



**Global
Challenges
Foundation**

The United Nations as the Agent for Change

Author

Sau Pung Chee

The submission proposes the creation of a UN ombudsman office overseeing and investigating global challenges, and raising an independent voice in the UN assemblies. UN General Assembly resolutions are to be made binding if receiving a supermajority of votes in the UN General Assembly, where the assenting member states contribute both a majority of the UN budget and world population, coinciding with a simple majority from the UN Security Council. Veto powers of the UN Security Council permanent members would be reformed: after a second veto on the same binding resolution the UN ombudsman would have the power to decide if it falls or stands. The ultimate recourse to block a binding resolution would be the ICJ, which may only allow or deny the resolution. Non-compliance to binding resolutions would incur a series of graduated punishments on infringing member states.





1. Abstract

Created with the best of intentions, the United Nations (UN) as an inter-national organisation to facilitate order and development has failed to live up to its potential. All too often, through breakdowns in its resolution making process, or its inability to get member states to follow through on resolution terms, the effectiveness of this most wide-ranging collective of sovereign nations to protect the peace and to prevent injustices from occurring has been severely limited.

Yet, if there is a need for a formation that is able to readily address challenges with great and urgent importance that the world faces in the near term, tapping on the existing mandate and resources of the UN would offer a most effective and convenient means, provided the obstacles that have hindered its efficacy thus far can be agreeably addressed.

The four areas that need to be attended to, regarding the less than effective ability of the UN to tackle the rapid and evolving challenges that the world faces are: that the focus of the UN General Assembly (GA) is guided by national interests rather than global needs; the non-binding nature of GA resolutions; the unrestricted ability of permanent members of the UN Security Council (SC) to block binding resolutions; and the ability of nation-states to ignore even binding SC resolutions.

GLOBAL NEEDS

Regarding the privileging of global needs, a new organ of the UN, the UN Office of The Ombud (UNOTO) should be created to look after affairs of a global nature, and be headed by a newly created position of the Ombud. This singular post would be filled by a vote in the GA from nominations made by the regional blocks under the advisement of the SC. Within the term of Office of five years, no amendments may be made to the role and duties of the Ombud, to guarantee the independence of the role while the particular Officer is on duty, with changes only to affect subsequent terms and only through amendments that have attained a supermajority in the GA and passage through the SC.

Besides issues of oversight, the UNOTO would be empowered to investigate topical challenges that the world is facing as a whole, and to bring up issues and introduce resolutions for passage to the GA as a non-state actor within the GA, though it would not be allocated the right to vote in these or any other resolutions that pass through the GA. This new organ of the UN would thus provide an independent, not member-state based channel for other organs of the UN, external NGOs, or even corporations or concerned groups of private citizens, to approach the UN assemblies regarding issues that might not otherwise get an airing if they were to be left to nation-state members.

NON-BINDING RESOLUTIONS

The non-binding nature of GA resolutions hampers the effectiveness of the GA to affect change in the global order. The proposal of the “Binding Triad” by the Centre of War/Peace Studies (where binding resolutions require a supermajority; where the acceding nations provide a majority share of the budget of the UN; where the combined population of the acceding nations make up a global majority) has been suggested as a sufficient benchmark requirement for binding GA resolutions.



In addition to this previous suggestion, to provide a further check to this new power for the GA, and as a guarantee of the continued importance of the SC, a binding GA resolution should then be passed along to the SC for a vote, with a simple majority sufficient to carry the resolution.

VETO POWERS

In this vote of a binding GA resolution in the SC, veto powers are maintained, thus assuring the continued importance of the permanent members of the SC. In the event of a veto, the resolution would be returned to the GA, which may choose to vote and pass the resolution, amended or unchanged, back to the SC. The SC would then vote again on the resolution.

In the case of a second veto, a new agent would be introduced into the equation: the Ombud as the arbiter of the impasse. At the Ombud's singular discretion, the resolution either would be passed or defeated, with the Ombud to provide a full written statement on the reasoning for the action.

In the case of SC binding resolutions that have been vetoed, the proposing party may choose to move the resolution to the floor of the GA, where it would enter into the process similar to that after the first veto of a GA resolution.

The "Autocratic Ultimatum" that is the "Ombud as Arbiter" in action serves as a decisive measure to encourage the members of the SC and GA to work towards agreements on resolutions while the decision rests in their own hands. It also serves to facilitate the addressing of pressing matters where deliberations and cooperation have failed and yet a decision is urgently required.

As an ultimate recourse to block a resolution, a case may then be brought before a full bench of the International Court of Justice, who only may deny or allow the resolution, and only on the basis of whether the aim of the resolution follows or runs counter to the Charter of the UN, not the merits or demerits of the particular resolution.

NON-COMPLIANCE

To address non-compliance to binding resolutions, whether passed by the SC or the GA, there would need to be a series of graduated punitive measures, to be administered by the UN Secretariat, along fiscal and administrative lines, to encourage resolution compliance.

In the former, fines and additional contributions to the UN budget may be imposed on the offending parties. For the latter, the imposition of suspension of voting rights of various durations for the offending members of the GA, suspension or non-admittance to non-permanent seats on the SC for a period, and suspension of veto rights for offending permanent members of the SC.



