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review paper

## THE SECURITY COUNCIL'S ENCROACHMENT ON THE JURISDICTION OF OTHER UN BODIES- THE FUTURE OR THE BREAKDOWN OF THE UNITED NATIONS?

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*Abstract:* In recent decades, the encroachment of the Security Council on the competence and jurisdiction of the General Assembly and other UN bodies is noticeable. The encroachment indicates the tendency of the Security Council to broaden, arbitrarily, the definition of what constitutes a threat to international peace and security, particularly with respect to thematic debates on social, humanitarian, economic, and development issues. Thematic debates on AIDS, climate change and human rights had caused the anger of the Member States and raised a question about the jurisdiction of the Security Council comparing to the other UN bodies like the General Assembly and the Economic and Social Council. The encroachment of the Security Council might have positive aspects in the development and popularization of the human security concept within the United Nations. The author concludes that the encroachment of the Security Council causes more damage than good effects for the United Nations. It shows a lack of coordination between main bodies, stagnation, and the marginalization of other main bodies in the UN system and arbitrarily boarding of “a threat to peace” and “the maintenance of international peace and security”.

*Key words:* the Security Council, encroachment, the General Assembly, threat to peace, AIDS, climate change, human security.

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## INTRODUCTION

The Security Council is a body primarily responsible for the maintenance of international peace and security within the UN system. In the first decade of the UN, due to the Security Council's often veto abuse, academics have been wondering "whether the Security Council is fated to become like the human appendix, an atrophied organ with no useful function to perform (...) or that perhaps will be changed in any case by an improvement in the state of international relations." (Goodrich, 1958, p. 273) (Non) activities of the Security Council during the 1990s and 2000s, controversial admissions to the UN membership, scandals, and manipulations relating to peacekeeping operations as well as the controversial cooperation with certain regional organizations have cast a shadow over its reputation. In the legal literature the Security Council has been characterized as "increasingly intrusive and proactive (...) a superpower organ with contrasting aspirations of the majority of the members of the UN" (Rath, 2006, p. 61), "an oligarchic" and "an exclusive club" (Dimitrijević, 2009, p. 11). The Security Council has been compared with "an international police officer who has been centralized the application of international law" (Jovanović, 2015, p. 61).

The UN Charter contains no provision limiting the scope of the Security Council's actions regarding the General Assembly and other UN main bodies. Over the years, the UN member states have noticed the encroachment of the Security Council on the competence and jurisdiction of the General Assembly and the other UN bodies. The "encroachment" indicates the tendency of the Security Council to "broaden, arbitrarily, the definition of what constitutes a threat to international peace and security, particularly with respect to thematic debates touching on social, humanitarian, or economic and development issues." (Sievers&Daws, 2014, p. 582) The Security Council has tried to justify this kind of practice, stating that discussions and actions on economic, humanitarian, and social issues are only considered within their importance for international peace and security.

The encroachment of the Security Council might be considered as a violation of the principles of the UN Charter, reduction of the authority of the other UN bodies as well as diminishing the Member States rights based on the UN membership. Also, the encroachment makes disagreements between the UN members. Developing countries consider encroachment as an abusive practice with the aim to strengthen the power of the Security Council. (Zifcak, 2009, p. 46) On the other side, the most developed countries have strategies and plans on considering social, humanitarian and developing issues within the Security Council in the future (Dröge, 2018, p. 1-7).

When did the encroachment of the Security Council begin, and what might be the consequences? Can the encroachment develop a new vision of the Security

Council and cause new directions and new aspects of the role of the Security Council? Is the encroachment just an (unhappy) phase within the Security Council? What are the consequences of the encroachment on the other UN bodies and their relation with the Security Council? These are some of the questions that require answers.

### **HOW DID IT ALL BEGIN?**

During the first fifty years of its functioning, the Security Council was considering the maintenance of international peace and security. Pursuant to this authority, it may “determine the existence of any threat to the peace, breach of the peace, or act of aggression” (UN Charter, article 39) and then “decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security” (UN Charter, article 39). With time, it has shown that among the permanent members of the Security Council “no consensus exists on what constitutes a threat to international peace and security and there is no agreement on how to respond even to those threats on which it does agree.” (Benard & Leaf, 2010, p. 1397) Acting under article 39 of the Charter, the Security Council has rarely determined the existence of a “breach of the peace” or “act of aggression”. It has normally considered it sufficient to determine a threat to the peace.

