Reform of the United Nations Security Council: The Emperor Has No Clothes*

Reforma do Conselho de Segurança das Nações Unidas: O Imperador nu

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'When all the world as it is today, at war – piecemeal though that war may be – a little here, a little there, and everywhere – there is no justification – and God weeps. Jesus weeps.'

Pope Francis[1]

Abstract

Although the United Nations General Assembly included the issue of the Security Council's reform on its agenda in 1992, the negotiations on this vital issue haven't broken the impasse even after a quarter of a century. At the same time we have testified to a series of major armed conflicts worldwide. This article emphasizes the need for an urgent reform of the Security Council, i.e. unacceptability of its further postponement, because the Council has largely failed in performing its main function – maintenance of international peace and security. Furthermore, the Security Council has no longer the necessary credibility, legitimacy and representativeness for the enactment and implementation of key decisions. The article analyzes key issues of the reform of the Security Council and proposes some possible solutions regarding the composition of the Council and the issue of veto. Finally, the article reviews the unsuccessful efforts to reform the Council with a special emphasis on the events on the eve of the 70th anniversary of the United Nations.

Keywords: United Nations. Security Council. Reform.

Resumo

Embora a Assembleia Geral das Nações Unidas tenha incluído a questão da reforma do Conselho de Segurança em sua agenda em 1992, as negociações sobre essa questão vital não lograram êxito, mesmo depois de um quarto de século. Ao mesmo tempo, testemunhamos uma série de grandes conflitos armados no mundo todo. Este artigo enfatiza a necessidade de uma reforma urgente da Conselho de Segurança, ou seja, a inaceitabilidade de seu adiamento adicional, porque O Conselho falhou em grande parte na execução de sua principal função, a manutenção da paz e da segurança in-

1 POPE, Francis. *The Lord weeps for the sins of a world at war*. 2015. Available at: <http://en.radiovaticana.va/news/2015/11/19/pope_francis_the_lord_weeps_for_the_sins_of_a_world_at%20_%20war_/1187974> Access on: 11 nov. 2016.

ternacionais. Além disso, o Conselho de Segurança não tem mais a credibilidade, a legitimidade e a representatividade necessárias para a promulgação e a implementação de decisões-chave. O artigo analisa as importantes questões da reforma do Conselho de Segurança e propõe algumas possíveis soluções relativas à composição do Conselho e à questão do veto. Finalmente, o artigo analisa os esforços infrutíferos para reformar o Conselho com uma ênfase especial nos eventos na véspera do 70° aniversário de as Nações Unidas.

Palvras-chave: United Nations, Security Council, Reform

1. Introduction

If we look at the Article 1 of the United Nations Charter,[2] we will see that the main purpose of the United Nations is to maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace. Article 24 of the Charter entrusts the Security Council with the primary responsibility for the maintenance of international peace and security, thus making it the most important body within the United Nations. Furthermore, Article 25 of the Charter stipulates the binding effect of the Security Council's decisions for all United Nations Member States, while Article 39 specifies that the Security Council shall determine the existence of any threat to the peace, breach of the peace or act of aggression.[3] Finally, Ar-

ticle 41 provides that the Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, while Article 42 enables the Security Council to use force as may be necessary to maintain or restore international peace and security. In this way, considering that the use of force is prohibited in the international law,[4] except in the case of self-defence,[5] the states have given the monopoly on the use of force to the Security Council, which has thus become the key player in the United Nations' collective security system. Moreover, the founders of the United Nations gave the right to veto the Council's decisions in the previously mentioned cases only to the five permanent members of the Security Council, thus making them morally most responsible for the maintenance of international peace and security.

Unfortunately, in its seven decades of existence, the United Nation's most powerful body – the Security Council – has largely demonstrated inefficiency in

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1974). See also CASSESE, Antonio. *International Law*. Oxford: Oxford University Press, 2001. p. 256-259; BROWNLIE, Ian. *Principles of Public International Law*. 7. ed. Oxford: Oxford University Press, 2008. p. 591-592, 735-737; DINSTEIN, Yoram. *War, Aggression and Self-Defence*. 5. ed. Cambridge: Cambridge University Press, 2012. p. 124-162. The other two concepts – 'threat to peace' and 'breach of peace' – have never been defined, and depend on the discretionary decision by the Security Council, depending on the case.

4   For centuries, the right to war was one of the fundamental rights of every sovereign country. However, after the adoption of the Kellogg-Briand Pact from 1928, war was prohibited, and the right to start a war (aggression) became prohibited for the first time in the international customary law. Article 1 of the Kellogg-Briand Pact stipulates: 'The High Contracting Parties solemly declare in the names of their respective peoples that they condemn recourse to war for the solution of international controversies, and renounce it, as an instrument of national policy in their relations with one another.' See: LEAGUE OF NATIONS. General Treaty for Renunciation of War as an Instrument of National Policy (signed 27 August 1928) 94 LNTS 57. Available at: <https://treaties.un.org/doc/Publication/UNTS/LON/Volume%2094/v94.pdf> Accessed on: 18 nov. 2016.

Article 2(4) of the UN Charter stipulates: 'All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.'

5   Article 51 of the UN Charter stipulates: 'Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.'

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2   For the text of the Charter see: UNITED NATIONS. *Charter of the United Nations*. Available at: <http://www.un.org/en/charter-united-nations/> Access on: 11 nov. 2016.

3   Although there is no definition of aggression (initiation of war) in the current international law, we can emphasize Resolution 3314 (XXIX) of the United Nations General Assembly, which approves the definition of aggression. Article 1 of the Resolution defines aggression as the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or the use of armed force in any other manner inconsistent with the UN Charter. Article 2 specifies that the first use of armed force by a State in contravention of the Charter shall constitute *prima facie* evidence of an act of aggression, although the Security Council may conclude that such a determination would not be justified in the light of other relevant circumstances. Article 3 enumerates acts which could be qualified as acts of aggression, while Article 4 stipulates that the enumerated acts are not exhaustive and that the Security Council may determine that other acts constitute aggression under the provisions of the Charter. See: UNGA Res. 3314 (XXIX) (14 December

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performing its main function. It is enough to mention the recent armed conflicts which took place on the territory of Afghanistan, Iraq, Sudan, Libya and Syria, to understand that the existing collective security system of the United Nations led by the Security Council does not function. It was adapted to the circumstances from 1945, but since then the picture of the world has changed completely.[6] Instead of massive ground, air and naval attacks, threats to international peace and security have assumed another, entirely new and different dimension which the authors of the Charter obviously could not have envisaged.[7] Threats are no longer posed by wars among states alone; now they are a lot more subtle, more sophisticated, more vicious and more dangerous. We are living in a time when bloody civil wars are raging around the globe, usually concealing genocide and ethnic cleansing. Furthermore, we are also faced with the problem of terrorism which knows no state boundaries and pays no heed to the casualties and consequences. Closely related to terrorism is the proliferation of weapons of mass destruction. If we continue to list the new threats such as humanitarian crises, poverty, hunger, environmental pollution and non-democratic regimes, we will come to realize that the existing Security Council is inadequate for the 21st century. This is partially due to the fact that, unlike the threats to international peace and security which have changed considerably over the past seven decades, the Security Council as the key player in the collective security system of the United Nations remained the same, trapped in the past of Dumbarton Oaks and Yalta.

Precisely for this reason, a reform of the Security Council is a priority, not only for the Organization whose primary purpose is the maintenance of international peace and security, but for all its Member States as well, which entrusted the Security Council with the primary responsibility of accomplishing that purpose, and ultimately for the humanity itself, which bears the consequences of the Security Council's functioning.[8] Although the topic of the Security Council's reform was first raised at the summit of the non-aligned coun-

tries in Jakarta in 1992,[9] and the same year the United Nations General Assembly included the issue of the Security Council reform on its agenda,[10] we testify to the unfortunate fact that negotiations on this vital issue are still at an impasse, even after almost a quarter of a century. Moreover, an institutional reform of the United Nations, whose main focus is the reform of the Security Council, represents one of the main elements of the overall reform of the United Nations which was presented in 2004 in the Report of the High-Level Panel on threats, challenges and changes, entitled *A More Secure World: Our Shared Responsibility*.[11] Any efforts to transform the United Nations into a strong and efficient organization, which will be able to face challenges, threats and changes of the 21st century, primarily depends on the institutional capacity of the United Nations to adapt to the new circumstances. Therefore, the key, and certainly the most controversial issue regarding the overall reform of the United Nations is the reform of the Security Council – the keeper of the international peace and security.

