

# REFORM OF VETO POWER IN SECURITY COUNCIL

*Nimmi\**

## I. INTRODUCTION

The United Nations Organization came into existence on October 24, 1945 as a result of realization of the need for an international institution to be in charge of collective security of mankind. This was brought about by the bitter experiences of two World Wars which showed clearly that if war is allowed to be veritable instrument of policy in interstate relations, it was only a question of time before mankind and civilization would go into oblivion.<sup>1</sup> So Preamble of the charter of United Nations provides that:

*“We the Peoples of the United Nations determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind do hereby establish an International Organization to be known as the United Nations.”*<sup>2</sup>

The organ that is so central to the realization of the United Nations objective of collective security of the entire humanity is Security Council.<sup>3</sup> It is the most powerful organ of United Nations. The charter has given it primary responsibility for the maintenance of global peace and security and its decisions are binding for all members States.<sup>4</sup>

Ever since the creation of the United Nations, the reform of the United Nations is high on International political agenda. One of the most controversial issues is reform of the Security Council. It includes expansion of membership, working methods and veto power of the permanent members of the Security Council. This paper is mainly concerned with the topic of reform of veto power of Security Council.

The United Nations Security Council “Power of Veto” refers to the veto power wielded solely by five permanent members of United Nations Security Council (China, France, Russia, United Kingdom and United States) enabling them to prevent the adoption of any substantive draft Council resolution, regardless of the level of international support for the draft. The veto does not apply to procedural votes, which is significant in that the Security Council’s permanent membership can vote against ‘procedural’ draft resolution, without necessarily blocking its adoption by the Council.<sup>5</sup>

The veto is exercised when any permanent member casts a ‘negative’ vote on a ‘substantive’ draft resolution. Abstention or absence from the vote by a permanent member does not prevent draft resolution from being adopted.<sup>6</sup>

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\* Incharge, Department of Law, Punjabi University, Regional Centre, Bathinda.

<sup>1</sup>L.O. Taiwa, “The Imperative of Reforming the United Nations Security Council in the Post Cost War Era” *Indian Journal of International Law* 237 (2007).

<sup>2</sup> Preamble of The United Nations Charter, 1945.

<sup>3</sup> The United Nations Charter, art. 23.

<sup>4</sup>*Id.*, arts. 24(1) and 25.

<sup>5</sup>*Id.*, art. 27(2).

<sup>6</sup>*Available at:* <https://partners.academic.ru/dic.nsf/enwiki/917128> (last visited on July 15, 2018).

## II. HISTORY OF VETO POWER

The United Nation's veto system was formalized at the Yalta Conference February 04-11, 1945. It was established to prohibit the United Nations from taking any future action directly against its principle founding member, in large part of legacy of the expulsion of the Soviet Union from the League of Nations in 1939, at the outbreak of World War –II. It had already been decided at the United Nation Founding Conference in 1944, the Britain, China, the Soviet Union, the United States and “In due course” France should be the permanent members of any newly formed Council.<sup>7</sup>

France had been defeated and occupied by Germany, but its role as a permanent member of the League of Nations, its status as a colonial power and the activities of the Free French Forces on the allied side allowed it a place at the table with the other four.<sup>8</sup>

During the negotiations at the San Francisco Conference (April 25-June 26, 1945), numerous small and medium sized States protested against the privileged status of the five permanent members and unacceptable infringement on the sovereign equality of States.<sup>9</sup> Apart from this, one of the reasons for granting the veto power i.e. being great power is no longer valid as the concept ‘great power’ is not static. It is a shifting phenomenon.<sup>10</sup>

Nevertheless, the countries in permanent membership made it clear that the complete and unconditional acceptance of the permanent membership and veto power was a condition sine qua non for their participation in the creation of the new world organization.<sup>11</sup>

The Allied powers attempted to reassure other countries by pointing out that despite the veto right, the operation of the Council would be less subject to obstruction than was the case under the League of Nations, where unanimity among all members were required. Furthermore, they accepted that their privileged status entailed a primary responsibility with regard to the maintenance of International peace and security and argued that it was not assumed that “the permanent members, any more than non-permanent members, would use their ‘veto’ power willfully to obstruct the operation of the Council.<sup>12</sup> In the end, the founding members were forced to accept the codification of the proposed balance of power through the insertion of Article 27, United Nations Charter.

