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**Title: The United Nations Security Council and the Veto  
Power of the Permanent Members**

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## Acronyms

G4	Group of Four
S5	Small Five
NATO	North Atlantic Treaty Organization
UN	United Nations
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNGA	United Nations General Assembly
UNICEF	United Nations International Children's Emergency Fund
UNSC	United Nations Security Council
ICC	International Criminal Court

## Table of Contents

DECLARATION OF ORIGINALITY .....	2
Acknowledgements.....	3
Acronyms .....	4
Introduction .....	6
Chapter 1: Mandate of the United Nations Security Council .....	13
Functions of UNSC.....	14
Chapter 2: The Veto Power.....	18
The Exercise of the Veto power .....	21
USA.....	22
Russia .....	25
China .....	28
The Situation in Myanmar.....	29
The conflict in Syria .....	30
United Kingdom, France and the Pocket Veto.....	35
Chapter 3: Reform Proposals .....	39
Pro-Veto Vs Anti-Veto.....	39
Reform Proposals.....	43
The Razali Plan .....	44
High Level Panel Report .....	44
G4.....	45
Uniting for Consensus .....	46
Ezulwini Plan .....	46
S5.....	47
Overarching Process Plan.....	47
Model X.....	48
Assessment of Reform Proposals.....	48
Geographical Representation .....	49
Operating Methods.....	51
The Veto Power.....	53
A New Proposal.....	54
Conclusion.....	58
Appendix 1 Use of Veto 1990 to 2017 .....	61
Appendix 2 UNSC P5 Behavior Summary 1990 – 2017 .....	67
Bibliography .....	68

## Introduction

The United Nations (UN) celebrated its 72<sup>nd</sup> anniversary this year. The international organization has large influence around the world with 193 signatory member states.<sup>1</sup> Having been founded in 1945, as a direct result of the efforts to protect future generations from the carnage suffered in WWII, the UN now engages in peacekeeping missions around the world with the aim of restoring peace to conflict regions. The UN also engages in the confiscation of Weapons of Mass Destruction (WMD), collective measures for the enforcement of peace (either through military or non-military means) as well as enriching the lives of suffering peoples by catering for human rights and development concerns by way of institutions such as UNICEF, the World Health Organization<sup>2</sup> and the UNDP.

The benefit the world has reaped, as a result of the UN efforts, cannot be quantified. Over 70 peacekeeping missions have been deployed since the UN's inception and there are currently 15 active peacekeeping missions.<sup>3</sup> Certain authors are of the opinion that the potential destruction that the Cold War threatened was negated, in part, thanks to the UN Security Council in which grievances were heard and debated.<sup>4</sup> It is said that the conditions which result in conflict are also diminished thanks to UN initiatives such as UNICEF and UNESCO.<sup>5</sup> It is apparent that since the inception of the UN the world has not suffered the savagery of WWII in which over 60 million people were killed.<sup>6</sup> This is known as the *Long Peace* and it is due to the world's super powers not engaging in battle with one another. This achievement is once again attributable

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<sup>1</sup> 'United Nation Member States' available at: <http://www.un.org/en/member-states/> (accessed 20 October 2017)

<sup>2</sup> 'What are the Contributions Made to World Peace by the United Nations?' available at: <https://www.enotes.com/homework-help/what-contributions-made-world-peace-by-united-343116> (accessed 3 July 2017).

<sup>3</sup> 'Current peacekeeping operations' available at: <http://www.un.org/en/peacekeeping/operations/current.shtml> (accessed 3 July 2017).

<sup>4</sup> Contributions to World Peace (note 2 above).

<sup>5</sup> Contributions to World Peace (note 2 above).

<sup>6</sup> 'Research Starters: Worldwide Deaths in World War II' available at: <https://www.nationalww2museum.org/students-teachers/student-resources/research-starters/research-starters-worldwide-deaths-world-war> (accessed 22 October 2017)

to the UN which sought world peace and the pacific relations among the world's great powers is surely instrumental to this cause.<sup>7</sup>

Despite the successes of the UN many critics, politicians and scholars hold views that are critical of the UN stating that the international organization is inefficient, uninvolved and has fallen into disrepute as a result of its archaic and anachronistic functioning methods.<sup>8</sup> The majority of the criticisms are directed at the United Nations Security Council (UNSC) which is the central mechanism in the UN structure and is the organ which assumes the most power.<sup>9</sup>

The preamble to the United Nations Charter states that the overarching function and primary purpose of the UN is to maintain international peace and security by protecting the following generations from the "scourge of war".<sup>10</sup> The UN system is made up of several organs and subsidiary bodies. One such organ is the United Nations Security Council (UNSC) upon which the UN Charter confers the primary responsibility in the maintenance of international peace and security.<sup>11</sup> The UNSC is the only UN organ that has the power to make binding decisions<sup>12</sup> and its functions include the identifying of the existence of threats to peace and acts of aggression, recommending that disputing parties settle their disagreements peacefully, the imposition of sanctions as well as the authorization of the use of force to preserve or restore international peace and security.<sup>13</sup> The UNSC is composed of 15 member states.<sup>14</sup> Five of the membership

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<sup>7</sup> 'The Long Peace' available at: <https://www.prospectmagazine.co.uk/magazine/thelongpeace> (accessed 3 July 2017).

<sup>8</sup> B Kia, P.A Ojie & Z.D Kidi 'Veto Power as A Diplomatic Cover for National Interests of Bearing Members In United Nations Security Council: Implications On the Management of Global Peace and Security' (2010) 1 *International Journal of Advanced Legal Studies and Governance* 123.

<sup>9</sup> Kia (note 8 above) 123.

<sup>10</sup> United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI, available at: <http://www.unwebsite.com/charter> Article 1 (accessed 10 June 2017).

<sup>11</sup> UN charter (note 10 above) Article 24.

<sup>12</sup> R Butler 'Reform of the United Nations Security Council' (2012) *Penn State journal of Law International Affairs* 8.

<sup>13</sup> 'United Nations Security Council' available at: <http://www.un.org/en/sc/> (accessed 22 October 2017)

<sup>14</sup> United Nation Member States (note 1 above).

seats are permanently held by the United States of America, the United Kingdom, China, Russia and France.<sup>15</sup> With the exclusion of China these members have served the UNSC since the inception of the UN.<sup>16</sup> The remaining ten members of the UNSC do not hold permanent membership but serve two-year terms with five new members inducted in January of every year.<sup>17</sup> The ten non-permanent members are elected from geopolitical regions with the following arrangement: Western and others group (WEOG) is allowed two representatives, the Asian group is allowed two representatives, the Eastern European Group is allowed one representative while the Latin American and Caribbean group (GRULAC) is allowed two representatives and the African group is allowed three representatives.<sup>18</sup> The non-permanent member states currently on the council are Bolivia, Egypt, Ethiopia, Italy, Japan, Kazakhstan, Senegal, Sweden, Ukraine and Uruguay.<sup>19</sup>

The United Nations charter provides the voting practice to be implemented in the UNSC.<sup>20</sup> Article 27 of the UN charter provides for two separate voting regulations in cases of procedural and non-procedural matters.<sup>21</sup> The distinction between procedural and non-procedural matters being that the procedural matters relate to the manner in which the council will carry out its functions and these include such matters as the order of items on the agenda. While non-procedural matters relate to the determination of the action to be taken by the UNSC in exercising its functions.<sup>22</sup> The charter provides that the minimum number of agreeing votes necessary for a resolution on procedural matters to be passed, by the UNSC members, is nine<sup>23</sup> while a vote on non-procedural matters requires a minimum of nine affirmative votes including the concurring votes of the permanent members.<sup>24</sup> Therefore the permanent members have a unilateral right to veto non-procedural resolutions as the negative vote of any permanent member

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15 Kia (note 8 above) 125.

16 Butler (note 12 above) 13.

17 S Okhovat 'The United Nations Security Council: Its Veto Power and Its Reform' CPACS Working Paper 15/1 (2011), *University of Sydney*, 4

18 Butler (note 12) 13.

19 Current Members (note 1 above).

20 UN charter (note 10 above) Article 27.

21 UN charter (note 10 above) Article 27.

22 Okhovat (note 17 above) 8.

23 UN charter (note 10 above) Article 27 (2).

24 UN charter (note 10 above) Article 27 (3).



results in the failure, in passing, of non-procedural resolutions. Schindlmayr indicates that there are, in fact, five forms of the veto power<sup>25</sup>:

1. The Open or Real Veto refers to the casting of a negative vote by a permanent member on non-procedural matters.<sup>26</sup>
2. The double veto refers to the situation in which the classification of a draft resolution as procedural or non-procedural is contested by a permanent member. That permanent member has the power to veto a classification that would render the resolution as procedural and in doing so the resolution is rendered as non-procedural and as a result the usual veto power on non-procedural matters applies and therefore the permanent members have a double veto.<sup>27</sup> Schindlmayr denotes that the double veto applies usually in the establishment of subsidiary organs for investigations where the expected result is the undertaking of enforcement action by the Security Council.<sup>28</sup>
3. Hidden Veto refers to the situation in which a simple majority cannot be reached to pass a resolution due to the persuasion of permanent members over the remaining council members. If seven council members vote negatively over a resolution that resolution will not pass and a permanent member need not exercise the veto power.<sup>29</sup>
4. The Artificial veto refers to the situation in which a permanent member attempts to make its consent necessary for a resolution which should rather require a majority vote.<sup>30</sup>
5. Veto by Proxy refers to the situation in which a permanent member exercises the veto power in the interest of non-veto possessing state.<sup>31</sup>

The drafters of the UN charter did not agree on the voting method for the UNSC. The representatives of the Soviet Union (now Russia), United Kingdom and the United States of America proffered the current system which includes the veto power of the

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<sup>25</sup> T Schindlmayr 'Obstructing the Security Council: The Use of the Veto in the Twentieth Century' (2001) *Journal of the History of International Law* 218.

<sup>26</sup> Schindlmayr (note 25 above) 225.

<sup>27</sup> Schindlmayr (note 25 above) 225.

<sup>28</sup> Schindlmayr (note 25 above) 225.

<sup>29</sup> Schindlmayr (note 25 above) 225.

<sup>30</sup> Schindlmayr (note 25 above) 225.

<sup>31</sup> Schindlmayr (note 25 above) 225.

permanent members. This was known as the Yalta formula.<sup>32</sup> The UNSC's permanent five members also drafted the Dumbarton Oaks proposal in 1944 for the UN charter.<sup>33</sup> The Dumbarton Oaks proposal and the Yalta formula were the subject of much debate at the inception of the UN in San Francisco 1945. Although many amendments were made, to the Dumbarton Oaks proposal, such as the addition of more military authority for the UNSC, the Yalta formula as agreed between the representatives of the United Kingdom, the Soviet Union and the United States of America was not amended but rather inserted into the UN charter verbatim.<sup>34</sup> Fernbach, opines that this is due to the fact that the states which would comprise the Security Council's permanent five would not agree to participate in the UN without the Yalta formula and as a result the representatives of the other states had no choice but to acquiesce as the military capability and funding prospects of a UN without these powers was bleak.<sup>35</sup>

Despite the apparent value of the UN, to the world, criticisms and dissenting views of the UN (specifically the UN Security Council) abound. Many believe that the UNSC is inefficient and ineffective in fulfilling its mandate. These criticisms are directed at the veto power, of the permanent members, which are accused of being anachronistic and an impediment to the fulfilment of the mandate of maintenance of international peace and security as, according to the criticisms, the permanent member's exercise of the veto power in the modern age does not reflect the intentions of the drafters of the UN charter. The permanent members of the UNSC are accused of self-indulgent exercise of the veto power for the purpose of securing their own national interests and the interests of their allies at the expense of the interests of UN member states and the mandate of the Security Council. There are several eyebrow raising cases of exercise of the veto power such as Security Council draft resolution 1441 which sought to restore order and peace to Iraq, an area in which international law principles were repeatedly violated under the Hussein regime. France and Russia exercised the veto power and the draft resolution was squashed. Kia denotes that the reason for the exercise of the veto in this instance was for the protection of the financial interests

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<sup>32</sup> A.P Fernbach 'The United Nations Security Council' 32 *Virginia Law Review* 118

<sup>33</sup> Fernbach (note 32 above) 120.

<sup>34</sup> Fernbach (note 32 above) 120.

<sup>35</sup> Fernbach (note 25 above) 121.

which Russia and France had in the area.<sup>36</sup> Another similar case can be found in the Myanmar problem where the members of the UNSC proposed a resolution seeking an end to the unrest in Myanmar however this resolution was vetoed by China and Russia. Kia opines that China vetoed the resolution due to the fact that Myanmar was its neighbour and China feared the collateral damage it may suffer due to punitive measures taken by the Council.<sup>37</sup> The permanent members also use the veto power to threaten other states to either support or oppose a resolution in order to secure an interest held by that threatening permanent member. Kia denotes that the United States of America successfully pressured the UN not to deploy United States troops that were to serve as UN peace keepers by threatening the use of the veto on all peace keeping operations that were to follow had the UNSC members not heeded the concerns of the United States.<sup>38</sup>

Subsequently a plethora of reform proposals have made the rounds each promising to increase the legitimacy of the UN through reform of the UNSC which would see the council becoming more effective and less subservient to the autarchic national interests of the permanent members. Butler suggests that there are three main areas of concern with regards to reform of the Security Council.<sup>39</sup> The first being the constituency of the Security Council. These proposals deal with amendments to the number of states serving on the Security Council and the selection process for these states. The measure of reform proposed by the Group of Four serves as an example of this type of proposal as it seeks the induction of new permanent members to serve on the council.<sup>40</sup> The second area of concern is the voting methodology. These proposals regard the limitation and, in some, the removal of the veto power altogether.<sup>41</sup> Butler, goes on to suggest that the third area of concern is the overall role of the Security Council in the maintenance of international peace and security. Cox provides another category of reform proposals, not considered by Butler, and these are the reform proposals that relate to the operating methods of the Security Council.<sup>42</sup>

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<sup>36</sup> Kia (note 8 above) 8.

<sup>37</sup> Kia (note 8 above) 9.

<sup>38</sup> Kia (note 8 above) 9.

<sup>39</sup> Butler (note 12 above) 12.

<sup>40</sup> Group of Four: Germany, India, Japan and Brazil advocating for each of these states to be granted a permanent seat on the Security Council.

<sup>41</sup> Butler (note 12 above) 32.

<sup>42</sup> B Cox 'United Nations Security Council Reform: Collected Proposals and Possible

This research seeks to assess the value of the veto power of the United Nations Security Council's permanent members, in the modern age and the necessity of reform of the Security Council. The paper shall consist of three chapters. The first chapter considers the mandate and functions of the Security Council, the second chapter will consist of a comparison between the rationale for the existence of the veto power and the modern exercise of the veto power by the permanent members from 1990 to 2017 (in order to determine whether a deviation exists between the exercise of the veto power and the rationale for the veto power). The last chapter considers the major proposals for reform of the Security Council and their value to the UN and the member states.