2. TWENTY-FIRST CENTURY: WORLD AT WAR

According to the Uppsala Conflict Data Program (UCDP), which is one of the world's leading data providers regarding armed conflicts,[12] in 2001 – 2015 period the recorded number of armed conflicts per year ranged between 31 to 50.[13] Moreover, precisely in 2015 UCDP recorded 50 armed conflicts – second largest number

6   See e.g. YOO, John C. Force Rules: UN Reform and Intervention. *Chicago Journal of International Law*, v. 6, n. 2, p. 644-645, 2006.

7   See e.g. FRANCK, Thomas M. Collective Security and UN Reform: Between the Necessary and the Possible. *Chicago Journal of International Law*, v. 6, n. 2, p. 600, 2006.

8   See e.g. SPAIN, Anna. The U.N. Security Council's Duty to Decide. *Harvard National Security Journal*, v. 4, p. 320, 2013.

9   See: NON-ALIGNED COUNTRIES. Tenth Conference of Heads of State or Government of Non-Aligned Countries, 'The Jakarta Message: A Call for Collective Action and the Democratization of International Relations' (6 September 1992) NAC 10/Doc 12/Rev 1. Available at: <s://disarmament-library.un.org/UNODA/Library.nsf/2b805de29c38b2fa85257631004b2105/a716c283e6ce532a8525779200672575/$FILE/A-47-675-S-24816_Indonesia-Jakarta%20msg-10th%20Conf%20of%20NAM.pdf> Accessed on: 26 nov. 2016.

10   See: UNGA Res. 47/62 (11 December 1992).

11   See: UNITED NATIONS. *A More Secure World:* Our Shared Responsibility. New York: United Nations, 2004.

12   An armed conflict is defined by the UCDP as a contested incompatibility that concerns government or territory or both where the use of armed force between two parties, of which at least one is the government of a state, results in at least 25 battle-related deaths in a year. UCDP definitions can be found at <http://www.pcr.uu.se/research/ucdp/definitions/> Access on: 3 dec. 2016.

13   MELANDER, Erik; PETTERSON, Thérèse; THEMNÉR, Lotta. Organized Violence, 1989-2015. *Journal of Peace Research*, v. 53, n. 5, p. 729, 2016.

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of armed conflicts in the entire post World War II period.[14] If we examine a broader time span, from 1946 to 2015, we will get an even clearer insight into the number of armed conflicts in the 21st century. By the 1950s and 1960s, the average number of armed conflicts per year was under 20, after which it started to increase, having reached the number of 30 armed conflicts a year in the mid 1970s.[15] During the 1980s and 1990s, the number of armed conflicts per year was mainly over 40. Although the number of armed conflicts in the course of the last fifteen years is smaller than those recorded in the 1980s and 1990s, it is still relatively high with regard to the entire observed period from 1946 to 2015. Data from the Conflict Barometer – another program which collects and systematizes data on conflicts – also confirm this constatation.[16] According to the Conflict Barometer data, 20 wars were recorded in 2011, which at the time represented the largest number of wars since 1945.[17] This number was repeated in 2013, which again recorded 20 wars, while 2014 marked a new record with as many as 21 wars.[18] In 2015, the number of wars remained high at 19.[19]

Armed conflicts in the 21st century resulted in numerous consequences, however, the worst one of them are millions of human lives lost. Despite that, it is impossible to determine the exact number of armed conflict-related deaths in this century, because the majority of parties involved in conflicts do not provide full and accurate information on the matter, and because of difficulties in obtaining data from the areas in which the conflicts are taking place. Additionally, various research studies dealing with the number of casualties in armed conflicts also use different methodologies, which

in turns leads to different estimates of the number of casualties in certain conflicts. Nonetheless, the aim of this article is not to determine the exact figures, but to use some of the relevant studies to examine and present at least approximate estimates of the number of human lives lost in the most significant armed conflicts of this century, and to indicate the current trends, which will in turn help us form a clearer picture of the international peace and security in the 21st century. According to one of the studies, based on field research, the war in Iraq has resulted in the loss of 654 965 human lives since the beginning of the invasion in March 2003 until June 2006.[20] Another study, also based on field research, estimates that 461 000 deaths in the period between March 2003 and June 2011 can be attributed to the war in Iraq.[21] Finally, in their research based on a comprehensive overview of the main studies and data on the number of casualties in Iraq, Afghanistan and Pakistan, the Nobel Peace Prize winner – International Physicians for the Prevention of Nuclear War (IPPNW) – published their own assessment in 2014, according to which there were approximately one million casualties of war in Iraq, 220 000 casualties of war in Afghanistan, and 80 000 in Pakistan; in other words, a total of approximately 1,3 million people were killed in the period between 2001 and 2013.[22] Moreover, this is a conservative assessment according to the IPPNW, considering the fact that the total number of casualties in these three countries could amount to two million.[23] Another significant armed conflict, the one in Syria, has been taking a grave human toll in the past several years. According to a study commissioned by the United Nations Office of the High Commissioner for Human Rights (UNHCR),

14   MELANDER, Erik; PETTERSON, Thérèse; THEMNÉR, Lotta. Organized Violence, 1989-2015. *Journal of Peace Research*, v. 53, n. 5, p. 729, 2016.
15   MELANDER, Erik; PETTERSON, Thérèse; THEMNÉR, Lotta. Organized Violence, 1989-2015. J*ournal of Peace Research*, v. 53, n. 5, p. 729, 2016.
16   HEIDELBERG INSTITUTE FOR INTERNATIONAL CONFLICT RESEARCH. *Conflict Barometer 2014*. Heidelberg: HIIK, 2015. p. 15-16.
17   HEIDELBERG INSTITUTE FOR INTERNATIONAL CONFLICT RESEARCH. *Conflict Barometer 2011*. Heidelberg: HIIK, 2012. p. 2.
18   HEIDELBERG INSTITUTE FOR INTERNATIONAL CONFLICT RESEARCH. *Conflict Barometer 2014*, Heidelberg: HIIK, 2015. p. 15.
19   HEIDELBERG INSTITUTE FOR INTERNATIONAL CONFLICT RESEARCH. *Conflict Barometer 2015*. Heidelberg: HIIK, 2016. p. 13.

20   BURNHAM, Gilbert et al. Mortality After the 2003 Invasion of Iraq: A Cross-sectional Cluster Sample Survey. *The Lancet*, v. 368, p. 1421, 2006.
21   HAGOPIAN, Amy et al. Mortality in Iraq Associated with the 2003-2011 War and Occupation: Findings from a National Cluster Sample Survey by the University Collaborative Iraq Mortality Study. *PLOS Medicine*, v. 10, n. 10, p. 10, 2013.
22   INTERNATIONALE ÄRZTE FÜR DIE VERHÜTUNG DES ATOMKRIEGES/ÄRZTE IN SOZIALER VERANT-WORTUNG; PHYSICIANS FOR SOCIAL RESPONSIBILITY; PHYSICIANS FOR GLOBAL SURVIVAL. *Body Count* – Casualty Figures after 10 Years of the 'War on Terror' – Iraq, Afghanistan, Pakistan. Washington DC, Berlin, Ottawa: IPPNW, 2015. p. 15.
23   INTERNATIONALE ÄRZTE FÜR DIE VERHÜTUNG DES ATOMKRIEGES/ÄRZTE IN SOZIALER VERANT-WORTUNG; PHYSICIANS FOR SOCIAL RESPONSIBILITY; PHYSICIANS FOR GLOBAL SURVIVAL. *Body Count* – Casualty Figures after 10 Years of the 'War on Terror' – Iraq, Afghanistan, Pakistan. Washington DC, Berlin, Ottawa: IPPNW, 2015. p. 15.