## III. DEFINITION OF VETO

A veto, Latin for “I Forbid”, is the power of an officer of the States to stop unilaterally a piece of legislation. In practice, the veto can be absolute (as in the U.N. Security Council, whose members can block any resolution) or limited (as in the legislative process of the United States, where a two-third votes in both the Houses and Senate may override presidential veto of legislation).<sup>13</sup>

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<sup>7</sup>*Ibid.*

<sup>8</sup>*Ibid.*

<sup>9</sup> Jan Wouters and Tom Ruys, *Security Council Reform: A New Veto For A New Century* 5 (2005).

<sup>10</sup>*Supra* note 1 at 243.

<sup>11</sup>*Supra* note 8 at 7.

<sup>12</sup> D.M.Malone (ed.), *The UN Security Council: From The Cold War to 21<sup>st</sup> Century* 352 (Lynne Rienner Publishers, Colorado, USA, 2004).

<sup>13</sup>*Available at:* <https://partners.academic.ru/dic.nsf/enwiki/45879> (last visited on August 03, 2018).

The concept of the veto originated in the 6<sup>th</sup> century BC with Roman consuls and tribunes. Either of the two consuls holding office in a given year could block a military or civil decision by the other; any tribune has the power to unilaterally block legislation passed by the Roman Senate. It is known as the ‘Intercession’.<sup>14</sup>

#### ***A. Article 27***

Article 27 of the United Nations Charter states:-

- 1) *Each member of the Security Council shall have one vote.*
- 2) *Decisions of the Security Council procedural matters shall be made by an affirmative vote of nine members.*
- 3) *Decisions of the Security Council on all other matter shall be made by an affirmative vote of nine members including concurring votes of the permanent members, provided that in decisions under chapter VI, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting.*

Although the ‘Power of Veto’ is not explicitly mentioned in the United Nations Charter, the fact that ‘substantive’ decisions by the Security Council requires “the concurring votes of permanent members”, means that any of those permanent can prevent the adoption, by the Council, of any draft resolution on ‘substantive’ matters.

#### **IV. USES AND ABUSES OF VETO POWER**

The first veto was cast in February 1946 by the Union of Soviet Socialist Republics (USSR). According to the Global Policy Forum (2008) some 261 vetoes have been cast in the period between 1946 and 2007. Almost half of the veto (123) in the history of the Security Council was cast by the Soviet Union, with the vast majority of those being before 1965. With 82 vetoes, the United States is entitled to silver medal. Since, using the first veto in 1970, the United States has been the most frequent user of the veto. Next in line are United Kingdom, France and China with 32, 18 and 6 respectively.<sup>15</sup>

Between the fall of the Berlin Wall in 1989 and the end of 2004, vetoes were issued on 19 occasions. United States used veto on 13 occasions, Russia on 4 occasions and other permanent members used their vetoes only two times.<sup>16</sup> Most recently, the veto was employed in July 2015, by Russia. On July 08, Russia vetoed a draft resolution on the 20th anniversary of genocide in Srebrenica, Bosnia and Herzegovina [S/2-15/508], and on July 29, it vetoed a draft resolution [**S/2015/562**] on the creation of an ad hoc tribunal for prosecuting those responsible for the downing of Malaysian Airlines flight MH17.<sup>17</sup>

#### ***A. Use of Veto and admission of new members***

According to Article 4(2) of the United Nations Charter, the Admission of any such State to membership in the United Nations will be effected by a decision of the General Assembly upon the recommendation of the Security Council.

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<sup>14</sup>*Ibid.*

<sup>15</sup> “Changing Patterns in the use of the Veto in Security Council”, Global Policy Forum (2008) *available at:* <http://www.globalpolicy.org/security/data/vstoab.htm> (last visited on July 15, 2018).