## Chapter 1: Mandate of the United Nations Security Council

The United Nations (UN) was established through the United Nations Charter (Charter) which confers the purpose of the United Nations as well as provides certain powers and functions held by the UN.<sup>43</sup> The preamble to the charter provides the paradigm in which the charter was drafted. The main concern for the drafters of the charter was to ensure that following generations would not witness the savagery and loss endured by those who had suffered WWII.<sup>44</sup>

Article 1 of the charter outlines the purposes of the United Nations:

*“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 principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;*

*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;*

*To achieve international co-operation 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*

*To be a centre for harmonizing the actions of nations in the attainment of these common ends.”<sup>45</sup>*

To ensure the fulfillment of these purposes chapter 3 of the United Nations charter establishes several organs and councils.<sup>46</sup> Namely the General Assembly, the Security Council, the Trusteeship Council, the Economic and Social Council, the Secretariat and the International Court of Justice.<sup>47</sup>

The preamble to the United Nations charter as well as the charter itself makes it abundantly clear that the overriding objective of the United Nations is the maintenance of international peace and security.<sup>48</sup>

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<sup>43</sup> P Malanczuk *Akehursts' Modern Introduction to International Law* (1997) Routledge 164.

<sup>44</sup> UN Charter (note 10 above) Preamble.

<sup>45</sup> UN Charter (note 10 above) Article 1.

<sup>46</sup> UN Charter (note 10 above) Article 7

<sup>47</sup> Malanczuk (note 43 above) 172.

<sup>48</sup> UN Charter (note 10 above) Article 1.

Article 24 of the charter confers the primary responsibility of maintenance of international peace and security on the Security Council and confirms that, in doing so, the Security Council acts on behalf of the United Nations member states.<sup>49</sup> While article 25 confirms that the Security Council's resolutions are binding on the United Nations member states making the member states legally obligated to obey said resolutions.<sup>50</sup> Tomescu, denotes that the drafters of the UN charter created a Security Council that would be the center of power of the UN, capable of rapid and effective action in carrying out the mandate of maintenance of international peace and security.<sup>51</sup> To that end, the drafters of the UN charter envisioned a small council composed, permanently, of the states that, by means of economic and military prowess and cooperation, were the victors of WWII as these states were in the best position to ensure that the Security Council's mandate would be fulfilled.<sup>52</sup> Thus the United Kingdom, China, Russia, France and the United States of America form the central permanent members of the Security Council, due to their unique position of economic and military power, these states have been burdened with the permanent responsibility of maintenance of international peace.

This chapter seeks to identify the practical implications that the Security Council must undertake in order to fulfill the mandate of maintenance of international peace and security.

### Functions of UNSC

The UN charter sets out the means through which the Security Council's mandate may be fulfilled through special powers and functions given particularly to the Security Council.<sup>53</sup> The Security Council's functions include the investigation of situations which may lead to international friction, clampdown of acts of aggression, prevention and removal of threats to the peace and, by way of peaceful means, the settlement of disputes which would likely result in a breach of peace.<sup>54</sup>

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<sup>49</sup> UN Charter (note 10 above) Article 24.

<sup>50</sup> UN Charter (note 10 above) Article 25.

<sup>51</sup> I Tomescu 'The Role of the Security Council in the Maintenance of Peace and International Security' (2010) *Agora IJJS: International Journal of Juridical Sciences* 103.

<sup>52</sup> Tomescu (note 51 above) 103.

<sup>53</sup> Tomescu (note 51) 103.

<sup>54</sup> UN Charter (note 10 above) Article 1 (1).

The principal functions of the Security Council can therefore be separated into two categories. The first being the making of recommendations to ensure the peaceful settlement of disputes and the second being the undertaking of enforcement action to squash acts of aggression, breaches and or threats to the peace.<sup>55</sup>

Chapter VI of the United Nations charter deals with the Pacific Settlement of Disputes. Article 33 states that should a dispute between parties exist that is liable to result in a breach or threat to international peace and security the Security Council may call upon the parties to settle their dispute through negotiation, mediation, conciliation and other peaceful means.<sup>56</sup> While article 34 states that the responsibility to investigate the likelihood of a dispute resulting in a threat or breach of the peace is borne by the Security Council.<sup>57</sup> The final responsibility of recommending measures to resolve a dispute or draft settlements is borne by the Security Council as well.<sup>58</sup>

Chapter VII of the United Nations charter deals with the action to be taken in respect of threats and breaches of the peace as well as acts of aggression. Article 39 provides functions that the Security Council must fulfill:

1. The Security Council must assess whether a situation amounts to a threat/ breach of the peace or act of aggression.
2. Should the Security Council come to the conclusion that a situation amounts to a threat or breach of the peace or act of aggression the Security Council may, depending on the circumstances at foot, make recommendations in line with article 41 of the charter which allows for non-military measures such as interruption of economic dealings and the termination of diplomatic relations.<sup>59</sup> However, should the circumstances of a particular situation dictate that military measures are required in order to maintain or restore international peace and security the Security Council may make a resolution under article 42 of the charter which allows for military measures to be taken. An example of this

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<sup>55</sup> Malanczuk (note 43 above) 173.

<sup>56</sup> UN Charter (note 10 above) Article 33 reads "The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice."

<sup>57</sup> UN Charter (note 10 above) Article 34.

<sup>58</sup> UN Charter (note 10 above) Article 36.

<sup>59</sup> Malanczuk (note 43 above) 183.

function can be found in the instance in which the Security Council exercised its right to undertake military measures in Security Council resolution 83 where the Council recommended that member states supply armed forces to repel the North Korean contingent that had invaded South Korea.<sup>60</sup>

Article 40 of the charter provides that the Security Council may, prior to taking the actions listed in article 39, call upon the parties involved in a dispute to take such provisional measures as may be essential. An example would be Security Council resolution 54 which called for a ceasefire between Israeli and Arab forces in the Palestine area.<sup>61</sup> Should the Security Council exercise this power the corresponding duty would be to monitor the situation in order to detect any violation of the provisional measures by the parties concerned.

In addition, the United Nations charter provides further duties and functions that the Security Council must fulfill such as the recommendation of new members to be admitted to the United Nations, the exercise of Trusteeship functions, recommending a suitable candidate to be appointed as Secretary General for the General Assembly and to work together with the General Assembly to elect judges to serve in the International Court of Justice.<sup>62</sup>

Cox denotes that the drafters of the Security Council did not intend that maintenance of international peace and security be synonymous with the prevention of all conflict.<sup>63</sup> According to Cox, international peace and security and internal conflicts are not mutually exclusive. Maintenance of international peace and security refers to the duty of taking up collective measures to restore threats and/or breaches of *international* peace. In light of this, a domestic conflict only becomes a concern for the UNSC when that conflict either has the potential to cause international friction or results in a dispute for which the potential of that dispute to cause a breach in international peace and security must be determined.<sup>64</sup>

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<sup>60</sup> Malanczuk (note 43 above) 185.

<sup>61</sup> Malanczuk (note 43 above) 183.

<sup>62</sup> UNSC (note 13 above).

<sup>63</sup> Cox (note 42 above) 120.

<sup>64</sup> UN Charter (note 10 above) Article 34.



Therefore, in light of the fact that the Security Council holds the primary responsibility of maintenance of international peace and security should a situation arise in which international peace and security is threatened or breached the Security Council acts on behalf of the member states in making a resolution aimed at either restoring or maintaining the peace. The Security Council thus serves as the UN's organ of first instance in matters relating to international peace and security.

However, considering the prominent role the Security Council plays in the maintenance of international peace and security, the unbridled power the organ has and the power held by the Council's permanent members to unilaterally veto a proposed resolution on non-procedural matters, the question should be asked whether the veto power does not threaten the fulfillment of the Security Council's mandate? As the rest of the United Nations member states, and indeed the world, are at the mercy of the Security Council's permanent member's integrity in not casting their votes based on private interests rather than the purpose for which the Security Council exists.

## Chapter 2: The Veto Power

The United Nations Charter confers, on the permanent members of the Security Council, a unilateral right to veto Security Council resolutions on non-procedural matters. The relevant section in Article 27 of the UN charter reads:

*“Decisions of the Security Council on procedural matters shall be made by an affirmative vote of nine members.”<sup>65</sup>*

In fact, the UN charter does not explicitly use the words: *veto power*. When a draft resolution on non-procedural matters is set before the council for vote the affirmative vote of nine council members as well as the agreeing vote of the permanent members is required for the successful passing of the resolution. Should a permanent member cast a dissenting vote on a non-procedural draft resolution that resolution may not pass. Whereas should a permanent member not particularly agree with a proposed resolution but that permanent member does not wish to cast a dissenting vote that member may simply abstain from the vote allowing the resolution to pass should it obtain the required minimum number of concurring votes.<sup>66</sup> However while an abstention by a permanent member on non-procedural resolutions may not have a direct ostensible impact on the outcome of the resolution the persuasive nature of a permanent member’s abstention on the remaining council members must be noted. Therefore, we say that the permanent members possess a right to veto Security Council resolutions on non-procedural matters.

The distinction between procedural matters and non-procedural matters lies in the fact that procedural matters are related to the operating methods of the council.<sup>67</sup> Procedural matters relate to the decisions made under article 28 to 32 of the UN charter.<sup>68</sup> Bailey states that analysis of the practice of the council will indicate that the following matters are among those considered to be procedural, namely, the inclusion and order of items on the agenda, invitations to participate in proceedings, challenges

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<sup>65</sup> UN Charter (note 10 above) Article 27.

<sup>66</sup> ‘Voting System and Records’ available at: <http://www.un.org/en/sc/meetings/voting.shtml> (accessed 14 January 2018).

<sup>67</sup> Okhovat (note 17 above) 8.

<sup>68</sup> UN Charter (note 10 above) Articles 28 to 32.

to rulings of the president, voting order of proposals and convocation of emergency special sessions.<sup>69</sup> While non-procedural matters refer to the substantive issues of the appropriate action, to be taken by the council, once a chain of events has started requiring the council to investigate or make a determination that disputing parties must settle their differences.<sup>70</sup> Bailey denotes that in such cases this chain of events might result in the council having to take enforcement action, through collective measures, and that is why decisions of this nature require the concurring votes of the permanent members.<sup>71</sup>

The United Nations Charter was adopted under tumultuous circumstances. The states which were the victors of WWII would not succumb to an international organization, which would essentially monopolize the use of force<sup>72</sup>, without safeguards for their protection. For the victors of WWII, particularly the United States of America and the Soviet Union, participation in the United Nations and the unique position of holding a right of veto in the Security Council were synonymous and without the veto these states would not partake.<sup>73</sup> Considering the fact that these states were the super powers of the world it is no surprise that the representatives of the states at the adoption of the UN charter in San Francisco had to acquiesce to their demands as failing such would result in a United Nations without the aid of the world's super powers and the flailing participation of the super powers in an international organization would surely result in that organization's demise as seen with the League of Nations.<sup>74</sup>

The rationale for the veto power can be ascertained from the statements of the representatives of the world's super powers who advocated for the veto. The commonality present in the statements of the representatives of the United Kingdom, United States of America as well as the Soviet Union is that for the purpose of the Security Council fulfilling its mandate, of maintenance of international peace and security, the world's super powers would have to be united and unanimous with the course of action needed in order to remedy a threat or breach of the peace. Failure

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69 SD Bailey 'Veto in the Security Council' (1967-1969) *International Conciliation* 2.

70 Bailey (note 69 above) 14.

71 Bailey (note 69 above) 14.

72 UN Charter (note 10 above) Article 2(4).

73 S Shraideh 'The Security Council's Veto in the Balance' (2017) *Journal of Law, Policy and Globalization* 135.

74 Shraideh (note 73 above) 136.

here would result in a failure in fulfilment of the mandate as well as the failure of the UN itself.<sup>75</sup> The representative of the United Kingdom stated that the insistence of the world's super powers on the veto power was not a menace to the smaller states but rather a safeguard for all the peaceable states of the world in that the unanimity brought about by the veto power would ensure that no ideological differences between the world's super powers could result in "...rival blocs which might clash in some future Armageddon."<sup>76</sup>

Therefore, the role of the veto power can be better understood when one realizes that the permanent members, of the Security Council, being the world's super powers are burdened with the permanent obligation of maintenance of international peace and security. Without the permanent members the UN would most likely have failed as the international organization would have considerably less enforcement power.<sup>77</sup> Therefore the veto power is bartered in exchange for the continued participation of the world's super powers in the affairs of the UN. Cox outlines a hypothetical scenario in which the council intends on placing economic sanctions on Sudan for war crimes committed in Darfur. For arguments sake we say that China has an agreement in place with Sudan for the purchase of oil which Sudan exports. The proposed resolution would be detrimental to the national interests of China as Sudan would no longer be able to export oil. In such a case China could exercise its veto power so as to secure its national interests. However, following the reform proposals which recommend the abolition of the veto power China would not have the option to veto the resolution. Consider the scenario in which that resolution is passed. Do we expect China to acquiesce to the binding resolution of the UNSC or does China have enough power and sway to blatantly oppose the resolution and continue in China's own national interests? Cox denotes that should China ever take such action the UNSC would have three possible courses of action:

1. The UNSC could pass a resolution authorizing military action against China. This scenario allows the greatest military and nuclear powers of the world to engage in war which is the very event that the UN Charter was adopted to prevent.

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<sup>75</sup> Shraideh (note 73 above) 136 and Butler (note 12 above).

<sup>76</sup> Shraideh (note 73 above) 137.

<sup>77</sup> Cox (note 42 above) 120.

2. The UNSC could pass a resolution authorizing economic sanctions against China. This scenario could result in global economic crises as China's economy is one of the largest in the world. The legitimacy of the UN is also at risk as most states could simply not participate in economic sanctions against China due to the economic loss of supporting an economic sanction against China.
3. The UNSC decides to not take action after considering China's military and economic prowess. This scenario results in the weakened public perception of the UN and loss of legitimacy.<sup>78</sup>

Despite the above the veto power is considered, by many, as anachronistic and superfluous to the fulfilment of the Security Council's mandate in that the reasons behind the exercises of the veto have been vastly different to those intended at the adoption of the United Nations charter.<sup>79</sup>

This chapter considers the veto exercises and their reasons by the Security Council's permanent members, from 1990 to 2017. In order to compare the exercise of the veto power, in the modern era, with how the drafters of the UN charter intended the veto power to be exercised so as to come to a conclusion on whether or not the criticisms, of the Security Council, and resultant calls for reform are indeed appropriate.

### The Exercise of the Veto power

The period following the Cold War Era would see a decrease in the explicit exercise of the veto power, more specifically the longest period without exercise of the veto was between 31 May 1990 and 11 May 1993.<sup>80</sup> Only nine vetoes would be cast between 1990 and 1999 and a total of 43 would be cast from 1990 to 2017.<sup>81</sup> The cause for this change in number of explicit exercises would be the alignment of ideologies between the east and west.<sup>82</sup>

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<sup>78</sup> Cox (note 42 above) 121.

<sup>79</sup> Okhovat (note 17 above) 5.

