



## CONSEQUENCES OF VETO POWERS IN UNSC: NEED FOR REFORMS

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### ABSTRACT

United Nation is an important international forum to discuss and debate various significant international issues. Security Council forms the backbone of UN as it is considered to be the powerhouse of UN as it is the only organ authorised to make decisions. UNSC is bestowed with the responsibility of ensuring international peace and security. In this paper the author discusses about the constitution of UNSC mainly w.r.t Permanent Members (P5) and the special status granted to them in the form of Veto Power.

In this paper the author has analysed the concept of veto in UNSC and the nature of this right in recent times. The paper discusses the aspect of voting pattern adopted by UNSC under Article 27 of the UN Charter. Subsequently the paper provides an insight as to how veto power has led to unequal representation of nations at the UNSC wherein other nations are subjected to the mercy of P5 members in order to resolve their disputes. Further analysis is done as to whether veto acts as abusive right contrary to its responsibility of ensuring international peace and security and safeguard the interest of politically weaker nations. The paper examines the trend of casting of veto since its

inception. Additionally the author deliberates as to how this right has led to humanitarian crisis. Lastly the paper argues for reforms in the structure of operation of UNSC.

**Keywords:** United Nations, Security Council, Yalta Formula, Article 27- UN Charter, Veto Power, Permanent Members (P5), International Peace and Security.

### 1. INTRODUCTION

The United Nations (UN) was set-up after the WW-II in order to prevent reoccurrence of world war like situation and ensure international peace and security. It calls for co-operation of nations as international system functions on the basis of consent, good faith and reciprocity.

The UN comprises of various organs however the UN Security Council (UNSC) is one of the most important organs of in the UN as it is the centre of power. It is the only organ having the authority to make decisions while the other organs only have the right to make recommendations. UNSC is bestowed with the responsibility to maintain international peace and security for which it is conferred with certain powers to investigate the matters and if required take appropriate action for the same.

All decision taken by the UNSC is mandatorily to be complied by the nations owing to the position of this organ in UN.<sup>1</sup> All resolutions of the general assembly must be approved by the UNSC. The role of UNSC is such that it decides the agenda of the secretariat which has to be compiled by them, which in turn raises concerns regarding

<sup>1</sup> Michael Teng, "United Nations Security Council Reform", Ethics of Development in a Global Environment (EDGE) Seminar, 2013.



separation of powers within the UN and may have an impact on its operation.<sup>2</sup>

The UNSC is consists of 15 members wherein five are the permanent members known as the P5 members (US, UK, France, China, Russia) and the remaining 10 members are elected on rotational basis for a period of two years. The P5 nations enjoy certain special powers such as ‘veto power’ which means that these nations have a right to block a resolution in UNSC however the remaining members do not enjoy such powers and get a right to one vote. For any resolution to succeed in UNSC it requires a majority of 9 votes excluding the P5 nations in all substantive matters and for procedural matters in total 9 votes are required.<sup>3</sup> However, if any of the P5 members exercises veto than the resolution fails automatically even if majority is attained in non-procedural resolutions.

The UN Charter lays down the voting rights of the nations in UNSC under Article 27<sup>4</sup> (Art.27) which sets out voting mechanism (including veto powers of P5 nations) to be exercised by nation while deciding on procedural and non- procedural matters. The former deals with the aspect of functioning of the council i.e. order of items in agenda whereas the latter pertains to the actions required to be taken by the council to ensure its functioning.<sup>5</sup>

The method of voting adopted for UNSC was not approved by the drafters back then. It was proposed by US, UK & Russia that UNSC should have a veto power for its permanent members. It is known as the Yalta Formula.<sup>6</sup> The P5 members of UNSC drafted Dumbarton Oaks for the UN General Assembly in 1944.<sup>7</sup>

Both this proposals were discussed at length initially by the UN General Assembly (UNGA) in San Francisco in 1945. The Yalta proposal remained altered and incorporated in the verbatim of UN Charter whereas the modification suggested for Dumbarton Oaks were accepted for instance including increased military power to the UNSC. It is argued that without the Yalta formula being accepted the US, UK & Russia would not have agree to be a part of UN which would diminish UN’s financial and military capabilities.<sup>8</sup>

