

PARADOX OF VOTING: PERIL OF THE VETOING TO THE PERPETUAL PEACE

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Keywords: United Nations, Security Council, Veto Power, UN Charter, Permanent Members, Articles 27, Article 108.

Abstract. The permanent members of the Security Council of the United Nations possess veto power which was vested to them by the Charter of the United Nations to maintain global peace and security. As many, as well as recent events (Russia's illegal aggression towards Ukraine in 2022) exhibit, in certain circumstances casting veto power, poses some perils to the global peace, *per se*, and they are twofold. First, all permanent members can exercise this power, according to their will, to block any resolution of the Security Council, including those that deplore their own illegal and illegit actions. The second challenge is the amendment of the UN Charter. The present wording of the UN Charter makes amending the Charter paradoxically onerous, if not impossible (by giving huge power to the permanent members again). Consequently, this situation has long triggered and urged politicians and legal scholars to explore possible solutions. This article will humbly contemplate the issue and explore the suggestions for the reinvigoration of the existing instruments to resolve the current legal and political quagmire.

INTRODUCTION

Ensuring the long-term and lasting peace is a philosophical 'dream' of mankind. However, this dream has not yet been realised so far. Despite many attempts to achieve this 'dream', such as the establishment of international organizations and the adoption of several international instruments, legal, political and practical difficulties still linger. The reasons for this vary. The desire of various states or nations to be 'superior' to others and to be accepted in that way, may sometimes be a reason. Or the inexhaustible egos of tyrants who rule nations and believe that they possess all 'inherent' rights to do whatever they want to, could be another example. Interestingly, these 'super' persons or 'superior' nations try to justify their actions to "maintain" or "preserve" the peace. And, yet ironically under modern international law, they do not even hesitate to mobilise their power at different international organisations, i.e., the United Nations, to achieve their "peaceful" goals. This leads to another problem which lies in the credibility deficit and structural failure of that very organisation. And similar functional failures in the United Nations and their sophisticated mechanisms could also be a serious obstacle to peacekeeping *per se* or to deploying timely and effective counteractions against the aggressor with warmongering behaviour.

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Hence, the misuse of the veto power by the permanent members of the Security Council of the United Nations is one of the long-standing and confounding issues since the establishment of the United Nations. Recently, this issue has sparked another wave of debates after Russia's illegal and unjustified aggression towards Ukraine in February 2022 and its exercising veto power to block the draft resolution of the Security Council that intended to deplore Russia's so called "special military operations" in Ukraine.² As a direct result of this "operations" almost everyone was affected by the economic handicaps and humanitarian disaster. The largest influx of refugees since the Second World War is putting various western states to the test (Jakobsson, 2022). In this challenging period, the United Nations (the 'greatest peace project' that mankind has achieved so far), especially the defunct Security Council, faces enormous challenges to cope with the escalating situations and this urges to question its capacity on to maintain global peace and security.

Consequently, the existing paradoxical situation compels everyone, especially, legal scholars to contemplate the stumbling sides of the organisation, since the current legal (highly political as well) mechanism does not suffice to confront and control the escalating situations and fails to combat against perils to the perpetual peace. Seemingly, the time has arrived for the reinvigoration. To this purpose and to better understand this quagmire, this article will first elucidate the existing legal structure of the United Nations and working mechanisms of the veto power that is enshrined in the UN Charter. After depicting the clear image of the system and current situation, suggested alterations, in recent decades, to the UN Charter in terms of the number of permanent members and working mechanism of the Security Council, shall be discussed. Lastly, in the light of the suggested proposals and recent developments, the article will explore possible solutions.

1. THE UNITED NATIONS AND ITS CHARTER (1945)

The international order and the law were shattered by the Second World War (Best, 1981; Rostker, 2013). In many ways, the war was a continuation of the conflicts left unresolved by World War I, after a tense 20-year break. This was the deadliest and largest war in history, where 40–50 million lives were lost (Encyclopaedia Britannica, World War II, 1939–1945). No other war of the mankind has caused so much sorrow and destruction.

