

The power of the veto versus the rule of law a United Nations (UN) dilemma

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ABSTRACT

This paper examines the use of veto power by the five Permanent Members (P5) of the United Nations Security Council (UNSC), focusing on the United States' use of this power in the Israel-Palestine conflict. It argues that the US veto has not only undermined the rule of law but also rendered the original intent of the veto irrelevant, particularly in the eyes of developing nations, thereby calling into question the effectiveness of the Security Council and jeopardizing global peace and security. The paper critiques the US veto during instances of severe human rights violations, ethnic cleansing or potential genocide committed by Israel a US ally, against Palestinians. It posits that the US's obstruction of motions for humanitarian cease fires exacerbates violence, effectively enabling Israel to continue its actions with impunity. The exercise of veto in these circumstances, the paper argues, not only violates human rights and the rule of law but also breaches international humanitarian law to which the US is a party.

Keywords: Five Permanent members, Veto power, UNSC, Human Rights, Rule of Law and International Humanitarian Law

INTRODUCTION

The predecessor of the United Nations (UN) was the League of Nations (LN) established in 1919, after the First World War under the Treaty of Versailles "to promote international peace and security." The League of Nations officially dissolved on April 20, 1946, transferring its assets to the United Nations. As part of this transition, the UN Secretariat assumed full responsibility for the League's library and archives. (Goodrich, 2009; Padelford, 1948). The LN according to Yurt Sever S. (2019) was born out of devastating consequences of the First World War; it failed to achieve peaceful sovereignty and further, failed to prevent the breakout of the Second World War and consequently it was replaced by the United Nations established at the end

of the Second World War. The UN has been criticised for the structure of the Security Council and the right to veto, The word 'veto' comes from the Latin term 'vitare' meaning 'I forbid or prohibit' (Watson, 1987 p 402.). The power first appeared in the constitution of the early Roman Republic established in hence the call for the need for serious structural reform. (Sever, 2019). 509 BC when the upper-class families called 'Patricians' overthrew the monarchy. (Roebuck, 1966; Jolowicz et al (1972; Padelford, 1948 p 227)

It is apparent that the word veto has not been used in the United Nations Charter. However, the power of the veto originates in Article 27 of the Charter which states as follows:

1. Each member of the Security Council (SC) shall have one vote.
2. Decisions of the S C on procedural matters shall be made by an affirmative vote of nine members.
3. Decisions of the SC on all other matters shall be made by an affirmative vote of nine members including the concurring votes of the Five Permanent Members (Hans, 1946).

The United Nations (UN) comprises five charter-based organs among them the Security Council whose 15 members' ten of whom are elected and five are permanent, the United States of America (USA), Russia, France United Kingdom (UK) and China (Syah, 2024). The decisions of the Security Council are by affirmative resolutions and each member is entitled to one vote. However, at the Centre of this voting is the veto, a preserve of the five permanent members. The possibility of a veto arises whenever; any matter other than a procedural one is put to a vote in the Security Council. By voting against any motion of a substantive nature, anyone of the five powers having permanent seats on the Security Council can prevent the adoption of a motion.

The Veto is the absolute and unaccountable power of the five permanent members of the Security Council called the P5 that ensures their control over it, and the rest of the UN. The P5 have consistently preserved their authority and utilised it to safeguard their own interests (Sinha, 2019). This element of the UN Charter has been a subject of significant controversy and remains a key point of dissatisfaction with the Security Council's effectiveness (Sinha, 2019). Commenting on the same, Senator Connelly Chairman then, of the Foreign Relations Committee, affirmed **“Our country will have the right to exercise the veto whenever in our opinion it is the wise and just thing to do to do.”** (Senate Document 58, 79th Congress 1st Session P6). Further,

said, “So long as the basis of international relations remains the state system, the government of the USA can never permit a group of representatives of other countries to decide for it when or where it's military power shall be used” (Padelford, 1948, p 227).

THE USE OF VETO POWER IN THE SECURITY COUNCIL BY THE FIVE PERMANENT MEMBERS

The use of the veto was conceived in the United Nations founding conference in 1944 after being debated from 1944 -1946 when finally, it was constituted. The main objective of Article 27 of the UN Charter was to reduce or bring to a halt any boiling tensions emanating from conflicts as a result of state misconceptions and misperceptions which could threaten globe peace and security and risk nuclear third world war considering that the permanent members are all possessors of nuclear weapons.

