collection on working methods reform on its website at <https://www.eda.admin.ch/missions/mission-new-york/en/home/working-methods-of-the-security-council.html>.

on governance and public administration. It is also argued that a principled approach to support both the implementation of agreed change and the strategic development of future reform is further enhanced by the addition of the principle of prevention to these discussions.

II. THE CAMPAIGNS FOR REFORM

A. The Broader Context

Security Council reform has long been a topic of interest, with many proposals focused on changes to the Council's structure as a means to improve perceptions as to the legitimacy of its powers. An early example of this connection can be found in the reform effort of 1963–65, which resulted in the only change, to date, to the number of seats on the Council. With the dramatic influx of new States in the UN from 1955 through to 1963,[8] the General Assembly was able to muster support for a resolution that declared the Council's composition to be 'inequitable and unbalanced'[9] and further recognized that the increases in UN membership made it 'necessary to enlarge the membership of the Security Council' so as to provide 'for a more adequate geographical representation' and make the Council 'a more effective organ'.[10] Although adopted with opposition,[11] the resolution nevertheless initiated the process for amending the Charter of the United Nations.[12] Upon receiving the required number of ratifications, and the support of the Permanent Five (P5) as required by Article 108 of the Charter, the amendment increased the number of non-permanent Council seats from six to ten.[13] The resolution also determined the geographic make-up for the 'Elected Ten' (E10), requiring five members from Africa and Asia, one from Eastern Europe, two from Latin America, and two from Western European and other States.[14]

Subsequent efforts to secure further reforms have not, however, been successful, with competing proposals affected by State rivalries and differing strategic goals, as well as reform fatigue. Having identified interest in what

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[8] While only one new member was admitted from 1950 to 1954, 16 new members were admitted in 1955, plus another seven from 1956 to 1959, then 17 more in 1960, followed by 12 more from 1961 to 1963. See United Nations, 'Member States of the United Nations' (undated) at <http://www.un.org/en/members/>.
[9] Question of equitable representation on the Security Council and the Economic and Social Council, GA Res 1991 A (XVIII), adopted 17 December 1963, reprinted in UN GAOR, 18th Sess, Supp No 15 at 21, UN Doc A/5515 (1964) preamb para 1.   [10] ibid, preamb para 2.
[11] The resolution was adopted by a vote of 97 in favour (including the Republic of China), 11 against (including France and the Soviet Union) and 4 abstentions (including the United Kingdom and the United States): UN Doc A/PV.1285 at 15 (17 December 1963).
[12] 26 June 1945, 1 UNTS XVI, in force 24 October 1945 (UN Charter).
[13] Amendments to arts 23, 27 and 61 of the Charter of the United Nations, adopted by the General Assembly of the United Nations in resolutions 1991 A and B (XVIII) of 17 December 1963: Protocol of Entry into Force, 557 UNTS 143, with ratifications by the Soviet Union on 10 February 1965, the United Kingdom on 4 June 1965, France on 24 August 1965, and lastly, the United States on 31 August 1965.   [14] GA Res 1991 A (XVIII) (n 9) para 3.

has been termed the 'question of equitable representation on and increase in the membership of the Security Council',[15] the Assembly established an 'Open-ended Working Group' as a forum for the consideration of proposals.[16] But no consensus emerged as to the number or type of seats to be added, nor is there agreement on which countries should occupy which seats. Some groups of States, including the African Group,[17] the Group of Four (consisting of Brazil, Germany, India and Japan), and the L.69 Group (which espouses the interests of developing States),[18] want an increase in both permanent and non-permanent seats. Others, however, resist the creation of more permanent seats, arguing that this would compound existing inequalities, and prefer instead the creation of more non-permanent seats, possibly with different terms, to address regional representation concerns.[19] Meanwhile, through practice, some States have become semi-permanent members through repeated election, although Article 23(3) of the UN Charter does bar their immediate re-election.[20] Japan is the prime example, having secured eleven terms on the Council, followed by Brazil with ten terms, Argentina with nine terms, and India and Pakistan each with seven terms.[21]

Within the various groups, and within the discussions fostered by the Assembly's Open-ended Working Group, mention is also made of the need to reform the Council's working methods as well as the matter of the veto.

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[15] Question of equitable representation on and increase in the membership of the Security Council, GA Res 47/62, adopted 11 December 1992, reprinted in UN GAOR, 47th Sess, Supp No 49, vol I at 25, UN Doc A/47/49 (1993). This matter had been introduced in 1979, and then included annually as a provisional Assembly agenda item, but it was not considered ripe for action until 1992: E Kourula and T Kanninen, 'Reforming the Security Council: The International Negotiation Process Within the Context of Calls to Amend the UN Charter to the New Realities of the Post-Cold War Era' (1995) 8(2) LJIL 337, 338.

[16] Question of equitable representation on and increase in the membership of the Security Council, GA Res 48/26, adopted 3 December 1993, reprinted in UN GAOR, 48th Sess, Supp No 49, vol I at 29, UN Doc A/48/49 (1994). See further Kourula and Kanninen (n 15) 339–40.

[17] The African Group's position can be found formalized in a draft General Assembly resolution introduced in 2005: UN Doc A/59/L.67 (18 July 2005). To date, African States continue to support what is known as the 'Ezulwini Consensus', a common African position on UN reform that was adopted by the African Union's Executive Council at its Seventh Extraordinary Session held in Addis Ababa, Ethiopia, 7–8 March 2005, AU Doc Ext/EX.CL/2 (VII), and then endorsed at the Fifth Ordinary Session of the African Union's Assembly held in Sirte, Libya, 4–5 July 2005, AU Doc Assembly/AU/Decl. 2 (V) and Assembly/AU/Resolution 1(V). Support for the Ezulwini Consensus was confirmed recently by the African Union's designated coordinating body, the 'Committee of the Ten', at a summit meeting held in Livingstone, Zambia in May 2015.

[18] The group's name is derived from the numbering of a draft resolution presented in 2007: UN Doc A/61/L.69/Rev.1 (14 September 2007).

[19] These countries, led most vocally by Italy and Pakistan, formed a group known as the Coffee Club, which was later renamed Uniting for Consensus (UfC).

[20] Semi-permanent membership has a historical precedent, with the addition of three semi-permanent seats having accompanied Germany's joining the League of Nations as a permanent Council member in 1926. See further D Carlton, 'The League Council Crisis of 1926' (1968) 11 (2) The Historical Journal 354.

[21] United Nations, 'Countries Elected Members of the Security Council' (undated) at <http://www.un.org/en/sc/members/elected.asp>.

For many States, the veto is seen as a right or privilege that flows from a particular category of membership, but for some States, the use of the veto is a working methods issue.[22] Russia, however, has stated repeatedly that the right of veto has 'nothing to do with the working methods of the Council'.[23] For its part, the Assembly's Open-ended Working Group has long characterized the veto as a membership or 'cluster I' issue, while working methods were considered 'other matters', or 'cluster II' issues.[24]

At the Millennium Summit in 2000, member States resolved to 'intensify [their] efforts' to achieve what was termed 'comprehensive' Security Council reform,[25] and in 2005, they again confirmed that reform is needed in order to make the Council 'more broadly representative, efficient and transparent and thus to enhance its effectiveness and the legitimacy and implementation of its decisions'.[26] The 2005 World Summit Outcome document also contained a dedicated paragraph on working methods reform, mentioning specifically the need 'to increase the involvement of States not members of the Council in its work, as appropriate, enhance its accountability to the membership and increase the transparency of its work'.[27] Draft resolutions subsequently proffered by the African Group,[28] the Group of Four,[29] and the L.69 Group,[30] as well as the Uniting for Consensus Group,[31] each mentioned the need for 'improvements' to the Council's working methods, some with more detail than others.

Hoping to reignite momentum, in 2007, the General Assembly decided to embark on a process of intergovernmental negotiations (IGN) on Security Council reform within the informal plenary of the Assembly itself, rather than within the Open-ended Working Group.[32] In 2008, an agreement was reached on the issues to discuss, with the Assembly formally deciding that 'the five key issues' for negotiation were the 'categories of membership; the question of the veto; regional representation; size of an enlarged Security

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[22] See, for example, the draft resolution brought forward as UN Doc A/59/L.68 (21 July 2005) at para 7(a).

[23] Russia continues to maintain this position: UN Doc S/PV.7052 at 14 (29 October 2013); UN Doc S/PV.7539 at 19 (20 October 2015).

[24] Kourula and Kanninen (n 15) 341. See also Report of the Open-ended Working Group on the Question of Equitable Representation on and Increase in the Membership of the Security Council and Other Matters related to the Security Council, UN Doc A/50/47 (13 December 1996).

[25] United Nations Millennium Declaration, GA Res 55/2, adopted 8 September 2000, reprinted in UN GAOR, 55th Sess, Supp No 49, vol I, 4, UN Doc A/55/49 (2001) para 30.

[26] 2005 World Summit Outcome (n 2) para 153.   [27] ibid, para 154.

[28] UN Doc A/59/L.67 (18 July 2005) (unnumbered).

[29] UN Doc A/59/L.64 (6 July 2005) para 8.

[30] UN Doc A/61/L.69/Rev.1 (14 September 2007) (unnumbered).

[31] UN Doc A/59/L.68 (21 July 2005) paras 7–9. See also '"Uniting for Consensus" Group of States Introduces Text on Security Council Reform to General Assembly', UN Press Release GA/10371 (26 July 2005).

[32] Question of equitable representation on and increase in the membership of the Security Council and related matters, GA Decision 61/561, adopted 17 September 2007, reprinted in UN GAOR, 61st Sess, Supp No 49, vol III at 137, UN Doc A/61/49 (2007).

Council and working methods of the Council; and the relationship between the Council and the General Assembly'.[33] The IGN process began in 2009, and remains ongoing, with the discussions organized around 'the five key issues'. There is, however, a need to clarify that the inclusion of 'working methods' within the IGN process refers to matters directly related to securing Council expansion, and not the day-to-day improvements that can be accomplished within other fora, most notably within the Council itself.[34]

B. The Efforts of the Small Five 2005–12

Given the express mention of working methods reform in the World Summit Outcome, a group of like-minded States decided to join together in late 2005 to promote and advance the cause, focusing their efforts on the stated goals of increased involvement, greater accountability, and increased transparency. Composed of Costa Rica, Jordan, Liechtenstein, Singapore and Switzerland, the group became known as the 'Small Five' or 'S-5' group. Unfortunately for the S-5, however, their efforts operated in parallel with, and for many were inextricably linked to, the more politicized debates about Council enlargement, notwithstanding the fact that the S-5, in their first outreach to States, embraced the view that 'enlargement and working methods are better served if dealt with in parallel and complementary processes'.[35] In a subsequent effort, the S-5 emphasized that their efforts were concerned with 'only one aspect of a comprehensive Security Council reform'.[36] Nevertheless, the broader context of Council reform would be ever present, with some States clearly committed to the view that any discussion of the Council's working methods must fall within the 'overarching framework' of wider Security Council reform, whether or not others decouple these matters in their advocacy.[37]

Nevertheless, the efforts of the S-5 have had influence, even if that influence is not always acknowledged. For example, in March 2006, the S-5 brought forward a draft Assembly resolution focused exclusively on 'Improving the working methods of the Security Council'.[38] The resolution also made a number of specific suggestions 'to further enhance the accountability, transparency and inclusiveness of its work, with a view to strengthening its

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[33] Question of equitable representation on and increase in the membership of the Security Council and related matters, GA Decision 62/557, adopted 15 September 2008, reprinted in UN GAOR, 62nd Sess, Supp No 49, vol III at 106, UN Doc A/62/49 (2008).

[34] A point made recently by Liechtenstein at an IGN meeting held on 22 February 2016.

[35] Open letter from the S-5 to all UN Missions, dated 3 November 2005, available from the Swiss Mission's website collection (n 7).

[36] Open letter from the S-5 sent to all UN Missions, dated 20 March 2006, available from the Swiss Mission's website collection (n 7).

[37] A position emphasized, for example, in a statement made by India during the annual open debate on working methods held in 2014: UN Doc S/PV/7285 (Resumption 1) at 29 (23 October 2014).   [38] UN Doc A/60/L.49 (17 March 2006).

legitimacy and effectiveness'.[39] Among the measures suggested were calls for regular and timely consultations between Council members and non-member States, as well as enhanced Council consultations with troop-contributing countries, UN bodies, and regional arrangements. There was also a call for the P5 to provide reasons when using the veto power, with such explanations to be circulated as an official Council document, and it was further suggested that the veto should not be used in situations of genocide, crimes against humanity and serious violations of international humanitarian law.[40] This last suggestion reflected proposals made during the lead-up to the 2005 World Summit, but did not reference expressly these sources.[41] While the draft resolution of 2006 was never put to a vote within the Assembly, nor formally discussed by the Council, the efforts of the S-5 likely helped secure Council support for a parallel effort being spearheaded by Japan to produce the first handbook on working methods in 2006.[42]

Five years later, the S-5 decided to try again, sending out a new set of proposals in April 2011,[43] and then tabling a second draft General Assembly resolution on 28 March 2012,[44] later entitled 'Enhancing the accountability, transparency and effectiveness of the Security Council' so as to highlight its link to the World Summit Outcome.[45] As with the 2006 text, the 2012 text again proposed a series of measures to improve transparency and accountability with regard to Security Council proceedings and to foster dialogue between Council members and the wider UN membership. It also recommended that the permanent members refrain from using their veto

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[39] ibid, annex.