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from the beginning of conflicts in March 2011 until April 2014, 191 369 conflict-related deaths were recorded in Syria,[24] while the Syrian Centre for Policy Research (SCPR), non-governmental organization based in Syria, published their assessment according to which 470 000 people were killed in the conflicts in Syria by the end of 2015.[25] Finnaly, in April 2016, Staffan de Mistura, United Nations Special Envoy for Syria, estimated that some 400 000 people had been killed in the past five years of war in Syria.[26]

One of the most significant armed conflicts which marked the beginning of the **21st century is certainly the conflict in Darfur** (Sudan). Although the conflict which started in February 2003 is still ongoing, having entered its 15th year, the available research and data on the number of casualties refer only to the first several years of conflict. On the basis of the conducted field research, back in April 2005 the Coalition for International Justice published that the number of casualties in Darfur in the first two years of conflicts was approximately 400 000,[27] which is the number mentioned by other researches, such as Reeves.[28] Certain authors had different opinions: on the basis of a field research conducted by the World Health Organization and Médecins Sans Frontières, in 2006 Hagan and Palloni offered their assessment according to which approximately 200 000 people were killed in the first 31 months,[29] while Degomme and Guha-Sapir estimated that 298 271 people were killed in the period from the early 2004 to the end of 2008, thereby not taking into consideration the entire year 2003, which has so far been the most violent year of the conflict.[30] In 2008, the United Nations published

their assessment according to which approximately 300 000 people were killed in Darfur.[31] Despite the various assessments, it is obvious that it involved hundreds of thousands of casualties; moreover, because the conflicts in the area of Darfur, although reduced in intensity, are still ongoing, it is likely that the number of casualties has already exceeded half a million. Finally, apart from the previously mentioned figures regarding human lives lost in the major armed conflicts of the 21st century, also alarming is the pronounced tendency towards an increase in the overall number of casualties of armed conflicts over the past several years. According to an assessment by UCDP, 70 451 people were killed in the armed conflicts in 2013, which represents an increase of 85% with regard to 2012, when 37 992 people were killed.[32] Moreover, in the course of 2014, there were 101 406 casualties of armed conflicts, which represents an increase of 44% with regard to the previously mentioned year 2013.[33] In September 2016, UCDP published their last assessment according to which over 97 000 deaths incurred in armed conflicts in 2015, the third--worst year in the post-Cold War period.[34]

One of the consequences of 21st century armed conflicts, which has assumed cataclysmic proportions over the past several years, are tens of millions of forcibly displaced persons. Thus, four years ago, UNHCR announced that there were 45,2 million forcibly displaced persons in 2012, which represents the largest number of displaced persons since 1994, in which 47 million of forcibly displaced persons were registered.[35] Within this number, as many as 15.4 million people were refugees. Moreover, according to the UNHCR data, as many as 51,2 million of forcibly displaced persons were recorded in 2013, from which there were 16,7 million

24 PRICE, Megan; GOHDES, Anita; BALL, Patrick. *Updated Statistical Analysis of Documentation of Killings in the Syrian Arab Republic.* 2014. Available at: <http://www.ohchr.org/Documents/Countries/SY/HRDAGUpda tedReportAug2014.pdf> Access on: 7 jan. 2017.
25 SYRIAN CENTRE FOR POLICY RESEARCH. *Confronting Fragmentation!* 2016. p. 61. Available at: <http://scprsyria. org /publications/policy-reports/confronting-fragmentation/> Access on: 7 jan. 2017.
26 See: <http://www.unmultimedia.org/radio/english/2016/04/syria-envoy-claims-400000-have-died-in-syria-con flict/#.WHNb-JPkrKUk> Access on: 7 jan. 2017.
27 COALITION FOR INTERNATIONAL JUSTICE. *Chronology of Reporting on Events Concerning the Conflict in Darfur, Sudan.* Washington DC, The Hague: CIJ, 2006. p. 336.
28 REEVES, Eric. How Many Dead in Darfur? *The Guardian*, London, 20 Aug. 2007.
29 HAGAN, John; PALLONI, Alberto. Death in Darfur. *Science*, v. 313, 2006. p. 1579.
30 DEGOMME, Olivier; GUHA-SAPIR, Debarati. Patterns of

Mortality Rates in Darfur Conflict. *The Lancet*, v. 375, p. 294, 2010.
31 FARLEY, Maggie. U.N. Puts Darfur Death Toll at 300,000. *Los Angeles Times*, Los Angeles, 23 Apr. 2008.
32 PETTERSSON, Thérése; WALLENSTEEN, Peter. Armed Conflicts, 1946-2014. *Journal of Peace Research*, v. 52, n. 4, p. 538, 2015.
33 PETTERSSON, Thérése; WALLENSTEEN, Peter. Armed Conflicts, 1946-2014. *Journal of Peace Research*, v. 52, n. 4, p. 538, 2015.
34 MELANDER, Erik; PETTERSON, Thérése; THEMNÉR, Lotta. Organized Violence, 1989-2015. *Journal of Peace Research*, v. 53, n. 5, p. 727, 2016.
35 UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES. *UNHCR Global Trends 2012:* Displacement, The New 21st Century Challenge. 2013. Available at: <http://www.unhcr.org/statistics/countr y/51bacb0f9/unhcr-global-trends-2012.html> Access on: 14 jan. 2017.

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refugees.[36] In 2014 the number of forcibly displaced persons reached 59,5 million – a level which has not been recorded since the Second World War, while the number of refugees reached 19,5 million.[37] Finally, in 2015 the number of forcibly displaced persons reached an all-time high for a fourth consecutive year. UNHCR recorded unprecedented 65,3 million forcibly displaced persons, including 21,3 million refugees.[38] Unfortunately, much like the number of persons killed in armed conflicts, also alarming is the pronounced tendency towards a sharp increase in the number of forcibly displaced persons in the past few years. Thus, only in the period 2012-2015, the number of forcibly displaced persons increased by 44%, while at the same time the number of refugees increased by 38%. Moreover, it is expected that new negative records will be set in 2016 with regard to the number of forcibly displaced persons, considering the fact that armed conflicts have continued at the same or even higher intensity in 2015, and some conflicts which were thought to be over (e.g. Lybia) have been re-activated.

So far presented dana are more than enough to illustrate the real picture of international peace and security in the 21st century. In fact, they are the key evidence that the Security Council does not perform its main task, at least not with much success. To say that we are currently living in a peaceful and safe world, after everything we have previously mentioned, would be a lie. Considering the fact that the existing collective security system is based on the Security Council, an urgent reform of this body of the United Nations imposes itself as an imperative for the entire international community.

3. KEY ISSUES OF THE REFORM OF THE SECURITY COUNCIL

Over the past 25 years, several issues related to the reform of the Security Council have become apparent: categories of membership, the question of the veto, regional representation, size of an enlarged Security Council and working methods of the Council, and the relationship between the Council and General Assembly.[39] Unfortunately, the problem of the Council's functioning is much more complex, because the essence of the problem lies in the contrasting interests of the five permanent members of the Security Council.[40] Nonetheless, solving these issues could certainly help improve the functioning of the Council, and therefore the maintenance of international peace and security. Although it is obvious that the primary goal of the reform is to extend the membership of the Security Council, all five issues are interconnected, and a comprehensive solution which would encompass other issues apart from the structural ones, like, for example, the decision-making process, could increase the capability and efficiency of the Council.

