



Limitations of the UN Charter; From a Liberal Institutional  
Lens

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## **1. Introduction:**

### **- The issue and topic being studied:**

Wars, invasions, and other diplomatic and political conflicts are recurrent phenomena in today's world. Since the formation of the UN on October 24, 1945, nations are still defying international law, international agreements and conventions (a very current example would be the Russian invasion to Ukraine). Despite that, the UN is constantly working on building bridges among nations, establishing ways to cooperate, and developing new coordinated action plans targeting various global issues. While media and opposition portray the UN as inactive and inefficient, the organization is evidently active on ground (based on various studies by multiple political institutes and research centers). Indeed, being present on ground in places where the most hazardous crises take place and the most dangerous organizations and entities are located, the UN surely works on preserving human rights, promoting peace, supporting the marginalized, and ensuring sustainability and development. As UN Foundation Founder and Chairman Ted Turner has written, "The UN does what no country can do alone. ...In an interconnected world, we all have a stake in ensuring human dignity for every person." (UN Foundation, October 2021)

Building on that, the UN – like any other political/international affairs/intergovernmental organization – faces restrictions and limitations. As a matter of fact, the most common limitations would be the pillars of integrity, sovereignty, efficiency in implementation of resolutions, as well as the concept of quotas that each member state must pay. In the UN's case, the major focus of its efforts is in eradicating wars and international peace and security (Diplomatic Bluebook, MOFA Japan, 1977). Therefore, this research will first discuss the issues of sovereignty, international peace and security, and the right for collective self-defense; and second, the limitations and

restrictions which hinder UN's global efforts, namely the Security Council resolutions; viewing it from a liberal standpoint.

- **Aim of this research paper and research questions:**

Hence, the core purpose of this research is to review the UN charter and its limitations – from a liberal institutionalist perspective - and whether the UN can achieve its cardinal objectives - the maintenance of international peace and security, the promotion of the well-being of the peoples of the world, and international cooperation - efficiently and effectively. Furthermore, this research aims to answer several questions that revolve around the major discourses and elements that had been previously mentioned. To begin with, what are the limitations that the concepts of state sovereignty (article 2) and international peace and security (chapter 7) pose on the UN's course of action? Second, in what ways might individual self-defense and collective self-defense (articles 50 and 51), breach state sovereignty (article 2)? Lastly, how can the UNSC ensure efficiency, preserve state sovereignty, and promote international peace, having the present limitations? All in all, this research paper will extensively explore the concepts of sovereignty, international peace and security, and collective self-defense as addressed in the UN charter. Aside from that, it will be answering the research questions that draw a relation between those concepts and the way the UN functions and accentuates within the present limitations in the charter.

- **Research Methodology:**

This research paper is a purely qualitative paper by which all concepts and ideas discussed are built on qualitative sources and methods. The methodology that had been used for this research is divided into part; the primary, and the secondary sources. For the primary resource, this research paper was based on the UN charter, namely, chapters 1 and 7 of it, and on documents by the UN

foundation that explain the articles in the presented chapters. As for the secondary sources, the ideas discussed above were based on political science researchers, political journals, and academic articles that comprehensively explain the objectives presented in the introduction. Undoubtedly, the arguments in this paper were built through well-trusted resources and objective reasoning; the use of scientific examples and historic facts.

- **Theoretical framework and key words:**

Although this research argument/topic can be discussed and explored through various theoretical frameworks, this research paper will examine the concepts and the discourses of the topic presented above through the liberal institutionalist lens. Liberal institutionalism is the ideology that reshaped and restructured the international political order since 1940s (Johnson T. and Heiss A. July, 18, 2018). It explains that national, regional, and international organizations and institutions promote peace and cooperation among nations and maintain that order. This theoretical framework targets the UN charter and the concepts of international peace and security, and collective self-defense. Therefore, the Limitations of the UN and the focus on collective self-defense, international peace and security, and sovereignty will be discussed and examined through a liberal institutionalist perspective.

