



U. N. Security Council Reform and the Right of Veto: A Constitutional Perspective (Legal Aspects of International Organization, 32)

By Bardo Fassbender

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This book is a timely contribution to the present discussion of a constitutional reform of the United Nations, a discussion rekindled by the end of the cold War and the significant involvement of the UN in international peacemaking and peacekeeping since the Kuwait crisis. Like the new debate, the work focuses on the Security Council, its composition and possible enlargement, its decision-making process and competences, and its relationship with the General Assembly and the International Court of Justice. Particular regard is given to the right of veto of the permanent members of the Security Council, which is seen as the central, and most problematic, feature of the present constitution of the UN. The work describes and analyzes the reform discussion as it has taken place at the UN since 1991. The different proposals made by governments, NGOs and individual scholars are evaluated by applying a number of standards and concepts ensuing from a perception of the UN Charter as constitution of the international community. Thus, the study advances a comprehensive constitutional theory of the UN and redefines the place of the Charter in contemporary international law.

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Editorial Review

Review

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From the Author

The author was born in 1963 in Germany. He studied law, history, and political science at the University of Bonn (Germany) and Yale Law School. He received a J.D. (equivalent) from the University of Bonn, an LL.M. from Yale Law School, and a Doctor juris from the Humboldt University in Berlin. He currently works as an assistant professor of law at Humboldt University, where he teaches international law, law of the European Union, and German constitutional law. He published many articles, book reviews and case notes in leading law journals, among them the 'American Journal of International Law' and the 'Yale Journal of International Law'. Recently, his article 'The United Nations Charter as Constitution of the International Community' appeared in the 'Columbia Journal of Transnational Law' (volume 36, 1998, number 3, pages 529-619).

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From the Introduction: Today, there is universal agreement that the Security Council of the United Nations needs to be reformed to put it in a position to perform, in a world fundamentally different from that of 1945, the tasks it has been set in the Charter. Reform proposals mainly address two questions--the composition and the decision-making process of the Council. Is such a reform simply a matter of politics, so that member states are given a free hand to reorganize the Council, or are there legal standards that must be observed? I submit that states, when amending the Charter, have to attend to certain principles and concepts which follow from an understanding of the Charter as the constitution of the international community. Accordingly, in the first part of this book I will establish the constitutional character of the Charter. The consequences of such a perception for a reform of the Security Council, and especially the future of the right of veto, are then

set out in the second part. Extrapolating the concept of constitution to the international community, I claim to describe an ongoing cumulative process in which empirical facts have forced revisions in our theory of the international legal system--revisions already suggested by the norms of the Charter. However, perhaps there is less continuity than we think or would like to see, and what is happening is a scientific revolution as perceived by Thomas Kuhn, in which an older paradigm is overthrown and replaced by a framework incompatible or even incommensurate with it. The old paradigm would be an international law based on state sovereignty--a system of bilateralism in which a legal rule only becomes binding on a state because of its consent. In contrast, the new paradigm would be international constitutionalism--the legal order of a community the fundamental rules of which must be honored by every member of the community. If this were true, we could not expect the 'facts' and ideas adduced to support the older theory to be relevant to the new, and the questions asked and answered in the new framework would be different from those of the old.

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