The concept of a threat to the peace has tended to expand over the years. The “expanded version” of a threat to the peace now covers “humanitarian emergencies, the overthrow of democratically elected leaders, extreme repression of civilian populations and cross-border refugee flows threatening regional security, and failure to hold perpetrators of major atrocities accountable” (Stromseth, Wippman & Brooks, 2006, p. 32).

The late 20th century and early 21st century brought new global threats to international peace and security- terrorism, the proliferation of nuclear weapons and other weapons of mass destruction, pandemics (AIDS), climate change and human rights. Many UN members expressed reservations about involving the Security Council in issues like climate change, AIDS and especially human rights, having in mind that such practice would result in the encroachment on the role of other organs such as the General Assembly, the Economic and Social Council, as well as interference in sovereign state affairs.

### **The Security Council and the AIDS problem**

The encroachment on the jurisdiction of the other UN bodies began with the Security Council’s debate on the impact of AIDS on peace and security in

Africa in 2000. Reflecting on some earlier discussions within the USA, the USA administration was behind the first major claim that AIDS was a security threat on the global level. The key moment in this process was the USA presidency of the Security Council in January 2000. During a month-long focus on Africa, the Security Council met to discuss the impact of AIDS on peace and security in Africa. Richard Holbrooke, then USA ambassador to the UN, played the central role in getting the issue on the Security Council's agenda. (McInnes & Rushton, 2010, p. 226-227)

Al Gore, the then vice president of the USA, during the AIDS debate, thanked the members of the Security Council for “their willingness to greet the dawn of this new millennium by exploring a brand-new definition of world security” emphasizing that “after more than 4,000 meetings stretching back more than half a century, the Security Council will discuss a health issue as a security threat.” (Security Council Press Release, 10 January 2000).

Academics have been wondering if the choice of the words “security threat” instead of “threat to peace” was deliberate. (de Wet, 2004, p. 173) If AIDS might be considered as a “security threat”, the Security Council would only be able to take binding action in terms of Chapter VII if the “threat to security” simultaneously amounted to a “threat to peace”. Many member states during the debate considered AIDS as a “threat to peace”. The representative of Argentina stated that a threat to peace should include a threat to human security and need not relate to the absence of war. Having in mind the fact that about 10 times more people in Africa died of AIDS in 1999 than in armed conflicts, some Member States considered that peace and security did not mean the absence of military conflict. It depended upon the socioeconomic realities of the nations (de Wet, 2004, pp. 173-174).

As a result of the debate, the Security Council adopted unanimously Resolution 1308 in July 2000. This was the first resolution to address the impact of AIDS worldwide. In the Resolution 1308, the Security Council encourages all interested Member States “to consider developing, in cooperation with the international community and UNAIDS, where appropriate, effective long-term strategies for HIV/AIDS education, prevention, voluntary and confidential testing and counselling, and treatment of their personnel, as an important part of their preparation for their participation in peacekeeping operations.”

Although adopted unanimously, Resolution 1308 had shown disagreement, even between the Security Council members. Russia, China and France were all initially opposed to discussing AIDS in the Security Council, although they were ultimately persuaded to support this Resolution. (McInnes & Rushton, 2010, p. 230)

The United Kingdom had certain doubts when it comes to the adoption of Resolution 1308. In the last days of negotiation over the text of Resolution 1308, the UK Foreign and Commonwealth Office (FCO) was concerned about the danger of exceeding the role of the Security Council. A telegram from the FCO to the mission in New York stated: “We remain concerned that the text as it stands does not obviously fall within the Security Council’s competence (...) Nevertheless, you should continue to support the US by shortening and amending the text” (McInnes & Rushton, 2010, p. 230).

The formal reason for putting AIDS on the agenda of the Security Council was that it could affect peacekeeping operations. Some Member States had the concept of human security on the mind as a theoretical basis for the AIDS debate in the Security Council.

