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Legitimacy of the United Nations Security Council

Bachelor's Thesis

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Declaration

1. I hereby declare that I have compiled this thesis using the listed literature and resources only.
2. I hereby declare that my thesis has not been used to gain any other academic title.
3. I fully agree to my work being used for study and scientific purposes.

In Prague on 3.5.2023

Ladislav Franko

References

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Abstract

United Nations Security Council is a unique decision-making body in the sense of global governance. It presents the highest implementation authority regarding the use of force and peacekeeping coordination. The legitimacy of the Security Council has, however, been continually disputed. Therefore, this thesis aims to demonstrate possible legitimacy deficits based on comparing how do notable scholars and authors assess various areas of Security Council legitimacy. Method of descriptive-comparative research design is used to compare and synthesize findings from the opinionated literature, in order to distinguish areas of legitimacy with the aim of overall UN Security Council legitimacy evaluation. Areas of legitimacy this thesis analyzes include accountability, efficiency, legal mandate, legitimate agenda, participation, representation and transparency. In conclusion, this thesis showcases that United Nations Security Council lacks legitimacy in almost all the distinguished areas. An exception is observed in the area of legal mandate, where it is generally acknowledged that the United Nations Charter provides the Council with full legal legitimacy.

Abstrakt

Bezpečnostná rada Organizácie spojených národov je jedinečným rozhodovacím orgánom v zmysle global governance. Disponuje najväčšou implementačnou autoritou v zmysle použitia sily a koordinácii mierových misií. Legitimita Bezpečnostnej rady je však pravidelne rozporovaná. Preto sa táto práca snaží poukázať na možné nedostatky legitimacy na základe porovnania prístupu významných akademikov a autorov k legitimita Bezpečnostnej rady v rôznych oblastiach. Metóda deskriptívnej komparácie je využívaná pre porovnanie a syntetizovanie zistení z odbornej literatúry, za účelom rozlíšiť skúmané oblasti legitimacy, a s cieľom vyhodnotenia celkovej legitimacy Bezpečnostnej rady OSN. Oblasti legitimacy, ktoré táto práca skúma, sú zodpovednosť, výkonnosť, legálny mandát, legitímna agenda, účasť, zastúpenie a transparentnosť. Vo svojom závere poukazuje táto práca na to, že Bezpečnostná rada OSN stráda legitimitu takmer v každej z vytýčených oblastí. Výnimka je pozorovateľná v prípade oblasti legálneho mandátu, kde Charta Organizácie spojených národov dodáva Rade plnú legálnu legitimitu.

Keywords

United Nations, Security Council, legitimacy, UNSC, accountability, procedure, performance, legality, membership, participation, membership, agenda, transparency

Klíčová slova

Organizácia spojených národov, Bezpečnostná rada, legitimita, BR OSN, zodpovednosť, procedúra, výkonnosť, legálnosť, účasť, členstvo, agenda, transparentnosť

Title

Legitimacy of the United Nations Security Council

Název práce

Legitimita Bezpečnostnej rady Organizácie spojených národov

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INTRODUCTION

Creation of the United Nations was a result of the destructive consequences of World War II. Leaders of that time have jointly decided that such massive scale of conflict and destruction should never repeat again. Since then, the United Nations and its organs have been providing a stable forum that allows world nations to hold discussions and debates among themselves to prevent conflicts and promote cooperation and welfare. However, one of the UN organs stands out. The United Nations Security Council is the most important decision-making body of the international community, with the greatest decision-making and implementation authority regarding the use of force and peacekeeping. However, in recent times, doubts concerning the Security Council's legitimacy began to emerge.

The issue of a legitimate UN Security Council is a crucial issue in the real practice of international relations. While its reform is a topic that has been worked on for a long time without any major result, its concept of legitimacy is often being disregarded. At the same time, solving the issue of legitimacy is one of the basic prerequisites for the subsequent reform of the Security Council. Therefore, we consider analysing legitimacy of the Security Council as a more than relevant choice for the theme of our thesis.

In the theoretical part of our work, we will look at the Security Council as such. We will discuss its creation, its mandate, function, procedure and powers granted by the UN Charter. Second part of our theoretical part will be the concept of global governance legitimacy of IOs itself. Here we will summarize the basic criteria for evaluating legitimacy in international organizations. The third theoretical part of of this thesis will briefly introduce the issue of the UN Security Council legitimacy.

In the practical part of the thesis, we will be applying the descriptive-comparative research design to showcase how various authors approach specific aspects of the UN Security Council legitimacy. Subsequently we will synthesize our findings into a more coherent version. We expect that this method will provide us with clearly defined areas of legitimacy that should showcase in which areas the United Nations Security Council might lack legitimacy. These areas of legitimacy will then be used to assess the overall legitimacy of the Security Council and to answer the main research question of our work: *“Should the United Nations Security Council be considered as a legitimate decision-making body?”*.

1. UNITED NATIONS SECURITY COUNCIL

1.1. Main purpose

United Nations Security Council is one of the six primary organs of the United Nations, and it is responsible for maintaining international peace and security. It was established on January 17, 1946. According to the United Nations, it has four purposes: to maintain international peace and security; to develop friendly relations among nations; to cooperate in solving international problems and in promoting respect for human rights; and to be a centre for harmonizing the actions of nations (United Nations, "What is the Security Council?"). All members of the United Nations agree to accept and carry out the decisions of the Security Council, since they adopt the Charter when becoming a member of the UN. While other organs of the United Nations make recommendations to member states, only the Security Council has the power to make decisions that member states are then obligated to implement under the Charter (United Nations, "What is the Security Council?"). Security Council is established in the Articles 23-32, and they further specify Council's composition, function, voting and procedures. Its powers are established in mainly in Chapter VI and Chapter VII of the United Nations Charter.

1.2. Composition and membership

Article 23 of the UN Charter establishes that the Security Council is composed of fifteen members states of the United Nations. Each of the members is represented at the Council by one representative. Out of the fifteen states, five members are granted permanent seats. These seats belong to: The Republic of China, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America. Other ten Security Council members are elected as non-permanent member states. Article 23 further states that the 10 non-permanent should be divided based on geographical distribution and that an elected member cannot be elected again in a successive term (UN Charter, Article 23).

