The UN Security Council's Mandate and Its Future Development: An Analysis Based on Law Governing International Organizations

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Abstract: After the Second World War, the world adhered to an international order embodied by the United Nations, which regulated interstate disputes, upheld peace, and encouraged international cooperation in areas like economic development, justice, children's welfare, and food security. One of the most important United Nations bodies is the Security Council, which has the authority to propose binding resolutions to uphold international peace and security. Some contend that the current United Nations model has only played a minimal and limited role, despite the fact that the United Nations was initially founded to achieve long-lasting global peace through cooperation. Their concerns include the legality of Council resolutions, the abuse of the veto, and its unfair consequences, among other things. The normative analysis of United Nations conventions and some Security Council regulatory documents is the primary method used to discuss both of these problems in this article. The paper makes the argument that even though the Security Council has been "paralyzed" for a while in incidents like the Russia-Ukraine conflict, it has at least given countries the opportunity for negotiation and has significantly contributed to ensuring the most stable possible international social order. In order to accomplish the objective of maintaining global security and peace, reform may lead to the Council's jurisdiction being further expanded or the duties of the other United Nations bodies being increased.

Keywords: United Nations Security Council, veto right, Security Council resolutions

1. Introduction

As one of the principal organs of the United Nations (UN), The Security Council is in charge of resolving tense circumstances resulting from international conflicts and the sole use of armed force. to suppress acts that threaten international peace by the UN Charter. The Council consists of five permanent and ten non-permanent members, and the Council's acceptance of procedural resolutions requires the approval of at least nine members; the adoption of non-procedural resolutions involves the absence of veto from all five permanent members. After the outbreak of the conflict between Russia and Ukraine, Russia, as one of the permanent members, used its power to deny the adoption of some draft resolutions until nearly two months later, the UN Security Council approved a declaration on Ukraine for the initial time.

During his visit to Ukraine, UN Secretary-General António Guterres publicly accused the UN Security Council of failing to ensure international peace and security and "failing to do everything in its power to prevent and end this war." On 26 April 2022, the UN General Assembly adopted a resolution proposed by Liechtenstein to limit permanent members' right to veto, issuing that any use of the veto would be automatically followed by a meeting of the UN General Assembly within ten days to discuss and review the legitimacy and justification of the actions. The discussion about the Council has revolved around reform measures such as eliminating or limiting the veto power of permanent members, expanding the size of the Council, or weakening the effect of the Council with other UN bodies' replacement. This essay will concentrate on the power of the UN Security Council in addition to its potential future developments from the viewpoint of the law of international agencies.

2. The Operational Mechanism of the Security Council

2.1. The Core Idea: Unanimity Among Great Countries

During the Second World War, a shared consciousness gradually emerged among the Allies that a universal international organization should be established after the war, to uphold tranquility and security. During the Dumbarton Oaks Conference and the Yalta Conference, a blueprint was planned that would be acceptable to most nations. The Charter of the UN was adopted and came into force after the 1945 General Assembly of the United Nations in San Francisco.

The United States, the United Kingdom, the Soviet Union, and China proposed and consulted on many occasions in the preparatory phase to establish the UN, particularly in establishing the voting procedures of the Security Council. Historically, from the 3rd century B.C. to the end of the 19th century, the Chinese-dominated tribute system in East Asia was the primary means of peaceful exchange between states; in Europe, until the Congress of Westphalia in 1648, multilateral international conferences were gradually explored to resolve security issues, followed by the Congress of Utrecht and the Congress of Vienna, which further refined and established the European coordination system, i.e., the balance of power. In the late 19th century, due to the technological revolution, the prevalence of nationalism, and security dilemmas, the balance of power as a mechanism of order and stability could not satisfy the development of nations. The concept of collective security replaced the balance of power after World War I. Article 11 of the Covenant of the League of Nations stipulates that if any war or threat of war arises, all member states shall be brought into a cause-and-effect relationship -- that is, the Secretary-General shall convene relevant collective meetings upon the request of any member state, which reflects the essence of collective security [1]. The League of Nations, with its one country, one vote, embodied equality and the rule of law but led to inefficiency because of requiring the consent of all Member States for resolutions. Owing to the absence of some of the most powerful countries (such as the United States, which never joined, Germany, Japan, Italy, and the Soviet Union, which entered and then withdrew) and armed forces, the lack of a permanent organization, etc., the League of Nations existed in name only in the late 1930s. It did not prevent the outbreak of World War II and was dissolved after only 20 years of existence.

This is why the way the international community communicates, and votes is constantly explored, changed, and developed. to fix the problems associated with the League of Nations and make sure that everyone can join the newly created global bodies, the UN needed to create a body such as the Security Council--that would change "unanimity" to "unanimity among great countries," giving the most powerful countries more privileges and requiring them to assume more responsibility for the maintenance of international order.

