

## REFORM OF THE TWO MOST IMPORTANT ORGANS OF THE UNITED NATIONS- THE SECURITY COUNCIL AND THE GENERAL ASSEMBLY

Hanne Christensen

Email: [hanne.steen.christensen@gmail.com](mailto:hanne.steen.christensen@gmail.com)

### Abstract

This paper outlines the difficulty of reforming the veto right of the permanent five members of the Security Council. It points to a strategy in the form of a negotiated compromise between two-thirds of the members of the United Nations General Assembly and all the permanent members of the Security Council. It shows that the Non-Aligned Movement could be a decisive factor in obtaining a two-thirds majority in the General Assembly. The paper also looks at how to strengthen the General Assembly within the framework of the UN Charter and better fulfill the role as a counterbalance to the Security Council in the maintenance of international peace and security, assigned to it by the Charter. The paper draws attention to the fact that United Nations member states need to agree to a new model for the Security Council and a revitalization of the General Assembly before the change turns into reality.

**Key Words:** *United Nations Charter. The Veto Clause. Negotiated Member State Compromise. General Assembly Reform. The General Assembly and International Peace.*

### Introduction

The United Nations is the foundation of international cooperation but is frequently accused of being a failure, for instance with conflict resolution, as we forget that it is the responsibility of the member states to use the framework which the UN represents fully. Reform of the Security Council to make it better tuned to conflict resolution, however urgent it may be, is in the hands of the member states and has proved challenging to tackle during the past 25 years. In the eyes of many member states, reform of the veto right is the most pressing issue of UN reform, but negotiations sanded up time and again. The reality of the situation is that the United Nations can never be more nor less than what its member states can agree on it to be.

### Reform of a defining feature of the Security Council

The last reform of the Security Council came into force in 1965 when its membership increased to 15. In 2018, the United Nations General Assembly again discussed Security Council reform, as it had done for decades. The first round of intergovernmental negotiations took place at the end of January and continued throughout the year. Given the difficulty the veto right poses to conflict resolution by the Security Council, which the tragic stalemate situation with Syria bears witness to, it is time to ponder over the most striking feature of the Council: The veto right of the few at the expense of the many. The Security Council is the only UN organ with the veto right. All the other organs have democratic voting rights.

The veto right has been with the UN since the beginning. It was Marshal Stalin, who insisted on it, agreed by Winston Churchill and formulated by President Roosevelt prior to the Yalta Conference in 1945. It was here they finally decided to establish the United Nations, and the President's words got straight into the Charter of the United Nations as Article 27.3, prescribing for the concurring votes of the permanent members of the Security Council.<sup>1</sup> The veto right was meant to hold permanent members in a united front but proved to have had an adverse effect in subsequent decades, encouraging disunity among the permanent members instead.

The veto right is not set in stone, though it was a sine qua non at the time the United Nations was established, but a reflection of a historical period which has now passed, and has become a source of resentment among UN member states. A thorn in the eyes in a world where numerous countries around the globe have gained importance in world affairs and naturally wish to have a say in the Security Council; and this is a situation where 35 percent of the member states haven't yet had a seat on the Council. Efforts to reform the veto right have been going on since the early 1990s, and several models have been negotiated among the UN member states, but failed to win the necessary support of the UN membership,

The veto right is by design a catch 22. To cancel it takes an amendment of the Charter and that requires ratification of the change by two-thirds of the member states, including all the permanent members of the Security Council: China, France, Great Britain, Russia and the USA (Article 109.2).<sup>2</sup> One state in the world cannot only block decisions by the Council but also decide if and when the veto right should be lifted, such as Great Britain with so relatively few people as 65 million compared to a world population of 7.46 billion. Whereas two-thirds of the UN member states may be inclined to amend the Charter to exclude the veto clause, most of the permanent members are not.

In connection with discussions on Security Council reform at the 70th session of the General Assembly in 2015-2016, Mogens Lykketoft, then president of the Assembly, advocated for a strategy. He advised that two-thirds of the member states should agree on a specific model, which even then could encounter opposition from the permanent members. The debate might come to a successful end, he thought, if two-thirds of the member states were to come forward to a compromise with the permanent members – a negotiated member states compromise for a specific model for the future Security Council.<sup>3</sup> The largest group of the Assembly consists of the Non-Aligned Movement with altogether 120 member countries - or close to two-thirds out of total 193 member states in the General Assembly. If with nine additional member states, they can agree on a model for Security Council reform that holds no veto right, or which delimits it, one of the conditions of Security Council reform would be met.