[40] ibid, annex, paras 13 and 14.

[41] In its report, 'A More Secure World: Our Shared Responsibility', the High-level Panel on Threats, Challenges and Change had called upon 'the permanent members, in their individual capacities, to pledge themselves to refrain from the use of the veto in cases of genocide and large-scale human rights abuses': Note by the Secretary-General, UN Doc A/59/565 (2 December 2004) annex, para 256. Looking further back, the International Commission on Intervention and State Sovereignty (ICISS) had suggested that permanent members 'should agree not to apply their veto power, in matters where their vital State interests are not involved, to obstruct passage of resolutions authorizing military intervention for human protection purposes for which there is otherwise majority support': 'The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty' (December 2001) XIII (with the Commission stating at para 6.21 that this proposal came from a 'senior representative of one of the Permanent Five countries').

[42] A point illustrated by reviewing the non-paper prepared by Japan to provide guidance on improving the Council's working methods that was included within the Japanese prototype for a handbook. See Permanent Mission of Japan to the United Nations, *Handbook on the Working Methods of the Security Council* (December 2006) annex 2, at <http://www.un.emb-japan.go.jp/jp/handbook.pdf>.

[43] A copy of the April 2011 proposals can be obtained from the Swiss Mission's website collection (n 7).   [44] UN Doc A/66/L.42 (28 March 2012).

[45] Consultations with States led to revisions to the draft resolution, resulting in a second version (UN Doc A/66/L.42/Rev.1 (3 May 2012)) and a third version (UN Doc A/66/L.42/Rev.2 (15 May 2012)). The first version used the title 'Improving the working methods of the Security Council'. The revised versions also included an additional operative paragraph to 'stress' that the resolution was 'without prejudice to decisions on comprehensive Security Council reform'.

power to block action aimed at preventing or ending genocide, war crimes or crimes against humanity, and as a new addition, it included a call for wider consultation in the appointment process for the next Secretary-General.[46] But pressure from the P5,[47] as well as procedural concerns, served to derail this effort, with media reports also suggesting that the UN Legal Counsel had advised that the matter related to Security Council reform and as such, would require a two-thirds majority vote.[48] This was an interpretation that was not shared by all, including the S-5,[49] but fearing the damage that could be caused to their long-term goals by either open opposition to the resolution, or the prospect of a procedural battle on the Assembly floor, or both, the S-5 withdrew the resolution before its scheduled debate.[50]

C. The Accountability, Coherence and Transparency Group

In May 2013, a new grouping of States was launched, calling itself the 'Accountability, Coherence and Transparency Group' and making use of the acronym 'ACT' and, on occasion, the verb 'ACTion'. ACT aims to build upon the earlier work of the S-5 by mobilizing a larger network of States from different geographical regions to support those within the Council in favour of making improvements. Composed initially of 22 States, including four of the S-5 States,[51] and then growing to comprise 27 small and mid-sized States,[52] ACT also has six members serving concurrent terms on the Council.[53] ACT's stated aim is to develop proposals to improve the working

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[46] See paras 17 and 18 of the April 2011 proposal and the May 2012 resolution text respectively, both referencing the work of the Open-ended High-level Working Group on the Strengthening of the United Nations System from 1995 to 1997, which led to the adoption of the resolution, 'Strengthening the United Nations System', GA Res 51/241, adopted 31 July 1997, reprinted in UN GAOR, 51st Sess, Supp No 49, vol III at 48, UN Doc A/51/49 (1997). Para 56 of the resolution's annex called for a 'more transparent' Secretary-General selection process.

[47] The Small Five subsequently advised the General Assembly that the permanent members 'put considerable pressure on us not to submit our draft resolution for action. They tell us that our proposals are divisive and could be directed against them.' UN Doc A/66/PV.108 at 5 (16 May 2012).

[48] See also Question of equitable representation on and increase in the membership of the Security Council and related matters, GA Res 53/30, adopted 23 November 1998, reprinted in UN GAOR, 53rd Sess, Supp No 49, vol I at 39, UN Doc A/53/49 (1999) recording an agreement that future resolutions on Security Council reform would require a two-thirds majority vote. The legal advice was leaked to, or obtained by, a reporter.

[49] On behalf of the S-5, Ambassador Paul Seger of Switzerland stated that with regard to the legal arguments, 'with all due respect, we find that utterly wrong and biased': UN Doc A/66/PV.108 at 5 (16 May 2012).   [50] UN Doc A/66/PV.108 at 6 (16 May 2012).

[51] Singapore was a member of the S-5, but is not a member of ACT.

[52] Austria, Chile, Costa Rica, Denmark, Estonia, Finland, Gabon, Ghana, Hungary, Ireland, Jordan, Liechtenstein, Luxembourg, Maldives, New Zealand, Norway, Papua New Guinea, Peru, Portugal, Rwanda, Saint Vincent and the Grenadines, Saudi Arabia, Slovenia, Sweden, Switzerland, Tanzania, and Uruguay.

[53] These six are Chile for 2014–15, Jordan for 2014–15, Luxembourg for 2013–14, New Zealand for 2015–16, Rwanda for 2013–14, and Uruguay for 2016–17. A seventh ACT State was also elected to serve for 2014–15, but Saudi Arabia declined to assume the seat because of

methods of what it terms 'today's Security Council', emphasizing that its reforms relate to the Council 'in its present' or 'current composition' so as to put aside, from a strategic perspective, the highly contested aspects of wider Council reform in order to focus efforts on the implementation of what it calls 'concrete and pragmatic' steps to encourage the Council to work in a 'more transparent, accountable and inclusive way'.[54] ACT's activities do not consider the questions of Council membership and expansion, nor do they aim to interact with the IGN process on comprehensive Security Council reform.[55] To date, ACT's efforts have been coordinated by Switzerland, which had also assumed a leadership role within the S-5.

ACT has expressed a desire for changes both within the Council and in the Council's relations with all UN States, arguing for improvements in how States are informed about Council activities and 'to the extent possible, *involved*' in its decision-making process.[56] In summary form, ACT wants more public and open meetings, more interactive briefings and substantive exchanges of views, enhanced consultations with the wider UN membership, and informal meetings organized by Council members with representatives of civil society, various UN bodies, and regional organizations. ACT has also called for a 'fairer and more inclusive' allocation of tasks within the Council, drawing attention to such matters as the process for deciding who chairs a subsidiary body or who 'holds the pen' for drafting a Council text. ACT has also called for a 'more pronounced conflict prevention perspective' to animate the Council in its work so as to identify potential risks and take action at an early stage. ACT has described itself as being composed of several teams working on different topics, on different tracks, that are advancing at different speeds.[57] However, for 2015, ACT decided to focus on three areas of priority, specifically: the selection and appointment process for the next Secretary-General; the voluntary suspension of the use of the veto in situations of atrocity crimes; and improvements to the substance and analytic quality of the Council's annual report,[58] (with 'analytic' being the word used to express a desire for the report to provide explanations and reasons for Council actions).

what it called the 'Security Council's inability to carry out its duties and assume its responsibilities': Letter dated 12 November 2013 from the Permanent Representative of Saudi Arabia to the United Nations addressed to the Secretary-General, UN Doc A/68/599 (14 November 2013).

[54] 'Factsheet: The Accountability, Coherence and Transparency Group: Better Working Methods for Today's Security Council' (June 2015) distributed by the Mission of Switzerland to the United Nations in New York, at <https://www.eda.admin.ch/content/dam/mission-new-york/en/documents/ACT-Factsheet-2015.pdf>.

[55] A position emphasized in a statement made by Switzerland on behalf of ACT during the annual open debate on working methods held in 2013: UN Doc S/PV/7052 at 19 (29 October 2013).

[56] ACT Factsheet 2015 (n 54) [emphasis in original].

[57] 'ACT: The Accountability, Coherence and Transparency Group: Better Working Methods for Today's Security Council' (August 2013) distributed by the Mission of Switzerland to the United Nations in New York, at <https://www.eda.admin.ch/content/dam/eda/en/documents/aussenpolitik/internationale-organisationen/ACT%20Fact%20Sheet.pdf>. [58] ACT Factsheet 2015 (n 54).

To date, ACT's activities have included the preparation of submissions to the Council[59] and the dissemination of jointly agreed statements of position, particularly during the Council's annual open debate on working methods,[60] as well as the close monitoring of the work of the Council's Informal Working Group on Documentation and Other Procedural Questions, with a view to influencing outputs and encouraging follow-up.[61] ACT also hosts formal and informal discussions among States, and supports efforts to disseminate accurate information and informative analysis concerning the Council's working methods. These efforts have included the co-hosting of seminars on the topic, including a March 2014 event with the NGO 'Security Council Report',[62] a leading not-for-profit organization known for its timely and informative analysis of Council matters. Security Council Report was led, at the time, by the former Foreign Minister, and former Ambassador of Costa Rica to the UN, with Costa Rica having been an S-5 State.[63] The efforts of both ACT and Security Council Report were also acknowledged expressly in the concept note prepared by Azerbaijan in advance of the 2013 open debate on working methods.[64]

As for ACT's more recent efforts, by the end of 2015, the Council had taken steps towards the making of more open arrangements for selecting a new Secretary-General,[65] and in December 2015, the Council released a note

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[59] See, in particular, Letter dated 1 June 2015 from the Permanent Representative of Switzerland to the United Nations addressed to the President of the Security Council, UN Doc S/2015/400 (1 June 2015) recommending a more open and transparent process for the nomination of candidates for the position of Secretary-General. This letter prompted the Council to hold its first discussion on the upcoming selection process on 22 July 2015 under 'Any other business': Letter dated 15 October 2015 from the Permanent Representative of Spain to the United Nations addressed to the Secretary-General, UN Doc S/2015/793 at 3 (15 October 2015).

[60] See UN Doc S/PV.7052 at 19 (29 October 2013); UN Doc S/PV.7285 at 26 (23 October 2014); and UN Doc S/PV.7539 at 22 (20 October 2015).

[61] See, for example, Letter dated 30 April 2014 from the Permanent Representative of Switzerland to the United Nations addressed to the President of the Security Council, UN Doc S/2014/312 (1 May 2014) commending the efforts of the Working Group to ensure the full participation of all Council members, while also using the opportunity to circulate an ACT proposal to establish a practice of designating co-penholders so as to foster more meaningful participation for non-permanent Council members.

[62] As mentioned by Sweden during the annual open debate on working methods held in 2014: UN Doc S/PV.7285 (Resumption 1) at 7 (23 October 2014). Sweden also mentions the report, 'Working Methods of the Security Council: A Tale of Two Councils?' (Security Council Report, 2014) at <http://www.securitycouncilreport.org/special-research-report/security-council-working-methods-a-tale-of-two-councils.php>.

[63] Bruno Stagno Ugarte served as Executive Director of Security Council Report from 2011 to 2014, Foreign Minister of Costa Rica from 2006 to 2010, and Ambassador to the United Nations from 2002 to 2006. He is a signatory to the November 2005 and March 2006 letters from the S-5, discussed at notes 35 and 36.

[64] Letter dated 16 October 2013 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc S/2013/613 (17 October 2013).

[65] On 15 December 2015, the President of the General Assembly and the President of the Security Council circulated an unprecedented joint letter marking the start of a reformed Secretary-General selection process: UN Doc A/70/623-S/2015/988 (17 December 2015). See also 'Revitalization of the Work of the General Assembly', GA Res 69/321, adopted 11

outlining changes to be made with respect to its annual reports.[66] Led by the efforts of Liechtenstein,[67] ACT has also broadened its approach to the veto, developing a voluntary code of conduct containing a pledge to support timely and decisive Security Council action in situations involving atrocity crimes, as well as a pledge not to vote against credible draft Security Council resolutions aimed at preventing or ending these crimes.[68] Running in parallel with efforts led by France, and then by France with Mexico,[69] to have the permanent members commit to a political declaration on the suspension of the veto in mass atrocity situations, ACT's code of conduct was pitched to all States, as either current or future potential Council members. The ACT initiative has attracted support from over 100 States, 82 of which gave their commitment in time for the Code's official launch in October 2015.[70] Among the permanent members, both France (speaking with Germany),[71] and the United Kingdom, have given their support to the ACT code of conduct, although the latter required a modification to the text to ensure that it referred to a 'credible' resolution.[72] (It assists that France and the United Kingdom have not cast a formal veto since December 1989).[73]

Lastly, it should be noted that UN reform, including Security Council reform, has also attracted interest from the Elders, a group of global leaders led by former UN Secretary-General Kofi Annan,[74] whose past efforts in pushing

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September 2015, UN Doc A/RES/69/321 (22 September 2015) to be reprinted in UN GAOR, 59th Sess, Supp No 49, vol III, UN Doc A/59/49 (2016) para 35.

