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THE UNITED NATIONS SECURITY COUNCIL'S PERMANENT FIVE VETO POWER: TIME FOR REFORM?*

ABSTRACT

From the Cold War until the present day, the fact that the United Nations has failed to live up to the lofty expectations of its framers can be attributed in significant part to the threat and exercise of the veto by the Permanent Five members of the Council. Twenty years of negotiation over reform of the United Nations Permanent Five Veto power is yet to bear fruit. The article begins by considering the origins of the veto provision and its usage. It then critically analyses the impact of the veto power on the United Nation's system. The article proffers that there is need for a reform of the veto.

Key words: International Law- United Nations- Security Council- Veto.

I) INTRODUCTION

Beyond permanency itself, the veto power is probably the United Nations Charter's¹ most significant distinction between on the one hand, permanent and non-permanent members and on the other hand, the Security Council and the General Assembly. The veto has been addressed regularly during the annual working methods debates and is among the topics most frequently raised in the context of almost all discussions of the Security Council working methods. Discussions on improving the United Nations effectiveness and responsiveness to international security threats often include reform of the veto. The unconditional veto possessed by the five governments has been seen by critics as the most undemocratic character of the United Nations as well as, the main cause for international inaction on war crimes and crimes against humanity. This article will look at the intricacies surrounding the veto power of the Permanent Five and make recommendations for its reform.

* Aisha Sani Maikudi, Ph.D, LL.B (IonnD), LL.M (LSE), B.L, Senior Lecturer, Faculty of Law, University of Abuja, FCT, Nigeria. E-mail: ayeesha31@yahoo.co.uk; Phone No: 08037040140.

¹ Adopted 26 June 1945 and entered into force 24 October 1945. United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI. Available at: <http://www.un.org/aboutun/charter/index.html>. In addition, the Charter of the United Nations is always reprinted in the most current Volume of the Yearbook of the United Nations.

II) ORIGINS OF THE VETO PROVISIONS

The veto power is the power or right vested in one branch of a government to cancel or postpone the decisions, enactments, etc., of another branch, especially the right of a president, governor, or other chief executive to reject bills passed by the legislature². The United Nations Security Council power of veto refers to the veto power wielded solely by the permanent five members of the United Nations Security Council (China, France, Russia, United Kingdom and United States) enabling them to prevent the adoption of any substantive resolution, as well as decide which issues fall under the substantive title³.

The idea of states having a veto over the actions of international organizations was not new in 1945. From the foundation of the League of Nations in 1920, each member of the League Council, whether permanent or non-permanent, had a veto on any non-procedural issue⁴. At inception of the League of Nations in 1920, there were 4 permanent and 4 non-permanent members, but by 1936 the number of non-permanent members had increased to 11. Thus there were in effect 15 vetoes. This was one of several defects of the League of Nations that made action on many issues impossible.

The United Nations Charter veto provision among the permanent five was the result of extensive discussion, including at Dumbarton Oaks (August–October 1944) and Yalta (February 1945)⁵. The evidence is that the UK, US, USSR, and France all favored the veto power, and that they were motivated in this not only by a belief in the desirability of the major powers acting together, but also by a concern to protect their own sovereign rights and national interest⁶. Truman, who became President of the US in April 1945, went so far as to write in his

²The Dictionary.com Website: <http://www.dictionary.com/browse/veto-power>. Retrieved 15th January 2019.

³ The IPFS Website:

https://ipfs.io/ipfs/QmXoypizjW3WknFiJnKLwHCnL72vedxjQkDDP1mXWo6uco/wiki/United_Nations_Security_Council_veto_power.html. Retrieved 15th January 2019.

⁴ League of Nations Covenant, Article 5(1).

⁵ Luck, Edward C. (2008). "Creation of the Council". In Lowe, Vaughan; Roberts, Adam; Welsh, Jennifer; et al. *The United Nations Security Council and War: The Evolution of Thought and Practice since 1945*. Oxford University Press. pp. 61–85.