2.2. Powers Conferred by the Charter

The UN Charter is a multilateral agreement binding on all signatories. Under Article 7 of the Charter, the main organizations of the United Nations are its General Assembly, Security Council, Economic and Social Council, Trusteeship Council, International Court of Justice, and Secretariat. Chapter V of the Charter sets out in some detail the composition and powers of the Security Council. Specifically, the mandate of the Council can be summarised in three areas: the peaceful resolution of conflicts, upholding peace, suppressing violence, among other things. Under Articles 25, 27, 39, 41, and 42 of the Charter, the Security Council can decide which acts constitute "threats and aggression or peace violations " and determine when and what response measures, including non-military means such as economic sanctions and military means, are to be taken [2]. The Security Council, for instance, had passed resolutions to send peacekeeping troops to violent conflicts in Kosovo, Georgia, Haiti, the Congo, etc.; it had imposed trade sanctions on Iraq and cooperated with the African Union in promoting peace processes in West Africa, etc.

As the only UN body with the power to take military action, the upkeep of global peace and security is the Security Council's core mandate as stated in the Charter, i.e., the Council's powers should derive from the mandate of the UN Members. Both at once, " The Members of the UN agree to accept and carry out the decisions of the Security Council in accordance with the present Charter." That is, the Council also creates several obligations for the UN Members. According to Article 49, " The Members of the UN shall join in affording mutual assistance in carrying out the measures decided upon by the Security Council." Such obligations may be the need for the members to implement other means than force as the Council decides, such as severing economic and diplomatic relations and ceasing traffic with the other party. When the Council decides to commit a military act, it is possible to request military resources from the members under Articles 43 to 45 of the Charter. Even the Security Council can create new binding international legal obligations -- UNSCR 1373 requires the members of the UN to take specific measures "to prevent and suppress the financing of terrorist activities." It has prompted countries to amend their criminal laws to make terrorist financing a criminal offense. Acts that do not traditionally fall within the Council's purview, such as unregulated financial flows, drug trafficking, female inequality and other phenomena, can threaten international peace and security, further extending the Council's authority [2].

The fundamental mechanism of the Security Council is the veto power of the permanent members, which is reflected in the fact that in non-procedural matters, it requires the agreement of "five (five permanent members) plus four (four non-permanent members)" to adopt a resolution, while in procedural cases any nine members can decide. However, the agreement of the nine ("five plus four") members is still required to determine whether the decision is procedural or non-procedural. In effect, the permanent members have a "double negative." This creation was debated in the preparatory period for the UN. The UK and US first argued for a limited veto and the USSR for strict adherence to the principle of great countries' unanimity -- both for non-procedural and procedural matters. Many small and medium-sized countries expressed dissatisfaction with the veto, even from the outset, such as Belgium, the Netherlands, Norway, and Australia in the joint declaration of the San Francisco Conference in 1945 [3]. Germany, Brazil, Japan, and India repeatedly applied for permanent membership. For small and medium-sized countries, the irrationality of the veto lies in the fact that when disagreements involve large countries, as in the early days of the Russo-Ukrainian conflict, Russia overrode a draft resolution on the situation in Ukraine submitted by the United States and Albania, which did not allow the Council to take immediate action. In April 2022, the UN General Assembly adopted the draft resolution proposed by Liechtenstein and 83 co-sponsors, entitled *Standing mandate for a General Assembly debate when a veto is cast in the Security Council*.

Ambassador Christian Wenaweser said that Liechtenstein had started working with a core group of countries on an initiative to review the veto more than two years ago [4].

3. Challenges to the Security Council

3.1. Commentary on the "Law-making" of Security Council Resolutions

There is a view in academic that Resolution 1373 is an act of "law-making," characterized by mandatory requirements on states to take binding and compulsory action, and universality: such obligations are not time-bound that are not linked to unique crisis conditions posing a threat to global peace and security [5]. Most scholars are negative and skeptical of behavior close to "lawmaking" by the Security Council, such as Happold, who argued that Council resolutions could never be legislated because the legislative process "involves the enactment of abstract legal propositions." Legislative work had a certain universality. Gadi Ezra argued, "Filling the gap in international law is the responsibility of the UN General Assembly to negotiate and conclude treaties." Security Council does not "legislate" but instead implements its Charter obligations [6]. The essential framework of the law of nations is also violated by "international law-making": the international community is "anarchic," and the subjects of worldwide lawmaking are independent nations. However, some scholars have argued that this is legal and legitimate, as the UN Charter does not explicitly grant or prohibit the Security Council's law-making power. Article 24 of the Charter, " In discharging these duties the Security Council shall act by the Purposes and Principles of the UN," which limits the Council's responsibilities, can be summarized as follows: Firstly, Council resolutions have three sources: the express consent of the Charter, the implicit provisions of the Charter and the consensus of the Members of the UN under certain conditions. Secondly, international organizations need more powers in practice because the content of the Charter is limited to responding flexibly to complex situations [7]. Similar to the support and criticism of "judges' legislation" in the domestic context.