UN is an important international forum for all nations to discuss and debated on international affairs affecting the peace and security of the world; however there have been numerous criticisms and dissenting views of the UN (specifically the UNSC). Many people believe that the UNSC is inefficient and ineffective in carrying out its mandate. The criticism of P5 members veto power, which is accused of being archaic and an impediment to fulfilling the mandate of maintaining international peace and security as this power does neither hold good in

<sup>2</sup> Zack A. Tucker, “United in Progress: A Proposal to Reform United Nations’ Organizational Structure”, Cultural Diplomacy News, 2010.

<sup>3</sup> Brian Cox, “United Nations Security Council Reform: Collected Proposals and Possible Consequences”, South Carolina Journal of International Law and Business: Vol. 6: Iss. 1, Aricle 4.

<sup>4</sup> United Nations Charter, 1945, Art. 27.

<sup>5</sup> S Okhovat ‘The United Nations Security Council: Its Veto Power and Its Reform’ CPACS, 2011.

<sup>6</sup> A.P Fernbach ‘The United Nations Security Council’ 32 Virginia Law Review 118.

<sup>7</sup> A.P Fernbach ‘The United Nations Security Council’ 32 Virginia Law Review 120.

<sup>8</sup> A.P Fernbach ‘The United Nations Security Council’ 35 Virginia Law Review 121.



today's time when we speak of equality nor does it represent the will of the drafter of Charter. It is observed that this power has been widely misused by the P5 members in order to further their own personal interest. In this paper the author has analysed whether access of veto power to P5 nations has resulted in concentration of power at the UNSC. Further author has examined whether the veto power defies the concept of equality of states in UNSC. Lastly, the paper will discuss the aspect of whether P5 nations should continue to get the privilege of exercising veto or should there be reforms in the operation of UNSC.

## 2. CHAPTERISATION

### 2.1 Voting Pattern in UNSC

Prior to establishment of UN post WW-I League of Nation was incorporated however one of the main reasons of its short life was the lack of authority for implementing the discussions and moreover it did not have the required backing from the countries which led to its collapse owing to its inability to prevent atrocities in china or Abyssinia.

On the other hand the UN has been able to withstand the test of time and dynamic political changes at the international level owing to its constitution i.e. having permanent members and the right of veto to P5 which prevented UN faith from running down the same lane as that of League of Nations.

However, over a period of time the structural framework that proved to be a boon for sustainability of UN turned into bane for other nations as the P5 nations used this power of veto to promote their own self-

interest. It became even more difficult to regulate this right of P5 nations because of this special privilege bestowed upon them which enable them to block any resolution hampering their special status in the UNSC.

The UN Security Council requires an open ballot for voting, and decisions require 9 affirmative votes under Article 27 (3) of the UN Charter.<sup>9</sup> In the past, the UN Security Council has allowed resolutions to pass with at least nine concurring votes and abstentions from one or more P5 members.<sup>10</sup>

Usually if the P5 member casts a veto than the resolution fails however under Art.27 (3) "decisions on all but procedural matters...s all be made by an affirmative vote from nine members including the concurring votes of the permanent members" which means procedural matters require simple majority can a resolution can be discussed even against the will of P5 nations. Nevertheless in cases of substantive matters if any of the P5 nation's exercises veto than resolution will not stand despite concurrent voting.<sup>11</sup>

Additionally Art. 52(3)<sup>12</sup> states that "a party to a dispute shall abstain from voting" which means, if any of the P5 members is a part of conflict on which the resolution is being discussed that member should not exercise his right of veto. But this provision has not been observed with sincerity by the P5 nations that have led to violation of their right to veto leading to misuse of their power.

<sup>9</sup> United Nations Charter, 1945, Art. 27 (3).

<sup>10</sup> Security Council Report, 2015

<sup>11</sup> *Supra*<sup>10</sup>

<sup>12</sup> United Nations Charter, 1945, Art. 52(3).