2. Description of the model

THE TASK AT HAND

As humanity has increased its knowledge and technical expertise, so has it also increased its ability to detect as well as to affect change in the environment both natural and human. And whether it be pollution, fluctuation of environmental conditions, conflict between humans and nature or amongst different groups of humans, these effects and challenges are only going to increase dramatically as the global population continues to grow rapidly and uncontrollably, and the space for the individual within society, and for burgeoning humanity as a whole within the biosphere, continues to shrink.

While there is a continued relevance for the traditional nation-state to tackle the various issues as they exist within their sovereign borders as well as they can, ultimately, what the individual state may achieve on its own is limited to the resources it has available to it, as well as to the political will and social climate of the particular nation-state. On the other hand, if external expertise or resources where to be amenable offered, or, where possible, different nation-states with different resources or expertise were to exchange and cover for where the other is lacking, this would allow for a greater ability to tackle issues even within the scope of the sovereign borders of a traditional nation-state.

But besides the issues that may be confined to the individual nation-state, there are also wider concerns that affect humanity on a regional or even a global basis, such as the assorted possible variations of cross-border natural and human-made disasters. In such cases, a wider regional or global approach needs to be activated to tackle the more extensive effects that any individual nation-state on its own may struggle and yet be unable to cope.

The cursory discussion above of the challenges facing humanity may seem limited or even derisory due to its brevity, but covering as they do topics that are commonly understood, if only to different interpretations, and forming as they do only the background rather than the crux of the task at hand, they help to illustrate the great requirement of the day: that there is a hugely important, urgent, and an ever growing need for international cooperation and the coordination of assistance to wherever it may be required, and hence a need to identify a new global governance model, a “New Shape” regarding international stewardship, that would be able to channel the attention and resources of the world community to effectively engage with the challenges facing humanity.

“THE UNITED NATIONS AS THE AGENT FOR CHANGE”

The United Nations (UN) was conceived as an inter-national organisation to jointly promote peace, security, development, and the basic rights of humanity. Later on, it also took on the mantle of promoting the protection of the environment.

But all too often, the various political and social challenges within and between member states have come to be realised in their representatives’ particular intransigent stances during debates at the General Assembly (GA) or the Security Council (SC) levels, that have resulted in deadlocks in the discussions at these two chambers of the UN. These stalemates, regardless of the validity of the ideas behind them, have resulted in breakdowns in the UN’s resolution making and consensus forging process, and thus in their ability to tackle issues great and small.



And even where resolutions can be agreed upon and passed by either or both the GA and the SC, there is little the UN can do directly when member states choose to not comply to resolution terms, even binding ones much less the non-binding recommendations. The effectiveness of the UN, this most wide-ranging collective of sovereign nations, to carry out its mandate to protect the peace and to prevent tragedies from occurring has thus been severely diminished.

Despite all these complications, the UN, through its worldwide membership and its continued moral standing in the international arena due to its support for much humanitarian work, remains a worthy, if flawed, platform to carry on its intended duties. Its global reach and membership provides the organisation with a mandate that would be hard to replicate even if there is a will to do so. And the UN has a lengthy track record, uneven though it may be, as an organisation that strives to help and to protect those in need regardless of their social or political stance.

As acknowledged in Section 1, there is a clear necessity for an organisation that is able to coordinate and address the great and urgent challenges that the world faces in the near term, and tapping on the existing mandate and resources of the UN would represent the most effective and convenient means to attend to such a pressing need, provided that the obstacles that have hindered its efficacy thus far, can be agreeably addressed.

The four areas that need to be attended to, regarding the less than effective ability of the UN to tackle the rapid and evolving challenges that the world faces are: that the focus of the GA is guided by national interests rather than global needs, limited as the discussions in that chamber are to the nation-state members of the assembly, thus necessarily shaping the debates in the chamber along the guiding interests of the sovereign governments of those nation-states rather than on the actual needs of the wider global community; the non-binding nature of GA resolutions, which limits the impact that the GA can have on its own, to tackle issues of global import, without appealing to the SC, whose membership is much more restricted, to make statements that are actually binding to the global community; the unrestricted ability of permanent members of the SC to block binding resolutions, which may result in the stalemating of any serious discussions of consequence in any area in which it is to the interest of at least any single one of the five permanent members of the SC to not allow the debate to progress; and the ability of nations to ignore with near impunity even binding resolutions, hollowing out the value of the advisories issued by both chambers of the UN assembly.

GLOBAL NEEDS AND THE OFFICE OF THE OMBUD

To allow global needs to be directly addressed, outside of the current requirement to convince and activate a nation-state actor to bring up the relevant issues in either the GA or the SC, a new organ of the UN, the UN Office of The Ombud (UNOTO) should be created. Established as an extension or reformation of the UN Joint Inspection Unit, the UN Office of Internal Oversight Services, or as an entirely novel setup, it would be funded through UN budget appropriations and would be headed by the newly created position of the Ombud, who, though nominally subordinate to the Secretary General of the UN in hierarchical terms within the structure of the UN, would report directly to GA as a matter of course in the execution of the duties of the Office.



