

THE DEMOCRATIC LEGITIMACY OF THE UNITED NATIONS SECURITY COUNCIL: PROBLEMS AND SOLUTIONS

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Abstract: The United Nations Security Council has the primary responsibility for the maintenance of international peace and security. Most of the debates and analysis regarding the UN Security Council make specific references to the need to reform this organ considered to be out of date in the view of the changes at the international level since 1945 when the Charter has been adopted. The article analysis the democratic legitimacy of the Security Council and the possible reforms that could lead to an increase of its input and output legitimacy.

Key words: United Nations Security Council, democratic legitimacy, reform, world governance, peace and security

1. Introduction

The United Nations system was created more than seven decades ago with the view to ensure the peace and international security of the world so devastated by World War II. And although seven decades have passed, the United Nations has not been reformed in order to reflect the new international system realities. Even during the Cold War, but most strongly since the 1990s, the UN has been accused of lacking legitimacy and voices have been raised on the need to reform the system. Any propose for reform should be based on a analysis of the legitimacy of the UN system, and in this sense the article proposes reforms to be implemented both in what regards the input legitimacy but also on the output legitimacy. Although the literature on the legitimacy is quite numerous (see for example Robert D. Lamb-*Rethinking Legitimacy and Illegitimacy*¹), the input and output legitimacy of the United Nations Security Council are generally discussed separately, or there is no distinctions between the two (see for example Martin Binder and Monika Heupel - *The Legitimacy of the UN Security Council: Evidence from Recent General Assembly Debates*²), and rarely proposed for reforms are proposed starting from the legitimacy problems identified. There is a high number of papers that propose reforms for the UN Security Council that do not specify why and how these reforms shall strengthen the UN legitimacy. The current analysis proposes to fill, at least partially this gap, and to derive proposals for reforms after a thorough consideration of the main sources of input and output illegitimacy of the United Nations Security Council.

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2. The United Nations Security Council

The United Nations system was created in 1945 as a response to the destructions caused by World War II but also due to the failure of the League of Nations which was created immediately after World War I. The United Nations Charter stipulates the aim of the organization, its main organs, but also the principles on which the new world order was supposed to rely upon. The supreme aim of the organization was defined as being maintaining peace and security, by guaranteeing that armed force is to be used only for the common interest of the states that form the international community³. In this sense, probably the most important principles stipulated in the Charter is that of non-use of armed force, which accepts only two exceptions: the use of force as complementary measures adopted by the United Nations Security Council in case of threat to the peace, breach of the peace, or act of aggression, and the use of force to individual or collective self-defence.

Having 51 founding member states, the United Nations has become in time the world's largest intergovernmental organization, gathering today 193 member states. The UN has two categories of organs: main organs (Security Council, General Assembly, Economic and Social Council, Trusteeship Council, International Court of Justice and the Secretariat) and subsidiary organs which are established by the main organs and have delegated competences. While the General Assembly of the UN is the only organ that ensures the equality in vote and representation of all member states, the Security Council is a permanent organ and the most powerful one in the UN system.

The United Nations Security Council is formed out of 15 members, out of which 5 are permanent members (United States, Great Britain, China, Russia and France) and have the right to veto any decision taken by this organ, which in practice means that all five members need to agree to any measure adopted within the Council or at least abstain. The other 10 non-permanent members are elected for a period of two years on geographical criteria with the aim to ensure a proportional representation of all continents, races and peoples. In practice, 3 members are selected from Africa, 2 members from Western Europe, 2 members from Latin America and Caribbean, 2 members from Asia, 1 member from Eastern Europe. The presidency of the Council is ensured through rotation each month in the alphabetical order of its member states. Because of its powers, the Council needs to be able to act rapidly in case of international emergencies, leading to the necessity for each of its member states to have a representative at the headquarter of the Security Council in New York City at any moment.