The debate on AIDS was a controversial step forward of the Security Council and “the first enlargement of the concept of security to include more than an absence of insecurity, or war.” (Piot, 2014) The AIDS debate was at the same time an introduction into the enlargement of the concept of security, step forward to the humanization of the security, and the beginning of the encroachment of the Security Council into the jurisdiction of the General Assembly and other UN bodies.

### **Climate change and the Security Council**

Probably the most famous and so far the most controversial case of the encroachment on the jurisdiction of the other UN bodies happened in April 2007 when the Security Council held the first-ever debate on the impact of climate change on peace and security. The debate on climate change was an open debate with the aim of exploring the relationships between energy, security and climate.

Academics and security analysts have been warning for some time that climate change threatens water and food security, the allocation of resources, and coastal populations. In the future, these threats could increase forced migration, raise tensions, and trigger conflicts (Todić & Dimitrijević, 2012). Some academics consider climate change “a far greater threat to the world’s stability than international terrorism” (Brown, Hammill and McLeman, 2007, p. 1143).

The debate on climate change in the Security Council was a result of the lobbying by the United Kingdom, one of the (secret) opponents of the AIDS debate in 2000. The then President of the Security Council, Margaret Beckett, Foreign Secretary of the United Kingdom, opened the debate with the words: “While there was some doubt about whether the Council was the right forum, the Council’s responsibility was the maintenance of international peace and

security, and climate change exacerbated many threats, including conflict and access to energy and food. The international community needed to recognize that there was a security impact from climate change, and begin to build a shared understanding of the relationship between energy, security and climate.” (Security Council Press release, 17 April 2007).

On the one side, the debate on climate change had indicated “general agreement on the importance of the topic”, but on the other side, it had indicated “wide differences in the perceptions of the specific nature of the security-related environmental problems as perceived by different countries” (Population Council, 2007, p. 421).

The Group of 77 accused the Security Council of violating the UN Charter, stating that its primary responsibility was maintaining international peace and security as set out in the Charter. All other issues, including those relating to economic and social development, are assigned by the Charter to the Economic and Social Council and the General Assembly. The Group of 77 considered that the Security Council had gone far beyond its mandate. Issues like climate change, nuclear non-proliferation, and even terrorism are issues for general membership (Deen, 2007).

Liu Zhenmin, the representative of China in the Security Council, emphasized that “discussions on climate change should be conducted within the framework that allowed participation by all parties. The developing countries believed that the Security Council did not have the expertise and did not allow extensive participation in decision-making. It would not help produce widely acceptable proposals.” (Security Council Press release, 17 April 2007)

Vitaly Churkin, the representative of the Russian Federation, appealed to the international community “to consider the issue of climate change in all its aspects in a comprehensive manner and within the appropriate international forums, such as the World Meteorological Organization, the General Assembly and the Commission on Sustainable Development, among others. The Security Council should only deal with issues directly under its mandate.” (Security Council Press release, 17 April 2007)

Egypt’s representative expressed concern that the subject of climate change debate lay clearly and squarely within the realm and mandate of other bodies of the United Nations system, especially the General Assembly and the Economic and Social Council. The Security Council’s encroachment on the mandates and responsibilities of other United Nations bodies, as well as indifference to the repeated cause demands by the Member States to put an end to that dangerous and unjustified practice. Also, the representative of South Africa expressed the opinion that the climate change debate did not fall within the mandate of the

Council and would be better addressed in other forums. (Security Council Press release, 17 April 2007)

On the other side, the climate change debate in the Security Council had received a lot of support from small island states. The Maldives expressed support for the debate considering that it is necessary to draw the world's attention to the urgency of climate change and its consequences. States of the Pacific Islands Forum emphasized that since no island was more than a few meters above the water, a sea-level increase of as little as half a meter would completely inundate those island States and threaten their populations. The Pacific Islands Forum expects from the Security Council "to keep the issue of climate change under continuous review" (Security Council Press release, 17 April 2007).