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<sup>1</sup> See Winston S. Churchill, *The Second World War, Vol. VI: Triumph and Tragedy*, London: The Folio Society 2000, pp. 165-169 and 274-288.

<sup>2</sup> See *Charter of the United Nations* at [www.un.org/en/sections/un-charter/un-charter-full-text/](http://www.un.org/en/sections/un-charter/un-charter-full-text/)

<sup>3</sup> See *UN News*, 8 September 2016, New York: United Nations News Service.

That leaves concurrence to reform the veto right by the permanent members, which has been a particularly thorny issue and the decades that have passed in discussing Security Council reform in the General Assembly, so far with little result in sight, have been a long march on the same spot. Were the permanent members faced with the unanimity of two-thirds of the General Assembly or more, maybe their position would be weakened and a change of mind considered, for instance in the form of acceptance to limit the veto right. Such limitation could include decisions concerning crimes indictable to the International Criminal Court in The Hague, notably genocide, crimes against humanity, war crimes and crime of aggression. The issue was under discussion some years ago which could perhaps be revived, not least since the world population would like to see it happen, and with Emmanuel Macron, President of France, advocating for it during the general debate of the General Assembly's 73rd session in September 2018, the ground may be getting prepared for it.

Should the veto right be lifted in time, a way forward would be to find a reform model for the Security Council that ignores prevailing practice of searching for consensus and demands of unanimity, unless it naturally presents itself, and which institutionalizes democratic voting rights. That is graduated majority voting according to the type and gravity of the decision in question, such as simple majority, a two-thirds majority, and five-sixths majority. That would require a Security Council of 24 members for the math to add up, which is a number suggested by Kofi Annan when he served as secretary-general of the UN.

In a world where democratic principles are the goal, abandonment or restriction of the veto is a reasonable scenario in line with the law of human rights: everyone is equal which also upholds equal rights of nations large and small, as stated in the Preamble to the UN Charter. Still, it takes concurrence of the permanent members of the Security Council which unanimity of a qualified majority of the General Assembly can perhaps help to achieve. Important to remember that it is up to the UN member states to decide if and how the Security Council is to be reformed. If they cannot agree on a new model, the status quo will prevail, and the veto right stays with the permanent members.

### **Reform of the General Assembly within the Charter**

Since the reform of the Security Council may still be a tardy affair, there is a reason to look at the General Assembly as the chief organ of the UN, the root of all other organs. The mandate of the United Nations General Assembly (UNGA) accorded by the Charter has been observed with a measure of UNGA subservience to the Security Council for many years, but that can be changed. The Assembly is the only forum in which each member state can contribute more significantly to the United Nations, whether they are members of the Security Council or not. Through increased participation in UNGA, member states can see to it that the Assembly functions by the intention and full potential of the Charter. The following are examples:

The General Assembly may discuss any question or matter within the Charter and make recommendations to members of the United Nations and/or to the Security Council on international peace and security matters, and the Assembly can discuss and criticize the competence and functions

of any other organ, including the Security Council (Article 10 of the UN Charter).<sup>4</sup> UNGA may not discuss disputes or situations seized by the Security Council (Article 12)<sup>5</sup>, although there is an understanding among international law experts that aspects, not covered by the Council, can be discussed by the Assembly. It is hence possible for UNGA to consider situations that in the future could pose a threat to international peace, present ways to resolve the problems, and thereby advice the Security Council on future focus.