The decisions adopted by the Council, in contrast with the ones adopted by the General Assembly, are binding upon all member states, and the functions it performs can be split up into two main categories: peaceful settlement of disputes and adoption of enforcement measures⁴, meaning that it has the primary responsibility for the maintenance of international peace and security. The Security Council has the following powers and functions: to maintain international peace and security in accordance with the principles and purposes of the UN; to investigate, any disputes or situations which led to international conflict and recommend methods of settlements; to formulate plans for the establishment of a system to regulate armaments; to

determine the existence of a threat to the peace or act of aggression and to recommend appropriate action to be taken; to call on member states to apply economic sanctions and other measures not involving the use of force to prevent aggression; to take military action against an aggressor. In addition, the UN Security Council also has administrative tasks, such as adopting recommendation on the admission of new member state, making recommendation to the General Assembly to appoint the Secretary-General, and elect the judges of the International Court of Justice together with the General Assembly.

In exercising its powers and functions, the Security Council acts in the name of all of the United Nations members, whether members or not of the Security Council. The vote in the Security Council is based on the rule one nation-one vote, but as mentioned already some votes are more important than other due to the veto power that belongs only to the major world powers. As a consequence, for a resolution to be adopted, two conditions need to be met: the favorable vote of minimum 9 members, out of which all five permanent members. Still, any member can abstain from voting, and the abstain does not equal a veto, and all members have the obligations not to vote when they are involved in a dispute subject to vote.

3. The Democratic Legitimacy of the United Nations Security Council

Most of the debates and analysis regarding the UN Security Council make specific references to the need to reform this organ considered to be out of date in the view of the changes at the international level since 1945 when the Charter has been adopted. Although in the last years debates have been raised regarding the legitimation of international institutions, in the case of the proposals to reform the UN Security Council the connection between legitimacy and membership has been treated as unproblematic, or even self-evident, as Ian Hurd correctly notices⁵. But, if the Security Council is considered one of the most, if not the most, powerful institution at international level, then the problem of legitimacy becomes even more crucial if we consider that good and effective governance depends on legitimacy.

In the case of the Security Council, as in the case of many other international organizations which have been created decades or even centuries ago, Matthew Stephen correctly assesses that one can talk about a legitimacy drift. This appears when an organization loses legitimacy by failing to adapt to the changing environment resulting from three sources: failure to live up to pre-existing standards (broken promises), changes in the standards of legitimacy by which organizations are assessed (shifting standards), and changes in an organization's relevant public (audience shift)⁶.

In order to analyse the level of democratic legitimacy of the UN Security Council and how can this be improved through specific reforms and adapted to the changing environment, we first need to answer to the question on what legitimacy is, democracy being considered one of the most powerful instruments of legitimation. Legitimacy means that "persons subject to the binding rules made by political authorities, or at least the overwhelming majority of them, must accept that the political institutions making those rules have a right to do so"⁷, in other words it means the right to govern. A political system is legitimate if it complies with three

conditions: input legitimacy (democracy), output legitimacy (performance) and identity.

It was Fritz Scharpf that introduce the two normative criteria of legitimacy, the input and the output. Input legitimacy, or simple known as democracy, require political systems to be based on the will of the people and addresses the issue of responsiveness to citizen concerns as a result of participation by people. The output legitimacy, or simple known as performance, refers to the effectiveness of policy outcomes for people.

The Security Council appears to suffer from problems at both input and output legitimacy. In what concerns the input legitimacy, which concerns the will and participation of the people in the decision-making system, the membership of the Security Council clearly affects significantly the democratic legitimacy of this institution. The Security Council is formed out of only 15 UN member states, out of which five, the permanent ones, dominate the institution and benefit from the veto power. Moreover, at the input dimension, the Council has often been accused of failing to comply to common standards of inclusiveness, transparency and accountability⁸. In these circumstances, it is not a surprise that the UN Security Council has become to be seen by politician, scholars as well as people around the world as an elite pact that holds the future of the international community in its hands. In most cases, states affected by the Council actions are excluded from the decision-making process, which is rarely transparent and understandable to the general public.