## 2.2 Veto Power – Unequal Representation of Nations

UNSC is endowed with the responsibility to maintain international peace and security and it is the decision making body of the UN. It is observed that the structural constitution mostly the P5 members are bestowed with excessive and unregulated powers in UNSC which have jeopardised interest of other member states.

Art. 27 was created with the objective of easing tensions between nations which had the potential of threatening international peace and security triggered as a result of political policies of one nation towards other. P5 nations were given this power in order to control extreme war-like situation as the development of nuclear weapons created fear of third world war and since these nations were in possession of nuclear weapons they were made responsible to control the happening of any such devastating possibility.<sup>13</sup>

However, P5 nations have not conferred this power in a right sense as they have widely misused this right to further their own interest and promote their political policy over other states in the rat race of establishing one's superiority over other. The phrase "power corrupts and absolute power corrupts absolutely" holds true for the current situation of UNSC wherein the P5 nations are conferred with a power that is unfettered and unregulated to an extent of it being disruptive to international peace and security due to inaction by states in a timely manner.

It is important to acknowledge the fact that the current voting provision was inserted

with intent to protect the interest of all states and not just P5 nations. It is not a mechanism of supporting political power-play of so-called superpowers. In the present situation it would not be wrong if one claims that the intent with which the provision was drafted has long back i.e. responsibility of P5 nations to protect the interest of developing and underdeveloped nations to defend themselves in such forums from the any kind of menace having a potential impact on their interest, has lost its ground.

Therefore, this right has been severely criticized as it has left other nations at the mercy of P5 members. What is even more dangerous is the fact that each nation of P5 has its own political agenda and interest different from other member and if they feel that a particular resolution might be against their policies they simply veto the resolution. The Art. 27 was drafted with an intention and aimed at providing P5 member s with a higher responsibility to safeguard the interest of other states however the manner in which it is being used has left is no more than a tool to promote their self-interest which has led to concentration of power in the hand of P5 nations. Thus, creating fear in mind of other states regarding the sanctity of "sovereign equality."

## 2.3 Veto- An Abusive Right

At the time of its incorporation at San Francisco in 1945 this right was adopted despite resistance from drafters of Charter owing to the international political situation and to maintain a strong backing system for UN from the states. As, these countries were considered to be superpowers by the end of

<sup>13</sup> Waxman, C. M., "An International Institutions and Global Governance Program: CSR NO 49, 2009.



WW-II pertaining to their economic and military capabilities.

It should be noted that the construction of the veto in article 27(3) is clear. The article imposes no conditions on the exercise of the veto, which is primarily a political tool, in setting out the strict voting requirements for a Security Council decision. Permanent members are not even required to provide reasons for their negative vote. The article states that if the right is exercised than the matter results in failed resolution.

At the time of its inception it was considered to be perceived as a bona fide right given to P5 members to ensure peace and security and safeguard the interest of politically weaker nations. The rationale for this reasoning can be found in Article 2(2)<sup>14</sup> which expressly requires UN members to “Fulfil in good faith the obligations they have assumed in accordance with the present Charter.” The Council ‘acts on their behalf,’ according to article 24(1).<sup>15</sup> Additionally Article 24(2)<sup>16</sup> states that Council should ‘Act in accordance with the Purposes and Principles of the United Nations,’ for the purpose of preserving international peace and security, as stated in Article 1.<sup>17</sup> Collective understanding of these articles set out an obligation on the P5 members to discharge their duty in good faith for ensuring greater good. However, it was cautioned that if this right is not exercised in good faith it would be considered to be violation of the Charter.

After analysing the intent of incorporating Article 27 of the Charter it seems as it was a

right conferred to enable the P5 members to fulfil their obligations under the Charter. Under international law a Doctrine of abuse of rights is recognised which is applicable in the present case. Various National laws have adopted this doctrine<sup>18</sup> and this doctrine has been upheld and affirmed by the ICJ at various instances directing the states to abide by the principle of good faith while carrying out its obligation.<sup>19</sup> In the context of UNSC this doctrine can be founded on the international community's reliance on the good faith exercise of the veto, as seen in the UN Charter's travaux préparatoires.