⁶ See e.g. Winston S. Churchill, *The Second World War*, vol. 6: *Triumph and Tragedy*, Cassell, London, 1954, pp. 181-2 and 308-13; Harry S. Truman, *Year of Decisions: 1945* (London, 1955), pp. 194-5, 201, and 206-7; Charles de Gaulle, *War Memoirs: Salvation 1944-1946 – Documents*, tr. Murchie and Erskine (London, 1960), pp. 94-5.

memoirs that, ‘all our experts, civil and military, favored it, and without such a veto no arrangement would have passed the Senate’⁷.

In the negotiations building up to the creation of the United Nations, the veto power was resented by many small countries, and in fact was forced on them by the veto nations - US, UK, China, France and the Soviet Union - through a threat that without the veto there would be no United Nations. At San Francisco, the issue was made crystal clear by the leaders of the Big Five: it was either the Charter with the veto or no Charter at all. Senator Connally (from the US delegation) dramatically tore up a copy of the Charter during one of his speeches and reminded the small states that they would be guilty of that same act if they opposed the unanimity principle. You may, if you wish, he said, go home from this Conference and say that you have defeated the veto. But what will be your answer when you are asked: Where is the Charter?⁸ It is imperative to note that the veto is not enshrined in the United Nations Charter⁹. The permanent five were given the privilege of veto and permanence because of fear that without such benefits the great powers would walk away from the organization just like they did the League of Nations¹⁰. To date, none of the permanent five have left the Security Council or the United Nations¹¹.

The permanent five veto power is found in Article 27¹² which states:

1. Each member of the Security Council shall have a vote.
2. Decisions of the Security Council on procedural matters shall be made by an affirmative vote of nine members.

⁷ Truman, *Year of Decisions: 1945*, p. 207. See also US Department of State: "The United States and the Founding of the United Nations". October 2005. Retrieved 15th January 2019.

⁸ The Yalta Voting Formula, Author(s): Francis O. Wilcox, Source: *The American Political Science Review*, Vol. 39, No. 5 (Oct., 1945), pp. 943-956, Stable URL: <http://www.jstor.org/stable/1950035>, Accessed: 05-05-2015 17:13 UTC

⁹ Article 27 (3): merely calls for the concurring votes of the permanent members when the United Nations Security Council takes substantive decision.

¹⁰ F. A. Boyle, explained that a Security Council without a great power veto would have been a non-starter from the beginning; Shortly after the foundation of the United Nations, former U.S. Secretary of State Cordell Hull stated bluntly that our government would not remain there a day without retaining the veto power. Available at: *The Memories of Cordell Hull*. New York, 1948, vol. 2, p. 1664.

¹¹ American ambassadors have sometimes been less than complimentary: one called the United Nations A Dangerous Place, while another said that no one would notice if it lost ten storeys. D.P. Moynihan, *The United Nations: A Dangerous Place*, (Little Brown & Company) 1978. See also W.F. Buckley, Jr., *United Nations Journal: A Delegate's Odyssey*, (Putnam) 1974 and M. Finger, *American Ambassadors at the UN: People, Politics, and Bureaucracy in Making Foreign Policy* (New York, Holmes & Meier) 1988.

¹² UN Charter, Article 27, as amended in 1965. Before that date, Articles 27(2) and (3) had specified the affirmative votes of seven members. The change was part of the process whereby the size of the Council was increased from 11 to 15 members.

3. Decisions of the Security Council on all other matters shall be made by an affirmative vote of nine members including the 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.

Thus, according to Article 27 of the United Nations Charter, Security Council decisions require a different majority depending on their nature: decisions on procedural matters are taken with an affirmative vote of 9 members, while substantive decisions require an affirmative vote of 9 members, including the concurring vote of the permanent members. If a permanent member votes against a Resolution, the Resolution cannot be adopted.

