



UN SECURITY COUNCIL PERMANENT MEMBERS' RIGHT TO VETO: A CRITICAL ANALYSIS

Monisha Roy*

Abstract: The United Nations Security Council (UNSC) has been of unique significance and authority in serving the conservation of international peace and security, which puts it in a position integral to the functioning of international law and international relations. Yet, it is extensively viewed as having had a mixed track record. At the time when the Security Council is considered to have played a very critical role in remedying some transnational issues, it is also viewed to have failed in dealing with several countries. Such a breakdown is considered by many to be a direct result of the decision-making methodology of the council, explicitly the veto power granted to the permanent members of the Security Council. Therefore, such power has been the subject of frequent calls for Security Council reforms, which in some cases presented its abolition as one of the options to deal with what they deem as dysfunctions of the council. This paper attempts to address the debate adjoining veto power by outlining its justification and analysing both sides of the debate in relation to its reform. It attempts to present a common ground for veto reform that could be more viable for implementation in the presence of diverse obstacles in the current dynamics of international relations.

Keywords – United Nations, Security Council, Veto, Permanent Members.

Introduction

The first and foremost task under the Charter of United Nations is “to maintain international peace and security.”¹ Security Council comprises of five permanent states, that are, China, Russia, Great Britain, France, and United States; later referred as P5. Along with the permanent members, the UNSC has ten non-permanent members who are elected every two years.

Sixty years after the birth of the United Nations, UN reform is high on the international political program. One of the most controversial issues, if not the single most sensitive one, concerns the structure and practice of the Security Council as the primary actor regarding international peace and security. Indeed, critique of the lack of representativeness and transparency of the Council has not diminished in recent time, despite a shift

¹ U.N. Charter, Art. 1, Para. 1.

towards more openness. On the contrary, as the Council has become ever more active, criticism has increased correspondingly.²

The United Nation Security Council (UNSC) was established in the year 1946, as a direct result of the efforts to guard future generations from the massacre suffered in World War II. It is one of the main foundations or the organ of the United Nations (UN). According to the UN Charter, the member states have conferred “*on the security council primary responsibility for the maintenance of international peace and security*”³, and have agreed that this body, in order to carry on this duty “*acts on their behalf*”. The decisions taken by the council has to be in accordance with Article 25⁴ of the charter. The UNSC is the only organ of the UN which is capable of issuing resolutions that are legally binding on all the member nations. Therefore, making UNSC the most commanding organ of the UN.

The UNSC identifies pitfalls to peace and aggression, recommends disputing parties to settle their conflicts peacefully, imposes sanctions, and also authorizes the use of force to preserve or restore international security and harmony. The UNSC comprises of fifteen members⁵, of which five are permanent members, that are, United States, United Kingdom, Russia, China, and France and the remaining ten non-permanent members serve for the term two years, with five members inducted in the month of January every year. In the first election of the non-permanent members after the increase of the membership of the security council from eleven to fifteen⁶, two of the four additional members shall be chosen for a term of one year. “*a retiring member shall not be eligible for immediate re-election.*”⁷ Only one representative shall be elected from each member nations. The non-permanent members are elected from geopolitical regions: two members are elected from Western and Other Groups (WEOG), two members from the Asian group, the Eastern European Group has one representative, the Latin America and Caribbean Group (GRULAC) has two representatives, and the African Group has three of its representatives. The non-permanent members presently on council are Albania, Brazil, Ecuador, Gabon, Ghana, Japan, Malta, Mozambique, Switzerland and United Arab Emirates.

The members of the UNSC are nominated via a process of voting.⁸ Two separate voting regulations are established for procedural and non-procedural matters correspondingly. Procedural matters are those matters listed in their outlined agenda and the council will have to fulfil their functions in respect to such matters. Whereas non-procedural matters relate to the determinations of the action to be conducted by the UNSC in application of its function.⁹ According to the Charter of UN, least number of agreeing votes necessary for a resolution on procedural matters to be passes by the UNSC is nine; while for non-procedural matters, at least of nine affirmative votes comprising the concurring votes of the permanent members¹⁰. On that account, the permanent members have a unilateral right to veto non-procedural resolutions as the negative vote of any

² B. FASSBENDER, ‘Pressure for Security Council reform’, in D.M. MALONE (ed.), *The UN Security Council: From the Cold War to the 21st Century* (London: Boulder) (2004), at 352.