[66] Note by the President of the Security Council, UN Doc S/2015/944.

[67] Liechtenstein's Ambassador Christian Wenaweser was also a signatory to the November 2005 and March 2006 letters from the S-5 discussed at notes 35 and 36. Both Wenaweser and Stagno Ugarte (n 63) have also served as President of the Assembly of States Parties to the International Criminal Court.   [68] UN Doc S/PV.7539 at 22 (20 October 2015).

[69] France and Mexico co-hosted a ministerial-level meeting on the proposed political declaration on the suspension of veto powers on 30 September 2015, with France later reporting that the initiative had received support from '80 other States on all continents': UN Doc S/PV.7539 at 19 (20 October 2015). France, however, has led this effort, with French President François Hollande having, two years earlier, 'propos[ed] that the permanent members of the Security Council define a code of conduct such that in cases of mass crimes, they may collectively decide to renounce the right of veto': UN Doc A/68/PV.6 at 34 (23 September 2013). The French Foreign Minister also penned an op-ed column calling upon the permanent members to refrain from using the veto in situations of mass crime, but with an exception for cases where vital interests were at stake: see Laurent Fabius, 'A Call for Self-Restraint at the UN' *New York Times* (4 October 2013); Laurent Fabius, 'Réformer le droit de veto au Conseil de sécurité' *Le Monde* (4 October 2013).   [70] UN Doc S/PV.7539 at 22 (20 October 2015).

[71] UN Doc S/PV. 7539 at 19 (20 October 2015).

[72] Statement by Ambassador Matthew Rycroft of the UK Mission to the UN at the ACT Group Event on the Code of Conduct, 1 October 2015 at <https://www.gov.uk/government/speeches/im-proud-to-say-that-the-united-kingdom-is-signing-up-to-the-act-code-of-conduct>.

[73] The two countries joined the United States in vetoing a resolution to condemn the invasion of Panama. The draft resolution can be found as UN Doc S/21048 (22 December 1989). See further, United Nations, 'Security Council – Veto List' (undated) at <http://research.un.org/en/docs/sc/quick/veto>.

[74] The official website for The Elders can be found at <http://www.theelders.org/>.

for reforms are well known.[75] In February 2015, the Elders articulated a set of proposals,[76] which would, in their view, make the Council 'more democratic' and 'more representative of the world of today,' while also making the UN more effective.[77] While no mention is made of working methods reform as such, the Elders have called for the permanent members to pledge not to use, or threaten to use, the veto in crises where populations are threatened with mass atrocities; although, the Elders add the following qualifier: 'without explaining, clearly and in public, what alternative course of action they propose, as a credible and efficient way to protect the populations in question'.[78] The Elders have also called for a new process for choosing the Secretary-General; a topic that has also attracted civil society interest,[79] as well as alternative campaigns, including those aimed at selecting the first female Secretary-General.[80] There is concern, however, that restraint of veto initiatives and the Secretary-General selection process, much like the issue of Council expansion, divert attention from the efforts to secure enhancements in the Council's day-to-day procedures for making its decisions.

III. THE RULES OF PROCEDURE

A. The Council's Role in Determining Its Rules

As is often said, the Council is the master of its own procedures, although this is also the case for other principal organs that are composed of member States.[81] Article 30 of the UN Charter makes clear that: 'The Security Council shall adopt its own rules of procedure, including the method of selecting its President'. Thus, some have argued that Council working methods reform is a subject matter for the sole and exclusive consideration of the Council,[82] although Article 30 does not preclude the making of suggestions by others, with the use of Arabic being an example of an initiative that came from the General Assembly.[83] In addition, the direction found in Article 30 does not stand

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[75] See, for example, 'In Larger Freedom: Towards Development, Security and Human Rights for All: Report of the Secretary-General', UN Doc A/59/2005 (21 March 2005) at paras 167–170.

[76] 'Strengthening the United Nations: Statement by The Elders' (7 February 2015) at <http://theelders.org/sites/default/files/2015-04-22_elders-statement-strengthening-the-un.pdf>.

[77] The Elders, 'A UN fit for Purpose' (undated) at <http://www.theelders.org/un-fit-purpose>.

[78] 'Strengthening the United Nations: Statement by The Elders' (2015) (n 76) 2.

[79] See, for example, the '1 for 7 Billion' campaign at <http://www.1for7billion.org/>.

[80] See, for example, the 'She4SG' campaign at <http://www.womansg.org/>.

[81] See arts 21 and 72(1) of the UN Charter with respect to the General Assembly and the Economic and Social Council respectively. The Secretariat is a principal organ, but it is not composed of member States.

[82] Russia, for example, takes the view that 'the working methods themselves and decisions on their possible modification are the preserve of the Security Council': UN Doc S/PV.7539 at 17 (20 October 2015).

[83] See 'Use of Arabic in the Subsidiary Organs ...', GA Res 35/219, adopted 17 December 1980, UN Doc A/RES/35/219, reprinted in UN GAOR, 35th Sess, Supp No 48 at 251, UN Doc A/35/48 (1981).

alone, with Article 31 indicating that a specially affected non-Council-member State may participate, without vote, at the discretion of the Council,[84] while Article 32 makes clear that 'a party to a dispute under consideration by the Security Council shall be invited to participate, without vote'.[85] In addition, under Chapter VII of the UN Charter, Article 44 provides for the participation in a Council decision on military action of those States that have placed their forces at the Council's disposal under Article 43. Since no State has entered into a special agreement under Article 43, Article 44 is of no direct application. However, its inclusion in the Charter reflects support for the view that troop-contributing countries deserve some degree of participation rights; a point expressed at the San Francisco conference of 1945 as the principle of 'no military action without representation'.[86]

Like the Security Council, the League Council was similarly charged with determining its own procedures, although in practice, the League Council preferred to operate on an *ad hoc* basis. Indeed, the League Council did not adopt its own rules of procedure until 26 May 1933, 13 years after its first meeting in 1920.[87] Some aspects of process were, however, determined by the organization's constitutive instrument, with decisions by the League's Assembly and Council, for example, requiring the agreement of all League members represented at the meeting.[88] League practice, however, provides an early suggestion that process matters may well differ from substance, since 'matters of procedure at meetings' could be settled by a majority vote.[89] It was also stipulated that non-Council members were to be invited to meetings concerning 'the consideration of matters specially affecting the interests of that Member of the League'[90] – a participatory approach that finds resonance within the UN Charter with respect to the Security Council.

Unlike its predecessor, the Security Council adopted its rules of procedure at its first meeting in 1946, ostensibly on an interim basis, with the rules being

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[84] Kelsen reports that this, indeed, was also the practice under the Covenant for the League of Nations, with the League Council deciding whether a State was specially affected: H Kelsen, 'Organization and Procedure of the Security Council of the United Nations' (1946) 59 HarvLRev 1087, 1090–1.

[85] See further F Soltau, 'The Right to Participate in the Debates of the Security Council' (2000) 25 South African Yearbook of International Affairs 1.

[86] See Summary Report of Sixth Meeting of Committee III, Doc. 320, 14 May 1945 in *Documents of the United Nations Conference on International Organization* (San Francisco, 1945) vol 12 at 316, with attribution to the Netherlands. See also Report of Mr.' Paul Boncour, Rapporteur, on Chapter VIII, Section B, Doc. 881, 10 June 1945 in *Documents of the United Nations Conference on International Organization* (San Francisco, 1945) vol 12 at 504 confirming that the committee's acceptance of the principle. See also Kelsen (n 84) 1093.

[87] B Simma, D-E Khan, G Nolte and Andreas Paulus, eds, *The Charter of the United Nations: A Commentary* (3rd edn, Oxford University Press 2012) vol 1, 1039.

[88] Covenant of the League of Nations, 28 April 1919, (1919) 13 AJIL Supp 128, in force 10 January 1920, art 5. See further J Stone, 'The Rule of Unanimity: The Practice of the Council and Assembly of the League of Nations' (1993) 14 BYBIL 18.

[89] Covenant of the League of Nations (ibid) art 5.   [90] ibid, art 4.

described and entitled as 'provisional'.[91] These rules had been drafted by Committee 2 of the Preparatory Commission of the United Nations, which was the body established at the San Francisco conference in June 1945, reporting to an Executive Committee.[92] Some committee members, reflecting on their experience at the San Francisco meetings, were convinced that if the Assembly and Councils 'did not, at the very beginning of their existence, adopt precise and detailed provisional rules of procedure they would wallow in lengthy and exasperating debates on procedure … that would interfere with the speedy and effective discharge of their duties'.[93] However, not all agreed that there was a need for any detailed guidance, with some believing that the Council would have to operate not with rules but 'in the light of its day-to-day experience'. Others argued that 'in view of the very general nature of the provisions of the Charter … it would be helpful if a complete set of rules of procedure … were prepared'.[94] Thus, the resulting recommendations made to the Council were something of a compromise, with the committee's representative concluding in 1945 that: 'Like all compromises, it is not entirely satisfactory.'[95]

Pragmatism was to hold sway within the drafting discussions, as well as an understanding that any recommendations could, or would, be changed by the Council. Detailed recommendations concerning the conduct of Council business did not attract the support necessary for recommendation from Committee 2 to the Executive Committee, and from there to the Preparatory Commission, while some matters, such as the nomination and appointment of a new Secretary-General, were recognized as requiring the future development of special rules.[96] The committee also drew up a list of matters for possible future inclusion in the Council's 'permanent' rules of procedure, with this list including the 'pacific settlement of disputes; the taking of enforcement action;'

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[91] UN Doc S/PV.1 at 11 (17 January 1946).
[92] See 'Interim Arrangements Concluded by the Governments Represented at the United Nations Conference on International Organization' (26 June 1945) reprinted in Report of the Preparatory Commission of the United Nations, UN Doc PC/20 at 143–44 (23 December 1945).
[93] From the memoirs of a Canadian diplomat who participated in the San Francisco conference, the Executive Committee, and the Preparatory Commission: E Reid, *On Duty: A Canadian at the Making of the United Nations, 1945–1946* (Kent State University Press 1983) 143.
[94] 'Observations by the Acting Chairman on the Work of the Committee on the Security Council' in Report by the Executive Committee to the Preparatory Commission of the United Nations, UN Doc PC/EX/113/Rev.1 at 44 (12 November 1945).   [95] ibid.
[96] ibid 45. Art 97 of the UN Charter provides that: 'The Secretary-General shall be appointed by the General Assembly on the recommendation of the Security Council.' Past interpretations of this provision have meant that the real decision-making is done by the Council, with the discussion and decision to be made 'at a private meeting' (*Provisional Rules of Procedure* (n 5) rule 48), although, practices have developed to make use of straw polls and informal consultations to gauge support and encourage, or discourage, certain candidates. For the 2016 selection, the Council and Assembly have agreed to pursue a more open process (see note 65), and candidacy information has been posted to the website of the President of the General Assembly at <http://www.un.org/pga/70/sg/>.

and rules on the Council's relations with other principal organs, including the Economic and Social Council.[97]

The method for selecting a Council President provides an apt example of the approach taken, where it was recommended 'on practical grounds' and as a measure that 'will occasion least controversy' to permit each State to serve as President for a one-month term, proceeding in the English alphabetical order of their names, because this would 'allow each member of the Security Council, including those elected for one year only, to hold office in the first year'.[98] (Egypt, Mexico and the Netherlands were then serving one-year terms, while Australia, Brazil and Poland were serving two-year terms). Several States thought that this method was to be used only for a 'short initial period',[99] while France pushed for the French alphabetical order, noting that this would avoid having three of the permanent members serve sequentially (namely, the Union of Soviet Socialist Republics, the United Kingdom, and then the United States of America).[100] Yet today, it remains the rule that the presidency is held 'in turn by the members of the Security Council in the English alphabetical order of their names' for 'one calendar month',[101] although innovation has allowed the chairs of subsidiary Council bodies to serve one-year terms.