1.3. Mandate and function of the Security Council

As the UN Charter itself states, functions and powers of United Nations Security Council are described in Articles 24-26. As stated in the Article 24, the Security Council exists to ensure quick reaction of the United Nations to possible disruptions of international peace, as the primary responsibility of the Security Council is to maintain international peace and security. When pursuing its primary responsibility, the Council should act on behalf of the UN members, following the UN's goals and principles. Moreover, the Council must give yearly reports and special reports to the General Assembly for review (UN Charter, Article 24). In relation to Article 24, to ensure a concordance among the member states and the Security Council, the Article 25 establishes that the member states agree to carry out the decisions of the Security Council (UN Charter, Article 25). In addition, Article 26 orders that the Security Council has a responsibility to create a system for controlling weapons, with the help of the Military Staff Committee (UN Charter, Article 26).

1.4. Voting and other procedures

Voting, decision-making process other procedures of the United Nations Security Council are explained in Articles 27-32 of the UN Charter. One of the most important matters is that each of the fifteen members has one vote (UN Charter, Article 27). This is not relevant in the case when a party of dispute is abstained from voting on the disputed matter (UN Charter, Article 52). However, the party of dispute may participate still participate in the meeting, as it is granted by the UN Charter (UN Charter, Article 31). Moreover, the Security Council members are obligated to lay down just conditions for the participation of such member state (UN Charter, Article 32).

The general voting procedure of the Council is divided into two kinds: voting on procedural matters and other matters. In the case of procedural matters, an affirmative vote of nine Security Council members is required to pass a procedure. In the latter case, voting on all other matters requires an affirmative vote of nine members, including concurring votes of the permanent members (UN Charter, Article 27).

Crucial for the Security Council is to be able to function continuously. Therefore, it is expected to be holding regular meetings at which also members of the member state's government may be present (UN Charter, Article 28).

To be able to function effectively, Security Council is allowed to its other subsidiary organs in order to improve its performance (UN Charter, Article 29). In addition, the Council may also its own rules of procedure, for example also involving the procedure of selecting the President of the Security Council (UN Charter, Article 30).

1.5. Powers of the United Nations Security Council

The Security Council has specific powers, which are listed in Chapters VI, VII, VIII, and XII of the UN Charter. (UN Charter, Article 24)

Chapter VI of the UN Charter is focused on peaceful means of dispute settlement, but also provides for the possibility of military action by the Security Council in certain situations (UN Charter, Chapter VI).

Chapter VII provides the legal framework for the Security Council to respond to threats to international peace and security and to take action to prevent or resolve conflicts (UN Charter, Chapter VII).

Chapter VIII establishes the possibility of creation of regional arrangements, which are subjected to approval by the UN Security Council. This later provides the Security Council to carry authorized out enforcement actions through regional agencies. Overall, Chapter VIII recognizes the important role of regional arrangements in maintaining international peace and security (UN Charter, Chapter VIII).

Finally, Chapter XII outlines the principles and procedures for the establishment and administration of trust territories. Main goal of such territories is to ensure well-being and development of the concrete area and its inhabitants (UN Charter, Chapter XII).

1.6. UNSC sessions

Security Council holds its session in the UN Headquarters in New York City, United States. It held its first session on 17 January 1946 at Church House, Westminster, London (United Nations, "What is the Security Council?"). There have been over 9300 meetings since then (United Nations, "Security Council Meetings - Quick Reference"). Security Council may also be holding its meetings in other places than the UN Headquarters in New York City (UN Charter, Article 28). In the past, the United Nations Security Council session were also held in Addis Ababa, Ethiopia (1972), in Panama City, Panama (1973) and in Geneva, Switzerland, in 1990 (United Nations, "What is the Security Council?"). A representative of each of its members must be present at all times at UN Headquarters so that the Security Council can meet at any time as the need arises (UN Charter, Article 28).

2. LEGITIMACY OF INTERNATIONAL INSTITUTIONS

2.1. Concept of legitimacy

As legitimacy is, in its nature, an abstract concept, there are numerous possibilities of how to approach the evaluation of it.

One of the global governance legitimacy concepts is the Theory of Legitimacy presented in the chapter of *After Anarchy: Legitimacy and Power in the United Nations Security Council* by Ian Hurd in 2007. According to Hurd, „*legitimacy refers to a normative or subjective belief by an actor that a rule or institution ought to be obeyed*” (Hurd, 2007, p. 30). When an actor believes that an international institution is legitimate, the actor complies with its decisions and rules due to the belief of the rightness and obligation, and not because of the coercion from the institution or calculations and personal interests (Hurd, 2007, p. 30). Moreover, legitimate compliance is less biased than a self-interest compliance, as the former compliance is motivated by the belief in an institution. To conclude, the concept of legitimacy can be made tractable for IR scholars when treated in the following way: as the subjective condition in which actors internalize rules given by institutions (Hurd, 2007, p. 64).

In relation to the belief in an institution to be regarded as legitimate by an actor, symbolism plays a significant role, as legitimate institutions generate symbols. Then the actors involved with the institutions further use such symbols to pursue strategic interests (Hurd, 2007, p. 65). One of the most notable symbols, which is closely related directly to the United Nations Security Council, are the United Nations peacekeeping blue helmets. Presence of these peacekeeping forces in the conflict bears the legitimacy derived from the United Nations Security Council resolutions.

2.2. Legitimacy standards

Even though legitimacy is a strongly abstract concept, it needs to be assumed based on some standards. There is general agreement that legitimacy of an international institution will be greater if there are high levels of political inclusion, participation, representation and achievement (Clements, 2014, p. 13). Then there are approaches,

such as linking legitimacy to democratic principles (Keohane, 2011, p. 100). It is due to the fact that, as democracy, legitimacy should be also built on principles, such as inalienable human rights, freedom in the decision-making process and an equality of the votes. To protect such standards, checks and balances should be established within the organization to constrain the potential abuse of power, as it is in democratic institutions and states (Keohane, 2011, p. 100). These checks and balances later also provide those, who are subjected to rule, with the ability to make judgments about the quality and legitimacy of the governance.