Extension of the membership of the Security Council stems from the criticism of the Council's current membership. The foundations of its present-day membership were laid at the Dumbarton Oaks Conference in 1944. It was then that the representatives of China, the Soviet Union, the United Kingdom and the United States agreed that the Security Council shall consist of five permanent and six non-permanent members, which was afterwards approved by the other United Nations founder states at the San Francisco Conference in June 1945.[41] The five permanent seats were shared between China, France, the Soviet Union, the United Kingdom and the United States. Considering the fact that the number of United Nations Member States grew rapidly, amendments to the Charter were adopted in 1965, anticipating 10 non-permanent members along with the

36   UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES. *UNHCR Global Trends 2013: War's Human Cost.* 2014. Available at: <http://www.unhcr.org/statistics/country/5399a14f9/unhcr-global-trends-2013.html> Access on: 14 jan 2017.
37   UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES. *UNHCR Global Trends 2014: World at War.* 2015. Available at: <http://www.unhcr.org/statistics/country/556725e69/unhcr-global-trends-2014.html> Access on: 14 jan. 2017.
38   UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES. *UNHCR Global Trends: Forced Displacement in 2015.* 2016. Available at: <http://www.unhcr.org/statistics/unhcrstats/576408cd7/unhcr-global-trends-2015.html> Access on: 14 jan. 2017.

39   See: UNITED NATIONS. *Resolutions and Decisions adopted by the General Assembly during its sixty-second session.* 23 December 2007 – 15 September 2008. New York: United Nations, 2008. v. 3. p. 106-107.
40   See e.g. BUTLER, Richard. Reform of the United Nations Security Council. *Penn State Journal of Law & Internationl Affairs*, v. 1, n. 1, p. 34, 2012.
41   US DEPARTMENT OF STATE. *Dumbarton Oaks Documents* on *International Organization.* Washington: US Department of State, 1944. p. 12.

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five permanent ones.[42] Unlike the five permanent members of the Council, which were individually specified in the Charter, the election of non-permanent members is based on two criteria. Thus, Article 23 of the Charter stipulates that the General Assembly shall elect the 10 non-permanent members of the Security Council by paying special regard, in the first instance to their contribution to the maintenance of international peace and security and to the other purposes of the Organization, and also to equitable geographical distribution. According to the usual practice, the 10 non-permanent members are elected from five regions: five from Africa and Asia, one from the Eastern Europe, two from Latin America, and two from the Western Europe and 'the rest of the world'. Non-permanent members are elected for two-year terms, without the possibility for immediate re-election.

The current membership of the Security Council was perhaps suitable for the time of Dumbarton Oaks in 1944, however, it is completely incongruous with the time in which we live.[43] Geopolitical, military, demographic and economic picture of the world has changed utterly in comparison with the one in the aftermath of the Second World War. In the past 71 years, primarily due to decolonization, the number of United Nations members has quadrupled in comparison with the number of founding members in 1945.[44] At the same time, also due to decolonization, former colonial powers (France, United Kingdom) lost significant parts of their territories, on which their power was based. On the other hand, new military powers such as India have emerged,[45] while Japan and Germany, which rose like a phoenix from the ashes of the Second World War, today represent the third and the fourth largest economy in the world res-

pectively.[46] Moreover, due to the economic power of Japan and Germany, it was decided that they shall contribute with 9,68% and 6,38%, respectively, to the regular United Nations' budget for the period 2016-2018.[47] If we compare this to other Member States, it becomes clear that their contributions are the second and third largest one. The largest contribution is made by the United States – 22%, while China contributes with 7,92%, France with 4,85%, the United Kingdom with 4,46%, and Russia with 3,08%.[48] Furthermore, thanks to the demographic growth, populations of India, Indonesia, Brazil and Pakistan combined make up one fourth of the total world population,[49] while soldiers from those countries contribute significantly to the United Nations' peacekeeping operations worldwide.[50] It is obvious that some countries, with regard to their financial and military contributions to the United Nations as well as to their military force, economic power and population size, are not adequately represented in the United Nations, and especially in its most important body – the Security Council. Also, there is the issue of the permanent African seat in the Council, as it is unfair that not a single permanent member of the Council comes from the continent whose countries make up more than one fourth of the total United Nations membership.[51]

On the basis of the previously mentioned observations, we can say that the Security Council no longer has the necessary credibility, legitimacy and representativeness which are necessary for the enactment and implementation of key decisions.[52] As Giegrich rightly

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42   UNGA Res 1991 (XVIII) (17 December 1963).

43   See e.g. BLUM, Yehuda Z. Proposals for UN Security Council Reform. *American Journal of International Law*, v. 99, n. 3, p. 637-638, 2005; ANDERSON, Kenneth. United Nations Collective Security and the United States Security Guarantee in an Age of Rising Multipolarity: The Security Council as the Talking Shop of the Nations. *Chicago Journal of International Law*, v. 10, n. 1, 2009. p. 83.

44   Currently there are 193 Member States of the United Nations. After the decolonization process and admission of the former colonies into the membership of the United Nations, the last significant expansion took place after the end of the Cold War when the countries which emerged after the fall of the Soviet Union, former Yugoslavia and Czechoslovakia became United Nations Member States. The last admitted Member States were Switzerland and East Timor (2002), Montenegro (2006) and South Sudan (2011).

45   See: <http://www.globalfirepower.com/> Access 18 jan. 2017.

46   See: WORLD BANK. *World Development Indicators 2015*. Washington: World Bank Group, 2015. p. 24-28.

47   See: UNGA Res 70/245 (23 December 2015).

48   See: UNGA Res 70/245 (23 December 2015).

49   According to the 2016 data, India, as the second largest population in the world, has 1,3 billion inhabitants, while Indonesia has 260 million, which puts it in the fourth place on the global scale in terms of population. Brazil is in the fifth place with 209 million people, and Pakistan is the sixth with 193 million people. See: <http://www.geohive.com/> Access on: 18 jan. 2017.

50   See e.g. BLUM, Yehuda Z. Proposals for UN Security Council Reform. *American Journal of International Law*, v. 99, n. 3, p. 638-639, 2005; see also <http://www.un.org/en/peacekeeping/resources/statistics/contributor s.shtml > Access on: 20 jan. 2017.

51   The distribution of permanent seats in the Security Council indeed does not comply with the democratic standards of the 21st century. Five permanent seats in the Security Council are distributed between Europe (3), Asia (1) and North America (1). In this distribution, Central and South America, Africa and Australia were left empty-handed. See e.g. Anderson (n 61) 83.

52   UNITED NATIONS. *A More Secure World*: Our Shared Responsibility. New York: United Nations, 2004. p. 64.

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observed, 'the Security Council is no longer representative of the international community as a whole nor of today's geopolitical realities'.[53] Precisely for this reason, it is becoming increasingly difficult to attribute the Security Council's decisions to those countries which are not represented in it (88% of the United Nations membership) and their population which amounts to approximately two thirds of the world population.[54] This can be changed only if all main players on the global scene, as well as other more important countries from the broader United Nations membership – which would ensure an equitable geographic representation in the Council – are included in the Council's decision-making process through the permanent membership in the Council. Furthermore, according to the recommendations of the Panel, when extending the membership, it is necessary to take into consideration the countries which contribute the most to the Organization in terms of finances, military and diplomacy.[55] The previously mentioned criteria should serve as the guidelines for electing new permanent members of the Security Council. If any new category of membership in the Council is introduced (e.g. long-term non-permanent membership), it is necessary to define the election criteria for that category. An expansion of the existing membership categories, or introduction of new ones, will define the size of the Council, which is important with regard to the Council's working methods (e.g. the number of votes required for adoption of decisions).