The singular post of the Ombud of the UNOTO would be filled by a vote in the GA from nominations from the various regional blocks under the advisement of the SC, a process similar to the also crucial role of the Secretary General of the UN. And within the term of Office of five years, no amendments may be made to the role and duties of the Ombud, to guarantee the independence of the role and duties while the particular Officer is serving out the duration of the term. Changes to the role and duties of the Ombud may only affect subsequent terms, after the ongoing term of the incumbent Officer has expired, and only through amendments that have attained a supermajority in the GA and passage, with veto powers in play, through the SC.

An Ombud may be impeached by the GA if the Officer is seen to have failed in the duties of the Office, has been shown to be incapable of carrying out the duties of the Office, or has displayed character unbecoming of a holder of the Office. A resolution to impeach the Ombud would have to be proposed in and approved by a supermajority in the GA, and passed unanimously by the SC, with the veto powers of the permanent members of the SC in play.

There is to be no Assistant or Deputy or any other form of alternate Ombud. If the Ombud is incapacitated, the position is to be left open until the Ombud's recovery is sufficiently advanced as to allow for a return to active duty by the Officer if the projected period of convalescence is short, or by an immediate search for a replacement via an emergency process of election to cover the remaining duration of the current term of Office otherwise. This is to protect the primacy of the Office and to prevent the "Shopping of Decision Makers". This last point would be expanded upon and would prove its importance in the discussion of the "Ombud as Arbiter" in Section 5 below.

There would however be an immediate subordinate position of the Overseer of the UNOTO, who is effectively the deputy of the Ombud in all day to day matters concerning the operations of the UNOTO except in the particular responsibility and duty of the "Ombud as Arbiter" to be discussed in Section 5. This subordinate position would be filled internally within the structure of the UNOTO.

In its ordinary purview, the UNOTO would function similarly to an ombud's office at the sovereign state level, providing an independent channel to check on the proper functioning of the UN in its entirety.

Besides these issues of oversight, and especially pertinent to the focus of this section of this paper, the UNOTO would be empowered to investigate topical challenges that the world is facing as a whole, such as the changing climactic conditions in relation to human habitation, the rapid advancement of artificial intelligence, or any other globally relevant matters. The impetus to target any particular areas of concern as worthy subjects of investigations by the UNOTO may be generated organically within the UNOTO itself, or may be suggested via direct petition to the UNOTO by interested parties within or external to the larger UN family.

Consulting with relevant experts, scholars, and other stake holders, the UNOTO can then bring up its investigation results to the GA, and introduce resolutions for passage to the GA, in relation to these investigative findings only, as a non-state actor within the GA. But as a non-state actor amongst the nation-state members of



the GA, the UNOTO would not be allocated the right to vote in these or any other resolutions that pass through the GA. This is to ensure that votes in the GA remain only in the hands of the sovereign nation-state members.

This new organ of the UN would thus provide an independent channel by which other organs of the UN, or external NGOs, or even corporations or concerned groups of private citizens, may approach the GA regarding issues that might not otherwise get an airing and an effort at being resolved in that inter-national forum if they were to be left to nation-state members. And where necessary, these concerns may then make their way, via GA resolutions, to the attention of the SC.

BINDING RESOLUTIONS IN THE GENERAL ASSEMBLY

In the years since the formation of the UN, efforts have been made to provide ordinary members of the GA with a greater say in global security issues, especially in the face of occasions where the SC is unable or unwilling, for whatever reason, to take action. This culminated in the passing of the UNGA resolution 377A, commonly called the “United for Peace” resolution, which allows the GA to pass resolutions on international security matters. While this represents a major step forward in terms of the empowerment of the GA, resolutions passed by the body remain non-binding to member states of the UN, hampering the effectiveness of any measures proposed by the GA to affect change in the global order.

That rank and file GA member states are unable to pass binding resolutions as compared to member states with a seat at the SC, and the relative lack of standing as a result of this, while partially ameliorated by the possible though limited prospect of election to the restricted number of non-permanent seats on the SC, runs contrary to the supposedly established principle of equality of standing amongst all states regardless of geographical size, economic clout, demographic magnitude, or any other differentiating factor, the “Sovereign Equality” that is enshrined in Article 2 of the UN Charter. On the other hand, the primacy of the SC in ensuring security and peace between nations, its responsibility in these matters to the UN, as established in Article 24 of the UN Charter, should not be diminished. To find a balance between these two points, a necessary benchmark of support for a resolution, not just in terms of the absolute number of votes received within the chamber of the GA, but also taking into account the relative weighting of the support in terms of the global stakes of the nation states involved, needs to be established.

One such measure had been previously suggested as a sufficient benchmark requirement for binding GA resolutions: the “Binding Triad”. Brought forward by the Centre for War/Peace Studies, the “Binding Triad” proposes that a binding GA resolution must be passed by a supermajority of GA member states, where the acceding nations provide in aggregate a majority share of the budget of the UN, and where the combined population of the acceding nations make up a global majority. These criteria suggest: firstly, that an overwhelming number of nation-state members support the acceded to resolution; secondly, that the nation-state members that have acceded to the resolution are significantly fiscally involved in any enforcement requirements or other areas of spending that the resolution may entail; and thirdly, that the nation-state members represent most of the world’s population.



