



**ADDIS ABABA UNIVERSITY**

**COLLEGE OF LAW AND GOVERNANCE**

**PROSPECTS AND CHALLENGES OF REFORMING  
THE UN: FOCUS ON THE VETO POWER IN THE  
SECURITY COUNCIL**

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**PROSPECTS AND CHALLENGES OF REFORMING  
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Submitted in partial fulfillment of the requirements for the Masters  
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## **Letter of Declaration**

I, Dawit Berihun, declare that this thesis is my original work and it has never been presented in any other University. All source materials used in this work have been duly acknowledged. It is hereby presented in partial fulfillment of the requirements for the award of LL.M Degree in Public International Law.

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## **Approval Sheet by Board of Examiners**

### **PROSPECTS AND CHALLENGES OF REFORMING THE UN: FOCUS ON THE VETO POWER IN THE SECURITY COUNCIL**

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## **ACRONYMS**

**AU:** African Union

**CENTO:** Central Treaty Organization

**CMT:** United Nations Change Management Team

**ECOSOC:** The United Nations Economic and Social Council

**EU:** European Union

**FAO:** Food and Agriculture organization of the UN

**G-4:** The Group of Four which comprises of comprising Brazil, Germany, India, and Japan

**G-7:** The Group of Seven comprising of Canada, France, Germany, Italy, Japan, the United Kingdom and the United States

**IAEA:** The International Atomic Energy Agency

**ICJ:** The International Court of Justice

**IPCC:** Intergovernmental Panel on Climate Change

**IPU:** The Inter-Parliamentary Union

**LN:** The League of Nations

**NAM:** Non Aligned Movement

**NATO:** North Atlantic Treaty Organization

**OAU:** The Organization of African Unity

**P5:** The Permanent Five Members of the United Nations Security Council

**PRC:** Peoples Republic of China

**R2P:** Responsibility to Protect

**RN2V:** Responsibility Not to Veto

**ROC:** Republic of China

**UK:** The United Kingdom

**UN:** The United Nations

**UNDP:** United Nations Development Program

**UNEO:** United Nations Environmental Organization

**UNEP:** United Nations Environmental Program

**UNGA:** The United Nations General Assembly

**UNPA:** United Nations Parliamentary Assembly or the United Nations Peoples Assembly

**UNSC:** The United Nations Peace and Security Council

**UNSCOP:** The United Nations Special Committee on Palestine

**UNSG:** The United Nations Secretary General

**US:** The United States of America

**USSR:** The Union of Soviet Socialist Republics

**WHO:** World Health Organization

**WHO:** World Health Organization

**WWI:** The First World War

**WWII:** The Second World War

## **DEDICATION**

To My Grand Parents

## **ABSTRACT**

The **United Nations** was created in 1945 as a global organization with a number of objectives and principles that reflect commitments ranging from the cause of international peace and security to the betterment of human life in all endeavors. The creation of the UN at that time was a remarkable achievement to the global society. Looking back at the UN's past 69 years work it is quite easy to testify that this global organization has achieved a lot in fulfilling its objectives and principles. But, from the moment of its establishment, the organization faced criticisms most of which can be classified as philosophical. Latter, critics started to focus towards its work, the implementation of the UN Charter as it is written, and also others related with the function of each subsidiary organs and the UN staffs working in these organs.

Without ignoring the changes that the UN has promoted and achieved globally, the critics that focus on the remaining tasks that this organization shall accomplish are well established considering the expectation that we have towards this global institution. Additionally, the continuing change in the global geopolitical and economic realities gives a compelling reason towards the reform of this organization for the better.

Even if there are critics and reform proposals calling for the reform of many of the UN organs, the United Nations Security Council (UNSC) is the UN organ that attracted very much serious and long time proposals of reform. Being the main organ of the UN at the core of protecting global peace and security, the UNSC has entertained too many criticisms and reform proposals towards its composition, membership, voting rights, working method and other related issues. But, among all the issues within the UNSC reform discussions, the Veto power of the permanent five of the council is the most contentious issue. Since its creation, the UNSC was reformed only once in 1965 when its membership rose from 11 to 15.

The geopolitical reality that existed in 1945 justifies the structure of the UNSC as a global Collective Security organization. As the most powerful states in the time and the winners of WWII, it is quite easy to understand how the permanent five managed to create such kind of collective security organization that protects their interest with a voting privilege called the Veto Power. The rules of charter amendment in the UN Charter are also another strong protection

against changes without their express consent. These provisions in the Charter also benefit the permanent five by their simultaneous effect, called the ‘Cascade effect’ of the provisions.

The criticisms against the Veto power in the UNSC started with its wrong application by the permanent five. But through time the fundamental changes in the global geopolitical and economic realities added substantial compelling reasons to the demand calling for the reform of the UNSC and the Veto power in particular. These reform efforts have already passed a number of historical steps and are currently at a point where it seems that reform is inevitable. But actual reform depends up on the willingness of the member states to agree on the lowest common denominator. If the right approach towards reform is followed, reform may come sooner than before what we expect it.

Therefore, in this thesis the writer begins with the discussion of the reform efforts for the UN as a whole. Then a detailed discussion of the history and politics of the reform of the United Nations Security Council is provided. Finally, the issue of the Veto power reform is addressed in detail. This involves the discussion of the status of the reform initiatives and prospects and challenges of reform. After looking these issues, the writer attempts to explain the best reform proposal at hand and makes recommendations for actors involved in the negotiation process. I believe doing this will clarify some of the chronic questions that may be raised in discussing Public International Law.

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# **CHAPTER ONE**

## **1. GENERAL INTRODUCTION**

### **1.1 INTRODUCTION**

The UN was established in 1945 as an international organization with the purpose of avoiding further conflicts and Human atrocities similar to what had happened twice during World War I and WWII. These purposes and commitments undertaken are expressly stated in the UN charter preamble and the following articles that provide the purpose and principles of the UN. These objectives of the UN range from maintenance of international Peace and security, ensuring respect to fundamental Human rights, respect for international Law and for the promotion of economic and social rights so as to achieve and promote social progress and better standard of life in larger freedom for all. From all the fundamental objectives of the UN, maintenance of international peace and security is the main objective that receives the prior attention of this international organization.

The League of Nations is the immediate predecessor to the UN. The LN had similar objectives and principles to the UN, which was principally the maintenance of international Peace and security. Article 1 of the LN covenant states a similar purpose and principles to the UN. It provides that the high contracting parties to the covenant, in order to promote international co-operation and to achieve international peace and security by the acceptance of obligations not to resort to war, by the prescription of open, just and honorable relations between nations, by the firm establishment of the understandings of international law as the actual rule of conduct among Governments, and by the maintenance of justice and a scrupulous respect for all treaty obligations in the dealings of organized peoples with one another, Agree to this Covenant of the League of Nations.

Collective security, the basic rationale for the establishment of the LN and also the UN, is the most feasible mechanism for the purpose of maintaining international Peace and Security. The History of collective security goes back to the League of ancient Greek city states. Ancient Greek City states formed different Leagues as a military alliance for different purposes. The

Delian League of ancient Greek city states is among one of these. The Delian League was an alliance of mainly coastal and Aegean city-states against Persia at a time when Greece feared Persia might attack again. Its goal was to make Persia pay and to free the Greeks under Persian dominion. The league morphed into the Athenian Empire that opposed the Spartan allies in the Peloponnesian War.

China saw some unsuccessful experiments in cooperative leagues of independent states in the seventh and sixth centuries B.C. Prior to a period of bitter warfare ending in the victory of one state that imposed unity.

In his *De recuperatione sanctae terrae* (ca. 1306), Pierre Dubois produced a plan of this sort in Europe, and in the seventeenth century, Maximilien de Béthune, duc de Sully, produced a more famous plan, which proposed keeping the peace by general pledges to defend the territorial status quo. Similar schemes flourished in the eighteenth century, when such philosophers as Immanuel Kant and Jeremy Bentham were among the authors of "plans for perpetual peace." Among the romantic utopians of the earlier nineteenth century was Comte Henri de Saint-Simon. The little world of Swiss independent cantons proved an interesting laboratory for such experiments. Although it seldom worked effectively, collective security as a 'universal alliance' of all the states within a given international system, which in former times could embrace a particular area such as China, Greece, Italy, or Switzerland, is a basic, archetypal mode of international relations, lying somewhere between total state egoism, in which states may be allied with each other in hostile or "balance of power" groupings subject to alteration, and a federated or unitary super state that has managed to absorb the lesser sovereignties.

The next major episode of collective security is the Holy League in Renaissance Italy of 1495. The Holy League In 1629, the French clergyman, noble and statesman Cardinal Richelieu proposed a scheme for collective security, which was partially reflected in the 1648 Peace of Westphalia. Later In the eighteenth century many proposals were made for collective security arrangements, especially in Europe. In 1795 Immanuel Kant outlined the concept of peaceful community of states in his famous work, "Perpetual Peace". In his work Immanuel Kant proposed the core objectives and ideals of the community of states. He proposed for the establishment of a peaceful international community whereby each states is free and sovereign and the equal and peaceful coexistence of states would establish an international peace and

security. In 19th c the writings of the Bahi faith also recognized the importance of collective security for peaceful coexistence. But the Early international cooperation to develop and to promote collective security originated in the Concert of Europe that developed after the Napoleonic Wars in the nineteenth century in an attempt to maintain the *status quo* between European states and so avoid war. Then the inter parliamentary Union (IPU) was formed in 1889 as a predecessor to the League of Nations with the objectives of encouraging governments to solve international disputes by peaceful means and arbitration.

After WWI the first large scale attempt to provide collective security in modern times was the establishment of the League of Nations in 1919-20. But the provisions of the League of Nations covenant represented a weak system for decision making and for collective action. The failure of the League in those days represented this weakness. The most important cases to recite here are the Manchurian crisis and the Italian invasion of Ethiopia. In 1931 Japan invaded Manchuria and this action was condemned by the League of Nations. But the League of Nation charter provided the Veto power to all members of the league council and Japan being a member of the League council Vetoed the resolution that demanded its withdrawal from that territory. Finally Japan withdrew itself from the League of Nations. The same is true to the Ethio-Italy case. In 1935 Italy Invaded Ethiopia but it vetoed any strong resolution that would have demanded its withdrawal from the territory. Emperor Haile Silasie I of Ethiopia continued his efforts towards this principle of collective security even though he was highly disappointed by the weakness of the parties that set the principle but also violated it and failed to practice their promises. His majesty's cry for the enforcement of this principle of collective security at his address of the League in Geneva received a great opposition from the Italian delegates and his ambitions were shattered. By acting so, Italy violated the provision of the Legue's covenant that prohibited aggression against a member state. Britain imposed an embargo on arms sales to both Italy and Ethiopia. Many historians believe that the embargo was a response to Italy's decree that it would view arms sales to Ethiopia as an act of unfriendliness toward Italy. Britain also cleared its warships from the Mediterranean, allowing Italy further unhindered access to eastern Africa. The League of Nations declared Italy to be the aggressor, and started the slow process of imposing sanctions on Italy. The sanctions were limited, however. They did not prohibit the provision of several vital materials, such as oil, and were not carried out by all members of the League. International support for the sanctions was by this time at a low level. The USA, exasperated by

the League of Nations' failure to act, actually increased its exports to Italy, and the United Kingdom and France did not take any serious action against Italy (such as blocking Italian access to the Suez Canal). The League of Nations response to the crisis was criticized by many for being passive. The war actually ended due to Italy's alliance with Hitler and the Allied powers operation on east Africa against Italy. The League of Nations and the members of the council were criticized for being passive to enforce the principle of collective security.

The theory of collective security in short can be defined as “a security arrangement, regional or global, in which each state in the system accepts that the security of one is the concern of all, and agrees to join in a collective response to threats to, and breaches of, the peace.” It is a security arrangement in which all states cooperate collectively to provide security for all by the actions of all against any states within the groups which might challenge the existing order by using force. This contrasts with self-help strategies of engaging in war for purely immediate national interest. While collective security is possible, several prerequisites have to be met for it to work. These basic prerequisites for a collective security to work as provided by one of the leading twentieth-century figures in the study of international politics Hans Joachim Morgenthau (1948) include:

First, the collective security system must be able to assemble military force in strength greatly in excess to that assembled by the aggressor(s) thereby deterring the aggressor(s) from attempting to change the world order defended by the collective security system. Secondly, those nations, whose combined strength would be used for deterrence as mentioned in the first prerequisite, should have identical beliefs about the security of the world order that the collective is defending. Finally, nations must be willing to subordinate their conflicting interests to the common good defined in terms of the common defense of all member-states.

Looking at the League of Nations even if its foundation was claimed for collective security, the League faced critiques as it has not functioned to the fullest satisfaction of its ideals mainly in the above-mentioned cases. The League's covenant was criticized as falling far behind the prerequisites that an international collective security organization should fulfill because the leagues covenant extended Veto power to all its permanent members of the council and in practice all the permanent members vetoed any resolution against their national Interest. Some scholars argue the League has done what it could and other criticizes the League for not acting to the fullest satisfaction of its core ideals.

The 1945 United Nations Charter contains stronger provisions for international decision making and rules for collective military action. But in a similar fashion to the LN, the UN also faces some critiques saying that it is not a full ledged and perfect collective security arrangement. The UN is more of a balance although containing stronger provisions for decision-making and collective military action than those of the League of Nations Covenant. But still the UN is criticized as it is not a full ledged collective security arrangement deterring any action that could threat international Peace and Security. Rather, the UN is a balance between collective actions on the one hand and continued operation of the states system, including the continued special roles of great powers, on the other. These critiques argue based on the necessary prerequisites that a collective security arrangement should fulfill.

In the Falkland Wars of 1982 when Argentina invaded the Falkland Islands which was the overseas territory of the UK, many UN member states stayed out of the case and this led to a widespread disapproval of the inaction of UN member states.

Obviously, the role of the UN as a global collective security organization is evolving. The global reality in 1945 and now are quite different points in comparison. At its inception the UN did not anticipate the rise of new threats and challenges to international Peace and Security like terrorism, international organized crimes, internal conflicts and other sudden appearances like the case of a complete state failure. But today these new threats and challenges place serious threat to international Peace and Security. So reform proposals from various directions provide their proposal for a better organization to address these challenges. .

The existences of different political and economic interest of the super powers holding a veto power in the UNSC is the main obstacle why this world body could not come up with an immediate resolution for taking action in order to avoid severe civilian casualties. In fact the UN and much of its organs need a substantial reform and arrangement in order to keep this organization in line with contemporary geopolitical realities. Among the many reform proposals this paper focuses on the reform of the United Nation Security Council Veto power.

As it was the reality form earlier times international politics is full of difference in national interest of the major powers. Also a huge difference in political power, economic power and military might. Obviously collective security would take in to account this difference. Collective

security being a global public good would also be exposed to free riders if one or few of the super powers that have the economic strength only take the burden in its enforcement. For this reason the UN charter provided the veto power to the permanent five members of the Security Council to balance their national interest in line with any collective enforcement action. It would be justified to provide such a power taking in to account the international political reality in the formation of the UN. But through time different powerful states have emerged shifting the balance of power to a certain extent. For example the United Nations takes in to consideration the will of Germany and the permanent five in taking some important decisions. These newly emerging powerful states also like Japan, Brazil, India and Italy and others have voiced their strong wish for the reform of the UN, and particularly the Veto power in the United Nations Security Council. The African union has called the Veto power “Anachronistic and Self Serving”. For these reasons reform proposals have been provided by states, individuals and international Organizations. Currently the United Nations working group on the UN reform is seized of the Matter. But whatever the reform efforts and proposals provided it remains a fact that the global reality places a very fundamental challenge on reforming the Veto power. Additionally the UN Charter also places a very stringent procedure for charter amendment that could hardly be achieved.

The numbers of reform proposals for the UN are great. But the UN was reformed few times in its past history of more than sixty years.

This paper will discuss the past, present and the near future realities in the prospects of reforming this world Body and the Veto power structure in particular. It aims to clarify the current status of reform proposals, new development in these reform efforts and the prospects of achieving a global consensus on the best reform proposal. It also outlines the challenges faced in detail.

## **1.2 Statement of the Problem**

Until now it has been questioned why there is prevalence of war and conflicts and the killing of civilians in internal disturbances and why the international community can not totally avoid war and the related catastrophic internal disturbances and death of large number of civilians. Why the UN is unable to totally avoid or reduce conflicts in its pursuit of international peace and security? Why are super powers at difference in passing decisions in the UN Security Council in some cases? How could a permanent member be prohibited from vetoing any resolution that is supported by all other permanent members and the majority of UN member states and how could a violation of the ideals of the UN be effectively sanctioned? What are the reform proposals that aim to fulfill these problems? How the UN can be reformed so as to be more successful in achieving its establishing purpose and principles? What are the prospects and the challenges of reforming the UN, Particularly the UNSC to meet contemporary international realities? How could the veto power of permanent members be amended? How can the difference of interest by super powers be balanced and how could the UNSC reflect today's global geopolitical realities and not of the past? Is the current international reality that can be achieved from international collective security arrangements at best or is there a better arrangement? What are the prospects of reforming the Veto power in the UN and what are the challenges of reform? This research therefore tries to answer these questions.

## **1.3 Objectives of the Research**

The objectives of the research are:

- To review past and contemporary reform efforts in the UN
- To examine past and present reform proposals of the UNSC.
- To examine and answer questions raised in relation to the prospects and challenges of reforming the Veto power in the UNSC and the possibility of achieving a better international collective security arrangement

## **1.4 Research Method**

This research is mainly a doctrinal research involving examination of theories, books, other researches on the issue and events in relation to the subject matter. The appropriate legal instruments of the UN, the UNSC resolutions and the General assembly declarations will be consulted and cited. Regional, country and interest group position and opinions on the subject matter will be consulted and discussed. Information from the famous news agencies will be incorporated. The most important activity report of the General Assembly and the Security Council will be incorporated step by step including meeting out comes short of either a resolution or a declaration. But looking at its structure the research mainly follows descriptive, narrative and analytical methods providing a final conclusions and recommendations.

## **1.5 Literature Review**

UN reform has been the focus of many researches and academic writings. But the actual reforms that took place within the UN are few compared to the number of reform proposals. Below the literatures on reforming the veto power, the theory, background and the future of collective security are reviewed from different sources.

Charles A Kupchan and Clifford A.Kupchan in their work: “Concerts, collective security and the future of Europe identify the basic character of self help, balancing, collective security and concerts as a system of international security arrangement. They differentiate between the Hobbesian world of anarchy, competitiveness and war proneness to the probability of a centralized world government and collective security arrangement. The main point of their work is on showing how the strategic landscape in Europe is changing and the need for a new collective security arrangement. They argue that the threat that the Warsaw pact was established for is nonexistent and there is a need for new security arrangement for this era. They argue that this could be done according to two different schools of thoughts. The first is a category of pessimists fearing that even if the east west conflict of the cold war era has gone in Europe there

is a probability of bipolarity in the future that challenges collective security, the second group is a group of optimists that hope bipolarity in Europe is not going to come again and it will be possible to preserve peace in Europe with all against one principle of collective security. So they strongly argue for the erection of a collective security arrangement in Europe. But in order to do so, they argue that what collective security is and its viability in the future of Europe has to be analyzed. Doing so, they focus on the shortcomings of the League of Nations. Since creating a more stable and less war prone Europe is necessary, they take the lesson from the concert of Europe of the 19<sup>th</sup> c that preserved peace for forty years. Since 1945 conventional wisdom argues that bipolarity and nuclear weapon preserved the peace. They propose currently that there should be a concert based collective security structure in Europe in the absence of these two factors.

Concert-based collective security relies on a small group of major powers to guide the operation of a region-wide security structure. This design reflects power realities-an essential condition for a workable structure-while capturing the advantages offered by collective security. They present their design for a new European security order in the following manner. The first section makes the argument that collective security provides an alternative to the Realist, Hobbesian view of international relations in which self-help and the competitive pursuit of power are the only means through which nation-states can cope with an anarchic and conflict-prone system. They then define collective security, discuss the different types of structures that fall within the collective security family, and identify the conditions that allow such structures to take shape and preserve peace. Next, they explain why collective security is desirable, and how it would promote stability. They argue that adequate and timely balancing against aggressors is more likely to emerge under collective security than in a world in which each state is left to fend for itself; balancing under collective security more effectively deters and resists aggression than balancing under anarchy. Collective security also enhances stability by institutionalizing, and thereby promoting, cooperative behavior, and by ameliorating the security dilemma. In the section that follows, they argue that a concert-based structure provides the most practicable and effective form of collective security under current international conditions. They show that a concert is attainable today by demonstrating that the underlying features of the nineteenth-century international system that gave rise to the Concert of Europe are once again present. Moreover, they contend that the current international setting is even more suited than that of 1815 to a concert-based security structure. The concluding section describes how a new concert of Europe

would work today. They argue that the Conference on Security and Cooperation in Europe (CSCE) should be recast to function as a concert-based collective security organization. A security group of Europe's major powers would guide the operation of a pan European security structure. They spell out the essential architecture of such a system and point to new mechanisms that could be introduced to enhance the ability of a collective security organization to preserve peace in Europe.

Hanspeter Neuhold in his article "Collective Security after operation allied forces" extensively discussed the basic orientation of the United Nations, the concept of collective security, the United Nations system of collective security before and after the east west conflict. He elaborates the increased Security Council activism in the post cold war era. In doing so he analyzes the authorization of the use of armed forces by the Security Council, application of non military sanctions, second generation peacekeeping operations, and enforcement by consent of a willing and able member state and Humanitarian intervention by the Security Council. He also explained the establishment of the international criminal court for the former Yugoslavia and Rwanda. He analyzed the Resort to armed forces without authorization by the Security Council. The typical cases examined in this aspect are the Unilateral Western enforcement of Humanitarian and disarmament obligations against Iraq and Operation allied forces which he calls it the Negative turning point for collective security. He explains this by discussing the Evolution of the Kosovo crisis in 1998/99 and analyzing the legal dimension of the case.

Neuhold based his analysis with the collapse of the communist regimes in eastern and Western Europe and the Soviet Union and the resulting end of the east west conflict. He says the east west conflict was the principal cause of the paralysis of the collective security system of the United Nations. So when this came to an end in 1989, the paralysis disappeared quickly and practically without bloodshed. That time reinstated the optimism concerning the effectiveness of the United Nations that was present in the 1945. However this hope has not come to rule fruition, as was most emphatically demonstrated in the Kosovo crisis in 1999. In any event, enough time seems to have elapsed for attempting to evaluate the progress and the shortcomings of the United Nations as a global security organization in the first decade of what many had hope would be a new ,more peaceful ere. He bases this conclusion on a quick assessment of the performance of the united Nation in the cold war era.

The United Nations came to existence on 24 October 1945 against the background of the horror of WWII. The victor powers managed to establish this organization with its aim stated in its first paragraph saying, “To save succeeding generations from the scourge of war which twice in our life time has brought untold sorrow to mankind.” Among the purpose of the organization listed in article 1 of the constituent treaty is “The maintenance of international peace and security”. This purpose is mentioned first. The charter provides two means to achieve this goal. The same paragraph provides, “effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace...” and the “Peaceful settlement of dispute” as the best alternative.

Neuhold concludes that that the Post –cold war period record of the UN system of collective security and the Security Council as its central institution is rather mixed. Because on the one hand the system has been activated much more frequently in the 1990s than in the previous decades in the area of non-military sanctions. However, this kind of mechanism was slow to produce the desired goals and its effectiveness is also doubted. The Security Council was innovative in the field of peace keeping, although” second generation” operations ran in to difficulties because the means at their disposal did not match their ambitious mandates. Military enforcement measures taken by the council itself still remain a dead letter. The council has tried to remedy that deficiency by authorizing states able and willing to do so to resort to military force in order to restore and maintain peace. “Enforcement by consent” is an interesting new variant in this context. The Security Council has also developed an increasingly broad notion of threats to the Peace. There even have been concerns about the transformation of the council in to a world government.

On the other hand, the system and the council are in the throes of a double crisis. The legitimacy of the Security Council is increasingly contested. The composition of this body, in particular the privileged position of its permanent members, endowed with the “Veto” power, reflects the political realities of more than half a century ago and is widely criticized as out of tune with the needs of the today’s world. A reform of the council rather appears unlikely, however, since all the permanent members would have to agree to any amendment or any revision of the charter as per articles 108 and 109 of the charter, and they do not seem to be ready to see their domination eroded.

Neuhold focuses on the accusation of the council of applying double standard in its practice of resorting to sanctions. Moreover, western air raids against Iraq and above all, "Operation allied force" have dealt severe blows to the Security Council's authority. Efforts at justifying these armed attacks on the basis of previous council resolutions without additional, specific authorizations were hardly convincing. The Security Council was ostentatiously bypassed in all three cases mentioned above.

In the Kosovo crisis, it was eventually used to sanction a solution which the FRY accepted after president Milosevic realized that his apparent strategy to wait for an early end to the bombing due to dissident within the NATO and for Russian assistance had failed.

It is not yet clear whether NATO member states will rely on 'operation allied forces' on as a precedent for similar actions on behalf of Western Values and/or interests in the future or whether it will remain an atypical episode. He questions, in particular, will the Atlantic Alliance consider the backing of military operations, above all its ill defined "crisis response operations", by the security council, if not in advance then at least afterwards, as essential or merely desirable, but not indispensable? The ambiguous formulations concerning this issue in the new strategic concept adopted at the NATO summit in Washington 23/24 April 1999 while "operation allied forces" was in progress and conflicting statements by leading politicians and the chief administrative officer of the alliance at the meeting do not permit a definitive answer to this question.

So Neuhold basically points out that in the above mentioned cases the use of military forces was not totally independent of the Security Council. The council had brought chapter VII in to play, had agreed on the existence of a threat to the peace and has also envisaged subsequent measures against the state responsible for the threat. Hence the western powers did not "go all the way" in the direction of unilateral enforcement, since the direction has been indicated by the sanctioned organ of the UN. The Security Council also reappeared on the scene after "operation allied force" had achieved its objective and accepted the settlement agreed on by the parties. The damage to the council's authority was thus limited to a certain extent; it remained severe enough, however, because of the challenge to the councils' monopoly on enforcement actions under the UN charter.

Another question mark concerns NATO's ambition to act as a "global policemen". Whereas the Washington strategic concept focuses on security in the Euro - Atlantic area, reference is made to the need to also take account of the global context.

But he also says that it is not possible to conclude the Security Council has been completely sidelined after the Kosovo crisis. As has already been mentioned, it adopted non -military sanction against the Taliban later in the 1999. Moreover, it launched "enforcement by consent operation" in east Timor to which the Indonesian government had eventually agreed. The council authorized the states participating in the operation to take all necessary measures to fulfill its mandate that included the restoration of peace and security in East Timor. This multinational force was to be replaced as soon as possible by a UN peace-keeping operation.

On balance, the system of collective security of the UN, despite some progress since the end of the cold war ,still leaves a great deal to be desired and has even suffered resounding setbacks in recent years. Conflicts continue to pit UN member states, in particular also major powers against one another. It must unfortunately be doubted whether the permanent members of the Security Council as the key actors will find it easier to act jointly in the near future. He takes note of the then Russian policy of riding on the crest of anti -western and nationalistic feeling in the wake of the Kosovo crisis and the armed conflict in Chechnya. Also about china "China, still not a democracy by any stretch of the imagination ,is looking for an independent great power to role in world politics and is at odds with its western counterparts over a number of issues. Even the western states have reasons to worry about the state of transatlantic relations. It will therefore remain difficult to reach the necessary agreement with in the Security Council in a concert crisis on a common assessment of the situation and measures that ought to be taken to deal with it. If the council is paralyzed, it is difficult to predict weather Western powers will resist the temptation to go it alone- at least as long as their present superiority will last in to the 21<sup>st</sup> century."

Joseph r. Stromberg's article entitled" The united Nations charter and the delusion of collective security" explains how the UN falls far behind the principal ideals of collective security and also Nico Schrijver's " Reforming the UN security council in pursuance of collective security" outlines the most common new proposals in the United Nations security council reform effort.

Just to make the idea clear the theory of collective security and its evolution is assessed by reviewing these and other literatures at the first chapter of this research.

Joachim Muller in his book entitled “Reforming the UN the struggle for legitimacy and effectiveness” approaches the reform effort by focusing on the need to reform this organization at a wider context and also particularly on the Veto power of the Security council. He depends on the 2005 world summit outcome report on reforming the United Nations and subsequent reform efforts undertaken by Secretary General Kofi Annan’s report. Appreciating the reform initiatives by the secretary general Joachim also concludes that the biggest challenge in the reform process is reconciling the national interest of 192 member states of the UN. He outlines that the condition for reaching agreement on reform, however, is consensus and the price to be paid is the adjustment of proposals to the lowest common denominator. To do otherwise may require the extraordinary circumstances of a catalytic event, such as the end of the Cold War, which allowed for the revitalization of the United Nations in the early 1990s. It might also require a group of visionary leaders who are prepared to make the necessary compromises. In the absence of those factors, for all the logic and promise of a grand bargain, such as the World Summit attempted to reach, it is destined to fail and reform in the United Nations will remain a cumbersome and lengthy step-by-step process. All the recent reform efforts leading up to the 2005 world summit report and next steps is incorporated in his work.

Ioan Voicu in his article “Reforming the UN: Prospects and limitations” reaffirms the strong need to reform the UN based up on the 2005 world summit outcome document on reforming the UN. He calls up on the necessity to have a new dynamic reform of this organization. He says the UN has to be tailored to respond effectively to the most ominous threats to international peace and security. If effective multilateralism is to be achieved, all States have to go beyond what is immediately significant and urgent to each of them at a strictly national level and help bring about a new multilateral approach for a new agenda on substantive and institutional issues.

Richard Falk in his book “Reforming the United Nations: Global civil society perspectives” bases his idea initially on Kofi Annan’s 2005 report claiming that “... the UN must undergo the most sweeping overhaul of its 60-year history. World leaders must recapture the spirit of San Francisco and forge a new compact to advance the cause of larger freedom. He recommends that

“the essential agenda of UN reform runs far deeper and is far wider than an expanded membership for the Security Council.” He further incorporates the differing opinions and proposals of different civil society organizations in the various reform proposals.

Gustaf Geerearts in his article “China, the EU and the UN security Council reform” outlines that: China and the European Union are emerging as major players in global security governance. As strong supporters of multilateralism, both actors recognize the central role of the United Nations in safeguarding global stability and peace. He aims at exploring the respective positions of China and the EU in the debate regarding the reform of the UN Security Council reform, the enlargement of its membership, the issue of the ‘responsibility to protect’ as well as conflict prevention, peacekeeping and peace building. Mainly he tries to identify the commonalities and differences together with possible areas for cooperation between China and EU in transforming the Security Council, the central body of global security governance, to better cope with the daunting challenges of the 21 Century.

Dimitri Bourantonis in his book “The history and politics of the UN security council reform” gives a detailed analysis of the history and politics of the Security Council reform from 1945 up now. Bourantonis provides a detailed and well narrated report and analysis of the reform efforts, what actually happened, what the current reform proposals and the interest of various groups are and what is probably going to happen. Olivia Laou provides a detailed explanation on the efficacy of small states on the expansion of the UN Security Council.

Alischa Kugel provides a short overview of the reform efforts in the UN, Particularly the Veto power of the five permanent members of the United Nations Security council and finally emphasizes on the political will of the this permanent members so as to achieve the appropriate reforms.

Edward C. Luck in his work, “How not to reform the UN” focuses on the past errors of reform efforts and concludes that a lessons should be learnt and there is still hope for reform of the UN and particularly the Security Council.

Pan Zhenqiang in his article on the reform of the UNSC outlines china’s position and Focuses on Annan’s 2005 report and argues that: “Annan’s proposed reform plan of the UNSC falls broadly into two categories, structural and cultural. Change of the structure of the UNSC involves

expansion of members of the organ from the current 15 to the future 24 while changes in working practices are related primarily to whether the UNSC should broaden its scope of mission to include the task, for example, of combating international terrorism, and whether there should be a new understanding as how the UNSC should use force in discharging its new duties.” Reactions to his proposals are mixed. Acknowledging many good points in his proposals, many countries feel, however, that Annan’s view of the reforms of the UNSC seems less balanced and on some occasions misleading. Including that of the opinion from china Zhenjiang explains what the pitfalls of Annan’s report are and the possible future proposals.

Razil Ismaili in his work “The United Nations in the twenty first century: prospects for reform” provides the most authoritative reform proposals similar to the 2005 world summit outcome document and also known as the Razil Plan. It is different from the Annan’s report and the 2005 world summit outcome document in such a way that it provides different number and accounts on the enlargement of members of the Security Council and also different proposal on the Veto power reform.

Sarah Okhovat in her article entitled “ The United Nations Security Council: Its Veto power and its reform” provides a detailed study of the Veto power, types of the Veto power, the Proposals of reforming the Veto power from different groups and the possibility of change.

The Ezuwilini consensus by the African Union by which the AU leader categorized the Veto as anachronistic and self serving and also other country reports like India, Japan, Italy, Germany and Brazil are incorporated.

## **1.6 Limitation of the study**

The main limitation in the work of this research is lack of sufficient funding, access to adequate internet connection, basic materials and information. Time is also another scarce resource. But within the given time and resources the most important information and documents vital for analyzing the prospects and challenges of reforming the Veto power of the Security Council are well consulted.

## CHAPTER TWO

### 2. BRIEF OVERVIEW OF COLLECTIVE SECURITY AND THE UNITED NATIONS

#### 2.1 Introductions

**Collective security** is defined as: ‘a security arrangement, regional or global, in which each state in the system accepts that the security of one is the concern of all, and agrees to join in a collective response to threats to, and breaches of, the peace.’<sup>1</sup> ‘Collective security is more ambitious than systems of alliance security or collective defense in that it seeks to encompass the totality of states within a region or indeed globally, and to address a wide range of possible threats.’<sup>2</sup> Even though the idea of collective security has a long history, the practical implementation of the theory has manifested several problems and it just remained an ideal theory for a long time. Several prerequisites have to be met for collective security to have a chance of practical success.

The basic pre-requisite for a collective security arrangement to as provided by Organski are<sup>3</sup>:

‘In an armed conflict, member nation-states will be able to agree on which nation is the aggressor, All member nation-states are equally committed to contain and constrain the aggression, irrespective of its source or origin, All member nation-states have identical freedom of action and ability to join in proceedings against the aggressor. The cumulative power of the cooperating members of the alliance for collective security will be adequate and sufficient to overpower the might of the aggressor. In the light of the threat posed by the collective might of the nations of a collective security coalition, the aggressor nation will modify its policies, or if

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<sup>1</sup> A. Roberts and B. Kingsbury, “Introduction: The UN’s Role in International Society since 1945”, in A. Roberts and B. Kingsbury (eds.), ‘United Nations, Divided World,’ Oxford: Clarendon Press, 1993, p. 30

<sup>2</sup> I. L. Claude, Jr., “The Management of Power in the Changing United Nations”, International Organization Vol. 15, spring 1961, p 222.

<sup>3</sup> A.F.K Organski, ‘World Politics,’ Alfred A. Knopf Publishers, New York 1960, pp 270.

unwilling to do so, will be defeated.’ These prerequisites are also provided as elements of an ideal collective security organization by many writers.<sup>4</sup>

Hans Joachim Morgenthau also provided the three basic elements that a collective security arrangement must fulfill.<sup>5</sup>

First, the collective security system must be able to assemble military force in strength greatly in excess to that assembled by the aggressor thereby deterring the aggressor from attempting to change the world order defended by the collective security system. Second, those nations, whose combined strength would be used for deterrence as mentioned in the first prerequisite, should have identical beliefs about the security of the world order that the collective is defending. Third, Nations must be willing to subordinate their conflicting interests to the common good defined in terms of the common defense of all member-states.

Looking back the historical background of collective security, we find it mentioned in the early proposals of the French clergyman, noble and statesman Cardinal Richelieu for a collective security arrangement in 1629. That proposal was incorporated in the Peace of Westphalia of 1648. But looking farther back in to ancient times we find that the roots of collective security were founded in the Leagues of ancient Greek States. The Amphictyonic League of the ancient Greek city states, by which Greek city-states assumed the obligation not to destroy any city of the Amphictyons nor cut off their streams, in war or peace and if any should do so, they would march against the aggressor represented earliest form of collective security<sup>6</sup>.

‘In the middle ages in the Holy League in Renaissance Italy(1495) and then in the 17<sup>th</sup> and 18<sup>th</sup> century in Europe there existed some type of collective security mechanism. Among early philosophers Emanuel Kant, Comte Henri de Saint-Simon and Jeremy Bentham proposed their understanding of the frame work for collective security.’<sup>7</sup> Others explained collective security as: ‘a universal alliance, a league of peace and also as a system of balancing state egoism and

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<sup>4</sup> See also Peu Ghosh, International Relations, 1960, Eastern Economy edition, pp 90

<sup>5</sup> Hans. Morgenthau. J, ‘Politics among Nations, the struggle for power and Peace,’ Kalyani Publishers, New Delhi, 1985, pp 87.

<sup>6</sup> G.W Downs, ‘Beyond the debate on collective security’, USA: University of Michigan press 1994, pp 1-17

<sup>7</sup>Lawrence Mwagwabi, ‘The theory of collective security and its limitations in explaining international organization: a critical analysis’, Journal of International Law, Vol 1(1), 2004, p 13.

creating balance of power. This view is referred as a romantic utopian view of collective security.’<sup>8</sup>

‘The modern understanding of collective security started in 1919. Woodrow Wilson is regarded as the articulator of the concept of collective security in modern time.’<sup>9</sup> The shock of First World War forced total reconsideration of the old ways of diplomacy, rival alliances and balances of power. James Bryce proposed that the League shall under take to defend any one of its members who may be attacked by any other State who has refused to accept arbitration or conciliation.<sup>10</sup> Under the League of Nations the concept is provided in articles 10-16. In 1945 the United Nation Charter also incorporated this idea of collective security that is reflected in articles 39-51. ‘But in practice both the UN and the League of Nations do not represent complete collective security organization.’<sup>11</sup> In the coming sections the theory of collective security, its early understandings, its application before the League of Nations within the League of Nations and finally the United Nations approach and practice with collective security are addresses in detail.

## **2.2 Early Understandings of Collective Security**

‘The history of Collective security goes back to the ancient Greeks before the modern collective security understanding was established in 1914. It is argued that the idea of collective security is as old as the Amphictyonic League, by which Greek city-states assumed the obligation not to destroy any city of the Amphictyons nor cut off their streams, in war or peace and if any should do so, they would march against the aggressor.’<sup>12</sup> ‘While the emphasis in this system was on protecting a common religious area bordered by all, the core of the plan required that a group of states punish any member that violated an important security norm collectively’<sup>13</sup>. This

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<sup>8</sup> Danchin, P. G. ‘Things Fall Apart: The Concept of Collective Security in International Law’, Cambridge University Press, 2009, p 23.

<sup>9</sup> Ibid , p, 27.

<sup>10</sup> Ibid, p.29.

<sup>11</sup> Supra 7, p 17.

<sup>12</sup> Hasan Ulusoy , ‘Collective security in Europe, Metu, Turkey 2003, P,5.

<sup>13</sup> G. W. Downs and K. Iida, ‘Assessing the Theoretical Case against Collective Security’ in G. W. Downs (ed), Collective Security beyond the Cold War, USA: University of Michigan Press, 1994, p 32.

collective commitment of a group to hold members accountable for the maintenance of an internal security norm is seen as the essence of collective security.<sup>14</sup>

‘Since the aforementioned early examples of collective security arrangements, for more than three thousand years there have been countless proposals for collective security systems and dozens of attempts to put specific plans into effect.’<sup>15</sup> In this regard, it is mentioned that: ‘the power and philosophy of the Catholic Church made the middle Ages a particularly fertile period for both. In Germany and especially France, religious councils passed laws obligating princes and clerics to oppose war by forceful means and placed combined forces under religious leadership.’<sup>16</sup> ‘On a more abstract level, scholars of the time debated the relative merits of a universal monarchy and a congress of princes to keep the peace in Europe.’<sup>17</sup>

Later, the Era of Enlightenment brought numerous secular collective security plans, which argued that the great powers should enforce a peace in Europe by assisting the weak and oppressed or otherwise keep themselves away from intervening outside their territory.<sup>18</sup> The treaties ending the Thirty Years War obligated the signatories to defend and protect each other as well as the laws or conditions of peace<sup>19</sup>. In 1693 William Penn outlined a peace plan for Europe that was based on an international tribunal and diet of European sovereigns whose decisions would be enforced collectively.<sup>20</sup>

Later in this period, Abbé de Saint-Pierre published his Project for Perpetual Peace, which called for a Union of States that would work along the same lines.<sup>21</sup> The plan stated: ‘ any state that attempted to use force outside the same lines, any state that attempted to use force outside the

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<sup>14</sup> Supra 12, p 5.

<sup>15</sup> Supra 13, p 3.

<sup>16</sup> Ibid,

<sup>17</sup> Ibid,

<sup>18</sup> Ibid

<sup>19</sup> Supra 13, p 4.