To further explain the major key words, although the meaning of sovereignty had varied from one political philosopher to another over the decades, the core argument generally poses that it is the highest ultimate authority within a territory (Sidgwick H.; *The Elements of Politics*, Cosimo classics, New York, 2005, p.597). Indeed, it might change according to the context that it is being put at; whether it was economic, political, social, or international. Moving to the second point, state sovereignty and collective security go hand in hand. According to what had been discussed in an article by the American Foreign Relations Encyclopedia, collective self-defense is

addressed as the security of individual nations by collective means. It is when nations collectively pledge to defend one another against a common aggressor. This concept was formed to become a pillar in the UN charter after the two world wars (Roland N. Stromberg). Lastly, the whole world order stands on three pillars which two of them were previously explored. Thus, international peace and security has been extensively and thoroughly presented by the UN in its charter and it demonstrates that the United Nations have the primary responsibility to maintain international peace and security, and to that end; it should take effective, collective, and necessary measures for the prevention and removal of any threat that might jeopardize global peace and security (as mentioned in article 1 of the UN Charter). To sum, the previously discussed notions and terminologies are the three core pillars to further understand the function of the UN as well as the limitations that might restrict its purpose, from a liberal institutionalist scope.

## **2. Literature Review:**

A large body of literature and research had examined the UN charter, work, and limitations. Various studies and several critics had been conducted to further understand the UN Security Council Resolutions and to propose potential modifications and effective measures. For that reason, since the existence of the UN, efforts to enhance the international order and system, to improve the work of this IO, and to develop new ways of resolution implementation had been put into action.

### **- The study of the UN Charter:**

According to most researchers and political scientists, in order to understand the scope of the UN, one must explore its charter. To start, in very first article of the UN charter, the UN outlines its purpose. Article 1 of chapter 1 of the UN charter argues the following, “To maintain

international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;”. After establishing the cardinal purpose of the UN, it is of utmost importance to understand how such an organization functions on those principles. Taking into account what had been discussed, article 2 of chapter 1 postulates that the organization is built on the pillar of state sovereignty and the equality of all member states. Besides, it further discusses the manners that all member states should abide by, when it stresses in sections 3 and 4 on not to use any means that might put international peace and security at risk, in resolving any international disputes or matters. In other words, it prohibits the use of force or any other discourse that is not consistent with the purposes and policies of the UN. As a matter of fact, subtopic 7 of article 2 in chapter 1 of the UN charter clearly mentions that nothing can grant the UN the right to intervene in domestic political issues of any member state; however, it also states that this concept shall never prohibit the implementation of chapter 7. Expanding from that point, chapter 7 of the UN charter explains that the UN Security Council will take any necessary measures if there were any threats to and breach of international peace and security, or any other act of aggression towards that end. All articles in this chapter discuss and explain the process of which the UN adopts and the trajectory of which the member states follow if international peace and security were breached or marginalized. In fact, the article presented in this chapter develop the plan if the Security Council resorted to the use of force as a means to restore international peace and security. Building on that, Article 41 of chapter 7 of the UN charter postulates that “The Security Council may decide what measures not involving the use of armed force are to be

employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations”. Article 42 adds that if the security council considered the measures discussed in article 41 are not enough, “it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.” At a certain point, some member states had criticized such rhetoric claiming that it can be easily twisted in favor for the major powers’ politics interests, due to its fluidity and vagueness. Furthermore, article 51 of chapter 7 in the UN charter specifically mentions the concept of individual security through collective measures; it states “Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security”. To sum up, the debate of the 21<sup>st</sup> century whether chapter 7 – as a whole - and article 2 contradict, has been going on since the formation of the UN (Williams A. and Caldwell M. R., 2014). However, the vagueness and fluidity of the language used in the present charter poses a bigger limitation on the UN than any other aspect (Gillette, G. M., Cohen, B., Sohn, L. B., & Wright, 1954), and this is what been focused on by major critics and UN experts such as Peter Nadin, Raymond Aron, and J.W. Smith.