In addition to this previous suggestion, a further condition should be imposed in the case of binding GA resolutions: that the resolution that has been passed by the GA, and that has fulfilled the stipulations of the “Binding Triad”, should then be handed along to the SC for a vote. This would be similar to the situation in a nation-state government where there is a separation of powers between a legislative branch and an executive branch. While such a separation of powers is not normally the case between the GA and the SC in the UN, in such an instance as suggested here, the SC, the organ that nominally executes the enforcement of binding resolutions, provides the check and balance to the legislation of the resolution by the GA. This further condition also guarantees the continued importance of the SC as the primary UN body in relation to binding resolutions regarding security and peace. And while the members of the SC are by default also members of the GA, the added responsibility that the SC members undertake as constituents of that body which has the primary stake in ensuring global peace and security, and the overt acknowledgement, by the GA as a whole, of the worth of these representatives to be either a permanent or non-permanent part of this assemblage, ensures that the small chamber collective decision of the SC is recognized as a creditable check and balance to the will of the larger GA.

A simple majority in the SC would be sufficient to carry the resolution, subject, of course, to the veto powers of the permanent members of the SC. If the binding resolution from the GA is cleared by the SC, it then becomes the SC’s duty to ensure that the binding resolution is adhered to by all the member states of the GA, thus exercising its executive prerogative defined in the UN Charter. If it were to not achieve a simple majority, the resolution would be seen to have been defeated. Any further attempts to resurrect the defeated resolution would have to go through the entire approval process anew.

VETOES THAT ARE NOT IMPASSES: “OMBUD AS ARBITER”

In the vote of a binding GA resolution in the SC, veto powers are maintained and may be exercised in that particular process, thus assuring the continued importance of the permanent members of the SC. But as mentioned in the concluding part of Section 2, the right to exercise the veto may also cause efforts to address an issue that disagrees with the sensibilities of any of the veto-wielding permanent members of the SC to turn into a quagmire. The following recommendations seek to remedy this sort of situation, to find a continued relevance for the veto and due respect to the SC members that have the right to wield it, while also making sure that discussions and recommendations that reach the SC do not get bogged down at the floor of the SC.

In the event of a veto, the binding resolution would be returned to the GA. In such an instance, the GA may hear further debate and counter proposals among those who support or oppose the resolution, and further amendments may or may not be affected on the resolution with a view to getting it approved. Or, of course, the proposed resolution may be withdrawn by the proposing party after the first veto. If the resolution is put once more to a vote before the GA, and passed while also fulfilling the “Binding Triad”, the resolution would then be moved again to the SC for a vote.

In the case of a second veto at the second vote before the SC, a new agent would be introduced into the equation: the Ombud as arbiter of the impasse. At the Ombud’s singular discretion, the resolution either would be passed or defeated,



with the Ombud being required to provide a full and detailed written statement on the reasoning for the action taken. The decision of the “Ombud as Arbiter” is final and there would be no further recourse to appeal the Ombud’s decision within the context of the GA or the SC.

And in cases of binding SC resolutions that have been vetoed, the proposing party may choose to move the resolution to the floor of the GA. There it would enter into the process similar to that described above, where after a first veto in the SC, a resolution may be debated on the floor of the GA, and amendments may or may not be made in view of having the resolution passed by the GA and then referred to the SC for a second vote, where a second veto would call the “Ombud as Arbiter” into play. Of course, a proposed binding SC resolution that has been vetoed may also be withdrawn by its proposing party.

The role of the “Ombud as Arbiter” would be relevant for all situations where the veto would come into play within the SC except where resolutions are being considered regarding proposed changes to the role and duties of the Ombud, or in resolutions calling for the impeachment of the very Officer that is the Ombud. A provision would also have to be included where the nation-state of origin, or nation-states in the case of a person with multiple nationalities, of the Officer that is the Ombud would not be allowed to propose any resolutions that are to be considered binding in the context of the GA or the SC for the duration of the term of the Ombud, to prevent instances where the Ombud may have to act as arbiter before a proposal from the Officer’s own nation-state/s of origin.

While the Ombud’s statement justifying the basis of the Officer’s decision in response to the second veto may be debated before the GA and the SC, the Officer that is the Ombud may not be impeached on the basis of the Officer’s decision making while performing the duty of “Ombud as Arbiter”. This is to protect the decision making independence of the Officer in carrying out the duty of “Ombud as Arbiter”.

As mentioned in Section 3, the lack of an Assistant or Deputy Ombud or any other form of alternate Ombud, who may step in immediately in place of the Ombud in the particular duty of “Ombud as Arbiter” should the Ombud become incapacitated, is to prevent the “Shopping of Decision Makers”, where unfortunate circumstances may suddenly happen on the person of the Ombud, incapacitating the Officer, and thus thrusting the automatic alternate into place as an immediate substitution.

That of course does not protect the Ombud in the case where parties may just choose to fudge the machinery of the “Ombud as Arbiter” by incapacitating the Ombud without hope of timely replacement, and thus ensuring that a situation of a second veto may not be remedied via this particular avenue. This represents, in the given context, the fabled “Sword of Damocles” which haunts the “Autocrat”, a role for which the function of “Ombud as Arbiter” may rightfully be described as, although the Officer who is the Ombud is only allowed to operate as thus in a strictly limited fashion and within a clearly defined and constrained scenario. The safety and security of the Ombud is thus of paramount importance. There should be allowed the possibility where the nation-state/s of origin of the Officer who is the Ombud would provide the immediate protection detail for the Officer, working in conjunction with the security setup provided by the UN itself.



