

The Security Council's Veto in the Balance

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Abstract

The United Nations Security Council has been of unique importance and authority in serving the maintenance of international peace and security, which puts it in a position integral to the functioning of international law and international relations. Yet, it is widely viewed as having had a mixed track record. At the time when the Security Council is considered to have played a very important role in remedying some international issues, it is also viewed to have failed in dealing with many others. Such failure is considered by many to be a direct result to the decision-making methodology of the Council, namely the veto power granted to the permanent five members of the Security Council. Therefore, such power has been the subject of many calls for Security Council reforms, which in some cases presented its abolition as one of the options to deal with what they deem as dysfunction of the Council. This study attempts to address the debate surrounding the veto power by outlining its rationale, and analyzing both sides of the debate in relation to its reform. It attempts to present a common ground for veto reform that could be more feasible for implementation in the presence of various obstacles in the current dynamics of international relations.

Keywords: United Nations, Security Council, Veto, Permanent Members, Reform

1. Introduction

The United Nations (UN) was born out of the devastation of the World Wars, with a hope that the establishment of a strong international organization would create a level of cooperation between countries that could limit the chances of facing future conflicts.¹

To emphasize on this goal, the Security Council, one of the main organs of the UN, was established primarily with the mission of maintaining international peace and security using collective measures for the prevention and removal of threats to international peace.²

In this regard, the Security Council has the power to investigate situations to determine the existence of a threat to international security, and the right to decide on appropriate measures to deal with such a threat that can range from various economic sanctions to a full-scale military action.³

The Security Council consists of fifteen members. Five of these members, namely the United States, the United Kingdom, France, China, and the Russian Federation; are permanent which enjoy the right to block decisions of the Council in what is referred to as the 'veto' right. The remaining members, who get one vote each in the Council, are elected based on specific geographical distribution for a period of two years. Any action taken of procedural nature by the Council must receive nine votes. However, substantive matters, which constitute the bulk of the Security Council's work, must achieve the nine-vote majority without the veto of any of the permanent members.⁴

While other organs in the UN make recommendations to member states, the Security Council enjoys an important and powerful position in the Organization, as the only organ that has the authority to make decisions that member states are obliged to obey.⁵ In addition, its authority penetrates into the powers of other organs of the UN. All General Assembly resolutions must be approved by the Security Council at one stage of its decision-

¹ Michael Teng, "United Nations Security Council Reform", *Ethics of Development in a Global Environment (EDGE) Seminar*, Autumn, 2013, at 2.

² Brian Cox, "United Nations Security Council Reform: Collected Proposals and Possible Consequences", *South Carolina Journal of International Law and Business*: Vol. 6: Iss. 1, Article 4, at 91.

³ *Ibid.*

⁴ *Id.*, at 92.

⁵ Teng, *supra* note 1, at 3

making process, whether before or after the resolution. The Security Council also mandates the working agenda of the Secretariat, which could raise question marks over the issue of separation of powers in the UN that could affect its functions.¹

The structure and the decision-making mechanism of the Security Council was affected by the hard-bargaining process that shaped the UN Charter itself between the allied super powers at the end of the Second World War to reach the philosophical foundation of the UN of giving up the sole authority over the use of force to a single body that would ensure world peace in return.²

In any international agreement, reaching a common understanding between states on a particular issue requires dealing with diverse, and in some instances, conflicting interests of participating states. The UN was not an exception. When the major powers, as emerged at the end of the Second World War, wanted to form an international body to bring stability to the world, the creation process had to accommodate their different views on how this new system should operate, more importantly, how their position was going to be in the new international regime.

One of the issues that reflected the compromise reached to satisfy such interests of the super powers in the new system of international governance was the right exercise the veto in the Security Council. The existence of the veto right was so important to a degree that some super powers associated their participation in the new system with the right of a veto.³ In this context, it was routinely expressed that “small nations should not be allowed to complicate the supreme task of keeping the peace”.⁴ The US insisted on such powers to maximize the chance of achieving the approval of the Congress and avoid the same scenario that occurred earlier regarding its participation in the League of Nations.⁵ Similarly, the Soviet Union maintained an absolute position in relation to having an unrestricted power of the veto to a degree that it was one of the main key points that were going to determine their participation in the UN.⁶