The issue of the veto has been one of the most controversial issues since the establishment of the United Nations. At the Yalta Conference in 1945 – the meeting of the 'Big Three' heads of state – the Soviet Union, the United Kingdom and the United States – a consensus was reached on the decision-making process in the Security Council. According to the so-called 'Yalta formula', the five permanent members of the Council were given the right to veto the Council's decisions on all non-procedural matters, including those decisions regarding actions to be undertaken in case of threats to the peace, breaches of the peace, and acts of the aggression.[56] At that time, it was believed that only those countries were able to guarantee peace and security, primarily due to their military potential.[57] By giving the right of veto to the five permanent members of the Security Council, one of the greatest contradictions regarding the existence of the United Nations was created. The very idea of establishment and functioning of the United Nations was based on a sovereign equality of nations.[58] It is difficult to speak of sovereign equality or of the much proclaimed democracy, when in certain cases the opinion of one permanent member of the Security Council is worth more than 188 opinions of the United Nations Member States which do not have a permanent seat in the Security Council. The claims that this was necessary in order to maintain international peace and security were tested over the seven decades of existence of the United Nations. The Middle East, Vietnam, Cambodia, Afghanistan, Rwanda, Congo, Iraq, Sudan, Lybia and Syria represent examples in which the permanent Member States used their conflicting policies and the right of veto to prevent the Council from performing its primary task, thus allowing bloody campaigns which resulted in tens of millions of dead, wounded and displaced persons. Moreover, the Cold War division completely paralyzed the work of the Security Council, thus allowing numerous countries to exploit the institutional weakness and shortcomings of the collective security system. For example, during the Cold War period, the right of veto was exercised 90 times by the Soviet Union, 68 times by the United States, 28 times by the United Kingdom, 16 times by France, and once by China.[59] At the same time, Article 2(4) of the UN Charter, which prohibits the threat or use of force, was subject to numerous violations. According to one study, the said provision was violated 200 times, while another study mentions as many as 680 violations of the said Article through the use of force in interstate conflicts.[60]

53   GIEGERICH, Thomas. "A Fork in the Road" – Constitutional Challenges, Chances and Lacunae of UN Reform. *German Yearbook of International Law*, v. 48, p. 34, 2005.
54   GIEGERICH, Thomas. "A Fork in the Road" – Constitutional Challenges, Chances and Lacunae of UN Reform. *German Yearbook of International Law*, v. 48, p. 34, 2005.
55   UNITED NATIONS. *A More Secure World:* Our Shared Responsibility. New York: United Nations, 2004. p. 66-67.
56   See: UN Charter Article 27.
57   See e.g. FASSBENDER, Bardo. *UN Security Council Reform and the Right of Veto:* A Constitutional Perspective. Hague: Kluwer Law International, 1998, p. 165; BUTLER, Richard. Reform of the United Nations Security Council. *Penn State Journal of Law & Internationl Affairs*, v. 1, n. 1, p. 28-29, 2012. p. 28-29.
58   The Preamble of the Charter emphasizes the equality of nations both large and small, while the Article 2(1) of the Charter stipulates that the Organization is based on the principle of sovereign equality of all its members.
59   See: <http://www.un.org/depts/dhl/resguide/scact_veto_table_en.htm> Access on: 23 jan. 2017.
60   GLENNON, Michael J. Platonism, Adaptivism and Illusion in UN Reform. *Chicago Journal of International Law*, v. 2, n. 2, p. 619,

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On the other hand, the Security Council approved the use of force only once (the Korean War).[61] When the Cold War ended, it seemed that the main reason for the obstruction of work of the Council would disappear. However, although the Security Council's activities intensified, reflected primarily in an increased number of resolutions,[62] including those which contain the authorization for use of military force,[63] its main task – maintenance of international peace and security – remained largely unfulfilled. At the same time, the Security Council remained a political arena in which the major forces used the right of veto to protect their own interests, as well as those of their allies.[64] Moreover, Butler emphasizes that the use of the right of veto represents one of the most significant forms of violation of the privilege of permanent membership in the Council.[65] Although a further analysis of the problem of the functioning of the collective security system led by the Security Council would take us far beyond the topic of this article, it is important to highlight that the said problem resulted in 'taking on' the role of the Security Council by

certain players. These players, which have been using force without an approval of the Security Council in an effort to become the 'global policemen', primarily include certain countries (e.g. the United States and about forty other countries allied in the so-called 'Coalition of the Willing' invaded Iraq in 2003), as well as two regional international organizations – Economic Community of West African States (ECOWAS) and NATO. On the basis of its Protocol relating to the Mechanism for Conflict Prevention Management, ECOWAS conducted military interventions in Liberia in 1990 and in Sierra Leone in 1997 by its military forces (*ECOWAS Cease-fire Monitoring Group* – ECOMOG), without prior approval of the Security Council.[66] However, Security Council subsequently approved the intervention in Liberia – Resolution S/788(1992), and the intervention in Sierra Leone – Resolution S/1132(1997).[67] Unlike the previously mentioned interventions, ECOWAS conducted an intervention in Mali in 2013 on the basis of a prior approval of the Security Council contained in Resolution S/2085(2012). On the other hand, in 1999, NATO attacked the Federal Republic of Yugoslavia without a prior, or subsequent, approval of the Security Council. The said attack, which was justified by the so-called 'humanitarian intervention' in Kosovo, constituted a gross violation of international law by NATO and a dangerous precedent which threatens to fully undermine the current collective security system, as provided in the Charter of the United Nations.[68]

It is obvious that the right of veto is fully inconsistent with the principles on which the United Nations are based, as well as with the democratic standards of the 21st century. Moreover, the right of veto was the main instrument by which permanent members prevented the Security Council from performing its main task over the last seven decades. However, at the same time, the right of veto was the main instrument by which Member States protected their national interests, as well as the interests of their allies. Precisely for that reason,

2006; see also generally FRANCK, Thomas M. Who Killed Article 2(4)? Or: Changing Norms Governing the Use of Force by States. *American Journal of International Law*, v. 64, n. 5, 1970.

61   By Resolution S/83(1950), the Security Council authorized the use of force for the first time, having recommended to United Nations Member States to offer 'all necessary help' to South Korea in repelling the armed attacks of North Korea, in order to restore peace and security in the area.

62   See e.g. SCEWCZYK, Bart MJ. Variable Multipolarity and U.N. Security Council Reform. *Harvard International Law Journal*, v. 53, n. 2, p. 454, 2012.

63   The Security Council authorized its Member States to use military force by the following resolutions: Resolution S/678(1990) in Kuwait; Resolution S/836(1993), Resolution S/844(1993) and Resolution S/1031(1995) in Bosnia and Herzegovina; Resolution S/837(1993) and Resolution S/929(1994) in Somalia; Resolution S/929(1994) in Rwanda; Resolution S/940(1994) in Haiti; Resolution S/1101(1997) in Albania; Resolution S/1264(1999) in East Timor; and Resolution S/1973(2011) in Libya. From these previously mentioned Security Council resolutions, two resolutions authorize one regional international organization to use force – the North Atlantic Treaty Organization (NATO). By Resolution S/1031(1995), the Security Council has authorized the forces led by NATO in Bosnia and Herzegovina (*Implementation Force* – IFOR) to undertake all necessary measures in order to implement the so-called Dayton Agreement, while Resolution S/1973(2011) authorized Member States and regional international organizations (in reality, NATO) to undertake 'all necessary measures' in order to protect civilians and areas populated by civilians in Libya.

64   FRANCK, Thomas M. Collective Security and UN Reform: Between the Necessary and the Possible. *Chicago Journal of International Law*, v. 6, n. 2, p. 609, 2006.

65   BUTLER, Richard. Reform of the United Nations Security Council. *Penn State Journal of Law & Internationl Affairs*, v. 1, n. 1, p. 34, 2012.

66   See: Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-Keeping and Security. *Journal of Conflict & Security Law*, v. 5, n. 2, p. 231-259, 2000.

67   Cf. KUWALI, Dan. *The Responsibility to Protect: Implementation of Article 4(h) Intervention*. Boston, Leiden: Martinus Nijhoff Publishers, 2010. p. 144.

68   Cf. CASSESE, Antonio. *International Law*. Oxford: Oxford University Press, 2001. p. 298; see also SIMMA, Bruno. NATO, the UN and the Use of Force: Legal Aspects. *European Journal of International Law*, v. 10, p. 1, 1999.

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it is unrealistic to expect that the permanent members will renounce this powerful tool or grant it to potential new permanent members of the Council.