Another open debate on climate change was held in July 2011. The initiator of this debate was Germany. This debate had also caused the counterwork of many UN members. Raphael Archondo, representative of Bolivia in the Security Council emphasized that "climate change was a real threat to humanity and Mother Earth. But the Council should not deal with it because some of the main emitters of global greenhouse gases were permanent Council members and they had the right to veto." (Security Council Meeting Coverage, 20 July 2011) Besides the concern that the Security Council's discussion on climate change had undermined the mandate of other UN organs, the member states consider that the agenda is already too extensive and the Security Council should be directed to resolve existing crises before addressing future-oriented ones (Lappin, 2015).

The Security Council held a debate on "Understanding and addressing climate-related security risks" in July 2018. (UN News, 25 January 2019). In January 2019, the Security Council held one more debate on climate change. The initiative for this debate comes from the Dominican Republic.

Despite the opposition of numerous Member States, the Security Council continues with the encroachment on the jurisdiction of the other UN bodies when it comes to climate change. Germany holds a non-permanent seat on the UN Security Council in 2019 and 2020, and it has announced that climate fragility will be one of its priorities. Having in mind mixed interest of the Security Council members' in climate change, Germany announced three challenges:

- adding value for all parties involved (the vulnerable developing countries as well as the permanent five countries in the Security Council);
- matching ambitions with resources (Germany's credibility as a climate policy leader needs to be maintained and engagement needs to be pushed at the highest level possible);
- managing expectations on possible Security Council progress on this non-traditional security issue in the next two years (Dröge, 2018, p. 1).

## **Human rights and the Security Council**

Another example of the encroachment on the jurisdiction of the other UN bodies was the Security Council's meeting on "Maintenance of International Peace and Security: Human Rights and the Prevention of Armed Conflict" on 18 April 2017. It was the first time the Council discussed human rights thematically.

Nikki Haley, the representative of the United States, said that warning signs of human rights violation could be seen in a number of countries, including the Democratic People's Republic of Korea, Syria and Burundi, adding that the real investigations of those and other similar situations must be launched. Engagement of the Security Council in human rights violations should be "early and often" (Security Council Meetings Coverage, 18 April 2017)

The United Kingdom's representative considers that the Security Council had a clear role to play and there was, in fact, no encroachment on other United Nations entities. The UK emphasized that in Syria, the warning signs had led to civil war, the rise of extremism, the refugee crisis and the use of chemical weapons. The repeated abuse of the veto to block the Council's resolutions against human rights violations in Syria was unacceptable. Emphasizing the importance of the work of the OHCHR and the Human Rights Council, the United Kingdom commended their investigative mechanisms, saying they were providing objective and vital information on active or potential conflicts. The Security Council "could not discharge its Charter responsibilities fully without addressing human rights." (Security Council Meetings Coverage, 18 April 2017)

Sweden emphasized the importance of human rights to the work of the Security Council across all three phases of the conflict cycle: before, during and after. Monitoring respect for all human rights (civil and political rights, economic, social and cultural rights) must be an integral part of prevention. Responding early to violations and abuses of human rights can effectively prevent conflicts before they become a threat to regional and international peace and security. (Security Council, 18 April 2017)

Some countries consider the Security Council's engagement in human rights as a threat and interference in the sovereign state affairs. For example, Egypt expressed concern "about the fact that there are some who insist on using our shared goal of promoting human rights as a back door for interfering in the internal affairs of States and adding items that do not constitute a threat to international peace and security to the Council's agenda." (Security Council, 7926th meeting, 18 April 2017)

The Russian Federation's representative in the Security Council said that the United Nations had a broad range of human rights instruments, but the Security Council was not among them. Similarly to Russia, Kazakhstan pointed out "that



human rights are mentioned 15 times in the Charter of the United Nations, but not in Chapter VII, which implies that these rights cannot be forcibly imposed on States; rather they can be realized through diplomacy, mediation and inclusive dialogue.” Kazakhstan, as well as many other countries, believes that the Human Rights Council, its mechanisms and procedures, as well as the United Nations High Commissioner for Human Rights and the Secretary-General, play a key role in monitoring the observance of the human rights situation in all countries and have the appropriate mandate and experience to contribute to conflict prevention at an early stage. (Security Council, 7926th meeting, 18 April 2017)