<sup>16</sup>*Ibid.*

<sup>17</sup> The Veto: UN Security Council Working Methods, *available at:* [www.securitycouncilreport.org/un-security-council-working-methods/the-veto.php](http://www.securitycouncilreport.org/un-security-council-working-methods/the-veto.php) (last visited September 28, 2018).

As early as February 1946, admission of new members to the United Nations has been frequently barred by the permanent members by casting a negative vote. Between 1946 and 1955, a small number of new members were admitted.<sup>18</sup> But in 1955, the permanent members reached a ‘package deal on the joint admission of sixteen new members’.

Soviet Union used its veto approximately 51 times to block the application of Kuwait, Vietnam, North Korea, South Korea, Japan, Spain, Libya, Nepal, Finland, Austria, Italy, Portugal, Ireland and Jordan.<sup>19</sup> After 1971, United States has become by far the most frequent user of the veto, mainly on resolution criticizing Israel, since 2002 the Negroponte Doctrine (on July 26, 2002 John Negroponte the United States ambassador to the United Nation, stated that the United States will oppose Security Council resolutions concerning the Israel – Palestinian conflict that condemn Israel without also condemning terrorist groups) has been applied for the use of a veto on resolution relating to ongoing Israel-Palestinian conflict. This has been a constant cause of friction between the General Assembly and Security Council as seen with the 2003 Iraqi war which was not endorsed by the United Nations.

United States also blocked the application of Vietnam six consecutive times. China used it twice to reject the membership of Mongolia in 1955 and to reject the Bangladesh application in 1972. It is very clear that the exercise of the veto has frequently worsened rivalries, rather than promoting unity. Therefore, in 1948 and 1949 both the US Senate and the General Assembly requested that the permanent members would refrain from the veto with regard to recommendation under Article 4(2) of the Charter. In the light of steady increase in United Nations membership the concept of the use of the veto against application for membership no longer undermines the working of the United Nations.<sup>20</sup>

### ***B. Article 27(3) and Abuse of veto***

According to Article 27(3), the United Nations Security Council members are obliged to abstain from voting in decisions regarding the peaceful settlement of disputes whenever they are party to the dispute under consideration.

Since the beginning of the 1960s, it has become increasingly rare for Council members to invoke abstention pursuant to Article 27(3), it is especially problematic when the party to the dispute in question belongs to the Permanent membership. The Security Council records show that then five permanent members have used their veto in such contested situations.<sup>21</sup>

### ***C. List of cases which involved the use of Veto***

- 1) Soviet Union vetoed a resolution regarding-
  - A. Berlin question, 25 October, 1948.<sup>22</sup>
  - B. Concerning the Soviet invasion of Czechoslovakia on 21<sup>st</sup> March, 1973.<sup>23</sup>
  - C. Concerning the shooting down by Soviet Forces of a South Korean Commercial Airlines on 12<sup>th</sup> September, 1983.<sup>24</sup>

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<sup>18</sup> J. Kaufman, *United Nations Decision Making* 50 (Sijthoff & Noordhoff Publishers, Rockville, 1980).

<sup>19</sup> *Supra* note 8 at 10.

<sup>20</sup> *Ibid.*

<sup>21</sup> Y. Z. Blum, *Eroding the United Nations Charter* 289 (Martinus Nijhoff Publishers, Dordrecht, 1993).

<sup>22</sup> United Nations Year Book (UNYB) 286 (1948-49).

<sup>23</sup> *Id.* at 302 (1968).

- 2) United States vetoed a resolution concerning-
  - A. Status of Panama Canal on 21<sup>st</sup> March, 1973.<sup>25</sup>
  - B. Condemning US air attacks against Libya on 21<sup>st</sup> April, 1986.<sup>26</sup>
  - C. Censuring US military activities in Panama on 22 December, 1989.<sup>27</sup>
  - D. Condemning the violation by US forces of the inviolability of the residence of the Nicaraguan ambassador in Panama city on 17 January, 1990.<sup>28</sup>
  
- 3) France vetoed a resolution concerning the dispute between France and the Comoros about the Island of Mayotte on 6 February, 1976.<sup>29</sup>