<sup>20</sup> ibid

<sup>21</sup> ibid

union or refused to execute a regulation of the council would be declared an enemy until it either disarmed or complied.’<sup>22</sup>

In this context, the evaluation of Rousseau on Saint-Pierre’s Project for Perpetual Peace is held as note-worthy as it anticipated many of the critiques of collective security that would be raised over the course of the next three centuries.<sup>23</sup> ‘While acknowledging that Saint-Pierre’s project would benefit the people of Europe, he argued that their desires were basically irrelevant. Monarchs were interested in extending their power, not in providing what would now be called public goods or collective benefits.’<sup>24</sup>

‘In 1495 the Holy League in Renaissance Italy sometimes known as ‘The League of Venice’ represented collective security of the Middle Ages Europe. This was an alliance of Pope Alexander VI, the Emperor Maximilian, Venice, Milan, other smaller Italian states and Ferdinand of Aragon, created mainly by the latter’s diplomatic maneuvering. The League had a single, but clearly defined, purpose: to expel the French King, Charles VIII, from Naples.’<sup>25</sup> ‘In 1629 Cardinal Richelieu proposed a scheme for collective security and that proposal was partially reflected in the 1648 Peace of Westphalia. In the eighteenth century many proposals were made for collective security arrangements, especially in Europe.’<sup>26</sup>

The concept of a peaceful community of nations was outlined in 1795 in Immanuel Kant’s famous work: “*Perpetual Peace: a Philosophical Sketch*.”<sup>27</sup> In his work Kant outlined the idea of a league of nations that would control conflict and promote peace between states.<sup>28</sup> However, the way how this collective security will prevail or perpetual peace would be borne is different from

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<sup>22</sup> Ibid

<sup>23</sup> Supra 12, p 6.

<sup>24</sup> Ibid, p, 7.

<sup>25</sup> Skirbekk, Gunnar; Gilje and Nils, ‘a History of Western Thoughts from Ancient Greek to the Twentieth Century’, Rutledge. 2001,p. 288

<sup>26</sup> Ibid

<sup>27</sup> Immanuel Kant, ‘Perpetual Peace: A Philosophical Sketch’, available at Mount Holyoke College website, last accessed on 28,12,2013.

<sup>28</sup> Supra 25

others in such a way that Kant argues for the establishment of a peaceful world community not in a sense that there be a global government but in the hope that each state would declare itself as a free state that respects its citizens and welcomes foreign visitors as fellow rational beings.<sup>29</sup> His key argument is that a union of Free states would promote peaceful society worldwide: therefore, in Kant's view, there can be a perpetual peace shaped by the international community rather than by a world government<sup>30</sup>.

Also the founder of Bahá'í Faith , Bahá'u'lláh (1817–1892), in his 19<sup>th</sup> Century writings provided collective security as a means to establish world peace. The excerpt of his writing reads:

“The time must come when the imperative necessity for the holding of a vast, an all-embracing assemblage of men will be universally realized. The rulers and kings of the earth must needs attend it, and, participating in its deliberations, must consider such ways and means as will lay the foundations of the world's Great Peace amongst men. Such a peace demands that the Great Powers should resolve, for the sake of the tranquility of the peoples of the earth, to be fully reconciled among themselves. Should any king take up arms against another, all should unitedly arise and prevent him. If this be done, the nations of the world will no longer require any armaments, except for the purpose of preserving the security of their realms and of maintaining internal order within their territories. This will ensure the peace and composure of every people, government and nation.”<sup>31</sup>

In collective security system Sovereign nations eager to maintain the status quo, willingly cooperate, accepting a degree of vulnerability and in some cases of minor nations, also accede to the interests of the chief contributing nations organizing the collective security. Collective Security is achieved by setting up an international cooperative organization, under the auspices

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<sup>29</sup> Supra 27

<sup>30</sup> Supra 29, perpetual peace writing is also available at <http://www.constitution.org/kant/perpeace>, last accessed on 10,12,2013.

<sup>31</sup> ‘Gleanings from the Writings of Bahá'u'lláh’, available at Bahi reference online library, ‘CXVII: The Great Being, wishing to reveal the...’, last accessed on , 12,28,2013.

of international law and this gives rise to a form of international collective governance, albeit limited in scope and effectiveness. The collective security organization then becomes an arena for diplomacy, balance of power and exercise of soft power. The use of hard power by states, unless legitimized by the Collective Security organization, is considered illegitimate, reprehensible and needing remediation of some kind. The collective security organization not only gives cheaper security, but also may be the only practicable means of security for smaller nations against more powerful threatening neighbors without the need of joining the camp of the nations balancing their neighbors.

The concept of "collective security" forwarded by men such as Michael Joseph Savage, Martin Wight, Immanuel Kant, and Woodrow Wilson, are deemed to apply interests in security in a broad manner, to 'avoid grouping powers into opposing camps, and refusing to draw dividing lines that would leave anyone out.'<sup>32</sup> The term collective security'has also been cited as a principle of the League of Nations and currently by the United Nations. Since 1945, by employing a system of collective security, the UN charter tried to dissuade any member state from acting in a manner likely to threaten peace, thereby avoiding any conflict.

Also Hans Joachim Morgenthau in his 1948 work politics among nations states that three prerequisites must be met for collective security to successfully prevent war:<sup>33</sup>

1. The collective security system must be able to assemble military force in strength greatly in excess to that assembled by the aggressor(s) thereby deterring the aggressor(s) from attempting to change the world order defended by the collective security system.
2. Those nations, whose combined strength would be used for deterrence as mentioned in the first prerequisite, should have identical beliefs about the security of the world order that the collective is defending.
3. Nations must be willing to subordinate their conflicting interests to the common good defined in terms of the common defense of all member-states.

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<sup>32</sup> Yost, David S. (1977). NATO Transformed: The Alliance's New Roles in International Security. London: Leicester University Press. p. 149

<sup>33</sup> Hans Morgenthau and Kenneth Thompson, 'Politics among Nations', 6th edition (New York: McGraw-Hill, 1985), p. 165.

Collective security has to be differentiated from collective defense mechanism. ‘Collective defense mechanism is an arrangement, usually formalized by a treaty and an organization, among participant states that commit support in defense of a member state if it is attacked by another state outside the organization.’ NATO is the best known collective defense organization. Its now famous Article V calls on but does not fully commit member states to assist another member under attack. This article was invoked after the September 11 attacks on the United States, after which other NATO members provided assistance to the US War on Terror in Afghanistan. Collective defense has been shown to be very helpful to all countries.<sup>34</sup>

Collective defense has its roots in multiparty alliances, and entails benefits as well as risks. On the one hand, by combining and pooling resources, it can reduce any single state's cost of providing fully for its security. Smaller members of NATO, for example, have leeway to invest a greater proportion of their budget on non-military priorities, such as education or health, since they can count on other members to come to their defense, if needed.

‘On the other hand, collective defense also involves risky commitments. Member states can become embroiled in costly wars in which neither the direct victim nor the aggressor benefit.’<sup>35</sup> In the First World War, countries in the collective defense arrangement known as the Triple Entente (France, Britain, Russia) were pulled into war quickly when Russia started full mobilization against Austria-Hungary, whose ally Germany subsequently declared war on Russia.<sup>36</sup>

It is possible to state four points that can be said the basic principles of collective security<sup>37</sup>.

First, almost every state, especially all major states, has to be in the collective security arrangement and committed to it for it to work. The League of Nations faced major problems with this given that the United States, a leading international power, did not join nor give its

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<sup>34</sup> Supra 32. p. 149

<sup>35</sup> *ibid*

<sup>36</sup> *Ibid*

<sup>37</sup> F. P. Walters, ‘A History of the League of Nations,’ London, Oxford University Press, 1952, p.653 in I. L. Claude, Jr., *Swords Into Plowshares: The Problems and Progress of International Organization*, 4th Ed, New York: Random House, 1964, p 256.

support to the organization. Similarly, when Italy invaded Abyssinia, Britain's and France's governments were more committed to blocking the rise of Germany, and hence did not seriously chide Mussolini, whom they saw as a potential ally against Adolf Hitler in 1935. Second, the power to block the decision making process by veto must be limited. This was a major issue with the League of Nations, as it gave every state veto power. Within the UN, the 5 victor states of the Second World War all hold veto power. This form of collective security can be described as procedural collective security, as there is a hierarchy, which both allows and calls upon the major powers to be the main defenders of international peace and security. Third, for sanctions to work, the international economy has to be sufficiently interdependent such that sanctions harm the intended country enough, but do not harm the countries doing the sanctioning. And for sanctions to work, universality of their application is especially important for them to have an effect. Finally, that for countries to trust collective security, they have to know it works well enough to safeguard their security. But at the same time, unless countries trust it, it's less likely to work. And while it is possible for collective security to start off with a small number of states and gradually have more adopt the idea, the first three issues need to be addressed in the first place.

In the aftermaths of the early attempts with the concept of collective security, the concept became widely known starting with the Concert of Europe in 1815, the first collective security arrangement of its kind.

The first, long lasting, and most successful attempt at collective security was the Concert of Europe, which helped to prevent great power war from 1815 to 1854.<sup>38</sup> Although enforcement was decentralized, its members supported Europe's great-power equilibrium, shared a strong distaste for war after the costly Napoleonic Wars, and agreed to consult and take joint action in response to threats to peace.<sup>39</sup> From 1815 through 1822 and to a lesser extent until 1854, they also shared a longer and broader conception of self interest than is usual in international relations, although the shared stakes did not extend beyond the inner club of great powers.<sup>40</sup>

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<sup>38</sup> Supra 12, p 6.

<sup>39</sup> Ibid

<sup>40</sup> ibid

These commitments weakened when the more liberal British and French regimes opposed domestic interventions favored by Austria and Russia.<sup>41</sup>

‘The concert of Europe was also known as the “Vienna System of international Relations” or “The congress system” after the congress of Vienna. The age of the Concert is sometimes known as the Age of Metternich, due to the influence of the Austrian chancellor's conservatism and the dominance of Austria within the German Confederation, or as the European Restoration, because of the reactionary efforts of the Congress of Vienna to restore Europe to its state before the French Revolution.’<sup>42</sup>

The Concert of Europe had no written rules or permanent institutions, but at times of crisis any of the member countries could propose a conference.<sup>43</sup> The Major meetings of the great powers in the concert's time included: Aix-la-Chapelle (1818), Carlsbad (1819), Troppau (1820), Laibach (1821), Verona (1822), London (1832), Berlin (1878).<sup>44</sup>

The Concert of Europe marked the development of international cooperation for the purpose of collective security.<sup>45</sup> This period also saw the development of international law with the first Geneva Conventions establishing laws about humanitarian relief during war and the international Hague Conventions of 1899 and 1907 governing rules of war and the peaceful settlement of international disputes.<sup>46</sup>

‘After an early period of success, the Concert began to weaken as the common goals of the Great Powers were gradually replaced by growing political and economic rivalries. While the Congress System had a further significant achievement in the form of the Congress of Berlin (1878) which redrew the political map of the Balkans, the old balance of power had been irrevocably altered, and was replaced by a series of fluctuating alliances.’<sup>47</sup> ‘The Concert's effectiveness came to an

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<sup>41</sup> Ibid

<sup>42</sup> Ibid

<sup>43</sup> Stevenson, David, ‘The History of the First World War: 1914-1918’, Penguin Books. 2004, p. 4.

<sup>44</sup> Supra 12, p 7.

<sup>45</sup> Martin Richard, “The EU and NATO relationship, a legal and political perspective”, 2006, Ashgate, p 9.

<sup>46</sup> F.S Northedge, ‘The League of Nations, Its Life and Times, 1920-1946’, London, 1986, p 10

<sup>47</sup> Ibid

end due to the rise of nationalism, the unification of Germany and the *Risorgimento* in Italy, and the Eastern Question and other factors. By the early 20th century, the Great Powers were organized into two opposing coalitions, and the First World War broke out.<sup>48</sup>

The forerunner of the League of Nations, the Inter-Parliamentary Union (IPU), was formed by peace activists William Randal Cremer and Frédéric Passy in 1889. The organization was international in scope with a third of the members of parliament, in the 24 countries with parliaments, serving as members of the IPU by 1914. Its aims were to encourage governments to solve international disputes by peaceful means and arbitration and annual conferences were held to help governments refine the process of international arbitration. The IPU's structure consisted of a Council headed by a President which would later be reflected in the structure of the League.<sup>49</sup> It was the first permanent forum for political multilateral negotiations. Initially, the organization was for individual parliamentarians, but has since transformed into an international organization of the parliaments of sovereign states. The national parliaments of 162 countries are members of the IPU, and 10 regional parliamentary assemblies are associate members.<sup>50</sup> The IPU has permanent observer status at the United Nations and general consultative status with the Economic and Social Council. UN and the IPU cooperate closely in various fields, in particular peace and security, economic and social development, international law, human rights, and democracy and gender issues, but IPU has not obtained the status of UN General Assembly subsidiary organ.

### **2.3 Modern Understandings of Collective Security**

At the start of the twentieth century two power blocs emerged through alliances between the European Great Powers. It was these alliances that came into effect at the start of the First World War in 1914, drawing all the major European powers into the war. This was the first major war in Europe between industrialized countries and the first time in Western Europe the results of industrialization (for example mass production) had been dedicated to war. The result of this

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<sup>48</sup> Josh Chandara, Derek Dowd, Rachel Piner, 'The Concert of Europe', Duke Journal of International Law, p 16.

<sup>49</sup> [http://www.unorg.ch/Before the League of Nations/](http://www.unorg.ch/Before%20the%20League%20of%20Nations/), The United Nations Office at Geneva, last retrieved 12,30,2013.

<sup>50</sup> <http://www.ipu.org/english/membshp.htm>, last retrieved 12,29,2013.

industrial warfare was an unprecedented casualty level with eight and a half million members of armed services dead, an estimated 21 million wounded, and approximately 10 million civilian deaths.<sup>51</sup>

The modern idea of collective security is born in 1918 with the birth of the League of Nations. The US president Woodrow Wilson is regarded as the enunciator of concept in modern time. The shock of First World War forced total reconsideration of the old ways of diplomacy, rival alliances and balances of power

By the time the fighting ended in November 1918, the war had had a profound impact, affecting the social, political and economic systems of Europe and inflicting psychological and physical damage on the continent.<sup>52</sup> Anti-war sentiment rose across the world; the First World War was described as "the war to end all wars",<sup>53</sup> and its possible causes were vigorously investigated. The causes identified included arms races, alliances, secret diplomacy, and the freedom of sovereign states to enter into war for their own benefit. The perceived remedies to these were seen as the creation of an international organization whose aim was to prevent future war through disarmament, open diplomacy, international co-operation, restrictions on the right to wage wars, and penalties that made war unattractive to nations.<sup>54</sup> So the League of Nations was created. James Bryce proposed the League shall undertake to defend any one of its members who may be attacked by any other State who has refused to accept arbitration or conciliation. This is incorporated under articles 10-16 of the League of Nations covenant.

## **2.4 Collective Security Before and During the League of Nations**

After World War I, the first large scale attempt to provide collective security in modern times was the establishment of the League of Nations in 1919-20. The League was formally established in 1920 at the Versailles Treaty and was meant to include all countries of the world and to resist aggression in all parts of the world. In fact, the meeting convened to set up the

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<sup>51</sup> David A. Bell, 'The First Total War. Napoleon's Europe and the Birth of Warfare as We Know It.' Boston, pp. 15-17, see also Supra 19, pp. 1-2.

<sup>52</sup> Supra 22, p. 16.

<sup>53</sup> Archer Johns, 'The art of war in Western world', UIP Press, 2001 p. 14, see also Supra 19, p. 1.

<sup>54</sup> Supra 22, p. 8.

league was attended by 32 allied and associated powers that became the leagues original members and 13 neutral states were also invited to join. By 1938 the membership to the league raised to fifty seven.<sup>55</sup> Article 16 of the League covenant stipulated that a state engaging in aggression shall *ipso facto* be deemed to have committed an act of war against all other members of the league. Members would then automatically impose collective economic and diplomatic sanctions. The League covenant was far more ambiguous on the question of joint military action. Article 10 did not bind member states to respond automatically to aggression with military force. Rather, the council was to decide when the use of force was warranted and to recommend how much military capability each member should contribute to up hold the covenant (article 16(2)). The covenant also stipulated that the council's recommendation would be authoritative only when reached unanimously. This provision effectively gave each member of the council weather permanent or rotating the power to exercise a veto<sup>56</sup>.

The provisions of the League of Nations Covenant represented a weak system for decision-making and for collective action. The Leagues covenant provision provided the way for a weak decision making as a collective security arrangement. In addition the then political reality demonstrated this weakness. An example of the failure of the League of Nations' collective security is the Manchurian Crisis, when Japan occupied part of China which was a League member. After the invasion, members of the League passed a resolution calling for Japan to withdraw or face severe penalties. Given that every nation on the League of Nations council had veto power, Japan promptly vetoed the resolution, severely limiting the League of Nations ability to respond. After one years of deliberation, the League passed a resolution condemning the invasion without committing the League's members to any action against it. The Japanese replied by quitting the League.

A similar process occurred in 1935, when Italy invaded Ethiopia. Sanctions were passed, but Italy would have vetoed any stronger resolution. Additionally, Britain and France sought to court Italy's government as a potential deterrent to Hitler, given that Mussolini was not yet in what

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<sup>55</sup> Supra 22, pp 46-47.

<sup>56</sup> Article 5 of the covenant of the League of Nations

would become the Axis alliance of World War II. Thus, neither enforced any serious sanctions against the Italian government. Later Italy joined Adolf Hitler as one of the Axis power in WWII. Additionally, in this case and with the Japanese invasion of Manchuria, the absence of the USA from the League of Nations deprived the League of Nations of another major power that could have used economic leverage against either of the aggressor states. Inaction by the League subjected it to criticisms that it was weak and concerned more with European issues since most leading members were European, and did not deter Hitler from his plans to dominate Europe. The Ethiopian monarch Emperor Haile Selassie I continued to support collective security though, having assessed that impotence lay not in the principle but in its covenants commitment to honor its tenets. Here strong critique is raised against the League saying that it has not done as much as it could and it should have despite other group of scholars argue that the league has done what it could have done in its time.

One active and articulate exponent of collective security during the immediate pre-war years was the Soviet foreign minister Maxim Litvinov.<sup>57</sup> However, there are grounds for doubt about the depth of Soviet commitment to this principle, as well as that of Western powers.<sup>58</sup> After the Munich Agreement in September 1938 and the passivity of outside powers in the face of German occupation of the remainder of Czechoslovakia in March 1939 it was shown that the Western Powers were not prepared to engage in collective security against aggression by the Axis Powers.<sup>59</sup> ‘Together with the Soviet Union, Soviet foreign policy was revised and Litvinov was replaced as foreign minister in early May 1939, in order to facilitate the negotiations that led to the Molotov-Ribbentrop Pact with Germany, signed by Litvinov's successor, Vyacheslav Molotov, on August 23 of that year.’<sup>60</sup> The war in Europe broke out a week later, with the German invasion of Poland on September 1.<sup>61</sup>

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<sup>57</sup> Beer, Francis A, ‘Alliances: Latent War Communities in the Contemporary World’. New York: Holt, Rinehart, Winston, 1970, pp 250-258.

<sup>58</sup> Ibid

<sup>59</sup> Ibid

<sup>60</sup> Ibid

<sup>61</sup> Ibid

## 2.5 The United Nations and Collective Security

Collective security is one of the founding principles of the United Nations. Compared to its predecessor also the UN better fulfills the basic requirements of collective security. Practically all states of the world except Switzerland and Taiwan are members. Article 2(4) of the UN charter prohibits the use of force against any other member state. Article 2(5) obliges all member states to cooperate with its decision especially that of the UNSC and to carry out the decisions of the UNSC. Thus all the legal requirements of a collective security arrangement are fulfilled. Whereas the UN system of collective security thus meets the objective criteria for its effective functioning, its main problem has always been the lack of genuine international solidarity, above all among the five permanent members of the Security Council.<sup>62</sup> Even if the United Nations Charter, contains stronger provisions for decision-making and collective military action than those of the League of Nations Covenant, it is criticized as not representing a complete system of collective security, but rather a balance between collective action on the one hand and continued operation of the states system including the continued special roles of great powers on the other.

Also Charles A Kupchan and Clifford A Kupchan argues that: “In theory, the family of collective security organization runs from that are universal in membership, global in scope, and legally binding in terms of commitment to collective action, to those that are limited in membership, regional in scope, and non binding commitments to collective action. In practice however, none of the organizations that have been erected to date meet the requirement of an ideal collective security. The League of Nations and the United Nations came closest but both fell far short.”<sup>63</sup>

Whether the UN represents a collective security arrangement or not is evaluated from the prerequisites for a collective security arrangement. Based up on those prerequisites the UN falls back behind the requirements. Additionally, critiques focus on the past and contemporary cases

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<sup>62</sup> Hanspeter Neuhold, ‘Collective security after operation allied forces’, J.A Frowein and R.Wolfrum (eds.), Max Planck Yearbook of United Nations Law, 73-106. @200Kluwer Law International. Printed in the Netherlands. Hereinafter cited as Neuhold, P 5.

<sup>63</sup>Charles A. Kupchan and Clifford A.Kupchan, ‘Concerts, Collective Security and the Future of Europe’, International security, vol.16.no 1(1991), pp 8.

in concluding that the UN cannot be said a complete collective security arrangement. The 1980s Falk land war when Argentina invaded the islands, which are overseas territories of the United Kingdom, many UN members stayed out of the issue, as it did not directly concern them and that was cited as one early example of the failure of the collective security arrangement. There was also a controversy about the United States role in that conflict due to their obligations as an Inter-American Treaty of Reciprocal Assistance the "Rio Pact" member. However, many politicians who view the system as having faults also believe it remain to be a useful tool for keeping international peace.

The role of the UN and collective security in general is also evolving given the rise of internal state conflicts. Since the end of WWII, there have been 111 military conflicts worldwide, but only 9 of which have involved two or more states going to war with one another. The remainders have either been internal civil wars or civil wars where other nations intervened in some manner. This means that collective security may have to evolve towards providing a means to ensure stability and a fair international solution to those internal conflicts. Whether this will involve more powerful peacekeeping forces or a larger role for the UN diplomatically will likely be judged from a case to case basis.

The theoretical aspect of collective security system appears to be logical and flawless, but in its actual operation it reveals number of short comings and drawbacks that are unrealistic and unworkable. The machinery of collective security system has never been satisfactory developed under League of Nations or United Nations. Most of the assumptions are hypothetical. It is an ideal assumption- not working in the contemporary world. In the age of nuclear age it became more irrelevant Power struggle between two blocks ensured the failure of collective security and rendered United Nations increasingly irrelevant. The failure of Congo Mission in 1961 and the crisis until today is one case. The Collective Security mechanism developed by power blocks or regional arrangements affected NATO, Central Treaty Organization (CENTO) and Southeast Asia Treaty Organization etc. The Vietnam War is another major episode in the time that demonstrated the failure of the United Nations collective security arrangement and the dominance of the power struggle between the two blocks. The number of casualties in the Vietnam War and the time spent is a testimony.

None of the international organizations installed until today does fulfill the whole requirement of an ideal collective security arrangement. In practice collective security is hard to implement as the terminology of the German sociologist Karl Mannheim, collective security is a "relative utopia" one that tries to be realistic but retains elements of fantasy.

An army under the direct control of the international organization, one that could be used without asking permission of the various member states, seems necessary to collective security; otherwise, as has been the case, it must make ad hoc requests for military contingents, which the various governments may or may not choose to honor, depending on their interests. If it had its own army, the United Nations would already be a world government, possessing sovereign powers over the subordinate member units.

One of the illusions of collective security, as was observed, seems to be that conflict is relatively rare, is a product of criminality, and can readily be recognized as "aggression" and as such suppressed by the great majority of law-abiding, peace-loving peoples. But conflict is both much more endemic in the world and much less possible to categorize as good and evil than this theory concedes. Aggression has proved much more difficult to identify and to define than collective security plans foresaw. Examples of such a difficulty include Israel and the Arab states, North and South Vietnam, North and South Korea, India and Pakistan, and perhaps most others, there is great difficulty in ascertaining who in fact struck the first blow, as well as a certain aridity in making this the crux of the matter. The need for the definition of an aggression was abandoned as it could not incorporate all possible future cases.

There is also the argument of redundancy. A workable collective security order is one in which most of the powers are in harmony, and which has enough unity to agree on basic definitions, for example, of justice and aggression. But if there is this much unity, there is hardly any need to install a system of collective security, for the problem will virtually solve itself. To create the formal institution of a League of Nations or United Nations does not alter the existing order of power and international relations.

Insofar as collective security is based on a firm defense of existing borders, it is open to criticism on the ground that this freezes the status quo. This raises the problem of justice. Many states will

not accept the justice of existing boundaries, which probably reflect the results of recent war and may contain arrangements clearly unacceptable to the losers. Finally, the basic dilemma of collective security is—assuming its efficacy—that of waging of war to prevent war. War by any other name, including "police action," is still war. Of course, the advocates of collective security hoped that vigilant international police work performed in time would nip a potential war in the bud—stamp out the brush fire before it became a raging inferno. But experiences such as Vietnam suggest that well-intentioned interventions of this sort may result not in diminishing war but intensifying it. Intervention by outside powers, even if acting in the name of an international organization, is, after all, not usually apt to reduce a conflict. In principle, collective security abolishes neutrality; no state may stand aside and observe, all must become involved to stop a war. (The 1930s saw a considerable debate on the implications of the new doctrine for traditional neutrality.) But the venerable principle of neutrality may be valuable in confining the scope of a war. To abandon it may involve the risk of widening wars.

## **CHAPTER THREE**

### **3. REFORM EFFORTS IN THE UN**

#### **3.1 Introduction**

The UN needs fundamental reform today. Reform efforts in the UN are not a 2014 issue. Before now many reform proposals has been submitted and also there were few successful reforms and other efforts that are still on agenda. Among the major reform proposals are the proposal provided by the UN secretary general in 2005, the world summit outcome document of 2005 and the Volcker inquiry report which is provided based up on the conclusions of the Volcker inquiry in to alleged corruption and other administrative criticisms against the UN.

In this chapter the historical account of the reform efforts in the UN will be analyzed in detail, but the main stepping stones in discussing contemporary reform efforts will be the above mentioned three proposals and documents due to their relevance in terms of being recent representing the ongoing reform efforts and also the relevance and criticality of the issues raised and addressed by the documents. These three reform proposals are very important looking at the nature of the reform proposals provided, the authority providing them and their exclusive attempt to discuss all reform issues comprehensively. It would be very detail to discuss the reform proposals of each state, so the most prominent reform proposals are discussed. Emphasis is given to the reform proposals provided by the newly emerging major powers. The chapter also examines the current status of the various UN reform agenda as it is very important in order to look up the particular reform of the Security Council.

First, the 2005 world summit outcome document reaffirms fundamental values and contains clear commitments on steps needed to reach by 2015. Much of these steps are the same to the development goals agreed upon at the Millennium Summit in September 2000. It is aimed at strengthening the UN's capacity for peacekeeping, peacemaking and peace-building, including a detailed project for a new peace-building commission. It contains recommendations to establish a Human Rights Council. It also incorporates some of the

issues including the reform of the United Nations organs and particularly the United Nations Security Council. The 2005 world summit outcome further provides that a more dynamic reform process is needed to make the UN respond to contemporary questions. World leaders agreed in 2005 that the UN has to be tailored to respond effectively to the most ominous threats to international peace and security and other challenges. As to the outcome of the meeting, “If effective multilateralism is to be achieved, all States have to go beyond what is immediately significant and urgent to each of them at a strictly national level and help bring about a new multilateral approach for a new agenda on substantive and institutional issues. By the time member states expressly agreed that they cannot establish a new world policy agenda without a new efficient and effective UN system that is adopted and is in line with the new realities of a changing human society at a planetary level.”<sup>64</sup>

A currently widespread critic questions the relevance and utility of the UN as a world body and its specific organs. The UN secretariat has been accused of mismanagement problems. So in order that the UN is to be a reliable effective and efficient international organization reforms has to be realized with each UN organ. Its secretariat has to come up with changes to solve the mismanagement problems that were revealed in the Volcker inquiry report. The Security Council should be enlarged and adapted to the new realities and increasing demands. But the basic question is how the Security Council meets these new increasing demands because the divergence of views, opinions and proposals are still numerous. The reform agendas are proposed for most of the UN organs and working methods.

Despite the difference of opinions towards the 2005 World Summit Outcome, the UN reform proposals provided by that summit are still a work in progress. The replacement of the UN human rights commission with a new Human rights council is the one that is realized. The working group on the UN reform is seized of the issues of reform. But there have not been other tangible reforms until today. From the nature of the issues and the fast changing global reality, however, it is mandatory that this international organization to come up with real

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<sup>64</sup> Ioan Voicu: “Reforming the UN: Prospects and limitations”, ABAC Journal Vol. 25, No.3, September-December, 2005, pp. 1 – 28, pp.1.

changes. Especially on the issue of peace and security and the work of the Security Council the need for reform seems more important. So reform has to be quick and followed by convincing actions able to give tangibility to existing commitments and to bring the world organization's founding ideals in to reality.

It is possible to say that the United Nations is at a Pivotal moment in its nearly seventy years history. On 24 October 1945 the world organization officially came into existence as a result of the ratification of its Charter by China, France, the Soviet Union, the United Kingdom, and the United States and by a majority of other 51 initial members. Today, the UN, with its universal composition of 193 member states, is forced by unprecedented developments to critically evaluate its past in order to ensure its very survival. The UN system is under strong critics, but actions in renovating this organization are not as quick as needed.

The main shortcomings of the UN are primarily rooted in the dysfunctional global order, but in some countries the epithets of irrelevant, impotent, obsolete are used to describe the UN<sup>65</sup>. Beyond all criticism, there is a valid question: Is the UN constellation still functionally linked to the profoundly changing international environment?

It might be essential to mention that the UN has done a great deal of achievements in its more than half a century life time. It is obvious that international relations are better with the UN. International trade, health, scientific innovations, communication, global politics, peace and security, human rights and all other aspects of every day global life are better with the UN. But it is beyond doubt to raise the fundamental critics of this organization and also reform proposals for its betterment in the future.

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<sup>65</sup> Rosemary Righter, "Utopia Lost: The United Nations and world Order", Twentieth Century Fund Press, May 1, 1995, P 14.

## 3.2 Major Criticisms of the UN and the Need for Reform

### 3.2.1 Major Criticisms

The UN had faced strong criticisms that are diverse from its inception on until today. While the critics are diverse, much of these focused on the UN's purported inability to handle international conflicts, even on a small scale. There are also critics that focused on the UN's alleged elitism or its presumed support of globalist philosophies. Before discussing the major areas of reforming the UN as a whole it looks appropriate here to see some of these major critics in short.

First the UN has faced strong Moral and philosophical criticism beginning from its inception from some groups. The first of these philosophical and moral critics focuses on the UN's moral relativism. This critics is well provided by Dore Gold, former ambassador to the UN in his book entitled "Tower of Babble: How the United Nations Has Fueled Global Chaos" published in 2004. In his book Gold criticizes what it called the organization's moral relativism in the face of genocide and terrorism that occurred between the moral clarity of its founding period and the present day. While the UN during its founding period was limited to those nations that declared war on at least one of the Axis powers of World War II, and thus were capable of taking a stand against evil, the modern United Nations has, according to Gold, become diluted to the point where only 75 of the 184 member states during the time of the book's publication "were free democracies, according to Freedom House." He further claimed that this had the effect of tipping the scales of the UN so that the organization as a whole was more amenable to the requirements of dictatorships.<sup>66</sup>

The second of this moral and philosophical criticism is on the allegation that the UN favors globalism. Some groups even criticized the UN for its allegation of globalism and favored the state system from early 1950's even. One of such proponents was John Birch Society of the United States. This society began a "get US out of the UN" campaign in 1959, charging that the

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<sup>66</sup> Dore Gold, "Tower of Babble: How the United Nations Has Fueled Global Chaos", Three Rivers Press ,October 25, 2005 , p. 31.

“UN's aim was to establish a "One World Government””<sup>67</sup>. “In France also Charles de Gaulle criticized the UN famously calling it “*le machin*” or “the whatchamacallit” trying to describe the UN as a concept that is not famously and usefully incorporated in to the global politics and he argued that “ a global security alliance would not help in maintaining world peace rather the UN should support and direct defense treaties between countries for maintaining global peace and security”<sup>68</sup>.

The UN has also been strongly criticized for supporting wrong population control plans. These critics focused on forced sterilization and other population control policies that have been supported by the UN<sup>69</sup>.

But above all critics the administrative criticisms are stronger. The UN administration has been questioned many times due to the role of elite nations. It is criticized that the five permanent members of the United Nations Security Council : Russia, the United States, China, the United Kingdom, France who are all nuclear powers, have created an exclusive nuclear club whose powers are unchecked<sup>70</sup>. Unlike the General Assembly, the United Nations Security Council does not have true international representation<sup>71</sup>. This has led to accusations that the UNSC only addresses the strategic interests and political motives of the permanent members, especially in humanitarian interventions: for example, protecting the oil-rich Kuwaitis in 1991 but poorly protecting resource-poor Rwandans in 1994.<sup>72</sup> Similarly, UN was quick to take a military action

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<sup>67</sup> John F. McManus, ‘The John Birch society: get US out of the UN’ posted at the John Birch Society website <http://www.jbs.org/>, accessed at March 6,2012, The John Birch society says the UN’s goal is to establish one world government available at [http://www.sourcewatch.org/John\\_Birch\\_Society](http://www.sourcewatch.org/John_Birch_Society). Accessed at January 12, 2014.

<sup>68</sup> Gerbet, Pierre, ‘Naissance des Nations Unies” 1995 English Translation available at [http://www.charles\\_de\\_gaulle.org/pages/thematiqu](http://www.charles_de_gaulle.org/pages/thematiqu)

<sup>69</sup> Stefano Gennarini, ‘ United Nations Engages in Major Population Control Debate’ on January31, 2013, available at <http://www.lifenews.com> accessed on March 28, 2014.

<sup>70</sup> Richard Butler AC, ‘Reform of the United Nations security council’, Penn state university journal of international law and international affairs , Volume 1, Issue 1 p 30.

<sup>71</sup> Ibid

<sup>72</sup> Sathir chella Rajan , ‘Global politics and institutions, Frontiers of a great transition’ Vol.3 Tellus institute, 2006, GTI paper series, p 2 .,also available at <http://www.gtinitiative.org/documents/>.

through NATO against Libya in 2011 against repressive regime, but the UN did not settle the crisis in Congo that continued from 1960 until today. As of July 2012 it still hasn't taken any decision on whether to take any strong action against Syria<sup>73</sup>.

Other very strong critics lie on membership in the Security Council. As to the rules of the charter any nation may be elected to serve a temporary term on the Security Council<sup>74</sup>, but critics have suggested that this is inadequate. They argue that the number of permanent members should be expanded to include non-nuclear powers, which would democratize the organization.<sup>75</sup> Still other nations have advocated abolishing the concept of permanency altogether, just to mention one, under the government of Paul Martin, Canada advocated this approach.<sup>76</sup>

The Veto power in the United Nations Security Council is the issue that has received the greatest number of criticism from various directions. The UN charter provides that a veto from any of the permanent members can halt any possible action the Council may take<sup>77</sup>. One nation's objection, rather than the opinions of a majority of nations, may cripple any possible UN armed or diplomatic response to a crisis. To mention one analysis, John J. Mearsheimer claimed that "since 1982, the US has vetoed 32 Security Council resolutions critical of Israel, more than the total number of vetoes cast by all the other Security Council members."<sup>78</sup> Another critics says, "as as to the charter candidates for the Security Council are proposed by regional blocs, for this

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<sup>73</sup> Somini Sengupta and Nick Cumming-Bruce, 'Security Council criticized by right Panel' at The New York Times ,March 5,2014,accessed on March 29, 2014.

<sup>74</sup> Article 23 of the United Nations Charter

<sup>75</sup> Hindustan Times.com, 'India makes strong case for UNSC expansion'" .Available at [www.webarchive.org/hindustantimes.com.news/6640](http://www.webarchive.org/hindustantimes.com.news/6640). accessed from the original on 29-01-2014

<sup>76</sup> Global Policy Forum 'Allan Rock speech on security council reform'. Available at <http://www.globalpoicy.org/security/reform/statements/2005/0712/canaqda>. Last accessed on 25-01-2014.

<sup>77</sup> Article 27(3) of the UN charter

<sup>78</sup> Washington report on Middle East affairs, 'An Updated List of Vetoes Cast by the United States to Shield Israel from Criticism by the U.N. Security Council', May/June special report, page 14. Last retrieved 07 may 2013.

reason the Arab League and its allies are usually included but Israel, which joined the UN in 1949, has never been elected to the Security Council. The Council has repeatedly condemned Israel<sup>79</sup>. Former U.S. Ambassador to the UN Jeane Kirkpatrick declared that: “what takes place in the Security Council more closely resembles a mugging than either a political debate or an effort at problem-solving.”<sup>80</sup>

More particularly, in the Security Council the practice of the permanent members meeting privately and then presenting their resolutions to the full council as an irreversible accomplishment has also drawn fire. According to Erskine Childers, "the vast majority of members North as well as South have made very clear their distaste for the way three Western powers behave in the Council, like a private club of hereditary elite members who secretly come to decisions and then emerge to tell the grubby elected members that they may now rubber stamp those decisions".<sup>81</sup>

The UN's effectiveness and its relevance in this 21<sup>st</sup> century are also deeply questioned<sup>82</sup>. The UN charter provides the basic purpose and principle of the organization in chapter one of the charter in its first and second articles as follows: Article 1 provides: The Purposes of the United Nations are:

1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the

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<sup>79</sup> 'The UN relationship with Israel' posted at Jewish virtual Library, available at [www.jewishvirtuallibrary.org](http://www.jewishvirtuallibrary.org) accessed on April 12, 2014.

<sup>80</sup> Ragnor Muller, "The United Nations, Its Development during the Cold War". Cambridge Press, 2011.

<sup>81</sup> [www.GlobalPolicy.Org](http://www.GlobalPolicy.Org), 'Empowering the Peoples in their United Nations, UN Reform', last accessed on 1 November 2013.

<sup>82</sup> G.W.Bush Discussion on the Relavance and irelevance of the UN if it will not authorize the US invasion of Iraq, 2002. Available at [http://unitednations.ispnw.org/arhives/bush-addressing the UN on September 2002](http://unitednations.ispnw.org/arhives/bush-addressing%20the%20UN%20on%20September%202002).last accessed at January 2, 2013.

- principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;
2. To develop friendly relations among nations based on respect: for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;
  3. To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and
  4. To be a center for harmonizing the actions of nations in the attainment of these common ends.

Article 2 of the charter provides the basic principle of this organization by stating that:

The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles:

1. The Organization is based on the principle of the sovereign equality of all its Members
2. All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations assumed by them in accordance with the present Charter.
3. All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.
4. All Members shall refrain' in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.
5. All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving

- assistance to any state against which the United Nations is taking preventive or enforcement action.
6. The Organization shall ensure that states which are not Members of the United Nations act in accordance with these Principles so far as may be necessary for the maintenance of international peace and security.
  7. Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

The charter enables the UN to maintain international peace and security and also if necessary to enforce the peace by taking preventive or enforcement measures.<sup>83</sup> The above objectives and principles of the organization are fulfilled through the actions supposed to be taken in accordance with chapter VI, VII and Chapter VIII of the UN charter.

Despite this clear missions in the UN charter, Political scientist Ragnor Muller summarizes the development of the UN during the Cold War years and he outlines that due to its restrictive administrative structure, the permanent members of the Security Council themselves have more than once prevented the UN from fully carrying out its basic functions as provided in these provisions.<sup>84</sup> The charter requires the unanimous approval, support or minimally abstention of all 5 of the permanent members of the UN's Security Council to take action in matters of international peace and security otherwise the Security Council can only "observe" report on, and make recommendations regarding these kinds of conflicts affecting international peace and security<sup>85</sup>. In fact, such unanimity on the Security Council regarding the authorization of armed UN enforcement actions has not always been reached in time to prevent the outbreak of international wars. Despite with all of these restraints and limitations in place on the UN's

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<sup>83</sup> Chapter VII of the UN charter

<sup>84</sup> Supra 80, P 50.

<sup>85</sup> Article 27(3) of the UN charter.

abilities to respond to situations of conflict, still various studies have found the UN to have had many notable successes in the 69 years of its existence.

To mention one, in 1962 UN secretary general U Thant provided valuable assistance and took a great deal of time, energy and initiative as the primary negotiator between Nikita Khrushchev and John F. Kennedy during the Cuban Missile Crisis, thus avoiding a possible devastating nuclear war at that time.<sup>86</sup> Also a 2005 RAND Corporation study found the UN to be successful in two out of three peacekeeping efforts. It compared UN nation-building efforts to those of the United States, and found that seven out of eight UN cases are at peace, as opposed to four out of eight US cases at peace.<sup>87</sup> Also in 2005, the Human Security Report documented a decline in the number of wars, genocides and human rights abuses since the end of the Cold War, and presented evidence though circumstantial that international activism mostly spearheaded by the UN has been the main cause of the decline in armed conflict since the end of the Cold War.<sup>88</sup>

Diplomatically and politically also the UN does not escape from strong critics. One of such critics focuses on the UN's inability to prevent conflicts. Critics and also proponents of the UN join together in questioning UN's inability to prevent atrocities. Its relevance and effectiveness is highly questioned in most of the famous cases because there could not be observed a real consequence on Violation of the Security Council resolutions. An early example of this kind of cases was the Bangladesh liberation war and the 1971 Bangladesh atrocities committed by the Pakistan Army on Bengali Hindus.<sup>89</sup> Critics of the UN argued that the UN was completely ineffective in preventing the genocide<sup>90</sup>, and that military intervention by India was the only

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<sup>86</sup> Dorn, A. Walter, and Robert Pauk, 'The Cuban Missile Crisis Resolved: The Untold Story of an Unsung Hero.' 2007 available at <http://www.walterdorn.org/pub/8>.

