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The San Francisco Promise, Ukraine, and UN's irrelevance

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During the San Francisco Conference, 25 April 1945. UN photo 256771

by Leo Klinkers & Mauro Casarotto |

The founding of the United Nations

As the Second World War drew to a close, representatives of eighty countries met in San Francisco from April to June 1945 to discuss the establishment of the United Nations. The aim was to create a form of cooperation that would guarantee that no wars would ever be fought again. The founding fathers established a General Assembly (not a parliament), a Security Council (an oligarchy of decisionmakers with veto right) and an International Court of Justice (without executive powers).

A crucial element was the composition of the Security Council: five permanent members – America, Russia, China, France, and the United Kingdom – and ten members elected every two years. America demanded a right of veto for the five permanent members. Many countries protested the fact that Article 109 of UN's Charter spoke of reviewing the Charter but did not set a deadline for this mandatory evaluation of the veto-right system. America offered a third paragraph as a compromise. It stipulates that the revision of the Charter should take place within ten years from 1945. See this important Article 109, especially its third paragraph:

- “1. A General Conference of the Members of the United Nations for the purpose of reviewing the present Charter may be held at a date and place to be fixed by a two-thirds vote of the members of the General Assembly and by a vote of any seven members of the Security Council. Each Member of the United Nations shall have one vote in the conference.
- 2. Any alteration of the present Charter recommended by a two-thirds vote of the conference shall take effect when ratified in accordance with their respective constitutional processes by two-thirds of the Member of the United Nations including all the permanent members of the Security Council.
- 3. If such a conference has not been held before the tenth annual session of the General Assembly following the coming into force of the present Charter, the proposal to call such a conference shall be placed on the agenda of that session of the General Assembly, and the conference shall be held if so decided by a majority vote of the members of the General Assembly and by a vote of any seven members of the Security Council.”

The San Francisco Promise

The third paragraph is the so-called ‘San Francisco Promise’. To date, this promise has not been fulfilled: the mandatory evaluation has still not taken place. So, the UN violates – with impunity – its own regulations. Addressing this impunity is blocked by Article 105 of the UN Charter which grants immunity to the institutions and officials of the UN. So, ‘the offender of breaching the rules of the Charter has ensured that his offence cannot be dealt with’. That makes the San Francisco Promise a cynical breaching of UN’s rule of law.

The Democratic World Federalist (DWF, San Francisco) and the Center for United Nations Constitutional Research (CUNCR, Brussels) are among the most important movements demanding the true application of Article 109(3). The motive is not only that an organisation based on a Charter is supposed to follow its own rules, but also and especially because the UN anno 2022 is failing to guarantee the promised security and peace in the world. Let alone that the UN applies another article of the UN Charter, namely Article 6 of the Charter:

“A Member of the United Nations who has persistently violated the Principles contained in the present Charter may be expelled from the Organization by the General Assembly upon the recommendation of the Security Council.”

The UN consists of 193 states, several of which commit serious violations of UN conventions on a daily basis. However, Article 6 has never been applied.

Bad example is followed

Psycho analysis teaches us that those who set bad examples – after all, the UN itself refuses to comply with Article 109(3) – should not be surprised if others – belligerent nations – follow suit and shrug off treaty obligations. As Russia did, by forcefully annexing parts of independent sovereign countries: Georgia (summer 2008), Crimea (February-March 2014) and Ukraine (February-March 2022).

This last war crime is now taking place under the chairmanship of Russia in the Security Council. How cynical can it be? It became possible because for decades the UN has not evaluated the veto power of the permanent member states of the Security Council, despite having committed itself to do so, at the latest in 1955.