In addition, Keohane identifies six specific criteria, which are crucial for understanding how legitimacy is acquired. According to Keohane, all these criteria follow liberal democratic principles. The first criterion is minimal moral acceptability. The second criterion is inclusiveness, which can be translated as an openness of institution to the participation of interested parties. Third of the criteria are integrity and transparency, as *an ability of the ruled to control the rulers depends on their access to information about the rulers' behavior*" (Keohane, 2011, p. 101). Fourth criterion is accountability and the ability of holding the actors, who are responsible for the decisions made, accountable. (Keohane, 2011, p. 102). Fifth criterion that Keohane identifies is that the international institutions should be compatibility of an institution with democratic governance standards. The last criterion is the comparative benefit factor (Keohane, 2011, p. 103), which basically means, that the benefit of the existence of a specific international institutions is significantly bigger than the possible results of the non-existence of such international institution.

2.3. Description of global governance legitimacy in literature

In their work, Buchanan and Keohane argue that global governance institutions can gain legitimacy through four key factors: procedural justice, performance, distributional justice, and ethical justice. Procedural justice involves transparency and inclusivity in decision-making processes. Performance refers to the effectiveness of the institution in achieving its goals. Distributional justice addresses the equitable distribution of benefits and costs among different groups. Ethical justice concerns the adherence to universal moral principles, such as human rights and environmental protection. Buchanan and

Keohane acknowledge that achieving legitimacy in all four areas is a difficult task but argue that it is necessary for global governance institutions to be perceived as legitimate and effective by their stakeholders, including member states, civil society organizations, and citizens (Buchanan, Keohane, 2006).

Daniel Bodansky argues that legitimacy is a critical factor in the acceptance and effectiveness of international legal norms and institutions, and that legitimacy can be enhanced through transparency, accountability, and participation. He also emphasizes the need for international institutions to be responsive to the diverse perspectives and concerns of all actors, and to be effective in achieving their stated goals (Bodansky, 2013).

Dellmuth and Tallberg examine the factors that contribute to the social legitimacy of international organizations. They argue that social legitimacy is based on three key elements: interest representation, institutional performance, and cosmopolitan identities, which include promotion of universal values, such as human rights and democracy. Moreover, they argue that international organizations need to be responsive to public concerns and engage in dialogue with diverse stakeholders in order to build social legitimacy (Dellmuth, Tallberg, 2012).

Dellmuth, Scholte and Tallberg further propose a framework that identifies four institutional sources of legitimacy: input legitimacy, output legitimacy, throughput legitimacy, and normative legitimacy. Input legitimacy refers to the representation and inclusivity of actors in decision-making processes, while output legitimacy relates to the effectiveness of international organizations in achieving their goals. Throughput legitimacy involves the fairness and transparency of decision-making processes, while normative legitimacy concerns the extent to which international organizations are able to promote and uphold shared values and norms (Dellmuth, Scholte, Tallberg, 2019).

Tallberg and Zürn also divide understanding legitimacy into comparable three main categories: input, throughput, and output legitimacy. Input legitimacy relates to the inclusivity and representation of different actors in decision-making processes, while throughput legitimacy concerns the transparency, accountability, and fairness of those processes. Output legitimacy relates to the effectiveness of international organizations in achieving their stated goals and addressing global challenges. Tallberg and Zürn also

discuss the role of legitimation in enhancing legitimacy, noting that legitimation involves the creation and reinforcement of social norms, values, and beliefs that support the legitimacy of international organizations (Tallberg, Zürn, 2019).

3. UNITED NATIONS SECURITY COUNCIL LEGITIMACY

Even though it has been disputed for some time, the legitimacy of the United Nations Security Council specifically has not been addressed much by the United Nations itself. One of the complex attempts came in the 2007, when a Special Research Report N. 3 was issued. This report focuses on the efforts to reform Council's working methods between years 1993-2007. The report states that most of the concerns about the Security Council's legitimacy are related to transparency, accountability, participation and effectiveness (Security Council, 2007). Other efforts have been undertaken by the 'Small Five' group of states from 2005 to 2012. They were subsequently followed by the efforts since 2013 of the Accountability, Coherence and Transparency Group (Harrington, 2017).

However, despite all mentioned efforts to reform the Council's working methods to increase its legitimacy, the reform of the body remains a contentious issue, with different views on what changes are necessary and feasible.

4. METHODOLOGY

Methodology of our work begins with assembling opinionated literature on the researched matter, the legitimacy of United Nations Security Council. The subsequent step is a synthesis of approaches from the given literature based on the areas of legitimacy the authors focus on. These distinguished areas of legitimacy should also reflect the areas of legitimacy from the theoretical part of our work.

By applying the descriptive-comparative design we will then showcase how authors consent or differ compared to each other in their approaches towards the legitimacy of the Security Council in each of the areas. Our aim is to demonstrate trends of legitimacy evaluation by scholars and authors based on their analysis of different areas of legitimacy.

There are two factors on which we will reflect in the subsequent evaluation of the data from opinionated literature, The first factor is on which areas of legitimacy of the UNSC do given authors tend to focus on. Second factor is, whether the opinion on the areas of legitimacy of the UNSC are positive or negative. The second factor will be evaluated later in our work.

Following the evaluation of the data that we have assembled, we will then derive our findings on whether, based on the trends and findings in the data we have acquired and evaluated, the United Nations Security Council should or should not be considered as a legitimate decision-making body in the international relations.

5. AREAS OF LEGITIMACY IN UNITED NATIONS SECURITY COUNCIL

In this chapter we evaluate our data from the opinionated literature on the legitimacy of the United Nations Security Council. We will be subsequently sorting them into specific areas of legitimacy, based on the area that concrete authors focus on. On the sample of chosen opinionated literature we will try to portray how are the specific area of legitimacy generally regarded. This will allow us to see more clearly in which areas the UN Security Council lacks legitimacy.

5.1. Accountability

Accountability, one of the procedural standards, means that the decision-making actors and the actors affected by these decisions can hold the international organization or international decision-making body accountable, or responsible for their decisions (Grant and Keohane, 2004; Binder and Heupel 2014).