Tekeda Alemu, the representative of Ethiopia, emphasized that the promotion and protection of human rights did not fall under the Security Council’s purview. The Human Rights Council was the primary body for addressing human rights questions, together with the relevant Committee of the General Assembly. Mr. Alemu stressed that the Council should remain focused on carrying out its mandated Charter responsibilities. He warned that the Security Council’s encroachment on other United Nations bodies would create unnecessary division and discord at a time when the Council could not find common ground on the most pressing issues. (Security Council, 7926th meeting, 18 April 2017)

Human rights are very sensitive issues for the Member States, especially having in mind abuses of human rights in the past as an excuse for highly controversial concepts of humanitarian intervention or responsibility to protect. In the last three decades, the United Nations and the Security Council have been criticized a lot due to some abuses of the human rights concept. The United Nations have a lot of bodies specialized in human rights. It is a duty and responsibility of each member state to integrate the promotion and protection of human rights into their national policies. But the key to human rights promotion and development within the UN has to be close cooperation between the Office of the United Nations High Commissioner for Human Rights and all relevant bodies of the United Nations.

### **THE SECURITY COUNCIL’S ENCROACHMENT: A STEP FORWARD TO HUMAN SECURITY?**

The encroachment of the Security Council on the jurisdiction of the General Assembly and the other UN bodies is a reflection of the current state in the United Nations. It shows a switch from “classic threats to peace” and “classic maintenance of international peace and security” towards new ones. All cases of encroachment were technically connected with threats to peace in a broader sense. New threats to peace such as HIV and diseases, climate change, human rights

can be characterized as the “non-traditional challenges – the so-called “gray area phenomena” (Brower&Chalk, 2003, p. 1)

Despite the disagreement of many UN Member States, the encroachment of the Security Council on the jurisdiction of the other UN bodies is a reality. It will continue in the future, especially about climate change and human rights. Besides, some new issues might be considered by the Security Council in the future as a threat to peace.

It is necessary to ask: “What can be good sides of the Security Council’s encroachment? What are the future perspectives of the Security Council’s encroachment on the jurisdiction of the General Assembly and the other UN bodies?” So far, it has been obvious that new threats to peace have something in common- all of them are more individual-oriented than state-oriented. AIDS, human rights and climate change in the first place affect people. Having in mind this fact, possible good sides of the encroachment on the jurisdiction of other UN bodies could be the development and popularization of the human security within the Security Council as well as the security sector reform.

The term “human security” was introduced into the international discussion in the 1990s as a response to new (or more generalized) “downside risks” that could affect everyone (Howard-Hassmann, 2012, p. 89). The United Nations Development Programme (UNDP) defined human security as both “safety from such chronic threats as hunger, disease and repression” and “protection from sudden and hurtful disruptions in the patterns of daily life.” (UNDP, Human Development Report, 1994) The UNDP report identified risks of excessive international migration, environmental degradation, drug production, and international terrorism. Later, other risks such as the spread of disease were identified. The human security concept is focused on early warning and prevention of all these risks. Human security “was meant to be a counterweight to the view that the only form of security that mattered was state security, defined quite narrowly as “military defense of state interests and territory.” (Howard-Hassmann, 2012, p. 90)

The concept of human security also has a switch in the main object of security. In the case of human security, it is no longer the state object of concern (national or state security), nor traditional warfare (military security). In the case of human security, security is all about humanity at every level- individuals, groups and the global population (den Boer & de Wilde, 2008, p. 10). By the words of the ex-UN Secretary-General Kofi Annan: “Human security can no longer be understood in purely military terms. Rather, it must encompass economic development, social justice, environmental protection, democratization, disarmament, and respect for human rights and the rule of law.” (UNESCO, 1999)

Within the United Nations, there was not much understanding of the concept of human security during the 1990s and early 2000s. The Commission on Human Security in 2001 provided a report “Human security now” defining the aims of human security as the protection of “vital core of all human lives in ways that enhance human freedoms and human fulfilment.” This report has been criticized as idealistic.