In the currently existing system of the SC, a persistent veto block by any of the permanent members of the SC would prevent a resolution opposed by any one of the permanent members from ever getting cleared, a very outsized capability to be accorded to any member no matter the clout of the particular nation-state. The “Autocratic Ultimatum” that is the “Ombud as Arbiter” in action serves as a decisive measure to encourage the members of the SC and the GA to cooperate, and to fashion and come to agreement on resolutions while the decision rests in their own hands. It also serves to facilitate the addressing of pressing matters where deliberations and cooperation have failed and yet a decision is urgently required.

As an ultimate recourse to block a resolution that has already been cleared by the “Ombud as Arbiter”, or in fact any binding resolution passed by either the GA or the SC, a case may be brought to a full bench of the International Court of Justice (ICJ), who only may block or allow the resolution, and only on the basis of whether the aim of the resolution follows or runs counter to the Charter of the UN, not the merits or demerits of the particular resolution. This follows from the point made earlier in Section 4, of the separation of powers, where in this particular area, the ICJ acts as the judicial branch of a tripartite separation of powers.

The restriction on the scope of the basis of judgement by the full bench of the ICJ as set out above, on whether particular resolutions contradict or adheres to the Charter of the UN, clearly defines the criteria by which resolutions may or may not be successfully appealed against. On the one hand, it sets out definitively the boundaries of what should be privileged and protected, thus establishing a clearly described context for an effective exercise in checking the intensions of the resolutions under appeal; and on the other hand, the plotted out margins as described by the Charter of the UN sets out the markers beyond which creative solutions may be explored and undertaken to tackle the varied challenges that the UN may be called upon to contend. And as with ICJ judgements in general, there would be no avenue for further appeal.

This final gantry of an appeal to the ICJ, along with the other checks and balances along the path taken in the shaping and authorization of a binding resolution as presented above, satisfies the need for an effective system of supervision over the powers vested in these bodies of the UN to engage in the diverse challenges that confront the world.

This process, played out publically according to clearly defined rules and regulations before a global audience, illustrates not only that the UN can tackle the challenges faced by the world, the course of action also shows that the shaping of a recommendation at the highest levels in the UN can be performed in a systematic manner, with checks and balances in place to ensure the fairness and level-headedness of the procedure. This transparency of system helps to build confidence, amongst the global population, in the UN being an organisation that can help bring about more positive outcomes for humanity, which feeds back in terms of greater cooperation with the UN by the global population, and hopefully also greater support and compliance by their nation-state governments to UN initiatives.



RESOLUTION COMPLIANCE

When binding resolutions have been passed and the dust of the process of getting to that point has settled, the effectiveness of the resolutions ultimately rests in the voluntary compliance to the terms of the resolutions by the nation-state members addressed by the resolutions. If any member chooses to ignore the particular binding resolutions, there is very little that the UN itself can do at the moment to force the issue, except to depend on another follow-up proposal by members of the SC for another binding resolution to address the non-compliance, this time typically with a ratcheting up of the tone of the language and possibly with the threat of sanctions thrown in, which may or may not have a tough time going through the process of getting passed, during which the resolution may get watered down for some reason or other.

While the speed and success of follow-up resolutions would have been improved due to the implementation of the processes described in the previous sections above to prevent resolutions from getting blocked up, depending solely on the possible eventual introduction of what could be defanged statements of intent as an exercise in the enforcement of binding resolutions may limit the credibility of the UN as a whole in its ability, if not to definitively force an issue, to at least show willing in its efforts to enforce conclusions decided upon by its main assemblies. A mechanism for immediate and predictable consequences for non-compliance to binding resolutions thus needs to be implemented. To be administered by the UN Secretariat, punitive measures along fiscal and administrative lines would be imposed on non-compliant member states.

In terms of fiscal measures, fines and additional contributions to the UN budget, both of them weighted to the economic standing of the targets of the measures, may be imposed on the offending parties for a recurring period until the member states come into compliance, or even beyond for a predetermined duration, the latter especially for recalcitrant member states. These fines and additional contributions though will not count in the weighting of the budget contributions within the reckoning for the “Binding Triad”.

And in terms of administrative measures, these include a suspension of voting rights within the GA and/or the SC for the duration of non-compliance or beyond for a predetermined duration. For non-permanent members of the SC who persistently flout multiple resolutions, or for prospective members of the SC who do likewise, they may be suspended from their seat at the SC, for the former, or banned for an extended period from taking up a seat, for the latter. And for recalcitrant permanent members of the SC, their veto rights, along with their voting rights, may be suspended.

These punitive measures, in and of themselves, may not be sufficient to force compliance onto wayward member states. Indeed, the effort to enforce fiscal penalties may end up being just as limited and futile as hoping that all members will voluntarily comply with all binding resolutions of their own free will. On the other hand, the application of these punitive measures does show the seriousness and intent of the UN organisation in its expectations that binding resolutions are to be complied with by all member states.