At this point, the only realistic option in terms of mitigating the negative effects of the right of veto is the reform of the Council's decision-making process related to procedural matters. Unlike the decision-making process related to non-procedural (substantive) matters, permanent members of the Council cannot exercise the right of veto when making decisions on procedural matters. The fact that the Council decisions on procedural matters are made by an affirmative vote of nine members of the Council (theoretically, this is possible even without affirmative votes of all five permanent members of the Council) opens up the possibility of a successful reform of this part of the decision-making process of the Council. An additional argument in favour of the reform of the decision-making process of the Council is the fact that the Council's rules of procedure have not been changed since 1982.[69] It was pointed out by Malaysia, which emphasized that 'it has been 30 years since provisional rules have been amended. They are a relic of the Second World War and the Cold War. The United Nations Security Council has refused to move with the times.'[70] Therefore, it is necessary to consider procedural changes by which the Security Council would be 'forced' to face the threats to peace, breaches of peace and acts of aggression 'more actively'. Apart from that, it is also necessary to consider an improvement of transparency and publicity of the decision-making process, thus creating an additional pressure for the members of the Council to make decisions which will be compliant with the interests of the entire international community. Also, countries which are not members of the Council as well as other United Nations bodies (the General Assembly in particular) should be indirectly included in the decision-making process. For example, Spain advocates the introduction of three new procedural duties whose purpose would be to improve the Council's decision-making process: 'the duty to decide' would require the Council to affirmatively decide whether or not it will take action in crises within the scope of its authority, but if the Council takes no decision, 'the duty to disclose' would require it

to publicly state its reasons for not doing so, and finally 'the duty to consult' would obligate the Council to engage in broader dialogue with affected parties before taking serious action.[71] On the other hand, at this point, any other proposals for the reform of the decision-making process of the Security Council which advocate abolition, restriction or extension of the right of veto are unfortunately doomed, since there aren't even the slightest indications of a consensus on this matter among the five permanent Council members.[72]

4. AN OVERVIEW OF EFFORTS TO REFORM THE SECURITY COUNCIL

Ever since 1992, when the General Assembly included the issue of the reform of Security Council on its agenda,[73] we have testified to several unsuccessful attempts at reform of the Council. In the late 1993, the General Assembly established the Open-Ended Working Group on the Question of Equitable Representation of and Increase in the Membership of the Security Council and Other Matters Related to the Security Council.[74] In 1997, Ismail Razali, the Chairman of the Working Group and the President of the General Assembly, presented the plan for Council reform which anticipated an expansion of the Council from 15 to 24 members by adding five permanent members without the right of veto and four non-permanent members.[75] The Razali's plan also contained the election procedure of new permanent members according to which two thirds of votes of the members of the General Assembly were required for their election. Although Razali's plan was not supported by the United Nations Member States, it is interesting to observe that one year later the General Assembly adopted Resolution 53/30, which stipulates that any decision regarding the expansion of membership of the Security Council and related issues

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69   See: UNITED NATIONS. *Provisional Rules of Procedure of the Security Council.* New York: United Nations, 1983.

70   SPAIN, Anna. The U.N. Security Council's Duty to Decide. *Harvard National Security Journal*, v. 4, p. 367, 2013.

71   SPAIN, Anna. The U.N. Security Council's Duty to Decide. *Harvard National Security Journal*, v. 4, p. 326, 2013.

72   See e.g. FRANCK, Thomas M. Collective Security and UN Reform: Between the Necessary and the Possible. *Chicago Journal of International Law*, v. 6, n. 2, p. 609, 2006; SCEWCZYK, Bart MJ. Variable Multipolarity and U.N. Security Council Reform. *Harvard International Law Journal*, v. 53, n. 2, p. 500-501, 2012.

73   See: UNGA Res 47/62 (11 December 1992).

74   See: UNGA Res 48/26 (3 December 1993).

75   For the Razali's plan see: <https://www.globalpolicy.org/security-council/security-council-reform/41310-razali-reform-paper.html> Access on: 2 feb. 2017.

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cannot be made without two thirds of votes of the members of the General Assembly.[76]

In 2004, High-level Panel, appointed by the United Nations Secretary-General, presented a comprehensive reform of the United Nations which also contained proposals for the reform of the Security Council. The Panel's recommendation was that those with the most significant financial, military and diplomatic contributions to the Organization should be included in the decision-making process in the Security Council.[77] Furthermore, the Panel also recommended that more representatives of the broader United Nations membership, especially those of the developing countries, should participate in the Council's decision-making process as well.[78] In this way, the Panel created a balance between the two main criteria for membership of the new Council: 'contribution' to the Organization (financial, military, and diplomatic) and overall 'representativeness'.[79] According to the Panel, these changes should not impair the effectiveness of the Council, but rather, they should increase the democratic and accountable nature of the Council.[80] Pursuant to this, the Panel suggested two models of reform of the Security Council. The very fact that the Panel proposed two models clearly illustrates how difficult and sensitive the issue was.[81] Model A envisaged an expansion of the Council to 24 members by adding six new permanent seats without the right of veto, and four new non-permanent seats.[82]

Model B also envisaged the expansion of the Council to 24 members, but without the introduction of new permanent seats. Instead, it proposed the introduction of eight semi-permanent seats without the right of veto (to be elected for four-year terms with the possibility of re-election), and one new non-permanent seat.[83] In its report, the Panel opposed any expansion of the right of veto onto potential new members of the Security Council, but it urged the permanent members to refrain from exercising their right of veto, especially in cases of violation of human rights and genocide. It was clearly emphasized that the right of veto plays an important role in the preservation of interests of the most powerful Member States, as well as the fact that the institution of the veto has an anachronistic character that is unsuitable to the modern-day democratic world, and that its use should therefore be limited.[84]

After the expansion proposed by the Panel, three main groups of countries emerged with their own proposals regarding the expansion of the Security Council. The first group consists of Brazil, India, Japan and Germany (The Group of Four or G-4), which are also the candidates for new permanent seats in the Security Council. The G-4's proposal from 2005 was closest to the model A, anticipating expansion of the Security Council with six new permanent seats without the right of veto, and four non-permanent seats; in other words, according to their proposal, the Council would consist of 25 members.[85] According to the G-4's proposal, two permanent seats would be awarded to African States, two to Asian States (India and Japan), one to Latin American and Caribbean States(Brazil), and one to Western European and other States (Germany).

76   See: UNGA Res 53/30 (23 November 1998).
77   UNITED NATIONS. *A More Secure World:* Our Shared Responsibility. New York: United Nations, 2004. p. 66-67.
78   UNITED NATIONS. *A More Secure World:* Our Shared Responsibility. New York: United Nations, 2004. p. 67.
79   BLUM, Yehuda Z. Proposals for UN Security Council Reform. *American Journal of International Law,* v. 99, n. 3, p. 634, 2005.
80   UNITED NATIONS. *A More Secure World:* Our Shared Responsibility. New York: United Nations, 2004. p. 67.
81   In his letter to the United Nations Secretary-General of 2004, Anand Panyarachun, the Chair of the Panel, highlighted that the members of the Panel have not reached an agreement regarding the proposed expansion of the Security Council. Some members of the Panel strongly believed that only the expansion of the Security Council with new permanent members, which will not have the right of veto, would allow the Security Council to cope with new threats successfully. Other members of the Panel, however, equally strongly believed that only the expansion of the Security Council with semi-permanent members was the right path for its reform. See: UNITED NATIONS. *A More Secure World:* Our Shared Responsibility. New York: United Nations, 2004. p. 6-7.
82   From the six new permanent seats, one would be awarded to Europe and America respectively, while Asia and Africa would each receive two. See: UNITED NATIONS. *A More Secure World:* Our Shared Responsibility. New York: United Nations, 2004. p. 67.