Similarly, on the contentious matter of the languages to be used, both the Executive Committee and the Preparatory Commission opted for the continued use of the language rules that had been agreed at San Francisco for both the Council and the Assembly.[102] From a pragmatic perspective, such an approach would enable the new organs to begin their work without delay, while also ensuring that the question of principle was to be decided by the organ itself rather than the Preparatory Commission. But it also meant that of the five official languages then recognized, only English and French were designated as the working languages, meaning that these were the languages used for translations. Recognizing that both Russia and China were to be permanent Council members, and recognizing the probability of a Spanish-speaking country on the Council, the Soviet Union had argued that 'the question of working languages was especially important for the proceedings of the Security Council' and had only agreed to the proposed language rules as a temporary measure.[103] It was not until the late 1960s that amendments

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[97] 'Observations by the Acting Chairman on the Work of the Committee on the Security Council' (n 94) 45–6. Australia and Canada appended a joint reservation to the committee's report to draw the attention of the Preparatory Commission to this last matter.

[98] ibid 44.   [99] ibid.   [100] ibid 45.

[101] *Provisional Rules of Procedure* (n 5) rule 18.

[102] See 'Language Rules Adopted at San Francisco by the Steering Committee of the United Nations Conference on International Organization' followed by 'Language Rules Proposed in the Report by the Executive Committee to the Preparatory Commission' included as Appendix I to Report of the Preparatory Commission of the United Nations (n 92) 119–21.

[103] See 'Extract from the Summary Record of the Eighth Meeting of the Technical Committee on the Security Council, at which Language Rules were Discussed' in Report of the Preparatory Commission of the United Nations (n 92) 122–3.

were made to the Council's rules of procedure to recognize other working languages, with Spanish and Russian added in 1969, Chinese in 1974, and Arabic (as both an official and working language) in 1982.[104]

A third topic of controversy was the matter of access to the records of private meetings, it having been agreed that verbatim records would be kept of public meetings. The topic had attracted much debate, with the Executive Committee recommending that only a summary record should be kept of private meetings, and that access to these records should be limited to those who attended the meeting, and the Secretary-General, to encourage freedom of discussion. Several States objected to this proposal, viewing the Security Council as an organ that acted on behalf of the membership, and thus all members should have a *right* to access the records of its proceedings.[105] It was also argued that there was a *need* for such access since it was recognized that the Assembly and the Council might well be dealing with the same matters simultaneously, while others argued for broad rights of access to enable the Assembly to serve their desired oversight role. Norway's delegate, however, made the prescient point that granting wide rights of access would lead the discussion of delicate matters to take place elsewhere, as between some or all members, in informal meetings[106] (which has indeed been the case, with official records kept for public (open) and private (closed) meetings, but not for informal discussions, even when formally organized). In light of the rotational nature of Council membership, it was also recognized that new members might need to consult past summary records, but even Syria, then a key proponent of rights of access, had recognized that the Council would need the discretion to limit access to records 'dealing with persons, or with the application of sanctions'.[107] In the end, the Preparatory Commission decided against recommending any rules providing a right of access to the records of private Council meetings, emphasizing that the issue was one for the Security Council itself to decide.[108]

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[104] See Resolution 263 (1969) adopted by the Security Council on 24 January 1969, UN Doc S/RES/263 (1969); Resolution 345 (1974) adopted by the Security Council on 17 January 1974, UN Doc S/RES/345 (1974); and Resolution 528 (1982) adopted by the Security Council on 21 December 1982, UN Doc S/RES/528 (1982). The informal working language among Council members is English.

[105] See 'Extract from the Summary Record of the Fourth, Sixth and Seventh Meetings of the Technical Committee on the Security Council, concerning Rule 31 of the Rules of Procedure' in Report of the Preparatory Commission of the United Nations (n 92) 125–9.

[106] ibid 127. [107] ibid 125.

[108] As explained at the Council's first meeting by Ambassador Zygmunt Modzelewski, the representative for Poland, and a former chairman of committee 2: UN Doc S/PV.1 at 3–4 (17 January 1946). Modzelewski would later be the Soviet candidate for the post of Secretary-General in 1950: SD Bailey, *The Procedure of the Security Council* (Clarendon Press 1975) 2.

B. The Permanence of the 'Provisional' Rules

Seventy years later, the rules of procedure that were adopted in 1946 are still largely in use today, and in light of their staying power, the provisional rules are, in practice, permanent rules. Immediately upon their adoption, a 'Committee of Experts' had been established to consider their further development,[109] and its efforts resulted in several amendments to the rules from 1945 to 1950,[110] addressing such matters as the registration of communications from NGOs (indicating that Council–civil society interaction is not a new phenomenon),[111] the participation of the Secretary-General at the Council,[112] and the presentation of credentials—the latter being a topic not covered by the Preparatory Commission. The Committee of Experts was also responsible for combining the rules concerning the publicity of meetings and of records into one section, since it felt that 'these matters were in fact closely allied',[113] but stark divisions on matters such as voting led to committee stalemates and inactivity, and apart from the eventual resolution of the languages issue, the Council's 'provisional' rules of procedure have remained untouched since 1950.

From time to time, there have been calls for wholesale reform, often timed with key anniversaries. For example, at a 1985 Council meeting held to commemorate the UN's fortieth anniversary, the Deputy Prime Minister and Minister of Foreign Affairs for Egypt suggested that the various mechanisms of the Council would be 'enriched and made more effective by updating and rationalizing the Council's rules of procedure', noting that 'despite their adoption 40 years ago, [the rules] remain provisional and not comprehensive or final'.[114] However, the Egyptian minister also expressed interest in making the rules 'flexible enough to meet the requirements of international relations, taking into account the experience acquired over the years';[115] with flexibility preserved by a degree of discretion. Ten years later, in the mid-1990s, similar calls to revise the rules and remove the 'provisional' designation could be heard within the Open-ended Working Group and during the General Assembly's debate on the Council's annual report.[116]

In the mid-2000s, the call for revision appeared to attract greater interest, particularly from developing States, with some advocates now drawing upon a 'rule of law' theme for support (often along the lines of knowing the rules

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[109] UN Doc S/PV.1 at 11 (17 January 1946). For a discussion of its work, see Report of the Security Council to the General Assembly, UN Doc A/93 at 86–89 (3 October 1946).

[110] The rules were amended at the 31st, 41st, 42nd, 44th and 48th meetings of the Security Council, on 9 April, 16 and 17 May, and 6 and 24 June 1946; at the 138th and 222nd meetings, on 4 June and 9 December 1947; and then at the 468th meeting on 28 February 1950.

[111] See further UN Doc S/PV.31 at 116–18 (9 April 1946).

[112] See further UN Doc S/PV.44 at 310–1 (6 June 1946).

[113] Report of the Security Council to the General Assembly (1946) (n 109) 89.

[114] UN Doc S/PV.2608 at 20, para 215 (26 September 1985).   [115] ibid.

[116] SD Bailey and S Daws, *The Procedure of the UN Security Council* (3rd edn, Clarendon Press 1998) 391.

and having them consistently followed). The securing of change through discretionary practice also attracted scorn, with South Africa opining in 2008 that 'as long as the rules of procedure of the Council remain provisional, those changes [made in practice] will always seem inadequate'.[117] The formalization of the Council's rules was strongly supported by the Non-Aligned Movement, ostensibly as a means to improve transparency and accountability;[118] with this position expressed in the Final Document of the Movement's high-level Summit Conference held in July 2009,[119] and in subsequent summit documents thereafter.[120] For some, the continued use of 'provisional' rules is an anomaly to be addressed, but others, such as the Philippines, have argued expressly that the adoption of finalized rules would be an indication of the Council's commitment to the rule of law.[121] An initiative undertaken by Austria from 2004 to 2008 on the role of the Security Council in strengthening a rules-based international system provides support for this view, with the final report of the 'Austrian Initiative' also concluding in favour of the adoption of formal rules of procedure.[122]

These calls have continued into the 2010s, with Egypt, for example, continuing to remind the Council of the importance both it and the Non-Aligned Movement attaches to the issue of improving the Council's working methods,[123] describing the replacement of the provisional rules as 'an initial and concrete step' towards wider improvements.[124] This position also finds support within the African Group, with Sierra Leone in 2010 expressing a desire for 'thorough reform' in relation to the rules.[125] While recognizing that change has occurred, those within the S-5 group have also described the provisional rules as being 'neither adequate, nor adapted to the needs of

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[117] UN Doc S/PV.5968 at 15 (27 August 2008).
[118] ibid 33. See also UN Doc S/PV.7285 (Resumption I) at 20 (23 October 2014).
[119] Letter dated 24 July 2009 from the Permanent Representative of Egypt to the United Nations addressed to the Secretary-General, UN Doc A/63/965-S/2009/514 (14 September 2009) annex, para 66.9.
[120] See, for example, para 82.9 of the Final Document of the sixteenth Ministerial Conference and Commemorative Meeting of the Non-Aligned Movement held in May 2011, annexed to Letter dated Letter dated 29 June 2011 from the Permanent Representative of Egypt to the United Nations addressed to the Secretary-General, UN Doc A/65/896-S/2011/407 (7 July 2011).
[121] UN Doc S/PV.5968 (Resumption 1) at 9 (27 August 2008). See also Letter dated 29 August 2008 from the Permanent Representative of the Philippines to the United Nations addressed to the President of the Security Council, UN Doc S/2008/589 (2 September 2008).
[122] The final report and recommendations from the Austrian Initiative, authored by its rapporteur Professor Simon Chesterman, then of New York University, can be found annexed to Letter dated 18 April 2008 from the Permanent Representative of Austria to the United Nations addressed to the Secretary-General, UN Doc A/63/69-S/2008/270 (7 May 2008). Recommendation 2 states: '… As part of a commitment to the rule of law, the Council should adopt formal rules of procedure rather than continuing to rely on provisional rules.' On the initiative generally, see KG Bühler, 'The Austrian Rule of Law Initiative 2004–2008: The Panel Series, the Advisory Group and the Final Report on the UN Security Council and the Rule of Law' (2008) 12 MaxPlanckYrbkUNL 409.
[123] UN Doc S/PV.6300 at 21–2 (22 April 2010).
[124] UN Doc S/PV.6672 at 25 (30 November 2011). See also UN Doc S/PV.7052 at 28 (29 October 2013).   [125] UN Doc S/PV.6300 at 27 (22 April 2010).

today,' noting how technological change has greatly accelerated the speed with which information is conveyed both within and outside the Council chamber.[126] The approach of the S-5 has also attracted support from others, with Ireland in 2012, for example, calling for the adoption of formal rules of procedure so as to 'add structure to the Council's working methods and … make them more transparent to the wider membership'.[127] In 2014, Saint Lucia acknowledged 'with disappointment that the rules of procedure continue to be provisional even 70 years after the Council's creation';[128] while India called for the adoption of 'clearly defined working procedures … by the time our Organization celebrates its 70th anniversary in September 2015'.[129]

In rebuttal, the United States, among others, has emphasized the need for the Council to retain its ability to act quickly, and with flexibility, albeit while working within long-standing rules.[130] These are views shared by others, both permanent and non-permanent, with both efficiency and effectiveness being reoccurring themes within discussions on Council working methods. Indeed, Sir Michael Wood, writing in his personal capacity in the mid-1990s, reminded his readers of the 1952 warning by then UN Secretary-General Trygve Lie that: 'The Council should not commit itself to procedures which in practice might prove to be excessively rigid, since each dispute with which the Council has to deal has unique characteristics.'[131] A similar appraisal was made years ago by Professor Julius Stone in relation to the League Council,[132] and the position also finds support in the words of another FCO Legal Counsellor, who explained succinctly at a 1992 workshop: 'That they are described as "provisional" is not without significance. The Council can, and does, depart from them whenever it considers it necessary.'[133]

IV. LOOKING BEYOND THE RULES

A. *Working Methods and Presidential Notes*

To focus solely on the rules of procedure would not, however, provide a complete picture as to the Council's working methods, given the reliance on developments through practice. Pragmatism and flexibility have led to innovation, with efforts having been made to enhance the transparency of the Council's activities and to engage in timely consultations with non-Council members, particularly with countries contributing troops to UN peacekeeping

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[126] UN Doc S/PV.6672 at 15 (30 November 2011).
[127] UN Doc S/PV.6870 at 33 (26 November 2012).
[128] UN Doc S/PV.7285 at 14 (23 October 2014).
[129] UN Doc S/PV.7285 (Resumption I) at 30 (23 October 2014).
[130] UN Doc S/PV.6870 at 19–20 (26 November 2012).
[131] Report of the Secretary-General, UN Doc A/2170 at para 102 (18 September 1952) as cited in Wood (n 1) 150.   [132] See Stone (n 88) 42.
[133] A Aust, 'The Procedure and Practice of the Security Council Today' in R-J Dupuy (ed) *The Development of the Role of the Security Council* (Martinus Nijhoff 1993) 365.

operations. Some of these changes have also received formal recognition from the Council through the adoption and publication of what are entitled 'Notes by the President of the Security Council'. Although opaque in title, and thus not immediately accessible to the new diplomat or commentator, these Notes nevertheless serve in essence as written supplements to the Council's rules of procedure, much like regulations may assist with the application of a statute.[134] In issuing a Note, the Council President is acting under rule 19 to represent the Council in its capacity as a UN organ, and thus presidential notes are considered consensus documents.[135] However, unlike regulations authorized by statute, a change in the Council's working methods that is recognized in a Note may still lose support over time, without amendment, or fail to be implemented fully.