<sup>87</sup> Rand corporation, 'Historical survey of UN peacekeeping work, The UN's role in Nation building: From the Kong to Iraq.' 2005, available at <http://www.rand.org/pubs/monographs/2005/RAND>, last accessed on January 2014.

<sup>88</sup> The 2005 Human Security Report, 'A detailed historical analysis of UN effectiveness in preventing wars', 2005 available at <http://www.hsrgroup.org/human-security-report/2005/overview>, last accessed on January 2014.

<sup>89</sup> Bangladesh Genocide archive, an online archive of every information, events and exclusive coverage of the Bangladeshi atrocities, available at [www.genocidebangladesh.org](http://www.genocidebangladesh.org)

<sup>90</sup> A. Drik. Moses: "The United Nations, Humanitarianism and Human rights: the trial of Pakistani soldiers for the Bangladeshi genocide.' In Stefani Ludwig Hoffmann, 'Human rights in the Twentieth Century,' Cambridge University Press, 2013, p 3.

thing to stop the mass murder<sup>91</sup>. Another such case occurred in the Srebrenica massacre where Serbian troops committed genocide against Bosnian Muslims in the largest case of mass murder on the European continent since World War II. Srebrenica had been declared a UN safe area and was even protected by 400 armed Dutch peace keepers, but the UN forces did nothing to prevent the massacre. In the 21st century, the most prominent and dramatic example is the Darfur crisis, in which Arab Janjaweed militias, allegedly supported by the Sudanese government, committed repeated acts of ethnic cleansing and genocide against the indigenous population<sup>92</sup>. The conflict has claimed an estimated 300,000 civilians have been killed in what is the largest case of mass murder in the history of the region, yet the UN was strongly criticized for continuously failing to quickly react against this severe Human rights crisis. The same is true to the Congo crisis.

The way the UN handled the cold war is also strongly criticized. Among the prominent individuals of the time that expresses dissatisfaction with this organization was Richard Nixon. Richard Nixon, while running for President of the United States, criticized the UN as "obsolete and inadequate" for dealing with the then present crises like the Cold War.<sup>93</sup> Also Jeane Kirkpatrick, who was appointed by Ronald Reagan to be United States Ambassador to the United Nations, wrote in a 1983 opinion piece in *The New York Times* that the process of discussions at the Security Council "more closely resembles a mugging" of the United States "than either a political debate or an effort at problem solving."<sup>94</sup>

The attention given to the Arab-Israeli conflict by the UN is also one of the sources of the debates against the UN. The Arab – Israel conflict occupied much Security Council resolution, general assembly declarations, other UN activities and also much of the UN resources. Critics such as Dore Gold, Alan Dershowitz, Mark Dreyfus, Robert S. Wistrich, Alan Keyes, consider UN attention on Israel's treatment of Palestinians to be excessive.<sup>95</sup>

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<sup>91</sup>Supra 82

<sup>92</sup> 'Eyes on Darfur conflict analysis' at [www.eyesondarfur.conflict.org](http://www.eyesondarfur.conflict.org)

<sup>94</sup> Ragnor Muler, "The United Nations, Its Development during the Cold War". 2011. Retrieved 25 December 2013.

<sup>95</sup> Alan Keyes as quoted in Yohanan Manor, 'To Right a Wrong: The Revocation of the UN General Assembly Resolution 3379 Defaming Zionism', New York: Shengold Publishers, 1996, p. 171, Dershowitz, Alan, 'The Case

According to Wistrich, during the past forty years one third of all the critical resolutions passed by the UN Human Rights Commission during the past forty years have been directed exclusively at Israel. Comparing this to other cases, there has not been a single resolution even mentioning the massive violations of human rights in China, Russia, North Korea, Cuba, Saudi Arabia, Syria, or Zimbabwe."<sup>96</sup>

The adoption of the United Nations special commission on Palestine (UNSCOP's) recommendation to partition Palestine by the United Nations General Assembly in 1947<sup>97</sup> was one of the earliest decisions of the UN. According to political commentator Alan Dershowitz, after the 1948 Arab-Israeli War, the UN defined the term "refugee" as applied to Palestinian Arabs fleeing Israel in significantly broader terms than it did for other refugees of other conflicts.<sup>98</sup>

The UN has sponsored several peace negotiations between Israel and its neighbors. The 2002 road map for peace is among such negotiations. From the early resolutions Resolution 3379(1975) remained to be controversial for many reasons and basically because it equated Zionism with racism. It was finally rescinded in 1991. According to Robert S. Wistrich, "on the same day Resolution 3379 was adopted, the General Assembly decided to establish the 'Committee on the Inalienable Rights of the Palestinian People.' Robert S. Wistrich says: With a large budget at its disposal and acting as an integral part of the United Nations this committee

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for Peace: How the Arab-Israeli Conflict Can Be Resolved. Hoboken: John Wiley & Sons, Inc., 2005, pp. 109, Jewish Telegraphic Agency, **Press** release about the UN, 'Don't be lynch mob, lawyers urge U.N.' 8 July 2009. , 8 July 2009. ADL Press release, 'UN Human Rights Council Resolution Reveals 'Cancerous Bias' Against Israel.'. 7 July 2009, Robert. S. Wistrich, 'A Lethal Obsession: Anti-Semitism - From Antiquity to the Global Jihad, Random House, and 2010, p. 487.

<sup>96</sup> Robert.S. Wistrich, 'A Lethal Obsession: Anti-Semitism - From Antiquity to the Global Jihad,' Random House, 2010, p. 487.

<sup>97</sup> P.J.M. de Waart Brill, 'Dynamics of Self-determination in Palestine', UIP Press, 1994, p. 121

<sup>98</sup> Dershowitz, Alan. 'The Case for Peace: How the Arab-Israeli Conflict Can Be Resolved', Op.Cite

has for more than thirty years done everything within its power to establish a Palestinian state in place of Israel."<sup>99</sup>

The UN has been accused by Dershowitz, human rights activists Elie Wiesel, Anne Bayefsky, and Bayard Rustin, Robert S. Wistrich, and feminists Phyllis Chesler and Sonia Johnson of tolerating anti-Semitic remarks within its walls.<sup>100</sup> These individuals strongly accuse the UN for the fact that Israeli delegates to the UN have been treated to a sickening litany of anti-Semitic abuse at the General Assembly, in the UN Human Rights Commission, and sometimes even in the Security Council" for decades.<sup>101</sup>

UN conferences throughout the 1970s and into the 1980s often passed resolutions denouncing Zionism<sup>102</sup>. But far from finding a diplomatic solution to the conflict, these conferences often did not have anything to do with Middle East politics. These critics accuse that most of the UN documents of the period denied the existence of the Jewish people, the history of ancient Israel, the Holocaust, and the notion that Jews deserve the same rights granted to other groups.<sup>103</sup> Wistrich described the 1980 World Conference of the United Nations Decade for Women in Copenhagen in his book as "*A Lethal Obsession*"<sup>104</sup> . .

Also in 2001 a UN sponsored conference was held in Durban, South Africa. The conference was initially meant to combat racism, but ended up being a forum for world leaders to make various anti-Semitic statements<sup>105</sup>. Among the anti-Semitic literature freely handed out at the conference were cartoons equating the Nazi swastika with the Jewish Star of David, flyers expressing the wish that Adolf Hitler had completely killed every last Jew on Earth, and copies of *The*

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<sup>99</sup> Supra 27, p. 471–483

<sup>100</sup> Supra 27, p. 471–483., supra 29 p 285, 'Transcripts.' CNN 6 August 2004 .also available at <http://edition.cnn.com/TRANSCRIPTS/>, Bayefsky, Anne. "Extra." 21 June 2004. 7 July 2009.

<sup>101</sup> Supra 30

<sup>102</sup> Efraim Inbar, 'Israel is not isolated', Bar-Illan University, Mideast Security and Policy studies, No 99, P 2.

<sup>103</sup> Rep. William Lehman of Florida, March 11, 1981, Congressional Record, Extension of Remarks, E993. Lehman incorporated a text by Harris O. Schoenberg, 'Anti-Semitism at the U.N.,' first presented in New York on March 10, 1981. qtd. in Wistrich, p. 480.

<sup>104</sup> Supra 96, p1184

<sup>105</sup> ibid

*Protocols of the Elders of Zion*.<sup>106</sup> So many scholars like Tom Lantos, Colin Powell, Charles Schumer, Elie Wiesel, Irwin Cotler, Alan Dershowitz, and Robert S. Wistrich condemned the entire conference, calling it hateful, racist, and anti-Semitic which is not expected of a UN sponsored conference at all .<sup>107</sup>

Dore Gold, Alan Dershowitz, and Robert S. Wistrich accuse the United Nations to have a long history of elevating what it calls "national liberation movements," armed groups who commit violence against civilians to achieve political goals, virtually to the status of civilians.<sup>108</sup> In 1974 and again in 1988, the UN invited Yasser Arafat to address the General Assembly.<sup>109</sup> These facts are strongly condemned by Alan Dershowitz who accuses the UN of allowing states that sponsor terrorism to sit on the Security Council.<sup>110</sup> According to Dershowitz, These visits legitimized the PLO without it "having to renounce terrorism."<sup>111</sup>

Alan Dershowitz stated that while Tibetans, Kurds, and Turkish Armenians all desire "national liberation," the United Nations has only officially recognized Palestinian claims to "national liberation" and allows representatives of the Palestinian cause to speak at the UN.<sup>112</sup> The difference between the three groups and the Palestinians is that the Palestinians use terrorism as a tactic for getting their voice heard, while the Tibetans and Turkish Armenians do not.<sup>113</sup> The UN, according to Dershowitz, favors "national liberation" groups who practice terrorism above those who do not, including those people who have been under more brutal occupation for a longer time such as Tibetans. Dershowitz has accused the UN of allowing its refugee camps in the Palestinian territories to be used as terrorist bases.<sup>114</sup>

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<sup>106</sup> Amiel, Barbara. 'Fighting racism? This will have the opposite effect.' At Telegraph.co.uk, 3 September 2001, accessed on 3 Jan 2014

<sup>107</sup> *Supra* 27, p. 207

<sup>108</sup> *Supra* 27, p. 468.

<sup>109</sup> *Supra* 27, P 468–469.

<sup>110</sup> **Supra 29** p. 148.

<sup>111</sup> *Supra* 26 p. 483.

<sup>112</sup> Dershowitz, Alan M. 'Terror Stings Its Pal, the U.N.' Los Angeles Times, Thursday, August 28, 2003.

<sup>113</sup> *ibid*

<sup>114</sup> *Supra* 29

In addition to criticism of the basic approach, some specific programs of the UN have been accused of various crimes in different times. For example, the Oil-for-Food Programme was strongly accused for suffering from widespread corruption and abuse. Throughout its existence, the programme was dogged by accusations that some of its profits were unlawfully diverted to the government of Iraq and to UN officials.<sup>115</sup> These accusations resulted in the establishment of an independent inquiry committee that provided its report that is known as “The Volcker Inquiry report” which in its final conclusion and recommendations called for UN reform in many aspects. The final report of the Volcker Committee is presented, entitled ‘The Management of the United Nations Oil-for-Food Programme’<sup>116</sup> issued in September 2005. The Committee issued a strong indictment, concluding that the Secretary-General, the Security Council and the United Nations agencies had not been up to the extraordinary challenges posed by the Oil-for-Food Programme.<sup>117</sup> Also the United States congress launched an inquiry in to the UN in parallel to the Volcker inquiry committee. The United States Congress considered the establishment of benchmarks for United Nations reform, coupled with the withholding of funding to the United Nations in case of non-compliance. In addition, the United States administration pushed for a strong package of United Nations management reforms in the areas of fraud prevention, oversight and accountability.<sup>118</sup>

In the 1996 U.N. study *The Impact of Armed Conflict on Children*, former first lady of Mozambique Graça Machel documented: "In 6 out of 12 country studies on sexual exploitation of children in situations of armed conflict prepared for the present report, the arrival of peacekeeping troops has been associated with a rapid rise in child prostitution."<sup>119</sup>

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<sup>115</sup> Oil-for-food chief 'took bribes'. BBC News, oil for food chief bribes, 2005-08-08. Retrieved on 2012-07-12, also available at [http://news.bbc.co.uk/middle\\_east/report/](http://news.bbc.co.uk/middle_east/report/)

<sup>116</sup> Joachim Muller: ‘Reforming the UN: the struggle for legitimacy and effectiveness’ ,Martinus Nijhoff Publishers,Lieden/London,2006 annex ,pp 350.

<sup>117</sup> Ibid

<sup>118</sup> Ibid, pp VIII.

<sup>119</sup> United Nations, *The Impact of Armed Conflict on Children* ,26 August 1996,available at [www.unicef.org/webarchives.com](http://www.unicef.org/webarchives.com)

### 3.2.2 Major Areas of Reform

UN reform was an issue shortly after the organization came into existence. But the issues of reform varied then and today. Particularly, since the late 1990s there have been many calls for **reform of the UN**. However, there is little clarity or consensus about what reform might mean in practice. Both those who want the UN to play a greater role in world affairs and those who want its role confined to humanitarian work or otherwise reduced use the term "UN reform" to refer to their ideas<sup>120</sup>. The range of opinion extends from those who want to eliminate the UN entirely, to those who want to make it into a full-fledged world government.

The United Nations has undergone phases of reform since its foundation in 1945. During the first years, the first decisive change was the development of peacekeeping measures to oversee the implementation of ceasefire agreements in 1949 in the Middle East and one year later in the Kashmir conflict between India and Pakistan. The Soviet Union launched reform initiatives during the East-West antagonism in the 1950s to curtail the independence of the Secretariat by replacing the post of Secretary-General with a troika, including a representative from the socialist states. In 1963 a real breakthrough took place in the UN reform agenda whereby the Security Council member states grew in number from 11 to 15 with addition of four non permanent member states.

Decolonization created rapid growth in UN membership, and by 1965 it stood at 118, twice as much as at the Organization's founding. With states from Africa and Asia joining the United Nations, development issues became increasingly important, resulting in the expansion of the United Nations in the development area, including the establishment of the United Nations Development Programme (UNDP) in 1965 and negotiations on an International Economic Order (NIEO) as part of the North-South conflict in the 1970s. Two major events characterize the 1980's. First the Global financial crisis and the retreat of the United States. The Global financial crisis triggered a reform of the budgetary process and the retreat of the United States triggered the downsizing of the Organization. But at the end of the Cold War the rediscovery of and

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<sup>120</sup> Muravchik, Joshua, 'The Future of the United Nations: Understanding the Past to Chart a Way Forward,' AEI Press 2005, pp 140

renaissance of the United Nations were hailed. The first half of the 1990s saw a major expansion of the Organization and the reform associated with the Agenda for Peace launched by Secretary-General Boutros Boutros-Ghali. By 17 June 1992 the secretary general came up with recommendation to member states of the UN called An Agenda for Peace: Preventive Diplomacy, Peacemaking and peace keeping. In that report the Secretary General reminds member states the founding ideals of the UN charter and he tried to clarify member states about the facts and realities of the changing context of world on which the UN is now expected to operate on. As one aspect of this he states “Even as the issues between States north and south grow more acute, and call for attention at the highest levels of government, the improvement in relations between States east and west affords new possibilities, some already realized, to meet successfully threats to common security.”<sup>121</sup> He stated all other the changes that are taking place in the time. Then he explains his agenda for peace, especially his plan how a preventive diplomacy mechanism have to work, the possibilities of peacemaking and the role of new type of peacekeeping operations.

Soon after new peacekeeping missions were launched in Namibia, Yugoslavia, Somalia, and Angola by the Security Council which also triggered interest in the reform of this 15 members body. Germany, Japan , India and Brazil emerged as new powers and launched efforts to gain permanent seats and veto rights at the Council. Secretary General Kofi Annan took much of the credit for his outstanding works in the late 1990’s for he improved the coherence of the United Nations with a better coordinated development system and a more effective humanitarian structures. In the mean time the Global Compact provided for a new concept of partnership between the UN and international business and also the fight against the HIV pandemic was energized. The Period also witnessed other reforms including the revamping of peacekeeping operations following the Brahimi Report. Reform efforts culminated in the 2005 world summit and the summit recognized, albeit mainly symbolically, an international ‘responsibility to protect populations from genocide. Also the discredited Human rights commission was replaced by the new Human rights council. The 2005 world summit outcome document also provided

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<sup>121</sup> Secretary General Boutros Boutros Ghali, ‘An Agenda for Peace: preventive diplomacy, peacemaking and peace keeping.’ United Nations, Secretary General, A/47/277,17 June 1992. Also available at UN documents, gathering a body of global agreements.

conclusions and recommendations that the world leaders agreed up on the need for UN reform in many aspects.

Secretary General Ban-Ki- moon continued the reform agenda starting from 2007 covering oversight, integrity, and ethics which had previously been launched in response to investigation of the UN Oil-for-Food Programme. Also in 2007 the General assembly approved a number of loosely related reform initiatives covering international environmental governance, a unified gender organization and enhancing the consolidation of the UN program activities. The general assembly recited the 2005 world summit out come in approving these reform initiatives in 2007.

On June 1, 2011, UN Secretary-General Ban Ki-moon appointed Atul-Khare of India to spearhead efforts to implement a reform agenda aimed at streamlining and improving the efficiency of the world body.<sup>122</sup> Khare, will lead the Change Management Team (CMT) at the UN, working with both departments and offices within the Secretariat and with other bodies in the UN system and the 193 member states. The CMT is tasked with guiding the implementation of a reform agenda at the UN that starts with the devising of a wide-ranging plan to streamline activities, increase accountability and ensure the organization is more effective and efficient in delivering its many mandates.<sup>123</sup>

### **3.2.2.1 Secretariat Transparency Reform**

Those groups calling for the UN secretariat transparency reform focuses on what they call UN beurocracy reform, UN administration reform or the UN secretariat reform. This reformers aim to make the UN secretariat more transparent, more accountable, and more efficient, including direct election of the Secretary-General by the people. The secretariat is at the heart of the UN beurocracy and administration. Despite the media coverage for the UN secretariat reform is low, within the organization it is widely seen as a contentious issue. This is because the secretariat runs the UN bureaucracy responding to the decision of states in the Security Council and in the general assembly.

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<sup>122</sup> **United Nations**, 'UN Secretary General Ban appoints Atul Khare of India to be the leader of his change management team'. 1 June 2011. available at [www.un.org/news/press.com](http://www.un.org/news/press.com)

<sup>123</sup> Deccan Herald, 'UN change management team: Spearheaded by Atul Khare,' 1 June,2011 available at [www.deccan herald.com/content](http://www.deccan herald.com/content)

Mark Malloch Brown, the former secretary general of the United Nations Development Program attributes the inefficiency of the UN administration to the "disconnect between the merit and reward" and further advocates "reconnecting merit to make the UN again an international meritocracy" to overcome the problem. He believes that the UN must stop promoting on the basis of political correctness that encourages promoting staffs proportionately from certain regions of the world<sup>124</sup>. But instead what should be encouraged is to have and to make more use of staffs from Asia, Africa and other so-called less developed regions that now offer a large pool of talented, skilled, and highly motivated professionals. He argues that these individuals who are highly qualified will readily move up through the UN system without need of the "cultural relativism which is used to promote incompetents. Similar argument is made made by UN member states from the developing world, who complains that some of the most desirable senior posts within the Secretariat are filled under a "tradition" of regional representation that favors the United States and other affluent nations. Once Ambassador Munir Akram of Pakistan, who was head of the G-7 made a strong argument supporting this issue. He said "The major countries, the major powers hold very high positions in the Secretariat and support their national interests and refuse to allow the Secretary General to cut departments. And when they do ask for budget cuts, they do it "where it does not affect their national interests." Mr Munir labeled this as "a double standard which is applied or is thought to be applied in the Secretariat, and we as overseers of the G-77 do not accept this double standard."

The secretary General's report entitled "Investing in the United Nations from March 2006" and the "Comprehensive review of governance and oversight within the UN" of June 2006 are among the notable reform efforts towards the secretariat. Also member states called for the secretariat reform. The Four Nations Initiative, a cooperation project by Chile, South Africa, Sweden and Thailand to promote governance and management reforms, aiming at increased accountability and transparency is among the strong moves to reform the UN secretariat<sup>125</sup>

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<sup>124</sup> David Kilgour, "Seven steps to fixing the UN", January 5, 2014 available at [Diplomat and International Canada.com](http://Diplomat and International Canada.com) accessed at March 31, 2014.

<sup>125</sup> Fasulo, as quoted at [www.dailyweeks.com](http://www.dailyweeks.com), "Reform of the UN, Reconnecting merit to make the UN again an international meritocracy.", PP 165.

### 3.2.2.2 Democratic Reform

One of the basic contemporary demands from groups calling for UN reform is that UN must be more democratic inside and also one of the core global institutions of democracy to lead the world. But this raises a fundamental question on the nature, functioning and role of the UN. The UN is not a world government but a collection of sovereign states. But as to the principles of democracy direct or indirect the people has to elect their leader. In the UN case the secretary general and the members of the GA and also the judges at the international court of justice has to be elected according to the principles of democracy. This seems difficult with the UN. But commentators argue and suggest that it is possible to unite the principles of direct and indirect democracy to make the UN more democratic. The people have to democratically elect their representatives nationally and member states democratically elect their representatives to the UN. Voting in the UN in various issues involves a number of problems. It involves diversity of interest of various governments. Also it is a problem to say that governments actually represent the direct wish of their people. Some states in the world are democracy, others are absolute dictators and also some claim to be democracy and also rule undemocratically. So in this kind of cases it is difficult to imagine the voting in the UN directly represents individual society's interest. It is impossible to implement direct democracy either in UN voting. Giving the UN any kind of actual governance power raises the question of how these powers could be carried out. What would happen when a vote of the UN General Assembly demands changes in the borders or political status of a nation, or requires citizens in some nations to tax themselves in favor of other nations, or demands the arrest of the leader of a nation, and is met by refusal.

The “subsidiarity” principle resolves some of these issues<sup>126</sup>. The term originates from social thought within the Early Roman Catholic church and says that no larger organ shall resolve an issue that can be resolved at a more local level. It can be compared to federalist principles where entities of the union retain some aspects of sovereignty. Only when two or more members of the

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<sup>126</sup> The principle of Subsidiarity at Europa : summary of European Legislations available at [www.eurpa/summary of legislations](http://www.eurpa/summary of legislations), last accessed on April 14, 2014.

federation are affected by any given act does the federal government have the authority to intervene. Giving a reformed UN more powers but incorporating the “subsidiarity” principle in the UN Charter would guarantee a more democratic UN that does not evolve in to a world autocracy that dictates policy.<sup>127</sup>

### **3.2.2.3 Financial reform**

According to Paul Hawken’s proposal in his book *The Ecology of Commerce*, “ a tax on missiles, planes, tanks, and guns would provide the UN with its entire budget, as well as pay for all peacekeeping efforts around the world, including the resettlement of refugees and reparations to the victims of war.”<sup>128</sup>

But such a radical Tax is hard to implement because much of the states will not accept such a tax. Some states might be okay with the proposal, especially, states with a history of neutrality or states like Japan (Japan spends very less on Defense, currently spends 1% of its GDP<sup>129</sup> ) and states like Costa Rica that does not have active military, the proposal will not be accepted by states like the United States, which spends 4% of its GDP on defense and dictatorships who depend on arms to keep themselves in power or states engaged in ongoing military conflicts and others in a state of heightened military alert, such as Israel. Arms producers would also oppose it, because it would increase their costs and possibly reduce their consumer base. And on the reform agenda many of these nations on the opposing side of proposals like this hold influential position in the UN.

A global resource dividend also can be used as a basic source of UN taxation to alleviate the financial problems this organization faces.

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<sup>127</sup> Hans Kochler: ‘Voting procedure in the united Nations security council,’ *Studies in International Relations*, XVII. Vienna: International Progress Organization, 1991. ISBN 3900704-10-4.p 5

<sup>128</sup> Paul Hawken: ‘*The Ecology of Commerce*’. Harper Collins, 1993.pp160-190

<sup>129</sup> ‘Global defense budgets,’ available at [www.bloomberg.com](http://www.bloomberg.com) last accessed on March 30, 2014.

### 3.2.2.4 Strengthening the UN Human Rights Council

Taking in to account the fact that the former UN human rights commission was controlled by Human rights abusive states as one problem the Secretary General Kofi Annan in his report called “In Larger Freedom...” recommended replacing the Human rights commission with a new United Nation Human Rights Council as one subsidiary organ of the UN. The establishment of this Human Rights Council as a successor to the commission was overwhelmingly supported by the General Assembly on Wednesday, 15 March 2006 Vote in which 170 member states Voted in favor among 191 member states. Four states only, the United States, the Marshall Islands, Palau, and Israel voted against the creation of this council claiming that it would have too little power and that there were no enough guarantees that states with very poor Human rights record would not take in control of this council. So the UN Human rights council was established as one subsidiary organ to the UNGA.

Secretaries General Kofi Annan and Ban Ki-moon, former president of the council Doru Costea, the European Union, Canada and the United States have accused the council of focusing disproportionately on the Israeli–Palestinian conflict.<sup>130</sup> The United States boycotted the Council during the George W. Bush administration, but reversed its position on it during the Obama administration.<sup>131</sup> Beginning in 2009 however, with the United States taking a leading role in the organization, American commentators began to argue that the HRC was becoming increasingly relevant

Critics are strong against the Human rights council in a similar way to its predecessor. Human rights groups say the council is being controlled by some Middle East and African nations, supported by China, Russia and Cuba, which protect each other from criticism.<sup>132</sup> This drew

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<sup>130</sup> UN Department of Public Information : “Secretary-General urges human rights activists to ‘fill leadership vacuum’ in address to international day event”, 8/12 /2008, Reuters (reprinted in Ynet News) , ” UN’s Ban faults rights council over Israel”, 21 06 2007, Swiss Info, “Human Rights Council president wants reform”, on 29/ 09/ 2007 accessed at March 31, 2014.

<sup>131</sup> Lynch Colum: "U.S. to Seek Seat on U.N. Human Rights Council" , The Washington Post, 26 May 2010 accessed on March 1, 2014.

<sup>132</sup> Reuters: “U.N. chief tells rights body drop rhetoric, blocs” on 12 December 2008 accessed at February 1, 2014.

criticism from the UN Secretary General Ban Ki-moon at the ineffectiveness of the council, saying it had fallen short of its obligations. He urged countries to 'drop rhetoric' and rise above "partisan posturing and regional divides"<sup>133</sup> and get on with defending people around the world.<sup>134</sup> This follows criticism since the council was set up, where Israel has been condemned on most occasions and other incidences in the world such as Darfur, Tibet, North Korea and Zimbabwe have not been discussed at the council.<sup>135</sup> Ban Ki-Moon also appealed for the United States to fully join the council and play a more active role.<sup>136</sup> The UNHRC was criticized in 2009 for adopting a resolution submitted by Sri Lanka praising its conduct in Vanni that year, ignoring pleas for an international war crimes investigation.<sup>137</sup>

### 3.2.2.5 Security Council Reform

There are five basic agendas concerning the reform of the United Nations Security Council (UNSC). The question regarding the categories of membership in the council, the question of the Veto power of the Five permanent members of the council, the issue of regional representation in the council, enlargement of the council and the its working methods and finally the relationship between the council and the General assembly are the basic reform issues. Different proposals are developed by member states, regional groups and other interest groups concerning the possibility of reform in these issues.<sup>138</sup>

The UN charter provides that reform of the Security Council shall be supported by at least two third of the UN member states and all the permanent five states to the council.<sup>139</sup> Looking at the

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<sup>133</sup> Xinhua, "UN chief urges rights council to rise above partisan posturing", on 12 December 2008.

<sup>134</sup> Supra 67

<sup>135</sup> ibid

<sup>136</sup> Supra 68

<sup>137</sup> Times: "Sri Lanka forces West to retreat over 'war crimes' with victory at UN", on 28 May 2009

<sup>138</sup> See ,“letter from the Chairman, Zahir Tanin, of the intergovernmental negotiations on the question of equitable representation and increase in the membership of the Security Council and other matters related to the Council available at <http://www.refromtheun.org/index/modules/upload>’

<sup>139</sup> Article 108 of the UN charter

current position of members of the UN and particularly the attitude of the five permanent members of the Security Council it is difficult to achieve such a consensus<sup>140</sup>.

The UN security council changed very little compared to the changes in the global geopolitical reality since 1945. In 1945 the winners of WWII provided a collective security arrangement in the UN charter by dividing the Veto power amongst themselves. That arrangement was correct in taking in to account the facts then. But in time the international geopolitical reality has changed and that challenges the old structures and procedures. It was evident that the number of seats in the council and the number of UN member states is unbalanced. Soon in 1965 took place the only significant reform of the Security Council. Two thirds of the UN member states including the permanent five ratified a reform proposal that called for the increase of non permanent members of the Security Council from six to ten<sup>141</sup>. The election of Boutros Boutros-Ghali as Secretary-General in 1992 reinitiated the reform discussions of the UN Security Council again as he started his new term with the first-ever summit of the Security Council. Then he published "An Agenda for Peace" where he recommended restructuring the composition and anachronistic procedures of the UN organ recognizing the changing world<sup>142</sup>.

Different states also emerged as new global powers. Japan and Germany had become the second and third largest contributor to the United Nations and started to demand a permanent seat in 1992. Also Brazil fifth largest country in terms of territory and India second largest country in terms of population as the most powerful countries within their regional groups and key players within their regions saw themselves with a permanent seat. This group of four countries formed an interest group later known as the G4<sup>143</sup>.

On the other hand their regional rivals were opposed to the G4 becoming permanent members with a veto power. They favored the expansion of the non-permanent category of seats with members to be elected on a regional basis. Italy, Spain, Argentina, Canada, Mexico, South Korea

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<sup>140</sup> African Bulletin: "The Reform Of The UN Security Council: Information and Analysis", available at <http://www.africanbulletin.com/> the pros and cons of the reform of the United Nations Security Council.

<sup>141</sup> Weiss, Thomas G. "The Illusion of UN Security Council Reform", Washington Quarterly, autumn 2003, p 149.

<sup>142</sup> *ibid*

<sup>143</sup> *ibid*

and Pakistan started to form an interest group, known as the “Coffee Club” and later “Uniting for Consensus”<sup>144</sup>.

Simultaneously, the African Group started to demand two permanent seats for themselves, on the basis of historical injustices and the fact that a large part of the Council’s agenda is concentrated on the continent. Those two seats would be permanent African seats that rotate between African countries chosen by the African group.<sup>145</sup>

The existing permanent members, each holding the right of veto on Security Council reform, announced their positions reluctantly. The United States supported the permanent membership of Japan and India and a small number of additional non-permanent members<sup>146</sup>. The United Kingdom and France essentially supported the G4 position, with the expansion of permanent and non-permanent members and the accession of Germany, Brazil, India and Japan to permanent member status, as well as an increase the presence by African countries on the Council<sup>147</sup>. China supported the stronger representation of developing countries, voicing support for the Republic of India.<sup>148</sup> Russia, India's long time friend and ally has also endorsed the fast growing power's candidature to assume a seat of a permanent member on the Security Council.<sup>149</sup>

By the 2005 world summit world leaders agreed on the need to reform the UNSC in the 2005 world summit outcome document but they did not expressly state the action to be taken accordingly.<sup>150</sup>

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<sup>144</sup> *ibid*

<sup>145</sup> African Union, Executive Council: “The E ZULWINI CONSENSUS: The common African Position on the proposed reform of the United Nations” 7<sup>th</sup> extraordinary session, 7-8 March 2005, Addis Ababa, Ethiopia.

<sup>146</sup> Dimitri Bourantonis, “The history and politics of UN security Council reform”, *Rutledge Advances in international Relations and Global Politics*. Hereinafter cited as Dimitri, P 75.

<sup>147</sup> *Ibid*

<sup>148</sup> [India/chineseembassy.org/News/](http://India/chineseembassy.org/News/) Chinese support for India’s permanent seat at the United Nations Security Council on April 12, 2013, Accessed on April 1, 2014.

<sup>149</sup> *ibid*

<sup>150</sup> UN General Assembly: 2005 world summit outcome document/planetary meeting outcome.

The General Assembly Task Force on Security Council Reform has delivered a Report (on the question of equitable representation on and increase in the membership of the Security Council) recommending a compromise solution for entering intergovernmental negotiations on reform<sup>151</sup>.

On March 21, 2005, the then UN Secretary General Kofi Annan called on the UN to reach a consensus on expanding the council to 24 members, in his publication entitled "In Larger Freedom". He gave two alternative plans for implementation, but he did not specify which proposal he preferred. Also different states and groups formed by states of similar interest have provided their overall positions on the UNSC reform. On June 12 2011 the current UN Secretary-General Ban Ki-moon appointed Atul Khare of India to spearhead efforts to implement a reform agenda aimed at streamlining and improving the efficiency of the world body. Khare, will lead the Change Management Team (CMT) at the UN, working with both departments and offices within the Secretariat and with other bodies in the UN system and the 193 member states. The CMT is mandated to spearhead and implement reform agendas in the UN

The UN is sized of this matter and the issue is still in debate and most of the commentator's prefer to discuss the prospect and challenges of the reform. Among the challenges is weather the permanent five and particularly the US would support any addition of a state with a veto power to the council or on the limitation of the Veto power.

### **3.3 Other Reforms**

#### **3.3.1 Creation of United Nations Parliamentary Assembly**

A United Nations Parliamentary Assembly, or United Nations People's Assembly (UNPA), is a proposed addition to the United Nations System that eventually would allow for direct election of UN Parliament members by citizens of all over the world<sup>152</sup>.

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<sup>151</sup> Reform the UN.org :”Tracking Developments , Ensuring Transparency and Accountability”, available at <http://www.reformtheun.org/moduleuploads>.

Proposals for a UNPA date back to the UN's formation in 1945 but was out of the reform agenda until the 1990's. The issue has got recent attention amidst the increasing globalization and national parliamentarians and citizens groups seek to counter the growing influence of unelected international bureaucracies. This kind of parliament is already incorporated in other international organizations. The African Union is planning for this kind of parliament. The Pan African Parliament as it relates to the African Economic community is proposed to be the future parliament representing the citizens of Africa<sup>153</sup>.

### **3.3.2 Replacement of the United Nation Environmental Program**

In 2007 the IPCC (Inter Governmental Panel on climate change) published its Fourth assessment report. This report named the “Paris call for action” as outlined by the then French president Chirac called for the replacement of the UNEP (United Nations Environmental Program) by a new and more powerful United Nation Environmental Organization. Thus proposal was supported by 46 member countries at the time. The UNEO is planned to be modeled on the World Health organization (WHO). Much of these 46 states that supported the plan are member states of the EU. But the US, china, India and Russia that are the Top four emitters of green house did not support the plan.<sup>154</sup>

### **3.3.3 Placing All UN Development Agencies and Specialized Programs Under A UNDG (United Nation Development Group)**

Then Secretary General Kofi Annan outlines that all UN Agencies working on International Development Issues to be under a new United Nations Development Group, chaired by the Administrator of the UNDP.<sup>155</sup> The Delivering as One concept was also introduced. The main

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<sup>152</sup> “Campaign for the Establishment of a United Nations Parliamentary Assembly”, available at [www.unpacampaign.org](http://www.unpacampaign.org), Last accessed on March 30, 2014.

<sup>153</sup> Article 17 of the African Union Constitutive Act.

<sup>154</sup> Doyle Alister: “46 nations call for tougher U.N environment role”, Reuters article news 2007-02-03 available at <http://today.reuters.com/news/articles/2007-02-03>.

<sup>155</sup> US Federal news service , “ Remarks By U.N. Secretary-General Kofi Annan At United Nations General Assembly Session, United Nations Headquarters”, 22 September 1997, available at [www.usfednews.com](http://www.usfednews.com)

normative instrument for reforming the UN development system is the General Assembly resolution known as Quadrennial comprehensive policy review (QCPR). Following an assessment of progress, which designs and gives mandates to the UN system to better address reform objectives, is negotiated every four years. The most recent QCPR was adopted in December 2012.

The quadrennial comprehensive policy review (QCPR) deals with issues of funding UN operational activities for development, the functioning of the UN development system and the development effectiveness of the work of the UN system for development.<sup>156</sup>

### **3.3.4 Removal of Spent Provisions in UN Charter**

It is known that some of the U charter provisions are outdated up on the elimination of the facts that necessitated the provisions. Kofi Annan in his “In larger Freedom” proposed the elimination of the following provisions form the UN charter.

1. Chapter XIII of the UN charter is no longer relevant and can be deleted because there are no longer any trust territories . So the Trusteeship Council no longer serves any purpose, and has not met since 1994.
2. Due to Cold War disagreements, the Military Staff Committee never succeeded in its intended purpose. Although it formally still meets every two weeks, it has been effectively inactive since 1948. Thus, article 47, and the references to it in articles 26, 45 and 46 can be deleted. It is ideal if it is possible to have this military staff committee. But up to date it is not a reality. The secretary General proposed for its deletion but other commentators strongly argue that this committee must not be extinguished rather it must be strengthened and has to be made effective. One of the basic issues of reforming the UN is to strengthen the United Nation Peace and Security Council so that it would be an efficient organ in keeping international peace and security. It seems that the future reform should create a strong military staff committee in order to achieve this goal. But as to the secretary General the provisions in the charter must be deleted. If the reform is achieved

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<sup>156</sup> Available at <http://www.un.org/en/ecosoc/QCPR/>

it might be easier to incorporate new and appropriate provisions dealing with a new military command within the UNSC.

3. The "enemy clauses" in articles 53 and 107 contain special provisions relating to the members of the Axis in World War II , Germany, Japan, Italy..., Some nations consider these to be no longer relevant. In particular Japan would like to see them removed.

There are also other provisions of the UN Charter that deal with transitional arrangements, and thus are now spent. For example, article 61(3) about the Economic and social council and article 109(3) about the general conference of the member states of the UN to review the charter are out dated. But Kofi Annan in his *In Larger Freedom* does not contain any proposals with respect to these provisions.

Due to the difficulty in amending the Charter, it is unlikely that any of these spent provisions will be amended except as part of a package making substantive amendments, such as Security Council reform. Further, while *In Larger Freedom* proposes that certain provisions be removed there is not universal agreement. One school of thought in particular suggests that the Military Staff Committee could be revitalized by member states finally meeting their Article 45 commitments to provide a force able to perform peacemaking and peace enforcement under the legitimacy of the United Nations flag. But this removal of the spent provisions in the UN charter does not pose difficulty in a similar fashion to the above mentioned substantive reforms. Because currently no vital national interest of member states is attached to this provisions. They need actual procedure of amendment to the UN charter but it can be achieved easily than the above reform proposals.

## **CHAPTER FOUR**

### **4. PAST AND PRESENT REFORM EFFORTS IN THE UN SECURITY COUNCIL**

#### **4.1 Introduction**

Indeed there are plenty of academic journals, articles and books that deal with the issue of the United Nations Security Council reform. There are also policy papers and also various scattered conceptual discussions about this issue. Each of these works use different methods in conveying their central idea. Some of them exclusively narrate the historical steps and the politics in the United Nations Security Council since 1945 until today. Others just provide the policy and attitude of some states or interest groups towards the issue. And still others just provide an ideal discussion of what should be done now and in the future. Here in this chapter the Past and present reform efforts in the UN Security Council are discussed in order to draw the clear picture about the particular issue of the prospects and challenges in reforming the Veto power in the coming section of the paper. It is quite essential to discuss all the reform efforts and proposals in short just to understand the current prospects and challenges in reforming the Veto power in the United Nations Security Council.

Therefore, this chapter aims to take stock of and evaluate the historical development of efforts to reform the UN Security Council, from 1946, the year the most important political organ of the UN started to operate, until now. By offering a historical observation of the reform movement, which has evolved throughout the life of the UN, this chapter will attempt to give insights into the various proposals, difficulties and the complex issues surrounding Security Council reform. It aims to clarify the main points of the reform efforts in the security council and show the reader what has taken place until now and the point where the disagreement among the major powers exist.

In this chapter when reform of the Security Council is mentioned it involves the reform in all aspects of the work of the Security Council that are susceptible of change. Depending up on the way the reform took place in the Security Council it might be either a Formal reform following the prescribed legal procedures that can be referred as *de jure* or *formal* reforms and informal reform referred as *de facto reforms* which are reform that became an integral part of the life of the Security Council through time. In doing so, in the first sub section of the chapter the major historical efforts of reform and both the *dejure* and *de facto* reforms will be discussed. In the second subsection of the chapter the major old and contemporary reform proposals of states and the reform proposal from the UN itself will be discussed.