2. The Rationale of the Veto in the security Council

The rationale of the veto, as expressed by the major powers, rest with the concept of unanimity.⁷ This concept, in the context of the UN’s functions and goals, means that in order for the UN to succeed, any of its acts must be unanimous to guarantee enlisting the resources and will of all great powers to serve the aims of the UN of which the maintenance of international peace and security takes the core position.⁸

This rationale is outlined in the statements of the representatives of the major powers, who branded the unanimity of the major powers, represented by the veto, as a key factor to the survival of the UN itself.⁹ In this regard, the representative of the US stated that:

*The great powers could preserve the peace of the world if united...they could not do so if dissention were sowed among them. The great powers had every reason to exercise the requirement of unanimity for high and noble purposes, because they would not want again to expend millions in wealth and lives in another war.*¹⁰

¹ Zack A. Tucker, “United in Progress: A Proposal to Reform United Nations’ Organizational Structure”, *Cultural Diplomacy News*, 2010, at 7.

² Dorothy V. Jones, *Sober Expectations: The United Nations and a “Sensible Machinery” for Peace*, in *The Dumbarton Oaks Conversations and the United Nations 1944 – 1994*, (Ernest May & Angelikj Laiou (eds), Harvard University Press, 1998), at 14.

³ Anna Spain, “The UN Security Council’s Duty to Decide”, *Harvard National Security Journal*, Vol. 4, 2013, at 333.

⁴ Cox, *supra* note 2, at 95.

⁵ Spain, *supra* note 8, at 332.

⁶ Henry Trofimenko, *A Hope that Still Might Come True*, in *Oaks Conversations and the United Nations 1944-1994* (Ernest May & Angelikj Laiou (eds), Harvard University Press, 1998), at 45

⁷ Cox, *supra* note 2, at 98.

⁸ *Ibid.* See also, Teng, *supra* note 1, at 10.

⁹ Richard Butler, “Reform of the United Nations Security Council”, *Penn State Journal of Law and International Affairs*, Vol. 1: Iss. 1, at 28

¹⁰ Document 936, III/1/45, June 12, 1945 (also found in Summary Report of Eighteenth Meeting of Committee III/1/45, compiled in *Documents of the United Nations Conference on International Organization, San Francisco, 1945, Vol. XI*, 474.

The representative of the Soviet Union pointed that “the agreement on a joint interpretation (that is of the veto power) would facilitate the creation of a truly effective and efficient international organization for the maintenance of peace.”¹ While the representative of the UK said:

*The present voting provisions were in the interest of all states and not merely of the permanent members of the Security Council. Peace must rest on the unanimity of the great powers for without it whatever was built would be built upon shifting sands, or no more value than the paper upon which it was written. The unanimity of the great powers was a hard fact, but inescapable one. The veto power was a means of preserving that unanimity, and far from being a menace to the small powers, it was their essential safeguard. Without that unanimity all countries, large and small, would fall victims to the establishment of gigantic rival blocs which might clash in some future Armageddon. Cooperation among the great powers was the only escape from this peril; nothing was of comparable importance.*²

3. The problematic issue over the use of the veto power

During the years of the Security Council there have been criticisms over veto practices by the five permanent members in the Security Council.³ The notion behind granting the permanent five members the veto power that such power was going to enable them to maintain world’s peace and better serve the goals and principles of the UN was diminishing. Instead, the veto practices of the permanent members have increasingly left the impression among the rest of the UN members that the veto power has been exercised in a selfish attitude that is based primarily on the idea of protecting the individual national interests of the permanent members and their allies.⁴ The practices of the permanent members have been increasingly suggesting that they view such power as a free right that can be exercised by them in whatever manner they decide.⁵

This attitude of the permanent members, and the impression of the rest of the UN membership were clearly evident during the years of the Cold War, which witnessed a head-on clash between the Western camp led by the US and the Eastern camp led by the Soviet Union that produced conflicting self-interests in all aspects of international policies, strategies, and self-ambitions.⁶ Such conflict of interests of the major powers of the UN resulted in using the veto power 263 times.⁷ Such what could be considered by many as abuse of power resulted in leaving the Council paralyzed by the Cold War, and unable to exercise its supposed role and take actions for most of the Cold War era, except for few noteworthy Council actions.⁸

Now, more than 70 years after establishing the UN, its universal character and comprehensiveness have allowed it to maintain its status as the primary forum for countries to address international issues, and as a platform for collective actions to deal with such issues.⁹ However, many countries and observers around the world share the view, when the UN is concerned, that there is still a considerable gap between aspiration and real accomplishments, and that the world that decided the nature, structure, functions, and working methods of the UN has changed dramatically.¹⁰ These factors have contributed in initiating an old new debate on the need of the UN for reforms.