Theoretically, a sixth veto came into existence via the addition of four new seats in the 1965 amendment. The sixth veto occurs when a coalition of seven non-permanent members agree to block a proposal if all the permanent five are voting for it¹³. This de facto control over the Security Council by the permanent five is seen by critics, since its creation in 1945, as the most undemocratic character of the United Nations¹⁴.

There are four issues with reference to the veto power. The first is the formal veto. This occurs when a matter is put to vote and a permanent member veto's it as against abstaining from voting or voting for it. A veto of one permanent member renders the matter null and void for all purposes. The member exercising the veto is not required to explain for what reasons the veto has been cast.

The second is the double veto. This is two fold and occurs when deciding whether a matter is procedural or substantive. A member of the Security Council can claim that a particular proposal is substantive and if this is accepted the proposal is liable to a veto. The first veto means preventing a matter from being considered procedural and the other means defeating the matter as a substantive question. The report from the *High Level Panel*¹⁵ was very critical of this and observed that even outside the use of the formal veto, the ability of the permanent five to keep critical issues of peace and security out of the Security Council's agenda has further undermined confidence in its work.

¹³ Although, the probability of seven non-permanent members rejecting a proposal that all the Permanent five vote in favor of is low.

¹⁴ The Yalta Voting Formula, Author(s): Francis O. Wilcox, Source: *The American Political Science Review*, Vol. 39, No. 5 (Oct., 1945), pp. 943-956, Stable URL: <http://www.jstor.org/stable/1950035>, Accessed: 05-05-2015 17:13 UTC

¹⁵ Report of the High Level Panel on Threats, Challenges and Change, chaired by Anand Panyarachun, '*A More Secure World: Our Shared Responsibility*', Doc. A/59/565 of 2 December 2004.

The third is the hidden veto. The threat of a formal veto is called the hidden veto. The permanent five mainly use the hidden veto in closed-door consultations rather than in official meetings. This makes it difficult to keep track of its use. During closed sessions, the permanent five have more freedom to pressure, threaten, and even bully other members of the Security Council. By giving private veto warnings before a vote takes place, the permanent five can 'convince' Security Council members to shift their position and still persuade the international public of their good intentions¹⁶.

The fourth is the double hidden veto. Non-permanent members, after facing one hidden veto after another, are in that way discouraged from bringing up topics they know will be met with dislike from the permanent five. This creates a double hidden veto¹⁷.

III) THE VETO USAGE

The authors of the United Nations Charter presumed that the great powers would continue to co-operate with one another and would rarely use the veto. Time has proved that to be wrong.

The veto usage is thus illustrated¹⁸:

- I. Between 16 February 1965 to 28 February 2019, the veto was mainly used by Russia and the United States. Russia used it 112 times and the United States used it 81 times.
- II. The formal veto was used 249¹⁹ times up until 28 February 2019. The use of the formal veto drastically declined after 1995 when it was used only 38 times. This gives an average of 8.3 vetoes a year until 1995, and only 1.5 vetoes a year after.
- III. Between 1996 and February 2019, the United States has used the formal veto 15 times, Russia 21 times and China 11 times. France and the United Kingdom did not exercise their veto rights during this period.
- IV. 59 vetoes have been used to block admission of member states: non-peace loving states of World War II such as Italy and Japan.

¹⁶ Nahory, C, 'The hidden Veto'. Available at the Global Policy Forum Website: <http://www.globalpolicy.org/component/content/article/196/42656.html#3>. Accessed on 10 August 2013 at 20:20.

¹⁷ *Ibid.*

¹⁸ Dag Hammarskjöld Library, United Nations, Research Guides & Resources. UN Documentation: Security Council -Veto List. Also available at: <http://research.un.org/en/docs/sc>.

¹⁹ 43 vetoes were used in closed sessions to block nominees for Secretary-General. They are not included in the official statistics. So 249 official vetoes plus 43 closed session vetoes makes a total of 292 vetoes.