- **Criticism of the UN and its work:**

Building on those two points, the conflict of interest and the contradiction between article 2 in chapter 1 and chapter 7 as a whole creates a controversy and poses a challenge to the UN (Hanhimäki, The United Nations, pp. 3). Historically, various movements and famous politicians

had criticized the work of the UN building it on its charter. In the 1950s, a campaign was made by the John Birch Society – an American Right wing political society – which was advocating to for the US government to get out from the UN and revoke its membership believing that it threatens national sovereignty and promotes globalism through its focus on international peace and global security (Matthew Lyons; Chip Berlet, p. 179, 2000). Besides, Charles de Gaulle of France (French president from 1959 till 1969) criticized the UN, famously calling it “le machin”; he was not so fond of the concept of having an international organization that regulates all states’ interests internationally and that it would truly promote global growth harmony and security. De Gaulle had postulated that it would be more fruitful when nations do that themselves through treaties and direct confrontation (Gerbet, Pierre, 1995. "Naissance des Nations Unies". Espoir 102.). In addition to what had been previously presented, John Ruggie – former UN assistant SG and Special Representative – challenged the thwart dominance of the two leading U.S. academic approaches to world politics, known as “realism” and “neoliberal institutionalism”. Through his writings and work, he criticized the UN work as a multilateral organization that somewhat impacts the international order and influences world politics. In “The UN, Peace and Force” book (edited by Michael Pugh), Ruggie explains in chapter 1, “The UN and the Collective Use of Force: Whither or Whether?” the gap between peacekeeping and warfighting. He ferrets out the limitations that prevent the UN security council from achieving international peace and global security. As a matter of fact, John Ruggie argues that the UN Security Council must adopt new strategies, and outlines new approaches in regards to the implementation of international peace and security. Besides, in the article “The United Nations and Its Discontents—An Academic View” that was written on the 70<sup>th</sup> anniversary of the UN, David M. Malone argues that the 70th anniversary of the United Nations was marked by discontent, failure, and criticism among member states. He



argues that “the relevance of the United Nations in international security is increasingly measured by how effective it is in preventing genocide and all-out civil war. The Organization’s failure to devise meaningful responses to the crisis in Syria is thus a serious threat to its overall credibility and should give rise to serious introspection within the Security Council” (September 2015, Nos. 1 & 2 Vol. LII, *The United Nations at 70*). Aside from that, various other academics and political scientist had criticized the UN with the aim to develop new approaches and outline new methods for it to be more effective such as N. V. Boeg, W. Harvey Moore, L. C. Green, Geoffrey de Freitas, Erwin H. Loewenfeld, Sheriff C. de B. Murray, S. P. Khambatta, Max Habicht, and Lord Porter.

- **Challenges in contemporary world:**

With the presented literature, one cannot but examine the challenges that the UN face in the modern-day world. To start, the terminologies used in the charter had developed and changed with time. Most recent and constantly used example would be the notion of “use of force”, it had surely been wrongfully interpreted and twisted. Besides, the newly developed systems also pose a great threat on the UN and its work. To illustrate, amid this growing world, new forms of economic systems, military strategies, political policies, and interventions got established, that the UN charter does not mention nor recognize. To be more specific, the UN Security Council’s main challenges are the following; its membership does not embody the contemporary world, and the abuse of VETO power by the five permanent members. To clarify, the Security Council membership does not have a representation for the developing countries as well as, a permanent representation from neither Africa nor Latin America. Besides, only five permanent members enjoy the veto power and frequently abuse this right. Some literature discusses that those member-states tend to impose their power to fulfil their political interests (Wouters J. and Ruys T., 2005). Thus, these two main issues would lead us to question the transparency and efficiency in the