Ramesh Thakur has also raised concerns about the lack of accountability of the Security Council. He points at the fact that the Security Council does not answer to the General Assembly, nor the World Court, and the world nations in general (Thakur, 2010, p. 18). Thakur hereby implies that the Council is not legally constrained by any other international body and it only answers to the UN Charter itself. In the sense of legal powers, Thakur focuses on the resolutions on terrorism and non-proliferation adopted by the Council. What concerns him is that these resolutions may often „intrude” into the prerogatives and resolutions, which were negotiated in international conferences and conventions (Thakur, 2010, p. 18). What is important to summarize is that such UNSC decisions and resolutions are binding and unopposable by the members of the United Nations (Thakur, 2010, p. 19). Moreover, the states are not even able to hold the Security Council accountable, as I have mentioned previously. Lastly, Thakur also points out the need to improve the accountability of the UN peacekeeping missions. (Thakur, 2010, p. 24)

In his work „Global Governance and Legitimacy” Keohane also argues that when it comes to the accountability for its actions, the UN Security Council is lacking

legitimacy. He argues with the example of the peacekeeping operations and the promotion of democracy, and that these efforts are only constrained by the membership on the Security Council of Russia and China (Keohane 105). However, what Keohane points out, is that no massive violations of human rights have been committed by the UN peacekeeping missions so far (Keohane 105), therefore there is yet to be a case for which the Council should be held accountable for. Moreover, in the conclusion of his work he stresses out that the world would be „more conflict-ridden” if it were not for the UN Security Council and its peacekeeping missions (Keohane 105). This finding he derives from the comparative benefit indicator of legitimacy. Keohane also describes accountability of international institutions as one of his six criteria for legitimacy assessment, which we have covered in the theoretical part of our work.

Frederking and Patane, as Thakur, bring up the fact that the UNSC is not accountable to other actors such as the International Court of Justice or the General Assembly (Frederking and Patane, 2017, p. 348).

Scherz and Zysset also analyze accountability standards of the Security Council. They claim that an autonomy of states is only possible if they are able to hold accountable the specific institution that somehow decides on the operations involving them. However, when it comes to who should be able to hold the institution accountable, the opinions differ. In the participation model, it is those affected by the operations. In the delegation model, it is those entrusting the institution with powers (Scherz and Zysset, 2020, p. 382).

Lastly, we find out, that Erika de Wet point at the lack of contestability of the United Nations Security Council decisions. Contestability is closely regarded to accountability, since it allows actors to contest the decisions of actors in the sense holding them accountable for their decisions. De Wet argues that the lack of contestability of the UNSC could be reduced if the sanctions regimes of the Council would be subjected to time limits (De Wet, 2008, p. 153). Such sanctions are imposed by the UNSC based on the powers granted by the Chapter VII of the United Nations Charter. De Wet argues that if the time limits would be part of the sancions regimes, the Council would possibly need a Chapter VII decision to extend such regimes (De Wet, 2008, p. 153).

5.2. Efficiency and effectiveness

According to Heupel and Binder, the most obvious way to assess international organization performance is to examine whether the IO fulfils its mandate. Another possibility is to determine whether the international organization applies its rules consistently. (Binder and Heupel, 2014). Performance legitimacy is also based on whether the international organization is able to restrict the great powers' influence on weaker countries. (Ikenberry, 2001; Binder and Heupel, 2014) If not, the international organization shall be considered illegitimate, because its performance is being biased by the great power. The final indicator is whether the international organization or its decision-making body respects fundamental human rights during performing its mandate. (Buchanan and Keohane, 2006).

Erika de Wet specifically identifies efficiency as a UNSC deficit in her work. She evaluates UNSC efficiency through the terrorism deterrence and proliferation of the weapons of mass destruction and successively concludes that the Security Council might not be the most suitable body to address such issues. Instead, she proposes treaty-making and negotiation within the UN General Assembly (De Wet, 2008, p. 154). We interpret such suggestion as a recognition of an efficiency deficit of the UNSC, which undermines performance legitimacy of the Council.

Scholz claims that the Security Council has generally failed in preventing after the World War II, yet it was successful in establishing new borderlines the great power respect. (Scholz, 2020) However legally, the Council does not bear abilities to restrict the behavior of the great powers. As an example, Scholz mentions that China is not a member of international treaties, such as the Limited Test Ban Treaty, or that Russia and the United States tend to abandon weaponry control regimes from time to time (Scholz, 2020). In the case of Russia and China, the two P5 members, Scholz also mentions Crimea and Hong Kong as the examples of undermining the Security Council and pointing at its performance legitimacy deficit. After February 2022, we can additionally mention the invasion of Ukraine by Russian Federation, as an example of lacking efficiency of the Council in restricting great powers in their pursuits.

Thakur directly identifies both an uneven and selective record of UNSC interventions (Thakur, 2010, p. 18). He advances to point mainly at the Western countries'

dissatisfaction with the UNSC efficiency due to their „*desire to resist the Council's role as the sole validator of the international use of force*”. Thakur argues that if the Security Council were to become increasingly activist, interventionist and effective with legitimacy defects in other areas, then it would lead many countries to question the authority of the Council even more (Thakur, 2010, p. 18). However, through these arguments Thakur simultaneously presents the Security Council as less efficient than the international society would expect it to be.

Anna Dimitrijevic directly implies that the Security Council is lacking on the effectiveness by implying that a standing UN force would enhance its performance legitimacy. She claims that the deployment of such force would significantly improve the efficiency and effectiveness of the UN and UNSC response to international security threats. Dimitrijevic explains that UN Charter Articles 43-48 „*allow for forces placed at the disposal of the Security Council for enforcement operations*” (Dimitrijevic, 2007, p. 11). She also argues that the peacekeeping missions have „*failed to fulfil its delivery on earlier promises made by member states*” (Dimitrijevic, 2007, p. 12).

Keohane studies performance legitimacy of the UNSC through the comparative benefit of international institutions. The key question here is what effect an absence of the specific institution would have on the world. Keohane points out that the UNSC is a unique decision-making body through which the countries in the world with the greatest military capabilities can reach joint decisions to control threats to the peace (Keohane, 2011, p. 105), even though he acknowledges that the performance efficiency of the Council is not ideal. Keohane argues on an example that without the Security Council there could hardly be such an effective response to Iraq's invasion of Kuwait in 1990. He also argues that without UNSC it would be more difficult to resolve the wars in the former Yugoslavia. Generally, Keohane states that the world would be more conflict-ridden if the Security Council did not exist (Keohane, 2011, p. 105).

