



PROBLEMS OF UN SECURITY COUNCIL REFORM AND ITS LEGITIMACY

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ABSTRACT

This article discusses the role of the United Nations Security Council in international security law and the need to reform the Security Council as the main organ charged with the maintenance of international peace and security. The author deeply analyzes main issues of reform of the Council and proposals of states in this regard. In particular, formats of cooperation on reforming the Security Council, such as the Big Four, the Consensus Group, the Annan Plan, and the African Group will be more widely covered. In the article, the author develops several proposals for the effective organization of the Council's activities.

KEYWORDS

Security Council, UN Charter, permanent and non-permanent members, veto power, representation.

INTRODUCTION

The United Nations Security Council is the main body of the international community for peacekeeping and conflict resolution. Unlike the decisions of the General Assembly, its decisions (called resolutions) are binding on all member states. This means that it has wide-ranging powers and, if necessary, can take actions such as imposing sanctions that impinge on state sovereignty. It is necessary for the Security Council to have these powers listed in Chapter VII of the UN Charter. The Security Council is a central part of international security law. The Council must have the necessary authority and legitimacy so that its

resolutions are respected and implemented by all countries. This means that the organ should be represented. Today, at a time when the realities of the world community are undergoing deep changes, the legitimacy, effectiveness and representativeness of the Security Council are under question.

In addition to the geographically balanced distribution of non-permanent members, the United Nations Charter clearly states that states are elected based on their participation in maintaining international peace and security and achieving other goals of the

Organization (Article 23 of the UN Charter). The current composition of the Security Council reflects the geopolitical situation in 1945, configuration of global power at the end of World War II and its expansion according to the 1963's amendment to the Charter (which entered into force in 1965) on increasing the number of non-permanent members to 10, however it did not significantly change the organ's activity. Given that the current composition of the Council was formed in 1945 and since then 142 new countries have joined the United Nations, this Council cannot be representative of today's world security system of more than 200 countries.

The need to reform the organization was previously expressed by some scientists in the early 90s of the last century after the end of the Cold War (J.Morris[1], M.Baccarini[2], E.Martini[3]), other scientists (N. Mustafayeva[4]) emphasize that this topic has become especially relevant at the beginning of the new millennium. In fact, the push for reform began about a decade after the organization's founding, when minor amendments to decision-making (Article 27 of the UN Charter) and membership (Article 23 of the Charter) of 1965 reduced the power of five permanent members. Although it reduced to a certain extent, their legal authority to determine the world order remained almost unchanged[5]. It is clear that in the current, extremely difficult international situation, the main attention in this process should be focused on the reform of the UN Security Council as the main body responsible for maintaining international peace and security.

As another factor to confirm the need for reform, it can be shown that the adoption of consensus decisions by the Council is complicated by the intensified geopolitical conflicts between the five permanent members of the Security Council (Russia, Great Britain, China, USA, France). According to Russian scientist

V.Y.Sergeyev, these reforms primarily concern their national interests (conflicts in Syria, Ukraine, Libya, Myanmar, Yemen, Palestine) and mass casualties of civilians and humanitarian disasters (mass migration, epidemics, natural disasters)[6].

A catalyst for the debate on council reform is the use of veto power by permanent members, which has become significantly more frequent in recent years. Enlarging the size of the Council (increasing regional representation or intruding new states to permanent member category) and the Council's decision-making process (the question of veto) are most disputed.

The issue of reforming the United Nations Security Council has been discussed for more than 20 years. In the United Nations Secretary General Report on "Our Common Agenda" the topic is included with three main aspects[7]:

- 1) Expanding the composition of the Security Council;
- 2) working methods used by the Security Council in its activities;
- 3) Mechanism of implementation of Security Council decisions.

It can be seen that the first issue is the most controversial of them within the framework of the discussion of reforms in the UN.

In order to develop the best option for Security Council reform, an Open Working Group was established by the General Assembly on 3 December 1993 to consider all aspects of Security Council membership and other issues related to the Security Council. This group became known as the "never-ending task force" because of how long it took to reach an agreement. Today, representatives of more than 100 UN member

states, including 5 permanent members of the Security Council, participate in the work of the Working Group.

At the annual sessions of the General Assembly, the Group reports on the progress of its activity. The reports are of particular interest because they allow identifying the most pressing issues of states' positions with the Security Council, as well as on the reform of this Council.