The Security Council has always been the most controversial body of the UN, which contributed in putting it in the core of the reform debate.¹¹ The Security Council’s calls for reform have focused on issues that include its effectiveness, openness, and procedures. However, the fact that the veto power has long been regarded as a source of non-action, positioned such power as a priority on the reform list.¹²

¹ Id, at 475.

² Ibid.

³ Butler, *supra* note 14, at 31. See also, Sahar Okhovat, “The United Nations Security Council: its Veto Power and its Reform”, CPACS Working Paper No. 15/1, The University of Sydney, December 2011, at 11.

⁴ Butler, *supra* note 14, at 31. See also, Okhovat, *supra* note 18, at 11. See also, Teng, *supra* note 1, at 5.

⁵ Butler, *supra* note 14, at 31.

⁶ Ibid.

⁷ Okhovat, *supra* note 18, at 11.

⁸ Teng, *supra* note 1, at 10.

⁹ Id, at 3

¹⁰ Ibid

¹¹ Edward C. Luck, “Reforming the United Nations: Lessons from a History in Progress”, International Relations studies and the United Nations Occasional Papers No. 1, 2003, at 1.

¹² Cox, *supra* note 2, at 102

When the function of the Security Council is concerned, one could argue that despite some successes in its functions, its record is more distinguished by repeated failures to deal with various threats to peace and security, as a result of its inability to reach agreement among its members due mainly to the veto power enjoyed by the permanent members and their refusal to set aside their own interests.¹

The conflict of Syria and the deficiency of the Security Council to adopt effective measures to stop such conflict has highlighted the rationale behind the argument branding the Security Council as dysfunctional due primarily to the veto power. One could see the Syrian conflict as a good example of the veto at work, where the conflicting self-interests of the Security Council major powers have contributed to making what is seen by many in the world as a bloodshed that affect not only Syria but also many other countries; last many avoidable years.²

However, even though the most recent Syrian conflict has been the one that sparked a surge in public attention accompanied by a need for reform, the Security Council proved ineffective during other high profile international events such as the Russian-Ukrainian Conflict, the Second Gulf War (Second Iraq War), and the NATO Kosovo Campaign, to mention few.³

The absence of timely and decisive action by the Security Council has exacerbated the conflict of Syria. The strategic clash between Russia and China from one side and the US, UK, and France from the other side has contributed in the inability of the Security Council to end Syria's civil war, which has resulted so far in hundreds of thousands of cases of people killed and millions of misplaced.⁴ The use of veto has been the ultimate tool to enforce the different interests resulted from the conflicting strategies of the permanent members of the Security Council.⁵ The continuing tenacious position of Russia, and to some extent China, of using the veto power against any Security Council resolution that is not, in any way, in tune with its strategy, has prompted other UN member states and international observers to put the veto power of the five permanent members under increased scrutiny, and question the legitimacy and efficiency of the Security Council itself.⁶

This view was clear in the statement made by Liechtenstein's representative to the UN during the 68th Session of the General Assembly themed with the Post-2015 Millennium Development Goals Framework, when it was stated that:

*Our inability to respond to the crisis in Syria demonstrates a crucial weakness in the system: the use of the veto, or its threat, in a manner incompatible with the purposes of the United Nations. This can make the Security Council irrelevant at times when it is most urgently needed.*⁷

While the veto has been one of the main reasons of the Security Council's inaction in the Syrian conflict, it was also a reason for actions outside the legitimacy of the UN umbrella in other cases. The Second Gulf War, and the NATO Kosovo Campaign provide good example on how the stiffness in the decision-making process of the Security Council could push states to ignore the UN altogether and take unilateral actions when they feel that their fundamental interests are at stakes.⁸ Regardless to the rationale used to justify such actions, and the explicit or implicit international support for them, neutralizing the Security Council, which has the legitimate mandate, is considered as a very dangerous precedent that threatens not only the existence of the Security Council but also the UN as a whole.⁹

The current experience in Syria and previous ones in Iraq and Kosovo indicate that the veto has been a reason for inaction, as it is the case in Syria, or for actions outside the scope of the Security Council and UN mandate, as it was the case with Iraq and Kosovo. Both consequences, however, undermined the role the Security Council was established for, and the purpose the veto power was granted to serve; in creating consensus towards collective actions that aim for the maintenance of international peace and security. They conflict with the rationale of

¹ Butler, *supra* note 14, at 34.