Refusal of membership of the International Criminal Court

The world has many countries under autocratic rule. Their violation of human rights as an everyday occurrence does not lead to expulsion from the UN on the basis of Article 6. How cynical is the Charter’s failure to punish misconduct of autocrats? This is even unbearable when we realise that Russia, China, and United States of America all refuse to recognise the International Criminal Court in The Hague. On top of that we see that on 16 March 2022, the other The Hague’s international court, the International Court of Justice, ruled that Russia should immediately stop its invasion of Ukraine. Such a judgment is binding on Member States, including Russia, but the Court cannot force countries to comply with it. The Court has no executorial power.

Who can take the UN seriously anymore?

So, it is not surprising that people are starting to question the UN’s right to exist. Ignoring with impunity its own rules (Article 109, the San Francisco Promise), not applying Article 6 (not expelling member states that structurally violate the UN conventions) and the actual events in Ukraine teach us that the UN is powerless to prevent structurally and principally crimes against humanity. It is now even showing its powerlessness when it comes to flagrant violation of human rights by a permanent member of the Security Council, Russia. According to the UN Charter, it should be expelled from the UN. Though the International Criminal Court is free to condemn Russia for its invasion of Ukraine expulsion will not happen because the Charter prevents the expulsion of a permanent Security Council member with veto power.

What does it teach us about the right of veto in the European Council?

The EU, like the UN, is based on a system of treaties. We know that treaties are only respected when it suits the partners. We also know that treaties are toys for administrators. In the context of treaties, parliaments do not play a decisive role. In this sense, the General Assembly in the UN, and the European Parliament in the EU, without binding powers of legislative initiative, are not real parliaments. Nor will they ever be as long as their legal system, that of treaties, remains in place. The veto-system in the European Council of 27 non-elected leaders of states or government will block any attempt to remove the European Council. That is how this system works.

Evolution of state-systems: federalisation is the next system

However, state-systems evolve. Until 1648, Europe had the state-system of the nobility, with its violent nobility-anarchy. After 1648, the nation-states emerged with their violent nation-state anarchy. After 1945 the treaty-based state systems of the UN and the EU emerged, with their treaty-based anarchy.

Seventy years after WWII it is becoming clear that working with treaties has a limited political life cycle. Both the UN and the EU are in an identity crisis. They consume far more energy than they store (the concept of entropy) and are on the verge of collapse. Both organisations are part of a global systemic crisis in which autocrats are gaining power and democracy is dying.

The current identity crisis of both the EU and the UN offers the chance to stop this process by creating federal states, based on democratic federal constitutions. Only if the Earth is governed by a World Federation, consisting of a number of (continental) federal states such as a European Federal Union, can geopolitically tensions, armed conflicts, and greed – causes of unprecedented human suffering, destruction of the earth, refugees, torture, migration flows, poverty, disease, illiteracy – be overcome.

Autocrats will undoubtedly want to use the present crisis to fall back on the nation-state system with its constant wars because of the anarchy associated with them unless the evolution of state-systems leads to an increased degree of federalisation and thus to structurally peace. By intervening in time, offering a federal Constitution for a Federal Europe, we might prevent a relapse into the bad history of the war-driven 19th and 20th century.

The Federal Alliance of European Federalists

This is the field of activity of the Federal Alliance of European Federalists (FAEF). FAEF supports the drive to replace the treaty-based EU with a Federal Europe, a removal of its ineffective treaty-based system and democratic deficit, in favour of a fully democratic and effective administration.

FAEF’s Citizens’ Convention has been working for several months on a federal Constitution for a federal Europe. A democratic legal basis that we have been waiting for, for two hundred years. Every attempt since 1800 to federate Europe and make it part of the already existing 27 federal states in the world has failed. However, we know the saying: ‘Never waste a good crisis’. It is just sad to realise how cynical it is that it takes an all-encompassing crisis to serve something good that should and could have been done over the past 200 years.

Anyhow, the Federal Alliance of European Federalists will soon surprise the people of Europe with our Federal Constitution, of, by and for the people of Europe. Follow our process at www.faefeu.

Leo Klinkers & Mauro Casarotto, respectively President and Secretary General of the Federal Alliance of European Federalists

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