Security Council's decision-making process (Wen-Cheng Lin, 2008). As a matter of fact, these challenges would surely lead the UNSC to a deadlock, if the interests of the P5 clashed. This has been voiced in 7919<sup>th</sup> meeting of the UN Security Council on the 7<sup>th</sup> of April 2017 where the meeting was addressing the U.S airstrike against Syria (UN Security Council, 2017). To add, a very current example of that issue would be the constant nuclear blackmail that the Kremlin is using as a rhetoric to threaten the NATO amid the intractable Russian-Ukrainian war, and the failure of the UNSC to reach an effective solution; which had been addressed in President Zelensky's speech to the UN, on the 22<sup>nd</sup> of September 2022. Furthermore, despite the UNGA 377 resolution that has been adopted in 1950 - which argues that in cases where the five permanent members fail to act, the General Assembly can issue appropriate recommendations to UN members for collective measures, including the use of armed forces – the major powers still blackmail the UN as a whole through the means of funding certain programs; this was seen in the case of peacekeeping missions. Another challenge would be the shift in the power dynamics in the global north, which in turn will impact the global south. An example to that would be the rise of BRICS and the proposed new global order that those 5 countries are mainly working on. To illustrate, the BRICS is a leading power in the new world order. Although they are aligned economically and they have shared interests, when it comes to the UNSC power and permanent seats, they might get into a minor clash. In the China-India Shared Vision, China admitted that India is interested in having a permanent seat in the UNSC, yet it opposed it. On the other hand, US did support India's aspiration claiming that it does balance the Chinese influence on the international scale. In the 4<sup>th</sup> summit of the BRICS in 2012, member states declared that a plan to reform the UN ought to be adopted and that the UNSC should be more inclusive and accommodating to contemporary rising

powers (Jyrki Kakonen, 2014). Unfortunately, with the present limitations and challenges, the UN is prone toward failure and inefficiency.

- **Case studies and available literature:**

As a matter of fact, political scientists had studied the UN through precedents and cases. To start, “The Right of Self-Defense under Article 51 of the UN Charter against the Islamic State in Iraq and the Levant” by Ignaz Stegmiller (2015), explains the use of international force and the implementation of article 51 of the UN charter. To elaborate, U.S., UK, Australia, France, Russia and others are carried on various air raids and bombings against the Islamic State in Iraq and the Levant (ISIL). However, wouldn’t that be a breach to the UN charter and state sovereignty? Indeed, most nations do not intervene on the territory of another State without the use of legal justification. In this case, the stipulation was that the actions of those nations got upheld by the right to self-defence under Article 51 of the UN Charter; howbeit, this point appears to be on tremulous legal basis. To clarify, the discourse of self-defense as a cardinal stipulation of the UN Charter ought to be elaborated narrowly. Therefore, for a state to rely on individual self-defense, an armed attack must take place. As mentioned by author in *Die Friedens-Warte*, “Only under very exceptional and narrowly construed circumstances are anticipatory acts in accordance with Article 51 of the UN Charter. Furthermore, the notion of "armed attack" does not include Non-State Actors – however, self-defense can be triggered by attacks committed by de facto regimes. It is submitted to treat ISIL as such a de facto regime, meaning that its violations of Article 2 (4) of the UN Charter can lead to the right to self-defense by victim States and, upon their request, third States” (*Die Friedens-Warte*, 2015, Vol. 90, No. 3/4, *Der “Islamische Staat”* (2015), pp. 245-282). In addition to what had been previously presented, Nina Kalantar had written an article that explains the limitations and capabilities of the UN in modern conflict (July 10, 2029). In this article, the author

explained how traditional provisions and manners are becoming challenges that hinder the UN's work in modern day conflicts. Kalantar argued that the presence of P-5, till this exact day, draws a huge question mark on the integrity, efficacy, and progress of the UNSC resolution; taking into account the fact that any of those five permanent states can use their power to veto any resolution that might be in conflict with their political interests. Henceforth, the UNSC becomes politicized and a playground for international disputes among major powers (p 33, 2019). The author referred to Simon Chesterman, Ian Johnstone, and David M. Malone by arguing that "the protection of civilians, the threat of violent extremism... and the dilemmas of state building" are core elements that had led the UNGA and the UNSC to reexamine their work and to have a more effective approach in modern day international issues (p 357, 2016). In addition to what had been previously presented, another case study would be the US airstrikes against Syria and the political dialogue which led to a deadlock in the UNSC resolution.

