

REFORMING THE UN SECURITY COUNCIL TO COMBAT INTERNATIONAL TERRORISM IN 21st CENTURY

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Abstract

The Security Council has been recognized as the world's most powerful institution. Since Article 1 of the Charter makes it clear that the UN's primary goal is to maintain international peace and security and in order to build genuine, lasting peace, it also establishes a range of initiatives which must be followed simultaneously.¹ With Syria crisis entering eighth year,² the Security Council is now being accused of slackening its pace, not taking important decisions and reducing the scope of its role on issues, significant to international peace and security. It is losing its credibility of being a custodian of world peace as it failed to act swiftly and effectively to suppress international terrorism, a threat to international peace and security, albeit having power and mechanism to contain them. The record of the Security Council, in taking decisions, is marked more by repeated failures to reach agreement on how to deal effectively with this threat to peace and security. The primary reason for this has been the refusal of one or the other Permanent Members to put separately their own interests. Vetoing U.N. action on the state, clearly violating international law and practice but that state is an ally, should not be accepted in practical political reality. This position of using veto to facilitate a particular state is the most significant example of abuse of permanent privilege.³ Thus researcher is of opinion that the decision-making procedure itself along with membership should be discussed, in order to ascertain the issues related which are skewing the efforts of Security Council to combat international terrorism.

Key words: Security Council, combat, international terrorism, veto power, membership.

¹ U.N. Charter Art.1, para. 1 (stating that the purpose of the UN is “[t]o 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.”).

² According to the World Bank, more than [400,000 people](#) have been killed in Syria since the start of the war in 2011 till 2017. The UN reports that more than [5.6 million](#) have fled the country, and [6.5 million](#) have been internally displaced since then. Available at <https://www.hrw.org/world-report/2018/country-chapters/syria> (last accessed on 12th Jan.2018)

³ Richard Butler AC, Reform of the United Nations Security Council, 1 Penn State Journal of Law & International Affairs, p.34, April 2012.

Membership and Power of Veto

Generally every democratic country does not apply the rule of equality in executive body of the country. Security Council too is like an executive body of UN endowed with special powers and Veto power to five permanent members is one of them. These five countries provide huge financial and military assistance to UN. The League of Nations failed because of the absence of financial and military existence. In the League of Nations every member country had veto power and viewed every international incident as per its own interest which led ultimately to its failure. The concept of the veto had, at the time of drafting the UN Charter, intense arguments as some states were against the very idea. Mexico and the Netherlands argued that in the UN system if one country could prevent the Security Council from taking urgent action to maintain the peace, the UN system would be basically imperfect and unjust. Australia, along with other countries, argued that the exercise of the veto should be confined to decisions under chapter VII of the Charter. The great powers didn't relent and the US Representative, Senator Connolly tore up the copy of the UN Charter to express what would be the outcome if the proposed veto was modified. The only assurance given was a non-binding declaration by four of the five permanent members, in which they suggested that they would use the veto with restraint.⁴

Under the circumstances after the Second World War, the Member States finally agreed to give special status to the permanent members through the veto power under Article 27(3)⁵ and the similar power under Articles 108⁶ and 109(2)⁷ of the Charter. Initially the Security Council had five permanent and six non- permanent members (elected) and required seven affirmative votes for the decision as per the proposal taken at Drumbarton Oaks. The UN Charter sets up now the same two categories of Security Council members: "Permanent Members" and "Non-Permanent Members".⁸ The Permanent Members⁹ (P5) are five in number and serve continuously each with a right to 'veto' i.e. to block any substantive decision of the Council by voting against it. These members gave themselves this special power and privileged position when they wrote the Charter in 1945. The Non-Permanent Members are the ten others,¹⁰ who serve two years non-renewable terms. Five new members are elected each year after election by the General Assembly. They are elected according to

⁴ P5, the permanent five members are: United States, Republic of China, France, United Kingdom, USSR now Russia.

⁵ It states that decisions of the Security Council on all other matters shall be made by an affirmative vote of nine members including the concurring votes of the permanent members; provided that, in decisions under Chapter VI, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting.

⁶ It states that amendments to the present Charter shall come into force for all Members of the United Nations when they have been adopted by a vote of two thirds of the members of the General Assembly and ratified in accordance with their respective constitutional processes by two thirds of the Members of the United Nations, including all the permanent members of the Security Council.

⁷ It states that any alteration of the present Charter recommended by a two-thirds vote of the conference shall take effect when ratified in accordance with their respective constitutional processes by two thirds of the Members of the United Nations including all the permanent members of the Security Council.

⁸ UN Security Council Members.(13 May.2018), <http://www.un.org/en/sc/members/>

⁹ Ibid.