## 4.2 The Original Composition of the UNSC In 1945

“When the UN Charter was being drafted, the end of the Second World War was still in sight, with easily discernible winners and losers. The intention was for the victorious states, which were the world’s great powers at the time, to exercise global leadership with a view to managing or governing the international system. It was also perceived that the international order inaugurated in 1945 could be better sustained by a variety of international organizations.”<sup>157</sup> In the realm of global peace and security, this objective could be more effectively served by the creation of a universal organization through the institutional framework of which cooperation among the wartime allies would continue uninterrupted<sup>158</sup>. Hence, the UN was set up with the Security Council as its dominant organ and beneath it the General Assembly and an array of other bodies dealing with specific issues, such as the ECOSOC, the Secretariat and the ICJ<sup>159</sup>. The overriding role of the Security Council reflected the strong desire of the founders of the UN to see it play an increasingly central role as the leading world forum for managing threats to the international order<sup>160</sup>. To this end, the UN Charter recognized the Security Council as the organ with primary responsibility for international peace and security, the maintenance of which would

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<sup>157</sup>Dmitri, p 3.

<sup>158</sup> Ibid

<sup>159</sup> ibid

<sup>160</sup> ibid

be realized in three ways<sup>161</sup>. The first is the formulation of plans for the regulation of armaments<sup>162</sup>.

Second, international disputes or situations which were likely to endanger international peace and security would be settled in a peaceful manner following methods set out in Chapter VI of the Charter although ‘decisions’ of the Security Council would be framed as ‘recommendations’ and as such could have no legally binding effect on the members of the UN. Third, the Security Council was empowered to take enforcement action to deal with threats to the peace, breaches of the peace and acts of aggression. According to Chapter VII of the UN Charter, two distinct forms of enforcement measures were available to the executive organ of the UN: those stipulated in Article 40 and 41, not involving the use of armed force, and those described in Articles 42–45 involving military action by air, land and sea forces. The Security Council would have a monopoly on enforcement measures subject to two exceptions: first, the exercise of individual or collective self-defense<sup>163</sup> and second, enforcement action taken by regional agencies authorized by the Security Council<sup>164</sup>. Chapter VII provided for a system of collective security centered on the Security Council for the enforcement of peace, which was more advanced than that of the League of Nations<sup>165</sup>. Evidently, the clear conviction of the UN founders was that the UN, as an international security organization, should have ‘teeth’, that is increased power of enforcement against states violating peace<sup>166</sup>. The experience of the League of Nations in the inter-war period had shown that international bodies which lack muscle and which are confined only to passing resolutions and issuing condemnations of aggressors are doomed to lose their creditability and legitimacy<sup>167</sup>. Decisions of the Security Council acting under Chapter VII were framed as ‘resolutions’ in the sense that they were to be binding for all the member states regardless of their own vote or of their participation in the executive organ of the UN. The provision for the binding character of this type of Council decision was inserted into the Charter with a view to increasing the moral pressure on member states to

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<sup>161</sup> Article 24 of the UN charter, hereinafter cited as UN.CH.

<sup>162</sup> Article 26 of the UN.CH.

<sup>163</sup> Article 51 of the UN CH.

<sup>164</sup> Article 53 of the UN CH.

<sup>165</sup> Dmitri, p 4.

<sup>166</sup> *ibid*

<sup>167</sup> *ibid*

implement the decisions of the governing body<sup>168</sup>. Finally, there is a fourth function of the Security Council, that was not foreseen in the UN Charter but which developed later in practice: to authorize the launching of peacekeeping operations which were not seen as the pure military enforcement action envisaged under Chapter VII<sup>169</sup>.

Apart from the primary functions bearing on international peace and security which were assigned to it, the Security Council was given the responsibility to carry out jointly with the General Assembly a number of secondary but important functions related to the internal operation of the UN. On certain important matters, the General Assembly cannot make a decision without a favorable recommendation from the Security Council. Such issues include the process of electing the Secretary-General<sup>170</sup>, the admission of new states to the UN<sup>171</sup>, the suspension of the exercise of the rights and privileges of membership<sup>172</sup>, and the expulsion of member states from the UN<sup>173</sup>.

As originally conceived in the UN Charter, the Security Council was to be composed of 11 members of which five would be permanent members<sup>174</sup>. The Permanent five are the United States, the Soviet Union, Britain, France and China all of whom would have the power of veto on substantive issues<sup>175</sup>. The other six would be non-permanent members to be elected by a two-thirds majority of the General Assembly to serve for a two-year term<sup>176</sup>. The UN Charter set two basic criteria to be applied in the election of the non-permanent members, namely, 'contribution of the members of the United Nations to the maintenance of international peace and security and to other purposes of the organization' and 'equitable geographical distribution'<sup>177</sup>.

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<sup>168</sup> *ibid*

<sup>169</sup> *ibid*

<sup>170</sup> Article 97 UN.CH.

<sup>171</sup> Article 4 UN.CH.

<sup>172</sup> Article 5 UN.CH.

<sup>173</sup> Article 6 UN.CH.

<sup>174</sup> Article 23 UN.CH. before amendment

<sup>175</sup> *ibid*

<sup>176</sup> *ibid*

<sup>177</sup> Article 23 UN.CH.

It is obvious that the Security Council was structured in such a way as to embody the element of power (representation of power) and, at the same time, to reflect a proportional representation of the entire UN membership, consisting of large and small states. The element of power was built into the Security Council's structure through the institutionalization of an inner group, consisting of the five most influential states, those that won the Second World War plus China. The idea of the major powers bearing great responsibility for the post-war order and, eventually, for the management of issues pertaining to international peace and security was uppermost in the minds of the founders of the UN. 'In their approach to the problem of building a security organization', they perceived that 'it might work with, rather than in opposition to, the realities of power'<sup>178</sup>.

This was rooted in the assumption, derived from the realist theory, that the UN as an entity of sovereign states could work effectively only when individual states, particularly its most powerful members, conferred on it sufficient authority and competences<sup>179</sup>. This led the founders of the UN to realize that if the great powers were to delegate authority and offer their political, military, technological and financial support to the Security Council, they should be given a privileged position in that organ<sup>180</sup>. The privileged position of the great powers found recognition in the permanent status granted to them in the Security Council and the veto powers bestowed on them<sup>181</sup>. Through this recognition, Roosevelt's idea of the continuation of the wartime alliance of the great powers acting as enforcers of post-war security was embedded in the structure of the UN and especially in the Security Council<sup>182</sup>. By conferring on the great powers of 1945 a superior status in the Security Council, the founders of the UN institutionalized an inner group of states within it which could exercise significant influence over Council decision-making<sup>183</sup>. The position of the permanent five in the Security Council had

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<sup>178</sup> H.Briggs, 'Power politics and international organization', *American Journal of International Law*, 39(4), 1945, p. 670.

<sup>179</sup> *Supra* 1, P 5

<sup>180</sup> Article 27 UN.CH

<sup>181</sup> *Supra* 1, P5.

<sup>182</sup> *Supra* 1, P5.

<sup>183</sup> R.Dahl, 'A critique of the ruling elite model', *American Political Science Review*, 52(2), 1958, p. 463

been somewhat analogous to that prescribed by political theorists as ruling elite within some specific political system. That is a well-defined group of people ‘who to some degree exercise power or influence over other actors in the system’<sup>184</sup>.

This influence of the permanent five which has been defined as ‘the ability to determine outcomes’ could be either positive or negative.<sup>185</sup> The positive influence, based on the ability ‘to get a resolution adopted’, stemmed from their world status as great powers ‘whose strength far outweighed all others’.<sup>186</sup> By way of persuasion, or through the offer of rewards or by what has been described by Holsti<sup>187</sup> and Russett<sup>188</sup> as ‘implicit or explicit threats of punishment’, the permanent seat occupants could exert a considerable degree of influence upon the other non-permanent members of the Council, thus impelling them to vote in favor of decisions which were useful or in the interests of the permanent five. As has already been stated, those which occupy non-permanent seats are usually small or medium sized states dependent ‘economically, militarily and politically upon the support of a great power’.<sup>189</sup> The possibility that one of them directly or indirectly, through allies, friends or proxies, might become involved in situations requiring international action, prompted the great powers to incorporate into the UN Charter the right of veto in effect giving them ‘the legal and constitutional weapon with which they could defend their interests and position’.<sup>190</sup>

There was no doubt then that the permanent five could influence virtually all Council decisions

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<sup>184</sup> Ibid

<sup>185</sup> B.Russett, B.O’Neil and J.Sutterlin, ‘Breaking the restructuring logjam, *The Once and Future Security Council*’, London, Macmillan, 1997, p. 157.

<sup>186</sup> D.Lee, ‘The genesis of the veto’, *International Organization*, 1(1), 1947, p. 34

<sup>187</sup> K.Holsti, ‘The concept of power in the study of international relations’, *Background*, 7(4), 1964, pp. 188–92.

<sup>188</sup> Supra 29, p. 158.

<sup>189</sup> H.Morgenthau, ‘Politics among Nations’, New York: Alfred Knopf, 1968, p. 448.

<sup>190</sup> F.Hinsley, ‘Power and the Pursuit of Peace,’ Cambridge University Press, 1963, p. 340.

bearing on international peace and security as well as important decisions taken by the General Assembly upon the recommendation of the Security Council. In addition to this, their ability to influence decisions on account of their great power status has been extended to other principal organs and agencies of the UN owing to the so-called *de facto* or unwritten privileges conferred on them (the so-called cascade effect of permanent membership)<sup>191</sup>. Apart from the written privileges provided for in the UN Charter (their permanent status on the Council and their veto power), they have unwritten ones that have arisen from custom<sup>192</sup>. Even pure institutionalists, like Lisa Martin, have admitted that ‘institutions do reflect the power relations prevailing at the time of their creation, and tend to reinforce those relations, presumably directing a large share of the benefits they provide toward the most powerful’<sup>193</sup>. Council’s permanent membership itself has guaranteed *de facto* permanent participation of the five in other principal UN organs, such as the ECOSOC and the ICJ. It has also resulted in the frequent appointment of nationals of the permanent five to key positions in the UN Secretariat. Due to their permanency, the five have ensured for themselves more frequent participation than the rest of the UN membership in ad hoc and subsidiary bodies of the General Assembly, such as the General Committee and in the executive bodies of several Specialized Agencies such as the IAEA, WHO and FAO.

The original UN charter at 1945 was successful in representing the element of Power in the Security Council original structure. But it did not take long for the founders of the UN to recognize that the element of power although necessary was not a sufficient condition to maintain for long the authority of the Council. They realized that the Security Council, when acting, as Article 24 of the UN Charter stipulates, on behalf of the membership as a whole, should be seen as representative of the entire UN membership. Otherwise its legitimacy and effectiveness would sooner or later be in jeopardy.

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<sup>191</sup> Paper Position of Argentina, UN Doc. A/AC.247/5 (a), 14 September 1995. The text of the paper appears in Appendix 1.

<sup>192</sup> L.Martin, ‘An institutionalist view: international institutions and state strategies’, in T.Paul and J.Hall, ‘International Order and the Future of World Politics’, Cambridge University Press, 1999, p. 93.

<sup>193</sup> Ibid

Only if a majority of the original member states held the perception that they and their interests were represented in the composition of the Council, would they feel obliged to heed the body and comply with its decisions. Thus, the founders of the UN took care to make the Security Council somewhat representative of the UN membership. Indeed, the inclusion of six non-permanent members in the composition of the Security Council, along with the presence of the permanent five, made its composition reflect, on the basis of a more or less geographical balance, a microcosm of the UN membership<sup>194</sup>. Apart from this, the small size of the body freed it from potential bureaucratic constraints and endowed it with efficiency, that is its ability to take, as stated in Article 24 of the UN Charter, ‘prompt and effective action’<sup>195</sup>. The Security Council’s main function was to serve as an executive organ, able to take swift decisions at a moment’s notice and to respond rapidly, whenever international peace and security were threatened. This capacity of the UNSC is referred as Efficiency of the UNSC as per different arguments. However, in order for the Security Council to survive for long, it needed to develop not only in accordance with the views of those who created it on the basis of the realities of 1945 but also in accordance with the transformations that had taken place in the real world since the birth of the institution in question. The Security Council could not remain a body sealed off from change in a world that was constantly changing. An international body that was not properly geared to the demands for change would either be relegated to the margins of international life or else it would simply die, as member states demanding a response to major world changes would turn away from it in frustration. Indeed, during the years of the Cold War there were considerable changes on the international scene. As Morris put it ‘Britain and France declined in relative power while other states grew in standing, most notably Germany and Japan but also a number of states in the south-eastern hemisphere’<sup>196</sup>.

The culmination of the process of decolonization in the 1960s and the consequent admission to the UN of a large number of newly independent states, mostly from Africa but also

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<sup>194</sup> Supra 1, P 6.

<sup>195</sup> Supra 1,p 7

<sup>196</sup> J.Morris, ‘United Nations Security Council reform: A Counsel for the 21st Century’, Security Dialogue, Vol. 31(3), 2000, p. 266.

from other parts of the developing world, brought about an explosive growth of UN membership and a significant alteration of its geopolitical synthesis. Even more significant international changes occurred with the end of the Cold War. At that time the world witnessed the most dramatic shift in the distribution of power since 1945, as Russia, the successor of the Soviet Union, lost its empire and status as a global power. The demise of the Soviet Union drastically diminished the military might as well as the economic and political capabilities of one of the victors of the Second World War, thus putting into question its international influence. Today Russia (as well as China) can justify its seat as a permanent member of the Security Council mainly on account of population and territorial size, that is, on similar grounds to which some countries from the developing world, such as India, have based their claim to become permanent members<sup>197</sup>. Furthermore, with the end of the Cold War, Britain and France saw their power further diminished. British and French claims to a permanent seat in 1945 by dint of their colonial possessions, or as a result of their experience in resolving post-colonial disputes<sup>198</sup> could hardly be justified in the 1990s, as such colonial disputes had become a thing of the past. On the other hand, on the basis of their economic and political potential, Germany (especially after its unification) and Japan have made a dynamic comeback as major powers in the family of nations. Apart from shifts in power, the breakup of the Soviet Union and Yugoslavia during the immediate post-Cold War period led to the creation of a host of new states, thus further expanding the membership of the UN<sup>199</sup>.

Due to these dramatic changes, the Security Council as a political agency has come under pressure to adapt to the new situation. In fact, during the Cold War but more so during the post-Cold War era, the UN has been receptive to pressures from its member states to make the necessary adjustments to the Security Council's structure in order to retain its legitimacy and

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<sup>197</sup> Dimitri, p 15.

<sup>198</sup> A.Parsons, 'Britain and the Security Council', in E.Fisher (ed.), *The United Kingdom—The United Nations*, London: Macmillan, 1990, p. 49.

<sup>199</sup> Dimitri, p 17.

relevance in an evolving world.

However, actual Security Council reform has proved to be a very difficult political task for a variety of reasons, the contest over reform turning out to be a struggle of member states to gain as much influence in the Security Council as possible. The diversity of UN membership and, in consequence, the diversity of interests led states or groups of states to present and support different and sometimes contradictory reform plans and, as David Malone put it, ‘to evaluate any reform proposal according to their own prospects of getting on [the Security Council] permanently or, alternatively, more frequently’<sup>200</sup>. A similar conclusion has been reached by Edward Luck, another expert on the UN. Attempting to draw lessons from the course of the debate on Council reform he concluded that for member states what really mattered in assessing any reform initiative was ‘who was putting forward the proposal, and what each group might be expected to gain or lose from it’.<sup>201</sup> The fact that ‘each state or group of states looked to its own national advantage’<sup>202</sup> when it was called to discuss Council reform rendered the search for consensus on the basic issues of reform a highly complex task.

In attempting to reform the Security Council, member states faced the difficulty of maintaining a fragile balance between representation, legitimacy and efficiency.<sup>203</sup> On the one hand, an increase in the membership of the Security Council would make this body more representative and democratic and therefore more legitimized. On the other hand, a broad expansion of the Security Council’s membership would inevitably create a top heavy and cumbersome body that would have great difficulty in acting swiftly and effectively. In all likelihood, such an expansion would lead to a loss of efficiency similar to that experienced by the League of Nations. Due to several increases in membership of the Council of the League, the Council

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<sup>200</sup> Roundtable on Security Council Reform. Available online at: [www.ncrb.unac.org/unreform/roundtables/SCreform.html](http://www.ncrb.unac.org/unreform/roundtables/SCreform.html) (accessed 5 January 2004).

<sup>201</sup> E.Luck, ‘Reforming the United Nations: Lessons from a History in Progress’, *International Relations Studies and the United Nations Occasional Papers* 2003, no 1, Academic Council on the United Nations, p. 5.

<sup>202</sup> *Supra* 44

<sup>203</sup> D.Caron, ‘The legitimacy of the collective authority of the Security Council’, *American Journal of International Law*, 87(4), 1993, pp. 552

became, as Edward Carr observed, more representative, but ‘lost much of its effectiveness as a political instrument’. Carr was right to indicate that the principle of representation is an abstract one. As he rightly underlined ‘reality was sacrificed to an abstract principle i.e. that of representation’.<sup>204</sup>

Indeed, it could be claimed that the composition of the executive bodies of international organizations should not be determined solely on the basis of the abstract principle of representation. Member states cannot easily find an answer to the question of how many states and under what criteria should be represented in the Security Council in order to make it reflect the UN membership. But one thing is certain: so long as demands for reforming the Security Council are persistently raised but not dealt with in a satisfactory manner, the legitimacy of the Security Council will continue to be in question.

Finally, and this is crucial, one cannot ignore the fact that progress towards reforming the Security Council will be made only if the member states can overcome the constitutional difficulty of amending the UN Charter. Any change in the Council’s membership or in the voting power of its members requires the unanimous consent of the permanent five. The main drafters of the Charter, the United States, Britain and the Soviet Union, were not only responsible for the creation of the Security Council’s structure but also for the insertion of a procedure for amendment of the UN Charter which requires the consent of the permanent five to any amendment. Article 108 of the UN Charter stipulates that

*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 [all] 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.*

In effect, Article 108 of the UN Charter inserted a blocking element in the reform process in the sense that power would be in the hands of the five permanent members of the Council to accept

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<sup>204</sup> E.Carr, ‘The Twenty Years Crisis’, 2nd edn, London: Macmillan, 1946, p. 29.

or reject amendments and they would be unlikely to do anything which might jeopardize their privileged position. If the Security Council was really to reflect the international distribution of power at any given time, it would have entailed the relegation of some from the select group as well as the appointment of others. It is difficult to imagine one of the permanent five accepting its relegation from the select club. The elevation of some states to permanent membership without necessarily displacing any of the current permanent five would imply the relative diminution of the political influence of the current permanent members. Would the permanent five accept this? Would they accept sharing their privileged position in the Security Council and a redistribution of the so called 'fringe' benefits enjoyed by them by virtue of their permanency such as permanent representation in other UN bodies, or very frequent participation in the executive Councils of various specialized agencies with some other states? Would they accept merely an expansion of the non-permanent seats given that such an expansion would bring about an increase in the size of the Council, thus inevitably raising the issue of voting threshold? Since the Council operates under majority rule, any enlargement would necessitate a change in the number of votes required for decisions. This might reduce the capacity of the permanent five to exercise their 'positive influence' in the Security Council. Still worse, a broad expansion of the number of non-permanent members would be likely to give them power, if they could stick together as a bloc, to exercise in certain cases 'negative influence', a so-called sixth veto.

### **4.3 Past Efforts to Reform the UNSC**

#### **4.3.1 Reform Efforts in the Cold War Era**

During the early life of the UN there was no change in the composition or the voting powers of the permanent or non-permanent members of the Security Council, a consequence of the fact that the number of member states of the UN changed little during the first nine years of its life.<sup>205</sup> Indeed, during the period 1946–54, 31 states had applied for admission for UN

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<sup>205</sup> Dimitri, p 10

membership, but only nine of them were admitted owing to the East- West conflict<sup>206</sup>. Membership issue became entangled in the politics of the Cold War, and each camp made use of the veto to block candidates supported by the other. The UN charter states that any state can be a member of the United Nations up on the decision of the general assembly based up on the recommendations of the Security Council<sup>207</sup>. In cold war time a number of qualified states were kept out of membership for years solely because the use of the veto prevented the Security Council from making favorable recommendations to the GA. As a result, no demands for Council reform were articulated by member states, which perceived the composition of the Security Council to be more or less representative of the UN.

But in the early life of the Security Council the permanent members of the United Nations Security council held the idea and agreed that voluntary abstention of a permanent member from voting does not amount a veto<sup>208</sup>. This is derived from the conclusion of many scholars studying the issue taking different evidences. This agreement has a significant political importance in allowing many resolutions during the cold war to be approved. It seems that the super powers then saw the problem in the strict application of article 27 (3) of the UN charter and wanted to overcome it<sup>209</sup>.

The membership of the Security Council in its early years was a reflection of the principal elements of power in the UN on the one hand and the major regional groups of states on the other. In accordance with that plan it was agreed that in the election of non-permanent members support would be given to two countries from the Latin-American region while one seat would be allotted to the British Commonwealth, one to the Middle East, one to Western Europe, and one to Eastern Europe<sup>210</sup>. However, the pattern of geographical allocation of the elective non-

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<sup>206</sup> Available at <http://www.un.org/en/index.shtml>, Last accessed on May 9, 2014

<sup>207</sup> Article 4 UN.CH

<sup>208</sup> C..Stavropoulos, 'The practice of voluntary abstention by permanent members of the Security Council under Article 27, paragraph 3, of the Charter of the United Nations', *American Journal of International Law*, 61(3), 1967, pp. 737-41.

<sup>209</sup> Y.Liang, 'Abstention and absence of a permanent member in relation to the voting procedure in the Security Council', *American Journal of International Law*, 44(4), 1950, p. 707

<sup>210</sup> UN Doc. GAOR, A/8/PV.45, 5 October 1953, para. 19

permanent seats left the African and Asian states dissatisfied. They felt resentment against the sponsoring powers of the agreement. Some of them, like India, never recognized the validity of this agreement and felt bound to challenge it. As the Indian representative in the UN asserted, the gentlemen's agreement, which was used as guidance for the distribution of Council seats, was never endorsed by the General Assembly. It had been reached secretly by the permanent five and as such it could not bind the membership of this organ<sup>211</sup>.

But in fact in that time only twelve of the UN's fifty- one original members came from Asia or Africa, and of these China was a permanent member of the Council, India was in the Commonwealth, and seven states were in the Middle East'. Only Ethiopia and Liberia had not been given the opportunity to be elected to non-permanent seats by the gentlemen's agreement<sup>212</sup>. It was Eastern Europe that was much excluded in that time due to the fact that the seat reserved to the region was always given to other regions by the super powers.

Within ten years from its formation the UN needed to expand a lot. In 1955 the United States and the Soviet Union agreed not to block any future applications for membership in the UN. This event is hailed as equal as the original birth of the UN<sup>213</sup>. The difficulty that had impeded the admission of new states was removed and the drive in favor of universality of UN membership gained momentum. This led to a substantial increase in the membership of the UN in the following years, Sixteen new members were admitted in 1955, four in 1956, six in 1957, and 20 in the period between 1957 and 1960<sup>214</sup>. By 1960, UN membership had risen to 99 and the ratio of elective seats on the Council to the total membership of the UN had fallen dramatically. In the period 1961–3 this ratio fell further because 12 new states joined the ranks of UN membership, which rose to 113. Except for the membership of the Latin American

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<sup>211</sup> S.Bailey, 'The Procedure of the UN Security Council', 2nd edn, Oxford: Oxford University Press, 1988, p. 113.

<sup>212</sup> R.Hiscocks, 'The Security Council. A Study in Adolescence', London: Longman, 1973, pp. 97–8.

<sup>213</sup> L.Gross, 'Progress towards universality of membership in the United Nations', *American Journal of International Law*, 50(4), 1956, pp. 791–6.

group, which remained constant, and the membership of the Commonwealth group, which changed little, there was a significant increase in the membership of the Western and Eastern European groups. But, more importantly, there was a dramatic increase in the number of African and Asian members, which by 1963 constituted more than half the UN's membership and now aspired to be fairly represented on the Security Council.<sup>215</sup>

This influx in the number of membership in the Security Council resulted in an increased competition for the non permanent membership of the Security Council. The original agreement about the membership in the United Nations Security Council became outdated and the need for new agreement arose. The first question for the expansion of the council came in 1955 At the 11th session of the General Assembly, 16 Latin American states<sup>216</sup> and Spain jointly took the initiative to propose that the General Assembly immediately consider amending the UN Charter so as to increase the number of non-permanent members of the Security Council and the majority required for its decisions.

It was the Latin American states that took the strong initiative but not the Africans or Asians. There was sufficient reason for them to do that by the time as most of the permanent powers expressed their intention in such a way that the increase in the number of the UN members could be balanced with the number of seats in the Security Council by way of redistribution of seats. And by the time redistribution could have resulted in a loss of seat by the Latin American States.

But in between 1957 and 1965 while the Latin American states never thought that their proposal for the expansion of the UNSC will be intertwined with interstate politics it actually did. In the time the Soviet Union already claimed itself the protector of the UN charter and provided two preconditions for the amendment of the UN charter. It said that there could not be any change in the UN charter without amendment and amendment is not possible without the positive vote of the Soviet Union. It set a precondition for the immediate guarantee for the communist China's seat as a permanent member to the UNSC<sup>217</sup> and Secondly, a guarantee that the Seat of Eastern

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<sup>215</sup> D.Kay, 'The impact of African states on the United Nations', *International Organization*, 23(1) 1969, pp. 20–47.

<sup>216</sup> Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Haiti, Honduras, Panama, Paraguay, Peru and Venezuela.

<sup>217</sup> M.McDougal and R. Goodman, 'Chinese participation in the United Nations: the legal imperatives', *American Journal of International Law*, 60(4), 1966, pp. 671–727.

European states will never be taken away again<sup>218</sup>.

The pattern of geographical distribution suggested by the Latin American states gave some satisfaction to the Eastern European states and principally to the Soviet Union which desired to have one of its own allies regularly on the Security Council. This pattern purported to allocate two seats to Latin America, two seats to Asia and Africa, one seat to the Commonwealth of Nations, two seats to Western and Southern Europe and one seat to Eastern Europe.

Despite all this, no action was taken on the Latin American proposal at the 11th session of the General Assembly in 1956, owing to the rigid attitude of the Soviet Union and its allies, all of which insisted that no positive solution to the issue of Council expansion was possible until the People's Republic of China was fully represented in the UN<sup>219</sup>.

The Afro-Asian and Latin American states realized that unless they made a move soon, they would be in a hopelessly weak position to promote Council expansion in the years to come. They had to take initiatives in order to:

1. Keep the member states entrenched in the debate on Council expansion rather than on the Chinese issue and:
2. Exert pressure upon the Soviet Union to shift its ground.

Thus, in 1960, 39 of them tabled a draft resolution in the Special Political Committee of the General Assembly, which contained a proposal for Council expansion akin to that which the Latin American group had submitted in 1956. They proposed an increase of the number of non-permanent members of the Security Council from six to eight and of the total size of the Council from 11 to 13<sup>220</sup>. But this proposal was doomed to fail. Soon the Afro Asian states were very angered by the soviet position and delay in the UNSC reform proposal. The Non Aligned

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<sup>218</sup> E.Schwelb, 'Charter review and Charter amendment-recent developments', *International and Comparative Law Quarterly*, 7(2), 1958, p. 316.

<sup>219</sup> H.Briggs, 'Chinese representation in the United Nations', *American journal of International Law*, 6(2), 1952, pp. 192-209.

<sup>220</sup> E. Schwelb, 'Amendments to articles 23, 27 and 61 of the Charter of the United Nations', *American Journal of international Law*, 1965, p. 837.

Movement of the African States was also established and it disregarded Soviet's preconditions in the UNSC expansion.

The attitude of the non-aligned states eventually led the Soviet Union to withdraw its proposal for tripartite representation in the UN organs. However, throughout the period 1962–3 the Soviet Union continued to link the issue of Council expansion with the Chinese question and was greatly vexed to see that there was now general discontent among the member states with its attitude.

In 1963, two groups of states, which had vested interests in seeking Council expansion, submitted to the Special Political Committee of the General Assembly two different draft resolutions containing Charter amendments.

1. On 10 December 1963, 21 Latin American states resubmitted their draft resolution calling for the Charter to be amended to increase the membership of the Council from 11 to 13 by the addition of two non-permanent seats.<sup>221</sup> This was followed;
2. On 13 December, by a draft resolution submitted by 37 Afro-Asian states seeking to increase the membership of the Council to 15 by the addition of four non-permanent seats.

According to the second draft resolution, the number of non-permanent members would be increased from six to ten, of whom five would be drawn from African and Asian states from which three would be allocated to Africa and two to Asia, two from Latin America and Caribbean states, two from Western Europe and others and one from Eastern European states.<sup>222</sup> After a series of consultations among the delegations of the Latin American states and the Afro-Asian states, the former agreed to incorporate in their draft resolution the figures of the Afro-Asian draft<sup>223</sup>.

On 17 November 1963, the draft resolution sponsored by the Afro-Asian and the Latin American states was adopted by the General Assembly as Resolution 1991A by a vote of 97 in favor and 11 against by the states of the Soviet bloc plus France with four abstentions by Britain, United States, Portugal and South Africa. Nationalist China, which did not participate in the vote

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<sup>221</sup> Yearbook of the United Nations, 1963, New York: UN Office of Public Information, 1964, p. 80.

<sup>222</sup> Ibid

<sup>223</sup> ibid

in the Special Political Committee, voted in favor of Resolution 1991A for tactical reasons, not wanting to go against the wishes of the non-aligned states that now had the numerical strength to press for its expulsion from the UN membership<sup>224</sup>.

By Resolution 1991A the number of non-permanent seats was increased by four non-permanent members and the total number of Security Council members was raised from 11 to 15 as five permanent and ten non-permanent members. An interesting feature of Resolution 1991 was that for the first time a clear and agreed pattern of distribution of the non-permanent seats among four different regions was promulgated<sup>225</sup>.

More than two-thirds of the member states, including all permanent members, deposited their instruments of ratification by the end of August 1965, the first time *de jure* Charter amendments in the history of the UN entered into force.

But in the enlarged Council it was difficult for any power or group to force a decision of importance. Any positive decision by the Council requires some support from all the main blocs, East, West and the uncommitted i.e. the non-aligned.<sup>226</sup> To overcome this problem, the Security Council, with the backing of the permanent members, began gradually from the early 1970s to move away from the confrontational formal public meetings and make use of a different method of doing business in order to arrive through negotiation and compromise at resolutions adopted by consensus or at least by an overwhelming majority: the so-called informal consultations of the whole<sup>227</sup>.

These were private meetings of all 15 members of the Security Council that would take place away from the glare of publicity. Unlike the formal meetings, informal consultations of the whole were not preceded by the circulation of an agenda and no minutes or records of the topics discussed were kept. These meetings were secret and as such they were not open to non-

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<sup>224</sup> *ibid*

<sup>225</sup> S.Daws, 'The origins and development of UN electoral groups', in R.Thakur (ed.), 'What is Equitable Geographic Representation in the Twenty-First Century', Tokyo: The United Nations University, 1999, p. 19.

<sup>226</sup> Richard Buttlar AC, 'Reform of the United Nations Security Council', Penn State journal of Law & International affairs, April 2012, hereinafter cited as Buttlar, P.29.

<sup>227</sup> D.Nicol, 'The United Nations Security Council. Towards Greater Effectiveness', New York: United Nations Institute for Training and Research, 1982, pp. 74–82

members of the Council. The scheme of informal consultations gave the 15 members the chance to bypass methods of work, prescribed in the UN Charter and its own Rules of Procedure, which had rendered the Council a very cumbersome body incapable of working in its formal meetings in a business-like manner.

After 1965, the membership of the UN increased significantly and by 1979 it had risen to 152, mainly due to the emergence and admission of newly independent states from Asia and the Pacific, Africa and Latin America. Further expansion of the UN resulted in the NAM states achieving more and more strength in number. Accordingly the members of NAM concluded several meetings and came up with a proposal of reforming the UNSC. Members of NAM looked forward for their empowerment in each and every decision making organ of the United Nations. In 1979, India, along with 12 non-aligned states and Japan, tabled in the General Assembly a draft resolution proposing an increase in the membership of the Security Council from 15 to 19 with the addition of four non-permanent members. In that proposal the distribution of the 14 non-permanent seats was as follows:

- a. five for the African states;
- b. three for the Asian states;
- c. three for the Latin American states;
- d. two for the Western European states and others; and
- e. One for the Eastern European states.

However, the permanent five and the Western and Eastern European states showed no interest in discussing the proposal. There for the sponsors of the proposal just halted their call for Vote on the proposal and the proposal was just transferred to each GA meetings since 1980 to 1990<sup>228</sup>. Those years were also highly marked with the growing hostility between the US and the USSR so there was no interest towards discussing reform efforts.

The issue of Council reform resurfaced with great vigour in the early 1990s as the astonishing scope of changes in the world opened up an improved prospect of commitment by the member states to reform of the Security Council.

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<sup>228</sup> Available on all UN yearbooks prepared by the department of public information from 1980 to 1990.

### 4.3.2 Reform Efforts after the Cold War

Demands for reform of the Security Council have been growing for years after that single dejure reform in its life time. In fact, the issue of Council reform had been on the General Assembly's agenda since 1979 but had attracted little interest. However, Security Council reform became a hot issue in the late 1980s when the end of East-West confrontation opened up prospects for a greater role of the Security Council in world affairs.

A number of new developments took since the end of the cold war in the international relationship. One being the improved relationship between the US and the USSR on the USSR side the role of the new revolutionary leader Gorbachev was fundamental.

In 1987 The Soviet leader gave the UN pride of place in his new thinking about Soviet foreign policy. In fact, one of the key themes of Gorbachev's new thinking on international relations was a greatly expanded and enhanced role for the UN in international politics<sup>229</sup>.

During his leadership the Soviet Union advanced a greater number of proposals for strengthening the UN and in particular the Security Council than any other member state. He called for a central role for the UN, with special emphasis on the Security Council, in providing a comprehensive system of global security<sup>230</sup>. Elements of this new Soviet policy toward the UN included the enlargement of the role of UN peacekeeping forces and the revival of the moribund Military Staff Committee, composed of the chiefs of staff of the five permanent members.<sup>231</sup> In his speech to the UN General Assembly on 7 December 1998, Gorbachev reasserted 'the supremacy of the common human idea over the countless multiplicity of centrifugal forces', and expressed regret that the UN had become 'for many years a field for

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<sup>229</sup> M.S.Gorbachev, 'Perestroika I, New Thinking for Our Country and the World Moscow': Politizdat, 1988.

<sup>230</sup> J.Haslam, 'The UN and the Soviet Union: new thinking?', *International Affairs*, 65(4), 1989, p. 68

<sup>231</sup> E.Sevardnadze's Address to the 45th session of the United Nations General Assembly, Pravda, 25 September 1990.

cultivating political confrontation’.<sup>232</sup>

Due to the relatively high degree of accord among the five permanent members, the Security Council suddenly became extremely effective and started working at full steam. From the early 1990s, it began to launch an unprecedented number and range of peace operations, to meet more frequently than in the past and to pass more resolutions than ever before in its history, thus emerging as a powerful actor in areas of conflict or potential conflict<sup>233</sup>.

As the Security Council began to play a more active role in dealing with situations relating to international peace and security and world attention was preoccupied more than ever with the work of the Council, the case for restructuring the most important organ of the UN gained momentum. Critics of the status quo argued that the composition, distribution of permanent and non-permanent seats and distribution of power and influence in the Security Council reflected the reality of the world of 1945. Hence there have been persistent complaints that the Council’s decisions did not reflect the will of the international community as a whole but rather the will of the few who dominate it because of their disproportionate representation in the Council’s membership.

These events, along with the emergence of Japan, Germany and the European Union as global economic powers, the relative decline of Great Britain and France from global to middle-ranking powers and the large increase in UN membership, fuelled the simmering debate on the reform of the Security Council.

Thus, from the onset of the 1990s, a reunited Germany and a reformed Japan started clamoring for permanent membership on the Council, reasonably claiming, although unofficially, as much right as Britain and France to sit as permanent members. The fear that elevating Germany to permanent member status would be tantamount to Italy’s decline to a power of second rank

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<sup>232</sup> P. Shearman, ‘New political thinking reassessed’, *Review of International Studies*, 19(2), 1993, p. 157.

<sup>233</sup> The Security Council passed 37 resolutions in 1990, 42 in 1991 and 74 in 1992. In 1987 the Security Council adopted only 13 resolutions, in 1988 and 1989 it passed 20 resolutions per year; for details see S. Morphet, ‘The influence of states and groups of states on and in the Security Council and General Assembly, 1980–1994’, *Review of International Studies*, 21(4), 1995, pp. 458–61.

prompted Rome to raise the issue of the European Community's representation on the Security Council<sup>234</sup>.

Furthermore, a large number of states mostly from the less developed world started forwarding their demands for a reform of the Council that would better reflect the geographical distribution of UN membership. They declared their deep dissatisfaction with the Council's unrepresentative character and arrogant exercise of power by the permanent five. The admission of a large number of states from Central and Eastern Europe as well as Yugoslavia to the UN family increased criticism, not least from the group of the non-aligned states, that the present Council no longer retained its representative character as it represented only a fraction of the UN membership. It is often argued that the UNSC is not proportionally representing the UN membership.

It is noteworthy that by 1946 the UN had 51 members, 11 of whom were members of the Security Council. The increase in the membership of the Council to 15 in 1963 was a response to the increasing membership in the UN, which, from 113 in 1963 rose to 183 in the beginning of the 1990s. But the 1990's complaint also focused on the dictatorship role of the five permanent members of the UNSC<sup>235</sup>.

The five permanent members of the Security Council reacted very guardedly to the prospects of reforming the body. The most obvious reason was their reluctance to share their privileged position with others and/or fear of losing their position, which they saw as a symbol of their international status and prestige. They reached a tacit agreement and adopted a common stance on the reform issue: to resist claims for reform and to do their utmost to prevent discussion on the subject in the UN.

The successful involvement of the Council in the Gulf crisis of August 1990 to January 1991 gave the permanent five the chance, on the one hand, to further cement their bonds of commonality and, on the other hand, to use the 'efficiency' argument behind which they rallied

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<sup>234</sup> M.Pedrazzi, 'Italy's approach to UN Security Council reform', *International Spectator*, 35(3), p. 55.

<sup>235</sup> S.Morphet, 'The Security Council and the General Assembly: Their interrelationship, 1980–1992', p. 12, paper presented at the joint sessions of the European Consortium for Political Research (ECPR), held at the University of Leiden, April 1993.

in order to justify their objection to Council reform. Understandably, the United States and Britain pointed to the Security Council's action over the Gulf War as proof that the existing Council was now working well and there was no need to amend its membership. The Soviets and the French, in an attempt to add their own voice of opposition to the demands for Council reform, started to back the 'efficiency' argument, which was expressed in the American slogan, 'if it ain't broke, don't fix it', or its British version, 'why change a winning team'. The permanent Five managed to divert UNSC reform agenda's from 1990 to 1992<sup>236</sup>.

Thus, they managed to defeat a UN resolution requesting discussion of the issue in the General Assembly in September 1991. The resolution had been tabled by India, Brazil and eight other countries, following a meeting of the NAM at Accra where the foreign ministers of the movement for reform called for a review of the membership on the Council.<sup>237</sup> The issue was deferred to the next session of the UN General Assembly that was to take place in September 1992.<sup>238</sup>

The reluctance of Germany and Japan openly to pursue permanent seats for themselves during the period 1990-1991 facilitated the permanent five's task of containing debate on the Council reform issue. But their representation in the permanent member seat in the UNSC has been the major issue in the foreign policy of these states. Both had begun since 1990 viewing the Security Council as a vehicle for a more active role in world affairs but, for various and almost similar reasons, they appeared reluctant to claim a permanent seat officially.

The anticipated bids for permanent seats by Germany and Japan were partly complementary because of the similarity in the economic and political importance of the two countries and this caused Germany to wait for the reaction of the international community, and especially of the permanent five, to the Japanese candidature. Similarly, Japan waited to see how the permanent five and Germany would react to the Italian proposal to replace Britain and France with Japan and the EU. The Italian proposal known as permanent five minus two plus two,

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<sup>236</sup> Supra 1

<sup>237</sup> S.Morphet, 'The influence of states and groups of states on and in the Security Council and General Assembly, 1980-1994', *Review of International Studies*, 21(4) 1995, p. 451

<sup>238</sup> UN Doc. GAOR, A/46/PV.68, 23 December 1991 and A/RES/46/418 of 11 December 1991.

although beset with legal and political problems, had the advantage of keeping the Council the same size. As such, it would also have the advantage of being unlikely seriously to diminish the Council's effectiveness. Japan believed that Italy's proposal would be politically more acceptable to a majority of UN members and especially to the non-aligned states.

