

The San Francisco Promise, letting “we the peoples” govern the world:

Article 109(3) Rediscovered

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Shahr-yar Sharei

Greetings my fellow world citizens,

Have you ever asked yourself: who really rules our world

Is it the United Nations?

The UN was created to maintain peace and security. The Security Council and its permanent 5 members were given supra-national and extra-ordinary powers to make sure that conflicts are resolved peacefully and that there are no wars.

Then why do we have an estimated 40 Million war and armed conflict casualties since World War-II? Not counting other injuries to our lives and economies. Imagine all that tens of trillions of dollars spent on war preparations, if it was instead spent to fight diseases, extreme poverty, and illiteracy. We would still have hundreds of billions left as peace dividend to reach our goals on climate change and Sustainable Development Goals.

Just imagine. In Martin Luther Kings’ terms. Oh, what a dream!

In fact, who manages our economy?

Is it the World Bank or the International Monetary Fund? is it the WTO

How about the world judiciary system?

Well, ICJ lacks compulsory jurisdiction, and it only handles cases where they are voluntarily submitted by states. Therefore a perpetrator-state can refuse to go to

court. In case of ICC it only handles certain crimes and does not have universal jurisdiction. Meaning that potential perpetrators from powerful states like Russia, China, and the United States who are not abiding by the Courts jurisdiction cannot be prosecuted. In fact the United States has recently declared the court is illegitimate and if any cases are brought against US nationals, the ICC judges would be arrested. And by the way, where is the enforcement for these international courts?

Who is in charge of disarming and disposing of our nearly 20,000 nuclear warhead? Is it the NPT (the Non-Proliferation Treaty)? Does NPT have an address?

And of course we have climate change. The UN Intergovernmental Panel on Climate Change just released a new report ringing the alarm bell to keep the global warming within 1.5 degrees Celsius.

So who is responsible for all of that?

Is it the UN, is the member states, is it COP? Does our global governance of climate and justice have an address?

Some say that it is not governments who are in charge. But multinational corporations such as the military industrial complex or the oil companies. Or more recently we hear people saying that it is perhaps Facebook and Google that are governing the world.

The real answer is, in varying degrees, in some cases it is some of the above, and in some cases none of the above.

It is almost unbelievable that in the 21st century global governance is completely fragmented, with a multitude of international law instruments, with formal and informal regimes, and with some super powers above the law.

Multiple jurisdictions and multiple competencies. And in many cases – like in the case of the high seas, space and cyber space - no jurisdiction and no competences. No rule of law.

Add to this confusion:

- the lack of enforcement;**

- individuals and powerful states unilaterally pushing their agenda;
- Countries putting themselves above international law;

And what we people, the global citizens have, is in fact not a potpourri of global governance, but a toxic soup of global anarchy!

The real problem is not lack of global structures or institutions; we probably have too many. The fundamental problem is a lack of global government and political will to make changes and an “election” system to introduce change.

The real problem is that the people have no power, no say, and that our global institutions are not democratic. If reform to this system is even considered this is at best done in high-level committees and at worst behind closed doors in back chambers.

But the beautiful city of Paris, and this forum, is no place for dystopian pictures of the world. So I am glad to say that In fact I am here today to tell you that the answer already exists.

The answer to these questions has been buried deep inside the Charter of the UN. To be precise in Article 109, which reads:

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 (Par. 1)

*... 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. (Par. 3) ...*Note there is no veto to hold the review conference. Only qualified majority of both the General Assembly and the Security Council.

Yes, there is an actual legal obligation (it says “shall be placed”, not “can be placed”) within the treaty for a review conference. And yet it has never taken place. How can that be?

Lets go back to 1945 Franklin Roosevelt and America and a majority of the states at the creation of the United Nations wanted to build something more than the failed League of Nations.

They moved away from sovereignty of states, which under Chapter VII can create enforceable international law. And together with the Security Council, they also created what they thought was just as important other “Councils”.

The Economic and Social Council they created was to handle all aspects of global economic, social, cultural, scientific and educational needs of the world. It was allowed to have subsidiaries (think of it as quasi ministries) where agencies such as the WHO (World Health Organization) and FAO (Food and Agriculture Organization), or UNESCO would be created. The Charter also recognizes our human rights and our gender equality and even our right to “full employment” but without much elaboration and constitutionalization.

The founders deliberately created a United Nations that would be more than just a Security Council resolving conflicts and keeping peace. They created an institution that would be governing global governance.

But they also realized that what they were creating was an unfinished work. That the decisions at the Security Council may not be fair. That the five unelected members could be there to the end of times. That those permanent members can veto and kill the decision of the majority at will. In fact, this undemocratic nature of the proposed Security Council, turned into an uprising in San Francisco of the majority of the states (almost 2/3) against the Dumbarton Oaks proposal and the so called “Yalta Formula”.

With the great opposition to the structure and the voting procedures at the Security Council, and the permanent five’s insistence on keeping their supreme status, the United States on behalf of the P5 offered a compromise:

By introducing Article 109 to the Charter, the possibility of a future review and revision of the Charter based on 2/3s majority was made possible. But this was

not enough, the majority stated they wanted to set an expiration date for the mandates of the Security Council and a date to be set to renew the UN.

