
NEW DELHI'S DIPLOMACY FOR UNSC REFORM: A RULE-BASED GLOBAL ORDER

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ABSTRACT

The United Nations has been waiting for structural reform since long. The need for reform has arisen due to the changing geopolitics and related contemporary challenges. When charter of United Nations was being drafted, the other members voted against the veto power, but permanent member countries were very adamant to the view that they shall have veto power. They even blocked the proposal of empowering international court of justice with Judicial Review. Had the actions of permanent members been subject to Judicial Review, the story might have been different. The charter of United Nations advocates that the functioning of the organization shall be based upon democratic principles which are very evident from its working methodology. The charter envisages that the permanent members would legitimately use their veto power but that has not happen unfortunately. Also, the changing geopolitics demands more inclusiveness, accountability and transparency of UNSC. In spite of many resolutions for reform from the member countries, the permanent members have not been able to agree for reform. They might not be willing to lose their extra ordinary power. But, how can they have everything on the table. After all, world is not only about the five permanent members of UNSC. The researcher has proposed to use the extra-legal measure which is in conformity with the legitimacy of the law. The principle of constitutionalism envisages that law shall not propose abstract legality which is thin version of rule of law, rather it shall provide for legitimate legality, which is thick version of rule of Law. Thus, the foundation of reform if the charter itself, just that the general assembly shall use "extra-legal measures" to establish the democratic foundation of the organization.

Keywords: United Nations Security Council Reform, Veto Power and Global Governance, India's Diplomacy at the United Nations, Democratic Legitimacy in International Law, Constitutionalism and Rule of Law, Reform of the United Nations Charter, Global Peace and Collective Security.

I. Introduction

The League of Nations¹ failed to check the Second World War. Two world wars were disaster to the mankind and the world could not face another war to its extinction. There was a need for stronger Global Institution which could check such further attempts of Militarism and Imperialism by Imperialistic states. In 1945, Representatives of 50 countries met in San Francisco at the United Nations Conference on International Organization to draw up the *United Nations Charter*². The Charter was signed on 26 June 1945 by the representatives of the founding these member countries. The United Nations (hereinafter referred as the Organization or UN or UNO) officially came into existence on 24 October 1945, when the Charter had been ratified by China, France, the Soviet Union, the United Kingdom, and the United States and by a majority of other signatories³. The *Preamble*⁴ proposes to save succeeding generations from the scourge of war, reaffirm faith in fundamental human rights, equal rights of nations large and small and justice and respect for the obligations arising from treaties and other sources of international law.

The United Nations Security Council (hereinafter UNSC) has, under the charter, been endowed with the responsibility of maintain the international peace and security. The council is required to act in accordance with the greater objective and principles of the United Nations. Today, credibility of the organization has been questioned many a time. There have been ample instances where the organization has not been able to deliver as is required by the larger objective of maintaining peace and security in the world. The recent case of Afghanistan in one of the many examples which has illustrated that the organization has failed at many instances as a global organization in real sense as mandated by the intention of the UN charter. The member states and the regional intergovernmental grouping have constantly been advocating the need for reform in UNSC in particular.

In 2020, United Nations completed its 75 years. The world today is not the same as it was in

¹ History of United Nations, available at: <https://www.un.org/en/sections/history/history-United-nations/index.html#> (last visited on February 5th, 2021).

"The forerunner of the United Nations was the League of Nations, an organization conceived in similar circumstances during the First World War, and established in 1919 under the Treaty of Versailles "to promote international cooperation and to achieve peace and security. (Emphasis added).

² Hereinafter the Charter

³ *Supra* note 1.

⁴ The charter, available at: <https://www.un.org/en/sections/un-charter/preamble/index.html> (last visited in February 8th, 2021).

1945. The organization started with 50 members and today it has 193 sovereign member states. The geo politics has changed. There has been substantial amount of power dynamism across the globe. The world has witness various emerging economies, like India, which have influential contribution in the global economy today. Despite all these dynamics, the organization has remained almost the same. The structure of the organization, especially, of UNSC, has not been amended according to the contemporary needs. Still, we have the same five permanent members namely, United Kingdom, France, Russia, China and United States. Three out of five represents Europe. The peacekeeping missions are the trademark of the organization. Around 70 percent of the peacekeeping missions have been delivered in Africa. Unfortunately, the continent has not been represented and almost neglected for its own decisions.

The geo-economic-political dynamics is being distributed substantially from west to the east and the middle. We have only one permanent seat in UNSC from Asia. There is clear no representation from Africa and South America in the UNSC. Apart from the representation issue, UNSC has also been criticized from its opaqueness. It lacks accountability and transparency. The permanent members have been alleged to be using the veto power to accomplish their personal geo political motive. The member states and the intergovernmental regional groups have constantly been strongly advocating for reform in the organization, especially in UNSC. The present research paper has taken into consideration the issue of needed reform at UNSC to answer to the contemporary global questions. Special focus has been given on role of India for Advocating reform at UNSC. The present subject is matter of great concern in the era of international relations and Diplomacy. The world has opened at economic, social and Political fronts. Every stakeholder is being affected by everyone else in the world today. This reason is sufficient to engage into the subject matter.