Pursuant to Article 27 of the United Nations Charter, however, the permanent members do not have veto power over all decisions in the Security Council and instead only need nine of the sixteen votes. Admittedly, veto power has been used to varied degrees by each state. (Chinwe et al, 2018).

Since the first use of the veto in 1946, the five permanent members of the UN Security Council have exercised this power a total of 293 times. The Soviet Union (later Russia) has used the veto the most, with 120 instances, primarily in the early years to block new member admissions. The United States follows with 82 vetoes, mostly in defense of Israel. The United Kingdom has used the veto 29 times, while France has exercised it 16 times. China has also used the veto 16 times, with 13 of these occurring after the People's Republic of China replaced the Republic of China in 1971. Since the end of the Cold War, Russia and China have increasingly relied on the veto, particularly regarding conflicts in Syria and Ukraine (Security Council Report, 2024).

The United Nations Security Council (UNSC) is comprised of five permanent members: China, the United Kingdom, Russia, France and the United States. These members possess a unique and influential power: the veto. Any of the permanent five can unilaterally block the adoption of a Security Council resolution, regardless of its support from other member states. The veto power is primarily employed to safeguard national interests, promote foreign policy objectives and advance specific issues deemed vital to the state (Chinwe et al 2018). This mechanism serves as a tool for these nations to exert influence on the international stage and protect their sovereignty.

Historically the permanent Five (P5) were allies during World War II and emerged as the victors. They also hold the distinction of being the first and most nuclear-armed states. This confluence of factors has solidified their position within the Security Council, and granted them veto power, a contentious yet crucial element of the international security architecture.

Since the end of the cold war in 1991, new trends in the use of the veto by the different Permanent Five (P5) members of the UNSC have emerged. France and the United Kingdom (UK) have not cast a veto since 23rd December 1989 (UNSC Report, 2024)

China, historically the least frequent user of the veto, has become more active in exercising this power, casting 13 of its 16 vetoes since 1997. During the same period, Russia has used its veto 24 times, while the United States has done so 16 times since the end of the Cold War. The use of the veto by Russia and China has significantly increased since 2011, largely in response to the conflict in Syria. Of China's nine vetoes during this period, eight were related to Syria, and one concerned Venezuela. Russia, on the other hand, used its veto against two resolutions regarding the conflict in Ukraine, one addressing the 20th anniversary of the Srebrenica genocide, one imposing sanctions on Yemen, and another concerning Venezuela. Since 2020, the United States has exercised its veto 14 times, with all but two

related to Israel-Palestine issues (Trahan, 2020). Although the term "veto power" is not explicitly mentioned in the UN Charter, it is derived from Article 27, which stipulates that each Security Council member has one vote and that procedural matters require at least nine affirmative votes for adoption.

Chinwe et al, (2018) notes a positive trend in recent years, the number of vetoes has decreased significantly compared to the cold war era, even as the total number of the UN Security Council has risen. This suggests a growing desire among the Permanent Five (5) to compromise and seek consensus on international issues.

The United States use of veto power in the UN Security Council, particularly to shield Israel in the Israeli-Palestinian conflict raises questions about its commitment to the rule of law. While the US has not explicitly violated domestic law, its actions have contravened International Humanitarian Law also known as the law of wars.

ESSENTIAL INTERNATIONAL HUMANITARIAN LAW RULES

In armed conflicts, all parties must consistently distinguish between civilians and combatants to ensure the protection of civilian populations and property. Civilians, whether as individuals or as a population, must not be targeted in armed conflict. Military objectives are the only legitimate targets of attacks. Additionally, warring parties do not have unrestricted freedom in selecting their methods or means of warfare. The use of weapons or tactics that cause excessive harm or unnecessary suffering is strictly prohibited. It is also forbidden to injure or kill an adversary who has surrendered or is no longer able to fight. Individuals who are not participating, or can no longer participate, in hostilities must have their lives and physical and mental well-being respected. They must be protected and treated with humanity, without any form of discrimination (ICRC, 2005).

The wounded and sick must be located, rescued, and provided with medical care as soon as conditions allow. Medical personnel,

facilities, transportation, and equipment must be safeguarded. The emblem of the Red Cross, Red Crescent, or Red Crystal on a white background serves as a universal symbol that these individuals and objects must be respected and protected (ICRC, 2005).