Caron analyzes how would the effectiveness of the Security Council be affected by an increase of the UNSC members. He does not state that the Council's performance legitimacy is low due to a lack of effectiveness, but he still says that increase of the membership may lower the effectiveness of the Council. Moreover, he states that such lowering of effectiveness might even be beneficial for some members (Caron, 1993, p. 574). He therefore stresses that it is important to strengthen the relationship among the

Security Council and General Assembly and that it is also important to further consider how to increase the number of Council members without disrupting its legitimacy (Caron, 1993, p. 574).

Frederking and Patane analyze how the efficiency of the Council differs when it comes to sending peacekeepers into conflict zones. They argue with the findings of Wallensteen and Johansson (Wallensteen and Johansson, 2004 in Frederking and Patane, 2017) that the UN is less likely to send peacekeepers into conflicts involving powerful states. They also mention Fortna's argument that the UN is less likely to send peacekeepers into the former colonies of the Permanent Five (Fortna, 2008 in Frederking and Patane, 2017). Their last argument is that of Binder that the UNSC has responded selectively to major humanitarian crises after the Cold War (Binder 2009). However, in the conclusion of their work Frederking and Patane summarize their findings by stating that the UNSC performance is „*influenced more by the intensity of a conflict than the veto members' strategic links to the states involved in the conflict*” (Frederking and Patane, 2017, p. 352). Therefore, in the end, they oppose the claims of the authors they mention.

Scherz and Zysset also claim that international institutions should be judged based on their effectivity. They add that it is necessary for the institutions to have a positive comparative benefit with other institutions (Scherz and Zysset, 2020, p. 375). Furthermore, that distinguish a specific phenomenon that, in addition to the inter-state conflicts, the Security Council also got involved in addressing intra-state conflicts or non-military issues (Scherz and Zysset, 2020, p. 377).

Dayal suggests that the UNSC is losing its legitimacy due to failure of the Council to resolve conflicts effectively. She points at the criticism that the Council has not responded to emerging crises soon enough and that it was not to prevent the escalation of conflicts in Syria and Yemen (Dayal, 2018).

5.3. Legal mandate

We begin this subchapter with defining legal legitimacy. We can ourselves define legal legitimacy as a form of legitimacy, which points out, whether an international

organization or its decision-making body is legally recognized and rooted in international law. Binder and Heupel focus on the legal mandate of the Security Council, which represents legal legitimacy. They furthermore explain that „the legitimacy of an international organization depends on whether states have consented to its creation” (Bodansky 1999; Buchanan and Keohane, 2006; Binder and Heupel, 2014). Therefore, if states consent to a creation of an international organization and its decision-making body, it means they legally recognize it, and furthermore they provide it with legal legitimacy. The crucial point is that in this case the legally recognized institution is strictly limited to its legal mandate. If an institution acts outside of its mandate, it begins to lose its legitimacy. (Bodansky, 1999; Binder and Heupel, 2014) This rule applies also to the bodies of an institutions, such as the UN Security Council.

In the beginning of her argument, Anna Dimitrijevics stresses that good governance based on the rule of law requires legitimacy anchored in legality. She demonstrates this principle on the Kosovo case, where she argues that accepting the use of force that is not authorized by the Security Council would open the way for states to claim the unilateral right to breach the UN Charter (Dimitrijevic, 2007, p. 5). Here she basically emphasizes the legal legitimacy of the United Nations Security Council, as she promotes the need of an authorization of the use of force by it. Moreover, she specifically says that the member states legitimize the Security Council legally by becoming signatory parties to the UN Charter (Dimitrijevic, 2007, p. 6).

Frederking and Patane also argue that UN Charter gives the UNSC its legal mandate and authority. Moreover, all the UN member states have legally consented to that authority by acknowledging the Charter. Here Frederking and Patane give an example that member states are able to explicitly withdraw their consent from the global social contract and leave the UN, but none have done it yet. To add up, most of the UN member states prefer to resolve conflict and use force under the mandate of the UN, the UNSC provides legitimacy to state actions (Frederking and Patane, 2017, p. 348).

Ian Hurd also focuses on how UN member states prefer to resolve conflicts under the mandate of the UN and how the general symbolism of UN peacekeeping missions might legitimize disputable military actions. Hurd gives an example of Russian „*regional peacekeeping*” in Georgia, Moldova, Tajikistan. The general opinion was that Russia should submit an official request for international peacekeeping support and as a result,

in 1992 Russian forces „painted their helmets” blue in order to legitimize their military actions in Moldova (Hurd, 2002). This showcases how the performance legitimacy might be crooked by the unilateral actions of the P5 member and how the peacekeeping label can be mistreated in the conclusion. However, Hurd also points out that Russia's actions also showcase that the country recognizes UN Security Council as a legitimate authority, since it has officially requested a peacekeeping mandate.

5.4. Legitimate agenda

Agenda legitimacy focuses on what influences the agenda of given the Security Council, whether the choice is biased and how it is chosen.

To begin, Hurd specifically distinguishes agenda legitimacy of the UN Security Council in his work. He explains that there are 2 parts of the agenda. First part is the the provisional agenda prepared by the Secretary-General that contains current topics. Second part consists of all the topics that were once on the official agenda but were not finally disposed of by the Council. This part of the Council’s agenda is called Summary Statement. Hurd explains that Summary Statement is also a great example of the UNSC symbolic politics (Hurd, 2002, p. 39). All of the United Nations member states have the right to place issues on the Security Council agenda and the Council cannot simply dispose it (Hurd, 2002, p. 40). The Summary Statement also clearly demonstrates how the actual agenda of the Council differs from the agenda that the UN members require. It is therefore a clear demonstration of the agenda legitimacy defect.

Scholz reminds us that the Security Council is now increasingly viewed as a tool for domestic preferences (Scholz, 2020). For example, when China declared its opposition to make climate change a part of the Security Council’s portfolio. Countries like China argued there should be specific committees to deal with such topics. On the other hand, the 2030 Agenda for Sustainable Development showcases that the United Nations is able to adopt agenda that suits almost all of the members. What Scholz stresses is that the Security Council must continue to implement resolutions in-line with the overall UN agenda, such as the 2030 Agenda for Sustainable Development (Scholz, 2020). Here we can say that such steps would lead to strengthening of the UNSC agenda legitimacy, as it would copy the agenda that all the member states support or at least respect.