The output or performance legitimacy measured the ability of an institution to effectively solve the problems and needs of the people. Since the input legitimacy is often a problem in what concerns the international organizations as procedures and composition are rarely fair for all members, the performance becomes even more important and can be measured by the level of which the institutional organization fulfills the mandate or specific aim for which it has been created. The United Nations has as main aim to maintain the international peace and security and the Security Council has been specifically design in such a way as to allow a fast and effective response of the international community to preserve international peace and security.

Measured in these terms, of capacity to maintain international peace and security, the performance of the Security Council can best be viewed as modest: failures have often been more evident than successes, from the humiliating defeats in the Balkans to the withdrawal from Rwanda, selectivity has been a rule in responding to international crises during as well as after the Cold War, and the Council has not been able to limit the use of power in international relations by the so-called great states. The UN interventions has often been affected by both logistics and political problems, including muddled mandates, inadequate resources, and the interests of major powers.

Most of the scholars agree that the UN Security Council composition and the voting rule have constantly undermined the performance legitimacy of the institution. But, at the same time, any discussion about changing composition and a possible enlargement of the Council have been framed by the opposition as a trade-

off between legitimacy and efficacy. But this trade-off is not very clear when a small organ is not efficient, as the records have shown so far.

4. Restoring the Legitimacy of the United Nations Security Council

So far it has been evident that the United Nations Security Council is not working well and is not entirely legitimate, both in terms of input and output. The main question is whether and how the legitimacy of the Security Council can be restored. Throughout the decades, many proposals have been raised inside the United Nations and in the academic forums, but so far little has been done in terms of restoring the legitimacy of the United Nations Security Council.

The first attempts to reform the UN Security Council date back to the 1950s and they focused on changing the decision procedure and changing the composition of the Security Council, and even discussing the veto right. Although these reforms could have been discussed at the 10th anniversary of the United Nations, no changes were adopted, and further on any reform attempts were hampered by the atmosphere of the Cold War. The only reform of the Council was adopted in 1963 and raised the number of non-permanent members from six to ten.

In the 1990s it became clear that the most stringent problem regarded the number of members of the Security Council, but any proposal was to be unsuccessful due to the opposition of states that were to be left outside of the new Council. Moreover, in the 1990s a resolution was adopted through which any change in the composition of the UN Security Council needed to be adopted by two thirds of the UN members, making any reform even more difficult than before.

In order to restore the input legitimacy of the Security Council, the membership problem needs to be addressed in order to ensure that this institution reflects the will of the people in as much as possible. Because, as correctly assessed by Matthew Stephen, „the legitimacy of an institution such as the Security Council is predicated on representing the countries of principal industrial and military strength, the emergence of new major powers outside the institution will lead to a decline in this aspect of its legitimacy”⁹.

During the decades many ideas have been suggested on how the composition of the Security Council can be changed in order to reflect the new realities and restore its legitimacy. Several groups of countries that share the same vision on the reform of the UN Security Council have been formed:

- The Uniting for Consensus Group (having Italy, Argentina, Pakistan and Mexico as members) proposed a Security Council of 26 members with 9 long-term permanent seats distributed among regional groups, while the rest of the seats would be held for two years;
- The G4 nations (Brazil, Germany, India, and Japan) includes the four states that support each other in obtaining permanent seats on the United Nations Security Council;
- The African Group proposes a Security Council with 26 members, out of which 2 permanent and 2 non-permanent seats to be attributed to the African states;

- ACT group represents a group of 21 states that want to revise the working methods of the Security Council in order to raise the responsibility of its members in front of the entire UN community and to increase its transparency;
- the L69 group is a cross regional grouping of 42 developing countries from Africa, Latin America and the Caribbean, Asia and the Pacific, that seeks the expansion of permanent and non-permanent members of the Security Council to better reflect realities at world level.