As Minister Garel Jones, on behalf of the British government, stated in the European Parliament in 1992, there was no need to change the existing arrangements in the Security Council because they offered a satisfactory representation for Europe. 'Europe has two permanent members on the Security Council and that gives Europe a powerful voice in the international arena', he said. This voice, he added, is further strengthened by the election of an EU member to the non-permanent seat allocated to Western Europe. 'Europe has a strong voice on the Security Council and we want to be very careful before we seek to tamper with that',<sup>239</sup> he added.

### **4.3.3 A De-Facto Reform of the UNSC**

While the permanent members continued to act in concert to contain the debate on Council reform in the UN, the collapse of the Soviet Union in December 1991 brought with it uncertainty about its permanent seat on the Council. In late December 1991, the USSR was formally dissolved through the mutual recognition of the independence of its constituent republics. The dissolution of the Soviet Union raised the important question of what was to happen to the Soviet seat on the Security Council. Would Russia be a state successor to the USSR with respect to its membership in the UN and its permanent seat in the Security Council? With the demise of the 'Union of Soviet Socialist Republics' this name had to be expunged from Article 23 of the UN Charter.

Perhaps the Soviet Union/Russia case bears a closer resemblance to that of a state splitting apart, where a former composite state breaks up into several parts. Two examples are the separation of India and Pakistan in 1947 and Pakistan and Bangladesh in 1971, where the larger unit, which also continued to bear the former corporate name, kept the General Assembly seat

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<sup>239</sup> Debates of the European Parliament, no 3-425/160, 16 December 1992.

and continued UN membership. The resulting new entity, by contrast, had to reapply for membership, going through the standard procedure stipulated in Article 4 of the UN Charter. In none of these cases, though, was a UN Security Council permanent seat involved.

The Russians were concerned about the implications of Russia not being automatically considered as the rightful successor to the Soviet Union and being obliged to go through the usual procedure of applying as an aspiring member. If the admission stipulations of Article 4 of the UN Charter were to be followed, the Russian issue had ultimately to be discussed and decided upon within the framework of the General Assembly<sup>240</sup>. President Yeltsin took swift action to ensure a smooth transition from a Soviet to a Russian permanent seat on the Council. He put pressure on the Commonwealth of Independent States, hereafter referred as the CIS, heads of states to support Russia's continuance of the membership of the USSR in the UN, including permanent membership of the Security Council, and other international organizations<sup>241</sup>. In a letter dated 24 December 1991, he informed the UN Secretary-General that 'the membership of the Union of Socialist republics in the UN, including the Security Council and the other organs and organizations of the UN system, is being continued by the Russian Federation with the support of the countries of the Commonwealth of Independent States. The letter was immediately circulated among the UN membership and received *de facto* acceptance, as no objection was raised<sup>242</sup>.

This fact of the continuation of Russia as the rightful successor of the Soviet Union in the international politics and international relation is recognized then by many states and organizations.

But through all this time the real changes in the composition of the United Nations Security Council remained just a proposal and discussion. The much-acclaimed report, *An Agenda for*

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<sup>240</sup> B. Conforti, '*The Law and Practice of the United Nations*', The Hague: Kluwer Law International, 1997, p.45.

<sup>241</sup> Decision by the Council of Heads of State of the Commonwealth of Independent States, in UN Doc. A/47/60-S/23329, op. cit., Annex V.

<sup>242</sup> Y.Z.Blum, 'Russia takes over the Soviet Union's seat at the United Nations', *European Journal of International Law*, 3(2), 1992, p. 356,

*Peace*,<sup>243</sup> produced by Boutros Ghali in June 1992, together with its 1995 sequel, *Supplement to an Agenda for Peace*,<sup>244</sup> had more of an impact on the intellectual and conceptual sphere than on the practical one.

By allowing Russia to take over the permanent seat of the former Soviet Union in the Security Council, the permanent members hoped that the reform issue was shelved for another decade.<sup>245</sup> However, their hopes were short-lived. Germany and Japan changed their policy and began publicly to voice their aspirations to become permanent members, while the non-aligned states increased their determination to implement Council reform.

By 1992, Japan and Germany had become, respectively, the second and third largest contributors to the regular budget of the UN, and to the costs for peacekeeping operations as well. Japan paid an average of 12.5 per cent of the total cost while Germany contributed about 8.93 per cent to the UN's budget and to the expenses for the peacekeeping operations. This was almost the average contribution of the permanent five. According to UN reports in 1992, the five permanent members of the Security Council paid 46.50 per cent of the regular budget of the UN, with the United States paying the lion's share of 25 per cent.<sup>246</sup> Russia, France and Britain paid 9.41, 6.0 and 5.2 per cent, respectively, while China paid only 0.77 per cent. The permanent five also paid 55.80 per cent of the costs of all UN peacekeeping operations. The growing financial burden which Japan and Germany shouldered in 1992 led them to believe that, since they were major contributors in paying the UN piper, they should also call some of the tunes. As Yoshio Hatano, the Japanese Ambassador to the UN pointed out, 'in the future we do not want to be just good taxpayers, but to have a word to say on the important decisions that

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<sup>243</sup> UN Doc.A/47/277-S/24111 of 17 June 1992.

<sup>244</sup> UN Doc.A/50/60-S/1995/1 of 3 January 1995.

<sup>245</sup> *The Independent*, 7 January 1992.

<sup>246</sup> Status of Contributions as of 31 January 1992, UN Doc. ST/ADM/SER.B/371, 5 February 1992 and Report of the Secretary General: Administrative and Budgetary Aspects of the Financing of the United Nations Peacekeeping Operations, UN Doc. A/47/484, 29 September 1992, Annexes I & II, pp. 4–13.

are taken in the United Nations'. This was also a strong defense against the counter argument raised to maintain the UNSC status as it is based on the principle of collective security and the free rider ideas.

Council reform was also one of the main issues discussed by the members of the NAM in Jakarta at their summit in September 1992. These states expressed concern 'over the tendency of some states to dominate the Council' as well as the view that 'the veto powers which guarantee an exclusive and dominant role for the permanent members of the Council are contrary to the aim of democratizing the United Nations and must, therefore, be reviewed'<sup>247</sup>. They were determined to play a leading role in the revitalization of the UN and pressed hard to get the Council's membership to reflect the increased membership of the UN as a whole<sup>248</sup>.

India, and 35 other non-aligned states, undertook to implement the decision reached at Jakarta. They tabled, in September 1992, a draft resolution that called for the inclusion in the provisional agenda of the 48th session of the General Assembly, an item entitled 'Question of equitable representation on and increase in the membership of the Security Council'. The permanent five could no longer contain discussion of the issue. On 11 December, the draft resolution, which was co-sponsored by Japan, was adopted without vote as Resolution 47/62. The resolution placed the question of Council reform on the agenda of the General Assembly, where it has since remained. It also requested member states to submit by the summer of 1993 written comments 'on a possible review of the membership of the Security Council'.<sup>249</sup> In 1993, 80 states sent written comments<sup>250</sup> and another 74 made their views known verbally during the

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<sup>247</sup> Tenth Conference of Heads of State or Government of Non-Aligned Countries, Jakarta, 1–6 September 1992, Final Document, para. 32 in UN Doc. NAC 10/Doc.11/Rev. 1, 6 September 1992.

<sup>248</sup> *ibid*

<sup>249</sup> A/Res/47/62, adopted at the 84th plenary meeting of the General Assembly.

<sup>250</sup> 'Question of Equitable Representation on and Increase in the Membership of the Security Council', *Report of the Secretary-General*, UN Doc.A/48/264 and Add. 1, Add. 2 and Add. 2/Corr. 1, Add. 3 and 4, 28 July 1993.

48th session of the General Assembly.<sup>251</sup> The positions adopted indicated clearly the urgency for the Security Council reform. Later that year, the General Assembly, in Resolution 48/26, set up the Open- Ended Working Group to consider all aspects of the question of Council reform.<sup>252</sup> Thus began the debate on the reform of the Security Council that continues to the present day.

At the beginning of the debate the council's weakest permanent member's i.e. France and Britain were quick to reject these reform proposals. They based their argument focusing on the need to increase the effectiveness of the council as per the UN charter rather than changing the composition of the Council<sup>253</sup>. Particularly France based its argument insisting that the effectiveness of the council depends up on the minimum number of its membership in such a way that it enables it to reach decision whenever there is a crisis quickly and effectively without taking any compromise. France saw no reason for enlarging the Council since 'the 10 non-permanent members of the Council already ensure an equitable geographical representation of member states, and they have contributed to the Council's primary role now at last restored to its original character'<sup>254</sup>. Russia also held almost the same position like Britain and France but with a low profile. Russia insisted on improving the working methods of the council rather than expanding membership<sup>255</sup>. But the position that China held was confusing because once it supported the need for expansion of membership but it said the time is not ripe<sup>256</sup>.

It was the United States that supported the permanent membership proposal of Japan and German out of all permanent members of the council in contradiction to its earlier policy towards such issues of reform. This is expressed in the 1993 US expression of its policy: "the current permanent members of the Council are countries with global and economic influence and a capacity as well as a will to contribute to global peace and security through peacekeeping and

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<sup>251</sup> UN Doc. GAOR, A/48/PV.61, 23 November 1993; see also UN Doc. GAOR, A/48/PV.62, 23 November 1993 and UN Doc. GAOR, A/48/PV.64, 24 November 1993.

<sup>252</sup> Resolution 48/26 of 3 December 1993.

<sup>253</sup> Supra 94, p. 91.

<sup>254</sup> Ibid

<sup>255</sup> Ibid

<sup>256</sup> ibid

other activities. Their status on the Council should remain unaltered. The United States supports permanent membership for Japan and Germany as well, fully recognizing that permanent membership entails assuming an active role in global peace and security activities.”<sup>257</sup>

After receiving assurances from the United States that there would be no change in the status of the existing permanent members, Britain and France began to soften their position. Thus, Britain, in the summer of 1993, and France, in the spring of 1994, gave lukewarm support to Germany’s and Japan’s candidacy as the lesser of two evils, the alternative being a collective EU seat, a proposal that had been presented in the discussions about Council reform as the only one of all propositions that would result in the removal of Britain and France from the Council. The support for Germany’s candidature to the permanent seat influenced the proposal for the EU to take one seat in representing the whole of Europe. This did not satisfy much of the small European states. But still US and others that supported Germany’s and Japan’s candidature to the permanent seat made it clear and insisted that their seat will be ranted depending up on their commitment to financial contribution to the UN particularly in terms of Peace keeping<sup>258</sup>. This position of the US, France and Britain is interpreted as a “wait and see” formula if these candidates will meet up the prerequisite for permanent membership. But this conditional position adopted does not satisfy German and Japan. Germany and Japan also had serious concern about the “Veto” power. Their non-committal position on the veto issue led Germany to state that it would not accept a second-class permanent membership. Japan had already taken a pro-veto position, saying that ‘the new permanent members should be given the veto because without it they would be handicapped as members of the Council’<sup>259</sup>. The statement of the German diplomat to the UN explains the firm position that German had towards the Veto right in the UNSC:

*‘...the right of veto is per se not an objective for us. But our bottom line is clear: If Germany,*

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<sup>257</sup> ibid

<sup>258</sup> E.Matanle, “The UN Security Council. Prospects for Reform,” Discussion Paper 62, London: Royal Institute of International Affairs, 1995, hereinafter cited as Matanle, p. 30.

<sup>259</sup> Matanle, p. 20.

*as it was suggested, shall become a permanent member of the Security Council, this has to be on an equal footing with the other permanent members without discrimination, i.e. with the same rights and the same obligations. With respect to the existing European permanent members and in comparison to their status any different position for Germany could not be politically explained, let alone justified, vis-a-vis the public of our country which is the third largest contributor to the United Nations' budget.....*"<sup>260</sup>

Germany and Japan accordingly continued to be major UN financial contributors and even improved their contribution.

The permanent members introduced different proposals to obstruct the permanent membership of the former 'Enemy states' in the UNSC. In order to do so they tabled proposals like improving the working condition and transparency of the UNSC that was also aimed at satisfying the reform need of other states outside Japan and German that complained against the UNSC. By introducing changes in the working methods of the Council, the permanent members wanted to satisfy a large part of the UN membership and especially the group of non-aligned states who had criticized them for converting the Council into 'an incredibly hermetic' club.<sup>261</sup>

Particularly the member states to the Non-Aligned Movement hereinafter referred as NAM had seriously complained against the working method of the UNSC and the way the three western powers decided issues in closed doors without any publicity. This reform proposal was meant to satisfy this complaint.

The NAM states recognized the importance of informal consultations in the works of the UNSC, but they insisted that it should not be done as it is happening in the time. They mentioned that informal consultations rather than being an exception has become the normal way the Security Council conducts business. They meant to curb this problem with an introduction of reform in

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<sup>260</sup> Statement by Ambassador Gerhard Henze, Acting Permanent Representative of Germany to the UN, in the Open-Ended Working Group, 17 May 1994, p. 4.

<sup>261</sup> Roundtable on Security Council Reform, Available at:  
HTTP:<<http://www.ncrb.unac.org/unreform/roundtables/SCreform.html>> (accessed 4 February 2003).

the transparency of the informal meetings by introduction of rules in the rules of procedure of the council.

They were also very concerned with the relationship of the council with other members of the UN and also the general assembly. So they introduced a rule that meant to improve the UNSC and the general assembly relationship by way of institutionalization of the practice of regular consultations between the Presidents of the two organs on matters before the Council, ‘with a view to keeping the Assembly apprised of developments in the Council which may be of interest to the general membership’<sup>262</sup>.

They had also suggested that the Security Council should make more frequent, timely and analytical reports to the General Assembly. They also called on the UN membership to find additional ways and means to ensure that a steady and sufficient flow of information would be provided by the Security Council to the General Assembly, other organs of the UN and the regional agencies acting under Chapter VIII of the UN Charter. These actions might include<sup>263</sup>:

1. Briefings of the President of the Council to non-members of the Council on the results of informal consultations of the whole.
2. Informal consultations of the whole and its provisional agenda to be announced, in advance in the *UN Journal*.
3. The monthly tentative forecast of work and the provisional agendas of the Council’s upcoming formal and informal work to be provided monthly to all non-members of the Council, as are draft resolutions ‘in blue’ (i.e. in near-final form).
4. The procedures of the Sanctions committees to be made more transparent by the introduction of various new practices such as increased use of press releases, quick preparation of summary records.
5. The decision to hold meetings between Council members, the Secretariat and members contributing troops to peacekeeping operations to facilitate exchanges of information prior

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<sup>262</sup> Position paper of the Movement of Non-Aligned Countries, 13 February 1995, contained in UN Doc. A/AC.247/5 (i) cluster II, found in UN Doc. A/49/965, 18 September 1995.

<sup>263</sup> M. Wood, ‘Security Council working methods and procedure: recent developments’, *International and Comparative Law Quarterly*, 45(1), 1996, pp. 150–61

to important Council decisions on peacekeeping operations.

6. The improvement of the format of the Security Council's reports to the General Assembly.

These measures were welcomed by all UN members as 'noticeable developments', which made the work of the Council more transparent<sup>264</sup>. But while the UN member states, especially the members of the NAM found this reforms as relevant they said they were only little and there is a lot to be done. Apart from this, they complained that the implementation of the measures adopted was problematic in the sense that they had not been institutionalized yet. They further stressed that the non institutionalization of this reforms creates a problem on their implementation. Furthermore they are not incorporated in the rules of procedure of the council and this leaves the implementation on the will of the superpowers. These states made it clear that procedural reformulations in the workings of the UNSC might be meritorious as they are but they should not be taken as a substantive replacement of the real need for the restructuring of the UNSC with respect to present realities and challenges<sup>265</sup>.

In essence, the member states of the UN, and especially the NAM states, sent an unequivocal message to the permanent members that they were not prepared to accept measures of transparency, however laudable, as an alternative to or a substitute for Council reform.<sup>266</sup> So they expressed the vital need for the restructuring of the UNSC and their commitment towards the success of the reform issues.

Indeed, during the lengthy and exhaustive labours of the Open-Ended Working Group on Security Council Reform and the General Assembly that took place in 1995-1996, most of the

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<sup>264</sup> See, for instance, the views of Brazil, Nigeria, Pakistan, in UN Doc. S/PV.3483, 16 December 1994, pp. 5-6 and 9.

<sup>265</sup> Remarks by Mr Sardenberg, Permanent Representative of Brazil to the UN, in the Security Council, cited in UN Doc. S/PV.3483, 16 December 1994, p. 6.

<sup>266</sup> Remarks by Mr Wibisono, Permanent Representative of Indonesia to the UN, in the Security Council, *ibid.*, pp. 20-21.

member states became actively involved in the debate. Their attitudes entirely changed the political context of the Council reform debate and shifted the focus away from Germany and Japan to the search for a more broadly equitable representation on the Council. The majority of member states forwarded or supported reform proposals aimed at making the Security Council more representative of the UN as a whole, at augmenting the power of the countries of the South, and at reducing, through expansion of the Council and restrictions on the use of the veto, the perceived monopoly of power of the permanent five.

#### **4.3.4 The Non Aligned States Reform Proposal**

This is a group that is very influential in the history of the UNSC reform for various reasons but mainly because it represents groups of states that makes up two third of the UN membership. This group also joined hands with the European states of Nordic countries, Spain and Italy and highly influenced the politics of the UNSC reform. This group expressly provided its stance on the reform issue as follows:

“...the non-aligned countries are grossly under-represented in the Council. This under-representation should, therefore, be corrected by the enlargement of the Security Council, which should enhance the credibility of the Council to reflect the universal character of the world body and to correct existing imbalances in the composition of the Security Council in a comprehensive manner. The extent, nature and the modalities of the expansion of the Security Council should be determined on the basis of the principles of sovereign equality of states and equitable geographical distribution. Attempts to exclude the Non-Aligned Movement from any enlargement in the membership of the Security Council would be unacceptable to the movement. If there is no agreement on other categories of membership, expansion should take place only, for the time being, in the non- permanent category.....”<sup>267</sup>

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<sup>267</sup> Position paper of the Movement of Non-Aligned Countries, B. Fassbender, ‘UN Security Council Reform and the Right of Veto: A Constitutional Perspective’, The Hague: Kluwer Law International, 1998, hereinafter

#### 4.3.4.1 The Various Proposals of the NAM States

##### 1. Permanent and Non Permanent Membership Questions

While a majority of the NAM states were in favor of expanding permanent membership, they felt that there should be a corresponding increase in the number of non-permanent members so that the total membership of the Council be increased from 15 to 26 seats. This, of course, did not mean that they were prepared to accept the proposal of the United States, Britain and France, which would grant permanent membership status to Germany and Japan alone. This proposal is known as the ‘quick- fix’ formula. The non-aligned states categorically rejected this proposal, arguing that any increase in the permanent membership of the Security Council that was limited to industrialized countries would not only aggravate the existing imbalance in the Council’s membership but would also fail to acknowledge the increasing role played by developing states in promoting international peace and security. Representatives of many NAM nations in the UN made it clear that they would support the candidacies of Germany and Japan only if a few of their own were also granted permanent membership status<sup>268</sup>.

Important regional states such as Nigeria, Indonesia, India and South Africa supported the expansion of the UNSC in such a way that will include states from the developing countries. But the members of the NAM were in disagreement on different issues. They were divided into two groups on questions of the scope of the expansion, the method of selection, and on whether to extend the right of veto to new members.

The first group, consisting of states mostly from Latin America and Asia, were in favour of the so-called ‘two plus three’ formula. This formula assigned two permanent seats to

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cited as Fassbender, p. 248.

<sup>268</sup> Remarks by Mr Jele, Permanent Representative of South Africa to the UN, in the General Assembly, cited in UN Doc. GAOR, A/50/PV.59, 14 November 1995, p. 7.

industrialized states (i.e. Germany and Japan), which, given their economic and political potential, had a real capacity to undertake global responsibilities, bolster the authority of the Council and shoulder a large part of the growing financial burden of the UN, while the other three permanent seats would be given to one country from each of the three southern regions, namely Africa, Asia and Latin America, including the Caribbean. Most of the supporters of the ‘two plus three’ formula agreed that the right of veto should not be granted to new permanent members. They believed that such an extension would only exacerbate an already undemocratic privilege which, they felt, in a post-Cold War world should actually be more restricted and, possibly, even abolished.

In fact, what this group sought was a reform scheme, which, if implemented, would have led to the introduction of a two-tier structure of permanent membership with the existing permanent members retaining the right of veto while the newer permanent members would lack the veto power. This would have had the further effect of subdividing the Council’s members into three categories:

1. Current permanent members with the right of veto,
2. Permanent members without the veto (i.e. the five new permanent members), and;
3. Non-permanent members.

Of course, there were some non-aligned states who favored the ‘two plus three’ formula but only if the right of veto were extended to the new permanent members. One of these states was India, which stated in the Open-Ended Working Group on Council reform that there should be no discrimination between the current permanent members and the new permanent members on the veto issue<sup>269</sup>.

As far as the method of selecting the five new permanent members was concerned, the proponents of the ‘two plus three’ formula came up with the so-called global selection method whereby the General Assembly would choose the new permanent members on the basis of

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<sup>269</sup> In its statement in the Open-Ended Working Group in 1996, India said: ‘Whatever the decision in regard either to keeping of the veto or elimination of the veto, or its curtailment or its regulation of use, my delegation firmly believes that there should be no discrimination between the present permanent members and the new permanent members on this score’.

objective criteria that they would formulate. India, for instance, stated that ‘the choice of additional states to be selected for the permanent members’ category should emerge from a decision of the General Assembly as provided in the Charter’<sup>270</sup>

However, others put forth their criteria for selecting the permanent members from the southern regions. India, for example, believed that consistency in support for and participation in important political and economic activities and peacekeeping operations of the UN and in fulfilling financial obligations should be the most important considerations in judging the suitability of a state that aspired to permanent membership.<sup>271</sup> Two other factors, India said, should also be taken into account: the population of the state and the size of its economy. Democratic states, with large populations, India believed, should be given increased rights of participation in international politics. This point of population and representation in the UNSC is mentioned in the secretary general’s report to the UN as follows:

“Population represents both an expression of the principle of democracy and an element of power. With increasing emphasis on the principle of democracy at the national level, there is a need for extending this principle to the international level also. The present permanent members of the Security Council have a combined population of less than 1.75 billion. This leaves two thirds of the world’s population without representation in the permanent membership category.”<sup>272</sup>

India also stressed the importance of the size, resiliency and self-sufficiency of the economy of a potential member, which, she pointed out, ‘are factors that have a bearing on a particular country’s ability to exercise independence of judgment and action on international issues’.<sup>273</sup>

Indonesia agreed that population and economic potential, along with a capacity for exercising regional influence and lending support for UN peacekeeping activities, should be

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<sup>270</sup> Question of Equitable Representation on and Increase in the Membership of the Security Council: Report of the Secretary-General, p. 48.

<sup>271</sup> Ibid. P.47

<sup>272</sup> Ibid. p.49

<sup>273</sup> Ibid. p. 48

factors which deserved serious consideration in determining which states should become permanent members.<sup>274</sup>

For the Central American countries of Costa Rica, El Salvador, Ecuador, Guatemala, Nicaragua<sup>275</sup> and Panama, the most important criteria were those already set forth in the UN Charter and which governed the election of non-permanent members.<sup>276</sup> For other states, such as the small states of the Caribbean Community,<sup>277</sup> the most important criterion was the ability and willingness to carry a large portion of the financial burden of the UN.<sup>278</sup> As countries with limited economic resources, they found their payments in support of UN peacekeeping activities quite burdensome. Thus, they made it clear that they would not oppose the idea of granting permanent seats to both developed and developing states that were economically capable of bearing a greater share of the UN's financial burden.<sup>279</sup> They hoped that in spreading the financial responsibilities to include the new permanent members, they would lessen their own financial burden.

The second group of non-aligned states wished to go beyond the 'two plus three' formula and proposed having more than three permanent seats for the developing states to redress the further imbalance that would come about should Germany and Japan be accepted as permanent members. Most of these were African states that found themselves in agreement with the position enunciated by the Council of Ministers of the OAU in 1994, which maintained that the representation of African states on the Security Council should be proportional to its membership in the UN and would entail Africa being assigned 'no fewer than two permanent

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<sup>274</sup> UN Doc. A/AC.247/5 (f), found in UN Doc. A/49/965, 18 September 1995

<sup>275</sup> Ecuador, Guatemala, Nicaragua and Panama were members of the NAM

<sup>276</sup> Remarks by Mr Martinez Blanco, Permanent Representative of Honduras to the UN, in the General Assembly, cited in UN Doc. GAOR, A/50/PV.56, 13 November 1995, p. 14.

<sup>277</sup> The CARICOM states that belonged to the NAM were Bahamas, Barbados, Belize, the Commonwealth of Dominica, Grenada, Guyana, Jamaica, Saint Lucia, Suriname and Trinidad and Tobago.

<sup>278</sup> See UN Doc. GAOR, A/50/PV.56, 13 November 1995, p. 14; see also remarks by Mr Insuaally, Permanent Representative of Guyana to the UN, in the General Assembly, cited in UN Doc. GAOR, A/50/PV.58, 14 November 1995, pp. 1–3.

<sup>279</sup> Ibid

seats’.<sup>280</sup>

They justified their position by pointing out that Africa, with 53 members in the UN, had no permanent seat on the Council. South Africa, Ghana, Ethiopia, Tunisia, Tanzania, Uganda, Zimbabwe and Kenya were among those setting forth the common African position. Some of them also contended that not only Africa, but Asia and Latin America as well, should each have two permanent seats.

In contrast to the supporters of the ‘two plus three’ formula, almost all the African states that belonged to the NAM claimed that as long as the veto power was retained by the current permanent five it should be extended to all new permanent members as well. If not, they said, a new category of second-class permanent members would be created. African states such as South Africa and Uganda were voicing the common position of the members of the OAU. South Africa stated that the new permanent members should have all the rights and privileges associated with permanent membership. Similarly, Uganda underlined that ‘either the veto applies to all or it should be dispensed with’. This point of view was also shared by some Arab states belonging to the NAM. Jordan, for instance, took the view that ‘the permanent members whose addition is proposed must enjoy all the power of permanent membership laid down in the Charter, including the right of veto, because that, in our opinion, would bring about equitable representation as well as imposing a kind of cooperation between states, particularly, the permanent members’.

As far as the method of selecting new permanent members was concerned, most African states preferred that of regional selection. They said that it should be up to the regions concerned to select the states to fill the new permanent seats. Each region should devise its own method of selecting candidates based on characteristics. This meant that all new permanent seats to be allotted to developing states had first to be allocated to regions, which, in turn, would nominate the candidates for permanent membership in accordance with agreed-upon procedures. For their part, the African states claimed that two *rotating* permanent seats with the right of veto should ‘be assigned to countries on the decision of the Africans themselves’. As several African states

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<sup>280</sup> Reformes des Nations Unies: Position Africaine Commune, OAU Doc. NY/OAU/POL/84/94/Rev. 2, 2 September 1994; see the English version of the communiqué in UN Doc. A/AC.247/1996/CPR.6, 25 April 1996.

emphasized, the two rotating permanent seats would belong to the region as a whole and thus the states occupying those seats would assume their responsibilities on the Council on behalf of the African continent. Those members sitting on the Council would thereby be accountable to the other African states with respect to how they discharged their mandate. As far as the other regions were concerned, it would be up to them to decide whether or not their permanent seats should be rotational.

A small number of NAM states, such as Chile and Egypt, questioned whether the inclusion of some developing states as permanent members was the best means of offsetting the imbalance that would result from the admission of Germany and Japan. For them, the most appropriate means of redressing the imbalance was by creating a new category of membership, so-called *semi-permanent* or *quasi-permanent* members, who would hover, so to speak, between permanent and non-permanent states. Their various proposals, although different in the details, agreed that these semi-permanent seats should be occupied by states that were representatives of the main regions of the developing world who would serve longer and/or more frequent terms than the existing non-permanent members. In effect, they were suggesting the subdivision of the Council into four categories:

- (1) Current permanent members with the veto,
- (2) Permanent members without the veto (i.e. Germany and Japan),
- (3) Semi-permanent members without the veto, and
- (4) Non-permanent members.

As previously stated, the overwhelming majority of the NAM states were in favor of an expansion in permanent membership. However, there was a bloc of some important non-aligned states, such as Pakistan, Argentina, Mexico, Colombia, Botswana, Libya, Sri Lanka and Lebanon, who opposed this reform entirely. They felt that there should be no changes in the current composition of permanent membership<sup>281</sup>. They called instead for a proportional increase only in the number of non-permanent seats. They would be happy to see the

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<sup>281</sup> Bardo Fassbender, 'All illusions shattered? Looking Back on a Decade of Failed Attempts to Reform the UN Security Council', 7 Max Planck Yearbook of United Nations Law 138-218, 2003, P.190.

membership of the Council to be raised to 26 by the addition of 11 non- permanent seats.<sup>282</sup> The opponents of the expansion of the permanent membership argued that the enlargement of the non-permanent membership would contribute more substantially than an increase in permanent members to the democratization of the Council. They disagreed with the view that an increase in permanent members would lead to a more balanced and representative Security Council. They believed that an increase in the number of ‘qualified’ permanent seats, with or without the veto, would only serve the interests of these states and alienate the majority of others, thus exacerbating existing inequalities in the Council. In reality, the opposition to the idea of increasing the number of permanent seats arose out of the fear that the delegation of enormous prestige and influence of permanent membership to a single country in their respective regions would lead to the establishment of a regional hegemony of a single country over the entire region. Pakistan, for example, used this argument against the expansion of the permanent membership, saying that regional representation in the permanent membership would ‘fuel the tendencies towards hegemony and domination which are manifest in some regions’<sup>283</sup>. This explains why the candidacies of some developing states for permanent membership, among them Brazil, India and Nigeria, had provoked criticism from their neighbors who would have been less than enthusiastic at the prospect. Argentina and Mexico, for instance, opposed Brazil and Pakistan opposed India. This bloc of states, which were against the idea of adding new ‘qualified’ permanent members, were also against the idea of introducing ‘rotational permanent seats’. They asserted that if some states from the regions were to be given ‘permanent seats’ on a rotational basis, their attitude and voting behavior in the Council would be influenced by their national perceptions of the issue at hand rather than by the perceptions of the regions they would be called on to represent.

It is quite clear that all the NAM member states accepted the expansion in the non permanent membership of the UNSC thinking that this will redress the problem that existed within the UNSC due to the increase in the UN membership. They also agreed that the criteria for selecting the Non-permanent membership should continue to be the one provided in article 23(1) of the UN charter that provides for ‘equitable geographical distribution’ criterion. They

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<sup>282</sup> Ibid

<sup>283</sup> Ibid

said that this criteria rather than the ‘Contribution’ criterion should be followed in order to avoid impartiality, and prejudice against regional representations. The great majority of the NAM states also agreed that the number of the UNSC membership should be expanded from 15 to 26<sup>284</sup>.

## **2. The NAM States Position on the Limitation on the Use of the VETO Power.**

Even if the members of the none aligned states were divided on the issue of the expansion of the number of the permanent seat of the UNSC they all agreed that there should be placed a limitation on the use of the Veto power by both the existing and new permanent members of the council. Both groups of states in the NAM that agreed on the expansion of the non-permanent membership and also the other group that agreed on the expansion of the permanent membership with the same rights and responsibilities as expresses by the View of the Groups of African states within the NAM supported that limitation should be provided on the scope of the use of the veto power both by the new and existing UNSC permanent members. Since the NAM member states recognized the fact that the existing permanent member states will not consent on the abolition of the Veto power now they took its limitations as the first step towards its future abolition. These proposals in the limitation of the use of the veto power are:

1. Decisions concerning the admission of new UN member states;
2. Recommendations for the appointment of the UN Secretary-General;
3. Decisions relating to provisional measures under Article 40 of the UN Charter; and
4. Measures under Article 50 of the UN Charter relating to the economic problems of third countries arising from UN-imposed sanctions.

Some of them went so far as to advocate that the veto should be restricted to decisions under Chapter VII of the Charter. There were also proposals for a change in the current voting system as outlined in Article 27 (3) of the Charter. Some of them, for example several African states,

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<sup>284</sup> Supra 262

welcomed the idea put forward by the Netherlands by which two vetoes would be required to overturn a decision. In this way no one permanent member could unilaterally block the Council's decisions and recommendations. Others pointed to the fact that certain measures to limit the scope of the veto, being procedural in nature and to which the veto itself could not be applied, would not require an amendment of the Charter and could be made through revision of the Rules of Procedure of the Security Council.

### **3. NAM Position on the Reform of the Working Methods of the Council**

The NAM member states claimed that changes in the composition of the UNSC membership must be substantiated with a change in the working methods of the council. These reforms of the working methods proposed were:

- i. Increase the transparency and improve the functioning of the Council and:
- ii. Address some of the tendencies and practices which run counter to fruitful cooperation between the Council and the whole membership of the UN.

This state's recognized there is achievement in this aspects of reform of the UNSC in the past years but they said they are not enough. So they suggested different mechanisms of improving the transparency of the works of the UNSC and its accessibility to much of the UN membership.

#### **4.3.5 UNSC Reform Proposals from the European States and Others**

In 1993-1994 several European states; the Netherlands, Norway, Spain, Belgium and Croatia among them, took a position on Council reform that was slightly different from that of the United States, Britain and France. They felt that, besides the admission of Japan and Germany to permanent membership, there should be minor adjustments with regard to the number of non-permanent seats.

By the end of 1995 most of the European states participating in the debate had come up with proposals for Council reform that were significantly different from the 'quick-fix formula'.

During discussions in the Open-Ended Working group and in the General Assembly, two informal groups of small and medium-size countries concluded that there was broad enough agreement between their positions on the main issues of Council reform to justify circulating papers and delivering speeches in the UN.

The first group consisting of Austria, Belgium, the Czech Republic, Estonia, Hungary, Ireland and Slovenia proposed that a Council of 20 to 25 members and an increase in permanent members by the addition of two or five seats. In other words this means a support to one of the two alternative formulas<sup>285</sup>. That means supporting either of the ‘quick-fix’ solution or the ‘two plus three’ formula (i.e. Germany and Japan, plus three developing states from Africa, Asia and Latin America).

In the selection of the new permanent membership they proposed that a states global influence and the capacity and willingness to contribute to international peace and security through peacekeeping operations and assuming additional financial obligations should be taken into account. Even if they did not state their position on the extension of the Veto power to new permanent membership or avoiding it they clearly expressed that its use must be restricted. They clearly expressed their support for the expansion of the non permanent membership for the purpose of balancing in the UNSC but clearly rejecting the proposal for the new kind of membership category calling for Semi-Permanent or Quasi – permanent membership. Bulgaria, Croatia and Portugal took a similar position.

The **Nordic countries** formed a second informal group of European states. These are Denmark, Finland, Iceland, Norway and Sweden<sup>286</sup>. This group advocated for:

1. A UNSC consisting of 23 member states,

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<sup>285</sup> For the common position of these states see UN Doc.A/AC.247/5 (c), 9 May 1995, found in UN Doc. A/49/965, 18 September 1995.

<sup>286</sup> See the common position paper of the Nordic countries, in UN Doc. A/AC.247/5 (j), 14 June 1995, found in UN Doc. A/49/965, 18 September 1995.

2. Rejection of the ‘quick-fix’ proposal and advocated the addition of five new permanent seats ‘for qualified states’,
3. Accepting Germany and Japan’s membership and also three rotating additional members for Africa, Latin Americas and Asia.
4. Leaving the criteria of selection to the concerned region.<sup>287</sup>
5. The General assembly on making final decision shall take in to consideration the regions proposal.

The Nordic countries were in similar position towards the expansion of the permanent membership of the UNSC by proposing the two plus three rotating permanent membership formula. But this group was at odds with the African group on the issue of the expansion of the Veto power. The grant of the veto power this group said will not only diminish the UNSC decision making power but also will compromise the roe of the non permanent members in the council.

These Nordic states recognized the importance of the Non-permanent membership and said that they should be given greater number in the expanded council. They supported the idea of having rotating permanent membership and said that the regional block should be left to use its own method of selecting its representatives. To ensure immediate reelection the Nordic states suggested the removal of immediate reelection to this category.

Like the members of the NAM the Nordic state countries also favored the restriction of the use of the veto power and also the reform of the working method of the UNSC to achieve greater transparency.

#### **A. Spain**

Spain proposed a different kind of solution including<sup>288</sup>:

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<sup>287</sup> UN Doc. A/AC.247/1996/CRP.18, 3 July 1996; see also Fassbinder, p. 258.

<sup>288</sup> For the Spanish position see Working Paper by Spain, Summary of Ideas on a Possible System of More Frequent Rotation in Additional Non-Permanent Seats in the Security Council, 28 February 1996, in UN Doc.A/AC.247/1996/ CRP.10, 4 June 1996; details of the Spanish proposal can be also found in UN Doc. A/50/47/Add.1, annex VIII, 4 June 1996. See also remarks by Mr Yanez-Barnuero, Permanent Representative of Spain to the UN, in the General Assembly, in UN Doc. GAOR, A/50/57, 13 November 1995, and pp. 8–9.

1. A more frequent rotation of the additional non permanent members
2. It did not specified the number of additional non permanent seats but it advocated for the addition of non permanent members that can participate and take responsibility in international peace and security more deliberation opportunity in the UNSC.
3. The selection of this members should be left to the regional block that is supposed to do it taking different criteria's mentioned above in to consideration.

## **B. Turkey**

Turkey provided almost a similar position to Spain and suggested the addition of ten non-permanent seats to be chosen from a list of 30 or 40 states which could be renewed every 12 or 16 years<sup>289</sup>. However, neither Spain nor Turkey advocated an increase in the existing permanent or non-permanent membership of the Council.

## **C. Italy**

Italy was at a fierce opposition stand against the 'quick Fix formula'. It gave a similar explanation to its position like the NAM states saying that the quick fix formula adds two additional industrialized western powers to the existing permanent five and it rather than creating a balance it aggravates the already existing imbalance.<sup>290</sup>

Italy strongly objected either the quick fix formula or the two plus three formula for the above mentioned reason.

Italy also raised the issue that the permanent five members are members of all the other UN organs because of the privilege they have as a permanent member of the UNSC Called the cascade effect of the Veto Power<sup>291</sup>. So, Italy mentioned that these newly added permanent

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<sup>289</sup> Position paper of Turkey, UN Doc. A/AC.247/5 (I), UN Doc.A/49/965, 18 September 1995.

<sup>290</sup> See the remarks of Paolo Fulci, Permanent Representative of Italy to the UN, in the General Assembly, UN Doc. GAOR, A/50/PV.56, 13 November 1995, p. 16.

<sup>291</sup> Ibid

members also would take the same privilege as their own prerogative once included in the permanent category<sup>292</sup>.

In 1995 Italy presented its own proposals to the UN including the following points<sup>293</sup>:

1. The Current existing five permanent members along with their privilege should remain unchanged.
2. New Ten or Eight rotating non permanent members shall be elected regionally in addition to the existing non permanent members and it should favor regions that are less represented currently.
3. The additional non-permanent seats would rotate over a six-year period with each state being two years on and four years off the Council. This meant that for each of these new seats, three states would rotate, making a total of 24 or 30 states (i.e. 8 seats×3 states or 10 seats×3 states).
4. These new states would be selected by the General Assembly by a majority of two-thirds on the basis of objective criteria, such as contribution to the maintenance of international peace and security and to other purposes of the organization; capacity and willingness to contribute to peacekeeping operations with military personnel, equipment and financial resources; ability and willingness to participate in voluntary funds for humanitarian activities, economic development and the protection of human rights.
5. The list of the 24 or 30 countries would be subject to periodic review every 10, 12 or 15 years in order to avoid creating new possibilities of entrenched privilege.
6. No state on the list could compete for one of the regular ten non-permanent seats.

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<sup>292</sup> Ibid,p. 16–18, see also remarks by Ambassador Paolo Fulci on Equitable Representation in the Open-Ended Working Group, 22 April 1996.

<sup>293</sup> The reform proposal of Italy is contained in UN Doc. A/AC.274/5 (g), annex, 15 May 1995, found in UN Doc. A/49/965, 18 September 1995. For further details about the Italian position see Italy and the reform of the UN Security Council. Available online at: <http://www.italyemb.org/SecurityCouncil.htm> (accessed 5 July 2003). In this site one can find a revised proposal for an enlargement of the Security Council submitted by Italy to the Open-Ended Working group on Council reform in 1997.

Italy's proposal was crafted very carefully in order to fulfill its national objective of obstructing Germany from getting the permanent membership and it was done in such a way that much of its alternative proposals were arranged to be convincing to all groups including the NAM and other European states proposals. In order to strengthen its points it presented the UN member states showing how much the small and medium sized states were denied participation in the UNSC affairs compared to the other minority group of powerful states.

Despite its similarities to the Spanish and Turkish proposals, the Italian plan was intended to meet the demands better of a large part of the UN membership for an equitable representation in the composition of the Council of all the geographical groups without any numerical discrimination. Thus, the Italian proposal caught the member states' attention. As pointed out by David Malone, former Deputy Permanent Representative of Canada in the UN, the specifics of the Italian proposal 'put a very energetic cat amongst the pigeons'<sup>294</sup>. Support grew steadily for the Italian proposal while at the same time there was a noticeable decline in support for the 'two plus three' formula or its variants e.g. the two+more than three permanent seats for developing states or the two plus a number of regional permanent rotating seats, all of which meant an increase in the number of permanent seats. By early 1996, a large number of states, Italy claimed 58 adherents, had expressed support for or interest in the major elements of the Italian proposal or saw it as a potential fall-back formula in the likely event that agreement on an increase in the permanent membership could not be reached.