Then, to break the deadlock in San Francisco, came the great compromise, by adding Paragraph 3 to Article 109, where it was promised that at the latest, in 10 years' time a review conference of the UN Charter would be held with just a majority vote of the General Assembly and the Security Council and no veto. San Francisco and the world were jubilant, and the Charter was unanimously adopted on June 22nd, 1945.

But the honeymoon at the UN was very quickly over. Wars and skirmishes popped up immediately, the veto was used immediately and just a few months later it was obvious to everyone that the Security Council was dysfunctional. Calls for UN reform started immediately. Knowing that quick fixes would not work, everyone's focus and attention was on the promised 1955 charter review.

In 1955 everyone was excited about the possibility of change. The so called "constitutional" debates were held both in New York and San Francisco commemorating the 10th year anniversary of the UN. They outlined what the member states wished for in a renewed UN. Amongst others:

- Compulsory jurisdiction of the ICJ
- the creation of a Human rights Council and court
- phased elimination of the veto; and
- nuclear disarmament

At the 1955 annual session, Secretary General Hammarskjold put the activation of Article 109(3) on the GA's agenda, the General Assembly by an overwhelming majority, Res. 992 (X), and the Security Council adopted it. An arrangements committee was set up to choose the time and place of the review conference.

For the next 12 years, the P5, with the exception of China, one by one, started losing interest in holding the review. They could not do this legally, but they kept on postponing the conference on procedural grounds. At the last rendezvous to hold the review conference in 1967, they decided to keep the conference in "being" but without holding it.

This way they de facto shoved it under the rug and derailed the process into multiple, often fruitless UN reform committees and forums. One of those

committees which has met for over 40 years is called the “Special Committee” on Charter, which as part of its rules of procedures only considers reforms as long as they do not require Charter change.

Let that one sink in for a minute.

Despite a legal obligation to review the charter, for the past 40 years only those attempts were made to reach UN reform that did not actually require charter reform. That is not only a complete oxymoron it is a breach of the Charter itself.

So why is all of this so relevant?

Let’s look at it as if we were at national level. At national level We have created government Institutions. We have created parliaments - elected representatives and leaders and hold them responsible and accountable. We have created courts and police forces and we ensure that different branches of the government- legislative, executive and judiciary - are kept separate and independent. In other words, we created “government of the people, by the people for the people”.

But at international level, due to the post war international circumstances we were forced to start up with a system that does not have those checks and balances. A system in which the P5 are de facto judge, jury and executioner. And the founders knew it. That is why they wrote a review clause in the founding document. In what we at national level would call the constitution. So what would happen at national level if the government showed complete disregard for its own constitution?

At national level we would at least call for new elections. So, similar to the election process in our national models, where we introduce change in how we are governed, think of the UN Charter review conference as the legitimate forum to introduce change in global governance context.

And if our national government would not allow us to have elections there would be protest, uprising and revolt. In that same spirit I stand here before you today to reignite the flame of Article 109. I stand here to start a citizens track II diplomacy together with coopting some champion states. To remind all the

member states and the leaders that we are in the breach of Charter that we have not only a moral, but also legal obligation to hold a review conference.

Why is the review conference so important?

Because it has great transformational potential. According to the Charter, a review conference once started is independent of the General Assembly and the Security Council. It is not under the influence and establishment of New York. In fact, according to the legislative history, it is not even supposed to be in New York. This is the forum where member states gather, similar to the EU and other treaties, periodically meet, to review and renew the institutional needs.

Dear friends,

Today we have heard both in Paris and elsewhere, many fantastic UN global governance proposals!

- **How to keep peace and security by reforming the Security Council.**
- **How to create a UN parliamentary assembly**
- **How to turn the GA to a representative and legislative body**
- **Or how to give the human rights a real court and to let it have teeth.**

And there are other, perhaps less radical changes, which are needed:

- **limiting the use of the veto or its elimination.**
- **Expanding ICJ and ICC jurisdictions and competencies**
- **And, turn the unused and outdated Trusteeship Council into a Trusteeship Council for the Environment.**

Or, perhaps such a UN review conference would reach a “constitutional moment”. Similar to what United States experienced at the Philadelphia convention, the Meiji Reform (Renovation) of Japan, or the European Union experienced accomplished with the Maastricht Treaty.

The possibilities and potentials are limitless.

Friends, global citizens, we can introduce change. And the great news is that the legal basis for the platform is already there. It was build with the San Francisco Promise in 1955.

Twelve years later in 1967, coinciding with the review conference being shoved under the rug, Scott McKenie sang his legendary “If you are going to San Francisco”.

And in that song he sings not only about “flowers in your hair” but he sings about the fact that “all across the nation there are people in motion. That there's a whole generation with a new explanation”.

Let us be that new generation. Let us be those people in motion

Let us hold our leaders accountable to the promise they made. Because it is only when that promise of a regular review conference is fulfilled, and we can govern ourselves, that the opening words of the charter “we the people” have been given true meaning.

Thank you.