International law is a delicate department. The scholars need to put in more cognitive mind to bring it out of the category of weak law. Globalization has brought in more demand for a catering International Law. United Nations has not truly been able to solve the pertaining issues. The reason can be accorded to the non-dynamism within the organization. With United Nations started being proven non effective, many regional organizations have been organized into. The regionalism has let to lobbying diplomacy which is anti-thesis to the Globalization.

United nation has potential to be the one and only needed International Organization in true

sense. We shall find the reason why has it failed in its duty. Contemporary issues such as Environmental deterioration, Neo Economic Imperialism, global security threats from Terrorism and extremist mentality, inward looking of responsible nations and protectionism can only be dealt with if the global community come together to reform the United Nation. The scope of study shall deal with need for UNSC reform and methodology that the researcher adopts to answer the arising questions.

The object of study of the present subject matter is to find the answers for the questions of UNSC reform that has been pending since long now. The answer, once found, will establish the rule of Law which is the need of hour. The International law has been taken not very seriously. The permanent members have been rightly blamed for misusing their power of veto a decision for their own agendas. Though whole of the international law is point of scholarly pondering, but right now in the present paper, researcher will primarily focus on the UNSC reforms that has been lagging despite it has been felt very urgently by almost every one even on the permanent table. The member countries and the regional groups have been making this constant effort to make necessary changes to the Origination to sustain its credibility. The researcher will check whether we can go beyond the black letters of the charter. Researcher will also examine how the principles of Constitutionalism of Political Legitimacy can be applied and be used to answer the necessary questions. Researcher believes to give hypothesis of solution to the existing questions.

Researcher has used *Doctrinal* as the main component of the research methodology. While enquiring and examining the documents available, the *Analytical and critical* methodology may be employed as well. Area of research would be to enquire into the existing provisions of the Charter and legality of claim for reform by the Member countries and the Regional intergovernmental groupings. The jurisdiction of Research would sometime Nation specific extending extent to the regional groupings. A comparative study regional jurisdiction and their proposal for reform would be done keeping United Nations Charter at the Centre of everything.

II. Failure of UN as an organization: *The Afghanistan case*

The U.N.'s failure has been multifaceted and cannot be ascribed to one single cause. From the disaster of the U.N. peacekeeping missions in Rwanda and Bosnia in the mid-1990s to the U.N.'s slow response to the Sudan genocide to the Congo Peacekeeping Scandal, the world has

witnessed the failure of UN at many instances⁵. These cases do not end here. There are several other cases which are evidence of failure of UNO. Israeli occupation (1948-Now), Somali civil war, Darfur conflict in Sudan, Syrian civil war, South Sudan, Yemen civil war, Rohingya Crisis, Myanmar are some examples.

In the present section, the researcher shall discuss the recent case of Afghanistan and examine the role of United Nations and to what extent the organization has justified its role in protecting the interest of the helpless citizens of Afghanistan and their human right. Let us consider few of the important resolutions of UNSC and critically examine the role of UNSC in reaching the present condition of Afghanistan.

With special purpose, the organization started the *United Nations Assistance Mission in Afghanistan (hereinafter UNAMA)* a Special Political Mission established to assist the state and the people of Afghanistan in laying the foundations for sustainable peace and development is a UN. UNAMA was established on 28 March 2002 by United Nations Security Council Resolution 1401. Its original mandate was to support the implementation of the Bonn Agreement⁶ (December 2001). All the subsequent resolution were addition to the resolution 1401 to extend its mandate.

*Resolution 1401 (2002)*⁷ was adopted by the Security Council at its 4501st meeting, on 28 March 2002 and created *UNAMA*. The resolution Stressed upon “*the inalienable right of the Afghan people themselves freely to determine their own political future*”. So, the ultimate mandate of the special program was to protect the human rights of the afghani people.

Post-Taliban led Afghan crisis, the UNSC has adopted two resolutions namely, resolution no. 2593 and resolution no. 2596. It would be necessary to examine the two resolution with respect to the earlier resolutions.

⁵ Nile Gardiner, “The Decline and Fall of the United Nations: Why the U.N. has Failed and How it Needs to be Reformed” *Macalester International 19*” Article 9 40 (2007).

⁶ Bonn agreement on provisional arrangement in Afghanistan pending the re-establishment of permanent government institution.

⁷Resolution 1401 (2002) available at: <http://unscr.com/en/resolutions/doc/1401> (Last visited on September 23th, 2021).

Resolution 2593 (2021)⁸

The relevant decisions of the resolution are referred below;

“It demands that Afghan territory not be used to threaten or attack any country or to shelter or train terrorists, or to plan or to finance terrorist acts, and reiterates the importance of combating terrorism in Afghanistan, *including those individuals and entities designated pursuant to resolution 1267 (1999)*, and notes the Taliban’s relevant commitments. (Emphasis added).