After the Second World War, the world entered new phase of international law. This new post-Westphalian world urged states to design a project that could maintain and preserve international peace and security. In July 1944, 44 states and governments convened a conference in Bretton Woods, the US, where the International Monetary Fund and the World Bank were established. The conference's objective was to develop a framework for economic cooperation and development that would result in a more stable and prosperous global economy. While this purpose is still at the heart of

² According to the Article 2, paragraph 4 of the UN Charter, all states have an obligation to refrain from the threat or use of force against the territorial integrity or political independence of any State. See Security Council Fails to Adopt Draft Resolution on Ending Ukraine Crisis, as Russian Federation Wields Veto, 25 February 2022, available at <https://www.un.org/press/en/2022/sc14808.doc.htm> (Accessed: 26 June 2022).

both organizations' activity, it is continually changing in response to new economic trends (Dixon et al., 2016, p. 493). Following the end of the Second World War and in the light of the Allied planning and aspirations made throughout the conflict, the Charter of the United Nations (the UN Charter) was adopted in 1945, and the United Nations (the UN) was founded in the same year (Shaw, 2021, p. 1070). The UN Charter outlines the organization's goals: *inter alia*, to maintain international peace and security; to develop friendly relations among the nations; to achieve international cooperation in solving international problems and being a centre for harmonising the actions of nations in the attainment of these common goals.³

The United Nations Charter is not only the multilateral treaty that established the organization and specified the rights and obligations of those who sign it; it is also the UN's constitution (Macdonald, 2000) outlining its functions and restrictions (Shaw, 2021, p. 1071). It is also the successor to the Covenant of the League of Nations Covenant, which was dissolved in 1946 (Pedersen, 2015).⁴

2. THE SECURITY COUNCIL AND THE VETO POWER: THE ORIGIN OF THE PARADOX

A 'paradox' is something that runs counter to popular belief and the word stems from the Greek words 'para' ('contrary' or 'against') and 'doxa' ('truth' or 'opinion'). The phrase came to be associated with anything that defies or contradicts common sense (The New World Encyclopaedia (NWE), 2022). And, 'veto', deriving from Latin origins, means 'to refuse to allow something' (Cambridge English Dictionary, 2022; Online Etymology Dictionary, 2022).

The United Nations is a unique organization. It was established independently of any peace treaty, avoiding the League of Nations' identification with a punitive peace (Crawford, 2019, p. 173). The Security Council was given vast discretionary powers and was designed to act as a continuous, efficient executive organ with a small membership (Shaw, 2021, p. 1072). It was entrusted with the primary task of maintaining international peace and security.

The Security Council's voting mechanism was outlined in Article 27 of the Charter which was agreed upon in San Francisco on June 26, 1945, following the tripartite conference between Roosevelt, Churchill and Stalin from February 3 to 11, 1945. The Security Council was initially made up of 11 (eleven) members, 5 (five) permanent and 6 (six) non-permanent, who were elected for two-year terms by the General Assembly. Non-permanent members of the Security Council have been elected on a geographical base to represent specific regions or groups of governments. According to the Article 27, UN Charter, the Council needed seven votes in favour of every decision, and votes on substantive (i.e., non-procedural) issues also needed 'the concurring votes' of the permanent

3 Article 1 of the UN Charter, full text is available at <https://www.un.org/en/about-us/un-charter/full-text>, (last accessed: 26 June 2022).

4 The League of Nations was founded on January 10, 1920, with the initiative of the victorious Allied nations at the end of World War I. On April 19, 1946, it was formally disbanded, its powers and functions having been handed to the emerging United Nations. *For more about the League of Nations generally see:* Susan Pedersen, *The Guardians: The League of Nations and the Crisis of Empire*, Oxford University Press, 2015.

members. Although the permanent members' right to veto was enshrined in this way, in subsequent practice, the absence of one or more permanent members did not prevent a Council resolution from being approved (until the Council's expansion in 1965) if seven members support it.