³ The UN Charter, Article 24, para 1.

⁴ The UN Charter, Article 25.

⁵ The UN Charter, Article 23.

⁶ The UN Charter, Article 23.

⁷ The UN Charter, Article 23.

⁸ The UN Charter, Article 27.

⁹ S Okhovat ‘The United Nations Security Council: Its Veto Power and Its Reform’ CPACS Working Paper 15/1 (2011), University of Sydney, 4.

¹⁰ The UN Charter, Article 27(3).

permanent member results in the failure, in passing, of non-procedural resolutions. As a result, the permanent members have the sole power to veto non-procedural motions as their passage is halted by the rejection of any permanent member's vote.

According to Schindlmayr, following are the five kinds of veto¹¹ power:

- i. The Real or Open Veto – referring to the casting of negative vote by a permanent member on non-procedural motions.
- ii. The Double Veto – is a situation where classification of a draft resolution as procedural or non-procedural is contested by a permanent member. The resolution is made non-procedural and the regular veto power on non-procedural matters applies, giving the permanent members a double veto.¹² The permanent member has the authority to veto a classification that would make the resolution procedural. According to Schindlmayr, the double veto often occurs when subsidiary institutions are established for investigations when the Security Council is anticipated to take enforcement action.
- iii. The Hidden Veto – is the situation where a simple majority cannot pass a resolution due to the persuasion of permanent members over the remaining members of the council. If seven members of the council vote negatively regarding a resolution, then that resolution shall not be passed.¹³ In this case a permanent member of the council does not have to exercise veto power.
- iv. The Artificial Veto - refers to the circumstance where a permanent member tries to force its approval for a resolution that ought to need a majority vote.
- v. Vote by Proxy - An instance where a permanent member uses their veto authority to benefit a state that does not have veto power.

The procedure of voting for the UNSC was a point of contention among those responsible for the drafting of the UN Charter. The representatives of the United States, the United Kingdom, and the Soviet Union (now Russia) proposed the current arrangement, which includes the authority of veto to the permanent members, known as the Yalta formula.¹⁴ The Dumbarton Oaks proposal for the UN charter was produced in 1944 by the five permanent members of the UNSC.

At the UN's founding conference in San Francisco in 1945, there was an extensive amount of discussion about the Yalta formula and the Dumbarton Oaks plan. The United States, the Soviet Union, and the United Kingdom agreed on the Yalta formula, which was inserted into the UN charter verbatim despite the Dumbarton Oaks proposal having numerous amendments made to it, including the addition of more military authority for the UNSC. According to Fernbach, this is because the countries that would constitute the Security Council's permanent five would not consent to join the UN without the Yalta formula. As a result, the

¹¹ T Schindlmayr, "Obstructing the Security Council: the Use of the Veto in the Twentieth Century" (2001) *Journal of the History of International Law* 218.

¹² T Schindlmayr, "Obstructing the Security Council: the Use of the Veto in the Twentieth Century" (2001) *Journal of the History of International Law* 225.

¹³ T Schindlmayr, "Obstructing the Security Council: the Use of the Veto in the Twentieth Century" (2001) *Journal of the History of International Law* 225.

¹⁴ AP Fernbach, 'The United Nations Security Council' 32 *Virginia Law Review* 118.

representatives of the other states were forced to comply, as the UN's prospects for funding and military might would be severely limited in the absence of these powers.¹⁵

As a result, several reform suggestions have surfaced, all of them guaranteeing to strengthen the credibility of the UN by changing the UNSC so that the body would become less dependent on autocratic national interests of the permanent members.

