

МІЖНАРОДНЕ ПУБЛІЧНЕ І ПРИВАТНЕ ПРАВО

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TO THE UNITED NATIONS SECURITY COUNCIL REFORM

This article is dedicated to the issue of the United Nations reformation process in general and the Security Council reform in particular. The authors study the problem that has had increasing importance for decades. They point out the main concepts of the Organization and main matters of argument when it comes to the process of the Security Council reform. These include: the matter of enlargement, the matter of veto, the matter of representation.

Moreover, in the paper some approaches to reform's execution are stated, as well as a brief analysis of how they might affect the Organization in general.

Key words: United Nations, Security Council, reformation, veto, enlargement, representation.

Problem statement. The issue of the United Nations Security Council reform has been a matter of discussion for decades now for it has proven to be ineffective in many ways in the last fifty years. It is utterly important now because all the agreements that were achieved after the World War II don't work anymore. Since the events in Ukraine the very system of international relations is crumbling and is it vital to find the way to fix it. The problem to do so raises one of the history's most dangerous questions: must we await a serious conflict before the common sense comes into play?

Analysis of recent researches and publications. Specialists in different subjects such as international law, international relations have been trying to find answers to the most important questions since the first signs of need of the UN reformation appeared. Their works are dedicated to different aspects

of the matter, or address the problem in general. Some theorists are trying to find an optimal solution to change the currently existing veto system whereas others are looking for a way to improve the representation inside the Security Council in order to make it as effective and efficient as possible. Among them we would like to distinguish Fassebender B., professor of Gallen University, Switzerland, whose publications 'UN Security Council and the Right of Veto: A Constitutional Perspective' and 'The United Nations Charter as the Constitution of the International Community' provide detailed insight on the problem of veto. We would also like to mention Luck E. C. and Weiss, T. Whose publications «UN Security Council: Practice and Promise» and «The Illusion of UN Security Council Reform» respectively provide a more critical view on the reformation process.

Paper purpose. Given the before-mentioned reasoning, the purpose of the article is to cover the most important questions that need to be addressed in order to successfully reform the Security Council. It also covers different approaches on how to regard some of the questions that are more likely to be addressed in the near future as well as those that don't have a definite answer yet.

Paper main body. The United Nation Security Council (hereinafter — UNSC) is the main executive body in the United Nations structure. Its main responsibility is the maintenance of peace and stability in the world. The UNSC was created in 1945 during the San-Francisco Conference when the Charter of the United Nations was signed (came in force on 24 October 1945). It is one of six UN Principal Organs, others being General Assembly, Economic and Social Council, Secretariat, International Court of Justice and Trusteeship Council (suspended operation on 1 November 1994, as on 1 October 1994 Palau, the last United Nations Trust Territory, became independent). All of the UN Principal Organs are located in the New York City, USA except for International Court of Justice which is located in Hague, the Netherlands [2].

The UNSC has been central in the conduct of global politics since its creation. However, while the global community has undergone massive change during that period, the Security Council has remained unaltered. To understand the main challenges that must be faced in order to reform the UNSC and the UN in general it is of utmost importance to understand what principles the UN as an organization is based on. Those are: the UN is a voluntary association; its members are self-determined and sovereign; they are formally and solemnly deemed to be equal; considering the voluntary nature of the organization, members are granted rights and immunities; in addition to rights and immunities there are assigned some obligations; the members are called upon to harmonize their actions in order to achieve the goals of the organization [3].

The main question that arouses is what those common goals are. As stated in the Charter they include: to «save succeeding generations from the scourge of war;» to «maintain international peace and security;» to «promote social progress and better standards of life in larger freedom» and to defend and guarantee the rights of all human beings [1]. The first thing that comes into mind is that these goals are exceptionally general and seemingly impossible to

achieve which reflects the very nature of the UN — the only universal organization in the world. Other questions that appear are how this association will be organized to achieve its goals. What's the mechanism of deciding on the agenda? Was the system created to ensure that the members neither exceed their privileges, nor fail to fulfill their obligations?

The answer can be found in the Charter and it consists of two parts. First and foremost, the Charter distinguishes five members from all others. In fact, these members decide the importance of every issue and are themselves above the law. These are the Permanent Members of the Security, often referred to as the «Permanent Five» or «P-5». Second, the Charter creates an objective Secretariat to provide advice, information and recommendations. It is headed by the Secretary General of the UN that is obliged to be objective. The Charter also provides a set of contradicting arguments. On one hand, there is a notion of equality among members, common purpose and commitment. On the other hand, a group with astonishing privileges is established, which is supposed to play a dominant role — the Permanent Five [4].