## V. POCKET VETO

Countries increasingly prefer to use the “pocket veto” (the threat the use of veto) instead of casting a veto. They use that threat either implicitly or explicitly, either in the private meetings of the Permanent Five or in the Larger Council. Although France has not cast any vetoes after the end of the Cold War, it has threatened to use that power on several occasions. The most prominent example was the case of 2003 Iraq War when France’s threats to veto any resolution that would automatically lead to a war successfully prevented the United States, the United Kingdom and Spain to prevent a draft resolution to the Council seeking to authorize military action(although France could not eventually prevent them from attacking Iraq). France also used the threat of veto very recently. A non-violent protest in West Sahara was crushed by Moroccan forces in November 2010. France intervened to support its ally, Morocco. By threatening to use its veto, France could prevent the UNSC members from presenting a resolution to the Council to look into the crimes of the Moroccan military.

A careful analysis of the Security Council records shows that Russia and China are the two countries that have been relying on “pocket veto” more than other permanent members. Sri Lanka is an important ally of China and Russia and it is believed in the last phase of Sri Lankan civil war in 2009 many Sri Lankan Tamils were killed by the Sri Lankan army and the forces of Liberation Tigers of Tamil Eelam(LTTE).UNSC did not take any action.<sup>30</sup>

During the course of the conflicts and its aftermath, Russia and China opposed the discussion of alleged violations in Sri Lanka. Moreover, a UN Panel of Experts was established and on April 25, 2011 released a report on accountability with respect to the final stages of Sri Lankan conflict. Concluding that both the Sri Lankan army and the LTTE forces committed grave human rights abuses, that panel recommended establishing an international independent investigation into abuses during the armed conflict.

## VI. VETO REFORM PROPOSALS

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<sup>24</sup>*Id.* at 219 (1983).

<sup>25</sup>*Id.* at 168 (1973).

<sup>26</sup>*Id.* at 247-257 (1986).

<sup>27</sup>*Id.* at 173 (1989).

<sup>28</sup>*Id.* at 187 (1990).

<sup>29</sup>*Id.* at 180 (1976).

<sup>30</sup> Sahar Okhovat, “The United Nations Security Council: Its Veto Power and Its Reform”, *available at*: <http://www.miat.org.au/Articles/UNSC%20FULL%20REPORT%20Sept%202011.pdf> (last visited on September 11, 2018).

Ever since the creation of the United Nations, the composition, working method, voting procedure of the Security Council have provoked strong criticism from vast majority of States member. As regard the existing veto power of the five permanent members, four proposals can be advanced. First of these proposal is to abolish the veto power. This means that the permanent members may stay as permanent members but would be divested of their veto powers.<sup>31</sup> Such a reform is being promoted by the African Union, the Arab League, and the Group of Non Aligned Nations and also by numerous Western countries. Apart from the permanent members hardly any State explicitly supports the existing veto power (Poland, Australia and Singapore figuring among rare exceptions).<sup>32</sup> The supporter to abolish the veto power considered that the exercise of veto power was introduced, it was hoped that the powers that have played that have played an important role in bringing the Second World War to an end would employ this power judiciously but unfortunately it did not happen. On the contrary, the National interest of Individual Countries began to guide the application of veto. Hence the world experienced the gross misuse of the veto power. To avoid the somewhat continuous misuse, perhaps the best way out is to divest all the five permanent members of their veto power.<sup>33</sup>

The second proposal revolves around more veto power. This proposal includes that more members to be given veto power especially from the developing countries in which regional representations may also be considered. Two or three among the non-permanent members are allowed to enjoy veto power during their tenure of Security Council. The weaker aspects of this proposal are that it would increase the chances of obstructions rather than facilitating the passage of resolutions.<sup>34</sup>

It also concludes the extension of the veto to possible additional permanent members. In this regard, Germany, Japan, India and Brazil have argued that there can be discrimination between first rate and second rate permanent members. Thus in their view, New permanent members should have same responsibilities and obligations as the current permanent members. So veto should be awarded to possible newcomers.<sup>35</sup>

China, Russia, the United Kingdom and the United States, permanent members of the Security Council, all signaled unwillingness to give up, change or reform the current veto structure. France also a permanent member of the Council underlined that they believed in so called intermediate solution new permanent members without veto admitted to Council, now with the option of evaluating their status at a later review conference.<sup>36</sup>

Some States Germany, Norway including Italy as well as other affiliated with the uniting for consensus faction, which opposes adding new permanent member to the Council, argued against giving any new members the veto. Italy's ambassador Giulio Terzi said that even when not used, the veto can alter or block the discussion of urgent issues. "Again and

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<sup>31</sup> P.M. Kamath, *Reforming and Restructuring the United Nations 70* (Anamika Publishers, New Delhi, 2007).