The P5 members while defending their stance for incorporating Yalta Formula in the Charter states that “It is not to be assumed ... that the permanent Members, any more than the non-permanent Members, would use their ‘veto’ power wilfully to obstruct the operation of the Council.”<sup>20</sup> This statement led to incorporation of the article in the Charter and subsequently ratification by other states.

However, despite this doctrine there was scepticism w.r.t abuse of such right by the P5 members and subsequently it was also observed that this right was being misuse by them to promote their own interest. Accordingly insertion of Article 27(3) was suggested that devoid P5 members from legal shield for unnecessary exercise of veto.

Therefore it can be observed that veto is an abusive right even if its violation cannot be treated legally under Article 27(3). In case P5 members violates right under Art. 27(3) they

<sup>14</sup> United Nations Charter, 1945, Art. 2(2).

<sup>15</sup> United Nations Charter, 1945, Art. 24 (1).

<sup>16</sup> United Nations Charter, 1945, Art. 24 (2).

<sup>17</sup> United Nations Charter, 1945, Art. 1.

<sup>18</sup> I Brownlie, Principles of Public International Law, 6th edn 697, 2003.

<sup>19</sup> H Lauterpacht, Oppenheim’s International Law, Longman’s, Green and Co., 1955.

<sup>20</sup> Statement by the Delegations of the Four Sponsoring Governments on the Voting Procedure in the Security Council’, UNCIO Vol XI, p. 754, 1945.



can be held responsible for failing to fulfil their obligation under international law.

#### 2.4 Analysis of Trend of Casting Veto

United Nations was established in 1945 “to diplomatically counter-balance the excesses of Nation States as they interact with one another. But if one may ask, was it able to stop all other subsequent wars such as the cold war of 1963, the Cuban missile Crisis in 1962, the Korean War, Iraqi war, Kuwait war, the conflict in Georgia, the 2009 massacre in Srilanka of the Tamils, the Arab Spring which sphere headed the Syrian civil war and rendered Libya and Syria to almost failed states, the Israeli/Palestine protracted wars, the forceful annexation of Crimea in the Ukraine by Russia, the civil wars in Africa such as Nigeria, Burkina Faso, Sierra-Leon, Sudan, Liberia, Congo, and the massacre in South Africa due to Apartheid and white minority regime?” the obvious answer is in negative.

According to a study the veto power has been used 264 times since 1964 -2015 by the P5 members in furtherance of their interest which has led to blocking 229 resolutions at the UNSC. Wherein Soviet Union /Russia has used this right the highest i.e. 123 times, followed by U.S. 83; the UK, 30; France: 18; and China: 10 times. Out of which 171 times the resolution was blocked by a single member and 33 times by two or more members together.<sup>21</sup>

The statistics are perplexing as this right was ment to be used once in a while however after looking at the trend it seems that P5 members

have refrained from using it once in a while. The first ever veto was casted by the then Soviet Union pertaining to withdrawal of troops from Lebanon and Syria on 16 February 1946.

Since the end of the Cold War, there is a change in the trend of casting veto, with the number of times the veto has been used by P5 members decreasing significantly. For example, France and the United Kingdom have not used their veto since the fall of the Berlin Wall, and Russia and the United States have significantly limited their use. China has also avoided casting it.

Though the frequency of exercising veto has reduced but when used is only to the advantage of P5 nation interest. E.g. US casting veto on Israel-Palestine issue and Russia’s veto in Syria and Myanmar resolutions. It was observed that there is a need for devising a code of conduct regulating the manner in which this right is used by the P5 members in order to ensure constructive usage of this right.<sup>22</sup>

#### 2.5 How has Veto led to Humanitarian Crisis?

The United Nations is established on the pillar of humanity to act as defendant and protector of people through its various institutions, thus fulfilling its functions democratically without discrimination, harassment or influence, politics or interference thereby, managing various political, economic, military and social problems that threaten humanity.<sup>23</sup>

Nevertheless UNSC had been subject to critic and discontent since ab initio owing to the

<sup>21</sup> Peter Wallensteen and Patrik Johansson, *The United Nations Security Council in state-based armed conflicts*, 2003.