Frederking and Patane analyze the UNSC agenda legitimacy through the considering whether the agenda reflects „material interests of veto powers or the intrinsic nature of the conflicts” (Frederking and Patane, 2017, p. 348). According to them, if the Council really pursues international peace and security then the most devastating conflicts should dominate the agenda. Furthermore, if the agenda and the overall Security Council legitimacy is considered, the Permanent Five should respect the UN Charter and let the Council choose the agenda based on the intrinsic nature of the conflict (Frederking and Patane, 2017, p. 349).

In his work, Caron suggests that the UNSC agenda is dominated by a few states (Caron, 1993, p. 562). Agenda legitimacy concerns expressed by Caron tend to focus on the United States, France and the United Kingdom. He supports this assumption based on the example of the resolution on the authorization of the use of force against Iraq. Caron explains that such dominance can result from the power of the permanent members in international affairs generally (Caron, 1993, p. 563). An example of such power is the Resolution 678 and the urgency attached by the United States to its passage. And it is not beneficial nor convenient for smaller states to oppose such power (Caron, 1993, p. 564).

Dayal highlights that the UNSC is increasingly being perceived as an instrument of powerful states, which use it to advance their own interests rather than the interests of the international community as a whole (Dayal, 2018).

5.5. Representation

As we have found through our analysis of given publications, representational legitimacy is a crucial area of legitimacy of an international institution, and especially the United Nations Security Council. While some scholars point at the representational legitimacy during analysing another area of legitimacy, numerous scholars distinguish this area in their work as an autonomous factor. In general, the UNSC membership legitimacy is based on who is the member of the Security Council and how well is the representation divided among member states.

To begin, Ian Hurd devotes a whole chapter to the UNSC membership legitimacy. He, again, describes membership legitimacy of the UNSC through symbolism. Hurd explains that Council membership guarantees status and recognition to member states and grants it with authority, which is derived from the legitimacy of the Council. According to Hurd, Council membership „confers status and recognition of a state and allows the state to appropriate some of the authority derived from the legitimacy of the Council“(Hurd, 2002, p.43).

One of the most crucial aspects of legitimacy is how representational a specific international institution is. Thakur states that the Security Council is not representational. (Thakur, 2010, p. 18) He refers to his other work, where he explains that the Council membership does not reflect the actual international reality. He states that the UNSC structure reflects the world of 1945 (Thakur, 1999, p. 2). This claim is present in many other works of different scholars, especially in the works focusing on the UN Security Council Reform. The other factor Thakur considers is that the Council is not representational in relation to the number of UN members. In the beginning 51 UN member states were represented in the Security Council by 5 permanent and 6 non-permanent members (Thakur, 1999, p. 2). Today, 193 members are represented by 5 permanent members and 10 non-permanent members. On the other hand, Thakur right after explains how difficult it is to define „representation” and therefore how hard it is to claim that the Council would be fully representational (Thakur, 1999, p. 3).

Scholz explains, how increasing membership of the Council, and therefore increasing its membership legitimacy would be. He claims that the Security Council would increase its representation by involving strong new permanent voices from Latin America and Asia. According to Scholtz, this would effectively counteract the perception of a bipolar world (Scholz, 2020). Based on Scholz’s argument, we can clearly assume that he does not consider current membership composition representational enough and therefore the membership legitimacy of the UNSC is also lacking legitimacy.

In order to preserve the legitimacy of the United Nations Security Council, Anna Dimitrijevic suggests that the Council should grant permanent seats to Brazil, Egypt, India, Japan and South Africa. She also suggests that an EU seat should replace the seats of France and UK (Dimitrijevic, 2007, p. 7), but we will not consider this suggestion because of 2 reasons. First, UK is no longer part of the European Union and

therefore the United Kingdom has absolutely no reason to give up its seat in favour of the EU. Second, none of the permanent members has ever relinquished their seat on the Council, so also in the future it is almost unimaginable. But why does Dimitrijević even consider such changes in the composition of the Security Council permanent members? She claims that the current composition of P5 is „unjust and inefficient”. With Brazil, Egypt, India, Japan and South Africa becoming members however, the Council would be far better represented, as every continent would have 2 permanent members in the Council. The only exception would be „Austral-Asia” with three permanent members, as more than a quarter of the world’s population lives in the area (Dimitrijević, 2007, p. 7).

Keohane explains that the United Nations generally derive its legitimacy from its inclusiveness. In other words, any country can become a member. However, he points out that the permanent seats in the Council are not inclusive, as they mimic the world at the end of World War II. The lack of inclusiveness is, according to Keohane, incorporated in the Security Council through the use of veto powers by the permanent members of the Council, who do not let any other countries to become permanent members (Keohane, 2011, p. 104).

As other authors, Scherz and Zysset question the membership legitimacy through the lack of representativeness of the UNSC. They point at the fact that today’s world is significantly different from the world of 1945, when the Council was created (Scherz and Zysset, 2020, p. 382).

In accordance with the membership legitimacy evaluation, Dayal points at the lack of representativeness of the interests of majority of the international community. She points at the fact that the permanent membership of the Council reflects the world after the WWII (Dayal, 2018).

Fitzgerald claims that Articles 31, 32 and 50 provide for participation by the U.N. Members in the Security Council's decision-making process when they are affected or when they have an interest in the Security Council's actions (Fitzgerald, 2000, p. 335). However, decisions are frequently made without any input from the countries involved. Resolutions are often taken without involving non-Security Council Members and without hearing outside points of view. (Fitzgerald, 2000, p. 336) Moreover, in contrary

to the principles of equality and representation, the Security Council and its permanent members dominate the U.N., rather than act on its behalf. Fitzgerald states that this is a product of the Security Council's “*exclusive powers, the self-interest of Council Members and the absence of checks and balances to limit the Security Council's power*” (Fitzgerald, 2000, p. 329).

5.6. Transparency

Transparency that enables interested states and stakeholders to trace the decision-making process is one of the procedural standards that a legitimate institution is expected to have incorporated in its decision-making process (Caney, 2006, p. 748–749; Binder, Heupel, 2014).

Erika de Wet calls, for example, calls for more transparency in the monitoring system of sanction regimes. As a possible solution she presents providing the Secretary-General and General Assembly with detailed reports (De Wet, 2008, p. 154).