However, as the number of members grew, this technique became more challenging. In 1965, the UN Charter was amended to raise the council's membership to 15 (fifteen), which included the initial five permanent members as well as ten non-permanent members. The People's Republic of China succeeded the Republic of China (Taiwan) as a permanent member in 1971, and the Russian Federation succeeded the Soviet Union in 1991. Following Germany's unification in 1990, the council's membership was once again debated, and Germany, India, and Japan, each asked for permanent council seats (Encyclopaedia Britannica, 2022). The current permanent members are the United States, the United Kingdom, Russia, China and France.

Article 27 of the UN Charter, where the veto power was implicitly considered, reads as follows (new wording has been in force since 1965):

"Article 27 of the UN Charter

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

The veto is held by the permanent members, who were chosen in 1945 based on then power politics. Decisions of the Council must be taken by a positive vote of 9 (nine) members (out of 15 (fifteen)), (previously 7 out of 11) including the permanent members' concurring votes, on all matters (excluding procedural matters). The General Assembly elects the other ten members for two-year periods.⁵ It should be noted that the 'veto power' was not drafted in the UN Charter word-by-word *per se* and as mentioned above only permanent members may exercise it. Decisions of the General Assembly on important questions (including recommendations with respect to the maintenance of international peace and security) are made by a two-thirds majority of the members present and voting.⁶

Decisions of the Security Council on all matters (excluding procedural ones) 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. This power, essentially, was conferred to permanent members of the international community to preserve peace and security. However, as we witness, in certain cases they might mobilise this tool to block resolutions that aim to deplore their own internationally wrongful

⁵ Article 23 of the UN Charter.

⁶ Article 18 of the UN Charter.

acts. This situation resembles a court hearing where the ‘the accused person’ has a tool to reject the decision made by the judge or jury. The worst thing is that they can not only refuse this decision, but also to block the execution of the verdict since the mere refusal is sufficient to do so (of course there is always an attempt to justify their actions with vague interpretations of the processes).

As mentioned earlier, the veto was enshrined in the Charter considering the power balances after the Second World War. However, some even question whether France was really qualified for ‘Great Power’ status in 1945. Its eventual inclusion among the permanent five was ostensibly driven more by Western statesmen’s nostalgia rather than by realpolitik reasons (Blum, 2005, 636). This was not the only issue. The Soviet Union, in particular, would not have acceded to the UN if the veto had not been drafted and added. The USSR’s demand was based on an assumption to defend itself from the Council’s and General Assembly’s Western bias at the time (Trahan, 2020). In practice, the Soviet Union used its veto regularly, the United States less frequently, and the other members only occasionally (UN Security Council Working Methods, 2020). The use of the veto by the United States has increased in recent years. The issue of how to discern between procedural and non-procedural issues has long been a source of contention, as well, which could be a topic of another article.

3. AMENDING THE COMPOSITION OF THE UN SECURITY COUNCIL AND THE CHARTER

Attempts to prevent abuse of the veto power were made as far back as the 1950s. The “Uniting for Peace” resolution, the so-called Dean Acheson resolution, was supported by the US as a buffer against possible USSR vetoes and accepted by the General Assembly in 1950. It has been contended that the Security Council’s ‘power of veto’ issue might be resolved with the passage of this resolution and the subsequent interpretations of the Assembly’s authority that became customary international law (Koerner, 2003; Hunt, 2006; Carswell, 2013). By adopting this resolution, more than two-thirds of UN Member States affirmed that, in circumstances where the Security Council has failed to fulfil its ‘primary responsibility’ for sustaining peace, the General Assembly may take whatever measures are required to restore international peace and security. According to this interpretation, the UN Charter grants the General Assembly ‘ultimate responsibility’, as opposed to ‘secondary duty’ for matters pertaining to international peace and security. The Uniting for Peace resolution is specifically mentioned in a number of official and unofficial UN reports as offering a means for the General Assembly to override any Security Council vetoes.⁷ This resolution short-lived and was relegated to oblivion once the five permanent members of the Security Council realised it was a double-edged sword and jeopardised their sovereign interests by perhaps compromising their own individual veto powers (Carswell, 2013, pp. 455-456).