² Richard Gowan & Nora Gordon, "Pathways to Security Council Reform", Center on International Cooperation, New York University, May 2014, at 4

³ *Ibid.*

⁴ Simon Adams, "Failure to Protect: Syria and the UN Security Council", Occasional Paper Series No. 5, March 2015, Global Center for the Responsibility to Protect, at 20.

⁵ *Ibid.*

⁶ *Ibid.*

⁷ *Ibid.*

⁸ Yonatan Lupu, "Rules, Gaps and Power: assessing Reform of the UN Charter", 24(5) Berkeley Journal of International Law, 2006, at 884-892

⁹ *Id.*, at 892.

abandoning states of unilateral actions, which were considered as the main element that waged World Wars, in favor of unanimity which was viewed as the new safeguard for the world peace.

This view was expressed by John Yoo, when he wrote, “[w]e appear to be returning to the era of Security Council paralysis, as demonstrated by the threatened vetoes of authorizations for the Kosovo intervention by Russia and the Iraq war by France and Russia.”¹ This statement was even before the disastrous incompetence of the Security Council in dealing with the current Syrian atrocity, which only serve in reinforcing the mounting impression of the adverse effect of the veto power in the efficiency of the Security Council’s role.

Presenting the Iraq War and the NATO Kosovo Campaign as examples, lead to the term of “pocket veto”, which refers to the threat of the use of veto, whether such threat was implicit or explicit.² The threat of veto has been enabling the permanent members of the Security Council to achieve specific outcomes in relation to issues of their interests, whether through manipulating the language of resolutions intended to go for the voting of the Security Council, or keeping certain issues off the Council’s agenda altogether.³ The threat of veto prompts states to question the use of presenting a draft resolution for a Security Council decision, when they know in advance that such draft is going to be blocked as a result of a threat of the use of veto exercised by one or more of the Security Council’s permanent members. Among many other occasions, the outlined cases of Iraq and Kosovo show clearly how effective the pocket veto could be in pressuring the Security Council to act in a certain way or not to act at all. Therefore, one could argue that the adverse effect of the veto over the efficiency of the Security Council in exercising its intended role is not only in the use of the veto power per se, but in its existence in the system in the first place.

4. The debate over the existence of the veto

The above discussion presents the subject of the veto and the threat of its use in the Security Council as a fertile ground for debate. Such debate takes place with increasing views that the veto power pressures other members of the Security Council to comply with the demands of members who have such power to a degree that the veto-bearing members are viewed to have shaped nearly all major international decisions that relate to the function of the Security Council since the establishment of the UN.⁴

The veto has been the center point of debates concerning reforms in the Security Council, which vary from expanding its membership for more veto-wielding states, restricting its use by the current five permanent members, to abolishing the veto privilege altogether. Hence, it is important to analyze the rationale used to justify the dissatisfaction over the current veto-related situation, and whether such rationale provides an adequate ground for change, taking into account the parallel rationale in support of the current system.

An argument could arise that the reason under which the veto was given as a privilege to the permanent members of the Security Council when the UN was established after World War II was to avoid the fate of the League of Nations.⁵ In this regard, the veto power was used as a tool to bind the major powers of the world at that time to the UN, and ensure that, by including such states in the Security Council permanently with the veto leverage, the role of the Council in maintaining international peace and security was going to be reinforced in order to avoid a repetition of events like World War II.⁶ Under this argument, abolishing the veto power could push the UN to end up with the fate of the League of Nations by prompting the major powers to abandon the Organization as a reaction to stripping off their most important leverage-ensuring power in the system.⁷

Such argument, however, ignores the state of international politics and the symbolic meaning the UN currently presents as a source of legitimacy for actions taken in the international level.⁸ This means that it is unlikely that any state would risk leaving the UN for what that would have of a negative impact on the state’s own

¹ John Yoo, *Using Force*, 71 *University of Chicago Law Review* 729 (2004), at 742.

² Okhovat, *supra* note 18, at 16

³ *Ibid.* See also, James Paul, “As Reform Negotiations Reach Fever Pitch, Germany and Japan Push for Permanent Seats”, New York, 7 March 1997.