A well-known UN document, the report of the Secretary-General’s “High-level Panel on Threats, Challenges and Change” focused on the old, classic and comprehensive system of collective security rather than moving beyond the confines of the traditional state-centric security paradigm. The fact is that the Report brought new threats to peace such as HIV and climate change, but it only broadened the classic concept of security with a new and wider range of threats. The state still remained an object of security, and all new threats were characterized as threats to its integrity. (Martin & Owen, 2010, p. 215)

The encroachment of the Security Council is an interesting example of developing human security within the United Nations. The UN Member States are aware of problems that might be caused by AIDS, climate change, human rights and the effects these threats might cause in the future. But, in the future, the Security Council should develop more person-centered debates on these problems, instead of a state-centered approach. All these threats first affect people and later, they might have a spillover effect on the state, region and the world. It is necessary for the Security Council to find a proper balance between human security and state security. Having in mind reputation, media coverage and the importance of the Security Council, this body should use its powers in good cause and develop and popularize the concept of human security.

Also, the popularization of human security might cause good preconditions for the security sector reform within the United Nations. The concept of the security sector reform was developed in response to a dysfunctional security sector and its implications for sustainable peace and development. This concept is based on the idea of reforming the security sector in order to enhance the effective and efficient provision of security not only for the state but also for its people. The security sector reform has an aim to establish an efficient security sector accountable for the people. (Bleiker & Krupanski, 2012, p. 37-38)

Security reforms are one of the most important aspects of UN reform, as well as the reform of the Security Council. Accepting and implementing security reforms and popularizing and developing the human security concept, the Security Council might not completely avoid encroachment accusations in the future, but it certainly can revive the Charter’s “We, the peoples of the United Nations”.

## **CONSEQUENCES OF THE SECURITY COUNCIL'S ENCROACHMENT ON THE OTHER UN BODIES**

Despite some possible perspective of the Security Council's encroachment in the future, most UN Member States are disappointed about this kind of action. The encroachment of the Security Council is showing a lot when it comes to the current state in the United Nations. It shows a lack of coordination between main bodies, stagnation, and the marginalization of other main bodies in the UN system (especially the General Assembly) and the hegemony of the Security Council.

What does the UN Charter say about the jurisdiction of the General Assembly and the Security Council?

The General Assembly may discuss any questions or any matters within the scope of the Charter or relating to the powers and functions of any organs provided for in the present Charter, and (except as provided in Article 12) may make recommendations to the Members of the United Nations or the Security Council or both on any such questions or matters (UN Charter, Article 10). Article 11 para. 1 of the UN Charter says that the General Assembly may consider the general principles of cooperation in the maintenance of international peace and security, including the principles governing disarmament and the regulation of armaments, and may make recommendations with regard to such principles to the Members or the Security Council or both. On the other side, the Security Council is primarily responsible for the maintenance of international peace and security (UN Charter, Article 24, para 1) In discharging these duties the Security Council shall act in accordance with the Purposes and Principles of the United Nations (UN Charter, Article 24, para. 2).

At first glance, the General Assembly has almost limitless jurisdiction. It is in charge of discussion on any questions or any matters within the scope of the Charter. Issues like AIDS, climate change and human rights are primary in the scope of the General Assembly, as well as some other main bodies like the Economic and Social Council and specialized agencies.

Having in mind all these facts, we should wonder: "Why the Security Council discusses on the issues not primary under its jurisdiction?" Unfortunately, the encroachment of the Security Council on the jurisdiction of the other UN bodies is a result and a direct consequence of the marginalization of other main bodies within the UN.

The General Assembly has broad jurisdiction, but resolutions of the General Assembly are not obligatory. Also, the history of the General Assembly can be viewed in three phases- expansion (during the 1950s), stagnation (during the 1970s-1990s) and marginalization (since 1990s) (Smouts, 2000, p. 21). In its early days, the General Assembly was a crucial actor in all the changes within the UN.

During the 1970s, the focus of the General Assembly changed from peace and security to development, economic and social issues.

Academics criticize the General Assembly for the size of its “enormous annual agenda” and “repetitiveness of agenda items.” (Childers & Urquhart, 1994, p. 131) Due to its problematic agenda, repetitive items and non-obligatory resolutions, the General Assembly is often described as paper diplomacy without any significant effect.

Similarly to the General Assembly, the Economic and Social Council has been criticized for the lack of effectiveness, too large and too unwieldy structure and failure to coordinate the overall direction in economic and social fields (Rosenthal, 2007, pp. 141-142). The Economic and Social Council has always been considered as a body subordinate to the General Assembly. That is why the Member States had always discussed economic and social issues in the General Assembly rather than the Economic and Social Council.