<sup>80</sup> Okhovat (note 17 above) 11.

<sup>81</sup> 'Veto List' available at: <http://research.un.org/en/docs/sc/quick> (accessed on 25 October 2017); See also Appendix 1.

<sup>82</sup> Okhovat (note 17 above) 11.

What follows below is an account of the reasons and exercises of the veto power, by the Security Council's permanent members from 1990 to the present day relating to the Security Council's mandate of maintenance of international peace and security. For ease of reference, a compilation of Security Council vetoes from 1990 to 2017 is attached as Appendix 1 as well as an illustration of the number of vetoes and abstentions recorded against each permanent member of the Security Council attached as Appendix 2.

## USA

The United States of America (USA) vetoed two separate draft resolutions in January and May of 1990. What is of concern is the veto of 31 May 1990 which relates to the Occupied Arab territories in which the establishment of a commission to investigate the practices and policies of Israel, the occupying power in the Palestine area, was intended pursuant to the Security Council's mandate of international peace and security. Although the draft resolution was supported by the other 14 member states the USA cast a negative vote resulting in the resolution not passing. The USA is the permanent member to the Security Council that has cast the second highest number of vetoes, second only to Russia.<sup>83</sup> However, after the Cold War era the USA has cast the most vetoes out of all the permanent members. Out of the 16 vetoes cast by the USA between 1990 and 2017 over 80 percent of these draft resolutions concerned the Israel/Palestine issue. In fact only 2 of the vetoes cast by the USA from 1990 to 2017 have not been related to the Israel/Palestine issue.<sup>84</sup> The majority of the draft resolutions vetoed by USA relating to Israel took place in the 2000s. These resolutions concerned ensuring the Palestinian civilians safety and protection by way of monitoring Israeli policies and practices,<sup>85</sup> the re-expropriation of illegally expropriated

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<sup>83</sup> USA has cast 77 vetoes since the first Security Council meeting in 1946 'Hard Evidence: who uses veto in the UN Security Council most often – and for what?' available at: <http://theconversation.com/hard-evidence-who-uses-veto-in-the-un-security-council-most-often-and-for-what-29907> (accessed on 25 October 2017).

<sup>84</sup> The two draft resolutions between 1990 and 2017 that the USA vetoed that did not concern the Israel/Palestine issue concerned the violation of diplomatic immunities with regards to Panama and the ICC jurisdiction over UN peacekeeping officers.

<sup>85</sup> UN Security Council, Security Council resolution (The situation in the occupied Arab territories), 31 May 1990, S/21326, available at: <http://mfa.gov.il/MFA/ForeignPolicy/MFADocuments/Yearbook8/Pages/141%20Security%20Council%20Draft%20Resolution%20S-21326-%2031.aspx> (accessed 10 October 2017).

land by Israel,<sup>86</sup> condemning Israeli settlement measures,<sup>87</sup> calling for removal of the Israeli military contingency from the Palestine area,<sup>88</sup> condemnation of all acts of violence by Palestinian Authorities and the Israeli Government and urging of resumption of negotiations<sup>89</sup> amongst others. Okhovat denotes that the relationship that exists between the USA and Israel along with the fact that Israel is a strong ally to the USA, in the middle-east is the reason why the USA has vetoed these draft resolutions in order to provide its strategic ally with political cover and protection. Throughout these draft resolutions, relating to the Israel/Palestine issue, the USA is the only country that opposed these resolutions. While other permanent members abstained from the vote the USA was the only permanent member that voted negatively. On four different occasions the USA was the only member to vote negatively in a draft resolution relating to the Israel/Palestine issue while the other 14 members voted in favour of the draft resolution.<sup>90</sup> Okhovat states that it is apparent that the actions of the USA regarding draft resolutions which relate to Israel are motivated by other considerations apart from interests of UN member states. The unique position of the USA in its stance towards the Israel/Palestine issue demonstrates how the veto power is used to secure the national interests of a state or

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<sup>86</sup> UN Security Council, Security Council resolution (The situation in the occupied Arab territories), 17 May 1995, S/1995/394, available at: <https://unispal.un.org/DPA/DPR/unispal.nsf/0/F58C6AD432A5A3980525651B00529AE9> (accessed 10 October 2017).

<sup>87</sup> UN Security Council, Security Council resolution (The situation in the occupied Arab territories), 07 March 1997, S/1997/199, available at: <https://unispal.un.org/DPA/DPR/unispal.nsf/0/18C75771AD131447802564650054B8BE> (accessed 10 October 2017) and

UN Security Council, Security Council resolution (The situation in the occupied Arab territories), 21 March 1997, S/1997/241, available at: <https://unispal.un.org/DPA/DPR/unispal.nsf/0/18C75771AD131447802564650054B8BE> (accessed 10 October 2017)

<sup>88</sup> Okhovat (note 17 above) 13.

<sup>89</sup> UN Security Council, Security Council resolution (The situation in the Middle East, including the Palestinian question), 27-28 March 2001, S/2001/270, available at: [http://dag.un.org/handle/11176/8/discover?rpp=10&page=179&group\\_by=none&etal=0&filter\\_type\\_0=agenda&filter\\_0=TERRITORIES+OCCUPIED+BY+ISRAEL&filter\\_relational\\_operator\\_0>equals](http://dag.un.org/handle/11176/8/discover?rpp=10&page=179&group_by=none&etal=0&filter_type_0=agenda&filter_0=TERRITORIES+OCCUPIED+BY+ISRAEL&filter_relational_operator_0>equals) (accessed 10 October 2017).

<sup>90</sup> These are found in draft resolutions: S/2136 (note 85 above); S/1995/394 (note 86 above); S/1997/199 (note 87 above) and UN Security Council, Security Council resolution (Middle East situation, including the Palestinian question), 18 February 2011, S/2011/24, available at: <https://unispal.un.org/DPA/DPR/unispal.nsf/0/8503563C218A481085257FCE006BA81C> (accessed 10 October 2017)



those of its ally.<sup>91</sup> Okhovat opines that this illustrates a deviation from the intended use of the veto power.<sup>92</sup>

The last time the United States of America vetoed a draft resolution was on the 18<sup>th</sup> of February 2011 which concerned the condemnation of settlement activities by Israel in the Palestine area and to further negotiation measures between Israeli and Palestinian authorities in the hope of finding lasting peace.<sup>93</sup> This draft resolution was supported by over 130 states and the veto by the USA received unparalleled criticism as the draft resolution was seen by many as pivotal in restoring peace to the area. Recently the Security Council, at the request of the representatives' of New Zealand, Malaysia, Senegal and Venezuela, passed a resolution on 23 December 2016 which condemned the settlement activities of Israel in the West Bank.<sup>94</sup> The passing of the resolution was largely due to an abstention by the USA. This resolution is seen by most commentators as a large stride in the direction of peace as United Nations Security Council resolutions are binding and Israeli settlement activity is regarded as detrimental to the two state peace processes that are in place.<sup>95</sup> The question that begs to be asked is why the United States of America stood in the way of fulfilment of the Security Council's functions at the expense of the thousands of civilians that are caught in the cross fire between Israeli and Palestinian forces? The answer that comes to mind is the fact the veto power ascribed to the United States of America is used primarily for the procurement of national interests.

Okhovat further denotes, that the decision of the USA to veto a draft resolution aimed at the renewal of a United Nations peacekeeping mission in Bosnia on 30 June 2002 had nothing to do with the peacekeeping mission nor the civilian population of Bosnia but rather turned on an issue completely unrelated to the Security Council's mandate.

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<sup>91</sup> Okhovat (note 17 above) 13.

<sup>92</sup> Okhovat (note 17 above) 13.

<sup>93</sup> S/2011/24 (note 90 above).

<sup>94</sup> UN Security Council, Security Council resolution 2334 (2016) (on cessation of Israeli settlement activities in the Occupied Palestinian Territory, including East Jerusalem), 23 December 2016, S/RES/2334 (2016), available at: <http://www.refworld.org/docid/587f347a4.html> (accessed 30 October 2017)

<sup>95</sup> 'US Abstention Allow UN to Demand End to Israeli Settlements' available at: <https://www.theguardian.com/world/2016/dec/23/us-abstention-allows-un-to-demand-end-to-israeli-settlements> (accessed 20 October 2017)



More specifically the concerns at play involved the actualization of prior threats made by the USA to derail future draft resolutions should the International Criminal Court (ICC) have jurisdiction over American United Nations peacekeeping officers.<sup>96</sup> Subsequently, the Security Council passed a resolution which requested that the ICC not exercise jurisdiction over American peacekeeping officers.<sup>97</sup>

#### Russia

No other permanent member of the Security Council has cast more vetoes than the Russian Federation (Russia). The majority of the vetoes cast by Russia were cast prior to the succession of the Russian Federation to serve as a permanent member on the Security Council in place of the Union of Soviet Socialist Republics (USSR). As a result, Russia has cast far fewer vetoes from 1990 to 2017 than its predecessor, the USSR, had from 1946 to 1991. Russia has vetoed a total of 17 draft resolutions since 1993 dealing with various situations ranging from Bosnia to Zimbabwe and recently Syria.<sup>98</sup>

Russia has vetoed two separate resolutions related to the extension of United Nations mandates in Cyprus while the other 14 council members voted in favour of the draft resolutions on both occasions.<sup>99</sup> Russia's first veto on Cyprus put an end to the longest period of time without a veto being exercised in the Security Council (36 months between 31 May 1990 to 11 May 1993). The veto regarded the financing of a peacekeeping operation in Cyprus and raised the concern of the United Nations financing system stating that the states which bore the burden of supplying armed forces had grown weary.<sup>100</sup> Russia's second veto on Cyprus occurred on the 21<sup>st</sup> of April 2004.<sup>101</sup> The draft resolution concerned the termination of a peacekeeping operation and its replacement with another. This draft resolution was vetoed by Russia

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<sup>96</sup> UN Security Council, Security Council Resolution S/2002/712 (2002) (The situation in Bosnia and Herzegovina), 30 June 2002, available at: [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/2002/712](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2002/712) (accessed 20 October 2017)

<sup>97</sup> Okhovat (note 17 above) 15.

<sup>98</sup> See Appendix 1

<sup>99</sup> UN Security Council, Security Council resolution (The situation in Cyprus), 11 May 1993, S/25693, available at: [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/25693](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/25693) (accessed 10 October 2017).

<sup>100</sup> Namely Canada, Britain, Denmark and Austria Okhovat (note 17 above); S/25693 (note 99 above).

<sup>101</sup> UN Security Council, Security Council resolution (The situation in Cyprus), 21 April 2004, S/2004/313, available at: [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/2004/313](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2004/313) (accessed 10 October 2017).

despite the unanimous support of the other 14 member states. The reason for Russia's veto was due to the fact that the representative of Russia felt that the draft resolution, if passed, would pose undue pressure on the state which was days away from a referendum regarding its reunification.<sup>102</sup>

Russia's other vetoes include vetoes on draft resolutions related to Bosnia and Herzegovina. On 2<sup>nd</sup> December 1994 Russia vetoed a draft resolution aimed at the cessation of the transporting of fuel from the former 'Yugoslavia' into Bosnia stating that the resolution would weaken economic developments between the two sides.<sup>103</sup> This draft resolution was supported by the other members of the council except for China that abstained.<sup>104</sup>

On the 8<sup>th</sup> of July 2015 Russia vetoed a draft resolution condemning the 1995 Srebrenica Massacre, in which 8000 Muslim men and boys were killed by Bosnian Serbs, as a genocide.<sup>105</sup> Russia has provided reasons for its exercise of the veto power in draft resolutions related to Bosnia and Herzegovina but certain authors are sceptical and rather look to the apparent financial undertakings and interests that Russia has in the region as the reason for Russia's casting of the veto in these matters. Serbia is considered to be Russia's ally in the Balkans, an area which Russia considers to be of strategic and economic interest. Kurt Volker, a former US ambassador is quoted as saying that Russia intends to fend off the influence of western ideology, personified by NATO and the European Council, in the Balkans.<sup>106</sup> Moscow and Belgrade have had ties for decades dating back to the Russian Empire.

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<sup>102</sup> 'Russia vetoes Cyprus resolution' available at: <https://euobserver.com/enlargement/15286> (accessed 10 October 2017).

<sup>103</sup> 'Russia vetoes U.N. resolution on Bosnia' available at: <https://www.upi.com/archives1994/12/02/Russia-vetoes-UN-Resolution-on-Bosnia/6154786344400/> (accessed 10 October 2017).

<sup>104</sup> UN Security Council, Security Council resolution (The situation in the Republic of Bosnia and Herzegovina), 02 December 1994, S/1994/1358, available at: [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/1994/1358](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/1994/1358) (accessed 10 October 2017).

<sup>105</sup> UN Security Council, Security Council resolution (The situation in the Republic of Bosnia and Herzegovina), 8 July 2015, S/2015/508, available at: [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/1994/1358](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/1994/1358) (accessed 10 October 2017).

<sup>106</sup> 'Why Did Russia Veto Recognizing Srebrenica as a Genocide?' available at: <http://foreignpolicy.com/2015/07/09/why-did-russia-veto-recognizing-srebrenica-as-a-genocide-putin-bosnia/> (accessed 22 October 2017).

Russian energy giant Gazprom also entered into a long term contract for the provision of gas to Serbia in 2013.<sup>107</sup>

On 15 June 2009 Russia vetoed a draft resolution aimed at the extension of a UN observer mission's mandate in Georgia and Abkhazia<sup>108</sup> after the region in question had, no longer than a year prior to the exercise of the veto by Russia, been involved in war with none-other than Russia itself.<sup>109</sup>

Russia famously vetoed a draft resolution related to the referendum of Crimea.<sup>110</sup> The draft resolution would have annulled the referendum of the people of Crimea who had voted in favour of annexation by Russia. The draft resolution was supported by the other remaining council members except for China which had abstained.<sup>111</sup> The tension over the issue exists in the fact that it deals with fundamental principles of sovereignty and self-determination with Russia arguing that the Ukrainian government cannot be recognized as it took power and effective control over Crimea in an illegal coup d'état while the remaining members of the Security Council are committed to the sovereignty and independence of the Ukrainian government.<sup>112</sup> The draft resolution implored the concerned parties to enter into peaceful negotiations in order to reach settlement. Samantha Power, the US ambassador condemned Russia's disregard for the fundamental principles of international law, prohibiting use of force in acquisition of territory, and stated that Russia usually adheres to these principles but in this case Russia used the veto power to defend an illegal abuse of power.<sup>113</sup> The sentiments articulated by the US ambassador resonate with certain authors who argue that

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<sup>107</sup> Russia Veto of Srebrenica Massacre (note 106 above).

<sup>108</sup> UN Security Council, Security Council resolution (Georgia: on the extension of the UN observer mission's mandate in Georgia and Abkhazia), S/2009/310, 15 June 2009, available at: [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/2009/310](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2009/310) (accessed 10 October 2017).

<sup>109</sup> Okhovat (note 17 above) 12.