This situation had addressed the frustration of member states claiming that the acts of US and Syria might put the UNSC in jeopardy and lose its remaining credibility. As a matter of fact, there were a group of delegates who expressed support for the air strikes by the US, claiming it as "proportionate" response to the Syrian Regime's alleged use of chemical weapons against civilians; on the other hand, an opposing group had condemned it stemming from a standpoint that this act was a unilateral act of aggression, emphasizing on the stipulation that the Council must authorize any similar intervention. For instance, Sacha Sergio Llorentty, the representative of Bolivia had stated that what the US did had jeopardized the international peace and security (UNSC 7919<sup>th</sup>, April 7, 2017). On the other hand, he also condemned the use of chemical weapons against civilians in Syria and called for an impartial independent investigation, resulting in the prosecution of the perpetrators under international law. On the other realm of the spectrum,

Matthew Rycroft, the delegate of UK, had opposed the Bolivian delegate in each and every point he addressed and showed complete support for what the US did while shifting the focus on the Assad's Regime and its doings. Throughout the meeting, the statements and positions of the members states had portrayed the confusion and turmoil that the 7<sup>th</sup> chapter of the UN charter could do if it was wrongly interpreted and unilaterally implemented. This political dialogue and the difference in the discourses of the member states in the UNSC had surely proved the failure of the UNSC to take the right decision at the right timing; and the veto power was a big obstacle that could have swayed the whole plot to the other side. A very current situation that builds on the precedents of the UNSC in the areas of article 2, chapter 7, and article 51, would be the Russian invasion of Ukraine and the discourse of NATO's intervention. Russia had explained its invasion to Ukraine as an act of collective self-defense backing its argument with article 51 of the UN charter. It claimed that the use of force is justified to defend the Donetsk People's Republic and the Luhansk People's Republic, which Russia recognizes as independent states. However, on the 28<sup>th</sup> of February 2022, John B. Bellinger III, published an article arguing that the Russian invasion is a direct threat to international peace and security, and a clear breach of the UN charter, namely article 2(4). He stated in his article that the rhetoric of President Vladimir Putin and other Russian officials of using article 51 as a justification, is absurd and has no legal basis. To give further context, he explained article 51 and focusing on the part where it states that "nothing in the present charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a member of the United Nations."

However, it was clear that Russia was the first to carry on such an act against Ukraine and titled it as "Special Military Operation"; Ukraine did not commit or threaten to commit an armed attack against Russia or any other UN member state. Besides, Gabriella Blum and Naz Modirzadeh

had postulated that “Countries’ sovereignty, political independence, and territorial integrity are widely recognized principles, enshrined in the United Nations Charter (Harvard Law Today, March 2, 2022). To add, after the 11<sup>th</sup> emergency special sessions of the UNGA on this topic, the following resolutions were passed; Resolution ES-11/1 “Aggression against Ukraine”, Resolution ES-11/2 “Humanitarian consequences of the aggression against Ukraine”, Resolution ES-11/3 “Suspension of the rights of membership of the Russian Federation in the Human Rights Council”, Resolution ES-11/4 “Territorial integrity of Ukraine: defending the principles of the Charter of the United Nations”, and Resolution ES-11/5 “Furtherance of remedy and reparation for aggression against Ukraine”. Despite all what had been discussed in UNGA and UNSC meetings, and ICC’s decision against Putin, Russia still made it to the presidency of the UNSC for the month of April. Last time Russia was the president of the UNSC, it launched a full-scale invasion; this draws a huge question mark regarding UNSC’s integrity and full adherence and implementation of the charter. In brief, countless studies and multiple political researchers had comprehensively discussed the limitations of the UN that articles 2 and 51 pose on this IO’s course of action and resolutions; they have addressed the loopholes that member states could resort to in order to feed into their political agendas. Indeed, various case studies had shown the vagueness in the UNSC resolutions and portrayed the dangers of wrongly interpreting the UN Charter and its articles. On the other hand, countless efforts had been put into action, in order to reform the UN, update its charter, and maintain a proper flow and implementation of resolutions with higher efficacy.