Veto Power of the Permanent Members: The Concept

The veto power is an essential component of the P5's privileged and accountable role as designated by the Charter. Every member of the P5 is able to obstruct any significant Security Council resolution. As mentioned earlier, Article 27 of the UN Charter allows permanent members of the Security Council to repeal any non-procedural draft resolution with their negative votes, regardless of its level of international support and popularity. This authority is known as the P5 veto power. However, the UN Charter makes no mention of the word "veto."¹⁶

Eleven people made up the UNSC when it was established in San Francisco: six elected members and five permanent members. The UN's inability to take direct action against any of its key founding members was the original reason for including veto power in the Charter. The designated victors of the Second World War, known as the P5, were the United States, the United Kingdom, France, the Republic of China, and the Union of Soviet Socialist Republics. For a two-year period, the elected members would serve on the UNSC.¹⁷ The P5 successfully argued over strong resistance that the United Nations would not exist without these powers, so they were granted permanent membership and the special veto authority. Substantially, the U.S. delegate in San Francisco upheld the idea that overriding the veto would mean overriding the Charter, thus supporting the reasoning. However, the representative of the UK explained that the present voting provisions were in the interest of all states and not merely permanent of the UNSC. The veto power thus, was a means of preserving that unanimity all countries. Without unanimity all countries would fall victims to some future Armageddon. Therefore, cooperation of the great power was much needed.

The P5 arguments prevailed under the Yalta formula and the UN was established as a community of equals. The P5 insisted on having individual vetoes over changes to the UN Charter in order to prevent the circumstances that ultimately led to the collapse of the League of Nations. This was another crucial and groundbreaking point made by the P5. Although almost every other UN member state criticizes the veto as unfair, Article 108¹⁸ essentially gives every permanent member a trump card that may override any attempts to reduce its formal power. given that the P5's long-standing interests in holding onto power and since there is no clause in the UN Charter requiring them to give up this ability, the veto has been and continues to be a barrier to reform.

In their pursuit of *raison d'état*, States use whatever institutions are available to serve their interests. This can be proven by the following one-sided decisions of the system.

¹⁵ AP Fernbach 'The United Nations Security Council' 32 Virginia Law Review 118.

¹⁶ Jan Wouters and Tom Ruys, "Security Council Reform: A new Veto for a New Century?" 5.

¹⁷ H. KÖCHLER, The voting procedure in the United Nations Security Council (Vienna: International Progress Organization) (1991), at 10; F.L. KIRGIS, 'The Security Council's First Fifty Years', (1995) 89 A.J.I.L., at 507.

¹⁸ The UN Charter.

Firstly, The P5 possesses four, not one, vetoes at their disposal pursuant to the Charter. The veto that has received the most attention up to this point pertains to the UNSC's acceptance of any significant and legally binding decisions made in accordance with Article 25, the first veto issued by the UNSC. The Charter¹⁹ grants the right to veto any suggestion made to the General Assembly for the appointment of a UN Secretary-General. The right to veto any application for membership in the UN²⁰, probably most importantly, Article 198 grants the right to veto any amendments made to the Charter. Therefore, P5 as a whole must agree to any attempt to alter their roles and authority.

Secondly, in addition to the open or clear veto, that is the rejection of a substantive proposal in the UNSC, there has been the “double veto”²¹ as mentioned before. This method is necessary because there may be disagreements within the Council over the nature of a proposed decision—namely, whether it is procedural or substantive. The Charter stipulates that a simple majority is needed for the procedural decision, at least in theory. In the event that the Security Council President issues a verdict on a topic that is subsequently contested, he is required to promptly submit the matter to a vote by the UNSC. In this particular context, it has come to be acknowledged that the P5 has the power to veto, meaning that if any of them disagrees with the decision made by the UNSC at that time on the procedural or substantive nature of a subject, the P5 may do so.

Furthermore, a veto is delivered on behalf of a non-permanent member, which became a dominant feature of the first fifty years of the Security Council's procedures. As a result, since the beginning of its work, there have been 229 vetoes cast in the UNSC. The U.S.S.R./Russia has cast 99, the United States 78, the United Kingdom 29, France 16, and China 7. The vetoes by Russia and the United States were cast largely in the period of the Cold War, and by each of them in defense of their “friendly” States. For example, Russia would veto on behalf of Eastern European allies and the United States would often veto for Israel.