<sup>110</sup> UN Security Council, Security Council resolution (Declared as invalid a referendum in Crimea, Ukraine), 15 March 2014, S/2014/189, available at: [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/2014/189](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2014/189) (accessed 10 October 2017).

<sup>111</sup> See Appendix 1.

<sup>112</sup> 'Russian vetoes are putting UN security council's legitimacy at risk, says US' available at: <https://www.theguardian.com/world/2015/sep/23/russian-vetoes-putting-un-security-council-legitimacy-at-risk-says-us> (accessed 30 October 2017).

<sup>113</sup> 'Russia and China veto UN resolution to impose sanctions on Syria' available at: <https://www.theguardian.com/world/2017/mar/01/russia-and-china-veto-un-resolution-to-impose-sanctions-on-syria> (accessed 20 October 2017).

Russia's veto did not arise out of neutral application of its discretion but rather out of individual procurement of national interests as the draft resolution would have declared invalid the annexation of Crimea by Russia and thus Russia would have missed out on an opportunity to increase its territory.<sup>114</sup>

With regards to Myanmar<sup>115</sup> and Zimbabwe<sup>116</sup> respectively, Russia vetoed draft resolutions aimed at condemning human rights abuses by the governments of these states. Okhovat denotes, that the reason behind the casting of the veto in these matters is because Myanmar and Zimbabwe are Russia's strategic allies and the veto was used as political cover and protection as seen with the USA and Israel. Okhovat denotes that Russia possesses economic interests in both Myanmar and Zimbabwe.<sup>117</sup>

#### China

Okhovat indicates, that the Security Council's permanent members are conscious of the negative criticisms that arise from repetitive exercise of the veto power.<sup>118</sup> No other state is as sensitive to the ramifications of exercise of the veto as the People's Republic of China (China) which rather opts to abstain from Security Council votes on draft resolutions. China has more recent abstentions than other permanent member (7 abstentions between 1990 and 2017). However, not unlike, USA and Russia China has vetoed several draft resolutions.<sup>119</sup> The first of these vetoes was on a draft resolution related to the verification of a ceasefire in Guatemala on 10 January 1997.<sup>120</sup> On the 25<sup>th</sup> of February 1999 China vetoed a draft resolution concerning the extension of a UN peacekeeping mission in Macedonia.<sup>121</sup> Okhovat is of the opinion

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<sup>114</sup> Russia Veto on Crimea (note 112 above).

<sup>115</sup> UN Security Council, Security Council resolution (The Situation in Myanmar), 12 January 2007, S/2007/14, available at [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/2007/14](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2007/14) (accessed 10 October 2017).

<sup>116</sup> UN Security Council, Security Council resolution (Peace and Security - Africa (Zimbabwe)), 11 July 2008, S/2008/447, available at [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/2008/447](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2008/447) (accessed 10 October 2017).

<sup>117</sup> Okhovat (note 17 above) 12.

<sup>118</sup> Okhovat (note 17 above) 15.

<sup>119</sup> See Appendix 1.

<sup>120</sup> UN Security Council, Security Council resolution (Central America: efforts towards peace), 10 January 1997, S/1997/18, available at: [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/1997/18](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/1997/18) (accessed 10 October 2017).

<sup>121</sup> UN Security Council, Security Council resolution (The situation in the former Yugoslav

that these vetoes did not arise out of a neutral consideration of the factors relevant to the Security Council's mandate of maintenance of international peace and security but rather China exercised the veto as a political weapon to punish Macedonia and Guatemala who both had engaged Taiwan recognizing Taiwan's independence which would not align with China's national interests of control over Taiwan.<sup>122</sup>

Along with Russia, China vetoed draft resolutions related to the condemnation of human rights abuses in Myanmar<sup>123</sup> and Zimbabwe.<sup>124</sup> Not unlike Russia, China did have economic interests in both Myanmar and Zimbabwe which Okhovat argues denotes the fact that Myanmar and Zimbabwe are strategic allies of China and as a result China exercised its veto in order to provide political cover and protection.<sup>125</sup> Okhovat, goes further to outline that Myanmar's current regime is greatly dependent on China for its level of power.<sup>126</sup>

#### The Situation in Myanmar

The Veto of both Russia and China regarding the Myanmar draft proposal<sup>127</sup> has been condemned by many authors and state representatives as a deep disappointment.<sup>128</sup> The resolution sought to condemn human rights violations, cease military attacks against Myanmar's civilian population by the Government as well as to give rise to political dialogue between opposing factions.<sup>129</sup> The people of Myanmar have suffered severe human rights violations since the Coup d'état of 1962 in which the democratic rule was brought to an end.<sup>130</sup> The reported human rights violations include persistent forced labour, torture, sexual violence, extrajudicial killings and the displacement of over a million people.<sup>131</sup> The military Government is also responsible for the systematic

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Republic of Macedonia), 25 February 1999, S/1999/201, available at: [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/1999/201](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/1999/201) (accessed 10 October 2017).

<sup>122</sup> Okhovat (note 17 above) 13.

<sup>123</sup> S/2007/14 (note 115 above).

<sup>124</sup> S/2008/447 (note 116 above).

<sup>125</sup> Okhovat (note 17 above) 12.

<sup>126</sup> Okhovat (note 17 above) 12.

<sup>127</sup> S/2007/14 (note 115 above).

<sup>128</sup> 'Security Council Fails to Adopt Draft Resolution on Myanmar, Owing to Negative Votes By China, Russian Federation' available at: <http://www.un.org/press/en/2007/sc8939.doc.htm> (accessed 9 November 2017).

<sup>129</sup> 'The Crisis in Burma' available at: <http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-burma#Saffron> (accessed 9 November 2017).

<sup>130</sup> The Crisis in Burma (note 129 above).

<sup>131</sup> The Crisis in Burma (note 129 above).

rape of women belonging to ethnic minorities and the destruction of villages and homesteads.<sup>132</sup> The international community condemned the violence in Myanmar.<sup>133</sup> Soon after the veto of the draft resolution the Government of Myanmar increased fuel prices by 500% resulting in what is referred to as the Saffron Revolution<sup>134</sup> in which thousands of monks marched in peaceful protest of the military Government. The Government responded with heavy handed arrests of pacific activists. The United Kingdom's representative to the United Nations expressed concern and pressed the Security Council to continue considering the situation in Myanmar.<sup>135</sup> The representative of the US condemned the military government of Myanmar claiming that the government committed gross human rights violations in pursuit of political power against the interests of the government's own civilian population.<sup>136</sup> The US representative also stated that the situation in Myanmar posed a threat to international peace and security as it posed risks to peace beyond its borders.<sup>137</sup> The representatives of Myanmar, China and Russia all specified that the situation in Myanmar did not amount to a threat to international peace and security and as a result the council failed to adopt the resolution.<sup>138</sup> The exercise of the veto power by Russia and China, in this instance, secured the proliferation of human rights violations in the country.

#### The conflict in Syria

A situation that has been extremely contentious, in the world as well as behind closed doors in the Security Council, over the last several years is the Syrian conflict. Over seven draft resolutions related to the Syrian conflict have been vetoed by either China and/or Russia since 2011.<sup>139</sup> The only draft resolution related to the Syrian conflict not vetoed by both Russia and China was the last vetoed draft resolution of 12 April

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<sup>132</sup> The Crisis in Burma (note 129 above).

<sup>133</sup> The Crisis in Burma (note 129 above).

<sup>134</sup> The Crisis in Burma (note 133 above).

<sup>135</sup> S/2007/14 (note 115 above).

<sup>136</sup> S/2007/14 (note 115 above).

<sup>137</sup> S/2007/14 (note 115 above).

<sup>138</sup> S/2007/14 (note 115 above).

<sup>139</sup> See Appendix 1.



2017<sup>140</sup> which Russia vetoed and China abstained.<sup>141</sup> The Conflict in Syria began in March of 2011 with civil protests directed against the government of Syrian president Bashar Al-Assad which had detained and tortured teenagers for painting anti-government/revolutionary slogans. These protests were part of several protests throughout the region that were collectively known as the Arab Spring. The presidency of Syria had remained in the Al-Assad family since 1971 and with protests directed against the president; the government responded with open fire on demonstrators injuring and killing several civilians. The ardent opposition of the government to the protests, of the civilians, only served to stir a deeper disenchantment with the Al-Assad government and inevitably civilians took up arms to defend themselves from government forces and oust these forces from their vicinity with assistance from foreign Islamic extremist combatants.<sup>142</sup> As a result a civil war broke out with anti-government contingencies fighting government forces for control of towns and cities. By 2013, 90 000 people were deceased as a result of the conflict, that number increased to 250 000 by 2015 while an estimated 11 million people have been displaced. The conflict has developed from the two dimensional Al-Assad versus the people to a more complicated context in which tribalism and heritage plays a role alongside the rise of the Islamic State and the inclusion of regional and global powers into the conflict.<sup>143</sup>

The Security Council has received a lot of criticism for its failures in delivering effective measures to halt the conflict in Syria and restore peace. So much so that many authors believe the inefficiency of the Security Council in this regard is primarily due to the exercise of the veto power. Al Shraideh denotes that the failures of the Security Council with regard to Syria are primarily due to conflicting self-interests between the major powers with Russia and China on one side and the USA, France and UK on the

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<sup>140</sup> UN Security Council, Security Council resolution (The situation in the Middle East), 12 April 2017, S/2017315, available at: [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/2017/315](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2017/315) (accessed 10 October 2017).

<sup>141</sup> See Appendix 1.

<sup>142</sup> 'Why Nato Intervened in Libya, but not Syria' available at: <http://ciceromagazine.com/features/why-nato-intervened-in-libya-but-not-syria/> (accessed 10 November 2017).

<sup>143</sup> 'Syria: The story of the conflict' available at: [www.bbc.com/news/world-middle-east-26116868](http://www.bbc.com/news/world-middle-east-26116868) (accessed 20 October 2017).

other side.<sup>144</sup> The UN representative of Lichtenstein stated that the Security Council's failure to provide decisive action in Syria shows a critical weakness in the Security Councils' voting system.<sup>145</sup> Russia and China provide various reasons as to why they veto draft resolutions on Syria. For example the draft resolution relating to the cessation of use of force by the Syrian government and withdrawal of troops from population centres<sup>146</sup> was vetoed by Russia and China on the 19<sup>th</sup> of July 2012 because, according to Russia, the draft resolution, which the western states argued would only promote non-military economic sanctions, would in reality open the door for external military forces to enter into domestic Syrian affairs. China's UN ambassador, Li Baodong agreed with Russia on this point.<sup>147</sup> However, Russia also supplies the Syrian government with weaponry and warships and Russia has a military base in the Syrian port city of Tartus.<sup>148</sup> While China also has economic ties to Syria as China became Syria's major supplier of imported products and China has invested in Syrian oil. However considering the size of Syria's economy these indicators cannot stand alone as evidence of a substantial economic interest held by China in Syria.<sup>149</sup> One could argue that the politics of the Cold War never died with the end of the war and we very much still live in a west versus east world where the world's superpowers are very much driven by their ideologies which permeate into their ambitions and goals.<sup>150</sup> With this backdrop one could see that Russia and China's involvement with Syria is in order to secure an ally in the middle-east and avoid a pro-west replacement by protecting the incumbent president's regime. The same blatant partisanship as seen with the political cover and protection USA granted to Israel in recent decades. Many authors opine that this deviates far from the intended use of the veto power which was outlined at the inception of the United Nations.

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<sup>144</sup> Al Shraideh (note 73 above) 138.

<sup>145</sup> Al Shraideh (note 73 above) 138.

<sup>146</sup> UN Security Council, Security Council resolution (The situation in the Middle East – Syria) 19 July 2012, S/2012/538, available at: [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/2012/538](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2012/538) (accessed 10 October 2017).

<sup>147</sup> 'China's veto on Syria: what interests are at play?' available at: <https://www.opendemocracy.net/nicholas-wong/china%E2%80%99s-veto-on-syria-what-interests-are-at-play> (accessed on 22 October 2017).

<sup>148</sup> China's veto on Syria (note 147 above).

<sup>149</sup> China's veto on Syria (note 147 above).

<sup>150</sup> China's veto on Syria (note 147 above).



Al Shraideh argues that regardless of the reasons for exercise of the veto, the veto power has been used as a political tool wielded to assert differences in conflict resolution strategies between the permanent members at the expense of the lives of millions of people and indeed the Security Council's mandate.<sup>151</sup>

The exercise of the veto power by Russia and China on resolutions seeking to sojourn the genocide and countless human rights violations ongoing in Syria resulted in the violence continuing unabated. Subsequently terrorist organizations such as the Islamic State have risen among the debris and corpses with the initial objective of defending the interests of the civilian population that were threatened by Assaad's government. Today Islamic State, has grown far from being a mere transnational terrorist organization and has demonstrated its proficiency in securing and defending strategic territory in the Middle East.<sup>152</sup> Albeit true that recent developments have whispered notes of a shift in the tide as Islamic State's self-proclaimed capital Raqqa has fallen thanks to United States of America led anti-Islam coalition.<sup>153</sup> Nevertheless Islamic State has claimed responsibility for a plethora of terrorist attacks beginning in 2013 the most recent occurring not too long ago in October 2017 on US territory.<sup>154</sup> Islamic State terrorist attacks have occurred in several states in multiple geopolitical regions.<sup>155</sup> The objective of Islamic State today can be defined as the establishment of a world order based on the beliefs contained in Sharia law through which the glory and power of the omnipotent *creator* of the world can be praised.<sup>156</sup> This includes the purging of non-believers or infidels through merciless violence intended to kill and frighten, the spreading of fanaticism and the teaching of pure or true Islam.<sup>157</sup>

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<sup>151</sup> Al Shraideh (note 73 above) 143.

<sup>152</sup> 'How Isis came to be' available at: <https://www.theguardian.com/world/2014/aug/22/syria-iraq-incubators-isis-jihad> (accessed 10 November 2017).

<sup>153</sup> 'The Guardian view on the fall of Raqqa: as Isis loses, Iran wins' available at: <https://www.theguardian.com/commentisfree/2017/oct/22/the-guardian-view-on-the-fall-of-raqqa-as-isis-loses-iran-wins> (accessed 14 January 2018).

<sup>154</sup> 'New York attack: Eight killed by man driving truck' available at: <http://www.bbc.com/news/world-us-canada-41825577> (accessed 10 November 2017).

<sup>155</sup> 'List of terrorist incidents linked to ISIL' available at: [https://en.wikipedia.org/wiki/List\\_of\\_terrorist\\_incidents\\_linked\\_to\\_ISIL](https://en.wikipedia.org/wiki/List_of_terrorist_incidents_linked_to_ISIL) (accessed 10 November 2017).

<sup>156</sup> J Siebert, Von Winterfeldt, RS John ' Identifying and Structuring the Objectives of the "Islamic State of Iraq and the Levant" (ISIL) and its Followers' (2015)

<sup>157</sup> Siebert (note 156 above) 13.

Terrorism has been a tool the Islamic State has implored in securing its objectives across the globe.