<sup>22</sup> McClean, Emma. “Hard Evidence: Who Uses Veto in the UN Security Council Most Often – and for What?” *The Conversation*, 2014.

<sup>23</sup> The United Nations Charter, 1945.



mode of undemocratic operation which led it to a web of controversies. The reason being infliction of injustice by P5 members on nations not having veto power. In the era of civil war, revolution, and the electoral system, the political leaders of developing countries who allied with each P5 members often turned their backs on electoral promises to become dictators, tyrannies, and oppressors. In other words, individuals and groups for or against the government have been deprived of their rights for illegal detention, detention, torture and imprisonment, without even trial or torture. In these situations, the person suffering is an innocent citizen of the developing country.

On the other hand, states having opted non-alignment in order to avoid interference and pressure from the international communities in their internal affairs as it is against the notion of sovereignty face the wrath of “internationally sponsored coups, civil uprisings, terrorisms, and rebellions against a legally constituted governments including assassinations. “The incident of 1960s in Congo, Nigeria, Venezuela and Cuba in 1970s saw attempts to assassinate the country leaders for building pressure on them to support P5 members on the issue of resolution.

It would have been commendable if the institution would have succeeded without any reservation by conferring special status to P5 members, had the founder of UN not given in to the demand of P5 nations for Yalta formula and created a positive vision thereby creating intermediate sources and tools to cope up with the requirement of funding to ensure its sustainability and growth.<sup>24</sup>

## 2.6 Need for Reforms

The UNSC’s veto and its relevance has been the subject of debate in recent times, one of the main topics of Security Council reform. If one of the P5 members gets involved in violence, its clear public security is not functioning. The notion of collective security is to ensure co-operation of nations to maintain peace and security. Several governments, member states, regional organizations, leaders and experts have produced and developed various suggestions and recommendations on reforms of UNSC.

It is a well-known fact that while the drafting of the charter the P5 nations proposed the Yalta formula to be incorporated which was highly objected by the drafters however the P5 nation issued a statement assuring the drafters as well as other member states describing the importance of such provision to maintain international peace and security owing to the international political conditions prevalent at that time.

This condition was accepted by the drafters as it was quite clear that if they did not incorporate this provision in the Charter the institution would not be able to sustain itself without sufficient economic and military support. Nevertheless it was observed that this right was misused by the P5 nations to further their own self-interest and prevented discussions on matters requiring urgent attention to stabilise and restore international peace. The reality is that the UNSC has been “impotent in the face of too many serious international conflicts”<sup>25</sup> as this right has been used to block resolutions for preventing massacres and addressing the issue of violation of human rights which raises

<sup>24</sup> The United Nations Charter, 1945.

<sup>25</sup> Security Council Report, S/PV.7389, 9: 2015.



serious concerns regarding the legality of such power to P5.

The proposed reforms are as –

- 1) The French initiative -2013, "the permanent members voluntarily and collectively pledge not to use the veto in case of recognized mass atrocities."<sup>26</sup>
- 2) The ACT initiative -2015, "The Code of Conduct calls upon all members of the UNSC – elected and permanent – to not vote against any credible draft resolution intended to prevent or halt mass atrocities."<sup>27</sup>
- 3) The Elders' proposal -2015, "the P5 must not use their veto without explaining their decision and proposing an alternative plan in accordance with international law that can achieve the same goals."<sup>28</sup> They are intended to curb the P5's veto power in a positive way in order to protect Art. 1 and Art. 2 of the UN Charter and provide greater security for its Member States.

These initiatives were suggested in the backdrop of failure of UNSC to address the issue of Syrian human rights violation which led to violation of international humanitarian law calling for reforms to restrict the power of P5 nations in exercising veto.

### 3. LITERATURE REVIEW

- **Bjarke Zinck Winther (2020):** In this article the author has discussed the UNSC and the need for reforms in its functioning. It deals with the aspect of representation as the factors preventing such reforms from materialising.
- **UN Security Council Working Methods, The Veto (2020):** The

report discusses the historical background of UNSC and the veto power. It further discusses the instance of exercise of such power by P5 nations and how its usage has led to stoppage of various resolutions.