The main forum in which such Notes are developed is the Security Council's Informal Working Group on Documentation and Other Procedural Questions, albeit its enthusiasm for the task has ebbed and flowed. Established in June 1993, the Working Group's creation was itself a reflection of the renewed interest among States in the Council's methods for making decisions, following the dramatic increase in Council activities after the end of the Cold War.[136] As noted above, increased State interest would also secure the establishment of an Assembly-based Open-ended Working Group on the matter of Council membership in the same year,[137] but many States were also pushing for greater openness and transparency to come from the Council itself. As explained by the late Sydney Bailey in writings contemporaneous with this period, most Council decisions were 'negotiated in private by two or three or five permanent members', there was 'rarely any public debate', and once presented with a decision within the Council, 'non-permanent members [were] expected to endorse it without being aware of the arguments pro and con'.[138] It was thought that this approach would curb the use of Council meetings to deliver 'political rhetoric' to national audiences and ensure that the Council's work was 'not delayed by the lengthy speeches of non-members'.[139] But for others, the move away from public meetings towards the greater use of informal consultations was also explained as 'the normal tendency of diplomacy reassert[ing] itself'.[140]

Not all, however, embraced this trend, with France, in particular, supportive of reforms in the mid-1990s.[141] France was also responsible, with the support of

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[134] It could be argued that unlike statutes and regulations, there is no legal hierarchy created by the Council's choice of format for publishing its decisions. See further Sievers and Daws (n 1) 374–5 and 448, fn 5. However, the analogy here is drawn on the basis of the substantive content found within the Notes.   [135] See further Sievers and Daws (n 1) 429–30.
[136] See generally J Dedring, *The United Nations Security Council in the 1990s: Resurgence and Renewal* (State University of New York Press 2008). See also J Pérez de Cuéllar, *Pilgrimage for Peace: A Secretary-General's Memoir* (St Martin's Press 1997).   [137] See above n 16.
[138] SD Bailey, *The UN Security Council and Human Rights* (St Martin's Press 1994) 128.
[139] ibid.   [140] Aust (n 133) 366.
[141] See, for example, the French 'Aide-mémoire concerning the working methods of the Security Council' annexed to Letter dated 9 November 1994 from the Permanent Representative of France to

other Council members, notably Brazil and New Zealand,[142] for initiating the first 'open debate' on working methods within the Council,[143] with the open debate meeting format being one that allows non-Council members to participate at the Council's invitation—a discretion that is exercised liberally in practice.[144] The 1994 open debate also led to the adoption of the Council's first presidential statement on working methods, which was used to confirm the Council's intention, 'as part of its efforts to improve the flow of information and the exchange of ideas between members of the Council and other United Nations Member States, that there should be an increased recourse to open meetings, in particular at an early stage in its consideration of a subject'.[145] Presidential statements are 'a means of conveying positions of the Council as a whole'[146] and while no legal hierarchy is created by the Council's choice of format for publishing its decisions,[147] it has been recognized that presidential statements, in contrast with resolutions, are a 'useful format for taking a decision which the Council wishes to be perceived as an "intermediate" step'.[148]

Thus, it follows that since the mid-1990s, the Council has made a number of changes to its working methods, while still retaining its flexibility. Perhaps in response to calls for the codification of these changes, the Council has also authorized the circulation of a descriptive index to facilitate easier access to the relevant Notes and Statements, first in 2002,[149] and then again in 2006,[150] with technology now allowing for an up-to-date version to be made available online. Among the changes approved by the Council have been the publication of the Council's daily agenda and a tentative forecast of its future work;[151] the circulation to non-Council member States of draft resolutions near finalization (known as 'resolutions in blue');[152] the provision of more information on each sanctions committee and on meetings with troop-

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the United Nations addressed to the Secretary-General, UN Doc A/49/667-S/1994/1279 (11 November 1994). See also the remarks of the French Foreign Minister, Alain Juppé, during the General Assembly's general debate of 1994: UN Doc A/49/PV.8 at 16 (28 September 1994).

[142] See Letter dated 18 November 1994 from the Permanent Representative of New Zealand to the United Nations Addressed to the President of the Security Council, UN Doc S/1994/1313 (18 November 1994) and Note Verbale dated 6 December 1994 from the Permanent Representative of Brazil to the United Nations addressed to the Secretary-General, UN Doc A/49/759-S/1994/1384 (6 December 1994).

[143] For a transcript of the debate, see UN Doc S/PV.3483 (16 December 1994).

[144] *Provisional Rules of Procedure* (n 5) rule 37.

[145] Statement by the President of the Security Council, UN Doc S/PRST/1994/81 (16 December 1994).   [146] Sievers and Daws (n 1) 397.   [147] See n 134.

[148] Sievers and Daws (n 1) 402. See also S Talmon, 'The Statements by the President of the Security Council' (2003) 2 ChineseJIntlL 419.

[149] Annexed to Letter dated 6 September 2002 from the President of the Security Council addressed to the Secretary-General, UN Doc A/57/382-S/2002/1000 (6 September 2002).

[150] Annexed to Note by the President of the Council, UN Doc S/2006/78 (7 February 2006).

[151] Note by the President of the Security Council, UN Doc S/26015 (30 June 1993) and Note by the President of the Security Council, UN Doc S/26176 (27 July 1994).

[152] Note by the President of the Security Council, UN Doc S/1994/230 (28 February 1994) and Note by the President of the Security Council, UN Doc S/1999/1291 (30 December 1999). A draft

contributing countries in the Council's annual report;[153] and the timely circulation of briefing notes on field operations to non-members of the Council.[154] Efforts have also been made to enhance Council engagement (as distinct from Secretariat engagement)[155] with prospective troop-contributing countries during mandate formulation,[156] and to encourage the fuller participation of all Council members in the drafting of Council texts.[157] The need to disseminate Council texts more widely has also been recognized,[158] and through practice, the Council has developed a mechanism, known as an 'Arria-formula' meeting, to carry out informal and confidential discussions with invited experts and, from 2000 on, NGO representatives.[159] (Council members also seek input from NGOs on their own and through the efforts of the NGO Working Group on the Security Council, first initiated by Global Policy Forum.)[160]

B. The Implementation of Change

The sustained implementation of change, however, remains a key concern, with some changes becoming more ingrained than others within the Council. The Council is also an organ with a changing membership, with the representatives of a new non-permanent member facing a bewildering array of presidential Notes and Statements, some of which become replaced by

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resolution in its final stage of negotiation is printed in blue ink and marked 'provisional': Sievers and Daws (n 1) 269.

[153] See, in particular, Note by the President of the Security Council, UN Doc S/2002/199 (26 February 2002, reissued 22 May 2002).

[154] Note by the President of the Security Council, UN Doc S/1999/1291 (30 December 1999).

[155] See DM Malone, 'The Security Council in the Post-Cold War Era: A Study in the Creative Interpretation of the U.N. Charter' (2002–03) 35 NYUJIntlL&Pol 487, 503–4, esp fn 51.

[156] See Statement by the President of the Security Council, UN Doc S/PRST/1994/22 (3 May 1994); Statement by the President of the Security Council, UN Doc S/PRST/1994/62 (4 November 1994); Statement by the President of the Security Council, UN Doc S/PRST/1996/13 (28 March 1996). See also Winkelmann (n 1) 55–61. See also Resolution 1353 (2001) adopted by the Security Council on 13 June 2001, UN Doc S/RES/1352 (2001) annex II.

[157] Note by the President of the Security Council, UN Doc S/2001/640 (29 June 2001).

[158] Note by the President of the Security Council, UN Doc S/1999/165 (17 February 1999).

[159] The name arises from their initial use by Ambassador Diego Arria of Venezuela in 1992, during his country's service as President of the Council. A background note prepared by the Secretariat in 2002, and reproduced in the *Working Methods Handbook* (n 3) 78–9, provides a description of the Council's practices relating to Arria-formula meetings. Council members view this as a guideline, rather than a rule, so as to maintain the flexibility of the Arria-formula meeting format, as explained by the outgoing Chair of the Documentation Working Group in 2006: UN Doc S/PV.5601 at 13 (20 December 2006). See also Sievers and Daws (n 1) 74 and their listing of all 'Arria-formula' meetings held 1992–2013 at 78–90. An updated table of Arria-formula meetings is available from Security Council Report.

[160] Malone (n 155) 508–9. The NGO Working Group on the Security Council brings together 35 major NGOs for meetings with Council ambassadors and senior UN officials, among others. Its website is found at <http://www.ngowgsc.org/>. Global Policy Forum is an independent non-profit organization, based in New York that monitors the work of the UN. Its website is <https://www.globalpolicy.org/index.php>.

subsequent texts, as well as a potential deficit in institutional memory that may impact upon the maintenance of a new procedural practice. To this end, the Council has adopted practices to assist newly elected members,[161] and the Security Council Affairs Division of the UN Secretariat's Department of Political Affairs also has a 'Security Council Practices and Charter Research Branch' that can provide guidance to new members upon request. In addition, since 2003, the Government of Finland has sponsored an annual workshop for newly elected Council members, organized under the theme of 'Hitting the Ground Running' in cooperation with others.[162] However, it must also be recognized that there are different kinds of non-permanent members (NPMs). To borrow the phrasing used by one legal adviser to an NPM, 'one might speak of 'frequent-NPM', 'recurrent-NPM' and 'occasional-NPM',' with the occasional-NPM, and to some extent, the recurrent-NPM, needing time to become familiar with the Council's working methods and practices.[163]

To this end, and given the benefits of consolidation, as well as a desire to revitalize the work of the Council's Working Group on Documentation, the Japanese mission to the UN in New York used its chairmanship of the Group in 2006, and then again in 2010, to transform the collection of various Notes and Statements into a 'concise and user-friendly' guide to the Council's working methods, to become known as 'Note 507'.[164] Note 507 was adopted by the Council with a cover note acknowledging that the goal was to 'enhance [the] efficiency and transparency of the Council's work, as well as [its] interaction and dialogue with non-Council members'.[165] To facilitate implementation, Japan also put together a helpful handbook on working methods, which was later distributed to all member States.[166] The Japanese-initiated handbook would later became a UN publication in 2012.[167]

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[161] See Note by the President of the Security Council, UN Doc S/2000/155 (28 February 2000) Note by the President of the Security Council, UN Doc S/2002/964 (22 November 2002) and Note by the President of the Security Council, UN Doc S/2004/939 (2 December 2004).

[162] Reports from the annual 'Finnish workshop' are made available the following April or May. See, for example, Letter dated 27 April 2015 from the Permanent Representative of Finland to the United Nations addressed to the President of the Security Council, UN Doc S/2015/292 (27 April 2015).

[163] A Rodiles, 'Non-Permanent Members of the United Nations Security Council and the Promotion of the International Rule of Law' (2013) 5(2) Goettingen Journal of International Law 333, 339–40. There remain challenges, however, with at least one quarter of the UN membership having never served on the Council: 'Countries Elected Members of the Security Council' (n 21).

[164] Note by the President of the Security Council, UN Doc S/2006/507 (19 July 2006) superseded by Note by the President of the Security Council, UN Doc S/2010/507 (26 July 2010) ['Note 507']. It is understood that Japan is working on a third consolidation while a Council member for 2016–17.

[165] Note 507 (n 164) para 1 (both versions).

[166] Above n 42. The 2006 version became known as the 'Blue Book' while the 2010 version became known as the 'Green Book': *Working Methods Handbook* (n 3) 4–5. It was also agreed that the Working Group would have its own webpage, which became live in 2008: Report of the Security Council: 1 August 2007–31 July 2008, UN Doc A/63/2 (2008) at 243. See further: <https://www.un.org/sc/suborg/en/subsidiary/wgdocs>.

[167] *Working Methods Handbook* (n 3) states expressly that it was 'Published by the United Nations in cooperation with the Permanent Mission of Japan to the United Nations'.