83   UNITED NATIONS. *A More Secure World:* Our Shared Responsibility. New York: United Nations, 2004. p. 67.
84   UNITED NATIONS. *A More Secure World:* Our Shared Responsibility. New York: United Nations, 2004. p. 68.
85   The only difference between the G-4 proposal and the proposal of the Panel, i.e. the Panel's Model A is reflected in the increase of the number of members of the new Council, from 24 to 25 (instead of three, another four non-permanent seats were proposed). For the G-4 proposal, which was also supported by Afghanistan, Belgium, Bhutan, Czech Republic, Denmark, Fiji, France, Georgia, Greece, Haiti, Honduras, Iceland, Kiribati, Latvia, Maldives, Nauru, Palau, Paraguay, Poland, Portugal, Solomon Islands, Tuvalu and Ukraine see: UNITED NATIONS. General Assembly. *UN Doc A/59/L64.* Question of equitable representation on and increase in the membership of the Security Council and related matters, 6 July 2005. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/LTD/N05/410/80/PDF/N0541080.pdf?OpenElement> Access on: 5 feb. 2017.

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The second group – United for Consensus (UFC) – which emerged as a reaction to G-4 and their proposal, among others consists of Argentina, Italy, South Korea and Pakistan – regional rivals of the members of the G-4 group.[86] The UFC group opposes the introduction of new permanent seats in the Security Council and proposes 10 new non-permanent seats in the Council.[87] The UFC's proposal is reminiscent of Model B, as it includes the possibility of re-election of the non-permanent members of the Council. According to the UFC proposal, the expanded Security Council would consist of 25 members – the five current permanent members and 20 non-permanent members. From the remaining 20 non-permanent seats, six would be awarded to the African States, five to Asian States, four to Latin American and Caribbean States, three to Western European and other States, and two to Eastern European States.

Finally, the third group consists of African countries gathered in the African Union (AU). Their proposal, based on the so-called 'Ezulwini Consensus' – the common position adopted by the AU Member States,[88] anticipates an expansion of the Security Council with six new permanent seats with the right of veto, and five new non-permanent seats. In other words, according to their proposal, the Council would consist of 26 members.[89] From 11 new seats, African States would be awarded two permanent seats and two non-permanent seats; Asian States would receive two permanent seats

and one non-permanent seat; East European States would receive one non-permanent seat; Latin American and Caribbean States would receive one permanent seat and one non-permanent seat; while Western European and other States would be awarded one permanent seat.

The clearly conflicting proposals presented by the G-4 countries, UFC and African countries testified to a deep division between Member States with regard to the Security Council's reform. Moreover, it is symptomatic that only France and the United Kingdom supported the G-4 proposal, while other permanent members, without whose approval the Charter cannot be amended nor the Council reformed, did not support any of the proposals.[90] Despite the fact that 170 heads of state, gathered at the 2005 World Summit at the United Nations' headquarters in New York, unanimously supported 'an early reform of the Security Council',[91] the only possible consequence of the deep division between Member States was the continuation of the status quo in the reform of the United Nations' most powerful body. This again confirmed that there is a general consensus among Member States on the necessity of a reform of the Security Council, but it also showed significant disagreements on how to do it.[92] Nonetheless, after 15 years of futile search for a solution to this pressing issue within the Working Group, on the last day of the 62nd Session of the General Assembly, after tough negotiations, the Decision 62/557 was unanimously adopted on the beginning of intergovernmental negotiations in the early 2009.[93] Although the progress was merely

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86   The other members of the UFC are Canada, Colombia, Costa Rica, Malta, Mexico, San Marino, Spain and Turkey.

87   For the UFC proposal see: UNITED NATIONS. General Assembly. *UN Doc A/59/L68*. Question of equitable representation on and increase in the membership of the Security Council and related matters, 21 July 2005. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/LTD/N05/434/76/PDF/N0543476.pdf?OpenEleme nt> Access on: on: 5 feb. 2017.

88   For the 'Ezulwini Consensus' see: <http://www.un.org/en/africa/osaa/pdf/au/cap_screform_2005.pdf> Access on: 5 feb. 2017.

89   For the proposal supported by Algeria, Angola, Botswana, Burkina Faso, Cameroon, Cape Verde, Chad, Congo, Côte d'Ivoire, Djibouti, Egypt, Equatorial Guinea, Ethiopia, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Liberia, Libyan Arab Jamahiriya, Madagascar, Malawi, Mali, Mauritania, Mauritius, Mozambique, Namibia, Niger, Nigeria, Rwanda, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, Somalia, South Africa, Sudan, Tunisia, Uganda, United Republic of Tanzania, Zambia and Zimbabwe see: UNITED NATIONS. General Assembly. *UN Doc A/59/L67*. Question of equitable representation on and increase in the membership of the Security Council and related matters, 18 July 2005. Available: <https://documents-dds-ny.un.org/doc/UNDOC/LTD/N05/421/67/PDF/N0542167.pdf?OpenElement> Access on: 5 feb. 2017.

90   Article 108 of the UN Charter stipulates: 'Amendments to the present Charter shall come into force for all Members of the United Nations when they have been adopted by a vote of two thirds of the members of the General Assembly and ratified in accordance with their respective constitutional processes by two thirds of the Members of the United Nations, including all the permanent members of the Security Council.'

91   'We support early reform of the Security Council - an essential element of our overall effort to reform the United Nations - in order to make it more broadly representative, efficient and transparent and thus to further enhance its effectiveness and the legitimacy and implementation of its decisions. We commit ourselves to continuing our efforts to achieve a decision to this end and request the General Assembly to review progress on the reform set out above by the end of 2005.' See: UNGA Res 60/1 (24 October 2005).

92   FREISLEBEN, Jonas von. Reform of the Security Council. In: CENTER FOR UN REFORM EDUCATION (ed). *Managing Change at the United Nations*. New York: Center for UN Reform Education, 2008. p. 1; see also SCHRIJVER, Nico. Reforming the UN Security Council in Pursuance of Collective Security. *Journal of Conflict & Security Law*, v. 12, n. 1, p. 127, 2007.

93   See: UNITED NATIONS. *Resolutions and Decisions adopted by*

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symbolic and procedural, many diplomats prematurely assessed this 'success' as historical.[94]

Unfortunately, despite the euphoria which gripped the East River, intergovernmental negotiations on the reform of the Security Council, which officially started in February 2009, proved to be equally unsuccessful as the previous attempts to solve the issue within the Working Group. Under the presidency of Zahir Tanin (2009-2014), the Afghan permanent representative to the United Nations, ten rounds of intergovernmental negotiations were held, which haven't broken the impasse of the Security Council's reform process, due to the fact that the three main groups of countries – G-4, UFC, African countries – did not budge from their initial positions. Apart from confirming the significant discord among Member States regarding the reform of the Council, the negotiations also showed a sharp disagreement of Member States regarding the rules of procedure of intergovernmental negotiations. On the one hand, G-4 countries believe that decision-making in intergovernmental negotiations should be based on voting, while on the other hand, UFC maintains that decisions should be made on the basis of a consensus.[95] Moreover, soon it became obvious that UFC – which enjoys the least support from Member States – was trying to slow the negotiations down, while G-4 countries – which enjoy a considerable, yet insufficient support of Member States – were trying to speed the negotiations up.[96] In the late 2014, Courtney Rattray, the permanent representative of Jamaica to the United Nations, was appointed as the Chair of intergovernmental negotiations, with the task of moving the intergovernmental process towards text-based negotiations.

On 26 March 2015, the Chair circulated a framework document on the reform of the Security Council to all Member States, with the request to complete the document with their own views and proposals regarding the five key issues of the reform: categories of membership, regional representation, the size of an enlarged Security Council and working methods of the Council, the question of the veto and the relationship between the Council and General Assembly.[97] On the basis of the collected opinions and proposals of member states, a negotiating text was drafted which Sam K. Kutesa, President of the 69th Session of the General Assembly, described as a 'sound basis' for the following stage of intergovernmental negotiations.[98] The text and its accompanying Annex,[99] which was presented on 31 July 2015, also allows us to see Member States' most recent views on the reform of the Security Council on the eve of the 70th anniversary of the United Nations. Our overview of the negotiating text once again confirmed that there was no convergence of opinions regarding the reform of the Security Council among Member States – especially with regard to new permanent seats and the issue of veto. Thus, G-4 still advocates the introduction of six new permanent seats without the right of veto – four for G-4 members and two for African countries.[100] Basing their attitude on the 'Ezulwini Consensus', African countries advocate the introduction of six new permanent seats with the right of veto, at least two of which would be awarded to African countries.[101] The Arabic group, which consists of 23 Member States, demands a permanent Arab seat in case of any future expansion of permanent seats in the Council.[102] On the other hand, UFC continues to oppose the introduction of new permanent seats in the Council, and proposes the introduction of a new category of seats – long-term non-permanent seats.[103] However, it should be noted that the vast majority of Member States which completed the framework document agree that it is necessary to expand the Council by introducing new permanent

the General Assembly during its sixty-second session. 23 December 2007 – 15 September 2008. New York: United Nations, 2008. v. 3. p. 106-107.