### **3. Reform of the UN**

Building on the case studies presented above, and the various literature discussed, multiple efforts had been put into action to reform the United Nations and work on enhancing its role in implementing its cardinal goals and taking proper action against those who do not adhere to its

charter, with higher efficacy and further accuracy. However, this is a very controversial topic that had received unprecedented criticism and endorsement. Speaking of the reformation of the UN, one cannot but touch down on the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, that has been established by a recommendation from the UNGA Sixth Committee. This issue is tackled from political and legal standpoints. Although at the 72nd United Nations General Assembly (UNGA) on 18 September 2017, 120 countries expressed their commitment to the reforms proposed by UN Secretary-General António Guterres, few member states had voiced their concerns in reforming certain aspects of the UN and amending the charter. Despite that, after the 77<sup>th</sup> session of the sixth committee, more than 10 resolutions were passed tackling this issue and other pertinent ones, such as A/RES/77/249 that targets crimes against humanity, and A/RES/77/97 that targets internationally wrongful acts. As a matter of fact, this topic is hugely broad and hosts various aspects; hence, in order to narrow it down, the dialogue had mainly focused on the reformation of the UNSC for it directly targets article 2, and chapter 7 and their implementation. Building on that, reforming the United Nations Security Council (UNSC) outlines five major issues that are considered the core of this UN organ. The key issues are, categories of membership, the veto power and exclusivity of it, regional representation and inclusivity, the size of an enlarged Council and its discourse, and the relationship between the UNSC and UNGA.

In other words, the reform plan suggests to enlarge the number of seats and have a more inclusive and diverse membership, on the one side of the spectrum, and to reconsider the exclusivity in the veto powers and to engage more growing countries in such a policy, on the other side of the spectrum. On this issue, the UN SG Antonio Guterres postulated the following, “The Security Council we have now does not correspond to today's world. I have encouraged member

states to have a serious dialogue on this. I want to continue this dialogue at the UN General Assembly, but the permanent members do not agree". Besides, Japan, Brazil, India, Lithuania, UK, and other member states had strongly supported this plan and the importance and urgency of implementing it. In a nutshell, for a more coherent, efficient, integrate, independent, and developed UN, reforms ought to be tackled, new approaches must be adopted, and a more contemporary modified charter should be the new norm, reality, and future.

#### **4. Conclusion**

In the world of social media, AI, cryptocurrency, cyberattacks and technological advancements, archaic policies won't help anymore. In today's societies, terrorism takes a different shape and form, international peace and security embodies a new definition, the concept of international cooperation hosts a different conceptual framework, and aggression and the use of force encompasses a new understanding. Today's major powers' biggest threats have changed, their economic interests had shifted, and the power dynamics between the global south and north had pivoted. In the 21st century, new concepts had emerged, new countries had developed, and new policies had been put into effect. Amid this new era, the politics of various alliances, nations, organizations, and regional and global powers had been restructured. Living in a constantly changing world poses so many challenges, limitations, and threats on the world. Therefore, from a liberal internationalist perspective, the challenges of today's world require a more robust and a more effective UN. In the context of this paper, for the UN to overcome its challenges and grow away from the limitations it has, it ought to reform certain bodies and modify its charter (Blum, Y. Z., 2005). Aside from the presented research question and discussed literature, it is of utmost



importance to address further questions and points to be discussed in further research papers and studies. When examining the UN charter, one cannot but raise the question of economic independence of this organization. This is directly linked to questioning the integrity and full independence of this organization. Another question would be raised is the question of the states that had been subjective to invasion on various levels. A body must be created to support those nations on an economic, political, social, and technological levels. Indeed, it is essential to have a council that assists the member states that had been subjected to illegal and brutal unjustified military or cyber invasions, or economic sanctions and boycotts such as Iraq, Ukraine, Estonia, Venezuela, and others. To conclude on what had been discussed in the following paper, the UN is a main element that keeps the world hanging together. As Norman Cousins once said, “If the United Nations is to survive, those who represent it must bolster it; those who advocate for it must submit to it; and those who believe in it must fight for it”. Stemming from that argument, UN’s representatives ought to support its path, its advocates should adhere to its policies and charter, and those who believe in its mission shall fight for its reformation and development (Mueller J., 2021).

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