To facilitate the oversight of compliance of member states to binding resolutions, the Secretariat would approach the UNOTO to provide resources to check on the



status of nation-states suspected of being covertly non-compliant to binding resolutions. The UNOTO would be empowered to demand the cooperation of any targeted member state, only at the request of the Secretariat, to show their level of compliance, or lack thereof, to the relevant binding resolutions. Failure to cooperate with the UNOTO in this regard would earn immediate punitive measures to be administered by the Secretariat.

To ensure fairness in the investigations by the UNOTO and the Secretariat, and the application of penalties regarding issues of compliance, an avenue of appeal would be allowed, through the ICJ, to review the imposition of any punitive measures by the Secretariat. Fines and additional contributions to the UN budget will be held escrow until the appeal has run its course, and will be added to the next UN budget if the appeal were to fail, or be returned to the aggrieved party if the appeal were to succeed. Suspensions of voting rights or non-permanent seats at the SC, of veto powers by permanent members of the SC, and of non-admittance to non-permanent seats on the SC, would be put on hold for the duration of appeals. If the appeal were to be successful, the suspensions and non-admittance restrictions put on hold at the start of the appeal would be lifted with immediate effect, and if the appeal were to fail, the suspensions and non-admittance restrictions would similarly be executed forthwith. As with other judgements by the ICJ, their decisions on the appeal are final without any further recourse to additional appeal.

THE ROAD AHEAD, A NEW SHAPE

The task at hand to be addressed by this paper, as stated in Section 1, involves identifying a way forward, a “New Shape” of a global governance model, that would allow the pressing challenges that humanity faces, in part or as a whole, to be addressed by the combined resources that may be mustered by the global community. This paper argues that this “New Shape” that is acutely required may be most compellingly and urgently achieved through the restyling of the “Old”, by utilizing the existing worldwide stewardship structure of the UN but reworking its processes so as to increase its ability to come up with positive outcomes to pressing needs.

The reform measures described in the previous four Sections seek to address the concerns stated at the end of Section 2 regarding the obstacles hindering the effectiveness of the UN in tackling the challenges facing humanity. The recommendations put forward considers not only what should be done but also what can be done, balancing the need to modify the processes that have hindered the UN from being more effective in tackling the issues confronting humanity, whilst also respecting the rights and obligations of the various current stakeholders as far as possible so as to not excessively rock the existing boat without the absolute need to, to allow for a more easy buy-in from as wide a variety of stakeholders as possible to affect the changes required of the UN.

After all, these existing stakeholders, the nation-state members of the UN as well as the organs of the UN themselves, would be the ones that would, on the one hand, have to possibly surrender some portion of their existing rights, or to at least renegotiate how those rights can be exercised, in order for the reforms suggested here in this paper to take place; and on the other hand, they are also the ones who would have to be depended upon to legislate and institute these changes. All these while also installing the necessary checks and balances described in the Sections above to ensure the fairness and level-headedness of the exercise of the now expedited UN decision-making processes.



For ultimately, reform that may be more limited but that is achievable is far more valuable in the pressing situation that exists today than that which may be perfect but unworkable within the foreseeable future. Perfection, or at least a humanly possible version of it, can be gradually worked towards in the longer run, but such an outcome would necessarily have to be built, step by step, on the foundation of the pragmatic and the possible.

3. Motivation

CORE VALUES

The proposed model of “The United Nations as the Agent for Change” (UNAAFC) addresses the criteria of “Core Values” at two different levels: accessibility of admittance for all views and agendas, and the empowerment of all nation-states to make a call to action.

– One of the existing limitations of the discussions and resolutions making process at the General Assembly (GA) and the Security Council (SC) at the United Nations (UN) is that the views and exchanges involved are directed solely by their nation-state members, which are guided by the particular agendas of their governments, rather than by the needs and requirements necessary to tackle the wider challenges facing humanity as a whole. The introduction of the United Nations Office of the Ombud (UNOTO) provides an inlet for views from a plethora of sources, from both within and outside the UN, to be discussed in the GA, and for these concerns to be shaped into resolutions put before the GA and the SC for wider action through the proxy that is the UNOTO, which is empowered as a non-state agent at the GA to introduce resolutions. This ensures that the GA may bear witness to discussions brought forth by direct contact with a broader swath of humanity than is currently the case.

– In the current situation at the UN, there is a seeming difference in status between ordinary GA members who can only enact non-binding resolutions, versus those with a seat at the SC, who can pass resolutions that are binding to all nation-state members of the UN. This ostensible difference in status may be seen to be counter to the value of “Sovereign Equality” established in the UN Charter, which emphasizes that nation-states are to be considered of equal standing despite the differences in their composition. Through empowering GA members with the ability to propose and push through binding resolutions, subject to the stated terms and conditions, UNAAFC seeks to diminish this seeming difference in status.

DECISION-MAKING CAPACITY

An enduring issue with the decision making process at the UN is the possibility for the unceasing exercise of the veto by any of the permanent members of the SC to prevent the passage of any binding resolution through that assembly.

