

Upholding the San Francisco Promise: The Roadmap to a Constitutionalised United Nations

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What mechanism could be harnessed in order to review and renew the UN charter without facing institutional gridlock? When the UN was established, the winners of the Second World War were given disproportionate power, in the form of a permanent seat and veto rights on the Security Council. This was, however, not initially intended to be a lasting situation: article 109 Par. 3 of the UN Charter established that a complete review would happen after ten years. A committee was formed as planned in 1955, but the process got stalled and never resulted in proper reform. Could article 109(3) offer a pathway to reform of the UN Charter? Consultation would be needed in order to test the interest and commitment of parties, but should legality be confirmed, triggering article 109 (3) could be a way to bypass opposition from the Permanent Five. A UN Charter Review, made possible by this process, could thus be the first step towards a fully constitutionalised UN.

Our UN founding fathers set the goal of maintaining international peace and security as the primary objective of the United Nations. The Security Council was established as the main organ entrusted with that responsibility. In the original design of the UN, it was made the exclusive broker in international law to authorise the use of sanctions, both non-military and military. Almost immediately, however, the Security Council was paralysed by the realpolitik of the Cold War era, and even after it ended, the five permanent members of the Security Council have continued to use or threaten to use the veto power granted them to protect their own self-interests.

As a result, we now see a world where peace and security are not adequately maintained by the Security Council. Indeed, it is a far more common occurrence that failures to prevent or end conflicts can be linked to the intransigence of the Security Council. What is less well-known, however, is that concerns over this unequal system are older than the UN itself. At the founding San Francisco conference, the Permanent Five made a concession to objections by weaker states: they agreed to a Charter review and revision process, incorporated as Article 109, as a possible way to correct the initial power imbalance. According to Paragraph 3 of Article 109, they further agreed to a

facilitated way of holding the review conference ten years in the future. The holding of the Charter review was adopted as General Assembly resolution 992(X) in 1955 and approved by the Security Council. A committee was formed, but the endeavour never came to fruition: the committee repeatedly delayed convening the review, and ultimately stopped meeting altogether. However, it was never officially disbanded, meaning that it remains legally in existence, and that the Charter Review as per Article 109 is still on the table.

We believe that we might bring about changes in the institution, and uphold the ‘San Francisco Promise’, by harnessing this mechanism inherent in the UN structure from its inception. The strength of this approach to global governance reform is that it has already begun – the General Assembly and Security Council have both voted to have a Charter Review conference. Working to reinstate the review process therefore sidesteps many of the legal and procedural obstacles seen in other efforts for global governance reform. Furthermore, by pursuing a full Charter Review, we are opening up the possibility for deeper structural changes, rather than being limited to the kinds of smaller reforms that are typically possible without any changes to the UN Charter itself. While pursuing a large magnitude of reform does mean that

more political effort will be required to convince countries to accept the review process, we do also think that the lessening of legal barriers makes up for this.

Our first step, therefore, is to strengthen the legal case for Charter Review as much as possible. While we believe that there is a clear duty to trigger Article 109, we understand that there will still be challenges to this proposal. We will therefore consider potential counters to our proposal and build a strong case for its adoption, as well as mapping out the exact legal procedure that will be necessary to do so.

Assuming that reinitiating the review process is legally valid, the next step to assess the viability of this approach would be to test potential support from key countries and regions. For this, three questions need to be addressed. The first is whether UN members would support opening up the Charter for update at a review conference, as Article 109 calls for. The second is whether they would be likely to vote in favour of a new Charter that abolishes the veto and allows for a more equal distribution of power on the global level – for instance, by establishing a UN Parliamentary Assembly? Finally, would they be likely to ratify a new UN charter, regardless of how it had voted at the review conference itself.

Once armed with this information, we will have a solid foundation from which we can build a targeted

campaign to re-trigger Article 109 and hold a Charter Review Conference. The campaign, through track II diplomacy, would target a coalition of willing states to push for Charter review. The countries that the San Francisco promise was made to, as well as those countries seeking more substantive UN transformation in recent years, would be targeted and made aware of the potentials of pursuing the path offered by article 109. Further, by introducing domestic referendums and petitions in key regions and states, such as the European Citizens Initiative, or the US ballot and petition system, global citizens' interest and awareness would be raised in calling for a more democratic and effective United Nations.

Unfortunately, although the San Francisco Promise can get us to Charter Review without any threat of the veto, whatever comes out of the review process will require the assent of all five permanent members. However, we believe that a veto is much less of a threat in the context of ratifying an entirely new UN Charter. If the negotiated Charter has widespread support from most other countries in the world (a two-thirds majority is required), there will be significant pressure on the Permanent Five to accept it as well. Furthermore, this would be a vote far removed from the diplomatic chambers of the UN, putting the decision in the hands of national legislative bodies. As a result, we believe that there will also

be more pressure from the public including the national citizens of the Permanent Five to accept a more representative and effective system of global governance. The cost of exclusion of any single country from a new global order would simply be too high.

The unique nature of our proposal is that it focuses much more on the path towards UN reform, rather than what the reform itself would look like. However, based on the problems we see with global governance as it stands now, certain directions of reform are clear – in particular, we believe that the UN system must be more democratised, in direct contrast to the inequities of the current Security Council as previously discussed. This democratisation can take a number of forms. The first option would be to make changes to the structure of the UN, such as adding a parliamentary body that more directly represents individuals. Another, more comprehensive,

option would be to aim for the constitutionalisation of the UN Charter – that is, transforming it into a binding document that includes an enshrined bill of rights for all citizens. Historically speaking, constitutional documents do not arise on their own, but from review conferences – the American constitution from Philadelphia, for instance, or the Maastricht Treaty for the EU. Therefore, we see UN Charter Review as the best, and possibly only, way to get a document that meaningfully enshrines and enforces human rights on a global scale.

There are many potential paths forwards to make meaningful change. Charter Review could allow for the most significant and comprehensive change all at once. While the road to Charter Review will not be an easy one, however, and despite failed attempts for substantive UN and Security Council reform in the past, we firmly believe that this endowed path is still viable, and perhaps the only option to UN transformation.

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