⁴ Teng, *supra* note 1, at 7.

⁵ Okhovat, *supra* note 18, at 26.

⁶ Robert C. Hildebrand, *Dumbarton Oaks: The Origin of the United Nations and the Search for Postwar Security*, University of North Carolina Press, 1990, at 184.

⁷ Okhovat, *supra* note 18, at 26

⁸ Jakob Silas Lund, “Pros and Cons of security Council Reform”, Center for UN Reform Education, 19 January 2010, <http://www.centerforunreform.org/?q=node/414>, Viewed on 2/ 2/ 2017.

legitimacy.¹ Therefore, it is very questionable that the permanent five members would abandon the UN only because the veto power is abolished, making the notion of the UN collapse for this reason much less likely than it was when first established.²

Saying that, however, no one can completely rule out the possibility that one or more of the permanent members leaving the UN as a result of abolishing the veto power, especially the US which has the potential capacity more than others in terms of its considerable international weight that allows it to do such action.³ Even if the permanent members decide not to take the drastic measure of opting out of the UN as a reaction to stripping them from the veto leverage, they could simply not participate in any action authorized by the Security Council. The reality of the current international dynamics still requires an active participation by the most powerful states in order to achieve international objectives, especially the ones related to world peace and security. The lack of participation in such issues by the major states would not be in the interest of the international community and the effective implementation of international collective measures, which could be argued to reaffirm the veto power as an incentive for their continuing engagement and contribution in the world security issues.

An argument for the abolishment of the veto power might use the occasions under which the veto was the main factor for not adopting any action by the Security Council to deal with issues at hand to support their view that the abolishment of the veto would allow more measures to make it through the Security Council, enabling a better fulfillment of its mission, and greater credibility in the international system. This argument outlines the nature of the UN under which it exercises its role through “soft power” rather than “hard power” to support its position. Under the “soft power” approach of the UN, it gives or takes legitimacy to and from states’ actions by passing resolutions. This function is highly important in shaping the international system and regulating its interactions. The veto, however, weakens this function by blocking necessary UN resolutions intended to add legitimacy or take it away from actions that are seen as detrimental to the international system.

On the other hand, the abolishment of the veto power might allow more resolutions to pass, but such resolutions would not be necessarily implemented. In other words, discarding the veto does not necessarily mean witnessing more actions on the ground, which is what really counts. The objection of one or more of the great powers to measures adopted by the UN Security Council would most probably prompt such power/s to take unilateral actions to paralyze the implementation of such measures.⁴ The UN would more likely be reluctant to go on a head-on clash with such major power/s, leaving a damaging effect on its credibility. Therefore, one might argue that the failure to adopt actions by the Security Council due to the veto blockage is an accepted compromise compared to the detrimental impact of being powerless in enforcing and implementing such actions.

In the same context, it could be argued that the use of veto by the five major powers of the Security Council as a tool to prevent action declined compared to the Cold War Era, which witnessed an excessive use of the veto power to a degree that paralyzed the functions of the Security Council. Therefore, the veto has been used increasingly well, and its current negative impact on the international system has been minimal compared to the effect of a whopping 240 vetoes casted in the period between 1945 and 1990.⁵

Despite the potentiality of the argument outlining the possibility of having a veto-stripped major power obstructing the implementation of the Security Council’s actions, it ignores the fact that those states are also aware of the adverse political consequences such obstruction might have on their international image.⁶ As a result of lacking the enforceability of the law in its traditional sense recognized by local laws, the international system relies to a degree on the moral pressure exercised by the international community on states going against the current and defying international consensus.⁷

This has been one of the factors taken seriously into consideration by the major powers when vetoing a popular resolution even though they were exercising a legitimate authorized right.⁸ This should leave them even more reluctant in standing unrightfully in the way of implementing such popular action authorized by the Security Council in the absence of a veto power to avoid international condemnation or isolation, which is very important to the international status of states, especially the leading ones as they are generally viewed to have more responsibility in maintaining international stability.

¹ Ibid.

² Okhovat, *supra* note 18, at 26.

³ Ibid.

⁴ Hildebrand, *supra* note 42, at 184.

⁵ Butler, *supra* note 14, at 31. See also, Okhovat, *supra* note 18, at 11.

⁶ Okhovat, *supra* note, at 13.