The United Nations Security Council has adopted a number of resolutions which condemn terrorism and has gone as far as creating a Counter-Terrorism-Committee through resolution 1373.<sup>158</sup> The Security Council has condemned several terrorist attacks through different resolutions pertaining to terrorist attacks in Bali,<sup>159</sup> Russia,<sup>160</sup> Kenya<sup>161</sup> and Spain<sup>162</sup>. Security Council resolution 2199 condemns terrorism as a threat to the fulfilment of the council's mandate of maintenance of international peace and security.<sup>163</sup> In 2015 the Security Council unequivocally condemned the Islamic State's spate of terrorist attacks in Ankara, Beirut and Sousse.<sup>164</sup> The resolution urged member states to impede the influx of foreign terrorist combatants in Iraq and Syria and stated the council's condolences for the victims of the terrorist attacks and their families. What is striking about the resolution can be found in paragraph five which reads:

*"...the Islamic State in Iraq and the Levant (ISIL, also known as Da'esh), constitutes a global and unprecedented threat to international peace and security"*<sup>165</sup>

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<sup>158</sup> UN Security Council, *Security Council resolution 1373 (2001) (on threats to international peace and security caused by terrorist acts)*, 28 September 2001, S/RES/1373 (2001), available at: <http://www.refworld.org/docid/3c4e94552a.html> (accessed 11 November 2017).

<sup>159</sup> UN Security Council, *Security Council resolution 1438 (2002) (on threats to international peace and security caused by terrorist acts)*, 14 October 2002, S/RES/1438 (2002), available at: <http://www.refworld.org/docid/3dda0f0f4.html> (accessed 11 November 2017).

<sup>160</sup> UN Security Council, *Security Council resolution 1440 (2002) (on threats to international peace and security caused by terrorist acts)*, 24 October 2002, S/RES/1440 (2002), available at: <http://www.refworld.org/docid/3dda0f444.html> (accessed 11 November 2017).

<sup>161</sup> UN Security Council, *Security Council resolution 1450 (2002) (on the threats to international peace and security caused by terrorist acts)*, 13 December 2002, S/RES/1450 (2002), available at: <http://www.refworld.org/docid/3f45dbd8e.html> (accessed 11 November 2017).

<sup>162</sup> UN Security Council, *Security Council resolution 1530 (2004) (on combating terrorism)*, 11 March 2004, S/RES/1530 (2004), available at: <http://www.refworld.org/docid/411347494.html> (accessed 11 November 2017).

<sup>163</sup> UN Security Council, *Security Council resolution 2199 (2015) (on threats to international peace and security caused by terrorist acts by Al-Qaida)*, 12 February 2015, S/RES/2199 (2015), available at: <http://www.refworld.org/docid/54ef1f704.html> (accessed 11 November 2017).

<sup>164</sup> UN Security Council, *Security Council resolution 2249 (2015) (on terrorist attacks perpetrated by ISIL also known as Da'esh)*, 20 November 2015, S/RES/2249 (2015), available at: <http://www.refworld.org/docid/5656a4654.html> (accessed 11 November 2017).

<sup>165</sup> UNSC 2249 (note 164 above) Paragraph 5.

The rise of the Islamic State is a result of the civil infighting in Syria which the Security Council could have sojourned. Had China and Russia not vetoed draft resolutions aimed at condemning human rights abuses in Syria and restoring peace, through ceasefire agreements, the Islamic State may not have risen to prominence. The veto power is indirectly responsible for the rise of the Islamic State through creating the space in which foreign Islamic combatants could organize and develop to become a transnational terrorist organization. Today the Islamic State is a threat to international peace and security as declared by the Security Council. One cannot help but think that these circumstances may have been avoided if the China and Russia did not exercise their veto powers.

#### United Kingdom, France and the Pocket Veto

The United Kingdom (UK) and France have not exercised a single veto between 1990 and 2017. The last time France and the UK exercised their veto right was in 1989 regarding a resolution which sought the withdrawal of American forces in Panama. The USA joined France and the UK in vetoing this draft resolution.<sup>166</sup> One might resign with the automatic conclusion that these permanent members have become inactive in the Security Council however you couldn't be further from the truth. Okhovat, stresses that Security Council permanent members wish to limit the public relations backlash that is attached with exercises of their veto power but, simultaneously, these members do not wish to remain silent on key issues. In order to circumvent this problem certain permanent members use lobbying tactics to keep certain matters on or off the agenda or to moderate the language used in a resolution by, implicitly or explicitly threatening to use their charter given right of veto.<sup>167</sup> This is known as the *Pocket Veto* and it is a bargaining tool most frequently used by Russia and China in recent years.<sup>168</sup>

In November of 2010 Moroccan armed forces squashed peaceful protests in West Sahara and avoided liability as France prevented the issue from reaching the Security Council agenda through threats of use of its (France's) veto power should a draft resolution seeking investigation into the actions of the Moroccan forces be put to vote.

<sup>166</sup> UN Security Council, Security Council resolution (The situation in Panama) 23 December 1989, S/21048, available at [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/21048](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/21048) (accessed 10 October 2017).

<sup>167</sup> Okhovat (note 17 above) 15.

<sup>168</sup> Al Shraideh (note 73 above) 141.

Similarly, France successfully warded off the Security Council passing a resolution which would lead to the authorization of the use of force by the UN in Iraq by asserting the fact that France would use its veto should the USA, UK and Spain present a draft resolution aimed at military action in Iraq in 2003.<sup>169</sup>

Although it is evident that the permanent members of the Security Council have in recent times used the veto power more parsimoniously, in comparison with the period prior to the end of the cold war, it is apparent that it is rather rare to find an exercise of the veto power – directly or indirectly, through the pocket veto - which is not to secure individual national interests and the interests of allies. According to Okhovat this represents a substantial deviation from the intended use of the veto power. Okhovat goes further in stating that, apart from the miscarriage of the Security Council's mandate, the veto power has given the permanent five members unmitigated power in that other council members must first consider the position of the permanent members, on a particular issue, and draft their submissions in such a way so as to appease the permanent members.<sup>170</sup> Al Shraideh's view is also critical as he states that the ineffectiveness of the Security Council in fulfilling its mandate can be attributed to both the exercise and threat of exercise of the veto power and consequently the United Nations system is inherently severely flawed.<sup>171</sup>

However, considering Cox's view point on the rationale of the drafters of the veto power one would not reach the same conclusions. According to Cox, the permanent members' exercise of the veto power for the purpose of securing national interests at the expense of the UN member states is not contrary to the Security Council's mandate. Cox opines that in the larger scheme of things the participation of the permanent members in the UN is of paramount importance and the self-serving exercise of the veto power actually protects international peace and security as the permanent members are able to serve their own national interests in exchange for their participation in the functions of the UN albeit at the expense of the smaller states

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<sup>169</sup> Okhovat (note 17 above) 16.

<sup>170</sup> Okhovat (note 17 above) 22.

<sup>171</sup> Al Shraideh (note 73 above) 139.

whose interests may be opposed to those of the permanent members.<sup>172</sup> Under this understanding, the use of the veto power in the interests of the allies of the permanent members is also excusable as the interests of your ally are your interests.

One may argue that this arrangement is inherently unfair as permanent members attain an advantage not available to other states. However, Cox explains that the UN system is a meritocracy in which power is rewarded. The burden placed on the permanent members to maintain international peace and security is not the same burden placed on other non-permanent members of the Security Council and this is similarly just as unfair as no high power, apart from morality, requires the great powers of this world to carry the encumbrance of securing the safety of the world.<sup>173</sup>

However, this viewpoint does not consider the fact that the great powers of this world are the ones most capable of securing the Armageddon as their military and nuclear prowess suggests we are at their mercy so we cannot say that the imposition of the encumbrance of securing world safety is inequitable as logic would dictate that the strongest of us must carry the heavier burden.

In light of this, the arguments of Okhovat and Al Shraideh who condemn the deviation from the Security Council's mandate of protection of international peace and security through the exercise of the veto power are persuasive. However, considering Cox's position, as to what international peace and security entails, one will view the exercise of the veto power in a more favourable light and one cannot say that the exercise of the veto power by the permanent members is necessarily out of line with the rationale of the veto power. I am of the opinion that while the exercise of the veto power, by the permanent members, is largely self-serving a conclusion that condemns the council for failure to meet its mandate based on the exercise of the veto power alone is superficial and short-sighted. However, the growing disenchantment of many UN member states in the virility of the Security Council as a result of failure to act in key situations which see death tolls of hundreds of thousands is a matter of concern. The drafters of the veto power intended to use the veto as a protection mechanism for the council's mandate. However, the continued and unrelenting self-indulgence of the permanent members in the veto power at the expense of the interests of the UN

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<sup>172</sup> Cox (note 42 above) 120.

<sup>173</sup> Cox (note 42 above) 120.

member states, in whose interest the Security Council must act, will only result in more disenchantment which will lead to the illegitimacy of the UN. While the power of the permanent members is undeniably necessary for the functions of the UN the contribution and participation of the rest of the UN member states is equally, if not more, necessary as the fundamental principles of international law dictate that sovereignty is an immutable right of every state and a UN without the participation of the rest of the world is an international organization without enforcement power which is of no use.

Considering the rise of the Islamic State and its condemnation as a threat to international peace and security, by the Security Council, the veto power's worth is again brought into the fore. While the self-serving exercise of the veto power by the permanent members cannot be said to be repugnant to the rationale of the drafters of the UN charter perhaps the circumstances that brought the Islamic State to prominence could not have been conceived by the drafters of the Charter. Many of the reform proposals condemn the veto power as anachronistic and superfluous in the modern age. The situation in Syria stands as an example of how the drafters of the UN charter could not anticipate 21<sup>st</sup> century problems as the exercise of the veto power has indirectly resulted in the creation of a threat to international peace and security. 72 years on from the inception of the UN it is apparent that the veto power of the permanent members may be a threat to the council's mandate. Perhaps a sincere consideration of reform is adequate in order to correct the nosedive the UN is currently in.

## Chapter 3: Reform Proposals

The embitterment of many politicians, scholars and critics towards the United Nations as a result of the functioning of the Security Council has been mentioned above. Many believe that the United Nations Security Council could stand to gain a lot as a result of much needed reform. Consequently, a plethora of proposals for reform of the Security Council and its operating methods have sprouted throughout the last 30 years. Reform proposals range from varying the number of permanent and non-permanent members on the Security Council, the limitation or abolishment of the veto power to the altering of the operating methods of the council.<sup>174</sup> Despite the apparent illegitimacy of the Security Council, debates over the issue of the veto power have existed for several years to the extent that some commentators are of the opinion that the issue has been debated since the inception of the United Nations.<sup>175</sup> The arguments of the pro-veto and anti-veto proponents as well as the mainstream reform proposals will be considered below so as to reach a conclusion as to the degree of necessity of reform and, succeeding that, determining the most adequate reform measure in light of the council's mandate of maintenance of international peace and security.

### Pro-Veto Vs Anti-Veto

The first argument for the continued use of the veto power borrows from the reason of the veto power's existence. The veto power exists in its present form because the founding members of the United Nations had no choice but to grant the world's super powers this mighty tool as a quid pro quo for their (world's super powers) participation in the endeavor of an international organization representing the interests of peaceable states across the world.<sup>176</sup> As stated above, the failure of the League of Nations is attributed to the lack of involvement of the world's super powers and the solution that proved successful, for the United Nations, has been to maintain the participation of the super powers at all costs. This argument insists that should the veto power be removed the main guarantee for the continued participation of the permanent members will be lost and as a result the risk of the permanent members

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<sup>174</sup> Al Shraideh (note 73 above) 139.

<sup>175</sup> Al Shraideh (note 73 above) 143.

<sup>176</sup> Al Shraideh (note 73 above) 140.



leaving the United Nations is born. The probability of this eventuality is low according to Al Shraideh, who argues that the public relations back lash would serve as enough of a deterrent to the permanent members to ever leave the United Nations which has garnered the emblematic designation of being the world standard in legitimacy of international actions.<sup>177</sup> Although Al Shraideh makes a valid argument, especially when one considers how the permanent members have reduced the exercise of the veto power in fear of public condemnation for impeding the mandate of the council in the last 27 years, the prospect of a permanent member discontinuing its participation with the United Nations is alarming. For instance the United States of America contributes more than 20% of the entire United Nations budget<sup>178</sup> and the veto power was pivotal for the United States senate to allow the United States' participation in the United Nations.<sup>179</sup> Al Shraideh goes further to say that one could not guarantee that a permanent member would not abandon the United Nations as a result of the abolishment of the veto power but he does acknowledge that the permanent members could engage less in implementation and enforcement of Security Council resolutions which would be detrimental to the fulfilment of the council's mandate as the current international dynamic still requires the support of the world's super powers in order to fulfill an international objective.<sup>180</sup>

One argument against the veto power considers how the United Nations uses "Soft Power" in order to fulfil its goals and objectives. Under this argument it is stated that the impact of the United Nations can be seen when the UN legitimizes and delegitimizes actions taken across the world by different actors through the UNSC resolutions. Here, the veto power proves to be a complete impediment to this method and without the veto power more resolutions, either condemning or praising certain conduct, would be passed and as a result the objectives of the UN would be furthered.<sup>181</sup> Al Shraideh argues,<sup>182</sup> that although, theoretically, more resolutions would be passed this would not necessarily translate into more actions taken on the ground as the super powers would take actions to impede UN objectives that offend

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<sup>177</sup> Al Shraideh (note 73 above) 141.

<sup>178</sup> 'Committee on Contributions' available at: [www.un.org/en/ga/contributions/honourroll.shtml](http://www.un.org/en/ga/contributions/honourroll.shtml) (accessed on 22 October 2017).

<sup>179</sup> Okhovat (note 17 above) 5.

<sup>180</sup> Al Shraideh (note 73 above) 140.

<sup>181</sup> Al shraideh (note 73 above) 139.

<sup>182</sup> Al Shraideh (note 73 above) 140.

the interests of the super powers and the UN would be unwilling to pursue aims which offend the interests of the powers thus resulting in less legitimacy for the United Nations.<sup>183</sup>

Certain authors proffer that the apparent post Cold War decrease in exercise of the veto, by the UNSC permanent members, speaks to an increase in responsible consideration of the UNSC mandate and reflects a less self-serving attitude by the permanent members. However Al Shraideh argues that this viewpoint is shallow as it does not consider the *pocket veto*.<sup>184</sup> The pocket veto has proven to be as useful as the veto while keeping the international legitimacy and integrity of UNSC permanent members intact. Permanent members use the, explicit or implicit, threat of exercise of the veto power in order to control the agenda of the UNSC meetings through deterring states from bringing issues that are detrimental to the permanent member's interest or coaxing states into supporting an issue in return for a later exercise of the veto by the permanent member. Permanent members have also been known to subdue certain issues only to veto the draft resolution at a later stage when the repercussions of that veto are less severe.<sup>185</sup>

Pro-veto authors have opined that the removal or adaptation of the Security Council or veto power is unnecessary as any perceived failure of the Security Council in fulfilling its mandate can be rectified by other measures. Particularly General Assembly resolution 377<sup>186</sup> which is also known as the "Uniting for Peace" resolution. This resolution states that should the UNSC fail to fulfill its mandate as a result of disagreement between the permanent members in matters related to acts of aggression, breach or threat of breach of international peace and security the General Assembly will deliberate the matter immediately.<sup>187</sup> In other words if the UNSC fails to fulfill its mandate as a result of the exercise or threat of exercise of the veto power the solution would be the measure provided in the Uniting for Peace resolution. This measure has indeed proven to be useful most notably in the debacle regarding the removal of France and the United Kingdom's forces from the Suez Canal which the

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<sup>183</sup> Al Shraideh (note 73 above) 140.