The current permanent members of the Security Council also expressed divergent ideas on how the future Security could look like: while The Russian Federation, United Kingdom and France support the idea of expanding the organ to about 20 members, the United States is open to a modest expansion in permanent and non-permanent categories as long as it does not diminish the Council's effectiveness or impact the veto power¹⁰, a fear expressed also by other UN members.

Any increase in the membership of the Council would enhance regional representation and therefore the Council input legitimacy, as it would create more opportunities for all member states to participate in the decision-making process.

Besides the request for expanding the Security Council, UN members states also call for removing the veto power. While the Arab Group members call for a total remove of this right, noting that it has been often used arbitrarily, other states, led by France and Mexico, consider that limiting its use is a more realistic goal than trying to eliminate it. During the UN history, the veto power has served only the national interests of those who hold it, and this situation would be even more problematic in case the number of permanent members will raise leading to more disfunctionalities in the work of the Council¹¹. Nevertheless, it is very clear that the veto power shall not be eliminated, as it would require the amendment of the UN Charter which needs the approval of all five permanent member states. The only issue to be discussed is whether the veto power shall be extended to the new permanent members of the Security Council.

On the output legitimacy of the Security Council, or simply known as performance or capacity to effectively solve the problems and needs of the people, there are many solutions that could be implemented in the near future, all depending on the will of its member states. If the UN Security Council is to deliver performance, then it needs to provide clear mandates, adequate funding and resources to all of its missions. The performance of a mission can be measured only against the mandate through which it was created, so as long as there are no clear mandates, no clear performance standards can be established. Moreover, these missions need to be financially supported and they need trained personnel that respect clear standards and ethics. Too often, mission personnel have been accused of sexual exploitation, abuse, harassment.

Though most of the time performance of the Security Council is seen as a direct consequence of its composition, Peter Nadin correctly appreciates that „more concerted efforts designed to address the Council's sometimes-deficient use of the instruments of sanctions and peacekeeping might yield a greater level of performance

than a mere ‘updating’ of the Council’s membership”¹². So until the membership and veto problems can be addressed, one of the most feasible solution to increase the legitimacy of the UN Security Council seems to be the efficient use of the instrument it has at its disposal.

5. Conclusions and Recommendations

There are several reasons why a reform of the United Nations Security Council is unavoidable and urgent: the raise in the number of UN members to 193 states, the insufficient geographical representation, lack of legitimacy, changes at international level. In this paper, we have focused on the issue of legitimacy, both at input and output, suggesting that the main solutions to increase this institution’s legitimacy is to change its composition, limit the veto power and increase the efficiency of the instruments it has at its disposal according to the Charter.

Although the ones opposing the reform of the UN Security Council suggest that a smaller institution is more efficient, especially when urgent decisions need to be taken, the history has shown that the even a limited Council can get blocked when needed to respond to major crisis.

Once agreed that the reform is necessary, two more questions need a response: what should be reformed and is the reform possible? The UN Security Council reform should focus not only on the membership but also on the veto power. Other reforms can be accomplished through day-to-day practice, without amending the Charter. Most observers have noticed the difficulty to realize any reform, underlying that leaving things as they are is a more realistic option than we think. Neither on the membership nor on the veto power there is no unanimity of opinions, and these two major changes can only take place if the Charter is amended.

Since the UN Security Council is the most important world institution in terms of international peace and security, it becomes obvious that its legitimacy is very important and cannot be restored in the absence of a reform. In what concerns the membership problem, the extension to around 20 members (permanent and non-permanent) seems to gather support at international level and could be a realistic solution. While eliminating the veto power does not seem feasible at this time, the only discussion concerns its extension to other future permanent members of the Security Council. In any case, even the veto power can be voluntarily limited by every member that has it or will have it. In the end, as with every issue in international politics, the will of the states to change something is the most important one. The Security Council needs not only to be an executive small functioning organ, but also an institution that is legitimate.

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