The General Assembly and the Economic and Social Council have lost a game in the United Nations and also have lost the respect of the international community, the Member States and the general public. The Security Council, despite the accusations of being hegemonic, oligarchic, too powerful and controversial, is the only respected body of the United Nations. Its encroachment is a result of the marginalization of the General Assembly and the Economic and Social Council. But, can the marginalization of main bodies and encroachment of the Security Council be good for the future of the United Nations? The answer is certainly – no.

### **Revitalization of the General Assembly as a “cure” for the Security Council’s encroachment?**

The United Nations need reform as soon as possible. The UN Charter is a precious and valuable legal document, but it is not good enough for the 21st century. The world needs better cooperation between main UN bodies, as well as different structure and jurisdiction of the main bodies. Beginning in its 60th session, the General Assembly has annually established an *Ad Hoc* Working Group (AHWG) on the revitalization of the work of the General Assembly. The AHWG is making recommendations about the General Assembly’s revitalization to the general membership. The working group typically aims to negotiate a resolution that can be adopted by consensus in the General Assembly. The four key thematic clusters of these revitalization discussions have been:

- 1) enhancing the role and authority of the General Assembly,
- 2) the role of the General Assembly in the election of the Secretary-General,
- 3) improving the working methods of the General Assembly,

4) strengthening the institutional memory of the Office of the President of the General Assembly.

For many Member States, the desire to strengthen the General Assembly is a result of the perception of a large power disparity between the General Assembly and the Security Council. Major proponents of revitalization (such as the Non-Aligned Movement) argue that the Charter sought to establish the General Assembly and the Security Council as separate but equal bodies, with the General Assembly as the chief deliberative, policy-making and representative organ. Having in mind the universal membership of the General Assembly, its decision-making process tends to be more divisive and slow-moving than the more exclusive Security Council, which also has the authority to produce legally binding decisions (Center for UN Reform, 2020).

The Non-Aligned Movement underlines close cooperation and coordination among all principal organs of the United Nations as highly indispensable in order to enable the United Nations to remain relevant and capable of meeting the existing, new and emerging threats and challenges. A balance between the two most important bodies of the UN systems (the General Assembly and the Security Council) could contribute in restoring the reputation of the UN and achieving the objectives envisaged by the Charter. (Gordanić, 2015, p. 62) The Non-Aligned Movement, as well as many Member States and even the P5 members, expresses its concern over the continuing encroachment by the Security Council on the functions and powers of the General Assembly and the Economic and Social Council. The Security Council should fully comply with international law and the United Nations Charter. (Fars News agency, 2018)

The *Ad hoc* working group for the revitalization of the General Assembly have discussed a number of recommendations to enhance its the role and authority- coordination between the presidents of the Security Council and the General Assembly, more consistent implementation of the General Assembly's resolutions, organization of thematic debates on critical topics with participation by experts and national policy, improvement of the General Assembly's reputation in the media, etc.

During the thematic meetings and the debate of the *ad hoc* working group on the revitalization of the work of the General Assembly in 2014, the Non-Aligned Movement and several Member States (India, Brunei, Egypt, Indonesia, Pakistan, Cuba and Malaysia) have argued that in order to restore the General Assembly's role and authority, the Security Council's encroachment on the General Assembly had to be addressed. The Non-Aligned Movement suggested the addition of a paragraph noting that the General Assembly and the Security Council avoid the encroachment of each other's competencies. Such a direct reference to encroachment caused much debate between the US, the EU, Japan, and the Non-

Aligned Movement. A paragraph about encroachment did not reach consensus. (Jagtiani, 2014) Final text of Resolution 68/307 on the Revitalization of the work of the General Assembly reaffirms that the relationship between the principal organs of the United Nations is mutually reinforcing and complementary, in accordance with and with full respect for their respective functions, authority, powers and competencies as enshrined in the Charter, and in this regard stresses the importance of further ensuring increased cooperation, coordination and the exchange of information among the Presidents of the principal organs. Requests for better cooperation between the principal organs were a central part of the other resolutions on the revitalization of the General Assembly.