Combatants who have been captured and civilians under the control of an opposing force are entitled to respect for their lives, dignity, and fundamental rights, including their political, religious, and personal beliefs. They must be safeguarded from violence and reprisals and have the right to communicate with their families and receive humanitarian aid. Furthermore, their legal rights must be upheld in any judicial proceedings (ICRC, 2005).

The preceding rules are in fact a simplified version of the Geneva Conventions 1949 and their two protocols (ICRC, 2005).

RULE OF LAW

According to Ndulo M (2011) the concept of the Rule of Law should not be mistaken for mere “rule by law,” as the latter lacks intrinsic values and can be used to justify even the most repressive regimes. Historically, some of the worst dictatorships and human rights violations have been structured within legal frameworks, albeit through oppressive laws. As one of the most fundamental political and legal principles in good governance, the Rule of Law plays a crucial role in upholding democratic values (Ndulo, M. 2011).

Given its significance as a pillar of democratic governance, the Rule of Law warrants close examination. While some scholars emphasize its role in eliminating broad discretionary powers within government, others define it as a framework that guarantees procedural fairness in governance (Ndulo, M. 2011). At its core, the Rule of Law asserts the supremacy of legal principles over government actions and individual conduct, serving as a safeguard against tyranny and arbitrary rule. The extent to which a government adheres to this

principle directly reflects the legitimacy of its actions.

Thus, the Rule of Law remains one of the most essential foundations of democratic governance, ensuring accountability, justice, and the protection of fundamental rights (Ndulo, M. 2011).

Perhaps there cannot be a better place to begin from than begin our conversation with an examination of the concept. What is the rule of law? To some the rule of the law calls for the elimination of wide discretionary powers of authority from government processes, and still others it means due process of law (Ndulo, M 2011). This is a concept that describes the supreme authority of the law over governmental action and individual behaviour. It is the antithesis of tyrannical or indeed arbitrary rule. It is generally accepted that the extent to which the government adheres to the rule of law is indicative of the degree of legitimacy of its actions (Ndulo, M 2011).

The concept “Rule of Law” originates from the Latin phrase *imperium legum*, meaning “the empire of laws not of men” (Seller, 2015, p.....). This principle is fundamental to good governance, as it ensures that the state is governed by laws rather than by individuals (Stain (2019). For the United Nations System, however, the Rule of Law is a governance principle where all individuals, institutions, and public or private entities, including the state itself, are held accountable to laws that are publicly announced, equally enforced, and independently adjudicated. These laws must also align with international human rights norms and standards (United Nations, 2024).

The United States of America (USA) has long positioned itself as a champion of democracy and the rule of law, often using this stance as a condition for providing bilateral aid to developing countries. However, this raises the question: is the US truly qualified to champion the rule of law, given its inconsistent record? This paper seeks to explore that question.

The USA has always held out itself as the champion of democracy and the rule of law to the extent that this stance more often than not has been used as a condition for receiving bilateral assistance or aid from America by impoverished countries of the third world. The question that begs for an answer is, does America qualify to champion the rule of law given its faltering record on the rule of law?

THE RECENT USA USE OF IT'S VETO POWER IN THE UNITED NATIONS SECURITY COUNCIL.

The United States of America's use of veto power in the UN Security Council particularly to shield Israel in the Israeli-Palestinian conflict raises questions about its commitment to the rule of law. While the USA has not explicitly violated domestic law, its actions have contravened international humanitarian law also known as the law of war. This paper will delve into specific instances where the USA has used its veto to prevent the UN from addressing Israel violations of international law. By examining these cases we can assess whether the US's actions align with its professed championing of the rule of law.

From 2020-2024, the USA has used 14 vetoes, 12 of them relating to the Israel-Palestinian conflict. In 2023, the Biden Administration vetoed a resolution that would have recommended that the General Assembly hold a vote on the state of Palestine full membership of the United Nations (O'Dell, 2023).

As of December 2023, the United States has vetoed resolutions critical of Israel more frequently than any other member of the UN Security Council, doing so 45 times. Since 1945, the U.S. has exercised its veto power a total of 89 times, meaning that just over half of its vetoes have been used to block resolutions criticizing Israel. According to O'Dell (2024), 33 of these vetoes specifically addressed issues related to Israel's occupation of Palestinian territories or its treatment of the Palestinian people.