Since 16 February 1946 when the Union of Soviet Socialist Republics (USSR) cast the first veto on a draft resolution regarding the withdrawal of foreign troops from Lebanon and Syria²⁰ the veto has been recorded 292 times²¹.

In the early years, the USSR cast most of the vetoes, with a considerable number of these used to block the admission of a new member state. Over the years, the USSR/Russia has cast a total of 141 vetoes, or close to half of all vetoes²². The US cast the first of its 83 vetoes to date on 17 March 1970²³ The USSR had by that point cast 107 vetoes²⁴. Since 1970, the US has used the veto far more than any other permanent member, most frequently to block decisions that it regards as detrimental to the interests of Israel. The UK has used the veto 32 times, the first such instance taking place on 30 October 1956²⁵ during the Suez crisis. France applied the veto for the first time on 26 June 1946 with respect to the Spanish Question²⁶ and has cast a total of 18 vetoes. China has used the veto 14 times, with the first one, on 13 December 1955²⁷, cast by the Republic of China (ROC) and the remaining 13 by the People's Republic of China after it succeeded ROC as a permanent member on 25 October 1971.

Since the end of the Cold War in 1991, new trends in the usage of the veto by the different permanent members have emerged. France and the UK have not cast a veto since 23 December 1989²⁸ when, in tandem with the US, they prevented condemnation of the US invasion of Panama. China, which has historically used the veto the least, has become increasingly active on this front and cast 11 of its 14 vetoes since 1997²⁹. Russia cast 22 vetoes in this period, whereas the US has resorted to the veto 16 times since the end of the Cold War³⁰.

²⁰ (S/PV.23) Letter from the Heads of the Lebanese and Syrian delegations to the Secretary-General dated 4 February 1946. The letter was in regard to the withdrawal of French and British troops from their territories.

²¹ *Op.cit.*, see note 18.

²² *Ibid.*

²³ S/9696 Question concerning the situation in Southern Rhodesia (Rhodesia's Unilateral Declaration of Independence and the Rhodesian Bush War)

²⁴ *Op.cit.*, see note 18

²⁵ S/3710 Letter dated 29 October 1956 from the USA to the President of the Security Council concerning the Palestine question (Suez Crisis).

²⁶ (S/PV.49) The Spanish question (Specifically, the question of actions to be taken with regards to Francoist Spain).

²⁷ (S/3502) Admission of new Members Mongolia (Mongolian People's Republic and the end of the Sino-Soviet Treaty of Friendship and Alliance)

²⁸ S/21048 The situation in Panama (United States invasion of Panama)

²⁹ *Op.cit.*, see note 18

³⁰ *Ibid.*

The use of the veto by Russia and China rose considerably since 2011, with the conflict in Syria accounting for the bulk of these. Since 2011, Russia cast 17 vetoes, 12 of which were on Syria³¹. Six of the seven Chinese vetoes during this period were over Syria and one was on Venezuela³². The remaining Russian vetoes since 2011 were against two resolutions related to the conflict in Ukraine, one on the 20th anniversary of the genocide in Srebrenica³³, one on sanctions against Yemen³⁴, and one on Venezuela³⁵. The US cast three vetoes since 2011, all of them on Israel/Palestine issues³⁶.

IV) THE NEED FOR REFORM OF THE VETO

The veto power has been heavily criticized. The *High Panel Report*³⁷ states that the institution of the veto has anachronistic character that is unsuitable for the institution in an increasingly democratic age with no practical way of changing the existing members veto power. The profound criticism of the veto is because matters decided in the Security Council can be vetoed by any of the five permanent members. A veto will render the matter dead. The use of the veto prevents action for national geopolitical interests rather than allowing the Security Council to do its job of maintain peace and security in the world³⁸.