As expected, states like Spain and Turkey were also favorably disposed to the Italian proposal because it embodied the basic elements of the proposals of the Open-Ended Working Group<sup>295</sup>.

#### **4.3.6 Debates in the UN and the Change in Position of the Permanent Members between 1996 and 2000**

It became clear letter in the days that the quick fix formula is rejected out of the negotiation. Not only the quick fix formula but also the reform proposals of the NAM states and that provided by

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<sup>294</sup> Supra 105.

<sup>295</sup> UN Doc. GAOR, A/51/PV.45, 30 October 1996, p. 10.

Italy is rejected by the open ended working group for their negative consequence each proposal will have on the power of the permanent five in the UNSC and also the working of the UNSC<sup>296</sup>.

Furthermore, a broad Council expansion might activate the so- called **informal veto**, that is, the capacity of a group of states other than the veto-wielding permanent members to prevent decisions from being taken.

Finally, the most important proposals that were presented during this period would, if adopted, materially diminish the importance of the veto power in that they included demands for restricting in one way or another its use by the permanent five. But for the permanent five the Veto power is a prize used in good times and bad times and it is against their national interest to let it go.

In the light of the new developments, all permanent members except China were compelled to modify their attitude towards reform of the Security Council. Thus, it was deemed necessary to work out a strategy, which would acknowledge the international impetus for reform whilst allowing for the least possible changes in the status quo.

First, Britain, Russia and the United States publicly accepted that they could no longer contain expansion of permanent membership to only two new members and came out in support of the ‘two plus three’ formula, whereby three out of five permanent seats would go to developing countries. Russia, for instance, declared that ‘Germany and Japan are real candidates for a reformed Council. The three permanent members explicitly told the Open-Ended Working Group on Council Reform and the General Assembly that they were unwilling to discuss any increase beyond 20 or 21 Council members in total.’<sup>297</sup> This meant that they were not prepared to accept an expansion in the non-permanent membership. They made clear that they considered it crucial to maintain a compact and operational Security Council membership and that exceeding the quantitative limit of 20 or 21 would have, as they pointed out, a negative impact

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<sup>296</sup> UN Doc.A/50/47, Para. 26 and UN Doc. A/51/PV.45, 30 October 1996, p. 11.

<sup>297</sup> Bill Richardson, the American chief diplomat in the UN, stated that ‘we have no flexibility above and beyond 20–21 seats on a reformed Council. This would permit expansion of the Council by one-third, with up to five new permanent members’; see statement on Security Council reform made by B. Richardson, Permanent Representative of the United States to the UN, in the Open-Ended Working Group, 17 July 1997.

on the efficiency of the Security Council's activities. The permanent three tried to justify their position arguing that the Security Council should remain organized on the principles of responsibility and efficiency, rather than on the principle of democratic representation. As they pointed out, the challenge would be to achieve the difficult balance whereby membership of the Security Council would reflect current global power relationships but not be so large as to make it an unwieldy body. But there was one more reason that made the three express strong opposition to an increase in the number of non- permanent members: they wanted to exclude the possibility of the developing states by their permanent and non-permanent seats creating a solid bloc and exercising an effective 'group veto' also called the sixth veto. France distanced itself from the position of prohibiting expansion of the non permanent category.

China had been the least specific of all the permanent members in that it had not mentioned any specific number of new seats that should be added to the Council. But it called for a reform of the UNSC in one that reflects balanced regional representation.

Sir Weston, the British Permanent Representative to the UN, made it clear that his country was not going to support any abridgement of the right of veto or its scope of application. It is worth quoting his statement in full:

“The veto power is popularly associated with the period of the Cold War when the Council was largely unable to function in major confrontations between the two major blocs. The existence of the veto at least protected the authority of the United Nations from being usurped by one bloc or the other. The role of the United Nations may have been diminished during the Cold War but a consequence of the veto in those years was that the United Nations survived, and that the organization has become the forum for genuine cooperation between the members of the same blocs since the end of the Cold War. While we see no likelihood of a return to international bloc politics, the fact that the veto served in those years to protect the neutrality of the United Nations and its unique position as the single global forum accepted by all is still relevant.”<sup>298</sup>

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<sup>298</sup> Statement by Sir J. Weston, KCMG, Permanent Representative of United Kingdom of Great Britain and Northern Ireland to the UN, in the Open-Ended Working Group, 21 May 1996

This position of the permanent five has a serious repercussion on the reform proposal of the UNSC. The quick fix formula was rejected, the NAM proposal was rejected and also even if German and Japan are accepted they might not get the same right as the existing members. Furthermore the developing countries have to come up on agreement on the three states representing them. Until then German and Japan has to wait.

The developing countries favored the expansion of the UNSC further to 26 member states and the existing permanent members agreed only an increase up to 20.

#### **4.3.7 Ismael Razali's Reform Proposal**

In the light of the above mentioned problems related with the difference in national interest of the permanent five and others towards the UNSC reform proposals, in 1997, Ambassador Ismael Razali of Malaysia attempted to put forward a compromise solution, the so-called Razali plan which, up until this time, constituted the single most important and most coherent reform proposal. Although it proved to be unworkable, it demonstrated the complexities, conflicting interests and shortcomings surrounding Security Council reform.

On 20 March 1997, the then President of the General Assembly, Ambassador Ismael Razali of Malaysia, outlined before the Open-Ended Working Group a reform plan aimed at breaking the deadlock on Security Council reform after more than three years of discussions. Razali believed that his initiative could result in a swift conclusion to the negotiating process. The Open-Ended Working Group', he said, 'should not be seen as a place for endless talk that would the United Nations a bad image'.<sup>299</sup>

Razali introduced a three-stage reform plan.<sup>300</sup> According to the plan, in the first stage the

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<sup>299</sup> Asahi Shimbun (newspaper), 31 January 1998.

<sup>300</sup> The full text of the Razil plan is provided as annex 3 at Dimitri Bourantonis's 'History and politics of reforming the UNSC', R.Drifte, 'Japan's Quest for a Permanent Security Council Seat. A Matter of Pride or justice?' Basingstoke: Macmillan, 2000, pp. 181–5; D.Bourantonis and K.Magliveras, 'The enlargement of the UN Security Council': reflections from the current debate', *Politics*, 22(1), 2002, p. 24–30.

General Assembly should vote a resolution calling for the Security Council to be enlarged to include five new permanent members two from industrialized and three from developing countries with one each from Africa, Asia, and Latin America and the Caribbean and four non-permanent members. The four non-permanent members would come from Africa, Asia, Eastern Europe, and Latin America and the Caribbean. In the second stage, the Assembly would pass, by 28 February 1998, a second resolution that would fill in the blanks by selecting specific candidate states. It was understood that, although Germany and Japan were not mentioned by name, it was they that Razali had in mind when he referred to the 'two industrialized' countries that should enter as permanent members. Both resolutions would be put to vote in accordance with Article 18 of the Charter for important questions that is by two-thirds majority of Assembly members present and voting. As was provided in the Razali plan, if the number of states having obtained the required majority fell short of the number of seats allocated for permanent membership, new rounds of balloting would be conducted for the remaining category or categories, until five states obtained the required majority to occupy the five seats. In the third stage the Assembly would, no later than one week following designation of the states to be elected to serve as new Council members, vote on a resolution implementing the two previous resolutions as Charter amendments. This resolution would need to be approved by two-thirds of all member states as stipulated in Article 108. The third resolution would include amendments to Article 27 (2) and (3) of the UN Charter requiring the affirmative vote of 15 of 24 members of the Security Council for decisions.

The Razali plan also provided that for peacekeeping assessments, all new and old permanent members would undertake to pay the same percentage rate of premium surcharge over and above their regular budget rate of assessment. Razali proposed that the five new permanent members would not have veto power while the current five holding the veto would be encouraged to limit its use to actions under Chapter VII of the UN Charter which provides for enforcement measures. While proposing so he made a distinction between the newly coming permanent five as elected and new while referring and explaining that the old permanent powers just are there and got the veto power from 1945 as they inherit it from the then reality.

The Razali plan also called on the Security Council to adopt a series of modifications in its working methods and procedures along the lines suggested by the members of the non-aligned group and other states.

The reaction of the permanent five towards this plan was different but much of them showed reservation. US made it clear that it supports the plan but any expansion of the UNSC beyond 20 is unacceptable. Russia also held the same position. France was the only one that welcomed the Razali plan. It saw the plan as an opportunity to begin in earnest the process leading to expansion of the Council.

The Razali plan caused serious divisions among the rest of the UN membership. There was a bloc of states that saw the plan as the proposal that could bring the hitherto fruitless discussions to an end. Among them were Germany, Japan, Brazil and India who believed that the Razali plan would offer them the chance to realize their ambition to become permanent members.

The Razali plan would have, if adopted, significantly increased the participation of non-aligned states in the Council, thus allowing them to have a significant voice in its decision-making and, by implication, to the UN as a whole. But the overwhelming majority of NAM countries chose not to associate themselves with it. The main reason the NAM objected this proposal was to save its unity and the continuity of the movement from any disagreement that comes due to difference in position among its members.

The Razali plan came under harsh criticism in both the Open-Ended Working Group on Council reform and in the General Assembly, as the elements of the plan did not correspond to the positions of NAM countries. Razali, the non-aligned states complained, dropped ‘a bombshell on 20 March 1997, by putting forward his own paper’<sup>301</sup>.

The immediate result of the polarization of the debate was the formation of the ‘Coffee Club’, an Italy-led coalition of developed and developing states opposed to the Razali plan. The Coffee

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<sup>301</sup> See speech by Mr Ahmad, Permanent Representative of Pakistan to the UN, in the General Assembly, UN Doc. GAOR, A/51/PV.63, 4 December 1997, p. 12

Club represented a *de facto* alliance of those, who through joint diplomatic initiatives, wanted to work against the Razali plan.<sup>302</sup>

Its positions coincided with those of the NAM. Its role proved to be decisive in the ensuing debate on Council reform. Its initiatives sparked off an acrimonious discussion during the 1997 and 1998 sessions of the General Assembly and the Open-Ended Working Group and, at the end of the day, led member states to turn down the Razali proposal.

Italy tabled on 22 October 1997 a draft resolution on Council reform. The draft resolution A/52/L.7, which was co-sponsored by other members of the Coffee Club : Canada, Egypt, Guatemala, Lebanon, Mexico, Pakistan, Qatar, Syria and Turkey proposed more time for negotiations and stressed that the matter of Council reform should not be subjected to any imposed time frame. According to the draft resolution, a rash approach bound to an unrealistic and rigid timetable was not appropriate, the situation simply not yet being ripe for a political decision on major issues of reform. But the most important part of the draft resolution was that which provided that 'any resolution with Charter amendment implications' must necessarily be adopted by a two-thirds majority of the UN membership, as stipulated in Article 108 of the UN Charter. Japan and Germany reacted promptly to the Italian initiative.

The coffee club increased in membership due to the fact that much of the developing states suspected that behind the Razil plan are the hands of Germany, Japan and other permanent members that wanted the increase of the permanent membership only in few numbers. These in other words mean the addition of only German and Japan to the permanent membership category

It was quite obvious that the Open-Ended Working Group, now in its fourth year of operation, had been converted into something that it ought not to be, a debating club unable to make any substantial contribution to the process of Council reform. A significant part of its work, after the first half of 1997, was diverted to the discussion of procedures for amending the UN Charter, about which the controversy showed no signs of growing. On the contrary, attitudes hardened in autumn 1998, with rumours rife that Germany, Japan and their main supporters including Britain,

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<sup>302</sup> F.Paolo Fulci, 'Italy and the reform of the UN Security Council', the international spectator: Italian Journal of international Affairs, p. 13.

France and the United States were about to present to the General Assembly a new plan inspired by the two plus three rotational seats formula and the voting procedures promoted by Razali.

Once again, the Coffee Club members were mobilized and resolved that a new draft resolution on procedure be introduced in the Assembly on 28 October 1998. The draft resolution, named A/53/L.16, was co-sponsored by Italy, Canada, Spain and 24 developing states. Draft Resolution A/53/L.16 provided more explicitly and emphatically than draft resolution A/52/L.7 of 1997 that ‘any resolution with Charter amendment implications must be adopted by the two-third majority of the United Nations membership referred to in Article 108 of the Charter’. The language of draft resolution A/53/L.16 was a faithful and word for word reflection of the Declaration regarding the reform of the Security Council issued by the heads of state or government of the members of NAM at their summit held in Durban from 29 August to 3 September 1998. The sponsors of draft resolution A/53/L.16 clarified that the phrase ‘any resolution with Charter amendment implications’ referred to resolutions which contained proposals for concrete amendments to the UN Charter, or which could lead to the possible adoption of such amendments, or which provided criteria or elements for such amendments.

In conclusion, Resolution 53/30 terminated any possibility of adopting reform proposals akin to the Razali plan. After many fruitless discussions and much discord in the discussions that took place in 1998 and 1999, a large number of states, mostly from the NAM, shifted their focus from demanding permanent seats on the Council to the less controversial issue of expanding non-permanent membership. They believed that the permanent five would be more likely to make progress on this issue. Having taken this position, all hopes for substantial comprehensive reform of the Security Council were dashed, dampening the optimism of Germany and Japan and certain other states for obtaining permanent seats.

The General Assembly, through the UN Millennium Declaration adopted on 8 September 2000, expressed the resolve of its membership to intensify efforts to achieve a comprehensive Council reform. To this effect, in the remaining months of 2000 and in 2001, the General Assembly and the Open-Ended Working Group on Council Reform dedicated a large number of sessions to debating a sound and acceptable settlement of the issues involved.

During these sessions it became apparent once again that the membership of the UN was still unable to reach even a minimum common position. What was clearly manifested was the debate's polarization between, on the one hand, the permanent five which felt that the current structure of the Council suited them fairly well and were happy to delay substantial reform for as long as possible and, on the other hand, the rest of the UN membership which continued to demand in one way or another reform of the Council. It seemed that the efforts to overhaul the Security Council would drag on for years to come.

Thus, it is possible to conclude that the NAM, for its own survival, tied its members down to an agreement not to go ahead with the Razali plan and, forming a common front with Italy, succeeded in mobilizing a very large number of states against the plan. As a result, it was removed from the negotiating table, thus bringing the debate on Council reform to an end in complete failure in the year 2000.

#### **4.4 Major Contemporary Reform Proposals**

After all this failed reform attempts the UNSC remained the same. It still had the same permanent members. But at the year 2000 countries were with a clear position on the reform of the UNSC. This issue involved complicated UNSC reform politics<sup>303</sup>.

Britain, France and Russia had supported permanent membership for Germany, Brazil, India and Japan. China and South Korea had doubts about Japan. Pakistan opposed India, and Mexico and Argentina opposed Brazil. The United States supported Japan, but refrained from supporting Germany, which many believed was tied to their respective governments' positions on the 2003 invasion of Iraq. The Obama administration also expressed its support to India's candidature for permanent membership in many occasions even though this attitude is not observed as being changed to action. The expansion of permanent membership would have marginalized a number of mid-sized countries, which at the same time were major peacekeeping contributors such as Italy, Pakistan, Canada, Argentina, South Korea and Spain. Led by Italy and Pakistan, those

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<sup>303</sup> Jaockim Muler: 'Reforming the UN: the struggle for legitimacy and effectiveness' Martinus Nijhoff Publishers, Leiden / Boston, P. 64

countries after forming the alliance known as the ‘Coffee Club’, rejected any increase in permanent membership and introduced a proposal for semi-permanent membership for which they would also qualify.<sup>304</sup>

Considerations of Security Council reform oriented the work of the High-level Panel. As it is mentioned earlier, when the High Level Panel presented its report in December 2004, it advanced a recommendation consisting of three elements.

1. The Panel suggested that there be selection and re-election criteria for membership such as financial, military and diplomatic considerations, and geographical balance.

2. The Panel suggested that the Security Council should be expanded from 15 to 24 members. Two possible models were recommended for the expansion:

**Model A:** involved new permanent members, and specifically, six new permanent seats and three new two-year-term non-permanent seats, divided among the major regional areas.

**Model B:** involved new long-term renewable non-permanent seats, and specifically, 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.

In neither option are any new vetoes created.

3. The Panel suggested a full review of the new arrangement in 2020.

In March 2005, the Secretary-General endorsed the recommendations of the High-level Panel in his report *In Larger Freedom*<sup>305</sup>. Without favoring a specific proposal, he urged member states to consider the two models or any other viable proposals in terms of size and balance that might emerge on the basis of either model. He emphasized that no reform of the United Nations would be complete without a reform of the Security Council and remarked that the inability to reach consensus should not become an excuse for postponing action.

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<sup>304</sup> *ibid*

<sup>305</sup> Koffi Anan, ‘*In Larger Freedom: towards development, security and human rights for all*’, letter from the UN secretary General to the president of the UNGA, 26 May 2005.

In May 2005, the United States warned Japan, India, Germany and Brazil that it would not support their bids to join the Security Council unless they agreed not to ask for veto power. The Group of 4 wanted veto rights. They recognized, however, that the existing permanent members, whose ratification was required for a United Nations Charter amendment to take effect, would rebuff such a demand. So they opted to become permanent members of the Security Council first, and reconsider the issues as part of a mandatory reconsideration in 15 years.

In their quest for the votes of 128 member states, the two-thirds majority necessary to amend the United Nations Charter, the Group of 4 had also agreed to add not only four permanent seats for themselves, but two more for undetermined African countries. On top of that, they proposed to expand by four the 10 existing seats elected by the General Assembly for two-year terms, adding one each for Africa, Asia, Eastern Europe and Latin America, thereby bringing the total membership to 25.

The Group of 4 proposal did not, however, gain the support of the African states. South Africa and Nigeria were the top candidates for one African seat and Egypt was pushing for the other, insisting that Arab nations must be permanently represented on the Council. Senegal and Kenya also expressed an interest in permanent membership.

In March 2005, the Executive Council of the African Union adopted a common position on Security Council reform, known as the 'Ezulwini Consensus'. According to the African proposal, the Security Council should be expanded from 15 to 26. The additional seats were to be allocated as follows:

- A. Two permanent and two non-permanent seats for Africa,
- B. Two permanent and one non-permanent seat for Asia,
- C. One non-permanent seat for Eastern Europe,
- D. One permanent and one non-permanent seat for Latin America and the Caribbean, and
- E. One permanent seat for Western Europe and Other States.
- F. All new permanent members should have the same prerogatives and privileges as the current permanent members, including the right of veto.

The African proposal included one additional non-permanent seat for Africa as compared to the Group of 4 proposal. Most important, however, was the demand that all new permanent members should have the same prerogatives and privileges as the current permanent members, including the right of veto.

When the negotiations reached a deadlock a few months before the Summit of Heads of State and Government, Japan, Germany, Brazil and India decided in July 2005 to force member states take a stance on Security Council reform. The Group of 4 tabled a draft resolution according to which membership of the Security Council would increase from 15 to 25, with six additional permanent members without veto rights and four additional non-permanent members.<sup>306</sup>

This draft resolution was not supported by certain hoped for co-sponsors, the most important of which were Belgium, Denmark, France, Greece, Poland and Portugal.<sup>307</sup> The African group put forward its own draft resolution, calling for an increase from 15 to 26, with six additional permanent members with veto rights and five additional non-permanent members, including two for Africa.<sup>308</sup>

This division was to the advantage of Italy and the ‘Coffee Club’, which strongly objected to the establishment of new permanent seats. Italy had previously proposed a new category of ten non-permanent seats to be rotated among a select group of 30 states; essentially, these would constitute semi-permanent seats for middle-sized states. Organized under the slogan ‘Uniting for Consensus’, Italy, together with Argentina, Canada, Colombia, Costa Rica, Malta, Mexico, Pakistan, South Korea, San Marino, Spain and Turkey, sponsored a third draft resolution on Security Council reform.<sup>309</sup> According to this proposal, the Security Council was to increase from 15 to 24. No additional permanent seats would be established. Unlike

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<sup>306</sup> United Nations document: Security Council Reform, General Assembly draft resolution A/59/L.64, 6 July 2005.

<sup>307</sup> Fassbender at supra 111, p. 399.

<sup>308</sup> Question of Equitable Representation on and Increase in the Membership of the Security Council and Related Matters, General Assembly draft resolution, UN Doc. A/59/L.67, 14 July 2005.

<sup>309</sup> Reform of the Security Council, General Assembly draft resolution, UN Doc. A/59/L.68, 21 July 2005

Italy's previous proposal, the draft resolution did not include the establishment of semi-permanent seats, which the smaller states sponsoring the draft resolution did not support. Instead, the number of non-permanent seats would increase from 11 to 20, distributed as follows: six seats for Africa, five seats for Asia, four seats for Latin America and the Caribbean, three seats for Western Europe and Other States, and two seats for Eastern Europe.

On 13 July 2005, the United States unexpectedly issued a sharp rejection of the Group of 4's proposals. This was because of the US strong stand against the extension of the Veto power to new permanent members as it is expected to reduce the US's role in the UNSC.

None of the three draft resolutions submitted in July 2005 was put to a vote during the World Summit. In August, China and the United States agreed to work together to defeat plans to expand the Security Council at that time. Given the deadlock in the reform situation, interest in pursuing this issue further appeared to diminish.

The Summit noted that the reform of the UNSC while the most ambitious reform effort had failed and been abandoned after nine months of negotiations. From the start of the negotiations on the Outcome Document, substantial questions related to membership and working methods had been excluded from the negotiations on the Outcome Document as a result of earlier disagreement.<sup>310</sup>

The lengthy Outcome Document makes only limited reference to the question of Security Council reform in only two paragraphs in fact<sup>311</sup>. The Summit supported an early reform of the Security Council as an essential element in the reform of the United Nations in general in order to make it more broadly representative, efficient and transparent and thus further enhance its effectiveness and legitimacy. The Summit also expressed a commitment to continuing efforts to achieve a decision to this end and asked the General Assembly to review progress on the reform by the end of 2005.

In January 2006, Japan developed a new proposal on Security Council reform. Security Council membership was to be expanded from the current 15 to 21. Of the six new seats, two

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<sup>310</sup> Fassbender, pp. 391–392.

<sup>311</sup> The full text of the Millennium summit outcome document is available at Joachim Muller's, 'Reforming the UN: The struggle for legitimacy and effectiveness' op.cit, P.442.

each would go to Asia and Africa, and one each to Latin America and Europe. In this concept, the status of new permanent members would be given to countries that won the support of at least two-thirds of the United Nations membership, or 128 countries. The new permanent member would have no veto right. Other elected candidates would become semi-permanent members with renewable long-term membership. The current non-permanent membership was limited to two years and was non-renewable. But this proposal was just another proposal doomed to fail. Japan looking at the failure of its proposal warned to reduce its contribution to the UN unless reform is guaranteed.

Since then many meetings in the general assembly were held concerning the issue of UNSC reform but there is no progress. The groups continuing to hold position being those groups at difference in the 2005 world summit, still there is no agreement. The main problem on the reform process is how to achieve a small UNSC that is efficient and representative. Much of the UN member states agree on the need for reform but there is still the disagreement on how?<sup>312</sup>

In September 2008, with the General Assembly's decision (GA)62/557, Member States agreed to move the fifteen year old deadlocked discussions on Security Council reform from the Open-ended Working Group to the Intergovernmental Negotiations in an informal plenary of the General Assembly with a hope that such a negotiation would result in binding decision even without a consensus.<sup>313</sup> But such a proposal was strongly opposed by strong opposition from the Uniting for consensus group.

The issue of UNSC reform is such a pressing issue and there are always new proposals and negotiations from that time on until today. But there is no real change taking place due to the different and complicated political interest behind the issues held by member states of the UN.

Through time there are changes in the reform process that can be taken as improvements but that could not totally justify the long and slow reform efforts. This kind of improvements are much

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<sup>312</sup> Helena Stromegegn: "Reforming the United Nations Security Council: a work in progress" University of Lund, LLM thesis, 2007, pp 26.

<sup>313</sup> Elizabeth Martini, 'UNSC reform Current developments', policy brief produced in the framework of the project, 'The European Union and the Reform of the United Nations Security Council', 2007.

related with the approval of the current permanent five states towards the permanent membership of new states like the US approval of India's bid for permanent membership in the UNSC.

## **CHAPTER FIVE**

### **5. VETO POWER REFORM**

#### **5.1 Introduction**

The Veto power in the United Nations Security Council is one of the most contentious issues involved in the reform process of the United Nations and in the Security Council in Particular. It is also the source of much of the criticism surrounding the UNSC. The widespread arguments raised in relation with its application in the international forum since its creation and incorporation in the UN charter had made it the focus of many discussions.

In chapter two of this paper attempt is made to show the historical background of the veto power, its necessity and application in international organizations before the UN. The theory and practical application of the principle of Collective Security empowers some of the major powers to have this kind of privilege in their relationship with the rest of the community. The Counter arguments to the basic philosophy of this understanding of collective security and all other issues are covered in Chapter Three.

In Chapter four while discussing the past historical attempts to reform the UNSC it is observed that this particular issue of the Veto power is among the major obstacles that hinder agreement between different states and other groups involved in the negotiation. As it is clearly observed from the previous proposals, while the newly emerging powers that aspire for UNSC membership in the permanent seat category want to have this similar privilege with the former permanent seat holders, the latter rejects the proposal to extend this privilege to new permanent members or any restriction in the use of it by themselves.

In this chapter the Veto power in the UNSC is exclusively discussed. This includes a discussion of types of the veto power, the experience of the veto power, analysis by country on trend of the use of the veto power, the criticisms and debates in international law surrounding the veto power, its reform and the different alternative proposals provided are discussed in detail. Most of the

critical debates and proposals that have weight are discussed. In doing so this chapter tries to exhaust all the issues surrounding the need for Veto power reform and on the opposite side the need to maintain this Veto power as an effective tool for international peace and security, ‘Safety Valve’, as it is referred to by individuals advocating for the continuity of the current Veto power held by the permanent five of the United Nations Security Council.

## **5.2 Brief Overview of the Veto Power in the UNSC**

The United Nations Security Council veto power refers to the veto power wielded solely by the five permanent members of the United Nations Security Council :China, France, Russia, United Kingdom, and United States, enabling them to prevent the adoption of any substantive draft Council resolution, regardless of the level of international support for the draft. The veto does not apply to procedural votes, which is significant in that the Security Council's permanent membership can vote against a procedural draft resolution, without necessarily blocking its adoption by the Council<sup>314</sup>.

The veto is exercised when any permanent member casts a negative vote on a substantive draft resolution. Abstention or absence from the vote by a permanent member does not prevent a draft resolution from being adopted<sup>315</sup>.

Looking at earlier practice of international organizations, 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 issue.<sup>316</sup> From 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 that made action on many issues impossible.

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<sup>314</sup> UNCH, Art 27(3).

<sup>315</sup> This rule is provided by a subsequent meeting of the permanent five members to the UNSC after the San Francisco conference

<sup>316</sup> League of Nations Covenant, Article 5(1).

The UN Charter provision of this Veto power or Unanimity was the result of extensive discussion, including at Dumbarton Oaks, August–October 1944, and Yalta, February 1945.<sup>317</sup> The evidence is that the UK, US, USSR, and France all favored the principle of unanimity, 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 hard-headed concern to protect their own sovereign rights and national interest.<sup>318</sup> Truman, who became President of the US in April 1945, went so far as to write in his memoirs:

"All our experts, civil and military, favored it, and without such a veto no arrangement would have passed the Senate."<sup>319</sup>

The purpose for the establishment of the Veto system was to prohibit the UN from taking any future action directly against its principal founding members. One of the lessons of the League of Nations (1919–46) had been that an international organization cannot work if all the major powers are not members. In the league's time the expulsion of the Soviet Union from the League of Nations in December 1939, following its November 1939 attack on Finland soon after the outbreak of World War II, was just one of many events in the League's long history of incomplete membership.

It had already been decided at the UN's founding conference in 1944, that Britain, China, the Soviet Union, the United States and, in due course France, should be the permanent members of any newly formed Council. France had been defeated and occupied by Germany (1940–44), but its role as a permanent member of the League of Nations, its status as a colonial power and the activities of the Free French forces on the allied side allowed it a place at the table with the other four.

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<sup>317</sup> Luck, Edward C. "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. 2008, pp. 61–85.

<sup>318</sup> Winston S. Churchill, 'The Second World War, Triumph and Tragedy,' Cassell, London, 1954, pp. 181-2 and 308-13

<sup>319</sup> Hari.S.Truman, 'Year of Decisions: The Presidential Memories of Hari.S.Truman,' the New American Library, 1945, p. 207. See also US Department of State: "The United States and the Founding of the United Nations". October 2005 available online at [www.state.gov/pubs/55407](http://www.state.gov/pubs/55407) ,last accessed on 12 Oct. 2013. .

It is article 27 of the United Nations Charter that holds this message of Veto power and it states:

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.<sup>320</sup>

Although the power of veto is not explicitly mentioned in the UN Charter, the fact that substantive decisions by the UNSC require the concurring votes of the permanent members means that any of those permanent members can prevent the adoption, by the Council, of any draft resolutions on substantive matters. For this reason, the power of veto is also referred to as the principle of great Power unanimity.<sup>321</sup>

### **5.3 The Experience of the Veto Power**

The actual uses of the veto, and the constant possibility of its use, have been central features of the functioning of the Security Council throughout the UN's history. In the period from 1945 to the end of 2009, 215 resolutions on substantive issues were vetoed, sometimes by more than one of the Permanent Five. The average number of vetoes cast each year to 1989 was over five: since then the average annual number has been just above one.<sup>322</sup>

The figures reflect the fact that a Permanent Member of the Security Council can avoid casting a veto if the proposal in question does not in any event obtain the requisite majority. In the first two decades of the UN, the Western states were frequently able to defeat resolutions without actually using the veto and the Soviet Union was in this position in the 1970s and 1980s. Use of

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<sup>320</sup> 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.

<sup>321</sup> Available at [www.un.org/sc/members.asp](http://www.un.org/sc/members.asp), last accessed on May 10, 2014.

<sup>322</sup> Available at [www.globalpolicyforum.org/UNSC\\_Veto\\_power](http://www.globalpolicyforum.org/UNSC_Veto_power), last accessed on May 10, 2014.

the veto has reflected a degree of diplomatic isolation of the vetoing state(s) on the particular issue. Because of the use or threat of the veto, the Security Council could at best have a limited role in certain wars and interventions in which its Permanent Members were involved for example in Algeria (1954–62), Suez (1956), Hungary (1956), Vietnam (1946–75), the Sino-Vietnamese war (1979), Afghanistan (1979–88), Panama (1989), Iraq (2003), and Georgia (2008)<sup>323</sup>.

Not all cases of UN inaction in crises have been due to actual use of the veto. For example, in the Iran–Iraq war of 1980–88 there was no use of the veto, but the UN role was minimal except in its concluding phase. Likewise the limited involvement of the UN in the crisis in the Darfur region of Sudan from 2003 onwards was not due to any actual use of the veto. A general lack of willingness to act was the main problem.<sup>324</sup>

Since 1990 the veto has been used sparingly. The period from 31 May 1990 to 11 May 1993 was the longest without use of the veto in the history of the UN. Up until the end of 1989 the number of resolutions passed by the Security Council had been 646, an average of about 15 per annum. The figures for the years since then show a peak of Security Council activism in 1993, followed by a modest degree of retrenchment.<sup>325</sup>

In 1950 the Soviet Union missed one important opportunity to exercise its veto power. The Soviet government had adopted an empty chair policy at the Security Council from January 1950, owing to its discontent over the UN's refusal to recognize the People's Republic of China's representatives as the legitimate representatives of China,<sup>326</sup> and with the hope of preventing any future decisions by the Council on substantive matters. Despite the wording of the Charter which makes no provisions for passing resolutions with the abstention or absence of a veto bearing member, this was treated as a non-blocking abstention. This had in fact already become Council practice by that time, the Council having already adopted numerous draft resolutions despite the lack of an affirmative vote by each of its permanent members. The result of the Soviet Union's absence from the Security Council was that it was not in a position to veto the UN Security

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<sup>323</sup> *Ibid*

<sup>324</sup> *Ibid*

<sup>325</sup> *Supra* 317, pp. 78–82, 135–7, 155–65, 688–705.

<sup>326</sup> Malanczuk, P. Akehurst's, 'Modern Introduction to International Law,' Ed. 7, Routledge, 1997, p375

Council resolutions 83 (27 June 1950) and 84 (7 July 1950) authorizing the US-led military coalition in Korea which assisted South Korea in repelling the North Korean attack.<sup>327</sup>

### **5.3.1 States that Commonly Use the Veto Power**

In the history of the Security Council, almost half the vetoes were cast by the Soviet Union, with the vast majority of those being before 1965.<sup>328</sup>

Since 1966, out of the total 155 vetoes cast, 133 were issued by one of the council's three NATO members: the US, the UK and France.<sup>329</sup>

From 1946 to 2008, vetoes were issued on 261 occasions. For that period, usage breaks down as follows:

- ✓ United States has used the veto on 82 occasions between 1946 and 2007; and since 1972, it has used its veto power more than any other permanent member.<sup>330</sup>
- ✓ Russia/the Soviet Union has used the veto on 124 occasions, more than any two others of the five permanent members of the Security Council combined.<sup>331</sup>

### **5.3.2. Most Recent Vetoes**

While China, Russia and the United States have exercised their veto power in the twenty-first century, neither France nor the United Kingdom did so. The following list contains the most recent event any of the five permanent members of the United Nations Security Council exercised their veto power:

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<sup>327</sup> Supra 12

<sup>328</sup> Veto database and information at Global Policy Forum available online at [www.globalpolicy.org/security](http://www.globalpolicy.org/security), last accesses on may 1, 2014.

<sup>329</sup> Use of the Veto: 1945-2008 at Global Policy Forum.

<sup>330</sup> Supra 13

<sup>331</sup> United Nations Documentation at [www.UN.org/documentations](http://www.UN.org/documentations) last accessed on April 20, 2014.

- ✓ Most lately, on July 19, 2012: China and Russia vetoed a resolution threatening Chapter 7 sanctions against Syria.<sup>332</sup>
- ✓ February 18, 2011: The United States vetoed a draft resolution condemning Israeli settlements in the West Bank.<sup>333</sup>
- ✓ December 23, 1989: France, the United Kingdom and the United States vetoed a draft resolution condemning the United States invasion of Panama.<sup>334</sup>

### **5.3.3 Analysis of the Use of the Veto Power by the Permanent Five of the UNSC.**

#### **A. The Soviet Union and Russia**

In the early days of the United Nations, the Soviet Union commissar and later minister for foreign affairs, Vyacheslav Molotov, vetoed resolutions so many times that he was known as ‘Mr. Veto’<sup>335</sup>. In fact, the Soviet Union was responsible for nearly half of all vetoes ever cast 79 vetoes were used in the first 10 years. Molotov regularly rejected bids for new membership because of the US's refusal to admit the Soviet republics. Since the dissolution of the Soviet Union, Russia has used its veto power sparingly.

#### **B. The United States**

Ambassador Charles W. Yost cast the first U.S. veto in 1970, regarding a crisis in Rhodesia, and the U.S. cast a lone veto in 1972, to prevent a resolution relating to Israel<sup>336</sup>. Since that time, it has become by far the most frequent user of the veto, mainly on resolutions criticising Israel. Since 2002 the Negroponte doctrine has been applied for the use of a veto on resolutions relating to the ongoing Israel-Palestinian conflict<sup>337</sup>. This has been a constant cause of friction between

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<sup>332</sup> BBC News, "West 'appalled' by Russia China UN veto". Available at [www.BBC News.com](http://www.BBC News.com). July 19, 2012, last accessed on July 19, 2013.

<sup>333</sup> List of Security Council meetings 2011, Available at [www.un.org/dept](http://www.un.org/dept), last accessed on 20 November 2014.

<sup>334</sup> List of vetoes in the United Nations Security Council., Available at [www.globalpolicy.org](http://www.globalpolicy.org) last accessed on 20 November 2014.

<sup>335</sup> Available at [www.uspolitics.com](http://www.uspolitics.com) last accessed on march 2, 2014

<sup>336</sup> *ibid*

<sup>337</sup> *ibid*

the General Assembly and the Security Council. On 18 February 2011, the Obama administration vetoed resolutions condemning Israeli settlements.

### **C. United Kingdom**

The United Kingdom used its Security Council veto power, along with France, to veto a draft resolution aimed at resolving the Suez Canal crisis in 1956. They eventually withdrew after the U.S. instigated an emergency special session of the General Assembly, under the terms of the Uniting for Peace resolution, which led to the establishment of the United Nations Emergency Force I (UNEF I), by the adoption of Assembly resolution 1001.<sup>338</sup> The UK also used the veto unilaterally seven times because of Rhodesia<sup>339</sup>.

### **D. France**

France uses its veto power sparingly. The last time it unilaterally vetoed a draft was in 1976 to block a Resolution on the question of the Comoros independence, which was done to keep the island of Mayotte as a French overseas territory.<sup>340</sup> It also vetoed, along with U.K, a resolution calling on the immediate cessation of military action by the Israeli army against Egypt in 1956 during the Suez Crisis.<sup>341</sup> The last time France used its veto power was in December 1989 concerning the situation in Panama.<sup>342</sup> In 2003, the threat of a French veto of resolution on the impending 2003 invasion of Iraq caused friction between France and the United States<sup>343</sup>.

### **E. China**

Between 1946 and 1971, the Chinese seat on the Security Council was the government of the Republic of China during which its representative used the veto only once ,to block the Mongolian People's Republic's application for membership in 1955 because the ROC considered Mongolia to be a part of China. After the Republic of China's expulsion from the United Nations

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<sup>338</sup> Available at <http://www.un.org/ga/sessions/emergency.shtml>, last accessed on may 2, 2014.

<sup>339</sup> *ibid*

<sup>340</sup> 'Subject of UN Security Council Vetoes', available at [www.Globalpolicy.org](http://www.Globalpolicy.org) ,last accessed on May 1, 2014.

<sup>341</sup> *ibid*

<sup>342</sup> *ibid*

<sup>343</sup> *ibid*

in 1971, the first veto cast by the present occupant, the People's Republic of China, was issued in 25 August 1972 over Bangladesh's admission to the United Nations. As of December 2008, the People's Republic of China has used its veto six times. Observers have noted a preference for China to abstain rather than veto on resolutions not directly related to Chinese interests.<sup>344</sup>

## **5.4 Types of the Veto Power**

### **5.4.1 Express Veto**

This is the exercise of the veto power clearly and expressly as it is provided under article 27 of the UN Charter. The critics and reform of this veto power are the central point of much of the reform proposals on the UNSC reform. But this Veto power provision in the UN charter has also resulted in other types of Veto that are discussed below.

### **5.4.2 Pocket Veto or Hidden Veto**

As mentioned before, instead of casting a veto and attracting criticism, countries increasingly prefer to use the threat of the use of veto that is referred as the Pocket Veto. They use that threat either implicitly or explicitly, either in the private meetings of the Permanent Five or in the larger Council. On many occasions, they managed to reach their intended outcome and could keep an issue off the Council's agenda or soften the language of a resolution. The examples of pocket veto are abound. In this section some of the most important cases are discussed.

Although France has not cast any vetoes after the end of the Cold War, it has threatened to use that power on several occasions. The most prominent example was the case of 2003 Iraq war when France's threats to veto any resolution that would automatically lead to a war successfully prevented the United States, the United Kingdom and Spain to present a draft resolution to the Council seeking to authorise military action although France could not eventually prevent them from attacking Iraq.<sup>345</sup> A non-violent protest in West Sahara was crushed by Moroccan forces in November 2010. France intervened to support its ally, Morocco. By threatening to use its veto, France could prevent the UNSC members from

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<sup>344</sup> 'Changing Patterns in the Use of the Veto in the Security Council' available at [globalpolicy.org](http://globalpolicy.org). Last accessed on March 2014.

<sup>345</sup> Tarik Kafala, 'The Veto and How to Use it,' available at [www.bbcnews.com](http://www.bbcnews.com) last accessed on 1 June 2013

presenting a resolution to the Council to look into the crimes of the Moroccan military.<sup>346</sup>

A careful analysis of the Security Council's records shows that Russia and China are the two countries that have been relying on pocket veto more than other permanent members. Sri Lanka is an important ally of China and Russia and it is believed in the last phase of Sri Lankan civil war in 2009 many Sri Lankan Tamils were killed by the Sri Lankan army and the forces of Liberation Tigers of Tamil Eelam (LTTE). China and Russia managed well to keep that issue and an inquiry or a possible resolution on the crimes of the Sri Lankan army off the agenda of the Security Council. A search through press statements and meeting records of the Council shows that issue was not adequately discussed in the Council and apart from issuing a press statement about the situation of Sri Lanka in May 2009, the UNSC did not take any other actions.