From January 26, 1976, to March 22, 2024, the USA has vetoed 29 resolutions regarding the Israeli-Palestinian conflict (United Nations 2024; Syah, 2024). The USA has consistently used its veto power to block every resolution that criticizes Israel, and which provides support for Palestine in violation of international law and its fundamental principles (Syah, 2024). Undoubtedly, several treaties have been violated in the process, among them the Fourth Geneva Convention and Hague Convention. Article 49 of the Fourth Geneva Convention prohibits the forcible transfer of population from occupied territory (International Committee, 1949). Israel has been ordering Palestinians to move from one area to another within the occupied territory. Article 46 and 47 of the Hague Convention prohibits the act of confiscation of private property as well as the act of pillaging (International Committee, 1907). Further, it's a war crime under the Rome Statute of the International Criminal Court (International Criminal Court, 1998). In addition, Israel has also violated Article 2 of the Genocide Convention by (a) killing members of the group (b) causing serious bodily harm or mental harm to members of the group conditions of life calculated to bring about its physical destruction in whole or part of it (Syah, 2024).

The United States has signed and ratified the four conventions and protocol 111 of 2005 but has not ratified the two protocols 1977 (i.e. protocols 1 and 11) it is therefore bound by the provisions of these conventions as a state's party as it did not enter any reservations. The mandate of the Security Council is that of preservation of international peace and security as provided for under the UN Charter. It functions through the passing of resolutions, for example condemning a member state found wanting in its behaviour towards another member state. The Security Council has on several occasions moved a motion to condemn Israel in the manner it has conducted its war against the Palestinians with no due regard to the law of wars. However, the US has vetoed such resolutions

claiming it is protecting national interests as well supporting an ally (Blessings et al, 2018). It has used the veto as one of the five permanent members of the Security Council thereby defeating such resolutions and in essence encouraging Israel to continue committing war crimes unabated.

On December 12, 2023, the UN General Assembly (UNGA) passed a resolution calling for a cease-fire in the Israel-Hamas conflict, in response to the worsening humanitarian crisis in the Gaza Strip. This resolution followed the failure of the UN Security Council (UNSC) — the only UN body with the authority to pass binding resolutions — to pass a cease-fire resolution due to a veto by the United States (O'Dell, 2023).

It is the position of this paper that this behaviour by the US acquiescing in the wrongs of Israel a country committing heinous crimes amounting to war crimes and crimes against humanity violates the rule of law and makes the US culpable hence unsuitable to champion the rule of law.

CRITIQUE OF THE USE OF THE VETO POWER

World leaders have criticized the veto system, including Turkish President Recep Tayyip Erdogan, who has long objected to the veto power of the five permanent members of the UN Security Council, stating that “the world is bigger than five.” According to Erdogan, the “representative nature of the Security Council” must be ensured so that the UN system can become “much more effective, just and fair

In an annual debate on the matter during a UN meeting in November 2023, several nations emphasized “the unfair and outdated rules and processes from the last century not relevant in today’s world and paralyze the Council from taking meaningful action.”

It is essential for the council to undergo structural reform to improve its effectiveness and legitimacy, President of the UN General Assembly Dennis Francis of Trinidad and Tobago said in his opening remarks during

the meeting, urging member states to push through long-standing positions and take practical steps to support inclusion and effectiveness. Francis said, “Never before has this issue been more pressing, both contextually and practically” O’dell, H (2024)

RECOMMENDATIONS

As the world has evolved, equally the UNSC must be reformed to be relevant to the current world needs. The paper proposes expansion of permanent membership based regional representation on account of size of population as an addition criterion. Africa for example comprises 18.3% of the world population, a significant proportion indeed deserving representation on the permanent basis. According to the World meter, Africa’s population is equivalent to 18.3% of the total world population. It ranks number 2 among regions of the world (Roughly to continents ordered by population. Africa’s population density is 51 per km² i.e. (132 people per M²). In numerical terms Africa’s population is 1.4 billion (Assogbavi, 2024).

CONCLUSION

The original intention of the veto was well intended to maintain world peace and security by the permanent members of the UNSC. However, that intention seems to have been lost with the emerging trend among the P5 of protecting national interest as well as ally interests notwithstanding the consequences on the ground in times of war. The Rule of law must be a guiding principle to the permanent members in times of voting for any resolution that is not procedural.

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