⁷ Ibid.

⁸ Id, 15.

In relation to the argument that the major powers have been more reasonable in exercising the veto compared to the paralyzing extensive use during the Cold War era, which enabled the Security Council to practice its role more efficiently; such argument is superficial. To argue that the sharp decrease in the use of the veto vote compared to its use during the Cold War period reflects more responsible attitude by the permanent members in their use of the veto power that enhances the efficiency of the security Council diminishes the role of the “Pocket Veto” in the decision-making process of the Council.

The Pocket Veto, or the threat implicitly or explicitly of using the veto, has proved to achieve the same outcome as the actual use of the power.¹ It allows the veto-threatening state to minimize the public attention and criticism normally associated with the veto vote, especially in popular resolutions, and force the issue subject of the resolution off the Council’s agenda at the same time, or at least tame it to what would be considered as acceptable for the veto-threatening state. Therefore, despite the decline in the use of the actual veto, there has been an increasing trend in the use of what could be referred to as the “masked veto” or threat of the use of the veto.

To illustrate the role of the “pocket veto” in achieving desired outcomes for the permanent states in line with the outcomes achieved from the actual veto use, it is relevant to refer to France’s position during the Second Gulf War, where its constant threats of using its veto power to block any resolution for military intervention by the Security Council succeeded in preventing the US and the UK efforts to achieve such authorization from the Council.² Russia and china, which are considered as the most frequent “pocket Veto” users among the permanent members, have also managed to put aside resolutions condemning the bloody crackdown of Syrian military forces on the pro-democracy protesters at the beginning of the Syrian conflict,³ before Russia decided to actually veto any resolution against its Syrian government ally in later stages, which has been one of the main factors that have been dragging the bloody conflict to a disastrous long period.

Furthermore, it is understood in the legal context that the existence of a loophole in a legal text warrants its amendment to ensure the efficiency of such text in serving the purpose it was enacted for regardless to the idea of whether this loophole has been actually utilized or not. The potential adverse effect of using such loophole is a sufficient ground for change. This analogical reasoning applies on the veto power. The reference point in analyzing such power cannot only be in the frequency of its use, but also in its merits and potential effect of its existence in the first place.

The veto-supporting view believes that vetoes and their threats are still not considered as a dead-end for UN actions, as any veto-related blockage could be bypassed through measures to be adopted in such cases, which diminishes the need for the elimination of the veto, as its impact is minimized in the presence of such measures.⁴ This argument is based on the ability to resort to UN Resolution 377, which is also known as “Uniting for Peace” Resolution. The heart of the Resolution is contained in Part A, which states that

*The General Assembly...resolves that if the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, breach of the peace or act of aggression, the General Assembly shall consider the matter immediately with a view to making appropriate recommendations to Members for collective measures, including in the case of a breach of the peace or act of aggression the use of armed force when necessary, to maintain or restore international peace and security.*⁵

Based on this, the veto and the threat of its use, which has the potential to paralyze the ability of the Security Council in taking any action could be dealt with by utilizing the “Uniting for Peace” Resolution for the purpose of fulfilling the duty of the Security Council in the maintenance of international peace and security when it fails to perform such duty.⁶

¹ Lupu, *supra* note 35, at 884-892. See also, Okhovat, *supra* note 18, at 16-20.

² Tarik Kafala, “The veto and How to Use It”, BBC News Website, created on 17September 2003, http://news.bbc.co.uk/2/hi/middle_east/2828985.stm, Viewed on 2/2/2017.

³ Okhovat, *supra* note 18, at 18.

⁴ Id, at 26.

⁵ Resolution adopted by the General Assembly 377 (V). Uniting for Peace, A/RES/ 5/ 377, 1950

⁶ Christina Binder, “Uniting for Peace Resolution (1950), Max Planck Encyclopedia of Public International Law, Oxford

Even though such resolution has been rarely used, it played an integral role in making progress in instances of security Council's halts, such as the high-profile case of the Suez Canal crisis, where a resolution for the withdrawal of France and Britain from the Suez Canal was vetoed by them, which prompted the call for an emergency "Uniting for Peace" session of the General Assembly that passed a resolution for the withdrawal after achieving the simple majority required vote, resulting in the actual withdrawal shortly after.¹ Therefore, the existence of such measure disqualifies the need for the abolishment of veto, as it provides a maneuver to counter the use of veto or the threat of it, especially where popular resolutions that have great potential of gaining support of the General Assembly are involved.