Thakur also points at the lack of procedural legitimacy on the grounds of a lack of transparency and democratization in decision-making (Thakur, 2010, p. 18). He furthermore proceeds to claim that the democratization in the world has been led by the permanent members from the West, namely the United States, the United Kingdom and France. He illustrates this to support his other claim that these three members of the UNSC Permanent Five have resistant to bringing democracy and transparency to the procedures and working methods of the Council itself (Thakur, 2010, p. 20).

In the case of transparency, Scherz and Zysset claim that transparency should be regarded as a general legitimacy standard (Scherz and Zysset, 2020, p. 376) and therefore we assume that they imply it should also be a part of the legitimacy evaluation in the Security Council.

Fitzgerald warns that nearly all the Security Council's work occurs in informal private meetings and consultations from which member states are excluded and which only Security Council Members or the Secretariat may attend. Moreover, she points at the fact that the Council members usually agree that no debate will take place in the official

meeting and that no non-Security Council Members will speak at the meeting (Fitzgerald, 2000, p. 337).

5.7. Veto powers, participation and the dominance of the Permanent Five

One of the crucial procedural legitimacy evaluations is whether a great power dominates weaker states within an international organization. (Coicaud and Heiskanen, 2001, p. 525–527; Binder and Heupel, 2014). Performance legitimacy is also based on whether the international organization is able to restrict the great powers' influence on weaker countries (Ikenberry 2001 in Heupel Binder). If not, the international organization shall be considered illegitimate, because its performance is being biased by the great power (Binder and Heupel 2014). Their argument is that an equal participation of all member states in the formal decision-making should be regarded as a procedural standard for a legitimate institution (Dingwerth, 2007; Binder and Heupel, 2014).

Hurd claims that the decision-making in the Council is effectively controlled by the Permanent Five. He even claims that the P5 has monopolized the decision-making in the Security Council (Hurd, 2002, p. 41). Hurd explains that the real decisions of the Security Council take place in the informal sessions of the Permanent Five. Furthermore, he claims that the formal meetings of the Council are now only a sort of pro forma meetings, which are influenced by the previous informal sessions. (Hurd, 2002, p. 42)

Tobias Scholz insists that the Security Council must continue to implement resolutions in line with the overall UN agenda. Scholz's argument is that Security Council is continually being used for promotion of domestic policies, mainly by the permanent members. (Scholz, 2020). He claims that the rise of nationalism in the world has been reflected in the Security Council through transactionalism and decline of democratic procedures. He suggests that a possible solution would be to install an automatic referral process within the United Nations that would pick up on vetoed resolutions by the permanent members and be able to bring those back into the legal process. He also adds that this can only succeed within a larger reform agenda and if nations reject transactionalism. Only after that can the UNSC be considered legitimate (Scholz, 2007).

Anna Dimitrijevics stresses that the UNSC decision-making mechanisms should be adjusted so that the procedural legitimacy could be enhanced (Dimitrijevics, 2007, p. 6). What concerns her is the limitation of the P5 veto right, however, she realizes that none of permanent members would relinquish their own right. In contrary she also illustrates the possibility of creating another permanent seat for the EU, however, Dimitrijevics right away states that increasing the number of permanent members of Security Council would only multiply the possibility of decision-making deadlocks. She therefore suggests that the P5 should abstain from exercising the veto right unless not using it would mean a threat to international peace (Dimitrijevics, 2007, p. 8). To overcome Security Council deadlocks in general, Dimitrijevics calls for an independent fact-finding commission to be created. Such commission would possess full authority and it would be held by internationally respected individuals who are currently not holding a political office. Such commission would be called into action by Secretary-General or qualified majority of the permanent members of the Security Council. It would be obligatory for the Council to pass a resolution based on the recommendation of the commission and it could not be subject to the use of veto. (Dimitrijevics, 2007, p. 9).

Keohane also considers the usage of veto as a major procedural problem, as its wielders have little incentive to stop exercising it. He also builds up on the transactionalist negotiations in the background of the public meetings of the Council. (Keohane, 2011, p. 104) This can be regarded as a major procedural legitimacy flaw. (Keohane, 2011, p. 104)

Frederking and Patane also point to the fact that according to many, the UNSC is not procedurally legitimate. They support this claim arguing that the Council is dominated by a few powerful states and does not have fair decision-making procedures (Frederking and Patane, 2017, p. 348). Moreover, they add that the veto power protects the Permanent Five and whoever they might want to exclude from the collective security enforcement (Frederking and Patane, 2017, p. 348).

David Caron directly identifies five procedural challenges to the United Nations Security Council legitimacy. The first one is that some states dominate the UNSC decision-making based on their overall power in the international relations. Second challenge is that some states dominate the Council based on their capabilities within the it. As the third challenge Caron identifies the disproportion in the representation in the

Council. The fourth and fifth challenges are surrounding the veto powers of the P5. First one is the double standard of the usage of veto. The second procedural challenge concerning veto powers is the most significant one, the dominance in the Council based on disabling powers of the veto (Caron, 1993, p. 566).

Scherz and Zysset also analyze UNSC procedural legitimacy through veto powers. In the sense of veto powers, they point at the fact that although all the Council members have one vote according UN Charter, the veto powers of the P5 restrict the non-permanent members from effectively using that vote (Scherz and Zysset, 2020, p. 381). On this basis, Scherz and Zysset recommend that „*either extended competences should be reduced or the procedural standards should be improved*“ (Scherz and Zysset, 2020, p. 387).

Fitzgerald is also concerned by the veto power of permanent members. She claims that via using veto the Permanent Five can “free themselves and their interests from the governance of the Security Council, the General Assembly and the United Nations as a whole“ (Fitzgerald, 2000, p. 334). She further explains that a permanent member of the Council can just include a specific issue in the UNSC agenda and then veto it, so the General Assembly would not be able to take further action. A permanent member can also do that for allied members (Fitzgerald, 2000, p. 334).

Dayal also claims that the procedure of the Security Council bears a tendency to be influenced by powerful states (Dayal, 2018).

6. EVALUATION OF RESEARCHED DATA

Now that we have summarized and compared how different scholars analyze different areas of United Nations Security Council in their works, we are ready to derive and synthesize our findings.

Based on our data analysis we have found out that at least seven areas of legitimacy can be distinguished. Transparency, accountability, participation and effectiveness (Security Council, 2007) are all represented in the distinguished areas. Other areas are legal mandate, agenda and representation. Agenda is often part of the procedural legitimacy and participation evaluation, but we have decided to analyze it on its own, since the area is robust enough to deserve individual recognition.