The holding of an open debate on the Council's working methods can also serve as a means for encouraging implementation, with this being the acknowledged purpose of the 2008 debate organized at the request of the S-5.[168] In the concept paper prepared in advance by Belgium to help focus the debate, attention was drawn to the 63 measures to which the Council had given its commitment in adopting Note 507 in 2006.[169] The 2008 debate attracted the active participation of 47 States, with many calling for the Council to become 'more efficient, effective, transparent, accountable and accessible'.[170] A year later, the S-5 expressed disappointment that Note 507 had not become 'part of the standard operating procedures', using the Assembly's recently initiated IGN process to circulate a further set of recommended measures 'to enhance the legitimacy, accountability and transparency of the Council's work'.[171] Then, in 2010, the Council agreed to hold another open debate on working methods, initiating what has now become an annual event, with each debate preceded by the distribution of a concept paper prepared by the chair of the Council's Working Group on Documentation to help focus the discussions. It was also after the 2010 debate that Japan led the efforts to revise and update Note 507, incorporating new information on both Council missions and informal interactive dialogues.[172]

Since 2010, there have been six more open debates on working methods hosted and held within the Council, in addition to the debates held in 1994 and 2008, with the title of the agenda item expressly emphasizing implementation.[173] Through these debates, attention has been paid to the need for the Council to make use of meeting formats that encourage greater interaction, as well as consultation with the wider UN membership. The use of video-conferencing technology has also been embraced as a means for the Council to receive briefings from the field,[174] while others have pushed for a greater emphasis on conflict prevention, suggesting that the Council receive more forward-looking briefings to help forecast future activities. There have also been calls for improvements in the Council's engagement with

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[168] Letter dated 20 June 2008 from the Permanent Representative of Switzerland to the United Nations addressed to the President of the Security Council, UN Doc S/2008/418 (24 June 2008).

[169] Letter from the Representative of Belgium to the Secretary-General, UN Doc S/2008/528 (4 August 2008).

[170] As aptly summarized in Report of the Security Council: 1 August 2008–31 July 2009, reprinted in UN GAOR, 64th Sess, Supp No 2 at 47, UN Doc A/64/2 (2009).

[171] See the Swiss Statement to the Intergovernmental Negotiations on the Reform of the Security Council: Debate on 'Working Methods' Informal Plenary (7 April 2009) and the accompanying document entitled 'S-5 Elements for Reflection', available from the Swiss Mission's website collection (n 7).   [172] See n 164.

[173] Links to the concept papers and meeting records for the annual open debates on working methods can be found at <https://www.un.org/sc/suborg/en/subsidiary/wgdocs/s/2010/507>.

[174] Reflected in Note by the President of the Security Council, UN Doc S/2012/402 (5 June 2012).

troop- and police-contributing countries,[175] with China to serve as a possible future bridge,[176] as well as calls for improved interaction with other UN organs, including the Economic and Social Council—an issue raised during the Council's founding in 1945–46.[177] The legal aspects of the Council's procedures have also attracted scrutiny, with the 2014 open debate having focused specifically on the due process aspects of targeted sanctions and the question of Council follow-up to referrals to the International Criminal Court.[178] There have also been eleven additional notes agreed to by the Council since the 2010 consolidation, and in October 2015, the Council issued a presidential statement confirming its desire to keep its working methods under continuous review 'with a view to ensuring their effective and consistent implementation'.[179]

V. A PRINCIPLED BASIS FOR IMPLEMENTATION

In reviewing the calls for change to the Security Council's working methods, it is useful to consider the content of the principles most often invoked in support of reform. These principles are expressed through the repeated use by State representatives of words such as openness, transparency, participation, inclusiveness, receptiveness, interaction, engagement, accountability, coherence and legitimacy, with mention also made of efficiency and effectiveness, although often as counterpoint considerations to the former. Tracing the historical record with respect to the development of the Council's working methods has shown both the longevity and persistence of these principles. They are also principles that resonate within the literature on global governance, and in discussions of international institutional law, as well as domestic discussions of public administration and public law. Indeed, some States in more recent discussions of Council working methods have been drawing upon a 'rule of law' approach to encourage the use of practices such as consultation and the giving of reasons to instill greater confidence in the Council. There is thus value in unpacking the meaning of the concepts most often invoked in relation to working methods reform. While recognizing the interconnectivity of the various terms used, the following analysis will focus

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[175] Reflected in Note by the President of the Security Council, UN Doc S/2013/630 (28 October 2013).

[176] The top troop and police contributors to UN peacekeeping operations are Bangladesh, Ethiopia, India and Pakistan; however, a P5 State may in future join their ranks, with President Xi Jinping's announcement made during the 2015 general debate that China will contribute a standby peacekeeping force of 8000 soldiers: UN Doc A/70/PV.13 at 28 (28 September 2015). Statistics on troop and police contributors can be found at <http://www.un.org/en/peacekeeping/resources/statistics/>.   [177] See n 97.

[178] See further Letter dated 8 October 2014 from the Permanent Representative of Argentina to the United Nations addressed to the Secretary-General, UN Doc S/2014/725 (8 October 2014).

[179] Statement by the President of the Security Council, UN Doc S/PRST/2015/9 (30 October 2015).

on transparency, engagement and accountability, before adding the principle of prevention to these discussions.

A. Transparency and the Security Council

Calls for openness or transparency in the Council's working methods have been ever present, with even the earliest discussions of Council procedures in 1945 having given rise to debates concerning private meetings and access to records. For most States, transparency is a principle that is asserted because it is 'of unconditional virtue' and 'universally perceived as a positive value'.[180] State representatives invoke the concept because it has resonance, even within international affairs, and regardless of whether it has a legal value of direct application to international institutions. As a legal principle, it is, at best, a 'practice, norm, rule or principle … generally seen as "developing" or "emerging"', according to one recent study,[181] but that does not diminish its perceived normative value. Transparency, as a general proposition, is viewed as having various benefits, notwithstanding the critique that it is also a 'pervasive cliché of modern governance' that is 'more often preached than practiced, more often invoked than defined'.[182] The availability of information about an institution and its activities is seen as a means to enhance knowledge and understanding, and as a tool to foster legitimacy, accountability, and good governance. Transparency is also valued as a means to enhance the abilities of others to participate in policy discussions and to hold decision-makers accountable by encouraging scrutiny and publicity. At the national level, where an increasing number of States have adopted access-to- or freedom-of information laws applicable to national decisions and activities,[183] transparency has been described by legal authorities as 'one of the basic values and principles governing public administration'.[184]

Defining transparency, however, is not an easy task, with one of the organizers of a recent study concluding that the concept is best understood as the dissemination of sufficient information[185] (putting aside the word's use in the fight against corruption[186]). The inclusion of sufficiency within this

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[180] A Bianchi, 'On Power and Illusion: The Concept of Transparency in International Law' in A Bianchi and A Peters (eds), *Transparency in International Law* (Cambridge University Press 2013) 1, 2.   [181] ibid 6.
[182] C Hood, 'Transparency in Historical Perspective' in C Hood and D Heald (eds), *Transparency: The Key to Better Governance?* (Oxford University Press 2006) 3, 3.
[183] See further, JM Ackerman and IE Sandoval-Ballesteros, 'The Global Explosion of Freedom of Information Laws' (2006) 58 AdminLRev 85. See also P Birkenshaw, *Freedom of Information: The Law, the Practice and the Ideal* (4th edn, Cambridge University Press 2010).
[184] *Brümmer v Minister for Social Development and Others*, CCT 25/09, [2009] ZACC 21, para 62.
[185] Bianchi, 'On Power and Illusion' (n 180) 8. See also RB Mitchell, 'Sources of Transparency: Information Systems in International Regimes' (1998) 42 International Studies Quarterly 109, 109 (defining transparency as the dissemination of regular and useful information).
[186] See, for example, the efforts of Transparency International at <https://www.transparency.org/>.

definition conveys the need for enough information to be disclosed that is useful and relevant, while also accepting that valid reasons can also prevent absolute or full disclosure. At least one UN body has embraced a similar approach, defining transparency to mean that 'information is freely available and directly accessible to those who will be affected by … decisions [taken] and their enforcement' and 'that enough information is provided …'.[187] Others, however, also want to see how decisions are made, with a committee of the International Law Association on the accountability of international organizations having defined 'the principle of good governance (or of good administration)' to include 'transparency in both the decision-making process and the implementation of the ensuing institutional and operational decisions' as well as 'access to information open to all potentially concerned and/or affected by the decisions at stake'.[188] The committee also recognized that: 'Transparency may in practice differ in format and modalities depending on the stage of the decision-making process.'[189] However, it also put forward a policy position to the effect that non-plenary organs acting on behalf of an organization's membership 'have a special obligation to act as transparently as possible, and should reduce as far as possible the number of non-public meetings', with the footnotes clearly indicating that the committee had the Security Council in mind.[190]

To determine what is possible, context must be taken into account, with the practice of diplomacy having long recognized that complete transparency, at all times, would be counterproductive to international relations. Similar considerations apply to matters of defence and national security and many national information laws contain exemptions so as to ensure that communications with foreign governments, intelligence briefings and military plans do not become public, at least not without the passage of time. Cabinet proceedings are also exempt from disclosure at the national level, and indeed, it has been suggested that the principle of Cabinet confidentiality enhances decision-making by ensuring that members are free to express themselves unreservedly at the discussion table. The analogies for the Security Council are obvious, given its creation as an executive body of limited membership, with reporting obligations to a larger assembly, and given its powers in relation to matters of international peace and security. Where the analogy may end, however, is when the Council exercises the powers of a legislature, which leads in turn to demands for the deliberative process to be more open and transparent.[191] A case has also been made for greater transparency with

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[187] United Nations Economic and Social Commission for Asia and the Pacific, 'What is Good Governance?' (undated) at <http://www.unescap.org/sites/default/files/good-governance.pdf>.
[188] Committee on Accountability of International Organizations, 'Final Report' in Report of the Seventy-first Conference held in Berlin, 16–24 August 2004 (International Law Association, 2004) 164, 172.   [189] ibid.   [190] ibid 172–3.
[191] See, for example, S Talmon, 'The Security Council as World Legislature' (2005) 99(1) AJIL 175, esp 186–8.

respect to the Council's imposition of targeted sanctions against particular individuals, groups and properties.[192]

It may be an unpopular conclusion, but from the information provision standpoint, the Council is not opaque. It does allow a wide array of information on its activities to be made available, with advancements in information technologies enabling regular and timely access to anyone with an internet connection. In contrast with national executive bodies, access is given to the Council's daily and monthly work programmes; its tentative monthly forecasts; the verbatim transcripts of its formal meetings (the *procès verbaux* or 'PV' records); the final output of its decision-making as found in resolutions, presidential statements, and press statements; the related voting records; and the texts of letters and reports sent to the Council by third parties through the Office of the Secretary-General. Many documents are provided on a timely basis, with transcripts subject to short embargo periods to allow for corrections to be made, and in contrast with many national information laws, dissemination is provided on a proactive basis, without the necessity of a request for disclosure or any demonstration of an affected interest.[193] Those so motivated can also watch live and archived videos of Council meetings and press conferences.[194] Many Council members, both permanent and elected, also make information available through their mission websites, albeit the information provided by a mission will be curated to meet that State's particular goals and interests. Social media is also being used, with the representative from one permanent member reading his Twitter handle into the record of the 2015 debate on working methods to encourage further openness and interactivity.[195]

However, if transparency is defined to include the ability to oversee how decisions are made, then there are aspects of Council practice for which only limited information is made available, with critics having focused on the Council's long-established use of informal meetings that are closed to all but the 15 Council members and for which no public record is maintained. Termed 'informal consultations' or 'consultations of the whole',[196] the use of this meeting format is not a secret,[197] with their use being announced in the daily

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[192] D Hovell, 'The Deliberative Deficit: Transparency, Access to Information and UN Sanctions' in J Farrall and K Rubenstein (eds), *Sanctions, Accountability and Governance in a Globalised World* (Cambridge University Press 2009) 92. See also D Hovell, *The Power of Process: The Value of Due Process in Security Council Sanctions Decision-Making* (Oxford University Press 2016).

[193] On the concept of proactive transparency, see H Darbishire, *Proactive Transparency: The Future of the Right to Information?* (World Bank Institute 2010).

[194] Many years have passed since the first live webcast of a Council meeting in 2002: Hulton (n 1) 246.

[195] UN Doc S/PV.7539 at 11 (20 October 2015) (United Kingdom). The hashtag #workingmethods does not, however, distinguish between Security Council related comments and those concerning the workplace.

[196] See the glossary in the *Working Methods Handbook* (n 3) 91.

[197] Indeed, a purpose-built conference room, with access to simultaneous interpretation facilities, was built in 1978 to facilitate their use: Winkelmann (n 1) 53, fn 92.