⁷ United Nations General Assembly Session 52 Document 856. A/52/856, available at https://www.un.org/ga/search/view_doc.asp?symbol=A/52/856 (last accessed: 07 July 2022); International Commission on Intervention and State Sovereignty. “The Responsibility to Protect”, 10 September 2005 at the Wayback Machine, ICISS.ca, December 2001, available at <https://web.archive.org/web/20050910032823/http://www.iciss.ca/menu-en.asp> (last accessed: 07 July 2022).

A couple of decades later, Kofi Annan, the secretary-general of the United Nations, in 2004, distributed the report (hereinafter the UN Report, 2004) that was produced by sixteen-person high-level panel to discuss “threats, challenges, and transformation” the organization might face in the near future (A More Secure World: Our Shared Responsibility, Report of the UN, 2004). The group was asked to, among other things, provide recommendations for improving the United Nations so that it can guarantee collective security for all in the twenty-first century. The panel’s report includes a summary of 101 suggestions that address a variety of issues the global community is experiencing. The idea for expanding the Security Council — with two alternate models (Model A and B) that call for such an expansion — has garnered the most attention worldwide. This interest is undoubtedly driven by broad questions about the function (and accountability) of the principal players in international relations in maintaining global peace and security. The report made an effort to find a balance between two key factors that, in its opinion, should determine the Council’s makeup: overall “representativeness” and contributions to the Organization (financial, military, and diplomatic).

The panel then suggested two models: model A and model B, for expanding the Council in an effort to reform the current system. Both models would increase the Council’s size from fifteen to twenty-four members (the UN Report, 2004, paras 252 and 253). The panel designated four “regional areas” for the sake of the reform ideas regarding the distribution of Security Council seats: ‘Africa’, ‘Asia and Pacific’, ‘Europe’ and ‘Americas’. The report clarified that “We see these descriptions as helpful in making and implementing judgements about the composition of the Security Council but make no recommendation about changing the composition of the current regional groups for general electoral and other United Nations purposes.” (the UN Report, 2004, para 251). Some contend that this strategy has some limitations. Since it is predicted that the majority of UN members will continue to adhere to the traditional and more politicised “regional group” idea, it obviously complicates any evaluation of the advantages of any of the two alternative models (Blum, 2005, p. 640). Model A would add 9 (nine) seats to the council of which 6 (six) new permanent members (overall 11 (eleven) permanent members) and add the other 3 (three) ones to the non-permanent seats (making a total of 13 (thirteen) non-permanent members). In comparison to the five original permanent members, the new permanent members would not have the power to veto, which would put them in a less advantageous position. The allocation of those seats among the several areas by the panel, which does not specify the names of the candidates for the new permanent proposal, leaves little room for speculation. Six new permanent seats would be allocated, with one going to Europe (Germany), two to Asia-Pacific (Japan and India), one to the Americas (Brazil), and two to Africa (Nigeria and either Egypt or South Africa).

Model B was different from Model A in terms of the composition of the Security Council. Thus, model B provided for no new permanent seats but would create a new category of eight four-year renewable-term seats and one new two-year non-permanent (and non-renewable) seat, divided among the major regional areas (the UN Report, 2004, para 253). In accordance with this model, i) the composite of the permanent membership of the Council would remain unaltered; ii) a new category of eight seats with a four-year renewable term would be created; these seats would be distributed

equally among the four regional areas, giving each two seats; and iii) a new non-permanent, two-year non-renewable seat would be created; the eleven seats in this category would then be distributed as follows: four seats would be given to Africa, three seats to Asia, three seats to the Americas, and one seat to Europe. Germany and Japan, two of the likely candidates for permanent seats, initially objected to this suggestion by the panel and insisted on their own right to veto. German Chancellor Schroder and Japanese Prime Minister Koizumi demanded that their nations be given permanent Council seats with veto power.⁸

Both models opposed the addition of any new veto-wielding Council members, and they would allocate the nine more seats in an equal split between the regions of Africa, Asia-Pacific, and America, giving each of those three extra seats (although the allocation of these new seats within each of these areas would differ).