Reaffirms the importance of *upholding human rights including those of women, children and minorities*, encourages all parties to seek an inclusive, negotiated political settlement, with the full, equal and meaningful participation of women, that responds to the desire of Afghans to sustain and build on Afghanistan’s gains over the last twenty years in adherence to the rule of law, and underlines that all parties must respect their obligations” (emphasis added).

It is important to mention that the present resolution referred to *resolution 1267 (1999)*⁹. The said resolution observed that few of the designated persons, related to Taliban too, would be on the red list of the UN. Their travel shall be banned and freeze any kind of fund and financial resources. Today, all these names are listed in the Taliban led government for various ministerial posts. And the resolution 2593 do not step back and say that the Taliban led government can not be recognized in the global forum. the *United Nations Assistance Mission in Afghanistan (hereinafter UNAMA)*, a Special Political Mission for Afghanistan appears to be failing.

Resolution 2596 (2021)¹⁰

The relevant observations of the resolution are re-produced below;

“Recalling mandate of the United Nations Assistance Mission in Afghanistan

⁸Resolution 2593 (2021) available at: <https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s%20res%202593.pdf> (Last visited on September 23th, 2021).

⁹Resolution 1267 (1999) available at: [https://undocs.org/en/S/RES/1267\(1999\)](https://undocs.org/en/S/RES/1267(1999)) (Last visited on September 23th, 2021).

¹⁰Resolution 2596 (2021) available at: https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/21.9%20res_2596_2021_e.pdf (Last visited on September 23th, 2021).

(UNAMA); Reaffirming its strong commitment to the sovereignty, independence, territorial integrity and Emphasizing the importance of the establishment of an *inclusive and representative government*; further *emphasizing the importance of the full, equal and meaningful participation of women, and upholding human rights, including for women, children and minorities*, Reaffirming the importance of combating terrorism in Afghanistan, *including those designated by the Security Council Committee pursuant to resolutions 1267 (1999) 1989 (2011) and 2253 (2015).*”

In *Resolutions 1989 (2011)*¹¹ the UNSC observed that

“Noting with concern the *continued threat posed to international peace and security by Al-Qaida and other individuals, groups, undertakings and entities* associated with it, reaffirming its resolve to address all aspects of that threat, and considering the 1267 Committee’s deliberations on the recommendation of the 1267 Monitoring Team in its Eleventh Report to the 1267 Committee that Member States treat *listed Taliban and listed individuals and entities of Al-Qaida and its affiliates differently,*”

Its very clear from the above discourse that prior to the present situation in Afghanistan, Taliban has been recognized as a group which pose threat to the international peace and security but presently, the Taliban led Afghanistan government is getting recognition¹² as a legitimate government. It clearly gives evidence for the fact that the UNSC has been failing in its mandate to protect the human right, as it is very clear that rights of women are at stack in present Afghanistan. Thus, we desperately need reform at UNSC if its legitimacy is to be protected.

III. Initiatives for UNSC Reform

Attempts by the UN Members to reform the Organization

With changing global geopolitics, the need for reform in United Nations, especially in UNSC was felt by almost every member and same has not been denied by the permanent members of

¹¹Resolutions 1989 (2011) available at: [https://undocs.org/en/S/RES/1989\(2011\)](https://undocs.org/en/S/RES/1989(2011)) (Last visited on September 23th, 2021).

¹² See UNSC resolution 2593 and 2598 of 2021

“Reaffirming its strong commitment to the sovereignty, independence, territorial integrity and national unity of Afghanistan, as well as its continued support for the people of Afghanistan,”.

the council as well. It was only latest in 1991¹³, the strength of UNSC was increased to fifteen from originally eleven (five permanent members and 6 non-permanent members). It is pertinent to mention here that the number of permanent members remained the same i.e five. The change was made to the numbers of non-permanent members from original six to ten. But then, the whole motive of this exercise has remained non useful in its exercise because we see no nexus with the object of the resolution. The position of permanent members has been same as even today, they have same position and power with respect to the veto. Even today one unhappy member, may be motivated by his personal ambitions, can veto the resolution taken by the general assembly. Question is, was this ever expected when the founding members came together to establish a global institution, which is has a democratic body like General assembly?