When talking about what is wrong with the Security Council, we would like to quote an Indian politician and former UN employee Shashi Tharoor who made a very accurate description of the problem in his article: «The problem of reforming the Security Council resembles the situation in which a number of doctors gather around the patient and all agree on the diagnosis, but it's impossible for them to agree on the prescription. The diagnosis is quite clear: the Security Council reflects the geopolitical realities of 1945 and not of today. This situation can be analyzed mathematically, geographically, and politically, as well as in terms of equity» [3].

When the UN was founded in 1945, the Council consisted of 11 members with a total number of UN members being 51. It means that some 22 percent of the member states were on the UNSC. Today, there are 193 members of the UN, and only 15 members of the Council — fewer than 8 percent. This leads to a big number of countries, both in absolute numbers and as a proportion not feeling adequately represented on the body [2].

The current composition of the Council also resembles the balance of power of at least a half century ago. Europe, for instance, that accounts for barely five percent of the world's population still controls 33 percent of the SC seats (that doesn't include Russia, regarded by a lot of specialists as another European country).

In terms of equity, this situation is unjust to those countries whose financial contributions to the UN outweigh those of four of the five permanent members. For instance, Japan and Germany have for decades been the second- and third-largest contributors to the UN budget, at roughly 19, and 12 percent respectively, while still being referred to as «enemy states» in the UN Charter. Moreover, the current Council membership denies opportunities to other states that have contributed in other kind (i.e. through participation in peacekeeping operations) or by size, or both, to the evolution of world affairs in the more than six decades since the organization was born. India and Brazil are notable examples of this latter case [4].

For more than a decade now, the Group of Four (G4) — Brazil, Germany, India, and Japan — have been in the forefront of an attempt to execute the Security Council reform, certainly expecting to earn their way of becoming the permanent members. From this new problems arouse.

Firstly, smaller countries understand that they will in no way benefit from these changes and they're quite content competing with each other every two years for a place of a temporary Council member. There are medium-sized countries who resent this kind of reform for it leads to selected few breaking free from their current second-rank status in the world. Some of these countries (Canada and Spain for example) consider the very existence of permanent membership wrong and they don't want to add up to the already existing «sin» by approving this kind of enlargement. Other countries that are thwarting the process of reformation are guided by different principles: a spirit of competition, historical unfairness or simple envy. These countries have created a coalition previously called a «coffee club» and now «Uniting for Consensus» [4].

The second problem is a very complicated procedure of accepting amendments to the UN Charter. It requires a two-thirds majority of the UN membership — 128 of the 193. Then it would need ratification by the same two-thirds of the membership. As ratification is a parliamentary procedure in many countries, it is easy for particular forces to halt the process [1].

Finally, what countries would the world want to see on an expanded SC? The answer is obvious: states that displace some weight in the world and have major contributions to the UN whether financially or in other ways. But if Germany and Japan mentioned earlier do make it into the UNSC it will further skew the existing North-South balance which means that they'd need to be balanced out by new permanent members of the developing world. The question here is who those members should be?

Can it be India in Asia, the world's largest democracy, and fifth-largest economy? But Pakistan which positions itself as its main opponent on the sub-continent and Indonesia don't fancy India being a member of the «permanent club». Similarly, Brazil in Latin America occupies the same position as India in Asia but its neighbouring countries, namely Mexico and Argentina, point out that a Portuguese-speaking country cannot represent a largely Hispanic region. And talking about Africa, how should one determine whether the continent's largest democracy, Nigeria, its largest economy, South Africa, or its oldest civilisation Egypt is worth a place [3]?

Another major problem is the «power of veto», established by Chapter IV of the UN Charter which allows any of the Council's permanent members to prevent the adoption of any non-«procedural» draft resolutions. The Permanent members are the United States, the United Kingdom, France, the Republic of China, and the Russian Federation (formerly the Union of Soviet Socialist Republics). This power they wield often prevents the Council from acting according to the situation where it needs be [1].