Clearly the most debated area of legitimacy is the dominance of permanent members over the Security Council. The main issue here is that what creates the lack of legitimacy is the existence of Permanent Five's veto powers. Procedural steps taken by the permanent members might often disable non-permanent members and non-Council UN members from being part of the decision-making process in the Security Council. Agenda legitimacy is also strongly interlinked with the dominance of veto powers over the Security Council. We have demonstrated on the examples mentioned in the opinionated literature that permanent members tend to push forward agenda that is in their own interest, or in contrary, dispose the agenda that they prefer to avoid. Hereby we have also confirmed that concerns about procedural deficits of the Security Council dominate the overall negative assessment of that body by UN member states (Binder and Heupel, 2014, p. 10).

In the case of accountability, we have found out that most authors point at the fact that the Security Council cannot be held accountable by any other institution or decision-making body, nor it cannot be held accountable by the states that are directly affected by its decisions. The Security Council is legally accountable only to the UN Charter and the mandate it provides it with, but there is no legal institute that would allow other bodies to reclaim the accountability.

In the sense of efficiency and effectiveness of the Council, we observe that it lacks legitimacy based on multiple factors. It is generally pointed out that The Security Council is not effective enough in being able to prevent conflicts, with multiple

examples being distinguished in the previous chapter. The Security Council also fails to address the Permanent Five members in order to deter them from the use of force. The efficiency of the Council is also influenced by the decisions of the Permanent Five on where to begin a peacekeeping operation.

We have distinguished representation in our data analysis as many authors tend to focus on the membership of the Security Council and that it is not representational enough. We have also distinguished it since in its sessions, the member states and their specific regions are not represented well and equally enough. The main issues the authors point at is that decisions are then taken without an input by an affected state. They also point out that the Permanent Five basically restrict other possible candidates from becoming permanent members.

Last, but not least, based on the opinionated literature we have found out that transparency deficit in the Security Council mostly reflects the practice of its sessions. The real decision making happens behind closed doors in informal session and therefore the output of the meetings does not reach all the members equally, nor does the public get enough information about the Security Council practices and functioning.

On the other hand, when compared to the rest of the areas of legitimacy, even though the legal mandate of the Council is often considered in the evaluation of the Security Council legitimacy, it is almost never disputed. The United Nations Charter clearly provides the Security Council with its fully legitimate and legal mandate with all its powers and procedures (see Chapter 1 of the thesis). Moreover, some of the distinguished authors claim that the member states legitimize the Council by adopting the UN Charter and that a member of the United Nations is yet to leave the organization due to the fact of not complying with the mandate of the Security Council guaranteed by the Charter.

7. OVERALL LEGITIMACY OF THE UNITED NATIONS SECURITY COUNCIL

After we have evaluated and synthesized the qualitative data we have gathered from the opinionated literature on the legitimacy of the United Nations Security Council, we are ready to assess the overall legitimacy of the United Nations Security Council. We have found out that the Security Council clearly lacks legitimacy in six out of seven distinguished areas. The lacking areas are accountability, effectiveness, legitimate agenda, participation dominated by the permanent members, representation and transparency. However, all of these areas are reformable or correctable. Based on the solutions distinguished by the chosen authors in the Chapter 5 of our work, there are various possibilities to improve legitimacy in these areas. For example, accountability could be improved by incorporating into the UN Charter an obligation of the Security Council to report to the General Assembly and International Court of Justice (Thakur, 2010; Frederking and Patane, 2017). Representation could be improved by adding additional permanent members to the Security Council from Asia, Latin America and Africa (Scholz 2020), such as Brazil, Egypt, India, Japan and South Africa (Dimitrijevcis 2007). Efficiency, legitimacy of agenda and participation in the Security Council could be simply improved by the change of the restrictive and dominant behavior of the Permanent Five members. To summarize, although these areas lack legitimacy, they lack it only in the current state and the UN member states should push for them to be reformed. One area, however, that does not lack legitimacy, is the mandate of the Council. As we have pointed out in the previous chapter, the Council stands on the legal mandate provided by the UN Charter and legally supported by all the member states by adopting the UN Charter.

So, should the United Nations Security Council be considered as a legitimate decision-making body? We argue that it should. Even though there are aspects of the Council's legitimacy that require reform in order to gain full legitimacy, the legality of the Council, based on its mandate the Security Council is a legitimate decision-making body accepted and recognized by all of the United Nations members.

SUMMARY

The aim of this thesis was to assess whether the United Nations Security Council should be considered as a legitimate decision-making body. In order to be capable of such assessment, we needed to focus on developing sufficient criteria for the analysis and subsequent evaluation of the legitimacy. In the theoretical part of our work we have defined mandate, composition, procedures and powers of the Security Council, in order to be able to better understand in what areas we would later be analyzing its legitimacy. Secondly, we have defined how we need to approach legitimacy in the international institutions and what criteria are appropriate for its assessment.

Methodological part of our work was based on comparative-descriptive research design used to analyze and compare how are different areas of the UN Security Council legitimacy approached by authors and scholars in opinionated literature. Areas of legitimacy analyzed in the practical part of the work clearly reflected the areas of legitimacy distinguished in the theoretical part.

The concrete evaluation of the comparison led us to the conclusion that the United Nations Security Council lacks legitimacy in numerous areas. Security Council suffers the most from the dominance of the Permanent Five members and their veto powers, which influence agenda, efficiency and participation legitimacy. Security Council's legitimacy also significantly suffers in the areas of accountability and transparency. It is also not representational enough, as it does not reflect current reality of political and military capabilities of the world.

On the other hand, while various scholars tend to analyze legitimacy of the Security Council also based on the legality of its mandate, they mostly conclude that in this area the Council is fully legitimate, as the UN Charter provides it with legally legitimate mandate. This mandate is also supported by the members of United Nations, who, by adopting the Charter, legally acknowledge the existence of the Security Council with all its deficits. Therefore, we need to stress that the Security Council is in its principle a legitimate decision-making body legally supported by all members of the United Nations. However, in order to be able to regard the Security Council as fully legitimate, the Council itself will need to counter the lacking legitimacy in other distinguished areas by possible reforms.

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