However, since there are no procedural limits, it is difficult to identify some Security Council resolutions as "law-making" directly. "International legislation" may be just great rhetoric, and introducing this proposition complicates the evaluation of Security Council resolutions, so it is better to focus on explaining whether the Security Council has a legal mandate under the UN Charter to adopt some general resolutions. If the answer is yes, when and how does the Council do in the exercise of power [8]? The scope of the authority given to the Council should be inside the parameters of the main body of global legislation – the Council was established from the existing system of foreign legislation, and it needs caution to preserve the order that international law is intended to maintain. It would be better to set the purview of the Security Council more restrictively or specifically.

3.2. The Veto Authority System Needs to be Retained

The types of voting power commonly used in modern international organizations are unanimity, majority, consensus, weighted voting, etc. Each system has its advantages and disadvantages. There must be differences in countries' size and power and their voice, influence, and resources in the international community. Suppose the "unanimity" principle of the League of Nations is retained. Is it to the detriment of the powerful and prominent countries in an organization such as the Council, whose purpose is to uphold global harmony and security？ -- smaller nations frequently "consume" international security. In contrast, large countries are the "providers [1]," and it is challenging to ask large countries to pay more while enjoying the exact content of rights as all member states. Furthermore, without the inclusion of large countries, the influence of that organization would not be sufficient to enable it to function, as in the case of the TPP. Giving global powers privileges such as the veto means that they should take on greater responsibilities and obligations; voting efficiency is

increased, as the Security Council is more efficient in maintaining security than in the League of Nations, where each country had a facto veto. The Council can act more quickly on issues of security maintenance.

One of the most influential theoretical arguments against the veto is that it violates the principle of the sovereign equality of states [3]. Based on the study of the law of international organizations, the classical notion of sovereign equality stems from the superimposition of individual equality. However, as doubts have grown, scholars who uphold sovereign equality refined this theory. Dickinson argued that "pre-legal equality" is not inconsistent with "classifying states and assigning them to different categories." Oppenheim distinguished between legal equality and political equality [9]. The principle of states' sovereign equality is not always incompatible with the veto system of the great powers. It is worth noting that, at the present stage, we cannot completely abandon the influence of political factors on international organizations – it is still not possible now to create an organization entirely independent of the interests of States. Meanwhile, we cannot ignore and exclude sovereign equality in the legal sense "because sovereign equality can counter hegemony in interstate relations [10]." If it is impossible to devise a new system to replace the old order, then the optimal approach should be to maintain and improve the existing one as time passes.

4. The Present and Future of the Security Council

4.1. The International Order Represented by the Security Council Is Still Relevant

This article argues that although the institutional design of the Security Council is still problematic and questionable, its survival is still relevant. The current Secretary-General of the UN, Mr. Guterres, has said that "the UN Security Council is a failure" in the aftermath of the Russia-Ukraine conflict, but this is not to deny the value of the body's existence. The Council has also made efforts on topics such as women and children, weapons, regional organizations, food security, etc. For example, it has adopted nine resolutions on women, peace, and safety, and Security Council Resolution 1325 (2000) was the first to emphasize the need for a gender perspective on the disproportionate impact of conflict on women and girls, as well as the need for women contributing to peacebuilding and political solutions. In its operations, UNMISS is mandated to protect all civil society and interlocutors with the UN, in particular women peacebuilders, from threats and reprisals [10]. In accordance with Security Council Resolution 1612 (2005), the Working Group on Children and Armed Conflict was created, advising the Security Council, peacekeeping missions, and conflict parties on possible measures to protect children affected by armed conflict, sending requests to other UN bodies, calling for action, etc. Resolution 2417 (2018) reaffirms the prohibition of hunger as a weapon of war.

Despite the Security Council having been "paralyzed" for some time in regard to the crisis between Russia and Ukraine and the war in Syria, it does not negate the fact that the Council plays a huge role in maintaining the best possible stability in the international social order. The Council cannot prevent all conflicts and wars, nor can anyone body or organization at this stage of development; at least it provides a forum for member states to meet and consult regularly, so we should be more concerned about making functional changes the existing mechanism.