Time and again, members of the organization have attempted to bring reform within it so that the organization may cater to the pertinent concerns of today's global geopolitics. One of the earliest of such attempts was made on December 11th, 1992; *Resolution 48/26*¹⁴ was adopted to recall that with substantial change in the membership, especially of developing nations, and international relations, the council need to adapt to the contemporary realities for respecting the sovereign equality. Similarly, in *Resolution 53/30*¹⁵ Question of equitable representation on and increase in the membership of the Security Council and related matters were again put on the Flore by recalling resolution 48/26¹⁶. It advocated that the membership of the Security Council shall be increased from fifteen to twenty-five by adding six permanent and four non-permanent members in manner provided considering the contemporary realities. The Resolution also advocated for better Working methods to enhance the transparency, inclusiveness and legitimacy of its work to strengthen the support and understanding of its decisions by the membership of the Organization, thereby increasing the Council's effectiveness. It can be achieved by meeting in public forum and by opening up to all Member States of the United Nations. It would be legitimate to consult the interested member while implementing Article 31 and 32. The council should be accessible to subsidiary organs and the

¹³ Resolution 1991, available at: [http://electthecouncil.org/timeline-post/unsc-non-permanent-membership-increases-from-6-to-10/#:~:text=The%20UNGA%20adopts%20Resolution%201991,into%20force%2031%20August%201965.\(Last visited on September 23th, 2021\).](http://electthecouncil.org/timeline-post/unsc-non-permanent-membership-increases-from-6-to-10/#:~:text=The%20UNGA%20adopts%20Resolution%201991,into%20force%2031%20August%201965.(Last%20visited%20on%20September%2023%202021).)

¹⁴ UN Security Council, *Question of equitable representation on and increase in the membership of security council*, available at: <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/WMP%20A%20RES%2048%2026.pdf> .(Last visited on September 23th, 2021).

¹⁵ UN Security Council, *Question of equitable representation on and increase in the membership of the Security Council and related matters*, available at: https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/A_RES_53_30.pdf .(Last visited on September 23th, 2021).

¹⁶ *Ibid*.

members. It can be done by making them available the Council draft resolutions and other draft documents for consultations.

*Decision 62/557*¹⁷, adopted in 2008, identified primarily five areas of Intergovernmental discourse. These were UNO membership categories, Veto Power, Regional representation in UN, Reform in UNSC and its working methods. A part of the document is reproduced below as;

‘At its 122nd plenary meeting, on 15 September 2008, the General Assembly, recalling its previous resolutions and decisions relevant to the question of equitable representation on and increase in the membership of the Security Council and other matters related to the Council, mindful of Chapter XXVII of the Charter of the United Nations and of the importance of reaching general agreement as referred to in its resolutions 48/26 of 3 December 1993 and 5380 of 23 November 1998 and in its decision 6I/561 of 17 September 2007 on the question of equitable representation on and increase in the membership of the Security Council and other matters related to the Council, as well as the ratification process of any amendment to the Charter as stipulated in its Article 108, and taking note of the seven principles presented by the President of the General Assembly to serve as guiding principles for the advancement of the Security Council reform.’

Reform proposal from Intergovernmental Groups

In this part researcher will, chronologically, put forth the Initiative by the Countries or Groups for advocating the reform at UNSC.

*Uniting for Consensus*¹⁸ proposal dated July 26th, 2005

According to the proposal, the Security Council shall consist of twenty-five members consisting five Permanent and twenty non-permanent members elected according to the

¹⁷ UN General Assembly, *the General Assembly adopted Decision 62/557 “to commence intergovernmental negotiations (IGN) in informal plenary of the General Assembly, available at: https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Decision%2062_557.pdf. (Last visited on September 23th, 2021).*

¹⁸ UN General Assembly, *Uniting for Consensus, GA/10371 available at: <https://www.un.org/press/en/2005/ga10371.doc.htm>. (Last visited on September 23th, 2021).*

regional geography. The proposal was that six from African States, five from Asian States, four from Latin American and Caribbean States, three from Western European and Other States and two from Eastern European States shall be elected by the General assembly. Each geographical group will decide on arrangements among its members for re-election or rotation of its members on the seats allotted to it.

Group of 4-G4¹⁹

The proposal by the “Group of Four” (G-4) namely, Brazil, Germany, India and Japan, is to increase the Council’s membership from 15 to 25, by adding six permanent and four non-permanent members.

African Group²⁰

The African group consists of members of the African Union. It demands two permanent and five non-permanent seats for Africa. While majority of UN work is concentrated in Africa, the continent has not been represented in the council. The group prefers to abolish the veto gradually.

New Delhi’s Diplomacy for UNSC Reform

India and UN Resolution 62/557²¹.

The UN Security Council (UNSC) must reflect contemporary global realities. For this purpose the reform of the UN including the expansion of the UNSC in both permanent and non-permanent categories is essential²². New Delhi has been actively working along with other like-minded countries for building support among the UN membership for a meaningful restructuring and expansion of the UNSC²³. India is a leading member to the intergovernmental grouping such as The G-4 comprising India along with Brazil, Japan and Germany and The L.69, a group of around 42 developing countries from Asia, Africa and Latin²⁴. India is

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ *Ibid.*

²² High Commission of India, Malaysia, *Indian Diplomacy at work*, available at: https://hcikl.gov.in/pdf/menu/19067UNSC_English.pdf .(Last visited on September 23th, 2021).