<sup>184</sup> Al Shraideh (note 73 above) 141.

<sup>185</sup> Al Shraideh (note 73 above) 141.

<sup>186</sup> UN General Assembly, *Uniting for peace*, 3 November 1950, A/RES/377, available at: <http://www.refworld.org/docid/3b00f08d78.html> (accessed 30 October 2017).

<sup>187</sup> Uniting for Peace (note 186 above).

UK and France both vetoed.<sup>188</sup> The matter was taken to the General Assembly, following the outline of the Uniting for Peace resolution, where the resolution was passed and subsequently the UK and France removed their forces from the area.<sup>189</sup> However, Al Shraideh argues that the Uniting for Peace measure is problematic for various reasons as it requires a failure, of the Security Council, to carry out its functions, to arise out of exercise of the veto power and in doing so this remedy overlooks failures by the Security Council, to meet its mandate, that arise out of the implicit or explicit threat of use of the veto. In addition, the legality of Uniting for Peace resolutions are still under debate as some authors are of the view that the UNSC has exclusive competence in authorizing collective measures for the use of force in maintaining international peace and security. However, the International Court of Justice (ICJ) provided an advisory opinion<sup>190</sup> stating that while article 24 of the UN charter<sup>191</sup> provides the UNSC with primary competence in the maintenance of international peace and security it does not confer exclusive competence.<sup>192</sup> Furthermore article 14 of the UN charter<sup>193</sup> provides the General Assembly with the authority to recommend passive measures.<sup>194</sup> Despite the text of the ICJ certain authors maintain that the General Assembly has no competence in these matters as article 24 of the UN charter confers primary responsibility for the maintenance of international peace and security on the UNSC.<sup>195</sup> Furthermore, General Assembly resolutions have no real binding effect apart from the moral urge to implement a resolution agreed upon by the majority of states. Al Shraideh denotes that it is for these reasons why many United Nations members shy away from the Uniting for Peace measure as its legality and legitimacy is yet to be confirmed.<sup>196</sup> Thus the Uniting for

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<sup>188</sup> UN Security Council, *Security Council resolution 119 (1956)* (Complaint by Egypt against France and the United Kingdom), 31 October 1956, S/RES/119 (1956), available at: <http://www.refworld.org/docid/3b00f1765c.html> (accessed 30 October 2017)

<sup>189</sup> Al Shraideh (note 73 above) 142.

<sup>190</sup> 'Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory' available at: <http://www.icj-cij.org/en/case/131> (accessed 22 October 2017).

<sup>191</sup> UN Charter (note 10 above) Article 24.

<sup>192</sup> Al Shraideh (note 73 above) 142.

<sup>193</sup> UN Charter (note 10 above) Article 14.

<sup>194</sup> Al Shradieh (note 73 above) 142.

<sup>195</sup> Al Shradieh (note 73 above) 142.

<sup>196</sup> Al Shradieh (note 73 above) 142.

Peace measure leaves much to be desired when one considers its legitimacy and legality as reflected in its rare use by United Nations member states.<sup>197</sup>

### Reform Proposals

Calls for reform of the Security Council have been belated throughout the ages with the earliest, and only reform, taking place as a result of General Assembly resolution 1991 which called for the addition of four new non-permanent members to the Security Council in 1965.<sup>198</sup> The rationale being that the United Nations had increased so vastly in membership, from 51 states to 114, that the Security Council membership of the time did not reflect adequate geographical representation rendering the council less effective in meeting its mandate.<sup>199</sup>

Both Butler and Cox denote that UNSC reform proposals cover various issues such as operating methods of the UNSC, abolition or limitation of the veto power and the issue of representation in the council.<sup>200</sup> Reform of the Security Council saw a resurgence in 1992 with General Assembly resolution 47/62.<sup>201</sup> This resolution made it possible for member states to submit proposals for reform of the Security Council's membership. Due to the high volume of submissions the Open-ended Working Group was established by General Assembly resolution 48/26<sup>202</sup> which highlighted the increased membership of developing countries in the UN and the importance of the principles of sovereign equality of all member states.<sup>203</sup> The aim of the resolution being: providing UN member states with the platform to discuss proposals for the reform of the Security Council.<sup>204</sup> Several reform proposals were submitted and discussed and the first of these to be formed by the working group was the Razali plan.

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<sup>197</sup> Al Shradieh (note 73 above) 142.

<sup>198</sup> UN General Assembly, Question of equitable representation on the Security Council and the Economic and Social Council, 17 December 1963, A/RES/1991, available at: <http://www.refworld.org/docid/3b00f1da10.html> (accessed 30 October 2017)

<sup>199</sup> Cox (note 42 above) 102.

<sup>200</sup> Cox (note 42 above) 103.

<sup>201</sup> 'Question of equitable representation on and increase in the membership of the Security Council' available at: <http://www.un.org/documents/ga/res/47/a47r062.htm> (accessed 22 October 2017).

<sup>202</sup> 'Question of equitable representation on and increase in the membership of the Security Council' available at <http://www.un.org/documents/ga/res/48/a48r026.htm> (accessed 22 October 2017).

<sup>203</sup> Cox (note 42 above) 103.

<sup>204</sup> Cox (note 42 above) 103.

### The Razali Plan

The Razali plan was aimed at enhancing the proficiency of the Security Council in fulfilling its mandate through expanding the Security Council's membership as well as adapting its operating methods.<sup>205</sup> The desired expansion of the Security Council would see the addition of five permanent members as well as four non-permanent members resulting in Security Council with 24 members. Three of the additional permanent members would have to be states from Africa, Asia and Latin America, the other two permanent members would be composed of industrialized states. The non-permanent members would be states from Africa, Asia, Eastern Europe and Latin America and the Caribbean.<sup>206</sup> In terms of the working methods, the Razali plan required the permanent members to refrain from exercising the veto and the veto would not apply to the new permanent members. Additionally, the plan called for regular scheduled meetings for the Security Council, steady briefings to all UN members, opening debates prior to council votes and increasing the involvement of the International Court of Justice (ICJ) through advisory opinions. Cox denotes, that while the Razali plan was not successful it did result in General Assembly resolution 53/30 which requires a two thirds majority for any reform proposal to pass.<sup>207</sup>

### High Level Panel Report

In 2004 Kofi Annan, the then incumbent UN Secretary General, reinvigorated the momentum for reform with the High Level Panel Report which consisted of two models addressing what Annan identified as key considerations for Security Council composition namely: contribution to UN objectives through financial and military aid and overall adequate representation necessary for the increased legitimacy of the Security Council .<sup>208</sup> Model A proposed that six permanent members be added to the council as well as three non-permanent members. The six permanent members would be composed of two states from Africa, two states from Asia and the Pacific, one European state and a single state from the Americas. Model B proposed that the council be joined by two members from Africa, two from Asia and the Pacific, two from

<sup>205</sup> Cox (note 42 above) 103.

<sup>206</sup> Cox (note 42 above) 104.

<sup>207</sup> 'Question of equitable representation on and increase in the membership of the Security Council and related matters' available at: [http://csnu.itamaraty.gov.br/images/29.a\\_RES.53.30\\_ING.pdf](http://csnu.itamaraty.gov.br/images/29.a_RES.53.30_ING.pdf) (accessed 22 October 2017).

<sup>208</sup> U.N. GA, High Level Panel on Threats, Challenges and Change, A More Secured World: Our Shared Responsibility, 256, U.N. Doc. A/59/565 (Dec. 2, 2004), available at <http://www.un.org/secureworld/report.pdf> (accessed 22 October 2017).

Europe and the Americas. The membership would last for a four year term (renewable once). The High Level Report did not propose that the new members possess any veto rights<sup>209</sup> but rather proffered a new voting system in which a preliminary vote would take place without veto rights prior to a formal vote following the usual procedure in the hopes of encouraging accountability in the exercise of the veto power.<sup>210</sup>

#### G4

The Group of Four “G4” plan is the reform proposal that seemingly is the middle ground between the Model A plan of the High Level Panel Report and the Razali plan. The G4 plan is the result of the joinder of bids of Brazil, Germany, Japan and India in attaining permanent seats on the Security Council.<sup>211</sup> The G4 plan caters for the increase in legitimacy of the Model A plan through improved geographical representation of the developing states which coincides with the concerns of the Razali plan.<sup>212</sup> Cox denotes that the G4 plan aims to enhance representation as well as cater for developing states through their unique understanding of “Security” whereby the increased involvement of developing countries in the affairs of the Security Council results in enhanced security as the council is better able to identify and respond to threats or breaches of international peace and security through the aid of developing states.<sup>213</sup> The G4 plan proposes to reach the outlined goals through an addition of ten members to the UNSC. Six permanent members and four non-permanent members. The permanent members would be composed of two African states, two Asian states, a single Latin America and Caribbean state and a single state from Western Europe and others. The four non-permanent members would be composed of a single state from Africa, Asia, Latin America and the Caribbean and Eastern Europe. The G4 plan would encourage the transparency and improved working methods outlined in the Razali plan such as regular UNSC meetings and increased use of ICJ advisory opinions. On the topic of the veto right, the G4 plan would not extend any right of veto to the new permanent members prior to a review of the plan following 15 years of the plan’s implementation.<sup>214</sup>

<sup>209</sup> Cox (note 42 above) 105.

<sup>210</sup> Cox (note 42 above) 105.

<sup>211</sup> Okhovat (note 17 above) 33.

<sup>212</sup> Cox (note 42 above) 106.

<sup>213</sup> Cox (note 42 above) 106.

<sup>214</sup> Cox (note 42 above) 106.



### Uniting for Consensus

The “Uniting for Consensus” reform proposal is, for the most part, a response to the efforts taken by certain advocates of the G4 plan in fear that the G4 plan proponents may attain permanent membership on the Security Council which would have adverse consequences for their neighboring states.<sup>215</sup> The Uniting for Consensus plan has proponents such as Italy, Pakistan, Mexico, Argentina, Spain, Turkey and Canada to name a few.<sup>216</sup> Not unlike other reform proposals adequate geographical representation is a major concern for the Uniting for Consensus plan. The plan follows the Model B approach of the High Level Panel Report in that it proposes new non-permanent membership through regular elections which would promote accountability in voting by way of frequent rotation and equal representation.<sup>217</sup> In practical terms, the plan proposes that the Security Council membership be increased to 25 members, leaving the current permanent members untouched and creating a system in which the remaining non-permanent members serve two year renewable terms (contingent on approval from their regional groups). The non-permanent members would be composed of six African states, five Asian states, four Latin American and Caribbean states, three Western European and others states and two Eastern European states.<sup>218</sup> The Uniting for Consensus plan also proposes reform of UNSC operating methods through increased transparency in decision making as well as calling for limited usage of the veto power with a view to its eventual abolishment.<sup>219</sup>

### Ezulwini Plan

The Ezulwini Consensus plan is the reform proposal which represents the African position with regard to the Security Council reform discourse. The plan states that the Security Council is not merely a responder and enforcer of international peace and security but the council is rather a guarantor of “Freedom from want, freedom from fear and freedom to live in dignity”.<sup>220</sup> Through management of the United Nations system the Ezulwini Consensus plan proposes to solve the plan’s identified issue of exploitation of developing states by developed states. Under the Ezulwini Consensus plan the Security Council would be expanded to 26 members composed as follows:

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<sup>215</sup> Okhovat (note 17 above) 33.  
<sup>216</sup> Okhovat (note 17 above) 33.  
<sup>217</sup> Cox (note 42 above) 107.  
<sup>218</sup> Cox (note 42 above) 107.  
<sup>219</sup> Cox (note 42 above) 108.  
<sup>220</sup> Cox (note 42 above) 108.



Africa would have two permanent and two non-permanent member states, Asia would have two permanent and one non-permanent member state, Eastern Europe would have one non-permanent member state, Latin America and the Caribbean would have one permanent and one non-permanent member state and Western Europe would have one permanent member state.<sup>221</sup> Pursuant to the Ezulwini Consensus plan the African Union<sup>222</sup> would select the African member states to serve on the Security Council and permanent members would retain the right of veto.<sup>223</sup>

#### S5

The Small Five plan (S5) represents a different, more measured, approach to Security Council reform. The S5 plan does not propose complex and vast changes but rather simple and calculated measures aimed at the Security Council's operating methods. The aim of the plan being to enhance the council's accountability and legitimacy. The measures proposed include regular scheduled meetings between the UNSC and affected member states, regular reports by UNSC to the general assembly, the addition of non-council member states to subsidiary organs as well as requesting the parsimonious use of the veto power by the permanent members in matters relating to genocide and the like. Should a veto be cast the reason for the veto must be published by that vetoing member to the UN member states.<sup>224</sup> Therefore it is evident that the S5 plan follows the reform of UNSC operation methods as outlined in the Razali plan.

#### Overarching Process Plan

The Overarching Process plan came about as a solution to the stalemate that arose between the G4, Uniting for Consensus and the Ezulwini Consensus reform proposals. The Overarching Process plan aims to take the reform measures common to the aforementioned reform proposals and implement them at the expense of the measures which are not common to all the reform proposals (which would be "open for negotiation") so as to break the deadlock that had been reached. The Security Council would expand to be composed of 22 members, elected by the General Assembly, with

<sup>221</sup> Cox (note 42 above) 109.

<sup>222</sup> Organization of African Unity (OAU), Constitutive Act of the African Union, 1 July 2000, available at: <http://www.refworld.org/docid/4937e0142.html> (accessed 22 October 2017).

<sup>223</sup> Cox (note 42 above) 109.

<sup>224</sup> Cox (note 42 above) 110.

geographical representation in the following manner: the seven new members would be separated into two members from Africa, two members from Asia, one member from Latin America and the Caribbean, one member from Western Europe and others and one member from Eastern Europe.<sup>225</sup>The Overarching Process Plan leaves certain matters to still be negotiated such as the renewability and length of a member's term. The operating methods proposed by the S5 plan would find application in the Overarching Process plan as well.<sup>226</sup> This plan is silent with regards to the veto power and leaves it as a matter that is yet to be negotiated.<sup>227</sup>

#### Model X

It is worthwhile to consider the prominent reform proposals that have been drafted by scholars such as the Model X plan. Under the Model X plan the common concerns of adequate geographical representation, held by the majority of reform proposals, would be negated to a certain extent while still catering for the needs of developing states. Under Model X the Security Council would be increased to 20 member states through the addition of five new non-permanent members who serve four year renewable terms. The five new members would be composed of two states from Africa, two states from Asia and one state from the Americas and the Pacific. The election and renewal of terms would be controlled by each regional group. Cox denotes that the lack of a new member state position being granted to Europe is indicative of the plan's redress of the overrepresentation of Europe in the current Security Council.<sup>228</sup>

#### Assessment of Reform Proposals

The abovementioned reform proposals do not constitute an exclusive list of proposals. They are in fact only the major reform proposals that have been brought forward and debated before the United Nations throughout recent years. What is common in all is that the proposals for reform tackle issues of geographical representation (with the exception of the S5 plan), the operating methods of the UNSC and the limitation or abolishment of the veto power. What follows is an assessment of the reform proposals,

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<sup>225</sup> Cox (note 42 above) 110.