4.2. Changes Already Made: Limiting the Veto Power of Permanent Members

Adopting a resolution limiting the veto power of permanent members was a substantial adjustment to the Council's operations. The UN General Assembly's authority is to review and monitor, and the issues voted on do not have the force of law -- the veto remains in force. However, it needs to be explained and debated in the General Assembly to all members. This may come at a higher political cost, and the permanent members would then need to consider whether it is necessary to exercise the veto, thus acting as a restraint. Such a procedural change indicates that the Council's action or

inaction could trigger an emergency special session of the General Assembly. This procedural reform would have a limited effect.

On the one hand, as the Chinese representative said: "We are in favor of Member States debating issues on the UN General Assembly's stage where the permanent members' disagreement leads to the Security Council's failure to take action major issues of peace and security." On the other hand, as the Russians argue, the UN has been operating effectively for 75 years now and should not be in a hurry to change, which is the most likely dilemma for the next reform. Although the Council's inaction on Ukraine has highlighted its weaknesses, decades of stagnation and disagreements among states could further delay reform.

4.3. Possible Changes

4.3.1. Expanding the Council's Jurisdiction to Preserve Global Stability and Security

Another similar way of enhancing the General Assembly's responsibility to review and monitor the function of the Security Council in preserving world peace was put forth by the United States in 1950, during the Korean War. The General Assembly adopted resolution 377A(V), entitled "Uniting for Peace." It stated that if the Security Council failed to unanimously agree to exercise its responsibility concerning a disturbance or threat to the peace, the General Assembly should immediately consider and recommend, by collective action, the matter, including using force if necessary. The General Assembly's role is, of course, limited to "recommendations," which, on the one hand, reduces fears of a dysfunctional Council and, on the other, maintains the existing Council structure, making change more likely.

The fact that this has only been achieved once so far has been questioned as a potential source of jurisdictional confusion between the Council and the General Assembly. The Council's jurisdiction has gradually expanded as the meaning of "peace and security" has evolved: from its original expression of "national security" to "common security" for the global community, and now more concerned with individual "human security," such as civilians in war, with some UN members arguing that the Council should focus only on armed conflict [11]. But this procedural dispute does not stop the Council from fulfilling its substantive functions; when providing international humanitarian relief, The Council has mostly urged conflicting parties to offer it, with the affected state giving its consent to the relief operation. In a few cases, the Council has taken binding measures under Chapter VII, effectively requiring the affected state to consent [12]. The Council is already concerned about the potential threats to international peace and security posed by emerging technologies in counterterrorism. As technology develops, artificial intelligence, UAS, and synthetic biotechnology, among others, will likely impact individuals, societies, and domestic security and will probably be the subject of consideration by the Council.

4.3.2. Enhancing the Responsibilities of the Remaining UN Bodies

From the standpoint of the design of the legal system, the Council acts primarily under the authority of the Charter. Based on General Assembly resolution 686 (VII), the Security Council's Repertoire of Practice and its Provisional Rules of Procedure present the interpretation and execution of the UN Charter since 1946. Due to the authority granted by the Charter, the Council's resolutions have legal effect, and as a recognized international treaty, Council resolutions are generally regarded as legitimate. In terms of the mechanism of the decision-making process, in accordance with Articles 31 and 32 of the Charter, the United Nations permits non-Security Council member states that are parties to the dispute under discussion or that have a special interest in it, whether they are UN member states or non-member states, to participate in the discussion without having the ability to cast a vote. Such a procedure is similar to prior consultation in international economic disputes; after a

decision has been taken, the resolution is binding on all states under Article 25 and Chapter VII of the Charter, and the Council can take action, whether by force or by non-violent, to bring conditions into compliance with the decision, which is aimed at maintaining or restoring international peace and security. The above internal design is already fair and sound. To prevent it from "failing" in a crisis, another suggestion is to make other UN bodies active, such as the International Criminal Court, the UN Human Rights Council, etc., with a mandate to investigate conflicts and perform their functions to safeguard fundamental human rights as far as possible.

5. Conclusions

Despite some obstacles encountered in practice, the veto system still has practical significance. However, there is still a need to consider improving the working methods of the Security Council in the face of problems such as the divergence of views among the permanent members, which prevent the adequate protection of the international public interest. At present, the most feasible approach is to expand the scope of the Council's mandate at an appropriate time or to enhance the responsibilities of the remaining UN bodies. These approaches aim to ensure, as far as possible, that the Council can adequately fulfill its principal purpose: to uphold or reinstate global harmony and safety. And when is the next step in reform most appropriate: the Security Council and the United Nations' institutions will be more effective in the long run in promoting human welfare, peace, and sustainable development if major nations can regularly and responsibly cede part of their influence in the global society.

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