Nowadays, one can argue that after the end of the Cold War and because of the elimination of ideological divisions among the superpowers, the veto has been cast more sparingly. However, a look at the use of veto in the last two decades reveals that although being cast less often, the veto is still exercised for self-interest or the interests of the Second World War allies. Thus, over the last 22 years out of a total of 30 vetoes, 13 have been used by Washington to protect Israel.²²

Moreover, the power of the “pocket veto” should not be disregarded since permanent members have frequently used it to keep subject matter off the UNSC agenda or soften the wording of a resolution without really exercising their veto power.²³ The existence of permanent membership on the UNSC and the associated veto power has had what has come to be known as the “cascade effect.” This ludicrous phrase aims to characterize the “prodigy” of the P5's effective permanent membership powers being extended in almost all other UN bodies, Commissions, and Committees. It is just accepted that those P5 will always be on the Committee, the Board of Governors, or whichever instrumentality is engaged in UN elections. Therefore, even if there fails

¹⁹ The UN Charter, Art. 97.

²⁰ The UN Charter, Art. 4.

²¹ T Schindlmayr, “Obstructing the Security Council: the Use of the Veto in the Twentieth Century” (2001) *Journal of the History of International Law* 225

²² UN Research Guides & Resources, 2013.

²³ S Okhovat ‘The United Nations Security Council: Its Veto Power and Its Reform’ CPACS Working Paper 15/1 (2011), University of Sydney, 4

to be a formal veto anywhere except the UNSC, the threat and freedom to use the veto language often affects decisions made in these bodies.

Vetoing a UN action against a State that is clearly in violation of international law and practice because that State is an ally should not be acceptable. This practice was never intended in San Francisco, and it should not be acceptable in practical, political reality. Yet, this position has been repeatedly accepted. Using votes as a favor is possibly the most significant instance of abuse of permanent privilege. That is why most of the UN peacekeeping missions are undertaken on the continent of Africa and not in other regions close to the interests of P5.

It is now beyond any doubt that the great privilege of "veto power" is given to the P5 nations has been used appropriately by them as a right given by the Un Charter. The P5 have acted and will continue to operate in a way that advances their claim to power as legitimate and unrestricted, available for use whatever the "main victors" of the Second World War deem appropriate. The idea that P5 has a power that they may use to safeguard and further their own unique national interests has largely supplanted the idea that this authority was granted to them despite strong objections, but for the sake of maintaining peace. This self-centered mindset frequently conflicts with the goals and ideals of the Charter.

Ultimately, the issue of whether or not vetoes should be allowed would need to be addressed in a comprehensive, in-depth analysis of the procedure for making decisions to be used in a modernized UNSC. If vetoes are used, a fresh interpretation of the conditions under which the veto can be lawfully issued is required.²⁴

Veto Power: Arguments For and Against It

The veto power's undemocratic aspect is made apparent in the preceding section. It demonstrates the significant authority it grants to a select few nations to safeguard their interests. One of the greatest obstacles to the UNSC reform has been this power. Few nations who are members of the UN endorse the veto authority. It is clear that the permanent members favor this kind of authority for selfish ends. 185 Member States denounced the veto as unfair back in the 1990s. As an illustration, the former ambassador of Pakistan to the UN, Ahmad Kamal, maintained the idea that "no one can be more equal than the others" and called the veto antiquated and undemocratic. That opinion was also held by several African nations.

Moreover, if the veto was undemocratic for the Security Council's work, should this privilege be given to new permanent members? Would that not make the lowermost common denominator?²⁵

The demise of the League of Nations, which occurred as a result of powerful nations like the United States declining to join, is cited by opponents of the veto. "Veto abolitionists" contend that if the veto is removed, the UN may suffer an analogous fate, with powerful nations either abandoning the organization or declining to contribute to measures they disagree with. Again, the likelihood of such a result is dubious, especially in

²⁴ H. KÖCHLER, *The voting procedure in the United Nations Security Council* (Vienna: International Progress Organization) (1991), at 10; F.L. KIRGIS, 'The Security Council's First Fifty Years', (1995) 89 A.J.I.L., at 507.