In recent years, conflict resolution has been marked by the use of armed force, reflected by the growth of United Nations peacekeeping operations from five in 1990 to fifteen in 2017, which is not the intention of the Charter. The Charter's sequence needs to be restored to the working of the Security Council. That is first and foremost Chapter VI action, peaceful redress, invoked early through proper contingency analysis, early warning and fact-finding missions; followed by Chapter VII action, enforcement, used as it was supposed to be used, sanctions first, and armed force only as a last resort, if peaceful redress has failed. Hence, it is in accord with the Charter to maintain full attention to the strong emphasis on pacific settlement of disputes, to make mediation a constant focus. It is infinitely better for everyone involved to settle by peaceful means and far less costly in every respect, not least in human lives. It is also the approach with the highest chance of providing a lasting solution. This shift could commence in the General Assembly. If a member state finds that the Security Council has diverted from the road to peace by ignoring the sequence of the Charter, it can say so in the General Assembly and remind the Security Council to get back on track. Besides, new and not-yet practiced modes of mediation and peace proposals could be a part of each member state's annual contribution to the General Assembly session, presented in the general debate for example where Heads of State and Government speak. National and international peace research institutions could feed into such contributions in which member states could also draw on own experience with conflict resolution. If the entire UN membership puts its mind to it, innovative and practical approaches to the pacific settlement are bound to materialize, and member states would be united in finding new ways to peace - of thinking of order, not warfare. The higher the focus on international peace and security and the more concrete pacific proposals for conflict resolution on the part of the General Assembly, the higher the pressure on the Security Council for maintenance of international peace and security with peaceful means. The General Assembly has a vital role to play in turning the tide, and UNGA's role as peacemaker would be strengthened vis-à-vis that of the Security Council.

However, wherever the use of armed force is justified and unavoidable to prevent massive loss of life, it is vital that peacekeeping missions have adequate troops for the task at their disposal and a robust mandate, as necessary. Likewise important is that it is equipped with the weaponry needed, tools, and supplies so it can adequately protect civilians caught in the conflict and defend itself. Another "must" is a clear and unambiguous channel of command lead by the UN. All too often peacekeepers have acted on instructions from their national military rather than those issued by the UN commanders and weakened the UN action.

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<sup>4</sup> See *Charter of the United Nations*, op. cit.

<sup>5</sup> Ibid.

Further, the General Assembly elects the non-permanent members, two-thirds of the Security Council, while the Security Council annually reports to the General Assembly, which in turn, can reject or accept the reporting. Members of the United Nations 'confer on the Security Council primary responsibility for the maintenance of international peace and security and agree that in carrying out its duties under this responsibility, the Security Council acts on their behalf' (Article 24.1 of the Charter).<sup>6</sup> It is the primary responsibility that is referred to, but the Security Council does not have exclusive responsibility as affirmed by the International Court of Justice (the Certain Expenses Advisory Opinion of 20 July 1962). The General Assembly has secondary responsibility. It also should monitor whether the Council acts on its behalf and, if it does not, to make its opinion known to the Security Council. If the General Assembly chooses to reject the report of the Security Council, a grave situation will arise at the UN, which may weaken the Security Council, place its legitimacy under severe pressure – especially so if the report would be rejected repeatedly. It hasn't yet happened but remains an option for the General Assembly if it finds it difficult to see itself in Council decisions or its inaction. The member states could ignore a Security Council that no longer enjoys legitimacy in the General Assembly. So far, the General Assembly has related to Council reports in a positive spirit, as exemplified by a resolution at its 71st session in which the Assembly commends the Security Council for improvements in the quality of its annual reports and welcomes its willingness to continue to consider suggestions for improvement".<sup>7</sup> The message is clear though: Not yet good enough.

The secondary responsibility was assumed a couple of years ago when the General Assembly expressed outrage at the escalation of violence in Syria in 2016, particularly in Aleppo, and demanded an immediate and complete end to all attacks on civilians and civilian objects and all sieges throughout Syria in a resolution passed with a majority of two-thirds<sup>8</sup>. It was Canada, which proposed the resolution, following several failed attempts by France to get a similar resolution passed in the Security Council.

Moreover, if Security Council action is blocked by a veto on a matter falling under the Responsibility to Protect Doctrine, the General Assembly can exercise its responsibility for maintenance of international peace and security under the Uniting-for-Peace resolution of 1950, rather than wait for the permanent members to reach unanimity that may not ensue in time. It can cost thousands of lives to wait. The resolution asserts the right of the General Assembly to step in when the Security Council is unable to act owing to Permanent 5 differences and to make recommendations, including those involving the use of armed force. With a majority of two-thirds of the Security Council, or a majority of the members of the United Nations, an emergency session of the General Assembly can be called within 24 hours, and the General Assembly in principle vote the action through with a two-thirds majority of the members present and voting.<sup>9</sup> In this respect, the General Assembly exercises its

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<sup>6</sup> Ibid.