Model B clearly provided a benefit of greater flexibility. The re-election of certain of the semi-permanent members (Brazil, Germany, India, Japan, and Nigeria), who would essentially become permanent members under model A, every four years, was a reasonable assumption. However, practically speaking, model B would enable additional members to compete, on a rotating basis, for the second seat in that category. These members would be located in Europe, Africa, and the Americas. Under model A, there would be no room for this choice. One of the clear disadvantages of both models is that they did not address the states of Indonesia (which has a population of over 230 million as of 2021)⁹ and Pakistan (whose population is over 210 million). Indonesia and Pakistan would be given the two-year non-renewable seats because it is almost clear that Japan and India would receive the seats for the Asian-Pacific region (under model A) or, alternatively, its two four-year (“permanent non-permanent”) seats (under model B). States with significantly lower populations (such as Egypt, South Africa, Argentina, Mexico, and Spain) would be more plausible candidates for four-year seats under model B, however on a rotating basis. Despite very tough discussions among the states on both models, this attempt did not make it possible to achieve any positive results till today.

Russia’s recent illegal and unjustified military aggression against Ukraine in February 2022 again resulted with revived impetus in the debates on the veto power of the UN Security Council members. With new standing mandate (26 April 2022) for a General Assembly debate, the President of the General Assembly is able to convene a formal meeting of the General Assembly within 10 (ten) working days of the casting of a veto by one or more permanent members of the Security Council, to hold a debate on the situation as to which the veto was cast, provided that the Assembly does not meet in an emergency special session on the same situation. The new requirement to examine any

8 Germany and Japan have always been supporting each other to take a permanent seat at the Security Council of the UN; See Schroeder Demands German Veto Power, available at <https://www.spiegel.de/international/un-security-council-schroeder-demands-german-veto-power-a-331971.html> (last accessed: 21 July 2022).

9 As a non-permanent member of the UN Security Council, Indonesia has been chosen for four times. For the years 1974–1975, Indonesia underwent its first election. It was elected a second time in 1995–1996 and a third time in 2007–2008, the last time with 158 votes out of the 192 member states that were then eligible to vote in the UN General Assembly. At the United Nations General Assembly’s 72nd session in June 2018, Indonesia was elected with 144 votes out of 192 member states.

veto usage is independent from the Security Council. It is automatic and is triggered if a permanent member state of the Security Council exercises its veto in any circumstance. One could argue that, in terms of maintaining global peace and security, the Security Council's strong grip has thus begun to be shared. According to the new mandate, the Security Council, and more specifically the permanent members, must be held accountable to the General Assembly for any inaction regarding situations that threaten international peace and security. Will it, however, make a difference? The truth is that the new mandate for the General Assembly is not a solution. They can only request permanent member(s) (who is casting the veto) to publicly justify their action and explain the rationale behind their decisions. Although the permanent members do not desire to be seen as 'aggressor' among the members of the international community, it is not difficult to assume that they will always be able to publicly defend their actions (although it comes with totally different interpretation of the situation).

Since all these attempts have not and do not resolve the situation, one could argue that the amendment of the UN Charter could be the only solution. However, amending the UN Charter is another arduous issue. The Charter reads: "*Amendments to the present Charter shall come into force for all Members of the United Nations when they have been adopted by a vote of two thirds of the members of the General Assembly and ratified in accordance with their respective constitutional processes by two thirds of the Members of the United Nations, including all the permanent members of the Security Council.*"¹⁰ This could only be done with when all the permanent members of the Security Council ratify the changes. Here, the paradox starts to become more complicated. This gives again huge power to the permanent members, thus, obviously, no permanent member would agree on any kind of alteration of the Charter that would deprive them of its power.