UNAAFC proposes that the “Ombud as Arbiter” may be introduced, in a situation where a binding resolution has come before the SC twice and has been vetoed on both occasions, to enforce the threat of the “Autocratic Ultimatum”, which sees the Ombud acting as the final and decisive authority on the passage of a binding resolution. This encourages the members of the SC and the GA to cooperate and work towards resolutions agreeable to as wide a group of members as possible while the right to make a decision resides in their own hands. Only when an



impossibly stalemated situation is in place and yet a decision is urgently required, should the “Ombud as Arbiter” step in to make a definitive decision, one that the Ombud would have to explain in detail through a written submission of a statement.

EFFECTIVENESS

The choice of a reformed UN as the basis for a global governance structure is to a large part predicated on its existing broad reach in terms of its worldwide membership. With such a mandate and the resources on tap as a result of that, the UN, through the new-found decisiveness of the GA and the SC, facilitated by the reformed resolution making process introduced by the UNAAF, and guided in part by the inclusive views from concerned parties introduced via the UNOTO, would be able to make a concerted effort in tackling the various challenges faced by humanity.

The proposal of punitive punishments for non-compliance by member states under UNAAF, to be administered by the UN Secretariat, would allow the UN to directly target and chastise member states that choose to deviate from complying with the intents of binding resolutions. This newly established power of enforcement for the UN Secretariat, paired with the traditional means of the enactment of further binding resolutions targeting non-compliance through statements of intent and punitive sanctions, now enhanced in its promptness and possible impact in the face of the “Autocratic Ultimatum” of the “Ombud as Arbiter”, would ensure a more effective implementation of decisions.

RESOURCES AND FINANCING

As a long operating organisation with a worldwide membership, the resources at the disposal of the UN, whether human, material, or fiscal, are well established and proven over the decades of its global interventions. That is a crucial factor in the choice of the UN as the basis for a global stewardship structure as proposed by UNAAF.

The reforms on the processes of the GA and the SC that are suggested under UNAAF by and large do not significantly affect the existing operating cost of the UN, other than through the additional expenses incurred due to a possibly increased number of interventions that are called into action due to a more activated GA and SC decision making process instigated by UNAAF reforms.

An exception would be in the case of the newly created organ of the UNOTO. If the UNOTO were to be established, as suggested under UNAAF, by a reformation of the UN Joint Inspection Unit, the UN Office of Internal Oversight Services, or of both offices, than there would only be an incremental boost in funding required to cover any additional resources needed to handle the increase in the responsibilities of the UNOTO as compared to those two UN offices. But if the UNOTO were to be created as a completely new office, than the budgetary requirements of the office would have to be entirely funded through fresh UN fiscal appropriations.

TRUST AND INSIGHT

As a matter of long established policy, UN assembly discussions and their conclusions have been made accessible to the public. In the current information era, live streams and video-on-demand streams of speeches and debates have



been made freely available on the internet. And the UN Charter, resolutions passed by the GA and the SC over the years, and other position papers and reports both current and from their archives, may be viewed from the UN website. Also available there are web pages that systematically and clearly describe the intricacies of the functioning of the various organs of the UN such as the GA, the SC, and the ICJ.

All these resources ensure that the public can be made fully aware of the actual processes of decision making in the UN assemblies, as well as the clearly defined rules and regulations that guide the proceedings. The further changes to the processes as recommended by UNAAF, as well as the rules, structure, and organisation of the UNOTO, would naturally also be a part of this public record, as well as the progression of the reforms recommended by UNAAF as they make their way from proposal to resolution to implementation.

And from these displays of the workings and statutes of the UN, this transparency of the system would help to build confidence in the operations of the various organs of the UN, including the UNOTO, amongst the global population: a confidence in the UN being an organisation that can help bring about more positive outcomes for humanity, which feeds back in terms of greater cooperation with the UN by the global population, and hopefully also a greater support and compliance by their nation-state governments to UN initiatives.

FLEXIBILITY

As self-regulating organisations, the structure and components of the GA and the SC may be revised and improved upon by the proposal of resolutions to that effect by representatives of the member states within the assemblies themselves. And with the assent of sufficient members, and subject to the existing rules and regulations that are relevant to those organisations, such changes can be introduced regarding improvements to the functioning of the two assemblies of the UN. That is in fact how the recommendations under UNAAF would have to be implemented, and the new organ of the UN that is the UNOTO, created.

With the establishment of the UNOTO, that organisation would, through its prerogative as a non-state agent within the GA, be able to recommend any further changes or amendments to the GA or the SC from the platform of the GA. And in reverse, the GA and the SC can also propose amendments to the rules, roles, and duties of the UNOTO and of the Ombud, and, with a supermajority in the GA and passage through the SC, have those changes enacted upon the UNOTO and the Office of the person of the Ombud.

One thing to note would be that amendments to the roles and duties of the Ombud would only come into effect in a subsequent term of an Ombud after the current term of the incumbent, the one holding the Office while the amendment has been passed, has expired. This is to guarantee the independence of the role and duties of an Ombud while a particular Officer is serving out the duration of the term.

PROTECTION AGAINST THE ABUSE OF POWER

The recommendations under UNAAF include numerous checks and balances to ensure that the power invested in the various parties are not subject to abuse. These recommendations are especially valuable as the most notable check and balance currently existing now in the UN GA and SC, the veto powers of the



permanent members of the SC, are curtailed, through reforms proposed, in order to facilitate decision making in the SC.