²³ *Ibid.*

²⁴ *Ibid.*

pursuing the matter through bilateral channels as well²⁵. A large number of countries have supported India's initiatives for reform of the UNSC as well as endorsed its candidature for permanent membership²⁶.

*India elected as non-Permanent member at UNSC for 8th term (2021-22)*²⁷

India's Permanent Representative²⁸ to the UN said that India's presence in the Security Council will help bring to the world its ethos of '*Vasudhaiva Kutumbakam*', multilateralism, comprehensive approach to international peace and security, and technology with a human touch. The council shall reflect the contemporary realities to remain credible.

The External Affairs Minister, while answering the Rajya Sabha over a Unstarred Question Dated 17.09.2020²⁹ remarked that, 'Whether Government has made serious efforts to acquire a permanent seat in the UN Security Council', said that Government has accorded the highest priority to getting permanent membership for India in an expanded UN Security Council that reflects contemporary global realities³⁰. India in collaboration with other pro-reform countries has been consistently making efforts to build support among the UN Member States for expansion of the UNSC, both in the category of permanent and non-permanent³¹.

Above discussion clearly state the fact that it has been already too late for the reform of UN. The global geopolitics has substantially changed from the birth of the organization. Post Second World War, the world has virtually become bipolar. The two immediate powers namely, the USA and the USSR have, to a large extent, been able to convince the countries which later started forming alliance with them. There was another set of countries that did not joined any of these two blocks and formed nonaligned movement.

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ Permanent Mission of India at UN, *India's Election as a Non-permanent Member Of The Security Council for the Term 2021-22*, available at: <https://www.pminewyork.gov.in/press?id=eyJpdil6InZDOVRiWjFGYINqQkhBUUNIaTdwMEE9PSIsInZhbHVlIjoiaEpZTEt6aTdMVVZuYU4wUHdtVct4Zz09IiwibWFjIjoiaOTlIM2M3M2Y3ZDVhMzM4ZWU0ZjEzMjUwMDQ3NTdhMWI1MWQ3NzU2MTE5Nzk0MGI5Y2Q2ZWU0YTFjMzI2NTMzNiJ9> .(Last visited on September 23th, 2021).

²⁸ Ambassador TS Tirumurti, on 07.02.2020.

²⁹ Ministry of External affairs, *Question No. 567 Permanent seat at UNSC* available at: <https://www.mea.gov.in/rajya-sabha.htm?dtl/32998/QUESTION+NO567+PERMANENT+SEAT+IN+UNSC> .(Last visited on September 23th, 2021).

³⁰ *Ibid.*

³¹ *Ibid.*

From then till today, the power has redistributed. The continents, then underdeveloped, have now significant contribution in the global GDP.

IV. Scope of UN charter to address the UNSC reform

Chapter V of the Charter³² is dedicated to UNSC. Article 23 provides that the total strength of UNSC is fifteen, comprising of Five Permanent members and ten non-permanent members. Permanent members are United States, United Kingdom, France, Russia and China. The non permanent members are elected by General assembly for the period of two years. Article 24 provides that the responsibility of UNSC is to maintain International peace and security. Article 27 provides for voting of UNSC members. All the members have one vote each. Decisions can only be taken if there are minimum nine affirmative votes which shall include votes of all the Permanent members.

It is important to bring in Article 108 of the UN Charter which provides that amendments need to be approved by two thirds of the UN General Assembly and ratified by two thirds of all UN members, including all the permanent members of UNSC. Any amendment can be made only when all the five permanent members of UNSC agrees, which has rarely happened

V. UN Charter and Constitutionalism

Brian Tamahana in his book *on the rule of Law: History, Politics and Theory* has formulated two models of rule of law namely the *Thin version* and the *Thick version* of rule of law.

The *Thin version* provides that state can do anything which is provided by law. Court cannot question the law, but can question the action of the state is the same is not sanctioned by law. This concept mainly propounds formal legality and the literal sense of rule of Law. According to Raz, the literal sense of the rule of law comprises two aspects: first, people should be ruled by the law and obey it; and second, for people to obey it, the law must be capable of guiding the behavior of its subjects, the people³³. Thus, a formal rule of law conception imposes only procedural requirements, only restrictions about the form that law must take.³⁴ Under this version, excessive reliance is placed onto the Courts and courts are mainly not supposed to go

³² The United Nation, *The Security Council*, Available at: <https://www.un.org/en/about-us/un-charter/full-text>. (Last visited on September 23th, 2021).

³³ *Conceptualizing the Rule of Law: A Multi-dimensional Approach* Chapter 3 at 77.

³⁴ *Ibid*

beyond the literal interpretation of the law. Thus, thin or the formal legality is mainly rule by the text and check is only on the procedural part of the law.