Then how to resolve these paradoxes? Solving a paradox is not an easy task, at all. After the start of Russia's aggression against Ukraine in February 2022, western countries imposed economic sanctions and pioneered other campaigns to halt Russia. One could argue that these sanctions are nothing but a mere postponement of further aggressions and wars in the future. They resemble an agreement where further conflicts are tacitly reserved for the future (Kleingeld (ed.), 2006, pp. 67-68). It is not a secret that when Russia stops its "special operations" these sanctions will start to be eased. However, at the moment, arguably and seemingly countries find no other effective tool but the sanctions to prevent further escalation of the situation.

Additionally, the solution of the Ukraine problem will not serve as a tool to unblock the veto paradoxes of the UN that derives from the Articles 27 and 108 of the UN Charter. The paradox can be resolved by only demonstrating why the suggested solutions and the framing of the problem are conceptually flawed. As mentioned earlier, the composition of the UN and wording of the UN Charter does not correspond to today's realpolitik. Consequently, the failure to modernize Security Council membership has been the most detrimental, and this unrestrained power has so damaged the credibility of the Security Council that rogue countries frequently dismiss its criticism as invalid (Ban Ki-moon, 2021). Moreover, no organisation does exist to censure the actions of the Security

¹⁰ Article 108 of the UN Charter.

Council. The Security Council's effectiveness may not necessarily increase with its expansion, whether in accordance with either of the two outlined models or in any other way. Nor new mandate gives power to the UN General Assembly to hold the Security Council accountable. Meantime, the Security Council's effectiveness may not necessarily increase with its expansion, whether in accordance with either of the two above-outlined models or in any other way. Therefore, expecting positive changes, in this regard, in the near and medium future would seem like a facile approach.

CONCLUSIONS

1. Much have been said and written about this issue, and less or no has been achieved so far. This very short research paper has tried to humbly depict the very recent history of the problem. Existing legal structure of the United Nations and working mechanisms of the veto power that is enshrined in the Charter have been, first illuminated. Then, the article discussed the suggested alterations, in recent decades (including very recent developments on the topic), to the UN Charter in terms of the number of the permanent members and working mechanism of the Security Council.
2. Veto power functions as a cementing ingredient at Security Council and it was envisaged as the only tool to bring global powers together. Under the umbrella of this power, they feel safe since it gives them assurances that no decision could be concluded against their intentions and goals. One could argue that this mechanism is a delusional instrument to make them to seat behind the table together and to govern the world rather than a true international cooperation.
3. It must be noted that the issue of the veto is not only a problem related to Russia. The United States exercised this right in recent years to their purposes. Thus, no one can guarantee that other permanent members will not abuse it in the future. However, completely excluding the state who exercises the veto power, from any international arena does not seem to be a possible solution. For instance, Russia's capacity in the diplomatic arena, military and economic power cannot be disdained. Fully isolating or curbing the ambitions of the state with the largest number of nuclear warheads in the world does not seem to be logical step, as well. The economic crisis in Europe and all over the world in general due to fossil fuel prices after Russia's illegal intervention in Ukraine is also known to everyone. On the other hand, it is hard to argue that the populations of the 'big powers' are to be blamed for the actions of those very states (where democratic institutions are paralyzed or not functional at all).
4. Lastly, although the veto power and permanent Security Council membership in particular seem like archaic vestiges, they are still in use because any proposed changes would likely create more issues than they would resolve. However, many believe that the ongoing technological development and the abandonment of fossil fuels in the near future will seriously change the economic and political composition of the global arena. Yet, it is not easy to predict when and to what extent this will happen. And since the problem is not a purely legal one reaching reconciliation among the states to find the best solution will definitely consume considerable effort and time.

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