Journal of the United Nations, and while the meetings remain private (as in closed to non-members), commitments have long been made to provide non-Council States with post-meeting briefings as well as copies of any draft resolutions and statements that are introduced.[198] Critics, however, complain that so much of substance takes place at these informal meetings that the Council's public meetings serve mainly as opportunities for voting on predetermined texts and the delivery of prepared statements.[199] Rarely is it asserted that these statements, when provided, serve a reason-giving function by placing a State's position vis-à-vis a particular decision on the record, with reasons being an underlying goal of transparency. Moreover, without the prior engagement on an informal basis, there would not be a text coming forward for a vote. Indeed, there are times when the (more formal) informal consultations of the whole must be suspended to permit further informal discussions on a bilateral or multilateral basis in order to reach agreement.

Proponents of informal meetings view them as means to achieve efficiencies, with deliberations, away from the glare of publicity, perceived as more likely to foster the changing of minds and the reaching of compromise. After all, within many institutions, from national parliaments to university councils, it is not uncommon for proponents of new initiatives to circulate draft texts informally to some, if not all, the members of a politically diverse body in order to receive feedback, address specific issues through revision, and gauge support before presenting a text for its formal consideration. Such a process also ensures that initiatives without sufficient support do not occupy a body's formal meeting time. There is also the danger that requiring all meetings to be open and recorded will lead to time spent on posturing through the making of statements, some aimed at national audiences, and the non-attendance of ambassadors and deputy permanent representatives in favour of more junior staff. Moreover, as a practical matter, and one that was recognized during the earliest discussions of Council procedures,[200] any move to require informal consultations to be open and transparent would surely mean that some or all Council members would meet in advance, in private, and elsewhere. Indeed, diplomacy throughout the UN system (and elsewhere) relies on various forms of informal meetings, at various levels (from ambassador to political coordinator to legal adviser), at missions and in capitals, with off-the-record 'informal dialogues'[201] taking place between a number of subsets of Council members, including the P3, the P5, some or all of the E10, including those E10 members involved in the

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[198] See Note by the President of the Security Council, UN Doc S/1991/329 (28 February 1994); Note by the President of the Security Council, UN Doc S/1999/1291 (30 December 1999).
[199] See, for example, A Tzanakopoulos, 'Transparency in the Security Council' in Bianchi and Peters (n 180) 371–2. See also Talmon (n 191) 186. For an earlier work, written prior to the issuance of the above-noted presidential Notes, see L Feuerle, 'Informal Consultation: A Mechanism in Security Council Decision-making' (1985–86) 18 NYUJIntlL&Pol 267.
[200] See the discussion associated with n 106.
[201] See the glossary in the *Working Methods Handbook* (n 3) 92.

Non-aligned Movement (NAM), and Council members in regional groupings.[202] Some Council initiatives may also include non-Council States.[203]

Underlying any call for more transparency is a need for clarity as to the extent of the demand, recognizing from our experience with national public law that concepts such as transparency and participation are applied flexibly, taking into account context. As Anne Peters has suggested in a recent study: 'A reasonable measurement of global transparency might require that international actors maintain websites, and publish the legal acts they produce, …' but a 'different matter is access to deliberations, drafts, and working documents whose publication is more than the final decisions', adding 'subject to counter-veiling considerations', to encourage the weighing of both the negative and positive effects of transparency on deliberations.[204] (The provision of briefings to non-Council States after informal consultations of the whole suggests an attempt to balance such considerations.) If transparency means the regular and timely dissemination of sufficient information, then the Security Council has become more transparent over time, even with room for improvement. It is for this reason that seasoned diplomats, including those working within ACT, focus their calls for reform on the continuing implementation of agreed changes in practice, or on specific proposals for improving those practices, rather than generic, undefined calls for greater transparency (although such calls can have great purchase with external observers, including the media and NGOs). Efforts have also been made to demystify the Council's processes through the preparation of handbooks and the creation of dedicated webpages providing access to the relevant Notes. But if transparency means the disclosure of all compromises reached through consultations, or the motivations or negotiating scope for the P5, then the Council will never qualify as transparent.

B. Engagement with the Views of Others

Related to, and often intertwined with, the calls for the Council to be more open and transparent is a long-standing call for the Council to be more receptive to the views of others, whether expressed as desires for consultation, greater engagement (or interaction), or fuller participation. There are, however, various 'others' to which these calls may relate, ranging from the non-

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[202] As one legal adviser to an E10 State has explained, 'groups of friends' and other informal platforms for coordinating views from the wider UN membership play a significant role in assisting the E10 in their efforts to influence Council outcomes: Rodiles (n 163) 337. E10 members 'do not only bring their interests to the table, they do often represent the views of their friends outside the Council, too; be it informal groups of like-minded States or the more traditional G77, the NAM or even regional organizations' (ibid 371).

[203] Consider, for example, the efforts of the P5 + 1 (Germany) with respect to the Iranian nuclear program.

[204] A Peters, 'Towards Transparency as a Global Norm' in Bianchi and Peters (n 180) 548 and 574–83.

permanent members of the Council, who wish to be more fully involved in drafting Council products and determining Council policies, to the specially affected non-Council States and the parties to a dispute, as well as neighbouring countries, who wish their views to be heard before a Council decision is made, to prospective troop- and police-contributing countries, who need advance warning in order to plan and wish to express their views before being asked to deploy their national assets.[205] In addition, the 'others' to which the desire for fuller engagement relates may also include senior UN officials and other UN organs, other international organizations including regional and subregional organizations, all UN member States (often expressed as 'interaction with the wider UN membership'), and external experts, including NGOs. There is also variety in the desired modalities for securing greater engagement and interaction, ranging from access, attendance and observation to the sharing and presentation of views, as well as timing issues, with many wanting their interaction to take place at an earlier stage so as to have influence. Some methods of engagement are also private and off-the-record, and deliberately so, to encourage the frank sharing of views and the asking of questions. Non-permanent Council members—having a 'greater sensitivity towards the needs and views of "the rest"'—may themselves also serve as informal channels for wider engagement.[206]

As with transparency, words such as access, engagement, interaction, consultation and participation are invoked by State representatives because they have resonance and a perceived intuitive value, rather than direct legal application, within these discussions. The variety of words used suggests varying degrees or depths of desired engagement and inclusion, representing various concentric circles around the Council,[207] with those within the inner rings having greater claims to more active forms of participation, including consultation and the hearing of views in advance of a particular decision being made, while those in the outermost rings may wish to be informed of new developments or to provide the Council with more generalized views. A State or entity's assignment within the circles may also change depending on the issue or context, with the potential use of military force, for example, bringing troop-contributing countries within an inner circle, foreshadowed by the principle of 'no military action without representation'.[208] There also appear to be two underlying functions at play, with some mechanisms to enhance engagement helping the Council to gather information, while others

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[205] For recent discussion encouraging 'triangular' dialogues between the Council, troop-contributing countries and the Secretariat, see 'The Future of United Nations Peace Operations: Implementation of the Recommendations of the High-level Independent Panel on Peace Operations: Report of the Secretary-General', UN Doc A/70/375-S/2015/682 at paras 61–63 (2 September 2015). [206] Rodiles (n 163) 371.

[207] In writing about the Council's working methods in 2003–04, Hulton, then a senior political affairs officer within the UN's Security Council Affairs Division, and a former FCO legal adviser, also considered the notion of various concentric circles to be an apt description: Hulton (n 1) 241.

[208] See n 86.

seek to assist non-Council members with respect to their desire to exert a potential influence on Council decision-making.

The Council's use of visiting missions, Arria-formula meetings, and informal interactive dialogues provide examples of the above, with these mechanisms serving purposes of information gathering, as well as consultation and outreach. There have been over 50 Council visiting missions since 1992,[209] with some serving a fact-finding purpose, while others serve to convey a Council message of heightened interest in a particular situation or support for a reconciliation process. Visiting missions may also result in written, as well as oral, reports. Also since 1992, the Council has made use of Arria-formula meetings to engage in frank, informal and timely discussions with a variety of Council outsiders, including specially affected States, high-level UN officials, the heads of international organizations, and civil society representatives. However, while flexibility within the rules allows for these meeting formats to develop, their use may come at a cost to transparency, with there being no record or specific outcome arising from Arria-formula meetings, as well as some grumblings about their cost and the choice of who is selected for participation.[210] The Council has also developed the format of an 'informal interactive dialogue' to hold off-the-record discussions with international and regional organizations, UN officials, and non-Council States on situations that affect them directly.[211] As for participation from the wider UN membership, open thematic debates are another Council innovation in working methods enhancing participation, although States need to exercise restraint so as to avoid turning such debates into posturing opportunities, and to give more consideration to the coordination of their statements, so that one State can speak for several to address concerns about the efficient and effective use of Council time.[212]

There remains, however, the need to ensure the full participation, at the centre of the concentric circles, of all Council members. To this end, the Council has made a number of commitments that recognize that its elected members should

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[209] Security Council Report has developed a useful table of the Council visiting missions taking place from 1992 to 2016 at <http://www.securitycouncilreport.org/un-security-council-working-methods/visiting-mission.php>. This working method has its roots in discussions dating back to 1946, with the first formally designated 'Security Council mission' having taken place in 1964. See further Sievers and Daws (n 1) 492, esp 493. See also Hulton (n 1) 240.

[210] As suggested by Russia at the 2015 open debate on working methods: UN Doc S/PV.7539 at 18 (20 October 2015).

[211] See further Sievers and Daws (n 1) 92–4. See also, Security Council Report for a table indicating all known 'informal interactive dialogues' taking place from 2009 to 2015 at <http://www.securitycouncilreport.org/un-security-council-working-methods/informal-interactive-dialogue.php>.

[212] Russia, for example, has complained that: 'The number of speakers in open debates can exceed 100': UN Doc S/PV.7539 at 17 (20 October 2015). During this debate, there was also praise for the efforts undertaken by six States to coordinate their views in advance such that only one State needed to make a statement. The six States were Angola, Chile, Jordan, Malaysia, New Zealand and Spain; all Council members at the time.

be involved from an early stage in the Council's activities;[213] however, one also hears permanent members calling for 'more adequate consultations' with all Council States.[214] Legitimacy concerns lead to a need to address perceptions, if not the reality, that certain topics or situations 'belong' to one particular Council member or another, or that certain Council members can dictate, through a series of initially limited and then staged consultations, the content of Council products. To this end, recent initiatives to secure the Council's agreement that any Council member can 'hold the pen' with respect to initiating and steering the negotiation of Council texts will be worth tracking in future research to measure their impact with respect to encouraging full participation.[215] The designation of co-penholders might also improve collaboration at the crucial early stages of negotiation between more Council members.

C. Accountability and the Security Council

Accountability is another concept that is often invoked in discussions concerning the Security Council, including its working methods.[216] As with transparency, with which it is often joined, accountability is an evocative word, embracing 'one of those golden concepts that no one can be against',[217] even though its content remains unclear and contested. Accountability can have political, legal and financial meanings, depending on the context. It can also be used as an 'umbrella concept' encompassing various markers of good governance, including fairness, efficiency, and integrity.[218] However, at its core, accountability must refer to the giving of an account for one's actions,[219] but it must mean more than the mere provision of information as this can be achieved through transparency reforms. Information, once set free, requires evaluation and analysis in order to inform, and thus, accountability is more usefully defined as an 'obligation to explain and to justify conduct', which in turn implies the need for a forum in which to receive the account.[220]

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[213] See Note by the President of the Security Council, UN Doc S/2014/268 (14 April 2014).

[214] See the views of China at the 2015 open debate on working methods: UN Doc S/PV.7539 at 13 (20 October 2015).

[215] See Note by the President of the Security Council, UN Doc S/2014/268 (14 April 2014). There appears to have been an earlier, but unsuccessful, effort to encourage reforms to the penholder system in 2011–12: Report of the Security Council 1 August 2011–31 July 2012, UN GAOR, 67th Sess, Supp No 2 at 246 (2012).

[216] The wider application of the concept of accountability to the Council and its sanctioning regime is the focus of a special issue of the Journal of Conflict & Security Law, published as vol 19(3) (2014).

[217] M Bovens, 'Analysing and Assessing Accountability: A Conceptual Framework' (2007) 13 (4) ELJ 447, 448. See further M Bovens, RE Goodin and T Schillemans, *The Oxford Handbook of Public Accountability* (Oxford University Press 2014).   [218] ibid 449.

[219] R Mulgan, '"Accountability": An Ever-Expanding Concept?' (2000) 78(3) Pub Admin 555, 555.   [220] Bovens (n 217) 450.

In his work on unpacking the meaning of accountability, Mark Bovens concludes that: 'Accountability is a relationship between an actor and a forum, in which the actor has an obligation to explain and to justify his or her conduct, the forum can pose questions and pass judgment, and the actor may face consequences.'[221] As Bovens explains, to be effective, an accountability forum must have the ability to pose questions, so as to query the adequacy of the account or the legitimacy of the conduct, as well as the ability to pass judgment, such as through the approval of a report, the denunciation of a policy, or the condemnation of an action. For some, the judgment by the forum, or just the three stages of reporting, justifying and debating, are sufficient to qualify a relationship as one of accountability, although there is debate as to whether the possibility of sanctions (or consequences to use Bovens' term), is also required so as to differentiate the provision of information from being held to account.[222] Accountability, however, is also contextual, and thus the need for, and what counts as, consequences may vary according to the context.