In the *Thick version* of rule of law, the content/substance of the law can be questioned for its arbitrariness. Law has to be fair and reasonable. The law shall imbibe into itself the constitutionalism principles such as social, economic, and political justice along with the formal legality. To say it more appropriate, the formal legality shall stand the test of the constitutionalism. A law cannot be made thoughtlessly rather it shall be reasonable.

Amber Fitzgerald³⁵ in his paper clearly indicates that the UNSC does not cater to the contemporary geo political problems that the world is facing. At the time of the signing of the Charter, the proportion of Security Council Members to the total Member States was greater than twenty percent. Today, it is less than eight percent³⁶. Lack of representation and equality for U.N. Member States and the domination of the Security Council's Permanent Members, the organization are losing its credibility³⁷. The main Problems Causing the Need to Reform are Domination by the Security Council Over the United the organization, Self-Interest of Council Members, Lack of Checks and Balances, misuse of Veto Power by Permanent members, Non-Participation of U.N. Members in Security Council Decisions, Lack of Transparency of Security Council Meetings, Obstacles to Reforming the Council etc. and many more to take about³⁸.

The Author discusses, at length, the reform measures proposed by the member states and the Regional Groups. There is a clear commonality in the proposal from the members. The organization now needs more permanent members in the council³⁹. The consensus may be replaced with the Majority members showing affirmation. Another way could be completely doing away with the Veto Power of the Permanent members⁴⁰. There is need for more inclusiveness in decision making of the organization, especially in UNSC. Opaqueness of the council is another area of worry. The decisions are generally taken behind the closed door⁴¹.

³⁵Amber Fitzgerald, "Security Council Reform: Creating a More Representative Body of the Entire U.N. Membership" 12 *Pace International Law Review* 319 (2000).

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

Member states and the regional groups have constantly been proposing for bringing in more transparency in the functioning and the decision making of UNSC⁴².

What interests Researcher the most and also is noteworthy is the proposal put forth by the Author for reform. Ideally no new permanent seats should be granted to any individual U.N. Member State. It would only make the Security Council more unrepresentative, unequal, and unresponsive to the concerns of the other countries. In fact this concept should never have been created. Now it is really doubtful if the permanent members would ever give up their privilege⁴³. It is noteworthy that Permanent Member status was strongly opposed at the San Francisco Conference⁴⁴.

General Assembly should pass an amendment to increase the entire Security Council membership to twenty-five seats. Proposal is to add new representation from the regional African, Arab, Asian, and Latin Groups onto the Permanent seat making it a net total of nine permanents. Remainder of sixteen non- permanent seats shall be divided on the grounds of equitable representation of the different regions of the world⁴⁵. Veto Power, ideally shall completely be abolished⁴⁶. The UNSC members now shall be made accountable to General Assembly.

Article 31⁴⁷ provides that it is discretionary for the affected Member States to participate into the affairs. The impugned provision shall be amended in a manner that the word "may participate" should be replaced by "Shall Participate"⁴⁸.

Rule 48⁴⁹ states that meetings "shall" be held in public "unless it decides otherwise." The Council itself should delete the wording "unless it decides otherwise" and create an objective standard pertaining to when private meetings can be held⁵⁰. *de facto* amendments⁵¹ to the Charter can be passed to decrease the Security Council's power and shift it to the Assembly.

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ UN Charter

⁴⁸ *Supra* Note 31.

⁴⁹ Security Council's Provisional Rules of Procedure.

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

Devon Whittle⁵² in his paper, talks about the legal restraint on UNSC actions. The powers of UNSC, as provided in the charter⁵³, especially of the Permanent members are immense. But there has to be some way to check and make the council more accountable. *David Schweigman*⁵⁴ reads Article 24(2) as requiring compliance with norms such as human rights, self-determination and the principle of good faith⁵⁵. Author talks about thinking of judicial reviewing of the Decisions of UNSC. But question, again, is how much is it legal? Reliance has been placed upon Article 24(2)⁵⁶.

Author talks about judicial review of the decisions of UNSC. However, the proposal of judicial review was rejected while charter was being formed⁵⁷. However, The ICJ is still the most promising candidate for institutionalized judicial review of the Council⁵⁸. Author proposes an *Emergency Power Theory*⁵⁹ to apply it to Chapter VII⁶⁰. The two dominant categories of emergency power regimes are the business-as-usual model⁶¹ and the accommodation model⁶².

The business-as-usual and accommodation models both adhere to the idea that the rule of law and the law itself can continue to apply during emergencies, either through legal regimes designed prior to the onset of an emergency or by accommodating responses to emergencies being instituted through a process regulated by the law⁶³. Both therefore take as their starting

De facto amendments are accomplished through the resolution process. These resolutions are in no way binding under the terms of the Charter. Yet, in the past they have been accepted and adhered to by the Security Council. For example, a de facto amendment was made to the Charter permitting the General Assembly to make recommendations despite the fact that the Security Council had seized the problem. The Security Council did not raise objections to this resolution.