Kishore Mahbubani³⁹ is of the view that, the permanent five act as if they own the Security Council and treat the non-permanent members as tourists. This means that the Security Councils decisions correspond to whatever at that time is in line with the interests of the veto holding permanent five⁴⁰. Veto holders consider the veto a reassurance and comfort in the

³¹ *Ibid.*

³² *Ibid.*

³³ S/2015/508 The situation in Bosnia and Herzegovina (20th anniversary of the Srebrenica massacre during the Bosnian War)

³⁴ S/2018/156 Sanctions against Yemen (Yemeni Civil War (2015–present))

³⁵ S/2019/186 The situation in the Bolivarian Republic of Venezuela (2019 Venezuelan presidential crisis)

³⁶ *Op.cit.*, see note 18

³⁷ *Op.cit.*, see note 16.

³⁸ Britain and the United States systematically blocked Security Council action to impose economic sanctions on South Africa during the 1980s; Britain and France blocked action on Suez in 1956; the United States refused action on Vietnam in the 1960s-70s and the USSR prevented action on Afghanistan in the 1980s.

³⁹ The representative from Singapore to the Security Council 2001- 2002.

⁴⁰ Especially the United States, often referred to as the permanent one, in the corridors of the Security Council. As an example he uses how Afghanistan went from being referred to as a 'strategic orphan' to a 'strategic priority' in the aftermath of the attack on the Twin Towers in September 2001. Likewise, despite 14 of the 15 Security Council members supporting Boutros Boutros Ghali, the United States veto ended his tenure as the United Nations Secretary-General.

realm of power politics that could prevent a defeat on matters by the majority⁴¹. The Permanent five have been given power without responsibility whereas the non-permanent members were given responsibility but no power⁴².

Although the permanent five claim that the veto should remain a 'last resort', they use the hidden veto constantly which generally worsens international crises. Washington's constant threat of vetoes on Security Council actions critical of Israel is a notorious example of this abuse. Though the Arab group has obtained monthly Security Council meetings on the situation in Israel and the Occupied Territories, the United States prevents any substantive role of the Security Council on the matter⁴³. The constant threat has been strengthened by the actual use of the veto⁴⁴ on draft resolutions judged either 'unfair' or 'unconstructive' by the United States⁴⁵.

Nahory illustrates the double-edged sword of a threatened veto via:

France's threat to block a resolution authorizing war against Iraq in the spring of 2003 illustrates the very unusual case of a threatened veto made public, confident that worldwide support for its action would ultimately help other members of the Security Council to stand up against United States pressure. However, in the great majority of cases, a single member issues a veto threat against the will of a large majority of Security Council members, and often too against the preponderance of United Nations member states and international public opinion⁴⁶.

Hidden vetoes are also used to weaken the definitions of crises under international law. In the 1994 mayhems of Rwanda, the word 'genocide' would have required intervention by parties

⁴¹ David Nicol, *The United Nations Security Council: Towards Greater Effectiveness*, (New York), 1982, p. 14: Without the veto the United Nations would collapse and an exceedingly valuable form of attempting resolution of major conflict would be lost.

⁴² Mahhubani, Kishore, 'The Permanent and Elected Council Members', Chapter 17 in Malone, David M. (ed.): *The UN Security Council: From the Cold War to the 21st Century*, (Boulder) 2004.

⁴³ In 2002 the United States blocked a draft resolution criticizing the killing by Israel forces and several employees and the destruction of the World Food Program warehouse in the West Bank Territories. In September 2003, the United States vetoed a resolution that denounced Israel's threat to remove the then Palestinian Leader Yasser Arafat. Washington said the resolution was 'flawed' because it did not include a robust condemnation of acts of terrorism by Palestinian militant groups.

⁴⁴ Between 1994 and March 2014, 13 out of 14 vetoes were cast by the United States specifically on Israel and the Occupied Territories. Between 2000 and March 2014 all 10 vetoes cast by the United States were specifically on Israel and Occupied.

⁴⁵ *Op.cit.*, See note 18.