²⁵ Human Rights Watch, *Leave none to tell the story: genocide in Rwanda*, (New York: Human Rights Watch) (1999).

light of the UN's present standing and the degree of public support for it²⁶. Although it is improbable that any member would take the chance of quitting the UN given that it would be a severe damage to its credibility, it is nevertheless possible, especially in light of how willing the UN is to engage in such action.²⁷ However, some American critics like David Holcberg²⁸, researcher at the Ayn Rand Institute, California, defended that the United States should withdraw from the UN. Holcberg's main argument which relies on the constraints that the UN imposes on the U.S. foreign policies, as well as the claim that most of the UN Member States do not support human rights and for that reason the United States should act unilaterally in order to be able to pursue the policies that support human rights. Furthermore, there are certain apocalyptic arguments on the significance of the veto which are not always well-supported. According to some political observers²⁹, the P5 are the only countries with nuclear weapons, which gives them the power to impose their will through deterrence. Others stated that the P-5 is capable of starting a full-scale nuclear conflict since they have sizable nuclear arsenals. Therefore, the veto power must remain in place to allow them to veto initiatives that pose a diplomatic threat to them. Through initiatives such as this, the international community may prevent these nuclear nations' dissatisfaction which could lead to tensions across the globe and perhaps even the outbreak of nuclear war.

However, the discussion on reform has also given rise to other ideas that avoid changing the charter entirely and offer different ways to handle the veto situation. The P-5 could opt to be more circumspect, for instance, by limiting the use of the veto to issues covered by the mandatory clauses of enforcement rulings made in accordance with Chapter VII of the Charter. The P-5 could refrain from intervening in humanitarian situations if there are no competing interests. Naturally, such constraint would come with no assurances and would create an unprecedented precedent requiring certain governments to renounce rights granted to them by treaties. Alternatively, state coalitions might go outside of the UNSC for institutional moral validation. For this reason, some think that the veto should be applied to other nations in regard to issues pertaining to a new power structure and claims to territory shared leadership model with emerging powers. However, certain individuals continue to hold the opinion that the P5 veto captures the spirit of the UN Charter and that changing it would undermine confidence, upholding the status quo.

On the one hand, maintaining the status-quo view acknowledges that the UNSC's relevance is not declining; since it remains the premier multilateral institution for matters of international security. UN member states exploit a range of frameworks, where direct UN involvement is not considered appropriate or feasible; the Council authorizes regional organizations interest-based partnerships to advance their national and collective security.

²⁶ Anirudha Choudhury and Prateek Mishra, "The Need To Expand UNSC: The Questions Answered or the Answers Questioned", *Journal of Critical Reviews*, Vol 8, Issue 1, 2021.

²⁷ S Okhovat 'The United Nations Security Council: Its Veto Power and Its Reform' CPACS Working Paper 15/1 (2011), University of Sydney

²⁸ David Holcberg, "The United States Should Withdraw from the United Nations.", *Capitalism Magazine*, May 12, 2001.

²⁹ UN (2004). "A more secure world: our shared responsibility", report of the High-level Panel on Threats, Challenges and Change, General Assembly, New York.

The UN Charter itself is another point of contention raised by those opposed to granting veto power to additional UN members. The process of amending the Charter is difficult and fraught with difficulties. It calls for the ratification of the pertinent domestic legislation by two-thirds of UN member states, including all of the P5 (Chapter XVIII, Articles 108–109), in addition to the approval of the United Nations General Assembly by two-thirds. As discussed in earlier parts, the UNSC increased from eleven to fifteen members in 1965, one of the only three revisions to the charter in its sixty-five-year history. However, recent surveys indicate that the general public is in favor of a moderate increase in the number of permanent members of the UNSC, including seats for South Africa, Germany, Japan, Brazil, and India.

The argument in favor of veto enlargement is strong, despite the fact that there are several erroneous points in the argument. Some can argue that the UNSC lacks representativeness after over 70 years. One permanent member for every ten nations was the initial ratio; currently, that number is closer to forty. Entire regions of the globe are excluded from the process of making decisions. Africa is the subject of almost 85% of UNSC agenda issues, although the continent lacks a P5 voice.