⁵² Devon Whittle, "The Limits of Legality and the United Nations Security Council: Applying the ExtraLegal Measures Model to Chapter VII Action" 26 *The European Journal of International Law* 671-698 (2015)

⁵³ UN charter

⁵⁴ *Supra* note 40.

⁵⁵ *Supra* note 41.

⁵⁶ UN charter.

⁵⁷ *Supra* note 48.

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*

In this article, emergency powers refer to special powers granted to governments and officials to respond to emergencies, grave dangers or existential threats.

⁶⁰ UN charter.

⁶¹ *ibid.*

Business-as-usual models reject the need for an exception, assuming that a government restrained by 'normal' law will still be able to effectively deal with any emergency.⁸⁹ Thus, they engage in 'constitutionalism absolutism'.

⁶² *Supra* note 48.

accommodation models suggest that the normal law should apply to emergencies, they accept that a 'degree of accommodation' may also be necessary.⁹³ Such accommodation can take the form of constitutional provisions for exceptions.

⁶³ *Ibid.*

point that rulers are bound by law, which always regulates their action, and that legal institutions can act as a check on the use of emergency powers⁶⁴.

When both the abovementioned model fail to answer as how can the restraint be put on machinery, the *extra legal*⁶⁵ measures are brought in. The extra-legal measures are re-assertion of a form of natural law to fill gaps within positivist legal orders⁶⁶. Thus when powers of UNSC are unrestrained, they become undesirable, and, thus, the use of the extra-legal measures model may help⁶⁷.

Ben I. Murphy⁶⁸ observes that accountability of UNSC has always been an uneasy ride for the international law scholar. The Author in the present paper has brought in the accountability discourse while bringing in the application of Constitutionalism⁶⁹, which can liberal legalistic⁷⁰ and Political⁷¹, for chapter VII⁷². Liberal-legal constitutionalism prefers judicial over democratic processes, ‘judges are deemed to be the guardians of the rule of law’⁷³. Thus global constitutionalism scrutinizes the public authority under the chamber of human rights standards reflecting the individualistic nature of liberal-legalism⁷⁴. Political constitutionalism is more constitutionalism than liberal legalistic and tries to fill the gap left by the latter in judicial institutions and aims to show the limited power of law⁷⁵. Author experiments the Constitutionalism in UNSC to make it more Accountable and prefers Political

⁶⁴ *Supra* note 50.

⁶⁵ *Ibid.*

The extra-legal measures model finds its roots in John Locke’s theory of prerogative powers. Sometimes certain prerogative powers to the government, which exist outside of the legal order may be used ‘when strict and rigid observation of the laws may lead to grave social harm’. Locke justifies this ‘extra-legal’ power as it avoids ‘an expansion of the government’s powers under the constitution and the vesting in the executive ... [of] a highly discretionary ... power within the constitutional framework’.

⁶⁶ *Ibid.*

⁶⁷ *Supra* note 48.

⁶⁸ Ben I. Murphy, “Situating the accountability of the UN Security Council: Between liberal-legal and political ‘styles’ of global constitutionalism?” *Cambridge University Press* 1–35 (2020).

⁶⁹ *Ibid.*

Constitutionalism typically aims to tame man’s quest for power, and aims to do so by providing legal limits. It stands to reason, then, that individuals trained in the law are deemed most suitable to this task

⁷⁰ *Ibid.*

‘Liberal-legalism’ is essentially the exercise of mapping the two insights on classical liberalism, individualism and the rule of law with the theory of legalism.

⁷¹ *Ibid.*

‘political’ style of constitutionalism, owes much to the work of John Griffith.¹⁰³ Its value is found in its antagonism to liberal-legal constitutionalism. To Griffith, the ‘concept of law’ is not an inherently ‘moral concept’. Instead, the invocation of legal argumentation is itself a ‘political act’, a statement of a ‘power relationship

⁷² The charter

⁷³ *Supra* note 56.

⁷⁴ *Ibid.*

⁷⁵ *Supr* note 56.

Constitutionalism because it goes beyond legality (rule of Law) to establish Political Legitimacy.

VI. Proposed reform: applying “*Extra-legal measures model*” to chapter XVIII of the UN Charter

Article 108 of the charter provides for the amendment of the charter. it mandates that any amendment can be possible only when two third members of the general assembly adopts it and then it is ratified by the two third majority of UN membership, including *all the permanent members*.

How shall we now proceed when the permanent members are not willing to bring reforms to the organization to cater the present global geopolitical aspirations? There have been instances where the permanent members have used their veto power for their own benefits. There is no permanent representation on UNSC from Africa and South America. China is the only representation from the largest continent of Asia. Even within Asia, the geopolitics is being shaped by countries like India, Japan etc. In fact, how can we say that one country is less to represent for every decision that affects it. Do we really need the concept of permanent membership to UNSC and their associated veto powers?