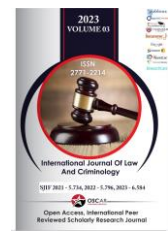
Over the past years, the composition of the Council, the number of new permanent and/or non-permanent seats, new categories of membership, the distribution of the seats by geographical or financial contribution and many other issues have been discussed. They also include the majority of votes required in the event of an expansion of the Council, the veto power of current permanent members and the possible new permanent members.

The open working group was divided into 2 groups. The first group concerns the number of members and issues related to membership (UN Security Council enlargement: determining which categories are to be enlarged (non-permanent and permanent, including issues of privileges, powers and enlargement); making decisions, including maintaining, limiting or revoking the veto; periodic review of the expansion of the Security Council). And the second group concerns the issues of the working methods of the Council and its transparency (improving the transparency and working methods of the UN Security Council; the participation of non-permanent members in the activity of the UN Security Council; the relationship between the UN Security Council and the General Assembly and other organs). But the common position in both groups was that it is desirable to increase the number of seats for non-permanent members[8].

In general, the enlargement of the Security Council involves complex issues. Although the number of the Member States has increased with the amendment of 1965, the size only involved the elected seats rather than permanent members. Africa (54 members, 0 permanent seat), Asia (54 members, 1 permanent seat) and Latin America and Caribbean States (33 members, 0 permanent seats) remain underrepresented [9], while conflicts in these regions take up more than 50 percent of the council's gatherings. When it comes to non-permanent seats, more than 50 UN member states have not yet served on the council [10].

Finding suitable candidates for regional representation is the main problem. For example, according to the Freedom House non-governmental organization, only five of the candidate states are listed as fully free (Brazil, South Africa, Japan, Poland, and Germany) in the democracy rating[11]. Looking at the Human Freedom Index, Brazil and South Africa are slightly above average[12]. In this regard, India is the most likely candidate for permanent membership, but China and India are rivals with an ongoing border dispute. Russia does not support the inclusion of Western members, opposes the inclusion of Japan or Germany, while the United Kingdom, France and the United States oppose the membership of countries with weak human rights protection or democracy.

In September 2008, with General Assembly Resolution N° 62/557, member states agreed to move the fifteen-year deadlock on Security Council reform from the Open Working Group to Intergovernmental Negotiations in an informal plenary session. According to Ambassador Zahir Tanin, Permanent Representative of Afghanistan to the UN and Chairman of Intergovernmental Negotiations, the purpose of this change in the scope of negotiations was to bring the process closer to a form that could lead to a decision on this issue.



Analysis of the activity of the Council shows that in its reform, special attention should be paid to 5 main issues, including: membership categories, regional representation, relations between the Security Council and the General Assembly, veto rights and working methods[13]. Every member state recognizes the need for the Security Council to be more representative and accountable, and every member sees the current situation as an anachronistic legacy of the post-World War II order, but there is no reached consensus among different factions on how to shape the Council. Many factions such as G4, Group for Consensus, Annan Plan, African Group have divergent positions on the means of reform.

The majority of UN members support the reform of the Security Council, including the expansion of both its categories (permanent and non-permanent seats). By 1992, Japan and Germany had become the second and third largest contributors to the United Nations, respectively, and began demanding a permanent seat. Brazil (the fifth largest country by area) and India (the first country by population) also saw themselves as permanent members, as the most powerful countries in their respective regional groupings. This group of four countries formed an interest group later known as the G4. The Group of Four (G4), consisting of Brazil, Germany, India and Japan, called for the creation of new permanent seats to be chosen from among the most economically powerful and influential countries of the international community. Their main argument for expanding to the category of permanent members is that the new centers of power should be more fully represented in the main body responsible for international peace and security.

On the other hand, their regional rivals opposed permanent membership of the G4 with veto power. They were in favor of expanding the category of non-permanent seats with members elected on a regional

basis. Italy, Pakistan, Mexico and Egypt began to form an interest group known as the "Coffee Club" or later "United for Consensus" (UfC). On July 26, 2005, under the leadership of Italy, Italy, Pakistan, Argentina, Canada and Colombia proposed to the General Assembly the composition of the Security Council, which retained five permanent members, but increased the number of non-permanent members to 20. In May 2011 in Rome, 120 UN member states participated in the Consensus Unification Meeting[14].

