

Session 3: The UN Reform and Global Governance

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From the core of the UN to the expanded family, let's say. What I call in my paper the universe in the expansion of the UN and beyond. I don't want to anticipate anything, but I was hinting that maybe we should start from the bottom through the functions that different agencies can perform, and from there having the possibility of a change of attitude "seeping up" in the system, and now you have concluded with a no-nonsense examination of what is the real problem, the funds, how the fund-raising is an element which conditions all these strategies and hopes for political change. We will turn and have a listen to insiders. We have informed observers of academia. I turn to Professor Greppi to start. Thank you.

PROF. GREPPI

Thank you very much Mr. Chairman.

In the past weeks I have been wondering what to say today, because there are many issues which are rather interesting for a lawyer, starting with all those relating to peace and security, to terrorism, to the so called "responsibility to protect", and many others. Questions that have been raised in the last few years. Then I decided to move to another field which appears to me of some interest, even though it may appear strange. But as you all know, lawyers are sometimes considered to be strange individuals, so I hope you'll forgive me for this.

There is a crucial issue to be found in all documents which have been submitted to the UN over the last few years, which is the role of the General Assembly. Even in the field of peace and security, if you look at the High Level Panel conclusions or at "In Larger Freedom" document, or at the "Outcome Document", you will find the role of the General Assembly mentioned in the parts devoted to pacific settlement of disputes, to the use of force under the Charter, to terrorism; in particular there is a strange mentioning of this role in the paragraph on the use of force under the Charter, which ends by saying "we also note the role of the General Assembly relating to the maintenance of international peace and security in accordance with the relevant provisions of the Charter". What does this mean? Nothing, absolutely nothing at all. But it is interesting that several times the role of the General Assembly comes out of this document.

I wish to go back to the reasons for the institutional dualism of the Charter. As we all know, the creation of the UN was a response to the great demand for peace and security following World War II. The organisation is the result of the combination of two basic principles: universal equality and oligarchic power. In other words, world peace and security were meant to be granted by a dualistic institution, composed of a General Assembly, in which States should have been represented on an equality basis, and a Security Council whose primary competence lay in the field of security and crisis management, in which a special position would have been granted to States having a major responsibility in international affairs. The five permanent members were conceived as a sort of "directorate of world affairs". As you all know, the system didn't work because of the Cold War and the impossibility of keeping the necessary harmony among the "directorate" members. But it didn't collapse: the Security Council was paralysed by the abuse of the so-called right of veto, but the General Assembly was capable of playing a certain role. It focused on economic and social issues,

and moreover it concentrated on the adoption of declarations of principles and on the radical transformation of the enlarged international community which was the result of de-colonisation. The emerging new countries quickly became the majority in the General Assembly, and they became very active in the mounting reforms, they wanted to discuss the main political, economic and legal issues of the international community. From the very beginning they seemed to refuse acceptance of an order with rules they hadn't contributed to form. One essential *leitmotif* was that of democratisation of the UN, basically through an augmentation of the powers of the General Assembly and stepping up the Security Council members with parallel elimination of the right to veto, or else extending this to new members.

Let me try here to contribute to the discussion by summarising a few elements or question marks. In the Charter primary responsibility in the field of peace and security was given to the Security Council; attempts to move the focus from this oligarchic body to the General Assembly failed. The main question was how the organisation could decide on effective action in the typical Cold War situation of a Security Council paralysed by a veto. According to the Charter there is no room for the General Assembly having power in the field of actions falling within Charter VII, but then we find references in all these documents to a *possible* role, even if not clearly identified, for the General Assembly. The "Uniting for Peace" Resolution of 1950 and the creation of UNEF in 1956 were strongly opposed by the Soviet Union and the Eastern European bloc; moreover no major State or group of States recognised in international practice the existence of a customary rule in international law. If this is the situation under the Charter and under customary international law, what about the possibility or desirability of a modification of the Charter in order to shift some competence from the Security Council to the General Assembly, even partially and in limited cases? In my opinion the main point is that the UN Charter provisions can be modified and at the same time basic principles still belong to customary international law and some of them are of a peremptory character. Principles like peace and respect for human rights are not and cannot be a matter of discussion or negotiation.