94 See: <http://www.reuters.com/article/2008/09/16/us-un-council-expansion-idUSN1533301720080916?pageNumber=1&virtualBrandChannel=0> Access on: 8 feb. 2017.

95 SWART, Lydia. *Countries Welcome Work Plan as Security Council Reform process Commences New Phase.* 24 February 2009. Available at: <http://www.centerforunreform.org/?q=node/386> Access on: 13 feb. 2017.

96 See e.g. HANSEN, Mie. *Update on Security Council Reform.* 5 April 2011. Available at: <http://www.centerforunreform.org/?q=node/435> Access on: 13 feb. 2017.

97 For the framework document see: <http://www.un.org/pga/wp-content/uploads/sites/3/2015/03/270315_interg overnmental-negotiations-sc-reform.pdf> Access on 14 feb. 2017.

98 For the negotiating text and the accompanying letter by the President Kutesa see: <http://www.un.org/pga/wp-content/uploads/sites/3/2013/11/Security-Council-reform-IGN-31-July-2015.pdf> Access on: 14 feb. 2017.

99 For the ANNEX Part I see: <http://www.un.org/pga/wp-content/uploads/sites/3/2013/11/Security-Council-refor m-IGN-31-July-2015-ANNEX_Part1.pdf> Access on 14 feb. 2017; for the ANNEX Part II see: <http://www.un.org/pga/wp-content/uploads/sites/3/2013/11/Security-Council-reform-IGN-31-July-2015-ANNE X_Part2.pdf> Access on 14 feb. 2017.

100 ANNEX Part I, p. 3.

101 ANNEX Part II, p. 63.

102 ANNEX Part II, p. 116.

103 ANNEX Part II, p. 123.

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seats. Also, the majority of Member States believes that the right of veto should be abolished. Because it is an unrealistic expectation, a part of them, such as African and Caribbean countries, believe that, so long as the right of veto exists, it should be extended to all members of the permanent category of the Security Council, which must enjoy all the prerogatives and privileges of permanent membership including the right of the veto. Furthermore, G-4 is willing to renounce the right of veto for new permanent members, while several countries propose a voluntary limitation or restraint of the use of the veto in specific situations (e.g. genocide, crimes against humanity and war crimes), while others propose a mandatory restriction of the use of the veto in the said situations.

Finally, it is interesting to examine the attitudes of the five permanent members of the Security Council, without whose mutual consent a reform of the Council is not possible. Thus, France supported the introduction of new permanent seats for members of G-4 and African countries, thereby emphasizing that they 'would not oppose extension of the veto to new permanent members if the candidates to such permanent membership were to pursue such an extension'.[104] The United Kingdom also supports the introduction of new permanent seats for members of G-4 and African countries, but it opposes the extension of the veto to new permanent members.[105] On the other hand, China refused to complete the framework document, holding that, according to the Decision 62/557 adopted by the General Assembly as well as the consensus of Member States, intergovernmental negotiations on Security Council reform should be driven by Member States, and the positions of Member States should form the basis of the negotiations.[106] According to China, the said principles and the consensus are not reflected in the framework document, which simplified and reduced the views of Member States without their approval. Therefore, China hasn't modified its initial views according to which it generally supports the extension of the Council, but without specifying the categories of the new seats or referring to the extension of the right of veto. Apart from that, China also believes that all five key issues of the reform should be solved as a whole, i.e. it opposes the 'piecemeal' or 'step-by-step' approach, thereby clearly

emphasizing that 'no solution on which Member States are seriously divided or approach that may cause division among Member States will have China's support'. Russia, which also hasn't completed the framework document, but merely sent an official letter instead, also supports the extension of the Council, but it does not specify the categories of new permanent seats, except it considers that the number of seats in the new extended Council should not exceed a reasonable level of low twenties.[107] However, Russia emphasizes that 'the prerogatives of the current permanent members of the Security Council, including the use of veto, should remain intact under any variant of the Council reform'. Additionally, Russia also believes that, in case of a lack of consensus among Member States with regard to the reform of the Council, it is necessary to ensure support by the overwhelming majority of Member States – a substantially greater number than the legally required two thirds of votes at the General Assembly. Finally, the United States, which also haven't completed the framework document, but sent an official letter instead, are willing to support a modest expansion of both permanent and non-permanent members, but consideration of new permanent members must be country-specific in nature.[108] Regarding the issue of the veto, the United States remains opposed to 'any alteration or expansion of the veto'.

Despite an obvious disagreement between Member States regarding both material and procedural matters of the reform of the Security Council, on 14 September 2015, the General Assembly decided to 'immediately continue intergovernmental negotiations on Security Council reform, building on the positions of and proposals made by Member States reflected in the text and its annex circulated by the President of the General Assembly in his letter dated 31 July 2015'.[109] It is difficult to predict the further course of events, although one thing is certain: this endless game between Member States enters into its 25 year, while the answer from the East River to the question – When will the reform of the Security Council finally take place? – remains un-

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104   ANNEX Part I, p. 35.
105   ANNEX Part II, p. 67.
106   ANNEX Part II, p. 101.

107   ANNEX Part II, p. 109.
108   ANNEX Part II, p. 114.
109   For the Decision see: UNITED NATIONS. General Assembly. *UN Doc A/69/L92*. Question of equitable representation on and increase in the membership of the Security Council and related matters, 11 September 2015. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/278/16/PDF/N1527816.pdf?Open Element> Access on: 23 feb. 2017.

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changed: Godot will certainly come tomorrow.

5. Final conclusions

The world is changing, but not the Security Council. While humanity is helpless in the face of armed conflicts raging across our planet, United Nations Member States have been, for almost a quarter of a century, unsuccessfully trying to reform the body which they themselves entrusted with the primary responsibility of maintaining international peace and security. 25 years have been wasted, thousands of meetings were held, miles of paper and oceans ink were spent for the purpose of the reform of the United Nations' most powerful organ, and yet there is still no sign of a final solution. Moreover, an overview of the previous attempts to reform the Security Council leads us to the only possible conclusion – 'the emperor has no clothes'. Although merely a drop in the ocean of academic attempts to contribute to the solution of the problem, this article is trying to draw attention to the need for an urgent reform of the Security Council, i.e. to unacceptability of its further delay, supporting it with, among other things, inefficiency of the Council in performing its main task – maintenance of international peace and security. Furthemore, some countries, with regard to their financial and military contributions to the United Nations as well as to their military force, economic power and population size, must be included in the Council's decision--making process through the permanent membership in the Council. Since it is unrealistic to expect that the permanent members will give up the right of veto, the only realistic solution in terms of mitigating the negative effects of the right of veto is the reform of the Council's decision-making process related to procedural matters. Finally, it is high time to reach a political compromise among all Member States regarding the reform of the Security Council on the basis of previous views and proposals expressed by Member States. This particularly refers to the five permanent members of the Security Council, which hold the key to the amendments to the Charter, and consequently also to the reform of the Council, in their hands. We can only hope that Member States will fulfill their moral obligation towards humanity, which deserves to live in a better and safer world, and undertake an urgent reform of the Security Council. Otherwise, prophetic words spoken by the American president Harry S. Truman during the signing the Charter on 26 June 1945 in San Francisco might come true: 'If we fail to use it, we shall betray all those who have died in order that we might meet here in freedom and safety to create it. If we seek to use it selfishly, for the advantage of any one nation or any small group of nations, we shall be equally guilty of that betrayal.'[110]

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