Along with the UfC countries, Italy also opposed the G4 proposal and strongly objected to Germany and Japan joining the UN Security Council as permanent members. Italy emphasized its position that the admission of the two countries that were defeated in the Second World War is a discriminatory step against other countries that were defeated in the war. Italy and Spain have expressed their concern that their status is expected to decrease due to the possible expansion of the Council at the expense of Germany and Japan. Canada, on the other hand, advocates not only reducing the number of permanent members, but also supporting their replacement with regional organizations[15].

At the same time, the African group began to demand two permanent seats for themselves due to historical injustice and the fact that most of the main issues on the council's agenda are concentrated on this continent. These two seats were to be permanent African seats to be awarded on a rotating basis among African countries selected by the African Group.

On March 21, 2005, then-UN Secretary General Kofi Annan called for consensus on expanding the UN Security Council to 24 members (a plan called "Greater Freedom"). He proposed two alternatives to implement this plan, including:

1) Plan A provides for the creation of six new permanent members as well as three new non-permanent members for a total of 24 seats on the board.

2) Plan B provides for the creation of a new category of members who serve for four years with the condition of renewal and the allocation of eight seats to them, as well as the creation of one additional non-permanent seat, for a total of 24 members.

Existing permanent members, each with veto power, announced their positions on Security Council reform. The United States supported the permanent membership of Japan and India and the addition of a small number of additional non-permanent members. The UK and France largely supported the G4 position, favoring the expansion of permanent and non-permanent membership and the permanent membership of Germany, Brazil, India and Japan, as well as more African representation in the council. China has supported stronger representation from developing countries, including India. Russia also approved India's candidacy for permanent membership of the Security Council.

According to N. Mustafayeva, a professor of international law at the Moscow State Institute of International Relations, the rule of law should be of great importance in the establishment of the activity of the Council, and the efforts in this regard should include the mechanisms of justice. She suggests that it also include efforts to establish peaceful conflict resolution mechanisms. In support of this opinion, we also believe that the Council should have more opportunities to use the mechanisms of criminal justice while taking measures to maintain international peace and security and serve as a guarantee of the inevitability of punishment for international crimes. We believe it is necessary. In particular, when domestic

institutions are unwilling or unable to prosecute perpetrators of international crimes, the Council should consider appropriate coercive measures, including referral to the International Criminal Court under the Rome Statute, as well as cooperation in prosecuting perpetrators. Especially currently in the issues related to the crime of ecocide, the Security Council should play a decisive role in determining the jurisdiction of the International Criminal Court[16].

In addition, the Council should be limited to using its emergency powers for emergency purposes. The exercise of such powers should be time-limited and subject to periodic review. The Council should, as a rule, allow the participation of affected States as parties to the conflict (for example, although not members of the Security Council under Articles 31 and 32 of the UN Charter) and, where possible, individuals.

In order to prevent conflicts and to stabilize the post-conflict environment, the Security Council should strive to strengthen cooperation with regional structures and organizations (ASEAN, SCO, NATO) that can support the legal order at the regional level. Measures for the maintenance of international peace and security and the involvement of regional structures or agencies in the peaceful resolution of disputes and further expansion of cooperation with them, which are contained in Chapter VIII of the UN Charter (Articles 52-54), are another part of the reforms of this body. should be rotated.

Summarizing the results of the above analysis, we can say that today's Security Council is not in harmony with current realities, especially the Council's composition and decision-making processes need to be reformed. In this regard, every member state recognizes the need for a more broadly representative and accountable Security Council, and every member sees the current situation as a continuation of the post-World War II

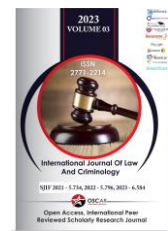


order, but what a reformed new Council should look like. There is no single opinion. The right of veto of permanent members is contrary to the principle of sovereign equality of states in international law. The effectiveness of the Council's activity is decreasing year by year, which causes mistrust of the Council and disrespect for its decisions. The main reason for this is that it is power-based rather than rule-based.

We believe that the solidarity of states plays a special role in order to ensure the effectiveness of the body's work, to increase the sense of trust among the states in relation to the council, and to play the role of a fair defender of the world legal order. The UN General Assembly is an appropriate platform for agreeing on the appropriate format of reforms.

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