Does democracy belong to these principles? When the General Assembly was envisaged there is no doubt that at least some States had in mind to apply the principle "one state, one vote" as a parallel to democracy's traditional "one man one vote". If this is true, a relevant problem arises: is it possible to imagine the shifting of some competence and power to a General Assembly in which decision-making would be based on the participation in an international democratic process of countries which lack democratic legitimacy in their own national constitution? So the question is: can we object to the major decision-making power being given to an oligarchic Security Council and at the same time increase the role of the General Assembly without solving this broad problem of lack of democratic legitimacy?

We cannot close our eyes and accept that democracy does not belong to the fundamental heritage of human rights. On the contrary, it belongs to the first generation of civil and political rights, and we should always remember that democracy plays an essential role in conflict prevention, both in a domestic and an international perspective.

Moreover, democracy is a crucial issue in peace-building situations. If there is the will to strengthen the General Assembly by recognising some decision-making power - which sometimes appears to be already recognised, at least in practice - we should think about introducing some kind of weighted voting. A policy-making body which can only adopt recommendations could be shaped in those terms in strict respect of the principle of sovereign equality of States under article 2, paragraph 1 of the Charter. If the General Assembly were to be given some power to adopt legally binding acts or decisions - and it sometimes appears to be pushing in that direction - it would probably make sense to introduce mechanisms which would grant a different weight to the People's Republic of China and to the Republic of San Marino, to the U.S.A. and to the Republic of Palau, to India and to the Seychelles, to the United Kingdom and to Tonga.

Another point which I would like to underline, is that the European Union decision-making mechanisms can provide a useful model for that kind of evolution. The EU is a multilateral organisation, whose member States have different size, different population, different political, military and economic power. Both the European Parliament and the Council of the Union have a representation of peoples and of States respecting these different dimensions; seats in the European Parliament are linked to the population of each State. In the Council, on the other hand, when a qualified majority is required, each government is given a different amount of votes. The Constitutional Treaty, which was signed in Rome on October 29th, 2004, introduced an even more sophisticated system based on the combination of a doubly qualified majority of States and population. The solution is therefore practical: it works, it respects high democratic standards and the requirement of representation based on principles of equity and balanced power.

Another point: along with the cases of the World Trade Organization and the FAO, the European Union should be represented in the UN as a single subject, beginning from the UN General Assembly. Up to now it has only been discussed as the possibility of a seat in the Security Council, as a single subject, provided of course that its member States ratify the new Treaty, adopting a Constitution for Europe including provisions on the common foreign policy for the Union and its related legal personality.

On the other hand, another issue that should be taken into account is that of *efficacy*. Are we sure that a representative body composed of 191 states would be the ideal actor to face international crises and conflicts? One of the reasons which at the origin pushed the founding members towards the creation of a Security Council with a limited membership was that a plenary assembly is generally considered inadequate for an efficient decision-making mechanism. Therefore competence in the field of peace and security should be left in the first place, as it is now, with the Security Council, that is to a body of restricted membership, in order to guarantee a quick and efficient response to threats to world order. The General Assembly could in that case be given a global political supervision responsibility, provided genuine democracy would be granted.

Last but not least, regional organisations should be given clear responsibility, provided that they comply with the general obligation to respect human rights and agree to introduce democratic mechanisms. There is no doubt that a collective security system based on strong regionalisation would in many situations be much more effective than a universal one. A regional conflict, a peculiar local crisis could be much more effectively approached and dealt with through the action of strong regional organisations. That was also the approach in 1945 and should be re-launched: chapter VIII of the Charter is still an unexplored world of opportunities.

As a way to conclude, I would only like to stress that the international law perspective is a very peculiar one because we have to face rules, existing rules in international law and governing international organisations, which are still based on the fundamental principle of sovereignty of States. They do not admit of other subjects in international law other than States; these are clearly inadequate in a world where we have so many subjects which are not States, like those we find in terrorism situations, in economic and social relations and so on. The post Westphalian world is today still working with traditional Westphalian instruments, and this is a problem.

Thank you very much, Mr. Chairman.