The charter shall be amended through extra-legal measures to bring in legitimacy into the functioning of the organization. Close examination of the charter reveals the fact that the foundation of governance of the organization is democratic. The charter intended that the General Assembly shall be consider being the main body of UN and the UNSC shall legitimately support the initiatives of the organization. The purpose of constituting a body of five permanent members with veto power was to stop another chance of war and not to veto the actions in order to satisfy their own political agenda. The General Legitimacy Thesis⁷⁶ and Specific Legitimacy Thesis⁷⁷ of the rule of law shall legitimate the action of judicial review of

⁷⁶*Ibid.*

The judiciary is *morally entitled* to do what is necessary in order to act, as far as it is factually and morally possible, in a legitimate way. This general legitimacy to do what is necessary to maintain their political legitimacy constitutes the ground for the legitimacy of judicial review. I call this thesis the 'General Legitimacy Thesis'. The General Legitimacy Thesis supplies the ground or source of the moral authorization or entitlement conferred to the judiciary to verify whether the norms they are asked to enforce in a given case are valid legitimate laws according to some independent normative standard of political morality and to set them aside, if such norms appear not to be valid or not to be legitimate laws. It supplies the ground or source of the legitimacy of judicial review.

⁷⁷ *Supra* Note 6.

International court of Justice in case the permanent members do veto the amendment. Article one demands that action under the charter shall be based on principle of justice. Article 7 provides that International court of Justice (hereinafter ICJ) is a principal organ of the organization. It is pertinent to mention here that while drafting the charter, the discussion over the role of ICJ was brought to the table. The permanent members had obstructed the way to give power of judicial review of the actions of the UNSC. What is important here is that members, though not all, wanted to endow the ICJ with the power of judicial review. It can be the base of reform in the organization.

The General Assembly shall function as a *Global Peace Parliament*⁷⁸. The Parliament is truly an inclusive and democratic body and therefore it would be a legitimate to endow it with the responsibility of maintaining peace and security worldwide. The functioning of Security Council shall be restricted to discuss and suggest amendments to the resolutions of the Parliament. Membership of UNSC shall be equitable and proportional to the population of the regional groups. The veto power shall be completely abolished. It is would be necessary to bring in here that the impugned Veto power was not being included in the Charter. It was because of adamant attitude of the permanent members of Security Council that their demand of endowing them with the veto power was accepted, out of helplessness, in order to maintain global peace. The council shall be made more inclusive keeping in mind the present geopolitics, which almost every research proposal, reviewed, pitched strongly.

Judicial review, while Charter drafted was being formed, was opposed by the permanent members of UNSC. It is high time that we now reconsider to bring in the scope of in the international law.

In the present Charter, any reform can only be possible with the full consensus of the permanent members of the UNSC. Thus, the P5 countries shall come forward to bring in the necessary changes and reforms in the organization to protect its legitimacy and also, legitimacy of their

According to the Specific Legitimacy Thesis, judicial legitimacy is conditioned by the rule of law provided that the law that is used as reason for judicial decision is morally permissible. It should follow, then, that any such authorization or entitlement should be grounded upon or derived from another law (say a constitutional law). But this other law cannot legitimize a judicial decision based upon it (for the purposes of verifying the legality and the legitimacy of a norm alleged to be law and setting aside) unless it is itself acceptable as morally legitimate. It should follow, then, that the court should be allowed, authorized or entitled to verify the legitimacy of this other law and, if it appears not to be legitimate, to set it aside.

⁷⁸ Researcher Proposes to rename the General Assembly as *The Global peace Parliament*, (herein after the Parliament)

own.

VII. Conclusion

The United Nations is an international organization in true sense. It has potential to cater the needs of all emerging geopolitical concern of the contemporary world. The only concern between the issue and its solution is that the organization needs reform. The contemporary world demands more inclusiveness within the UNSC in particular. Today, credibility of the organization has been questioned many a time. There have been ample instances where the organization has not been able to deliver as is required by the larger objective of maintaining peace and security in the world. The member states and the regional intergovernmental grouping have constantly been advocating the need for reform in UNSC in particular. In 2020, United Nations shall complete its 75 years. The world today is not the same as it was in 1945. There has been substantial amount of power dynamism across the globe. The world has witness various emerging economies, like India, which have influential contribution in the global economy today. Despite all these dynamics, the organization has remained almost the same. The structure of the organization, especially, of UNSC, has not been amended according to the contemporary needs.

In the paper, it has been established that charter of the united states shall not merely be consider as a legal document. The reform can only take place when the real intention of the charter is acknowledge. The charter talks about equality and justice in its functioning. The concept of permanent members and their veto power goes against the very democratic foundation, which is the basic of the organization. The general assembly shall in its present form appear to be more legitimate organ to take decision which would be more democratic.

The proposed amendment will convert the General assembly into a Global Peace Parliament and the UNSC will be an executive organ, answerable to the Parliament. The proposed body will be the final organ to decide upon any matter. It shall follow the democratic process as it does today. The proposed structure may be able to answer the contemporary geopolitical issues.