However, the argument viewing the "uniting for Peace" Resolution as an effective remedy to deal with cases of Security Council inaction due to the veto vote downplays the controversial status of such resolution regarding its practicality and even legality. The Resolution indicates the mandate of the General Assembly to interfere in matters relating to international peace and security that in the event under which the Security Council cannot exercise its role in maintaining international peace and security in a specific matter, this matter can be taken up by the General Assembly.² The Resolution requires an expressed inability of the Security Council to exercise its duty in the maintenance of international peace and security as a result of lack of unanimity of the permanent members due to the veto vote.³ This deals almost exclusively with the cases where actual veto is exercised and led to the paralysis of the Council. It fails to acknowledge the impact of the threat of the use of veto, which has proved to have a considerable effect on the behavior of the security Council, through the softening of the resolutions' language to a compromise acceptable to the veto-threatening state/s, but at the same time lacking behind in serving the original intended purpose of such resolutions.

Furthermore, the legitimacy and legality of the Resolution is still the center of debate. The International Court of Justice explicitly confirmed substantive as well as procedural aspects of the UN General Assembly Resolution 377 in its Israeli Wall Advisory Opinion, stating that Article 24 of the UN Charter conferred the primary but not the exclusive competence on the Security Council for the maintenance of international peace and security, and held that, inter alia, under Article 14 of the UN Charter, the General Assembly had the power to 'recommend measures for the peaceful adjustment' of various situations.⁴ However, there is still opposition to the legitimacy of the Resolution in providing the General Assembly the power to intervene in the outlined circumstances.⁵ Such opposition insist that the Security Council is the body in the UN with an exclusive competence to authorize collective action to counter threat to international peace and security.⁶ Despite the advisory opinion of the International Court of Justice, there are considerable views stressing that Article 24 of the UN Charter gives the Security Council the sole competence to act for the maintenance of international peace and security.⁷

Such division over the legitimacy of the Resolution resulted in making states reluctant in its use, especially when a military intervention is involved.⁸ The idea of setting the Security Council aside is still considered by many as illegitimate, and that was reflected in the rare use of the resolution despite the many occasions in which the Security Council failed to exercise its role as a result of the veto, which should have warranted the utilization of the Resolution.⁹

In addition, resolutions passed by the General Assembly are merely unbinding recommendations, which means that other than the moral weight it has as an action agreed on by the majority of the General Assembly's members which could be effective in some instances, such resolutions fall behind in terms of enforceability when compared with Security Council's resolutions.¹⁰

Public International Law, Created on June 2013, <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e568>, viewed 2/2/2017.

¹ Willian R. Patterson, "Historical Security Council: Suez Canal", Old Dominion University Model United Nations Conference Issue Brief, 2009.

² Resolution adopted by the General Assembly 377 (V). Uniting for Peace, A/RES/ 5/ 377, 1950

³ Ibid

⁴ Legal Consequences of the Construction of a Wall on the Occupied Palestinian Territory (Advisory Opinion) {2004}, International Court of justice Rep 136.

⁵ Binder, *supra* note 58, at 6-9.

⁶ Ibid.

⁷ Ibid.

⁸ Thomas Weiss, "Overcoming security Council Reform Impasse: The implausible versus the Plausible", Working Paper No. 14, Friedrich Ebert Stiftung, January 2005, at 31.

⁹ Ibid.

¹⁰ Okhovat, *supra* note 18, at 27.

Therefore, although the “Uniting for Peace” Resolution has been hailed by some as a successful maneuver from the blockage in the Security Council’s decision-making process, the issues of its legitimacy, enforceability, and the rare utilization by states, leave doubts over its capability of being considered as a viable alternative to the role of the Security Council when such role is affected by the veto power. Hence, it cannot be much relied on in the rationale the downplays the need for reform in the Security Council decision-making process.