<sup>32</sup> B.Fassbender, "Pressure for Security Council Reform", in D.M. Malone (ed.), *The UN Security Council From the Cold War to the 21<sup>st</sup> Century* 352 (Lynne Rienner Publishers, Colorado, USA, 2004).

<sup>33</sup> *Supra* note 32 at 71.

<sup>34</sup> *Ibid.*

<sup>35</sup> "Draft Resolution on Security Council Reform, 13 May 2005", available at: <http://www.globalpolicy.org> (last visited on August 06, 2018).

<sup>36</sup> "Second Meeting on Security Council Reform Addresses the Veto, 18 March 2009", available at: [www.centerforunreform.org/node/394](http://www.centerforunreform.org/node/394) (last visited on August 10, 2018).

Again the hidden veto has prevented substantial discussion of questions that are crucial to international peace and security,” he said.<sup>37</sup>

The proposal suggests the concept of rotating veto power. This implies that veto power is given to various deserving powers for a period of four years and after the expiry of their tenure the veto is given to another set of States. The idea of rotating veto powers means that only two or three States may be given veto powers (two from permanent members and one from non-permanent members) and after every two or three years the United Nations Security Council should elect from its members new veto wielding States. Those who have already done such privileged term will have to wait for five to ten years before their name can again be considered. In this way, the principle of geographical representation can be applied.<sup>38</sup>

The fourth proposal is combination of 4+3 permanent members plus 15 non-permanent members. This is a combination of various proposal already advanced in one form or the other. This First Four are US, Russia, China and one from European Union (could be either France or Germany or UK). The next three are one each from Asia, Africa and South America.<sup>39</sup>

But these reform proposals stand little chance of being incorporated into the Charter, because the permanent members, most notably the United States and Russia, have repeated time and again said that they will not accept any limitation to the veto<sup>40</sup>. Consequently, several States have adopted a more pragmatic approach, calling for restrictions that are self-imposed and do not require Charter amendment. Even the Secretary-General in “Large Freedom Report” recommended that the Member States that already have veto right should limit their use in accordance with the principle of organised self-restraint.<sup>41</sup> Again, the Groups of Ten (Austria, Australia, Belgium, Bulgaria, the Czech Republic, Estonia, Hungary, Ireland, Portugal and Slovenia) argued the permanent members to only use their veto with regard to the decisions listed as procedural and General Assembly Resolution 267(111). Moreover the Group of Ten advocated that the veto should be excluded with regard to admission or expulsion of Member States, or appointment of United Nations Secretary-General.<sup>42</sup>

The Report of the High Level Panel, recognizing that there is no practical way of changing the existing members veto power, proposed the introduction of a system of ‘Indicative Voting’ whereby the members of the Security Council could call for a public indication of positions on a proposal action. Thus, the actual vote would be preceded by a non-binding voting round, in order to make the Council’s decision making procedure less secretive and to increase the accountability of the veto use. Yet, even the mild modifications of the Council’s procedures may not prove workable for some of five permanent members.<sup>43</sup>

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<sup>37</sup>*Ibid.*

<sup>38</sup>*Supra* note 32 at 72.

<sup>39</sup>*Ibid.*

<sup>40</sup>*Supra* note 32 at 352.

<sup>41</sup> Kofi Annan, *In Larger Freedom: towards development, security and human rights for all*, UN Doc.A/59/2005 (March 21, 2005).

<sup>42</sup>*Supra* note 8 at 28.

<sup>43</sup> Report of The High-Level Panel on Threats, Challenges And Change on A More Secure World: Our Shared Responsibility 256-257 (March 29, 2009), *available at*: <https://peacekeeping.un.org/en/report-of-high-level-panel-threats-challenges-and-change-more-secure-world-our-shared-responsibility> (last visited on September 07, 2018).