<sup>226</sup> Cox (note 42 above) 110.

<sup>227</sup> Cox (note 42 above) 110.

<sup>228</sup> Cox (note 42 above) 114.

in light of the issues addressed, while taking into account the current Security Council arrangement which the proposals intend to amend.

#### Geographical Representation

Geographical representation is indeed a hot button issue for most proponents of Security Council reform. These proposals argue that through increased membership the Security Council's effectiveness and legitimacy can be enhanced by way of access to vastly different perspectives.<sup>229</sup> The proposals also proffer that the increase in membership would result in equitable representation of contribution of states to the Security Council.

The current Security Council non-permanent members are appointed by the General Assembly by way of majority vote. Five new states are appointed in January of every year.<sup>230</sup> These states represent geopolitical regions: Western and others group (WEOG) is allowed two representatives, the Asian group is allowed two representatives, the Eastern European Group is allowed one representative while the Latin American and Caribbean group (GRULAC) is allowed two representatives and three representatives from Africa.

However, many commentators feel the representation present in the permanent membership is not adequate. Western Europe has two permanent members serving on the Security Council (United Kingdom and France) while South America and Africa (which is second only to Asia in populous) have no representatives.<sup>231</sup>

Cox argues that adequate representation was never the main concern of the Security Council. He states that the Security Council is a meritocratic body that burdens the world's superpowers with the duty of protection and advancement of the UN mandate.<sup>232</sup> Cox states that while the lack of representation on the Security Council is a geographical disadvantage, for African states, the arguments of the African Union (AU)<sup>233</sup> with the regards to the Ezulwini plan do not carry much power as the reason proffered by the AU for increased membership is based on concepts of egalitarian

<sup>229</sup> Cox (note 42 above) 117.

<sup>230</sup> Okhovat (note 17 above) 9.

<sup>231</sup> Okhovat (note 17 above) 32.

<sup>232</sup> Cox (note 42 above) 116.

<sup>233</sup> AU (note 222 above).

values of fairness and equity.<sup>234</sup> Cox goes further in summarizing the failure of the Ezulwini plan as a result of a general disinterest in adding a developing state into the United Nations core of protective power as no modern African state has attained great power status.<sup>235</sup> Considering the meritocratic nature of the Security Council the Ezulwini plan leaves much to be desired.

Reform proposals such as the G4 and Uniting for Consensus plans proffer that increased membership would result in adequate representation and diversity which in turn would further the legitimacy of the Security Council which would result in the council being more effective. Here effective is taken to mean efficiency in fulfilling the Security Council's mandate and avoiding gridlock situations. Cox states that the current 15-member Security Council struggles to reach consensus on political issues as all UNSC members serve their own national interests. In light of that, the perceived mitigation of deadlock situations through the increase in UNSC members is dubious. Cox denotes that any reform proposal that seeks to increase the Security Council membership while maintaining the veto power, such as the Ezulwini plan and High Level Panel Report, may only exacerbate the situation.<sup>236</sup> In addition, the G4 and Uniting for Consensus's argument that increased representation would result in an enhancement in the council's effectiveness through diversity and new perspectives is also questionable.<sup>237</sup> The current 15 members serve their own national interests what guarantee exists that the additional members would not copy suite?

The G4 plan and High Level Panel Report's argument that the membership increase of the Security Council would support equitable representation of actual contribution to the UN is considered by many as sound. In terms of this argument the contribution of a state to the UN through troops and finances should reflect in the representation that state has in the Security Council.<sup>238</sup> For example if a state is among the five major contributors of troops and financial aid to the UN that state's role within the UNSC should reflect its contributions. More contributions should equal more power. However Cox opines that while this argument does reflect the sentiments of the drafters of the

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<sup>234</sup> Cox (note 42 above) 116.

<sup>235</sup> Cox (note 42 above) 116.

<sup>236</sup> Cox (note 42 above) 117.

<sup>237</sup> Cox (note 42 above) 117.

<sup>238</sup> Cox (note 42 above) 118.

UN charter it does not capture their aims.<sup>239</sup> The argument fails to consider total peacekeeping capacity which Cox defines as the capacity of a state to wage war and maintain peace.<sup>240</sup> Here the factors to consider would be economy of a state and the stability of the government in place as well as the willingness of that state to keep peace.<sup>241</sup> Cox uses the example of a state which is a major contributor of troops to UN peacekeeping missions. In terms of the argument of representation based on contribution one would come to the conclusion that should a state contribute more than any other, in terms of troops, that state should receive representation on par with that contribution. However, this conclusion would be short sighted as contributing troops is a secured endeavor as the contributing state is given a timeline for the return of the troops and the expense of maintaining the troops and their transport is not necessarily borne on the state which contributes the troops as well. Cox believes that mere contribution is a fair factor for the determination of non-permanent members but in terms of permanent membership the capacity of a state to wage war and maintain peace at the cost of a state's own economic security and political authority is much more relevant. Cox states that China and the USA would be good examples of states which possess a large war capacity and it is no surprise that these states are permanent members of the Security Council. Therefore despite the fact that the proponents of the G4 and High Level Panel Report might be large contributors to UN peacekeeping missions they may still lack this crucial capacity which is more desirable for the purpose of fulfilling the mandate of the UNSC than mere contribution.<sup>242</sup> Cox does concede that large contributions of financial aid and troops are indicative of a state's will to fulfill the mandate of the UNSC and as result contributions should be factors for the consideration of additional members to the UNSC.<sup>243</sup>

#### Operating Methods

The abovementioned proposals all carry measures for the adaptation of the operating methods of the Security Council. While some proposals exclusively focus on these operating methods, such as the S5 plan, others provide operating reform measures

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<sup>239</sup> Cox (note 42 above) 118.

<sup>240</sup> Cox (note 42 above) 118.

<sup>241</sup> Cox (note 42 above) 117.

<sup>242</sup> Cox (note 42 above) 118.

<sup>243</sup> Cox (note 42 above) 119.

as ancillary to the fundamental reform of the veto and/or the representation in membership of the council. These reform measures are, incidentally, the easiest to implement as due to their procedural nature the veto power of the council's permanent members would not apply.<sup>244</sup>

Cox denotes that the UNSC operating methods reform outlined in the S5 plan, Razali plan and the Overarching plan, amongst others, represent valuable ideas which, if implemented, would enhance the legitimacy of the UN.<sup>245</sup> Cox states that briefings and conferences between the council and the states which are affected by UNSC resolutions would allow for real participation of non-permanent members in the decision making process of the council while not infringing on the duties and rights of permanent members.<sup>246</sup> Cox goes further in stating that the replacement of closed-door decision making meetings with open formal sessions would curtail the perception of the UNSC as a club for self-serving oligarchs and would further accountability for decisions. The measure related to a requirement for the provision of reasons for exercise of the veto power would most undoubtedly curtail the exercise of the veto power as permanent members are currently deterred from the backlash of veto exercise. Having to provide reasons for that exercise would serve as a further deterrent.<sup>247</sup> Moreover, a measure that requires council members to furnish any national interests a member may have pertaining to a matter that is set to be voted on would provide greater transparency and accountability as a member would be less likely to act in its own interests at the expense of the interests of the states involved if those interests are common knowledge.<sup>248</sup> Cox denotes that this requirement would allow for the decision making process of a council member to be assessed for fairness and for that council member to be judged accordingly.<sup>249</sup>

While the overall success of reform of the Security Council operating methods is more likely than any other reform measure the increased number of meetings and other proposed measures would add a significant amount of time to a process which is

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<sup>244</sup> Cox (note 42 above) 121.  
<sup>245</sup> Cox (note 42 above) 122.  
<sup>246</sup> Cox (note 42 above) 122.  
<sup>247</sup> Cox (note 42 above) 122.  
<sup>248</sup> Cox (note 42 above) 122.  
<sup>249</sup> Cox (note 42 above) 122.

already considered to be drawn out.<sup>250</sup> However the rationale of this reform is that the ends would justify the means. The end being enhanced accountability and legitimacy for the UNSC. Okhovat states that some reform of the Security operating methods has been achieved such as reform of the Security Council transparency and accessibility to the General assembly.<sup>251</sup> Okhovat indicates how the council has become less secretive as the president of the Security Council holds briefings with non-members and the press regarding the private consultations of the council. The council also holds meetings with NGOs and experts with the aim of attaining a better understanding of the causes and on-going developments in conflict situations so as to be better informed before making decisions.<sup>252</sup>

#### The Veto Power

As stated before the veto power of the UNSC permanent members is a matter which causes a lot of unrest. The veto power is seen by many as anachronistic to the modern world and has merely become a tool for the self-serving permanent members to either secure their own national interests or the interests of their strategic allies at the expense of the interest of the UN member states. It is no wonder that all the major reform proposals proffer limitations or the abolition of the veto power. The only reform proposal that would maintain the veto power for new permanent members is the Ezulwini plan.<sup>253</sup>

However Cox opines that proposals for reform of the Security Council veto power are based on a misunderstanding of the rationale of the veto power.<sup>254</sup> According to Cox the UN charter did not establish the Security Council in order to prevent violence or prevent all wars but rather the purpose of the Security Council is to maintain international peace and security.<sup>255</sup> To this end the veto power serves as a tool to maintain pacific relations between the super powers of the world. Therefore these proposals correctly identify a crucial issue in the functioning of the modern day Security Council but the proposals fail to provide a suitable replacement or arrangement. The proposals' failure lies in the fact that the concerns raised by Cox in removal of the veto power still exist. The propensity of the Security Council to take

<sup>250</sup> Cox (note 42 above) 122.

<sup>251</sup> Okhovat (note 17 above) 42.

<sup>252</sup> Okhovat (note 17 above) 42.

<sup>253</sup> Cox (note 42 above) 122.

<sup>254</sup> Cox (note 42 above) 120.

<sup>255</sup> UN Charter (note 10 above) Article 24.



action which does not suite the interests of a permanent member is a real concern. According to Cox the reality of the situation is that because of the heavy burden placed on the permanent members of the Security Council we must appease these members by granting them the right to act in their own interest. In exchange the world receives international safety and security guaranteed by the permanent members.<sup>256</sup> None of the above proposals suggest a manner in which the interests of permanent members and those of the rest of the UN membership can be simultaneously cared for.

As Cox sees it the veto power is a compromise between a bad situation and a worse situation. The reform proposals are based on an inadequate grasp of the real issues at play and are rather concerned with concepts of fairness and representation whereas the Security Council is a practical creature designed by meritocracy and power.

Despite the fact that the reform proposals do not grasp the reality of a Security Council without the veto power they do raise a valid concern. The drafters of the charter granted the permanent members the veto power as an insurance policy for the continued participation of the world's super powers in the affairs of the UN. Therefore the veto power was intended to be a protection measure for the council's mandate. However it is apparent that the use of the veto in certain circumstances may threaten the mandate of the council as seen in Syria. While a valid proposal that seeks to abolish the veto power and ensure the continued participation of the permanent five members has not been contrived it is apparent that the negative consequences of the exercise of the veto power need to be mitigated.

#### A New Proposal

The first modern major reform proposal is now over 20 years old. Cox opines that the reason the reform proposals have no success is attributable to the fact that they do not share the aims and purposes of the United Nations but are rather based on concerns of fairness and geographical representation.<sup>257</sup> Cox further notes that a successful reform proposal will pander to the interests of the permanent members while addressing the concerns of the abovementioned proposals as any reform proposal (dealing with the non-procedural issues) would have to overcome the wrath

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<sup>256</sup> Cox (note 42 above) 123.

<sup>257</sup> Cox (note 42 above) 125.

of the permanent member's veto power. Additionally the successful reform proposal will not add too many members according to Cox this will serve as a deterrent for permanent members who would wish to guard their interests.<sup>258</sup>

Cox opines that the addition, of several states, to serve as new permanent members is not feasible. However Cox recommends the addition of new permanent members based squarely on the considerations of the drafters of the UN charter. Namely military capability, economic stability to sustain peace enforcement and willingness to maintain peace.<sup>259</sup> Cox denotes that the UNSC will not always reflect the true community of power and as such processes for the induction of new great powers should be set in place.<sup>260</sup>

Upon considering the above proposals the S5 plan is the most feasible as it cannot be vetoed by the permanent members (the veto power does not apply to procedural matters). The reform proposed by the S5 plan would require a majority of two thirds. The enhanced accountability and legitimacy of the S5 plan make the plan more attractive however the underlying concern of the veto power is not dealt with. The other major proposals for reform are too bombastic and zealous in their approach. The Ezulwini, G4 and Uniting for Consensus plans recommend the substantial increase in the Security Council membership I agree with Cox who notes that increased membership while securing interests of adequate geographical representation does not actually guarantee enhanced effectiveness of the UNSC through diversity. Further the positive achievement of a more representative council does not necessarily align with the aims and rationale of the drafters of the council.

The criticisms of the UNSC have prevailed since the council's inception.<sup>261</sup> The veto power is central in these criticisms. The vigor and urge for change has grown resulting in various proposals for reform almost all of which recommend the limitation or abolishment of the veto power. However, as indicated by Cox, these criticisms and reform proposals fail to consider the purpose of the United Nations and how that purpose is achieved as well as protected.<sup>262</sup> The purpose of the UN is the maintenance

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<sup>258</sup> Cox (note 42 above) 126.  
<sup>259</sup> Cox (note 42 above) 126.  
<sup>260</sup> Cox (note 42 above) 126.  
<sup>261</sup> Okhovat (note 17 above) 33.  
<sup>262</sup> Cox (note 42 above) 120.

of international peace and security.<sup>263</sup> This purpose is achieved through the UNSC which is mandated with the duty of achieving this purpose.<sup>264</sup> In order to ensure that the purpose would be achieved the drafters of the UN charter created the veto right. However the drafters of the UN charter did not take into account the possibility of the protection measure having adverse consequence for the purpose. In other words the drafters of the UN charter did not consider how the veto power would threaten the maintenance of international peace and security. That is in fact the world we live in today. The fact that none of the reform proposals have been implemented does not mean that the vigor for their implementation is lost. Many are disillusioned with the Security Council specifically with the exercise of the veto power by the permanent members.