5. Reforming the veto

The issue of reforming the Security Council is one of the unending debates that has been discussed over the years to an extent that some describe it as old as the Council itself. The fundamental flows of the Council have prompted the majority of the UN Member States to call for such reform. The relationship between the Security Council and the General Assembly, which provides for a Council consisting of fifteen Members having a mandate on much of the functions of the General Assembly, which is the representative body of all UN Members, is one of the issues of interest in this regard.¹ Other issues of interest in the reform debate include the transparency of the working procedures of the council, its size, the geographical representation of states in the Council, and its decision-making process.²

When reforms on the decision-making process is concerned, the veto, the focus of this paper, presents itself as the most problematic issue worthy of reform. Proposals regarding the veto reform range from its extension to new permanent members, to its complete abolition, as well as proposals for restricting its usage.³ Reform proposals of the veto have been the most controversial and the least supported among other categories of Security Council reform.⁴ Discussions over the veto power seem to miss the substance of the issue represented in dealing with a problematic privilege that has been deemed for long responsible for the dysfunction of the Security Council. Instead, reform efforts could be described mainly as a race for grabbing permanent seats in the Security Council.⁵ Questions of who should be added as permanent members or which part of the world would get more seats were the main attention-receiving issues in the permanent members/ veto related reform subject.⁶

Subjecting the substance of the veto to reform is doubtful, as it is questionable if a reform that touches the heart of the issue will ever gain momentum, especially by the major powers, which are the ones benefiting from the current situation. However, even if the actual reform on the substance of the veto is still a distant goal, developing norms involving the limitation of the circumstances under which the veto can be used instead of actual legally binding limits is very much achievable.⁷

The idea of a restraint on the use of the veto in mass atrocity situations, for example, provides a common ground that both sides of the veto debate should agree on. This idea was reflected clearly in the position of Liechtenstein in the 68th Session of the General Assembly themed with the Post-2015 Millennium Development Goals Framework, when it emphasized that

Liechtenstein firmly believes in the Responsibility to Protect populations from atrocity crimes. Clearly we have so much work to do to put this norm into practice...All five Permanent Members should be able to give the world one public commitment: that they will not use their veto to block action aimed at ending or preventing atrocity crimes. This should be crucial to enhance the Council’s effectiveness – and its credibility⁸

Therefore, with or without reform of the Security Council, atrocities such as, genocide, crimes against humanity, war crimes, and ethnic cleansing should be sidelined from the scope of the veto vote through an explicit or

¹ Okhovat, *supra* note 18, at 31.

² *Ibid.*

³ *Id.*, at 36.

⁴ *Ibid.*

⁵ Butler, *supra* note 14, at 37.

⁶ *Ibid.* Germany, Japan, India, and Brazil formed a group called the G4 in order to lobby collectively and support each other’s bid to get permanent membership in the Security Council. This bid was accompanied by another bid of rival powers forming an opposition group called “Uniting for Consensus” consisting of Italy, Pakistan, South Korea, Mexico, Argentina, Spain, Turkey, Canada, and Malta, which were prompted by their regional political rivalries with the G4 countries to advocate the addition of non-permanent seats.

⁷ *Id.*, at 34. See also, Okhovat, *supra* note 18, at 37.

⁸ Adams, *supra* note 31, at 20.

implicit commitment by the permanent powers. Such commitment would not resolve all veto-related issues in the Security Council, as the blockage in the decision-making process would be more likely to continue in many cases in the future, which would continue to detriment the function of the Council, but such restraint in the use of veto in cases of atrocities, for example, would at least revive a role of the Security Council that has been considered by many to have been marginalized long time ago, the Responsibility to Protect.

6. Concluding remarks

No matter to what side of the debate the person is in relation to the veto, or who makes a better sense in such debate between those who see it as a necessity that ensures an effective implementation to resolutions of the Security Council and those who view it as an outdated and unwanted leverage that proved in many instances its misuse and paralyzing effect; and regardless to the willingness and maturity of the current international political atmosphere for its reform, the reality of the current international situation demands a pause from all concerned parties in the international society.

Many international situations headed by the ongoing atrocity in Syria present good examples as to the dysfunction that exists in the Security Council as the prime guarantor of international peace and security. Therefore, there have been increasing views that it is about time that the Security Council exercises such role, with or without reforms. The Security Council should live up to its Responsibility to Protect, which is in line with the declared intended purpose of guarding international peace and security. Developing a norm or a commitment on the restraint of the use of veto could contribute significantly in enhancing the role of the Council and better serve its Responsibility. Even though such restraint in the use of veto in certain cases would not be imposed by legally binding rules regulated in an amended Charter as a result to the sensitivity and complexness of an actual reform in this issue, practicing such norm would make a huge change in many current and future situations that affect primarily the weak and vulnerable.

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