⁴⁶ *Ibid.*

to the 1948 Genocide Convention⁴⁷. Thus, the atrocities in Rwanda were defined as ‘acts of genocide, a definition not requiring such severe action. The use of the hidden veto blocked the ability of the Security Council to take effective, timely action to safeguard peace and prevent the massive loss of life⁴⁸.

History has shown that the permanent five act in pursuit of their respective interest and not necessarily in accordance with the ideals and aspirations set out in the United Nations Charter⁴⁹. The situation during the Cold War when the Security Council was paralyzed by the conflict between two of its permanent members, the United States and the Soviet Union⁵⁰ is an example of this. Likewise, the crisis in Ukraine is a current illustration of this⁵¹. The effect of the veto power is that, the permanent five who have substantially different interests influence matters tabled for discussion before the Security Council and ultimately, the shape of policies. This makes the Security Council inept.

While the number of Member States has considerably increased from 51 in 1945 to 193 currently, the institutional framework of the Security Council has remained unchanged with the exception of the expansion of its membership from 11 to 15 in the 1960's⁵². In speeches and corridor conversations, diplomats often point out that four⁵³ out of the five permanent members are European and industrialized countries. The four-fifths of humankind that live in the poor countries of the global South, have only one voice: China⁵⁴.

With the end of the East-West conflict, new tensions can unfold at any time. This is evident in the intensifying North-South conflicts⁵⁵. A polarization between the industrialized North and

⁴⁷ UNGA, *Prevention and Punishment of the Crime of Genocide*, 9 December 1948, A/RES/260.

⁴⁸ This was due to France's interest in Rwanda and support for the government, as well as the United States reluctance to use the amount of money that such an intervention would require. Former President of the United States, Bill Clinton expressed regret, in a speech now known as ‘the Clinton Apology’, for not acting earlier in Rwanda: See, the speech of William J. Clinton, *Remarks by the President to Genocide Survivors, Assistance Workers, and U.S. and Rwanda Government Officials* (Kigali Airport, Kigali, Rwanda March 25, 1998)

⁴⁹ As examples, see Rwanda and the Balkans.

⁵⁰ However, after the end of the Cold War in the late 80s, the activity in the Council increased.

⁵¹ On 15 March 2014, Russia vetoed a Letter dated 28 February 2014 from the Permanent Representative of Ukraine to the United Nations addressed to the President of the Security Council (S/2014/136). Accessed at: http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2014/136. 20 March 2014 at 10:30.

⁵² *Op.cit.*, See note 3.

⁵³ France, Russia, United Kingdom and United States of America.

⁵⁴ Michael Roskin, *International Relations: The New World Order*, (New Jersey, Prentice Hall) 1993 at pg 63.

⁵⁵ Hans Kochler, *Democracy and the International Rule of Law. Propositions for an Alternative World Order. Selected Papers Published on the Occasion of the Fiftieth Anniversary of the United Nations*. Vienna and New York: Springer, 1995, pp. 85-116

the economically disadvantaged South emerges. The permanent members of the Security Council, apply the principles of the United Nations Charter only very selectively to safeguard the common interests of the industrialized world.

Kochler⁵⁶ argues, how else for example, can the lack of collective security measures against Israel be explained as it refuses to abide by resolution 242⁵⁷ (1967) in occupying and even annexing Arab territory? In its occupation practices, Israel continuously violates the Fourth Geneva Convention of 1949⁵⁸ without enforcement measures ever being considered by the Security Council. Another example of this policy of double standards was the Security Council's passive attitude towards the invasion of Panama by the United States⁵⁹. This lack of self-restraint mirrors the Soviet Union's excessive use of the veto in the past at a time when it still enjoyed actual superpower status when it tried to secure its interest *vis-à-vis* the Western bloc.⁶⁰

In spite of rapid growth during the decolonization process and increasing pressures for Security Council expansion⁶¹, strong cases for permanent membership of major member states powers, such as Germany and Japan, as well as of developing countries, such as South Africa, India, Egypt and Nigeria, have been unsuccessful so far⁶². The veto granted to the five permanent members makes the Security Council extremely difficult to reform⁶³. This is because, at the end of World War II, the permanent five used their advantaged position to eternalize the status quo of 1945 in the United Nations Charter through their permanent voting privilege in the Security Council by making the acceptance of the proposed United Nations Charter and any later amendments dependent upon their concurring votes⁶⁴.