Applying a narrow and nuanced understanding of what is meant by accountability for an international institution may help identify those aspects of Council practice on working methods that would benefit most from continuing or further reforms. Since its inception, the Council has been obliged by Article 24(3), read with Article 15(1), of the UN Charter to submit an annual report to the General Assembly that gives 'an account of the measures … decided upon or taken'. These annual reports can serve as a source of information about the work of the Council. However, for the annual report to serve as a vehicle for accountability, as distinct from a vehicle for enhancing transparency, the report must contain more than a descriptive listing of meetings held, decisions made, and letters received; a point that finds support in the repeated calls for the annual report to be more 'analytical' (or reasoned). Requiring the Council to provide an analysis of its past conduct leads to the provision of explanations and justifications, which in turn may serve as a tool through which past lessons may be learnt or further explored. By encouraging learning and reflection, accountability can also serve as a means to improve the Council's effectiveness. However, to serve as an accountability forum, the General Assembly must also embrace its role vis-à-vis the report. It must probe and ask questions, and provide feedback to assist with the learning objective, with the Assembly's debate concerning the Council's annual report often overshadowed by a focus on the broader issue of the Council's composition. Indeed, it was not until 2011, that the annual report was listed as an Assembly agenda item separate from the issue of equitable representation and membership.[223]

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[221] ibid.   [222] ibid 451. See also Mulgan (n 219) 556.
[223] Security Council Report, 'Adoption of the Security Council Annual Report' (26 October 2011) at <http://www.whatsinblue.org/2011/10/adoption-of-the-security-council-annual-report.php>.

It is also true, however, that dissatisfaction with the Council's annual report has existed for some time, leading to a number of proposals for reform. Most of the report is prepared in draft by the Secretariat and then approved by the Council. However, since 1997, Council Presidents have been encouraged to provide 'brief assessments on the work of the Council' that are then appended to the annual report, albeit with a warning that these 'should not be considered as representing the views of the Security Council'.[224] Since 2002, the focus has shifted to the report's introduction as the means for stimulating the desired assessment of past events and identification of areas for improvement. Over time, however, the introduction has lost its analytical edge. The introduction is prepared by the Council member holding the July presidency; however, with a reporting period running from August 1 to July 31,[225] and membership terms running from January to December, there have been times when the State preparing the introduction was not even part of the Council for part of the period on which it was reporting.[226] The sharing of a draft with other Council members (immediately past and current) was one practice that developed to assist, but this can also lead to disagreements about analytical content that are then resolved, when time is short, by resorting to factual accounts. Some drafters have also organized interactive informal exchanges to secure the views of the wider UN membership;[227] although such a practice mixes efforts to enhance consultation and engagement (a valid, but separate, matter aimed at securing proactive input) with those aimed at securing accountability through self-reflection and retrospective analysis. Presumably aware of these concerns, the Council announced in December 2015 that it will switch to a January to December reporting period starting in 2017, with this change in working methods accomplished as per usual practice by the issuance of a presidential note.[228]

Articles 15(1) and 24(3) of the UN Charter serve as the means to oblige the Council to come forward with an account for its conduct, while informal briefings and press conferences, as well as voluntary audits and periods of self-reflection, may serve as informal opportunities to present additional, and possibly partial, incomplete or evolving, accounts. Wrap-up sessions and monthly summaries, both public and private, may also serve as occasions to provide an account, particularly if interactive. They also serve to enhance transparency through the provision of information, including analytical assessments of Council activity. However, it is the formality of the annual

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[224] Note by the President of the Security Council, UN Doc S/1997/451 (12 June 1997) para 5.

[225] Note by the President of the Security Council, UN Doc S/2002/199 (22 May 2002) para 2(a).

[226] See further Security Council Report, 'UN Security Council Working Methods: Annual Report to the General Assembly' (4 February 2016) at <http://www.securitycouncilreport.org/un-security-council-working-methods/annual-report-to-the-general-assembly.php>.

[227] A past practice that is recognized in Note by the President of the Security Council, UN Doc S/2012/922 (12 December 2012) para 9.

[228] Note by the President of the Security Council, UN Doc S/2015/944 (10 December 2015).

report obligation that has particular value since it mandates an opportunity for the Assembly to receive and scrutinize, and to provide feedback, should it choose to do so. Indeed, the Council has encouraged its members to 'report back … relevant suggestions and observations raised during the General Assembly debate on the annual report'.[229] It is also possible that the Assembly's 'consideration' of the report through an annual debate may also entail consequences for the Council if, for example, the criticisms from Assembly members lead to or exacerbate divisions between Council members, especially permanent members.

D. Conflict Prevention

The last principle worth highlighting within the context of a call for a principled approach to support and sustain working methods reform is the principle of prevention. Given its primary responsibility for the maintenance of international peace and security, the Security Council clearly has a role to play in the prevention of armed conflict. However, much of its work has focused on crises and emergencies where violence has erupted, leading to renewed calls for a shift from a culture of reaction to a proactive culture of prevention in 2014.[230] Such calls echo the efforts of Kofi Annan during his tenure as UN Secretary-General.[231] Prevention is both a goal and a potential organizing principle for developing more forward-looking working methods for risk management. Back in 2001, Annan encouraged the Council to develop new mechanisms to discuss early prevention cases, while also initiating from his office a new practice of providing the Council with informal periodic briefings on potential threats to international peace and security.[232] Annan also welcomed the resumption of Council missions as having important preventive effects.[233] In response, the Council adopted a resolution affirming the centrality of conflict prevention to its work,[234] only to repeat this exercise in 2014.[235]

As with transparency, engagement and accountability, conflict prevention is a concept or term whereby an expansive approach to defining its scope risks diluting the clarity of its guidance.[236] For example, if peacekeeping operations are included, then much of what the Council does serves a

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[229] Note S/2012/922 (n 227) para 11.
[230] See the statement of the United Kingdom during the 2014 open debate on conflict prevention: UN Doc S/PV.7247 at 7 (21 August 2014).
[231] See, in particular, 'Prevention of Armed Conflict: Report from the Secretary-General', UN Doc A/55/985-S/2001/574 (7 June 2001) paras 4, 16, 24 and 169.
[232] ibid, paras 34–39. See also Resolution 1625 (2005) adopted by the Security Council on 14 September 2005, UN Doc S/RES/1625 (2005) para 3(a).   [233] ibid, para 38.
[234] Resolution 1366 (2001) adopted by the Security Council on 30 August 2001, UN Doc S/RES/ 1366 (2001).
[235] Resolution 2171 (2014) adopted by the Security Council on 21 August 2014, UN Doc S/RES/ 2171 (2014).   [236] See further EM Cousens, 'Conflict Prevention' in Malone (n 1) 101–15.

preventive aim. Council members, however, 'often view peacekeeping as a tool discrete from preventive action',[237] although the latter remains a multifaceted concept, consisting of many interconnected elements, as well as operational, structural and systemic aspects. Operational prevention, for example, refers to tools used to prevent the outbreak of violent conflict, such as early warning mechanisms and preventive diplomacy efforts, while structural and systemic prevention refer to efforts aimed at addressing underlying socio-economic factors and global risks that can contribute to conflict.[238] Conflict prevention also requires the Council's efforts to work in tandem with the efforts of many others, with the Council having recognized that the 'essential' or 'primary' responsibility for conflict prevention rests on national governments.[239]

Nevertheless, the relevance of the principle of prevention to the subject matter of the Council's working methods is gaining traction, as reflected in ACT's call of 2015 for the Council to focus more attention on the development of working methods to identify potential risks and take action at an early stage.[240] Some methods are already in place, with the Secretary-General using his first report on preventive diplomacy in 2011 to include an acknowledgement that the building of strong Council relationships with regional and subregional organizations and the Council's monthly luncheon with the Secretary-General can serve a preventive function.[241] More, however, needs to be done, with the June 2015 report of the High-level Independent Panel on Peace Operations (HIPPO), chaired by former East Timor head of State José Ramos-Horta, recommending that the Council 'seek to play an earlier role in addressing emerging conflicts', while also noting that 'interactive dialogues in informal formats and visits to turbulent areas' are 'important in addressing emerging threats'.[242] However, in his response to the HIPPO report in September 2015, Secretary-General Ban acknowledged that the Council 'has at times been hesitant to consider crises at an early stage'.[243]

One working method of interest to a preventive approach is the provision of regular, forward-looking, briefings by senior UN officials to the Council on

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[237] P Romita, *The UN Security Council and Conflict Prevention: A Primer* (International Peace Institute 2011) 3.

[238] ibid, drawing upon the work of the Carnegie Commission on Preventing Deadly Conflict, which argued for a focus on operational and structural prevention efforts rather than the more costly activities of intervention and rebuilding. See further 'Preventing Deadly Conflict: Final Report' (Carnegie Commission on Preventing Deadly Conflict 1997).

[239] Resolution 1366 (2001) (n 234) para 2; Resolution 2171 (2014) (n 235) para 3.

[240] ACT Factsheet 2015 (n 54).

[241] 'Preventive Diplomacy: Delivering Results: Report of the Secretary-General', UN Doc S/2011/552 (26 August 2011) para 12.

[242] 'Report of the High-level Independent Panel on Peace Operations on Uniting our Strengths for Peace: Politics, Partnership and People, annexed to Identical letters dated 17 June 2015 from the Secretary-General addressed to the President of the General Assembly and the President of the Security Council', UN Doc A/70/95-S/2015/446 at 11 and 33 (17 June 2015).

[243] 'The Future of United Nations Peace Operations' (n 205) para 34.

nascent situations of emerging concern. Such briefings have occurred in the past, including on a daily basis during a period in the 1990s, but they have not been successfully institutionalized within the Council as a result of political sensitivities. Nevertheless, several Council members have expressed interest in receiving informal and interactive (and thus closed and unrecorded) assessments from the Secretariat, and in particular, its Department of Political Affairs (DPA), on unfolding situations and potential risks of conflict, with the United Kingdom in recent years taking a lead role to institute what it termed 'horizon scanning' briefings.[244] The first such horizon scanning briefing took place in November 2010, during a UK Council presidency, but by 2012, and throughout 2013, support for the briefings had waned. It may well be the case that some States fear that their mention in a briefing may lead to their designation as a Council agenda item, while others dislike the role given to the DPA in identifying country-specific situations of emerging concern. Efforts since have tried to put aside the 'horizon scanning' label so as to focus instead on the provision of monthly 'DPA briefings' on thematic situations of emerging concern and on the use of the agenda item 'Any other business' to bring forward potential country-specific situations of concern.[245] There is also preventive potential in the Council's use of informal interactive dialogues to engage with countries at risk of conflict, albeit that such working methods do not advance the aims of transparency and wider interaction with the UN membership as a whole.

<p style="text-align:center">VI. CONCLUSION</p>

Although not widely acknowledged, there has been change in the working methods and procedures of the Security Council, with the Council having become more transparent and more open to engagement with a variety of actors through various channels over time. Indeed, in light of the tensions between transparency and engagement, and the progress achieved with respect to the former, it is time for the Council to shift the focus of its efforts towards improving the latter, particularly for those with rights of full participation. Given the Council's commitment to maintaining flexibility, which it views as integral to the delivery of its mandate, changes have occurred through practice marked by pragmatism, rather than through formal amendments to the Council's rules of procedure. There remains, however, the challenge of implementation, as well as continuing reform. In my view,

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[244] UN Doc S/PV.6360 at 18 (16 July 2010). Horizon scanning can also be a tool for strategic decision-making at the national level, with the United Kingdom having conducted a cross-government review of its own horizon scanning capacity in 2012, led by the then Chairman of the Joint Intelligence Committee, Jon Day.

[245] See further Security Council Report, 'Horizon Scanning Briefings' (9 July 2015). See also Security Council Report, 'In Hindsight: Making Effective Use of Any Other Business' (1 April 2016).

the response to that challenge does not lie in (likely wasted) efforts to remove the word 'provisional' from the title of the Council's rules, but rather in the development of a set of key principles of guidance to underscore and strengthen a continual evolution in practice. While principles may strike some as being too vague to generate any sense of obligation, as others have found, including the ILA Committee on the Accountability of International Organizations, the question of determining the law binding international organizations is 'a surprisingly difficult one to answer'.[246] It is this uncertainty that calls for its own pragmatic approach, with the use of a set of key principles, clarified and contextualized, being a first step towards engendering a 'rule of law' approach towards the embedding of procedural best practice into the constitutional fabric of the Council.

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[246] Final Report (n 188) 238.