As a result, there is a general perception, especially in developing nations, that the UNSC is becoming less and less legitimate and effective. This belief is based on a number of factors, including the UNSC's failure to include regional leaders and lack of geographic balance in its permanent membership, its decreasing relevance in light of current security threats, its inability to enforce the resolutions³⁰ it supposedly adopts, and the exclusion of nations that could enhance global security. Based on this research, the UNSC's legitimacy, credibility, and efficacy appear to be stronger than detractors have claimed, based on the real actions of UN Member States rather than their rhetoric. However, it is problematic that the UNSC has not been expanded, as it would deny permanent membership to strong nations that might enhance global security and provide sustained political backing for the UN.

A New Proposal

The first modern major reform proposal is now over 20 years old.³¹ The fact that the reform ideas are centered on concerns about fairness and regional representation rather than the goals and objectives of the UN is the reason they have failed. Furthermore, a successful reform proposal will consider the problems raised by the aforementioned suggestions while also catering to the interests of the permanent members, as any reform proposal that deals with non-procedural matters would have to overcome the veto power of the permanent members. Additionally, the successful proposal will not ass too many members and this will serve as a deterrent for permanent members who would wish to guard their interests.³² Addition of several states to serve as a permanent member is not feasible as the UNSC will not always reflect the true community of power and as such processes for the induction of new great powers should be set in place.

A reform proposal which is aimed at curbing the use of veto power is apt because it would be a procedural matter therefore the permanent members would not be able to veto it. This proposal would also not be

³⁰ Freiesleben, Jonas Von, "Reform of the Security Council", Global Policy Forum, 2008.

³¹ B Cox 'United Nations Security Council Reform: Collected Proposals and Consequences', South Carolina Journal of International Law and Business, Vol 6, issue 1, 2009.

³² B Cox 'United Nations Security Council Reform: Collected Proposals and Possible Consequences', South Carolina Journal of International Law and Business, Vol 6, issue 1, 2009.

abhorrent to the permanent members as they are already abreast and fearful of the criticism furnished for exercise of the veto power and as result a permanent member would not want to be seen impeding a proposal which merely seeks to curb the use of the veto³³; denotes a reform which requires reasons for exercise of the veto power would be successful in curbing the use of the veto power as it would serve as a deterrent to permanent members who already dread the public criticism of exercise of the veto. Having to deliver reasons would prolong the public attention and possibly increase the criticism.

Conclusion

In history, however, the task of accommodating rising powers has been among the most difficult challenges of world politics. International relations tend to be particularly unstable when the global distribution of power changes and international structures fail to keep pace. A prime example of this is the interwar years, 1919–1939, which were marked by extreme instability and a time in which no state retained primacy. The United States can increase global political support for, or at least compliance with, existing arrangements and leverage the contributions of capable States willing to provide a larger share of global public goods by leading reform that gives rising powers as well as significant established powers a stake in the current world order. Nonetheless, China and Russia often undermine American policies by citing the norms of liberal international organisations. In the UNSC, they wielded their veto power to deny the West resolutions supporting the bombing campaign in Kosovo in 1999 and the invasion of Iraq in 2003, and more recently, they have slowed the effort to isolate Syria. They occasionally work together in other venues, too, such as the Shanghai Cooperation Organization. Although the Beijing-Moscow relationship is unimpressive compared with military alliances such as NATO, it's remarkable that it exists at all given the long history of border friction and hostility between the two countries.

Even if the future is unpredictable, multilateral security cooperation may become more difficult in the next decades if the UNSC's structure is not changed. In the worst-case scenario, it appears improbable that Member State unhappiness would spur a full-scale attack on the legitimacy of the UNSC and attempt to diminish its function. It is more likely that disgruntled candidates will lessen their financial and diplomatic support for the organization, depriving the UN of essential resources and decreasing its efficacy as a whole.

Any attempt to expand the UNSC will ultimately be tough, and as power shifts globally and demands greater change, the process will become increasingly difficult over time. The P5 can assist in using the potential of emerging global players and provide incentives for their responsible behavior by acting immediately.

³³ B Cox 'United Nations Security Council Reform: Collected Proposals and Possible Consequences', South Carolina Journal of International Law and Business, Vol 6, issue 1, 2009.