The most recent example of the use of pocket veto by Russia and China is the situation in Syria and the opposition of these two countries to the issuance of any resolutions by the Council despite the bloody crackdown of Syrian military forces on pro-democracy protestors. When the UNSC members gathered to discuss the situation of Syria on 27 April 2011, the British and French delegates hoped they could get the members to agree on a resolution. However, they were faced with strong opposition from the Russians who argued that the situation did not pose a threat to international peace and security. They believed that all of the problems did not come from one side only and that some protestors hoped to destabilize the country. China was not happy with that resolution either and some of the non-permanent members like India, Brazil, South Africa and Lebanon did not fully support it. Consequently the European sponsored resolution was not put for voting.<sup>347</sup>

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<sup>346</sup> Noam Chamsky, 'Libya and the World of Oil', at New York Times Online viewed at august 2013.

<sup>347</sup> The United Nations Security Council, Under-Secretary-General for Political Affairs Briefs Security Council on Syria, Says 'Repression Is Not the Solution;,' Inclusive Dialogue, Reforms Needed, United Nations Website, [www.un.org/News/Press/docs/2011/sc10235.doc](http://www.un.org/News/Press/docs/2011/sc10235.doc), Last accessed 24 August 2011.



have managed to block any resolutions. As they wanted, the Council merely published a Presidential statement<sup>352</sup> which condemned widespread violations of human rights against Syrian civilians, called for immediate end to the violence, and urged all sides ‘to act in utmost restraint’. Reaffirming their commitment to the sovereignty and territorial integrity of Syria, the Council members called on the authorities to respect human rights and hold accountable those responsible for violence.<sup>353</sup>

There are also some instances where the permanent members, Russia and China in particular, did not keep an issue off the agenda of the Council but managed to soften the language of the resolution issued by the Council. Iran’s nuclear program is an example. Russia and China considerably affected the second resolution on that program which was issued in December 2006. It was the first punitive resolution which imposed sanctions on Iran. Because Iran has been one of the important trade partners of Russia and China, the language of the resolution eventually issued by the Council was much softer than the original draft and the imposed sanctions were lighter.<sup>354</sup> An analysis of all seven UNSC resolutions regarding the nuclear program of Iran shows that Russia and China did not even abstain from voting and always voted in favour of all of the resolutions. Considering their stance towards Iran, one can conclude that they supported the resolutions because the final drafts which came to the Council for voting were in accordance with their interests and were drafted with attention to what they wanted. However, the support of these countries for Iran has decreased over the recent years mainly because of the economic incentives of Western and Arab countries as well as Iran’s continuous defiance and its opposition to compromise.<sup>355</sup>

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Last accessed on June 2, 2013.

<sup>352</sup> Unlike resolutions, a presidential statement needs unanimity.

<sup>353</sup> *supra* 38

<sup>354</sup> UN Passes Iran Nuclear Sanctions, BBC World News Website, available at [www.bbc.new.com.uk/middle-east](http://www.bbc.new.com.uk/middle-east) last accessed on 25 August 2011.

<sup>355</sup> Julian Borger, Medvedev: Sanctions against Iran’s Nuclear Program ‘May be Inevitable’, Guardian Newspaper, available at [www.guardian.co.uk/world/2009/sep/23/nuclear-iran-un-gcc](http://www.guardian.co.uk/world/2009/sep/23/nuclear-iran-un-gcc)- last accessed on 25 August 2011.

However, there is still strong chance that these two countries will veto any resolutions authorizing military action against Iran in the future or they will use the threat of veto to prevent any such resolutions materializing.

The above and previous examples show how the use of veto power has become distant from the initial reason it was included in the Charter. The actual use of veto or even the threat of its use can pressure other members of the UNSC to comply with the demands of the member who has that power. Therefore, the veto gives substantial power to France, the UK and to some extent Russia, who otherwise would not have much power. Robert Hill confirmed that the stance of each of the permanent members is important when a draft resolution is debated. Referring to the importance of North Korea for China or at least until recently Iran for Russia and China and the consequent delicate treatment of those issues by the Council, Robert Hill commented that “the general direction of the Council at the moment is to go easy on the issues that are not of interest of some of the permanent five members of the UNSC”.<sup>356</sup>

### **5.4.3 The Indirect Veto or the Double Veto**

Under article 23 of the UN charter the five permanent members are stated and under article 27 paragraph 3 it states the Veto power of the permanent Five. But that is stated indirectly not explicitly. Decisions are to be made by an affirmative vote of nine of the fifteen members including the concurring votes of the permanent members. This regulation is moderated in that parties to a dispute must abstain from voting on decisions falling under the specifications of Chapter VI.

However, the temptation to use the veto as a tool of power politics occurs only when the interests of a permanent member are at stake i.e. when the member is more or less involved in, and thus a party to, a dispute. To make matters worse, the permanent members can veto the determination of an issue as either a dispute or a mere situation<sup>357</sup>. “Thus, the

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<sup>356</sup> Robert Hill, US ambassador to UN describing the UNSC procedures at June 2011.

<sup>357</sup> According to a regulations made after the San Francisco Conference

permanent members have a so called double veto power on the meta level that decides the preliminary question of whether or not a certain matter is subject to the veto. They can therefore fully protect their interests, and the abstention clause contained in Art. 27, which looks good on paper, is worthless.”<sup>358</sup>

A similar problem arises in regard to the regulation limiting the veto to non-procedural or substantive matters. The permanent members of the Security Council circumvent this restriction of the veto, too, by reserving themselves the right to define the specific Status of the decision on whether something is itself subject to the veto, a substantive matter, or not. This is the classic example of the double veto.

## **5.5 Major International Law Debates Concerning the Application of the Veto Power**

The use of the Veto has raised critical debates in international law. One of the most notable cases is the conflict in Yugoslavia and NATO’s military intervention in Kosovo. During the course of the conflict, Russia in order to protect Yugoslavia repeatedly threatened that it would veto any Security Council resolution authorizing the use of force in Kosovo.<sup>359</sup> Therefore, the Council only went as far as Resolution 1199 which asked for a ceasefire following the reports of gross human rights violations. This resolution emphasized that if its contents were not met the Security Council would ‘consider further action and additional measures to maintain or restore peace and stability in the region’.<sup>360</sup>

Therefore, this resolution did not authorize any country or regional organization to

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<sup>358</sup> Hans Köchler, ‘The Voting Procedure in the United Nations Security Council: Examining a Normative Contradiction in the UN Charter and its Consequences on International Relations’, XVII. Vienna: International Progress Organization, 1991. P 7.

<sup>359</sup> Mary Ellen O’Connell, ‘The UN, NATO, and International Law after Kosovo’, Human Right Quarterly, 22, no.1, February 2000, p.76.

<sup>360</sup> United Nations Security Council, Resolution 1199 (1998), available at [www.un.org/peace/kosovo/98sc1199](http://www.un.org/peace/kosovo/98sc1199), last accesses on 25 August 2011.

launch military intervention. However, on 24 March 1999, the NATO started a bombing campaign over Yugoslavia. The Council perhaps because of the presence of some key NATO members like the United States did not condemn those actions in any subsequent resolutions.<sup>361</sup> Only Resolution 1244, which put an end to the NATO bombing, started with a reminder of the purpose of the UN Charter and the primary responsibility of the Security Council in maintaining international peace and security. It did not condemn the actions of NATO either.<sup>362</sup>

Therefore NATO launched military action against Yugoslavia without the Security Council authorization. It generated a large amount of debate on whether or not that action was legal in terms of international law. Mary O'Connell, in her article on 'international law after Kosovo', argues that the use of force by NATO was inconsistent with both of the UN Charter and the practice of the Security Council.<sup>363</sup> This view is shared by many commentators like Bruno Simma.<sup>364</sup> Unlike other occasions where countries breached Paragraph 4 of Article 2 of the UN Charter and then tried to justify it, the NATO members did not try to provide any legal justifications based on the UN Charter for their actions.<sup>365</sup> . In a nutshell and as the Independent International Commission on Kosovo, an independent group of human rights proponents, confirmed in 2000, those actions were illegal but legitimate as they were ethically justified.<sup>366</sup> Although some countries condemned the actions, the lack of strong

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<sup>361</sup> For example the resolution 1239 which was adopted in May 1999 and after the start of NATO bombing did not mention anything in that regard. Russia and China abstained in protest to this fact.

<sup>362</sup> United Nations Security Council, Resolution 1244 (1999),

<sup>363</sup> *Supra* 59.

<sup>364</sup> Bruno Simma, 'NATO, the UN and the Use of Force: Legal Aspects', *European Journal of International Law*, 10, number 1, 1999, p.1.

<sup>365</sup> Antonio Cassese, 'Ex iniuria ius oritur: Are We Moving towards International Legitimation of Forcible Humanitarian Countermeasures in the World Community', *European Journal of International Law*, 10, number 1 1999, page 24.

<sup>366</sup> Thomas G. Weiss, 'Overcoming the Security Council Reform Impasse: The Implausible versus Plausible', *Friedrich Ebert Stiftung, Occasional Paper Number 14* January 2005, p.29. But here it should be mentioned that still

criticism also showed that in the eyes of many countries those actions were justified. Even the Secretary-General did not condemn NATO's use of force and sufficed to say that: 'normally a U.N. Security Council resolution is required'<sup>367</sup>.

Many NATO members justified their actions on humanitarian grounds. They mentioned that the situation was exceptional and that it would not set a precedent. Furthermore, they argued that their actions were not meant to undermine the Security Council. They declared their commitment to abide by UNSC decisions and to seek its authorization for future enforcement actions. However, this was not so for the USA. American politicians never spoke of that intervention as an exception. In fact, several high-rank officials in the Clinton administration stated that they did not see any necessity in seeking the UNSC's authorization for NATO's enforcement actions.<sup>368</sup> Many argue that by doing so, the USA showed its capacity in undermining the Security Council.

'After the NATO bombing of Yugoslavia, 'the legal regime for the use of force by the regional organizations no longer reflected the previous neat principles'.<sup>369</sup> NATO's use of force in Kosovo initiated different debates over that regime. Some believed that action was a violation of law and did not change anything, while others argued that NATO did not need to seek the UNSC's authorizations. As Cassese argues, exception is not a meaningful term here. Once a group of countries bypass the Security Council and the UN Charter with some vague justification, nothing can restrain them from the same action in the future.<sup>370</sup> That event and following debates lent impetus to the concept of humanitarian intervention, that is, the right to take military action without the UNSC's authorization during humanitarian disasters in order to protect human rights.<sup>371</sup> One can say an event which was the result of repeated use of veto

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many argue against this stance and believe that the grave humanitarian situation of Kosovo was exaggerated for self-serving reasons

<sup>367</sup>Supra 363, p.82.

<sup>368</sup> Ibid. p.57.

<sup>369</sup> Ibid., p.82.

<sup>370</sup> Supra 365, p.25.

<sup>371</sup> Supra 363, pp.70-82.

power by a permanent member, to some extent introduced a new concept in the international law and opened another way to bypass the Security Council. It should be pointed out, however, that this new concept is still controversial and has not yet been mentioned in any treaty or customary law.

It is debatable if the NATO military actions against Former Yugoslavia could be excused because of the grave humanitarian situation of Kosovo people. Many believe that the level of humanitarian crisis was exaggerated and by the time the bombing began many refugees had gone back home and it triggered an exodus of non-Albanians.

However, Kosovo action cannot justify the 2003 Iraq war which shows the capacity of the USA and to some extent the UK to bypass the Security Council when they need to. It also shows the inability of the Council to condemn those actions. The war started without the consent of the Security Council amidst strong opposition from many countries. At that time the latest Security Council resolution on Iraq was Resolution 1441 which found Iraq in material breach of the ceasefire terms and its obligations under Resolution 678 (1991). It stated that the failure of Iraq in fully cooperating in the implementation of the contents of this Resolution constitutes “further material breach of Iraq obligations” and recalled that the Council had repeatedly warned this country that it would face “serious consequences as a result of its continued violations of its obligations”. However, this Resolution was not an authorization for war. It pointed out that the Security Council decided to convene immediately if it received a report of Iraq’s further material breach of its obligations.<sup>372</sup> What some politicians said during the UNSC meeting prior to the adoption of this Resolution further confirm this thesis. John Negroponte, the then Permanent Representative for the US, clearly asserted that the Resolution contained no hidden triggers and no automaticity for the use of force; what the ambassador for the United Kingdom confirmed as well, saying that ‘if there is a further Iraqi breach of its disarmament obligations, the matter will return to the Council for discussion’<sup>373</sup>

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<sup>372</sup> United Nations Security Council, Resolution 1441 (2002), Security Council Documents, available at [www.un.org/unsct/documents/resolution-1441\(2002\)](http://www.un.org/unsct/documents/resolution-1441(2002)), last accessed on 25 August 2011

<sup>373</sup> United Nations Security Council, Security Council 4644<sup>th</sup> meeting, available at UNSC documents, last accessed on, 25 August 2011.

By threatening to veto any resolutions authorizing war on Iraq, France prevented the US and UK from presenting another draft resolution to the Council to get permission for a military attack on Iraq. However, USA, UK and Australia waged war against Iraq without the Security Council approval and without the consent of the majority of international community. Although proponents of the invasion notably then UK Prime Minister, Tony Blair did put forward humanitarian and ethical arguments, for ridding the Iraqi people of an abusive dictator, these were not widely accepted as justifications, and did not serve to broaden support in the international community. Kofi Annan, a year after the start of the war, called the invasion of Iraq illegal and asserted that he believed it should have been up to the Security Council to determine the consequences of Iraq's failure to comply with its obligations. Furthermore, since the beginning of the war he said several times that 'the invasion did not conform with the UN Charter'.<sup>374</sup>

It was later clarified that the issue of Iraq's possession of weapons of mass destruction, the main justification for the initiation of the war, was mainly fabricated by the American authorities to get international support for the US led invasion.<sup>375</sup> Despite all opposition and document fabrication, the Security Council has never issued a resolution condemning the actions of the USA, and UK since both of these countries are permanent members of the Council and can veto such a resolution. Later on, the Council adopted American and British sponsored Resolution 1483 which recognized these two countries as the occupying powers and therefore made them the legitimate and legal peacekeeping authorities. It asserted that it recognizes 'the specific authorities, responsibilities, and obligations under applicable international law of these states as occupying powers'.<sup>376</sup> Therefore, the Council legitimized their presence rather than condemning it.

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<sup>374</sup> BBC News, 'Iraq War Illegal, Says Anna,' available at [www.bbc.news/middle\\_east](http://www.bbc.news/middle_east), last accessed on July 25, August 2011

<sup>375</sup> Iraq Survey Group Final Report, 30 September 2004, available at Global Security Website, [www.globalsecurity.org/wmd/library/report/2004/](http://www.globalsecurity.org/wmd/library/report/2004/) last accessed on 25 August 2011.

<sup>376</sup> United Nations Security Council, Resolution 1483 (2003)

## 5.6 Basic Arguments For and Against the Veto Power

### A. How Much Does the Veto Power Reflect Global Geopolitical Realities?

There is a basic argument raised against the Veto power saying that it is unreflective of today's global geopolitical realities<sup>377</sup>. Different reasons are provided in justifying this position. The first of all the considerations made in concluding so is because the Veto Power is anachronistic and the world now does not need the Security Council as it is now<sup>378</sup>. 'The Permanent 5 were given this privilege for two reasons that have no application in the post Cold War world. Firstly, the Allied powers, with the addition of China, tried to bind themselves to the UN Security Council, which was designed to prevent events like World War II repeating themselves. Secondly, the Permanent 5 held unrivaled strategic might through their possession of nuclear weapon technology or imminent nuclear capacity. However, to examine the status quo, the UN is no longer in danger of collapse. Considering the state of international politics and the symbolic meaning of the UN, the Permanent 5 can no longer abandon the UN or the cause of global peace simply because the veto power is taken away<sup>379</sup>.

The Second argument that this group of scholars raise is that saying: 'the UN Security Council Veto is unreflective of geopolitical realities. They claim that the global power balance has shifted dramatically since 1945, making the nations' participation in global cooperation for security more crucial. Nuclear proliferation has accelerated in the past decade, such that inter alia India, Pakistan, North Korea, Egypt, Iraq and Iran are developing inter-continental ballistic capacity,

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<sup>377</sup> UN's High-level Panel on Threats, Challenges and Change: 'A more secure world: our shared responsibility"', 1 December 2004,p 68.

<sup>378</sup> Too many articles and books are written supporting this position but of all similar expressions the AU position on the veto power reflects this argument. The AU has claimed the Veto anachronistic in its 7<sup>th</sup> extra ordinary session of the executive council of the African union. It adopted the Common African Position on the proposed reform of the United Nation also called 'The Ezulwini Consensus' at the end of the session held form 7-8 march at Addis Ababa, Ethiopia.

<sup>379</sup> The united nation and global policy, available at [www.globalpolicyforum.org](http://www.globalpolicyforum.org),last accessed on july2, 2012.

which is incentive for the permanent five members of the UNSC and other nations to continue to support the Security Council under any circumstances.<sup>380</sup>

Thirdly, they say that the UN Security Council veto perpetuates differences and animosity. One of the permanent five countries typically vetoes a resolution in the United Nations because they or their allies have a strong national or cultural interest in doing so. These interests often contrast sharply with the interests of other countries. And the veto, given the fact that it unilaterally stops things from happening, brings these contrasts to the surface in an often bitter, angering, and antagonizing way. It, therefore, makes a direct connection between antagonism and the differences between countries. This is unhealthy in the international system.

Fourthly, the UN veto is accused of perpetuating unfortunate geopolitical games . The UN veto system was established, in part, to ensure that the United Nations fits within the broader geopolitical game and that it is tolerated within that game. It, therefore, perpetuates an unfortunate geopolitics of self-interested states instead of assuming a higher, fairer role of global governance with the objective of securing common global interests.

There are also groups of scholars who are in the opposite side of all these points of argument. Concerning the issue of Nuclear Powers this scholars say that the UNSC Veto is justifiable given to nuclear powers<sup>381</sup>. ‘The Permanent veto holding members of the UN SC are unique in that they are the only countries that have nuclear arsenals. They are the only countries with the power to initiate full scale nuclear war. Therefore, it is important that that they be able to end measures with their veto power to ensure that measures are not realized that could foment serious international tension and possibly nuclear war.’<sup>382</sup>

Secondly, the Veto power of the permanent five encourages strongest states to work inside not outside the system<sup>383</sup> . If all states are given equal power in the UN SC, it is possible that the most powerful states in the international system will simply not participate. This is not within the interests of the international community, as the participation of the most powerful states is

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<sup>380</sup> Ibid

<sup>381</sup> ‘UN Security Council Veto’ available at [www.debatepedia.com](http://www.debatepedia.com), last accessed on June 2011. This shows the range of similar arguments and the general similar arguments rose in detail.

<sup>382</sup> Ibid

<sup>383</sup> ibid

essential to achieving international objectives, particularly security objectives. ‘Offering veto powers to the most powerful states helps incentivizes the participation of these powerful states, and this ensures the longevity of the UN and its objectives.’<sup>384</sup>

‘Thirdly, the permanent five vetos reward the disproportionate contribution to global security. The most important function of the United Nations, as defined in the UN Charter, is the maintenance of international security. But, different states make very different contributions to international security. Thus, it is appropriate to reward states that make a greater contribution to this primary mission of the UN. The veto to the Permanent five does this.’<sup>385</sup>

Fourth, abandoning the UN SC veto to constrain the US would be wrong . ‘If the Security Council is to enforce its collective decisions, U.S. participation is, at present and for the foreseeable future, a sine qua non. If its purpose is to prevent Washington from doing what it has decided is vital to U.S. interests, only a hopeless romantic would claim this is feasible. Although perhaps understandable as a visceral reaction, the idea that the remaining superpower will continue to participate politically or financially in an institution whose purpose has become to limit its power has no precedent.’<sup>386</sup>

### **B. The Veto Power and the Democratic Principle of Equality**

The line of argument saying that The UN SC veto violates democratic principal of sovereign equality is based on the point that it is no longer viable to argue that nations agreed to join the UN as an unequal body. As a global constitution, the UN charter must uphold sovereign equality. And, yet, the UN SC veto power violates this principle.

‘Power politics dictated the introduction of this Veto power rule, and the member states accepted the normative inconsistency caused by its incorporation into the Charter as a *fait accompli*’<sup>387</sup>.<sup>388</sup> “This not only jeopardizes the systemic consistency of the Charter, but

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<sup>384</sup> *ibid*

<sup>385</sup> *ibid*

<sup>386</sup> Thomas Weiss. "The Illusion of UN Security Council Reform", Washington Quarterly 2003,p 15.

<sup>387</sup> *Supra* 358, p. 85

<sup>388</sup> *Ibid*, pp. 85-116

at the same time it is extremely detrimental to the universal acceptance, legitimacy and implementation of United Nations resolutions. The voting privilege stated in Art. 27 stands in direct conflict with the universal recognition of the United Nations as a transnational authority. Art. 2, para. 1 states that the Organization is based on the principle of the sovereign equality of all its members.. This pledge, however, is nullified by the provision of article 27 without any exculpation as to Narasimhan's expression in his book *The United Nations: an inside View*<sup>389</sup>.

The General Assembly again confirmed in the Declaration of Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations<sup>390</sup> that "the purposes of the United Nations can be implemented only if States enjoy sovereign equality and comply fully with the requirements of this principle in their international relations" and that the principle of equal rights : 'constitutes a significant contribution to contemporary international law' " (Preamble).<sup>391</sup> Para. 1 of the Declaration further defines sovereign equality, among other aspects, as juridicalequality.<sup>392</sup> A voting privilege for certain members of the United Nations, however, is in no way compatible with juridical equality.

Nor does the argument of exception serve to justify the actual situation<sup>393</sup>. Both equality and inequality cannot rule at the same time. One principle nullifies the other.<sup>394</sup> Nor does the argument of exception serve 'so as to this argument a norm is either universally valid or not valid

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<sup>389</sup> Supra 76

<sup>390</sup> Resolution 2625 (XXV) of October 24, 1970.

<sup>391</sup> Supra 358, pp. 79 & 85

<sup>392</sup> It is stated that "nothing in this Declaration shall be construed as prejudicing in any manner the provisions of the Charter or the rights and duties of Member States under the Charter." Thus even in such a declaration formulated with internationalist pathos and moral ambition the precautions of power politics finally take effect. As to Kochler this statement in the declaration itself also is a testament to the effect of Power Politics.

<sup>393</sup> Supra 76

<sup>394</sup> Herbert Weinschel, "The Doctrine of the Equality of States and its Recent Modifications," in *The American Journal of International Law*, vol. 45 (1951), pp. 427

at all. The charter therefore needs clarification along the lines of Kelsen's principle of the unity of normative knowledge.<sup>395</sup>

'The acceptance of the normative power of the facts that there is a functional difference between states in the UN, in other words, a acknowledging that a larger population, superior economy and greater military capabilities entitle a country to additional rights clearly express the surrender of international law to power politics and this is in no way consistent with the United Nations Charter.'<sup>396</sup>

In conclusions all of the arguments raised concerning the veto power and the principle of equality, most of them conclude that the Veto power is just a direct reflection of international power politics not international law and it is a violation of equality of states in the eyes of international law and avoiding the veto power is the only option that is available for a better and more secure world<sup>397</sup>.

### **C. The UN Veto Power and the Principle of Check and Balance**

Scholars that strongly support the Veto power in the UNSC just dismiss the above argument and they say the Veto power in the UNSC is meant to ensure state sovereignty and equality. 'The UN charter does not explicitly offer sovereign equality as a right in the international system. Rather, international security and equality of security is the primary objective. UN SC veto power is a means to maintaining the greatest level of international security, and is thus consistent with the primary objectives of the UN charter'<sup>398</sup>. So as an international organization for collective security the UN is not a place to look for the principle of equality. The UN also provides enough place for the application of the principle of check and balances. The Veto power could not be taken as a violation of the principle of check and balance. The veto power is essential to ensure maximum peace and security. Check and balance criterion is applied over an already provided law and its application. If a practice is out of the prescribed law and there is no means to curb

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<sup>395</sup> Supra 76

<sup>396</sup> *ibid*

<sup>397</sup> Hans Kochlers, *op cite* explains this contradiction between the veto power and the principle of equality in international law in detail.

<sup>398</sup> Hans Kochler, 'Voting procedure in the UNSC', *op.cite*.p 90.

that then it might be possible to say there is no check and balance. But that is not the case with in the UNSC and the UN as a whole. The permanent five have the Veto power for the purpose of international Peace and security and its use and application is regulated by law and any action outside the UN charter is controlled by the UN and the international community as a whole<sup>399</sup>.

#### **D. The Veto Power and the UN Effectiveness**

Some group argues that: ‘the Veto power has decreased the effectiveness of the UN. They argue that abolishing veto would enable more global action in the UN. If the veto was abolished; more measures would make it through the general assembly and Security Council that reflect the will of the general assembly. More would get done in the world, the UN would better fulfill its mission, and it would subsequently achieve greater credibility in the international system, furthering its ability to get things done.’<sup>400</sup>

They also add that: ‘the Veto power undermines the moral stature of the UN. Morality in the international system is defined in large part by equality. Because the UN SC veto undermines the notion of sovereign equality, it undermines the moral foundation and authority of the UN itself. This damages its credibility in the international system, and thus impairs its long-term functionality. The argument further claims that the Veto power causes the perception of the UN as the tool of the West.’<sup>401</sup>

Further, it is pointed out that: ‘Security Council veto undermines UN's soft power legitimacy. The United Nations exercises soft power better than hard power. It gives legitimacy to the actions taken by states, or it takes away from that legitimacy by passing resolutions that, for example, condemn certain actions. This is a highly important function in shaping the international system into a more desirable form. Yet, the veto undermines this function by

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<sup>399</sup> *ibid.* p 85

<sup>400</sup> *ibid*

<sup>401</sup> *Ibid*

enabling veto-holders to veto UN resolution that seek to legitimize or de-legitimize actions taken in the international system.<sup>402</sup>

The Veto power receives strong support from groups that view its presence increases the UN effectiveness in many aspects. They argue that the Veto power ensures that the UN does not pass measures that it cannot fulfill. If measures are passed in the UN that even a single of the Great Powers objects to, the chances that the measure will be implemented are very slim, as a Great Power is liable to take unilateral actions to block implementation. The UN will be powerless to carry through its measure, and its credibility will be damaged. Therefore, the veto is something of a safety valve that ensures that no measures are passed that will fail in the face of geopolitical realities.

The veto power has been wielded with increasing success both during and since the Cold War. This makes it still necessary for increased efficiency in the Security Council. Between 1945 and 1990, 240 vetoes were cast. Yet between 1990 and 1999 the power was utilized on only 7 occasions, while more than 20 peacekeeping operations were mandated. This figure exceeds the total number of operations undertaken in the entirety of the preceding 45 years. Therefore, the veto, rather than bringing the feared side effects of slowing up the Security Council, has been used increasingly well. ‘The prodigious use of the veto during the Cold War period might have saved the world from the realization of nuclear war’<sup>403</sup>. Now, increasing nuclear proliferation is a reason for maintaining the unity of the Permanent five by means of the veto. ‘The current rhetoric concerns ‘rogue states’ gaining possession of nuclear weapons. These are states whose potential deployment of arms is unpredictable and with whom there is limited international dialogue. If the Permanent five is split on a matter of international security, any one or more of

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<sup>402</sup> Sarah okhovat, ‘ The United Nations Security Council: its Veto Power and its Reform’, CPACS Working Paper No. 15/1, Dec 2011,p 30.

<sup>403</sup> David Malone, ‘ The United Nations Security Council from the cold war to the 21<sup>st</sup> C’,Lynne Ryner,USA,2004.P 20.

its members could become equally 'rogue'. Thus, the veto has been effective in uniting the Permanent Five powers in the face of security issues.<sup>404</sup>

#### **D. The Veto Power and Abuse for Individual National Interests**

The critics against the veto power saying it is hijacked by national interest are so abound. These critics say: 'in the rare recent circumstances in which the veto power has been utilized, it has been hijacked by ideological demands and petty national interests. China prevented peacekeeping operations proceeding in Guatemala and Macedonia on account of the engagement of those countries with Taiwan. The veto is no longer applied for the maintenance of collective security.'

The United States unjustly protects Israel with UN veto. The United States has protected Israel from international condemnation in the UNSC dozens of times. The condemnation has surrounding such things as Israel's alleged oppression of Palestinians or abuses and international law violations in its war against Hezbollah in Lebanon. There are too many instances in which Israeli abuses and violations of international law were fairly clear. US defenses of Israel in these instances, therefore, constitute an abusive and unprincipled attempt to protect an ally. This all exposes how the UNSC veto opens the door to abuse.

As discussed above these critics also say that the 'hidden' threat of the UN veto is a major concern. The threat of the use of the veto is as powerful in preventing resolutions being passed as the actual veto itself. Veto wielding countries often notify promoters of a resolution that they will veto it, subsequently causing those promoters to back down and to never actually bring legislation to the floor of the general assembly.

Another point of argument for these critics is Uniting for Peace Resolutions to bypass UN vetoes are only symbolic. The problem with General Assembly Uniting for Peace resolutions is that they don't circumvent the reality that the Security Council is still responsible for the implementation of measures. Therefore, if a Uniting for Peace measure was designed to take any action, it would almost certainly fail to be implemented by the Security Council due to blockage by the vetoing member.

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<sup>404</sup> Ibid

They also raise the concern that the UN veto is being abused to stymie country admissions to UN. Country admission into the UN and into the Security Council is a sensitive topic for some countries, and can often involve deeply rooted prejudices. But, admission should not be held ransom to these prejudices in the form of the veto. The issue of applying the Veto power to the question of membership in the UN was strongly argued on and a proposal was submitted to prohibit any Veto on the question of a state to UN membership<sup>405</sup>. The practice in the cold war showed clearly how the Veto power could negatively be used to prohibit state in the other block from joining the UN.

But scholars that support the prescience of the Veto power in the UNSC forward different counter arguments to the above critics.

First, they say the permanent five vetoes generally uphold international security interests. The military might of each of the permanent five members individually, and within separate groups, notably the UK and US axis within NATO, is such that the avoidance of disagreement is crucial to international peace. The Permanent five may occasionally cast the veto for selfish reasons. Yet this cost is outweighed by the maintenance of unity that becomes ever more critical in the post Cold War multi polar world.

Secondly, UNSC vetoes can be bypassed with Uniting for Peace Resolution.<sup>406</sup> . There's an esoteric maneuver to get around a threatened veto: invoking the obscure U.N. Resolution 377, also known as the Uniting for Peace Resolution. In early 1950, the United States pushed through the resolution as a means of circumventing possible Soviet vetoes. The measure states that, in the event that the Security Council cannot maintain international peace, a matter can be taken up by the General Assembly. This procedure has been used 10 times so far, most notably in 1956 to help resolve the Suez Canal crisis. Britain and France, which were occupying parts of the canal at the time, vetoed Security Council resolutions calling for their withdrawal. The United States called for an emergency uniting for Peace session of the General Assembly, which passed a

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<sup>405</sup> For detailed explanation, see the none aligned movement member states proposal for the restriction of the use of the veto power by the permanent five of the UNSC.

<sup>406</sup> Brendan I. Koerner. 'Can You Bypass a U.N. Security Council Veto?'. Available at [www.Slate.com](http://www.Slate.com). Last accessed on May 1, 2014.

withdrawal resolution. A simple majority vote is required. Britain and France pulled out shortly after. Therefore, it is not really necessary to abolish the veto as sufficient means exist to get around it in the exceptional instances in which the veto contravenes international norms and consensus.

### **E. Is it possible to avoid the Veto Power**

Some argue that reforming the UN Security Council is constitutionally feasible. As Richard Butler has observed, a proper debate about the defects of the veto might at the least yield a more constructive interpretation of the nature of the veto and its application. ‘An informed public awareness of the potential for the Security Council to be bypassed or hijacked might lead to pressure for exercise of the power in accordance with the Charter aims. Notably, China was persuaded or compelled not to cast the veto in respect of the Council measures on Kosovo. This reasonable approach prevailed in spite of vocal Chinese opposition to the bombing campaign, and the destruction of the Chinese embassy by NATO forces.’<sup>407</sup>

Another supportive argument says that the UN veto harms US interests more than it benefits them. This is based on the assumption that The United States more frequently pushes the Security Council to take action than not. And yet, the veto frequently stands in the way of action being possible, particularly in regard to the French, Chinese, and Russian vetoes.

But not everybody agrees on all the above proposals. In the opposite of these arguments lies the groups of scholars that provide the reform of the Veto power is going to be a very tough task.

The first reason they provide is the permanent five countries will not allow the abolition of their UNSC vetoes. The abolition of the power of veto is highly unlikely. The Permanent five states will not willingly cede their pre eminent position in international politics. Articles 108 and 109 of the United Nations Charter grant the Permanent five vetos over amendments to the charter, requiring them to approve stripping away their own veto powers. ‘Given the influence wielded

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<sup>407</sup> Richard Butler AC, ‘Reform of the United Nations Security Council’, Penn State University School of International Affairs, Vol 1, Issue 1, p 33.

by a veto bearing state, it is unlikely that any of the Permanent five would agree to give up this privilege.<sup>408</sup>

The Second reason as to them is because abolition is not a solution. Veto power propels Powerful engines of the permanent five in active world politics and prevents collision between them. World community gets benefits from their social involvement. Dilution of Veto power is good option. New permanent member from developing country requires including in UN SC and Power of Veto need to change. It can be like In place of one two or more members require preventing the adoption of any substantive draft Council resolution, regardless of the level of international support for the draft.<sup>409</sup>

### **F. The Veto Power and Nuclear Proliferation**

There is a very strong argument between two group of scholars that say the Veto power contributes to nuclear proliferation and on the opposite others saying that the Veto power is a tool for disarmament.

The first argument provided by those saying the Veto power contributes to Nuclear Proliferation is : “ the veto power operates to the detriment of international arms control agreements. The web of treaties that concern the non-proliferation of weapons of mass destruction (WMD) are enforced directly or indirectly by the Security Council. Where the treaty provisions do not identify the Council, the constant presence of the leading nuclear powers in the form of the Permanent five, and the responsibility of the body for peace and security ensures that it is the de facto policeman of non proliferation. The Council is crippled by the veto from fulfilling perhaps its most vital function. Two pertinent examples include the continued assembly of a nuclear arsenal by North Korea in violation of its obligations under the Non Proliferation Treaty (NPT). Chinese interests precluded adequate enforcement action by the Council. Iraq had breached every Council measure pertaining to arms limitation to the extent that the UN inspectorate was

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<sup>408</sup> Supra 386, p 147.

<sup>409</sup> Open ended working group on the question of equitable representation on and increasing the membership in the United Nations Security Council.

withdrawn from Baghdad. The absence of an effective response can be attributed to Russian support for Iraq.”

In the opposite of these arguments the other group says that Non-proliferation failures shouldn't be attributed to UN veto. Non proliferation is a highly sensitive and precarious issue, driven by cross currents of history and intelligence. The apparent failure to create an effective system for arms limitation cannot be glibly attributed to the presence of a power of veto. It should be asked whether veto or no veto, what should constitute the appropriate Security Council to a breach of a non proliferation treaty. Under articles 41 and 42 of the Charter the Council could authorize economic sanctions or direct military intervention. Would either overtly hostile approach encourage cooperation on the matter of disarmament? Diplomacy is often best conducted without the big stick of the Security Council. It is thus scarcely remarkable that the United States Non proliferation is precarious because of the significant vested interests at stake. These interests would not only persist in the absence of a veto power, but more likely be inflamed without this crucial ‘safety valve’ for power politics.”<sup>410</sup>

### **G. What are the Alternatives to Abolishing the Veto?**

The possibility of abolishing the Veto power or the absence of any other alternatives to abolishing it is also subject to hot debate. Those arguments raise different issues that are discussed below in short.

The first argument says: “Extending UN SC veto to more countries would reduce UN effectiveness While one way to level the playing field is to offer the veto to more countries that deserve it according to their geopolitical standing. The problem is that this risks increasing the instances in which the veto is used, and in which resolutions are blocked by the national agendas

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<sup>410</sup> Jacques E.C. Hymans, ‘Veto Players, Nuclear Energy, and Nonproliferation’, *International Security*, Vol. 36, No. 2 (Fall 2011), Harvard College and the Massachusetts Institute of Technology. pp. 154–189

of countries. It is better to level the playing field, therefore, by moving in the other direction by banning the veto.”<sup>411</sup>

Secondly, extension of UN SC veto power to other countries will be resisted by current veto holders as demonstrated to the hitherto UNSC reform proposals and the response from the permanent five. Current veto holders enjoy their privileged position and are unlikely to go along with the extension of this privilege to other countries, as it dilutes their own veto power.

Thirdly, “Expanding UN SC veto would increase unilateral military actions With the likelihood of more vetoes being leveled in the UN SC, particularly in regard to the use of military force, it is likely that more countries will take unilateral military action in the face of a veto. This will decrease the legitimacy of the United Nations Security Council, decrease international legal checks on military action, and shift the world back into a more anarchic geopolitical maze.”<sup>412</sup> For these reasons, abolishing the veto is a better course of action.

But there are also quite a number of alternatives provided rather than abolishing the Veto Power.

The First of these says: UN SC veto need not be abolished, but extended to more countries. The veto simply needs to be extended to more countries and in a manner that is more reflective of the geopolitical distribution of power today, as opposed to post-WWII when the current veto-powers were originally distributed.

Arguments include most of the reform proposals raised in chapter four of this paper like “Germany should receive UN Security Council veto power. Germany is raised as an example because it is the strongest power in Europe economically and in terms of its population and territory. And, it is no longer necessary to constrain it out of fears of a WWII relapse. If it were offered veto powers, this would help alleviate some of the geopolitical imbalances associated with it today.”<sup>413</sup>

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<sup>411</sup> Hans Kochler, op.cit.P 90.

<sup>412</sup> *ibid*

<sup>413</sup> German’s position on the UNSC reform and expansion of the veto power to itself, available at [www.spiegelinternational.com/German demands UNSC Veto power](http://www.spiegelinternational.com/German%20demands%20UNSC%20Veto%20power), last accessed on June,2013.

There are also too many other similar arguments saying : Voluntary limitations of UNSC veto to only enforcement would not work ,Abolishing UN SC veto won't solve broader problems in UN SC.

Others argue that the UN reform will not solve problem of states acting in self interest . The UN is generally an ineffectual body in the sense that states are keen on acting in their self interest, whether or not the Security Council gives any blessings or condemnations. Therefore, the veto is somewhat irrelevant to the actions that states will take.

And Finally there is a suggestion saying that the General Assembly should be able to overrule a UN SC veto Instead of abolishing the veto altogether, one solution would be to minimize its power by offering the general assembly the ability to overrule the veto through a supermajority, 2/3 vote. This is the system set in place in many countries, including the United States, where the Senate is empowered to overrule a presidential veto by 2/3 majority vote. In other words implementing the Uniting for Peace resolution of the general assembly would resolve this problem.

### **5.7 Uniting For Peace Resolutions as One Aspect of Revitalization of the United Nations General Assembly**

United Nations General Assembly (UNGA) resolution 377 A,<sup>414</sup>the ‘Uniting for Peace’ resolution, states that in any cases where the Security Council, because of a lack of unanimity amongst its five permanent members, fails to act as required to maintain international peace and security, the General Assembly shall consider the matter immediately and may issue any recommendations it deems necessary in order to restore international peace and security. If not in session at the time the General Assembly may meet using the mechanism of the emergency special session.

The Uniting for Peace resolution also known as the ‘Acheson Plan’ was adopted 3 November 1950, after fourteen days of Assembly discussions, by a vote of 52 to 5 (Czechoslovakia, Poland,

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<sup>414</sup> United Nations General Assembly Resolution **A-RES-377(V)**

the Ukrainian Soviet Socialist Republic, the Union of Soviet Socialist Republics and the Byelorussian Soviet Socialist Republic), with 2 abstentions (India and Argentina).<sup>415</sup>

The resolution provides that:

The General Assembly:

‘Reaffirming the importance of the exercise by the Security Council of its primary responsibility for the maintenance of international peace and security, and the duty of the permanent members to seek unanimity and to exercise restraint in the use of the veto,’ ...

‘Recognizing in particular that such failure does not deprive the General Assembly of its rights or relieve it of its responsibilities under the Charter in regard to the maintenance of international peace and security,’ ...

‘Resolves that if the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, breach of the peace, or act of aggression, the General Assembly shall consider the matter immediately with a view to making appropriate recommendations to Members for collective measures, including in the case of a breach of the peace or act of aggression the use of armed force when necessary, to maintain or restore international peace and security.’

To facilitate prompt action by the General Assembly in the case of a dead-locked Security Council, the resolution created the mechanism of the ‘emergency special session’ (ESS),<sup>416</sup> which can be called upon the basis of either a procedural vote in the Security Council, or within twenty four hours of a request by a majority of UN Members being received by the Secretary-General. In procedural votes, the permanent members of the Security Council do not have the

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<sup>415</sup> United Nations General Assembly Process Verbal meeting 302 session 5 page 7, available at [www.undemocracy.com/ap-v/302](http://www.undemocracy.com/ap-v/302). Last accessed on may,2014.

<sup>416</sup> UN General Assembly Emergency Special Sessions available at [www.un.org/ga/special/session](http://www.un.org/ga/special/session).

ability to block the adoption of draft resolutions, so unlike substantive matters, such resolutions can be adopted without their consent.