For example, the UNSC didn't pass any resolutions on the major conflicts of the Cold War period, including the Soviet invasion in Czechoslovakia, the

Vietnam War, and the Soviet invasion in Afghanistan. Additionally, it applies to the selection of the UN's Secretary-General, as well as any amendments to the UN Charter (Articles 108, 109), which gives them great influence [1].

Thinking about why the veto power was given to these chosen members, the answer is very simple: these were the so-called victor powers of World War II. The argument behind giving them the power of veto was that these five countries are ready to argue successfully against surrounding opposition and that unless these powers were given to them, there would be no new Organization.

The representative of the United States, at San Francisco, stated: 'the great powers could preserve the peace of the world if united...they could not do so if dissention were sowed among them. The great powers had every reason to exercise the requirement of unanimity for high and noble purposes, because they would not want again to expend millions in wealth and lives in another war' [4]. He warned that killing the veto would kill the Charter.

The representative of the Soviet Union said: 'the agreement on a joint interpretation [that is of the veto power] would facilitate the creation of a truly effective and efficient international organization for the maintenance of peace' [4].

The representatives of France and China adopted similar positions, but the position of the representative of the United Kingdom deserves particular attention. He said: 'The present voting provisions were in the interest of all states and not merely of the permanent members of the Security Council. Peace must rest on the unanimity of the great powers for without it whatever was built would be built upon shifting sands, or no more value than the paper upon which it was written. The unanimity of the great powers was a hard fact, but an inescapable one. The veto power was a means of preserving that unanimity, and far from being a menace to the small powers, it was their essential safeguard. Without that unanimity all countries, large and small, would fall victims to the establishment of gigantic rival blocs which might clash in some future Armageddon. Cooperation among the great powers was the only escape from this peril; nothing was of comparable importance' [4].

The matter of veto is strongly interconnected with the problem of enlargement for there seems to be less support across the full UN membership for new veto wielders than there is for the abolition of the veto altogether. Understanding the signal, they announced they would voluntarily forgo the privilege of a veto for ten years, but this did not noticeably add momentum to their cause. Considering a very specific nature of the problem it is safe to say that this question will be a subject of discussion for a long time. Abolition is not the only solution there is. Other proposals to reform the veto power include: 1) limiting the use of the veto to vital national security issues; 2) requiring agreement from multiple states before exercising the veto.

The main problem with the veto is that its reform will require the consolidated position of the Permanent members of the Security Council more than anything else. Considering that it would lead to them sharing their unique powers with others or even more, being deprived of these powers, it is very likely that this matter will not be addressed in the near future [3].

Conclusions. To conclude the article we would like to emphasize that in the point of view of many international law and international relations scientists as well as former and current UN employees the perspective of complex UN reformation is rather vague and indefinite. Considering the scale of the Organization it is important to understand that the consolidated will of most countries in the world is required in order to successfully complete this process. There are many concepts of how to address certain issues that cause the highest degree of discussion as well as those that are not directly connected with the Security Council activity — finances, transparency, etc. These require not so much of world's united effort as every member's responsibility in their obligations fulfillment.

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ЩОДО РЕФОРМУВАННЯ РАДИ БЕЗПЕКИ ООН

Резюме

Статтю присвячено питанню про реформування Ради Безпеки ООН як одного із головних органів Організації. Автори досліджують сучасний стан цього процесу, його еволюцію та перспективи. Вони виокремлюють основні принципи, на яких побудована ООН, а також різноманітні підходи до вирішення найголовніших питань, які виникають в експертному середовищі: про розширення Ради Безпеки, про право вето, про принципи прийняття рішень, про відповідність організації Ради Безпеки сучасному стану міжнародних відносин.

Ключові слова: Організація Об'єднаних Націй, Рада Безпеки, реформування, розширення, вето.

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О РЕФОРМИРОВАНИИ СОВЕТА БЕЗОПАСНОСТИ ООН

Резюме

Статья посвящается вопросу о реформировании Совета Безопасности ООН как одного из главных органов Организации. Авторы исследуют современное состояние этого процесса, его эволюцию и перспективы. Они выделяют основные принципы, на которых построена ООН, а также различные подходы к решению наиболее важных вопросов, возникающих в экспертной среде: о расширении Совета Безопасности, о праве вето, о принципах принятия решений, о соответствии организации Совета Безопасности современному состоянию международных отношений.

Ключевые слова: Организация Объединенных Наций, Совет Безопасности, реформирование, расширение, вето.