Regarding the role and duty of the Ombud:

– Changes to the role and duty of the Ombud may only be implemented via the passage of a resolution with a supermajority through the GA, and a subsequent vote before the SC with the veto powers of the permanent members of the SC in play.

– Any changes to the role and duty of the Ombud will only take effect after the term of the current incumbent, to ensure the independence of the role and duties of the Ombud for the duration of the Officer's term.

– An Ombud may be impeached by the GA if the Officer is seen to have failed in the duties of the Office, has been shown to be incapable of carrying out the duties of the Office, or has displayed character unbecoming of a holder of the Office.

– A resolution to impeach the Ombud would have to be proposed in and approved by a supermajority in the GA, and passed unanimously by the SC, with the veto powers of the permanent members of the SC in play.

In the case of the process for the passage of a binding resolution in the GA:

– Such a resolution has to fulfil the condition of the “Binding Triad”, a stipulation that is instituted to ensure that a binding GA resolution must have received adequate support not just in terms of the number of votes received, but also in terms of having sufficient fiscal commitment from the supporters of the resolution, and also in the global buy-in as expressed by the demographic representation of the supporters of the resolution.

– A binding GA resolution would then be required to pass a vote at the SC. As the executive power in the UN, the SC provides a check and balance to the legislative power exercised by the GA in proposing the binding resolution. And as another level of checks within the SC, the permanent members of the SC, who traditionally have provided the bulk of the resources in the enforcement of the negotiated will of the UN, would retain the right to wield the veto to block the passage of any resolution.

– If cleared by the SC, a binding resolution would then be liable to a final appeal to a full bench of the ICJ by any parties remaining in opposition to its passage. The ICJ would only rule on the basis of a resolution's adherence to or departure from the Charter of the UN, either blocking or allowing the passage of the binding resolution as a consequence. In this scenario, the ICJ acts as the judicial power in a tripartite interplay for balance, along with the legislative and the executive counterparts.

– The restriction of the basis of judgement by the ICJ, regarding a binding resolution's adherence to or departure from the UN Charter, acts as a check on the justifications to which the ICJ may pass judgement in this scenario.

In the case of vetoes at the SC:

– If a binding resolution has been consecutively vetoed at the SC, the “Ombud as Arbiter”, whose opinion is final and decisive as far as the process in the GA and the SC is concerned, would be introduced to the situation to break the deadlock. This is a check instituted to prevent any one permanent member of the SC from single-handedly preventing any issue from getting addressed.



– The GA and the SC may prevent the encroachment of the “Ombud as Arbiter” by cooperating in the crafting of a resolution and coming into agreement regarding its passage, preventing the second veto from being wielded, and thus avoiding the situation where they would face the “Autocratic Ultimatum”.

– A final check on this “Autocratic” power of the “Ombud as Arbiter” would reside in the ICJ, which, as in the case mentioned above regarding the passage of binding resolutions in the GA, may be appealed to as the final gantry in the passage of a binding resolution.

Regarding compliance to binding resolutions and the issuance of punitive measures:

– The UN Secretariat acts as the party overseeing the administration of punitive measures to non-compliant member states according to set standards.

– To oversee compliance to binding resolutions, the Secretariat is required to approach the UNOTO for assistance in cases where a member state may be suspected of being covertly non-compliant. The UNOTO is the organ invested with the power to examine such cases, and to demand cooperation from the member states under investigation on pain of immediate punitive measures.

– The UNOTO is only allowed to investigate member states under the explicit request and direction of the Secretariat.

– As a final check on the process of overseeing compliance, a member state found by the UNOTO and the Secretariat of being non-compliant to a binding resolution may appeal to the ICJ to review not just the issue of compliance but also the severity of punitive measures imposed.

ACCOUNTABILITY

The decision making responsibilities in the GA and the SC resides in the application of the vote by the representatives of the member states of the assemblies in question. These representatives naturally are guided by the particular ideologies and beliefs of the governments of the respective nation-states that they are a proxy for.

The accountability of the decision makers is thus in the hands of the respective nation-state governments for whom their proxies represent. And in turn, the nation-state governments are accountable to their constituent populations regarding the decisions made at the GA and the SC, or as far as the political systems of the various states allow their respective governments to be answerable to their constituent populations, which is the sovereign right of each nation-state to determine. It is thus up to the constituent populations of the various nation-states of the world, where politics allows it, to hold their chosen governments responsible for their performance at the GA and the SC.

The UNOTO, for its part, as an ombud’s office for the larger UN organisation, has the responsibility to investigate any less than proper functioning in the various components of the UN family. It rests on the Ombud, as the head of the UNOTO, and the Officer who may be directly held accountable by the GA for the effectiveness of the UNOTO, to ensure the proper running of the UNOTO. And the



GA has the responsibility to ensure that the Ombud performs as required as the head of the UNOTO on pain of impeachment.

As for the special case of the “Ombud as Arbiter”, while the Ombud would intervene in the event of a veto stalemate, it should be the members of the GA and the SC, who are unable to come to an agreement, who should be held accountable for whatever decision is finally made by the “Ombud as Arbiter”, as they have the power to prevent such a situation from precipitating.