Emergency special sessions have been convened under this procedure on ten occasions, with the most recent convened in 1997. However, unlike preceding ESSs, the tenth ESS has been 'adjourned' and 'resumed' on numerous occasions, over the past several years, and remains adjourned. Indeed, more than ten separate 'meetings' have been held by the Assembly, whilst sitting in tenth ESS, since 2000.<sup>417</sup>

While the emergency special session framework was established by resolution A/RES/377 A, the UN Charter always contained provisions for special sessions,<sup>418</sup> which, according to the General Assembly's current Rules of Procedure,<sup>419</sup> can be called within fifteen days of a request being received by the Secretary-General.

The Uniting for Peace resolution was initiated by the United States,<sup>420</sup> and submitted by the Joint Seven Powers<sup>421</sup> in October 1950, as a means of circumventing further Soviet vetoes during the course of the Korean War (25 June 1950 – 27 July 1953). It was adopted by 52 votes to 5,<sup>422</sup> with 2 abstentions.<sup>423</sup> In the closing days of Assembly discussions leading up to the adoption of 377 A, US delegate to the UN, John Foster Dulles, made specific reference to the Korean War as a chief motivator in the passage of the resolution:

"Then came the armed attack on the Republic of Korea and it seemed that the pattern of 1931<sup>424</sup> had in fact begun to repeat itself and that the third world war might be in the making.

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<sup>417</sup> Available at [www.un.org/ga](http://www.un.org/ga) sessions, last accessed on may 2014.

<sup>418</sup> UN Charter, Article IV.

<sup>419</sup> UN General Assembly, Rules of Procedure.

<sup>420</sup> Williams, W: 'Intergovernmental Military Forces and World Public Order', Oceana Publications, 1971,p 284.

<sup>421</sup> United States, United Kingdom, France, Canada, Turkey, Philippines and Uruguay

<sup>422</sup> Czechoslovakia, Poland, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, and Byelorussian Soviet Socialist Republic

<sup>423</sup> India and Argentina

<sup>424</sup> A reference to the Japanese invasion of Manchuria in 1931.

And that might have been and I think it would have been had it not been for a series of accidental circumstances which made it possible to improvise collective resistance to that aggression."<sup>425</sup>

The principal accidental circumstance referred to by Dulles was that the Soviet Union was boycotting the Security Council at the time of the outbreak of hostilities in Korea, and had been since January 1950, owing to its discontent over the UN's refusal to recognize the People's Republic of China's representatives as the legitimate representatives of China,<sup>426</sup> returning only on 1 August 1950 to assume the rotating role of Council President, for that month. This circumstance had meant that the Security Council was able to adopt its resolutions 83, of 27 June 1950,<sup>427</sup> and 84, of 7 July 1950,<sup>428</sup> thereby establishing a UN mandated force for South Korea to repel the armed attack from the North. Had the Soviet Union been seated at the Council during the months of June and July, the relevant draft resolutions would almost certainly have been vetoed, and the United States was well aware of this, as evidenced by the above statement.

Although "Uniting for Peace" was enacted because of Soviet vetoes its first use was, unexpectedly, against two NATO members.<sup>429</sup> The Assembly's first emergency special session was instigated by a procedural vote of the Security Council on its Resolution 119 of 31 October 1956,<sup>430</sup> as a result of the Suez Crisis, which commenced 29 October 1956. France and the United Kingdom were the only two Council members to vote against the adoption of Council resolution 119, and were likewise, along with Israel, the principal antagonists in the conflict with Egypt; a conflict that the United States wanted to end. The session's meetings were held between 1 November and 10 November 1956.

On 7 November 1956, the Assembly adopted resolution 1001,<sup>431</sup> thereby establishing the United Nations Emergency Force I (UNEF I) to secure and supervise the cessation of hostilities. The

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<sup>425</sup> United Nations General Assembly Process Verbal meeting 299 session 5 page 4, John Foster Dulles on 1 November 1950

<sup>426</sup> Malanczuk, P , 'Akehurst's Modern Introduction to International Law', Ed. 7, Rutledge, 199,page 375,

<sup>427</sup> United Nations Security Council Resolution 83 in 1950

<sup>428</sup> United Nations Security Council Resolution 84

<sup>429</sup> Eayrs, James , 'The Commonwealth and Suez: A Documentary Survey' ,Oxford University Press, 1964, p. 171.

<sup>430</sup> UN Security Council resolutions of 1956.

<sup>431</sup> Hunt, C. 'The 'veto' charade', available at [www.zmag.com](http://www.zmag.com) last accessed on March 2014.

Assembly, by its own resolutions, not only established UNEF I, but also called for "an immediate cease-fire, and recommended that all Member States refrain from introducing military goods in the area, thereby authorizing military sanctions.

The UNGA's eighth emergency special session was convened by Zimbabwe in order to discuss the Question of Namibia. Its meetings were conducted between 3 September and 14 September 1981.<sup>432</sup>

At the conclusion of the final meeting of the session, the Assembly adopted resolution A/RES/ES-8/2,<sup>433</sup> in which it stated:

*"Declaring* that the illegal occupation of Namibia by South Africa together with the repeated acts of aggression committed by South Africa against neighboring States constitute a breach of international peace and security,"

*"Noting with regret and concern* that the Security Council failed to exercise its primary responsibility for the maintenance of international peace and security when draft resolutions proposing comprehensive mandatory sanctions against South Africa under Chapter VII of the Charter of the United Nations were vetoed by the three Western permanent members of the Council on 30 April 1981," ...

*"6. Calls upon* Member States, specialized agencies and other international organizations to render increased and sustained support and material, financial, military and other assistance to the South West Africa People's Organization to enable it to intensify its struggle for the liberation of Namibia;" ...

*"13. Calls upon* all States, in view of the threat to international peace and security posed by South Africa, to impose against that country comprehensive mandatory sanctions in accordance with the provisions of the Charter;"

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<sup>432</sup> United Nations General Assembly Document 856 session 52

<sup>433</sup> Available at [www.un.org/UN General Assembly Emergency Special Sessions](http://www.un.org/UN%20General%20Assembly%20Emergency%20Special%20Sessions), Last accessed on April 2014.

"14. *Also strongly urges* States to cease forthwith, individually and collectively, all dealings with South Africa in order totally to isolate it politically, economically, militarily and culturally;"

This was the first occasion on which the Assembly authorized economic, diplomatic and cultural sanctions against a state; it had already authorized military sanctions by its resolution 1001 of 7 November 1956,<sup>434</sup> during its first emergency special session. Resolution A/RES/ES-8/2 also reaffirmed the power of the General Assembly to authorize the use of military force by UN Member States, though it contradicts the UN Charter (Art. 12).<sup>435</sup>

### **5.8 The Place of the Veto Power Issue within Past and Present UNSC Reform Proposals.**

As it is discussed in detail the UNSC reform debates is something that has been on agenda ever since the initial time of its operation. But the reform demands and the proposals varied through time. Currently the UNSC reform debates stands where it was in the 2005 millennium summit. No greater issue is resolved since that time in terms of actual agreement on the reform proposals. There were various proposals but there is still no agreement on the specificities of what a reform actually is. There is quite an improvement on the way the UN handles the issue. One of such great improvement being the direction of the negotiation from the working group to the intergovernmental panel.

There is also a significant improvement on the side of the permanent five. Unlike previous times, the permanent five are now supporting the proposal of states for the permanent seat category. The US support for India and also the rest of the permanent five supporting the proposal of the group of four is something that was absent in the previous UNSC reform discussions.

It is possible to summarize the major events in the UNSC reform effort as follows: Let alone the 1965 breakthrough in the UNSC history as the only real change in the UNSC structure through

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<sup>434</sup> Ibid

<sup>435</sup> Ibid

dejure Charter amendment, much of the contemporary positions on the UNSC reform find their roots from 1991 on. Germany and Japan aspired to be permanent members of the UN since 1991. German and Japan saw themselves as major contributors to the UN budget and claimed permanent seat for them in the UNSC. Their proposal got immediate conditional acceptance from the permanent five attached with it a requirement of commitment in the future peacekeeping operations of the UN and other UN activities. But German and Japan were not happy not only with the acceptance of their proposal with conditions attached but due to the fact that the permanent five were against the extension of the Veto power to them.

The Non Aligned States made UNSC reform one of the basic goals since their meeting in Jakarta in 1991. They requested the UNSC expansion both in the permanent and non permanent membership category. But the NAM member states were in disagreement on the number and type of increase in membership and also while some of them supported the extension of the veto power others said we should move towards abolishing and the new permanent members shall not have the Veto power.

Even if the members of the none aligned states were divided on the issue of the expansion of the number of the permanent seat of the UNSC they all agreed that there should be placed a limitation on the use of the Veto power by both the existing and new permanent members of the council. Both groups of states in the NAM that agreed on the expansion of the non-permanent membership and also the other group that agreed on the expansion of the permanent membership with the same rights and responsibilities as expresses by the View of the Groups of African states within the NAM supported that limitation should be provided on the scope of the use of the veto power both by the new and existing UNSC permanent members. Since the NAM member states recognized the fact that the existing permanent member states will not consent on the abolition of the Veto power now they took its limitations as the first step towards its future abolition. These proposals in the limitation of the use of the veto power are:

5. Decisions concerning the admission of new UN member states;
6. Recommendations for the appointment of the UN Secretary-General;
7. Decisions relating to provisional measures under Article 40 of the UN Charter; and
8. Measures under Article 50 of the UN Charter relating to the economic problems of third countries arising from UN-imposed sanctions.

9. Some of them went so far as to advocate that the veto should be restricted to decisions under Chapter VII of the Charter. There were also proposals for a change in the current voting system as outlined in Article 27 (3) of the Charter. Some of them, for example several African states, welcomed the idea put forward by the Netherlands by which two vetoes would be required to overturn a decision. In this way no one permanent member could unilaterally block the Council's decisions and recommendations. Others pointed to the fact that certain measures to limit the scope of the veto, being procedural in nature and to which the veto itself could not be applied, would not require an amendment of the Charter and could be made through revision of the Rules of Procedure of the Security Council.

The group of the European states both the Nordic Countries and the other group also agreed with the NAM and African states proposal for the restriction of the use of the Veto power.

The other proposal by Italy that was supported by Spain, Egypt and many more other countries called on the creation of other category of UNSC membership and expansion only in the non permanent membership category. This proposal avoided expansion in the permanent membership category and an increase in Veto wielding power.

In the 1996 though, all the permanent members of the UNSC made it clear that they will not deal with any UNSC reform proposal that aims at avoiding the Veto power or restricting its use by the permanent five.

In 1997 Ismael Razali, the then GA president, made an attempt to reconcile the multiple difference between the UN member states in the UNSC reform. According the Razil reform plan there will be newly selected five new permanent members and four non permanent members. But the new five permanent members would not have the Veto power. But this reform proposal was mate with strong criticism from the NAM states and it was dropped out from the UNSC reform agenda in 2000.

Then taking into account the proposals of the High-level Panel, three draft reform resolutions were considered. The Group of 4, including Germany, Brazil, Japan and India, pushed for a proposal that would provide them with new permanent seats. In order to improve the

acceptability of the proposal, no veto right was demanded for the new permanent seats. A larger group of member states, called Uniting for Consensus and led by Italy, Pakistan, Canada, Mexico, South Korea, Spain, Turkey and Argentina, favoured the establishment of a larger number of semi-permanent seats, again without veto rights. Whereas those countries were unlikely to gain one of the proposed new permanent seats, they would be stronger candidates in a semi-permanent arrangement. The two proposals did not, however, gain the support of the African states, which demanded permanent seats for Africa with veto rights. As described, in the end, no proposal was submitted to the World Summit, and the attempt to reform the Security Council had failed once again after its previous collapse in the context of the 1995 Summit.

In May 2005, the United States warned Japan, India, Germany and Brazil that it would not support their bids to join the Security Council unless they agreed not to ask for veto power. In 2008 there was initiative within the UN to take the UNSC reform agenda from the working group towards an intergovernmental negotiation, but this plan was opposed by the NAM states and it was rejected.

## **5.9 Different Types of UNSC Veto Power Reform Proposals**

There is no any single reform proposal pertaining to the Veto power of the P5 in the UNSC. All the Veto power reform proposals come up with the proposal of reforming the UNSC. But within the stated and groups of states proposal for the UNSC reform and also as an independent issue the veto power reform has been raised so many times. In the coming section, we will look at the various reform proposals pertaining to the Veto Power only.

### **5.9.1 Avoiding the Veto Power**

As it is expressed in the position of the member states to the NAM movement abolishing the Veto power is the very best option of reforming the United Nations Security Council for the purpose of global Peace and Security. This is an argument that is supported by many groups. The main emphasis of the argument calling for the total removal of the veto power is the conditions that were present after WWII are no more in the contemporary world and the UN today does not need a member state with a veto power. This argument gains strength with the increase of contribution from non permanent member states to the UNSC in the area of maintaining

international Peace and security and the growth in their financial contribution to the UN budget and the persistent refusal of the incumbent permanent five to elevate the status of these new actors in the UNSC.

### **5.9.2 Two Veto Instead of a Single Veto**

Another argument raised as an alternative to abolishing the Veto power is to adopt a law that requires two Vetos from two permanent members in order to stop only one permanent member from stopping a decision that is unanimously supported in the UNSC.

A requirement that for a veto to become effective it has to be exercised at least by two permanent member states has been supported by the OAU, Mongolia, Tunisia, Singapore and other member states to the UN<sup>436</sup>.

### **5.9.3 Determining the Existence National Interest of One of the Permanent Five by the Rest of the UNSC Members.**

Among the proposals for the Veto power reform presented is one that leaves the right of any permanent member to use its veto power on the will of the rest of the permanent five. In the working group discussion it was presented that: ‘No permanent member shall be allowed to use its Veto Power when the other permanent members of the council unanimously agree that states has National Interest over the issue’<sup>437</sup>.

At the same time another proposal was also presented to leave decisions concerning the status of members of the organization and cooperation with regional organizations and agencies in the performance of coercive action within the scope of the Veto and to expand the scope of procedural matters to which the Veto does not apply according to article 27, Para 2 of the UN charter<sup>438</sup>.

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<sup>436</sup> Position of the OAU on the UNSC reform, OAU DOC, NY/OAU/POL/84/94/Rev.2 of Sep, 1994, para 31, 33&34, and also statement by the Tunisian Ambassador in the open ended working group on Feb 28, 1986.

<sup>437</sup> Open ended working group on the question of equitable representation on and increasing the membership in the United Nations Security Council.

<sup>438</sup> Ibid

In this context it was emphasized that certain measures to limit the scope of the veto would not require an amendment to the UN charter, but could be achieved through a revision to the provisional provisions of the rules of procedure of the Security Council, current practice with in the security council and General Assembly resolutions. In particular emphasis was given to the General Assembly resolution 267(III) which includes a list of issues that are considered procedural by the assembly in that time.

#### **5.9.4 Responsibility Not to Veto Certain Issues in the UNSC**

This Proposal<sup>439</sup> provides that the permanent five members of the UN Security Council (P5) should agree not to use their veto power to block action in response to genocide and mass atrocities which would otherwise pass by a majority. The concept of the ‘responsibility not to veto’ (RN2V)<sup>440</sup> has been discussed in a variety of international forums for nearly a decade as an element of the Responsibility to Protect (R2P). However, while the Member States of the United Nations (UN) unanimously endorsed the ‘responsibility to protect’ principle in October 2005, the Permanent five have yet to operationalize it. Adopting an agreement which removes the use of the veto in cases of genocide and mass atrocities would be one step to implementing the R2P agenda<sup>441</sup>.

The idea that the Permanent five s t a t e s should agree not to use or threaten their veto power when addressing situations of mass atrocities has its origins in the early discussions about the R2P principle. In 2001, in an attempt by the International Commission on Intervention and State Sovereignty (ICISS) to engage the permanent Five , key French government officials, think tank members and opposition party members were brought

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<sup>439</sup> Ariela Blätter , ‘The responsibility no to Veto a way forward’, the Director of Policy and Programs for Citizens for Global Solutions 2010

<sup>440</sup> The term was created by Don Kraus, Chief Executive Officer of Citizens for Global Solutions.

<sup>441</sup> Supra 129.

together for a roundtable in Paris.<sup>442</sup> It was here that the French Minister of Foreign Affairs, Hubert Védrine, first proposed a new ‘code of conduct’ for the P5 in the context of a responsibility to protect. Védrine proposed that an agreement be generated concerning use of the veto regarding actions necessary to halt or avert a serious humanitarian crisis.<sup>443</sup> His idea was that in matters where their vital national interests were not involved, the P5 states would not use their veto to obstruct the passage of draft resolutions that would otherwise gain a sufficient number of votes to pass.<sup>444</sup> This ‘code of conduct,’ he argued, was a more achievable option than formally amending the UN Charter to reflect a change in the veto authority. Védrine suggested that an agreement by the P5 to refrain from using the veto would enable the Security Council to be a more effective body by allowing quicker reaction time which, in turn, would generate greater reliability, predictability and credibility for the institution<sup>445</sup>

This proposal and the ICISS’s own deliberations eventually led the Commissioners to recommend that the P5 ‘should agree not to apply their veto power, in matters where their vital state interests are not involved, to obstruct the passage of resolutions authorizing military intervention for human protection purposes for which there is otherwise majority support.’<sup>446</sup> The R2P idea slowly started to build momentum during 2002 and 2003. In September 2003 Secretary-General Kofi Annan reported to the General Assembly that he had appointed a High-Level Panel to conduct an in-depth study on global threats and recommend changes necessary to ensure effective collective action, including a review of the principal organs of the UN. Of most relevance here is the fact that the Panel’s report published in December 2004 referred to the institution of the veto as having an ‘anachronistic character’ and

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<sup>442</sup> On 23 May 2001 a roundtable discussion with French Government officials and Parliamentary officials was held at the Canadian Cultural Center in Paris. This was one of many consultations the ICISS held at venues all over the world. For details of the Paris meeting see ICISS, *Responsibility to Protect: Research, Bibliography, Background* (Ottawa: IDRC, December 2001), pp.378ff.

<sup>443</sup> Ibid, paragraph 6.21.

<sup>444</sup> Ibid, p.379.

<sup>445</sup> Ibid, p.379.

<sup>446</sup> Ibid, p.XIII.

recommended that any proposal for Council reform refrain from expanding the veto power.<sup>447</sup> The High-Level Panel called for the permanent members, ‘in their individual capacities, to pledge themselves to refrain from the use of the veto in cases of genocide and large-scale human rights abuses.’<sup>448</sup>

Momentum for the idea of a responsibility not to veto continued in the debates leading up to the World Summit in 2005. However, the final version of the outcome document did not address any measures that would limit the P5’s veto powers in relation to situations of mass atrocities. According to accounts of the long process of drafting the outcome document this particular omission was due in large part to P5 pressure.

In early 2008 the idea was out back on the agenda by an alternative and bipartisan group of Americans who were planning a rather different approach to R2P. This initiative was the Genocide Prevention Task Force established by the US Holocaust Memorial Museum, the American Academy of Diplomacy, and the US Institute of Peace and chaired by former Secretary of State Madeleine Albright and former Secretary of Defense William Cohen. The Task Force was assigned to create a blueprint for the incoming administration to procedurally and structurally align the US government to prevent genocide and mass atrocities worldwide. Among other suggestions, the Task Force also discussed the question of the P5 veto.

‘Too frequently,’ its report argued, ‘one of the five permanent members of the UN Security Council has made effective collective action virtually impossible by threatening veto, implicitly or explicitly. This has led to either watered-down, ineffectual resolutions or no resolution at all.’<sup>449</sup> Recognizing that in the contemporary international system there is little substitute for effective action taken by the Security Council, the Task Force pointed out that it was in US national interests to improve the manner in which the Council deals with mass atrocities.<sup>450</sup>

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<sup>447</sup> High-Level Panel, A More Secure World, paragraph 256.

<sup>448</sup> Ibid, paragraph 256.

<sup>449</sup> Genocide Prevention Task Force (GPTF), Preventing Genocide: A Blueprint for U.S. Policymakers (Washington DC: The US Holocaust Memorial Museum, The American Academy of Diplomacy, and the US Institute of Peace, 2008, p.106.

<sup>450</sup> *ibid*

Shortly after the release of the Genocide Prevention Task Force, the UN Secretary-General released his January 2009 report, *Implementing the Responsibility to Protect*, which called for reform of the way the P5 wielded their veto power. Citing a global attitude shift since the massacres in Cambodia, Rwanda, Srebrenica and elsewhere, Ban Ki-moon stated that the political costs had risen domestically and internationally for ‘anyone seen to be blocking an effective international response to an unfolding genocide or other high-visibility crime relating to the responsibility to protect.’<sup>451</sup> Describing the P5 veto power as a privilege of tenure, he outlined how these States had particular responsibility ‘to refrain from employing or threatening to employ the veto in situations of manifest failure to meet obligations relating to the responsibility to protect’ in situations of genocide, war crimes, ethnic cleansing and crimes against humanity.<sup>452</sup> Later that year the General Assembly debated how to take the R2P agenda forward and it was notable that more than 35 member states echoed the recommendation of the Secretary-General’s report for the P5 to refrain from employing the veto in situations where people are at risk of mass atrocity crimes.<sup>453</sup>

This brief overview illustrates that not only has the idea of a responsibility not to veto been doing the diplomatic rounds for at least a decade it has also made some headway within P5 states, notably members of the former US administration, France, as well as the UN Secretariat. Yet it has made no discernable public progress in the arena that really counts: the Security Council. Moreover, it is noticeable that even senior figures in the Obama administration who are self-proclaimed supporters of the R2P have made no public mention of the responsibility not to veto.<sup>454</sup>

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<sup>451</sup> *Implementing the Responsibility to Protect*, Global Center for the Responsibility to Protect, paragraph 61. August 2009), p.6

<sup>452</sup> Ibid

<sup>453</sup> These included South Korea, Liechtenstein, Lesotho, Costa Rica, Denmark, Italy, Malaysia, New Zealand, Rwanda, Solomon Islands, South Africa, Slovenia, Switzerland, Singapore, Timor-Leste and Norway. Bolivia went as far as calling for the veto to be abolished. Global Center for the Responsibility to Protect, *Implementing the Responsibility to Protect – The 2009 General Assembly Debate: An Assessment* (GCR2PReport, August 2009), p.6.

<sup>454</sup> Remarks by Ambassador Susan E. Rice, US Permanent Representative on ‘The UN Security Council and the Responsibility to Protect’, International Peace Institute, Vienna seminar, 15 June 2009,

## **5.10 The Prospects for the Responsibility Not to Veto and the Challenges Ahead**

The extent to which members of the P5 are willing to countenance the idea of RN2V is arguably a good barometer of the depth of their commitment to responding effectively to mass atrocities. While the RN2V idea appears to have originated from a P5 member – French Foreign Minister Hubert Védrine – the P5 have not taken up the issue publicly since then. In many ways their reluctance to openly discuss self-imposed limits on their veto authorities beyond what is prescribed by the UN Charter is hardly surprising. What is perhaps more telling is that all references to the RN2V were removed from the final version of the 2005 World Summit Outcome Document despite being present in earlier drafts of the text. In sum, the P5's commitment to the Responsibility to Protect must be questioned; the failure to adopt concrete proposal to reform their approach to the veto in cases of genocide and mass atrocities demonstrates that there is still a lot of work to be done here.

In conclusion, all the above mentioned proposals alternative to abolishing the veto seem workable alternative at this time. But it does not mean that these are the only proposals on the table, there are too many others. What are discussed above are the proposals having more weight and which are more attractive to the contemporary UNSC reform effort.

## **CONCLUSIONS AND RECOMMENDATIONS**

### **CONCLUSIONS**

The United Nation is created in 1945 with different objectives and principles that stand for the maintenance of international peace and security, ensuring respect to fundamental Human rights, respect for international Law and for the promotion of economic and social rights so as to achieve and promote social progress and better standard of life in larger freedom for all. It was particularly aimed at creating a world body that could avoid further destruction and atrocities similar to what has happened in WWII. In doing so the founding fathers expressly incorporated the geopolitical reality of the time in the UN charter. But through the last almost 70 years since the creation of the UN there is a significant change in the global geopolitical realities that gives a compelling reason to reform the UN.

Looking at the international system before the creation of the United Nations we find similar organizations that manifested commitment for similar objectives and principles that the UN is established for. The League of Nations had the closest resemblance to the UN. Throughout time it is proofed that states created an alliance for the purpose of maintaining peace and security and also other similar purposes. The Principle of collective security is raised so many times as a principle providing for the maintenance of international Peace and Security. While the roots of the practice of collective security date back to the ancient times, the modern understanding came at the second decade of the twentieth Century. This theory was incorporated in the creation of the United Nations. The theory of collective security aspires for the security of all. In its application it is inevitable that the Major Powers with a better financial and military capacity will take the burden of providing this Security Service that is considered as a public Good. Enforcement of collective security actions demands a huge financial, technological and human resource, so inevitably there will be states that take the lion's share of the action and states that just contribute only a very minimum to the collective security action. In the presence of this reality it is inevitable to provide a privilege for those states that are the Biggest Lions in the

collective security Enforcement action. If that is so it is mandatory to have a collective security organization that works behind the national interest of its major power, though this is not taken as the main objective of the organization.

The power structure in the United Nations Security council is justifiable from the perspective of establishing a global collective security organization that includes the major powers that are mainly responsible for the actual implementation of collective security actions. The UNSC structure is more justified looking at the geopolitical realities that existed at the establishment of the UN.

On the other hand changes in the global reality are also one vital aspect of international relations. As an international organization, the UN had faced strong criticisms that are diverse from its inception on until today. Criticisms against the UN are not directed against a single organ only. There are multifaceted critics. This critic has resulted in reform in the UN since 1945 until today in various activities of the organization. But still in 2014 reform is compulsory in the UN regarding the transparency of the UN secretariat, the application of democratic principles in the major UN organs, reform as regards the rule of financial contribution to the UN, strengthening the UN Human rights council and other reforms. But above all the Reform of the United Nations Security Council is the most demanding. Currently, there are compelling reasons for the change in structure of the United Nations Security Council.

The Security Council was formed mainly by the victorious states of 1945 with a view to be the main organ responsible for peace and Security. The Security Council was built up around the realistic conviction that its structure, for reasons of effectiveness, should have integrated within it the element of power and should reflect on a small scale the membership of the UN. The element of power was embedded in the structure of the Security Council through the creation of a select group of five permanent members, which were given special privileges including the coveted right of veto over questions of substance which came before it. The idea that its composition should be more or less proportionally representative of the UN membership was materialized through the addition of six non-permanent members, thus raising the total size of the Council to 11 members.

Even if the UNSC was established in accordance with the realities of 1945 but, as a dynamic

and flexible institution of the UN, it had to keep its structure abreast of the changes in the world environment in which it has lived ever since. It follows that the reform of the Security Council is not an end in itself but rather an essential means of it retaining its relevance to an evolving world. The need arises for the institutional structure of the Security Council to be periodically overhauled in order to avoid facing the danger of remaining behind the reality in which it is supposed to function.

During the first ten years of the Security Council's operation there were relatively few complaints. Such demands started to be raised from 1955 and onward as many new independent states emerged in Asia and Africa in the course of the historical process of decolonization and became UN members. As a result, the general membership of the world organization was doubled during the period 1955 to 1960. The dramatic increase in UN membership, which continued unabated until 1963, upset the ratio of the total number of members of the UN to the number of seats in the Security Council and brought about pressures for a reconsideration of the original composition of the Security Council and, more particularly, its non-permanent category. A large number of small and medium states called into question the original membership of the Security Council, casting doubts on the validity of the agreement of 1946, on the basis of which the non-permanent seats had so far been geographically distributed. In 1963 the afro Asian states constituted more than half the UN's membership and became more assertive and demanding in the expansion of membership in the UNSC. Accordingly, they tabled their own proposal, which called for an increase of the non-permanent seats from six to ten and thereby an increase in the total membership of the Security Council from 11 to 15 and a change in the number of votes required for Security Council decisions from seven to nine. Their proposal also called for the replacement of the agreement of 1946 and the election of the non-permanent members possibly on the basis of a newly agreed formula for regional distribution. Their proposal, which was tabled in the form of a draft resolution in the General Assembly, was approved by an overwhelming majority of the General Assembly in 1963. It constituted an amendment of Articles 23 and 27 of the UN Charter and came into effect in 1965, when two-thirds of all the members of the UN deposited their instruments of ratification according to the requirements of Article 108 of the UN Charter.

The successful expansion of the composition of the Security Council gave satisfaction to the majority of the member states and eliminated almost all pressures for Council reform for a

while. Until the 1990 rebirth of the reform claim it was only India and some members of the Non Aligned Movement that tried to ask further expansion of the UNSC but it did not last long. The UN membership increased very much and the need was felt for further reform. Germany and Japan started publicly to voice their aspirations for permanent membership of the Council. Italy put forward its proposal for an EU common seat at the Council, while a large number of states mostly from the less developed world began to make complaints saying the council is unrepresentative and the use of power by the permanent five is against international law. This regenerated the question of reform again but the permanent five were against any reform proposal of the UNSC.

The permanent five replaced Russia on the former USSR seat in order to stop further reform questions. The General assembly started to discuss the reform issue under the item entitled 'Question of Equitable Representation on and Increase in the Membership of the Security Council'. In 1993 Germany and Japan decided openly to pursue a permanent seat on the Council, while a large number of medium and small states, mostly from NAM, put strong pressure on the UN General Assembly to consider the issue. The permanent five were no longer able to contain discussion of the issue in the UN.

By the end of 1993 the question of reform was included in the deliberations of the General Assembly, which established a special subsidiary group to discuss and examine the question of Council reform and all relevant issues. When the 'Open-Ended Working Group on the Question of Equal Representation on and Increase in the Membership of the Security Council' started its proceedings in 1993, the three Western permanent members changed their status quo position and gave lukewarm support to Japan's and Germany's candidatures. Washington, London and Paris made their support conditional on Bonn and Tokyo committing themselves not only to increasing their financial contribution to the UN budget but, more importantly, to being able and willing to take part in UN peacekeeping and peace-enforcement operations.

The permanent five were also silent about the question of the Veto Power. China and Japan remained silent as to their support of any candidate. The conditional support expressed for Japan's and Germany's claims for permanent membership pushed the two candidates to work hard from 1993 onwards on improving their credentials for permanent seats: both states, which had started from the early 1990s to assume additional financial responsibilities, raised further their contributions to the UN budget as well as to its budget for peacekeeping operations.

Until 1994 the permanent five of the Security Council tried to satisfy the reform demand by the addition of Germany and Japan to the permanent membership. However, the prospect of the Council becoming more heavily tilted in favor of the industrialized world caused resentment among many countries which made known to the permanent five that they would never accept the enlargement of the Council by only these two states.

The states of NAM sought an expansion of the total membership of the Council of up to 26 seats. There were two main groups of states within the ranks of NAM, each group holding different positions as to a number of crucial issues. The first group, consisting of states mostly from Latin America and Asia, were in favor of the so-called 'two plus three' formula, whereby two permanent seats would be assigned to Germany and Japan and three permanent seats to developing states plus six non-permanent seats. Most of them, with a few exceptions such as India, were against the idea of extending the right of veto to the new permanent members. The second group, consisting mostly of African states belonging to NAM, sought the addition of more than three rotating permanent members from the less developed world in order to offset the imbalance that would be created by the inclusion of Japan and Germany into the club of permanent members and, at the same time, a corresponding increase in the non-permanent membership. They claimed that the veto power, as long as the permanent five continue to hold it, had to be granted to all new permanent members as well. There was also a smaller group of NAM states which opposed the idea of increasing the number of permanent seats and sought an enlargement only of the non-permanent category by 11 seats. Despite their divisions over the crucial issues of Council reform, all states of NAM promoted the view that the UN should aim at restricting the use of veto by the permanent members of the Council as a first step towards its abolition in the future.

Italy was against the above proposal and presented its own proposal calling for the expansion of only non permanent category of the UNSC. Through at the UNSC reform effort Italy's proposal is directed against Germany's candidature to permanent category. All the candidates to the permanent category got regional rivals.

Due to such demands from 1996 and onward, all except China came out in support of the 'two plus three' formula, whereby three out of five permanent seats would go to developing states. This represented the least damaging proposal from their standpoint since it envisaged an

increase of the total membership of the Council to a maximum of 20 seats. Their position was that the Security Council should remain organized on the principle of responsibility and efficiency, rather than on the principle of representation. Their viewpoint was that the larger the Security Council, the less efficient its decision-making would be. They also communicated their intention to defend their own right of veto and opposed restrictions on the scope of the veto. They were probably more vehement on this burning issue than they were ever before.

But the two plus three proposal made German and Japan's accession dependent on the agreement between developing states on their future representatives in the permanent category. But the discussions in the UN demonstrated disagreement between the developing states on the issue. Finally the developing states demanded further expansion of the UNSC non permanent membership category in addition to the two plus three proposal and this resulted in disagreement with the permanent five.

In 1997 Ismael Razali, the then General Assembly's President, made an attempt to reconcile the multiple differences between the member states. He put forward a three- stage reform plan that proposed the inclusion of five new permanent members and four new non-permanent members, thus bringing the total to 24 states. According to the Razali plan the five new permanent members would not get the veto power and would be selected by the General Assembly.

However, this plan was dropped off the agenda because of the position of the Non Aligned Movement member states, was rejected and by the year 2000 all UNSC reform efforts were in a complete failure. The UNSC reform issue was taken up to the 2000 millennium summit and also the 2005 world summit but both ended without any actual development. One change that took place in the negotiation was the GA's convening of the High level panel on threats, Challenges and Change", integrated by 16 eminent personalities. By 2007 the UNGA authorizes the intergovernmental negotiation on the reform of the UNSC. Though out this times there were many proposals tabled for negotiation form different groups but none of them were adopted. By 2010 the obama administration came to the public support of the candidacy of India and Japan to the permanent membership category.

The development in the developing world is so fast that currently it constitutes for more than 50% of the global economic activity. Unquestionably there are new economic giants emerging also with an effective military. Brazil, India, Germany, Japan are among the most economic giants.

This changes in the global geopolitical and economic realities results in a compelling reason for the UNSC reform. But the magnitude of this change is not as powerful as the reform demands provided. For example avoiding the veto power of the current permanent members or extending the Veto power to new permanent members is a very maximalist view that would upset the permanent five members and it might have a negative result for the negotiation process.

## RECOMMENDATIONS

1. The United Nations as a global organization standing for those lofty ideals expressed in its objective and principles that are provided in the UN charter has contributed a lot for the betterment of Human life across the globe in its 69 year's life. Currently there is a huge demand for the reform of its various organs. As a global organization it is absolutely important that the organization incorporate the reforms needed that arise from time to time. Currently there are many reform demands in the UN organs. Some of the reform demands involve a very contentious political interest of member states to the UN and some other are all most important reform issues that do not involve political interest of few groups as different from the rest of the UN membership. In all areas of UN reform that involve contentious political interest of states, member states to the UN shall try to come up with a consensus on the lowest possible denominator so that reform will be a reality. The reform areas that commonly represent the interest of all UN member states need to be strengthened and implemented rather than lengthy discussions and too much proposals.

2. There is a tremendous change in the global geopolitical and economic reality since 1945. The economic activity now in the developing world is more than 50% of the global economic activity. There are newly emerging economic giants like German, Japan, Brazil and India. Even if the original structure of the UNSC is justifiable as to the then and up to date reality, currently there is a need to reform its structure to incorporate these changes. Expansion of the Security Council at least by six more permanent members and few non permanent categories is the best proposal to implement. Germany and Japan already had got acceptance from all permanent members for this candidature. India and Brazil are the next candidates taking in to account there economic growth and in case of India representing the second most populous state in the world. Africa as the continent representing many UN members and also as a continent where cases involving the UNSC happen to take place repeatedly needs at least two seats in the permanent category to make the UNSC a global security organization.

3. The argument that is raised saying that the UNSC permanent membership category is not a place for global representation and it is only a place reserved only for those states that

have the efficient capacity to take military action is not sound taking in to account the UNSC interventions that happened until today. Intervention in Libya, Iraq and Yugoslavia were not strictly authorized by the UNSC. These interventions were military actions taken by the US and its allies alone, most of the time by NATO. If the UNSC had a global representation then it would be possible to have legitimate Security Council resolutions whenever there is a legitimate need and enforcement could be possible with the collaboration of all UN member states. UNSC intervention in Korea is one best example for this. This argument would be sound assuming that the US and all other states will act according to the UN charter. But if they do not do that, reform effort has not be curtailed by such arguments.

4. In fact the current permanent members of the UNSC, particularly USA, Russia and China possess the most efficient military capacity, space technology and also they have very strong economy. But this does not entitle these states to continue to rule with absolute privilege different from the rest of the UN member states and the reform initiative to incorporate newly emerging economic giants and the developing world must be strengthened. It has been 69 years since the UNSC started operation with the structure it has now except the reform of 1965. It could not be said that this is the reality forever. It has to incorporate changes across the globe. But on some of the very contentious issues, reform has to wait for another very convenient time and situations.

5. The most serious critics against the UN arise not within the structure from the UN charter but on its implementation. A proper implementation of the UN Charter would have addressed many problems today. If the UNSC as it is now was exploited genuinely as a global collective security organ, it would have been possible to address much of the very serious conflicts categorized as a threat to global peace and security. Making the UNSC much representative of the UN member states will make it a more active global collective security organ.

6. As the four candidates to the UN permanent membership has stated it, it is better to extend the time to request the Veto power to the new permanent members of the UNSC at least for the coming negotiations in the future. In the future it will be decided either to eliminate the

Veto as a whole or to extend it to new permanent members too. It is not either the time to call on the establishment of a new global security organization. Therefore, the new permanent members shall not have the power of Veto. The African Union request for the power of the Veto is too maximalist for the current negotiations. It is better to bring the current permanent five states with the Veto power in to agreement with the rest of the UN membership on the use of the Veto power. The first best alternative about the Veto power is to bring the permanent five members towards an agreement that requires a rule asking for two veto's instead of a single Veto. This will at least increase the UNSC's effectiveness in maintaining international Peace and Security. As an alternative to this or if possible in addition to the above rule the UN member states shall strengthen their effort to set the rule on the responsibility not to veto certain issues in the UNSC by any of the current permanent members. This rule will be a guarantee that the UNSC veto power is not used to prohibit the UNSC from taking enforcement actions against a serious violation of basic human rights like Genocide, War crime, crimes against Humanity and any other similar case. This list may also incorporate cases like membership to the UN. Third option for the veto power reform is to determine the existence of the national interest of any of the permanent five of the UNSC in the case being considered in the UNSC. If the rest of the UNSC members unanimously agree that there is the national interest of that state involved in the case it should be prohibited from Vetoing that UNSC resolution. Fourthly, the Uniting Consensus power of the General Assembly shall be effectively utilized. The GA shall be revitalized in such a way that one permanent UNSC member state cannot act against the absolute majority Vote of the UN member states. The general assembly shall be revitalized in such a way that the absolute majority vote of the UN member states shall always be the sovereign power in the UN to execute the objectives and principles of the charter. If one of the above mentioned recommendations are implemented it is possible to solve many of the problems with in the UNSC veto power.

7. In the long run, the veto power in the UNSC may be totally avoided and a new system of international peace and security might be in place. But the main source of problem with in the UN as it is now is not the actual problems emanating from the UN charter as it is. Rather problems arise from the violation of international law and the UN Charter. So genuine implementation of the charter provisions is the main step that has to be followed by member

states before dealing with the UN structures. This recommendation is highly applicable to the permanent five of the UNSC in particular.

**8.** Looking at the current status of the reform efforts, the permanent five are positive towards enlargement of the UNSC by addition of five permanent memberships and one or two non permanent membership category. The Permanent five has expressed this position many times. The permanent five are against extended enlargement of the council claiming that it would reduce its effectiveness. They are also against any restriction on the use of the Veto power they have or its extension to new permanent members. But looking at the history of the UNSC reform this is very attractive and acceptable reform proposal from the permanent members to the rest of the UN members. Accordingly, the G-4 states had already accepted to postpone their Veto claim for a round of another negotiation after a decade. The African Union still retains its position that is expressed at the Eluzini Consensus and it insists that as long as the permanent five continue to exercise their Veto power it should also be granted to new permanent members. But as a reform process that has gone long journey it is up to the African Union and other groups calling for UN reform to establish agreement among them and accept the reform proposal that is accepted by the permanent five members. This for a while could create substantial improvement in the work of the UNSC and the ultimate reform in the future. As it is observed from the history of WWII and the disintegration of the LN, it is not possible to disappoint the major powers and to have effective global security organ. It takes time to realize every reform agenda. Currently UN charter amendment is very difficult task especially, with issue concerning the veto power up on which the permanent five have a very serious stand. So it is better to go along with the reform proposals that the permanent five accept and bring them to further negotiations in for the future. At the end of the day, with increased changes in the global realities, it might be possible to have not only a UN charter amendment but also to reform the whole of the UNSC structure and provide a very new idea of global security organization, but until that time steps has to be small and measured. For now the reform proposal accepted by the permanent five is very conducive and the rest of the UN membership shall accept it and proceed to further negotiations in the coming years towards creating an ideal global security organization. With such kind of approach to the UNSC reform effort, it is possible to see actual reform even before actual reform schedules that might be drawn.

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