The marginalization of the General Assembly and the Economic and Social Council is a result of a long political process and a result of the slow marginalization of the United Nations. As long as the General Assembly and the Economic and Social Council stay marginalized, the Security Council will continue the encroachment, despite the resentment of the UN Member States. The key goal of the UN reform has to be the balance and coordination between the Security Council and the General Assembly, as well as the democratization of the Security Council and enhancing the role and the authority of the General Assembly. (South Center, p. 145)

## CONCLUSION

The encroachment of the Security Council on the jurisdiction of other UN bodies is a multilayered problem. It is not just the hegemony of the one UN body. It shows different approaches to a threat to peace; broadening of a threat to peace; humanization of security as well as the lack of cooperation and coordination between the main UN bodies. The Security Council has marginalized already marginalized main bodies even more. The Security Council's encroachment shows a breakdown of the United Nations and indicates the necessity of the UN reform.

The encroachment of the Security Council on the jurisdiction of the other UN bodies also shows differences when it comes to the interpretation of the Charter. On one side, developed countries like the USA, United Kingdom, Germany, etc. broadly interpret the UN Charter, while on the other side, the Non-Aligned Movement interprets the Charter in a narrow manner. When it comes to the dangers of the broad interpretation of the Charter, there are a lot of issues that might be considered as a threat to international peace - not only AIDS, climate change or human rights. This might cause abuse in the future, and most Member States are afraid of possible abuses and even more of the encroachment of the Security Council.

The encroachment means overstepping the bounds, and overstepping the bounds means fear and dissatisfaction of the Member States. The Security Council has become too exclusive and too hegemonic. It is not an adequate representative of UN membership. The General Assembly is the most democratic body of the United Nations, consisted of all member states. Even marginalized, due to its democratic structure, it enjoys the trust of the UN membership. Encroachment undermines the UN system, causes disharmony between the Member States, as well as the legal insecurity. The General Assembly may discuss any questions or any matters within the scope of the Charter. All encroachment cases are under the jurisdiction of the General Assembly.

Maybe in the future, in the new UN Charter, the maintenance of international peace and security and threats to peace will be defined in a broader and more detailed manner, so the encroachment of the Security Council on the jurisdiction of the other UN bodies will be a thing of the past.

Broad interpretations of threats to peace only cause the anger of general membership. Every UN main body should perform its role as it is written in the Charter, without overstepping the bounds. The UN's main bodies have to work on its coordination and cooperation and avoid duplication of jurisdiction and encroachment.

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### **PREKORAČENJE NADLEŽNOSTI SAVETA BEZBEDNOSTI: BUDUĆNOST ILI SLOM UJEDINJENIH NACIJA**

*Apstrakt:* Poslednjih nekoliko decenija primetno je zadiranje i prekoračenje nadležnosti Saveta bezbednosti u oblasti koje tradicionalno pripadaju Generalnoj skupštini i drugim organima Ujedinjenih nacija. Zadiranje pokazuje tendenciju Saveta bezbednosti da proširuje definiciju pretnje međunarodnom miru i bezbednosti, posebno u pogledu tematskih debata u pogledu socijalnog, humanitarnog, ekonomskog i razvojnog karaktera. Tematske debate o AIDS-u, klimatskim promenama i ljudskim pravima su uzrokovale gnev velikog broja država članica i postavile pitanje u pogledu granica nadležnosti Saveta bezbednosti i drugih tela, poput Generalne skupštine i Ekonomskog i socijalnog saveta. Ovakve tendencije Saveta bezbednosti mogu imati određene pozitivne efekte na popularizaciju koncepta humane bezbednosti u Ujedinjenim nacijama. Autor zaključuje da zadiranje Saveta bezbednosti u nadležnosti drugih organa uzrokuje više negativnih nego pozitivnih efekata. Ovakva praksa pokazuje nedostatak koordinacije između glavnih organa UN, produbljuje marginalizaciju drugih UN organa i proširuje koncept pretnje miru i održanja međunarodnog mira i bezbednosti.

*Ključne reči:* Savet bezbednosti, Generalna skupština, pretnja miru, AIDS, klimatske promene, humana bezbednost.

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