The reforms are heavily dependent upon the unanimity of view of permanent members as any one of them could easily veto even the reform package. Perhaps that's why the Pakistani Foreign Minister remarks on the television that 'permanent members cannot be replaced even they cease to deserve the privilege. While they do not support the reforms, their attitudes towards reform are generally passive, although China and France are relatively more positive. In addition five permanent countries would not accept the demand for veto power by aspirant countries.<sup>44</sup>

The idea of responsibility no to veto in case of genocide and mass atrocities appears to have originated from permanent members-French Foreign Minister Huber Verdine. When in 2004 High Level Panel published its report, referred to the institution of the veto as having an 'anachronistic' character and recommended that any proposal for Council reform refrain from expanding the veto power.<sup>45</sup> The High Level Panel called for the permanent members, in their individual capacities to pledge themselves to refrain from use of the veto in cases if genocide and large scale human rights abuses.

After the release of the Genocide Prevention Task Force, United Nations Secretary General released his January 2009 Report, implementing the responsibility to protect, which called for reform of the way the permanent five members wielded their veto power. In sum, the permanent five's commitment to the responsibility to protect must be questioned; the failure to adopt a concrete proposal to reform their approach to the veto in cases of genocide and mass atrocities demonstrate that there is still a lot of work to be done here.<sup>46</sup>

In 2013, France hinted at this possibility with Foreign Minister Laurent Fabius making informal reference to a possible "code of conduct" to rein in the veto under such dire circumstances. In an op-ed published in *The New York Times* on October 04, 2013, Fabius proposed that "[i]f the Security Council were required to make a decision with regard to a mass crime, the permanent members would agree to suspend their right to veto...[except]...where the[ir] vital national interests...were at stake."<sup>47</sup>

France and Mexico took this initiative one step further in 2014. On September 25, on the margins of the 69th session of the General Assembly, the two countries co-chaired a ministerial-level event on this issue. The meeting was presided over by Fabius, and Mexican Secretary for Foreign Affairs José Antonio Meade Kuribreña. The High Commissioner for Human Rights, Zeid Ra'ad Al Hussein made a statement in support of the French initiative. In a summary of the event, the co-chairs called on the P5 to "voluntarily and collectively pledge not to use the veto in case of genocide, crimes against humanity and war crimes on a large scale." According to the proposed framework, the UN Secretary-General would have the authority to make a determination on whether the situation amounts to one of those crimes, if necessary at the request of the UN High Commissioner for Human Rights or of 50 UN member states.<sup>48</sup>

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<sup>44</sup>*Supra* note 32 at 72.

<sup>45</sup>*Available at*: [http://www.globalsolutions.org/files/genera/issues/pdfs/CGS\\_RN2V-7-14-2010.pdf](http://www.globalsolutions.org/files/genera/issues/pdfs/CGS_RN2V-7-14-2010.pdf) (last visited on September 15, 2018).

<sup>46</sup>*Ibid.*

<sup>47</sup>*Supra* note 17.

<sup>48</sup>*Ibid.*

ACT has launched a code of conduct regarding Security Council action against genocide, crimes against humanity or war crimes. As of October 23, 2015, this had been supported by 104 UN member states, including France and the UK. The other permanent Council members—China, Russia and the US—have not supported the ACT initiative, nor have they backed a French/Mexican declaration on veto restraint in cases of mass atrocity.<sup>49</sup>

## VII. CONCLUSION

Ever since the birth of United Nations, veto power of the Security Council has provoked strong criticism from the vast majority of United Nations Members States. These States want to abolish or restrain the veto. But it is equally true that permanent five members reject any limitation on the veto power. So, the practical way to reform the veto power is voluntary restraint on the veto use. The permanent members must recognize that their primary responsibilities with regard to international peace and security require to use the veto with caution, taking into account not only their national interest, but also interest of the wider international community. They must understand that such measures are for the better and safer world, not a sacrifice on their part.

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<sup>49</sup>*Ibid.*