⁵⁶ *Ibid.*

⁵⁷ Security Council Resolution 242 of 9 September 1968.

⁵⁸ International Committee of the Red Cross (ICRC), *Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)*, 12 August 1949, 75 UNTS 287.

⁵⁹ *Op.cit.*, See note 38.

⁶⁰ *Ibid.*

⁶¹ Luck, E.C. 'Reforming the United Nations' in J. E. Krasno (ed.) (2004) *The United Nations: Confronting the Challenges of a Global Society* (London, Boulder: Lynne Rienner Publishers) pg.113.

⁶² Taylor, P. and Devon Curtis, 'The United Nations' in Baylis and Smith (eds.) (2008) *The Globalization of World Politics* 4th edn (Oxford: Oxford University Press) Pg.317.

⁶³ Weiss, T. 'The Illusion of UN Security Council Reform' in R. Bova (2009) *Readings on How the World Works: Current Issues in International Relations* (London: Pearson Longman) Pg.162.

⁶⁴ *Op.cit.*, see note 1, Arts. 108 and 110, para. 3

For various reasons, the permanent five are not keen on abolishing the veto⁶⁵. The Security Council is important to France⁶⁶, Russia⁶⁷ and the United Kingdom⁶⁸, because they want to maintain their status as a Great Power though most of them cannot live up to this claim economically, politically or militarily. The Security Council is also important to China and the United States, whose great power status is not in question. This is because the Security Council is a useful tool for China to exercise its increasing power. The United States has an interest in the Security Council because its resolutions give legitimacy. Acting without such a resolution, can leave severe damage to a state's reputation⁶⁹.

There is an open contradiction between the United Nations ideology and its Charter⁷⁰. The principle of power politics in the Security Council contradicts the general legal principles enshrined in the United Nations Charter. If one values the rule of law over traditional power and interest politics,⁷¹ genuine democratic principles must prevail⁷². Clyde Eagleton, in analyzing the role of power politics in the legal procedure of the United Nations has heavily criticized the United States, which put into the United Nations Charter the veto, 'to enable us to escape submission to law'⁷³. The *Carnegie Endowment for International Peace* likewise opined that the veto is essentially negative. Its effect is not to foster cooperation; it is to prevent action⁷⁴.

⁶⁵ See the 1965, 1997 and 2005 reforms.

⁶⁶ France as a great power is no longer the reality on ground although, they claim to provide a counterbalance to the United States assertions of hegemony.

⁶⁷ With the dissolution of the Soviet Union, Russia likes to prove it is still a super power. This might not be far from the truth seeing as Russia has prevented any action against Syria; likewise against itself for the annexation of Crimea and the current situation in Ukraine.

⁶⁸ The status of the United Kingdom as a super power is also not currently correct. Their permanent membership in the Security Council gives them a disproportionate power on the world stage.

⁶⁹ The United States War against Iraq can be used here as an example. Hence, why the Obama administration is more willing to work with the Security Council on the Syrian issue.

⁷⁰Hans Kelsen, Organization and Procedure of the Security Council of the United Nations," in *Harvard Law Review*, vol. 59 (1956) p.1121.

⁷¹ As does the United Nations Charter in conformity with contemporary international law.

⁷² *Op.cit.*, See note 51.

⁷³ Clyde Eagleton, 'The Task of the International Lawyer', *American Journal of International Law*, vol. 41 (1947), p. 437

⁷⁴ *The Secretariat of the United Nations (Under the auspices of the Carnegie Endowment for International Peace)*. New York, 1964, p. 52.