- **Richard Gowan (2018):** In this article the author defended relations between the five permanent members of the Security Council and recommendations for strengthening cooperation.
- **Florence Emmanuela Dallas (2018):** In this paper the author has discussed the power of P5 nations to veto resolutions and how over a period of time this power has been misused by the nations. It also deliberates on the aspect of need of such power in the 21st century and the reforms required ensuring efficient response of nations to deal with future challenges. It further discusses the aspect as whether structural changes would advance the credibility of UNSC.
- **Iyase, Nneka Blessing (2017):** In this paper the author has analysed the system of veto power in UNSC and its impact on developing economies being unfavourable owing to the resistance of P5 nations to give up on their special power. It also evaluates the global trend of usage of veto power and calls for reforms.
- **Andrew J. Carswel (2013):** In this article the author aims to provide an insight into the importance of veto power in UNSC by referring to general assembly's power under the UN Charter to allow nations to

<sup>26</sup> France ONU, 2018

<sup>27</sup> GCR2P, 2015.

<sup>28</sup> Carvalho, 2015.



maintain international peace and security in a constitution manner.

- **Elida Rønnaug Hole Wirkola (2010):** In this thesis the author has tried to depict as to how veto power and acts as a barrier to incorporate reforms in UNSC status quo. It also discusses the reluctance of nations in bringing of reforms.
- **Amber Fitzgerald (2000):** In this paper the author address the issue of lack of mechanism in UNSC to ensure proper check and balance system in its functioning. It also analysis the obstacles that restrict the enactment and implementation of reforms with respect to the contentious veto power. It has further proposed certain reforms in its operation.

#### 4. CONCLUSION & SUGGESIONS

After the failure of League of Nation subsequent to WW-I establishment of United Nations after WW-II was under a great pressure to prevent third world war and was responsible to maintain international peace and security. It was incorporated on pillar of humanity to act as defendant and protector of people through its various institutions. Fortunately UN was able to withstand the test of time and dynamic political changes at the international level owing to its constitution i.e. having permanent members and the right of veto to P5 which prevented UN faith from running down the same lane as that of League of Nations.

However, over a period of time the structural framework that proved to be a boon for sustainability of UN turned into bane for other nations as the P5 nations used this power of veto to promote their own self-

interest. It became even more difficult to regulate this right of P5 nations because of this special privilege bestowed upon them which enable them to block any resolution hampering their special status in the UNSC. Owing to which it has been subject to a host of controversies.

A huge price had to be paid for the success of one international organisation as its repercussions had to be borne by other states of the world specifically innocent citizens. It is a well-known fact that while the drafting of the charter the P5 nations proposed the Yalta formula to be incorporated which was highly objected by the drafters however it was quite clear that if they did not incorporate this provision in the Charter the institution would not be able to sustain itself without sufficient economic and military support.

It is important to acknowledge the fact that the current voting provision was inserted with intent to protect the interest of all states and not just P5 nations. It is not a mechanism of supporting political power-play of so-called superpowers. However, P5 nations have not construed this power in a right sense as they have widely misused this right to further their own interest and promote their political policy over other states in the rat race of establishing one's superiority over other.

After having analysed the topic it is concluded that veto power is an abusive right granted to P5 nations in UNSC as it is exercised contrary to the intent of being incorporated to further their personal interest and is against the Doctrine of Abuse of Rights. The manner in which the UNSC has handled sensitive matters portrays its incompetency and an urgent need for reforms in the structural functioning of the organ.



Suggestions

- It is suggested that the international scenario have changed since the time of inception of UNSC and thus if veto is there to stay why should it be restricted to P5 members when there is a provision of having other permanent members.
- It is suggested that the ambit of Art. 27 (3) should be widen to include Doctrine of Abuse of Right in addition to violation of provision by way of an amendment.
- It is suggested that P5 member should be mandated to provide a rationale for their decision of using veto in order to gauge the authenticity of its exercise and avoid misuse of this right for furthering their self-interest.
- It is suggested that in matters of conflict where one or more of the parties involved are P5 members than their right to veto should be curb in order to ensure fair decision-making under Art. 52 (3) of the Charter.

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