<sup>7</sup> See General Assembly Resolution A/RES/71/323 of 20 September 2017.

<sup>8</sup> See General Assembly Resolution A/RES/71/130 of 9 December 2016.

<sup>9</sup> See General Assembly Resolution 377(V) of 3 November 1950.

secondary responsibility and, at the same time, assumes ultimate responsibility. However, since recommendations of the General Assembly do not have binding effects, it would be up to a coalition of the willing among the member states to execute the recommendations. With the moral support of the General Assembly.

Moreover, the General Assembly can exercise economic control of the Security Council since it is UNGA, which considers and approves the budgets of the United Nations (Article 17 of the Charter).<sup>10</sup> Only the General Assembly has budgetary powers. The Security Council cannot appropriate a single dollar of UN funds. If the Assembly finds that the Council intends to spend funds on a peace mission incompatible to the purposes of the Charter, it can reject to finance the mission and pass a resolution, stressing the need of conflict resolution with peaceful means. That would give the Security Council something to contemplate and can be done all the more so since the budgets, that of the peacekeeping operations included, consist of contributions by member states which may wish to see value for their money.

Finally, the General Assembly can exert more influence on the selection of the secretary-general. Formally, it is the Assembly, which appoints the secretary-general upon the recommendation of the Security Council, while the Council is the leading actor of the selection process. Here the Permanent 5 need to agree on whom to recommend to the General Assembly and so far the Council has, after voting on it, endorsed one candidate at a time, as requested by the Assembly during its first session.<sup>11</sup> It is merely a recommendation. UNGA can choose another candidate, if it so wishes, especially so if the hearings with candidates in the General Assembly suggest that an alternative candidate is appointed. UNGA can also place the final choice with itself by adopting a new resolution, asking the Council for several names to choose from, and thus increase its influence on the process.

Thus, there are several ways to strengthen the General Assembly. With active, eloquent member states in the General Assembly, decisions of the Security Council can be set in perspective and advocated for being set right. A stronger General Assembly would not only solidify the United Nations, but it would also enhance its legitimacy.

It may be argued that one thing is what the Charter allows for, another what is feasible in prevailing political circumstances, given the various scenarios that have encompassed the General Assembly since the Charter entered into force in 1945. This view, however, if pursued, may reduce member states' options in advance and diminish their influence on the world organization, whereas the approach latent in the Charter entails full participation in the General Assembly and optimizes member state influence. If member states do not choose to utilize the potential granted to the Assembly by the Charter, UNGA's role as the counterbalance to the Security Council, it is meant to be, would be at risk of fading out, and the only democratic organ of the United Nations comprising all member states could grow increasingly irrelevant. Fortunately, there are other trends. In 2005, the General Assembly established an ad hoc working group on revitalization of its work. The working group has come up with some proposals and innovative General Assembly resolutions, for instance,

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<sup>10</sup> See *Charter of the United Nations*, op. cit.

<sup>11</sup> See General Assembly Resolution A/RES/11(1) of 24 January 1946.

resolution A/RES/69/321 of 11 September 2015. That is the resolution, prescribing for greater involvement of the Assembly in the selection of the secretary-general, by recommending hearings in UNGA with candidates for the post alongside the consideration of the candidates in the Security Council. Also in 2005, a summit of Heads of State and Government took place, which affirmed the UN Charter's stipulation: The position of the General Assembly as the chief deliberative, policymaking and representative organ of the UN.<sup>12</sup> Years passed since then. In 2018, the message of the general debate of the 73rd session was to strengthen the General Assembly, with many member states, especially African ones, calling for devolvement of powers to the General Assembly to enable it to effectively counterbalancing the Security Council. Hence, revitalization of the Assembly implies renovation of the primary UN process, deliberations in UNGA, which is promising for the development of the UN.

Thus, there is a movement within the General Assembly of getting closer to the UN Charter, which it is up to the member states to set into further motion. An active UN membership can make a difference if it so wishes.

**Profile of Author: Hanne Christensen, former United Nations staff member**

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<sup>12</sup> See General Assembly resolution A/RES/60/1, paragraph 149 of 16 September 2005.