Such an inconsistent application of the principles of the United Nations Charter because of power politics renders them *de facto* obsolete⁷⁵ and undermines the good intentions of the United Nations system. This inconsistency produces a climate of insecurity⁷⁶. Above all, it is the permanent members of the Security Council and their allies who have launched military aggressions and thus jeopardized world peace⁷⁷. It has therefore become obvious that the Security Council cannot effectively carry out its mandate.

Hans Kochler⁷⁸ notes,

it is necessary to prove that the mistake is not a lack of consensus among the great powers. Rather, the error remains a problematic legal construction: namely, the privileged status of certain members in the Security Council. If this privileged status did not exist, a qualified majority could handle measures of collective security. The problem lies primarily *not* in the factual conditions for the application of the Charter, but in a contradictory normative regulation. This flaw has led to the invalidation of the rule of the majority and, thus, of the principle of equality when important issues are at stake.

States have tried to circumvent the use of the veto by avoiding the tabling of a matter before the Security Council. This can be done via the Uniting for Peace procedure⁷⁹. Another method of evading the veto can be seen from the NATO intervention in Kosovo. NATO sought for moral approval outside the Security Council arguing that the intervention may be illegal without Security Council authorization but still legitimate on moral and ethical grounds.

Notwithstanding the obstacles caused by the veto to the Security Council's mandate, resolutions passed in consensus can serve as a sharp tool and strong shield in the world's common endeavours to achieve international peace and security⁸⁰. The veto also forces the majority to consider minority positions in its resolutions. Focarelli opines that, non-aligned states themselves, while opposing humanitarian intervention, are favourably disposed to the

⁷⁵ Benjamin Cohen, *The United Nations: Institutional Development, Growth and Possibilities*. (Cambridge, Mass.), 1961, pg. 15.

⁷⁶ For example, the United States in obstructing the implementation of Resolution 242 (1967) and frequent use of the veto to prevent a United Nations condemnation of Israel (nineteen times since 1981, seven within a one-year period between 1989 and 1990). Also, through its arbitrary interpretation (or over interpretation) of resolution 661 (1990), the United States prematurely interfered militarily with a naval blockade in the Iraq-Kuwait conflict.

⁷⁷ Robert E. Riggs, 'The United States and Diffusion of Power in the Security Council', *International Studies Quarterly*, vol. 22, no. 4 (Dec. 1978), pp. 513-544.

⁷⁸ *Op.cit.*, See note 55.

⁷⁹ 'Uniting for Peace' UNGA Res 377 (V) (3 November 1950) UN Doc A/1775, 10; Available at: <http://www.un.org/Depts/dhl/landmark/pdf/ares377e.pdf>; A 2/3 majority is necessary in the General Assembly.

⁸⁰ UNSC Resolution 678(1990) Adopted by the Security Council at its 2963rd meeting, on 29 November 1990, S/RES/678.

right of veto of the five permanent members as a *guarantee* against abuses of the great powers⁸¹. This can be seen from the Libyan case: when sanctions for Libya's failure to turn over those wanted for the Lockerbie airline bombings⁸² were softened, China abstained from voting⁸³.

V) CONCLUSION

In conclusion, although there exist some benefits of the veto power as enumerated, its disadvantages far outweigh its advantages, thus it is imperative that the veto power is reformed. It is submitted that the veto power should be amended from absolute to limited, thus, not abolished. A caveat as in the legislative process of the United States, where a two-thirds vote in both the House of Representatives and Senate may override a Presidential veto of legislation should be used. This will also take care of the so-called sixth veto whereby a coalition of minimum one more member than a third of the General Assembly can function as a veto player. This will mean that the veto usage can be circumvented and thus add more legitimacy to the Security Council.

⁸¹ Focarelli, 'Responsibility to Protect Doctrine and Humanitarian Intervention', p. 210.

⁸² The Pan Am Flight 103 involved in the Lockerbie bombing of 21 December 1988.

⁸³ *Op.cit.*, see note 81.