While the value of the veto power has been noted the reader may still feel an urge for change. The drafters of the above proposals share this sentiment and have offered their best ideas on how the situation can be amended for the best. However what is alarming is how certain proposals proffer to combat the self-serving nature of the Security Council by implementing change which would see their drafters in places of power in the Security Council. The fallacy being that certain UN member states, should they occupy permanent seats on the Security Council, would act in the interests of the other UN member states and not selfishly as the council operates now.

As stated above any proposal which suggests an alteration of the number and composition of member states on the council, while answering concerns of adequate geographical representation, is actually superficial and does not adequately contemplate the purpose of the Security Council arrangement. Furthermore, no evidence exists that should the council reflect the modern geographical composition of the world the council will become more effective through diversity. In fact the opposite argument holds more weight as the current Security Council is considered ineffectual because member states act in their own interests.

The commonality amongst the research proposals is that they are all born out of a frustration and disillusionment with the Security Council. This is the real concern. The growing disenchantment of member states is an issue the council must address as we

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<sup>263</sup> UN Charter (note 10 above) Preamble.

<sup>264</sup> UN Charter (note 10 above) Article 24.

cannot expect the UN member states to continue supporting a UN which does not have the local individual interests of member states but caters to the interests of certain powerful states.

Al Shraideh argues that the veto power should not be exercised with regards to situations involving human rights violations.<sup>265</sup> This position was shared by Lichtenstein at the 68<sup>th</sup> session of the General Assembly where their representative called for a commitment by the permanent members to not exercise the veto power in cases of human rights violations.<sup>266</sup> This measure would have curbed the infighting in Syria which created the foundation upon which the Islamic State rose to power. Extensive lobbying or an impressive argument would be required for the permanent members to be able to squash such a proposal. However the interests of permanent members and those of the victims of human rights violations do not always align as seen in Myanmar, Syria and Zimbabwe<sup>267</sup> and as a result the success of such a proposal is also dubious.

A reform proposal which is aimed at curbing the use of the veto power is apt because it would be a procedural matter therefore the permanent members would not be able to veto it. This proposal would also not be abhorrent to the permanent members as they are already abreast and fearful of the criticism furnished for exercise of the veto power and as result a permanent member would not want to be seen impeding a proposal which merely seeks to curb the use of the veto. Cox<sup>268</sup> denotes a reform which requires reasons for exercise of the veto power would be successful in curbing the use of the veto power as it would serve as a deterrent to permanent members who already dread the public criticism of exercise of the veto. Having to deliver reasons would prolong the public attention and possibly increase the criticism.

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<sup>265</sup> Al Shraideh (note 73 above) 143.

<sup>266</sup> Al Shraideh (note 73 above) 143.

<sup>267</sup> Cox (note 42 above) 116.

<sup>268</sup> Cox (note 42 above) 122.

## Conclusion

The value the world has reaped from the United Nations cannot be quantified. The UN achievements include over 193 member states, 70 peacekeeping missions deployed all over the world, humanitarian aid to victims of conflict and the Long Peace in which we currently live. The efforts of the UN are aimed at ensuring peace and security for the world and the succeeding generations who will occupy it. Despite these efforts and achievements many argue that the UN has fallen short in many cases and the UN is judged pejoratively with some going as far as saying the whole endeavor is fruitless. The criticisms are hurled primarily at the United Nations Security Council which is considered to be an organ whose sole purpose is the procurement of the interests of the great powers of this world, through the veto power, at the expense of the UN member states.

While the decisions of the Security Council may at first sight seem alarming it is not until we truly understand the rationale behind the mechanisms which make such decisions possible that we see the bigger picture. The exercise of the veto power for self-centered reasons at the expense of the interests of the UN member states is offensive and one may even come to the conclusion that the veto power has become a tool used to impede the mandate of the Security Council. However as stated by Cox the veto power was intended to be a protection mechanism for the mandate of the Security Council.<sup>269</sup> Pursuant to the above the interests of the great powers, that form the permanent members of the Security Council, take precedence over the interests of the remaining UN member states as these great powers carry the bulk of the burden in the maintenance of international peace and security and without these powers the mandate could not be fulfilled.

Although I agree that the UN system would not be able to function effectively without the participation of the permanent members I disagree with the view that we must reward the permanent members for occupying positions of great power and ability to maintain international peace as these great powers are the same states that pose the biggest threat to international peace and security. The imposition of a heavier burden in the maintenance of international peace and security on the permanent members

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<sup>269</sup> Cox (note 42 above) 120.

does not offend logic. Therefore the reward of the veto power which is used to secure the national interests of the permanent member wielding it is not as suitable as Cox believes. The Islamic State has taught us that while the drafters of the UN charter foresaw several intricacies that could arise many years into the future they did not conceive the circumstances in Syria. The exercise of the veto power by Russia and China resulted in the inaction of the Security Council in Syria which in turn created a vacuum that the militant terrorist group Islamic State has occupied. Islamic State now poses a unique threat to international peace and security that the UNSC is not traditionally equipped to deal with. It is true that the drafters of the UN charter foresaw the permanent five members using the veto power in order to secure their own self-interests but the drafters could not envision the situation in which the use of the veto power, for self-indulgent reasons, could result in a threat to international peace and security.

The calls of several scholars and politicians that condemn the veto power as an anachronistic antique not suitable to cater for the concerns of the modern world are indeed true. We did not heed the calls for reform and as a result a new threat growing out of that inherent flaw has risen. The veto power assuredly needs reform. An acceptable reform proposal must consider two important issues:

1. The concerns the drafters of the UN charter had when creating the UN charter. Particularly to ensure the pacific relations of the world's superpowers as a means of securing the mandate of the council.
2. The interests of civilian populations.

The interests of civilian populations is indeed paramount as an exercise of the veto power in cases regarding human rights violations results in the illegitimacy of the UNSC by way of the growing disenchantment of UN member states. Furthermore, the inactivity of the Security Council in cases of human rights violations has also indicated that the solitude and vulnerability of persons subject to human rights violations serves only to leave the individual more susceptible to radicalization and the assumption of violent activities as seen in Syria with the Islamic State which has now become a threat to international peace and security.

Alas the veto power is indeed a useful tool which for the most part secures the mandate of the Security Council through ensuring peaceful relations among the

world's super powers. However it is apparent that the exercise of the veto power can result in a threat to international peace and security and for this reason we cannot carry on without considering suitable reform.

I am of the opinion that procedural reform requiring the publication of reasons for the exercise of the veto power by a permanent member, in cases pertaining to human rights violations, must be implemented. The overzealous nature of the remaining reform proposals only serve to secure their non-implementation. Procedural reforms aimed at increased proficiency in fulfilment of the council's mandate are harder to oppose as the permanent members cannot cast a veto on procedural resolutions. Additionally, the public relations backlash that accompanies impeding a resolution aimed at the betterment of the council, in serving the interests of UN member states and the mandate of the council, is tremendous.

72 years on from the inception of the UN the world has indeed changed. The Security Council does not operate in a vacuum but operates in a real world with ever-evolving problems and threats to international peace and security. One such threat to international peace and security arising out of the context of the 21<sup>st</sup> century is the veto power of the permanent members. While the veto power successfully procures the interests of the permanent members, in return for their participation in the affairs of the UN, the interests of civilian populations are not catered for (even in circumstances involving human rights violations). This arrangement has allowed for a new foe to international peace and security to enter the arena: The Islamic State. While many argue that reform of the Security Council is insurmountable and unnecessary the continued rise of the Islamic State, through terror attacks all over the world, only serves to remind us of our collective failure.

The veto power of the Security Council permanent members is not equipped to handle modern issues and as such modern solutions are rendered necessary to right the ship.



## Appendix 1 Use of Veto 1990 to 2017<sup>270</sup>

<b><u>Date</u></b>	<b><u>Vetoing Member</u></b>	<b><u>Topic</u></b>	<b><u>Abstention(s)</u></b>	<b><u>Vote</u></b>	<b><u>Draft Text no</u></b>
17 January 1990	USA	Violation of Diplomatic Immunities in Panama	UK	13-1-1	S/21048
31 May 1990	USA	Israel/Palestine: Occupied Arab Territories		14-1-0	S/21326
11 May 1993	Russia	Cyprus: on financing UNFICYP		14-1-0	S/25693
2 December 1994	Russia	Bosnia-Herzegovina: Transport of goods between the former Yugoslavia and Bosnia	China	13-1-1	S/1994/1358
17 May 1995	USA	Israel/Palestine: Occupied Arab Territories (East Jerusalem)		14-1-0	S/1995/394
10 January 1997	China	Guatemala: authorisation of 155 observers for verification of agreement on the definite ceasefire		14-1-0	S/1997/18
7 March 1997	USA	Israel/Palestine: calling upon Israel to refrain from settlement activities		14-1-0	S/1997/199
21 March 1997	USA	Israel: demanding Israel's immediate cessation of construction at Jabal Abu Ghneim	Costa Rica	13-1-1	S/1997/241

<sup>270</sup> 'Global policy The Security Council Veto' available at: [file:///C:/Users/Joram%20Rukambe/Desktop/LLM/Semester%201/working%20methods\\_the%20veto.pdf](file:///C:/Users/Joram%20Rukambe/Desktop/LLM/Semester%201/working%20methods_the%20veto.pdf) (accessed 22 October 2017).

<u>Date</u>	<u>Vetoing Member</u>	<u>Topic</u>	<u>Abstention(s)</u>	<u>Vote</u>	<u>Draft Text no</u>
25 February 1999	China	Former Yugoslav Republic of Macedonia: on the extension of UNPREDEP	Russia	13-1-1	S/1999/201
27 March 2001	USA	Israel/Palestine: on establishing a UN observer force to protect Palestinian civilian	France, Ireland, Norway, UK	9-1-4	S/2001/270
14 December 2001	USA	Israel/Palestine: condemned acts of terror against Palestinian and Israeli civilian	Norway, UK	12-1-2	S/2001/1199
30 June 2002	USA	Bosnia: on the renewal of the UN peacekeeping mission in Bosnia and the immunity of US peacekeepers from ICC jurisdiction	Bulgaria	13-1-1	S/2002/712
20 December 2002	USA	Israel: on the killing by Israeli forces of several UN employees and the destruction of the WFP warehouse	Bulgaria, Cameroun	12-1-2	S/2002/1385
16 September 2003	USA	Israel/Palestine: on the Israeli decision to "remove" Palestinian Authority leader Yasser Arafat	Bulgaria, Germany, UK	11-1-3	S/2003/891

<b><u>Date</u></b>	<b><u>Vetoing Member</u></b>	<b><u>Topic</u></b>	<b><u>Abstention(s)</u></b>	<b><u>Vote</u></b>	<b><u>Draft Text no</u></b>
14 October 2003	USA	Israel/Palestine: on the security wall built by Israel in the West Bank	Bulgaria, Cameroon, Germany, UK	10-1-4	S/2003/980
25 March 2004	USA	Israel/Palestine: on the condemnation of the killing of Ahmed Yassin, the leader of the Islamic Resistance Movement, Hamas	Germany, Romania, UK	11-1-3	S/2004/240
21 April 2004	Russia	Cyprus: on the termination of the mandate of UNFICYP and its replacement with UNSMIC		14-1-0	S/2004/313
5 October 2004	USA	Israel/Palestine: demanded Israel halt all military operations in northern Gaza and withdrawal from the area	Germany, Romania & UK	11-1-3	S/2004/783
13 July 2006	USA	Israel/Palestine: demanded the unconditional release of an Israeli soldier captured earlier, as well as Israel's immediate withdrawal from Gaza and the release of dozens of Palestinian officials detained by Israel	Denmark, Peru, Slovakia, UK	10-1-4	S/2006/508

<u>Date</u>	<u>Vetoing Member</u>	<u>Topic</u>	<u>Abstention(s)</u>	<u>Vote</u>	<u>Draft Text no</u>
11 November 2006	USA	Israel/Palestine: on the Israeli military operations in Gaza, the Palestinian rocket fire into Israel, and called for immediate withdrawal of Israeli forces from within the Gaza Strip to positions prior to 28 June 2006	Denmark, Japan, Slovakia, UK	10-1-4	S/2006/878
12 January 2007	China, Russia	Myanmar: called on Myanmar to cease military attacks against civilians in ethnic minority regions and to put an end to the associated human rights and humanitarian law violations	Congo, Indonesia, Qatar	9-3-3	S/2007/14
11 July 2008	China, Russia	Zimbabwe: condemned the violence by the Government of Zimbabwe against civilians after the elections of 27 June and demanded an immediate end to attacks against and intimidation of opposition members and supporters	Indonesia	9-5-1	S/2008/447
15 June 2009	Russia	Georgia: on the extension of the UN observer mission's mandate in Georgia and Abkhazia	China, Libyan Arab Jamahiriya, Uganda, Viet Nam	10-1-4	S/2009/310

<u>Date</u>	<u>Vetoing Member</u>	<u>Topic</u>	<u>Abstention(s)</u>	<u>Vote</u>	<u>Draft Text no</u>
18 February 2011	USA	Israel/Palestine: condemned Israeli settlement activities		14-1-0	S/2011/24
4 October 2011	China, Russia	Syria: condemned human rights violations by the Syrian authorities	Brazil, India, Lebanon, South Africa	9-2-4	S/2011/612
4 February 2012	China, Russia	Syria: condemned human rights violations and supported the Arab League's 22 January 2012 decision for political transition		13-2-0	S/2012/77
19 July 2012	China, Russia	Syria: endorsed the 30 June 2012 Geneva communiqué on a Syrian-led political transition, renewed UNSMIS for 45 days and threatened sanctions if the Syrian government did not cease the use of heavy weapons and withdraw from population centres within 10 days	Pakistan, South Africa	11-2-2	S/2012/547/Rev.2

<u>Date</u>	<u>Vetoing Member</u>	<u>Topic</u>	<u>Abstention(s)</u>	<u>Vote</u>	<u>Draft Text no</u>
15 March 2014	Russia	Declared as invalid a referendum in Crimea, Ukraine	China	13-1-1	S/2014/189
22 May 2014	China, Russia	Syria: referred Syria to the ICC		13-2-0	S/2014/348
8 July 2015	Russia	Bosnia and Herzegovina: the 20th anniversary of the Srebrenica genocide	Angola, China, Nigeria, Venezuela	10-1-4	S/2015/508
29 July 2015	Russia	Bosnia and Herzegovina: the 20th anniversary of the Srebrenica genocide	Angola, China, Venezuela	11-1-3	S/2015/562
8 October 2016	Russia	Middle East (Syria)	Angola, China	11-2-2	
5 December 2016	China, Russia	Syria: called for an end to all attacks in Aleppo for 7 days	Angola	11-3-1	
28 February 2017	China, Russia	Middle East (Syria)	Egypt, Ethiopia, Kazakhstan	9-3-3	
12 April 2017	Russia	Middle East (Syria)	China, Ethiopia, Kazakhstan	10-2-3	

## Appendix 2 UNSC P5 Behavior Summary 1990 – 2017

<b><u>Permanent Member</u></b>	<b><u>Number Of Vetoes</u></b>	<b><u>Abstentions</u></b>
USA	16	0
Russia	17	1
China	10	7
France	0	1
UK	0	9



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