¹⁰ Ibid. The non-permanent members elected for two-year terms by the General Assembly (with end of term date):Bolivia (2018), Côte d'Ivoire (2019), Equatorial Guinea (2019), Ethiopia (2018), Kazakhstan (2018), Kuwait (2019), Netherlands (2018), Peru (2019), Poland (2019), Sweden (2018).

their contribution to peacekeeping and a fair geographical distribution. To meet the geographical criterion, Member States are divided into geographical groups¹¹ with one or two seats on the Security Council.¹²

Working Procedure

Each member of the Security Council has one vote but approval of P5 is a must everywhere. Security Council decisions are taken as follows:

By affirmative vote of at least 9 of the 15 members for procedural matters; by affirmative vote of at least 9 of the 15 members and no veto from a permanent member for substantive matters.¹³

Mere absence of the representative of a permanent member from the meeting of Security Council is not considered as veto.¹⁴ During the first eight years of its operation, 64 non-procedural decisions were adopted by the Security Council by a vote in which one or more of the permanent members abstained.¹⁵ The double veto power conferred on permanent members is exercised in following situations:-

- 1) When a negative vote can be cast to decide whether the question raised for the voting is one of the procedure or substance.
- 2) When a negative vote can be cast to defeat the very substance of motion. The Security Council has adopted a practice of normally indicating points in footnotes or in the text whether that resolution is considered by the Council to be a question of procedure or otherwise.¹⁶ The preliminary question whether the draft resolution is procedural or substantive is the subject of a statement by the President of the Council.¹⁷

Need for Reform

In view of the short comings apparently present in the procedure of becoming a member of Security Council and the way permanent members exercise their right to vote and veto a decision, researcher is of the view that reform is needed in the followings:-

¹¹ Ibid. Africa group (3 seats), Latin America and Caribbean group (2 seats), Asia group (2 seats), Eastern Europe group (1 seat), Western Europe and Others group (2 seats).

¹² UN Charter, Art.23.

¹³ UN Charter, Art.27.

¹⁴ Repertory of Practice of United Nations, 2(1945-54) Article 27, para 52, (18 Dec. 2017), http://legal.un.org/repertory/dtSearch/dtSearch_Forms/dtSearch.html.

¹⁵ Ibid. para 46.

¹⁶ Ibid. paras 14-15. The Repertory elucidates that this approach has been considered without any objection concerning the inclusion of items in an agenda, the order of an agenda item, adjournment of a meeting, the conduct of business and the removal of an item from the list of matters to be considered by the Council.

¹⁷ Ibid. para29.

A. Membership of the Council

The Security Council went through major reform in 1963 when the UN General Assembly passed a resolution expanding the number of non-permanent members from six to ten.¹⁸ Since then many attempts have been made at more reforms but without success.¹⁹ In 1997, the Open-Ended Working Group on the Question of Equitable Representation and Increase in the Membership of the UNSC put forward the Razali Plan²⁰, which called for expanding the Council's membership to include the addition of five permanent and four non-permanent seats. Knowing that the veto power was problematic and should be restricted, the Razali Plan also offered procedural changes to improve the Council's working methods and transparency.²¹ This plan was never adopted but the Council urged the UN General Assembly to pass a resolution stating that future resolutions relating to expansion of the membership of the UN Security Council would be requiring a minimum of a two-thirds majority vote to pass.²² In 2004, the UN General Assembly came out with a report of two proposals, in response to Kofi Anan's call for comprehensive reform of UN Security Council, focusing on altering UNSC membership to favor nations that contribute significant funding to the U.N. and nations with a comparatively large population.²³

Kofi Anan's, the then General Secretary of UN, call for change impelled more discussions about reform, and in 2005 various members of the U.N. put forward three plans. G4 was the first plan, offered by twenty-seven nations, which called for the addition of six permanent and four non-permanent members.²⁴ The plan also recognized that "security and development are intertwined and mutually reinforcing and that development is an indispensable foundation of collective security."²⁵ The "Uniting for Consensus" plan was the second proposal, called for membership reform by adding five new non-permanent seats to the UNSC as well as restrictions on the veto and changes to the

¹⁸ UN Doc. G.A. Res. 1991 (XVIII), para 20–22, U.N. Doc. A/RES/1991(XVIII) (Dec. 17, 1963).

¹⁹ Jonas Von Freiesleben, Governing and Managing Change at the United Nations, Reform of the Security Council, Centre for UN Reform Education, New York, pp.1-22, (2008) (Providing a Historical Overview of Reform Efforts at the Security Council).

²⁰ Razali Plan: The UN General Assembly decided:

- a) to increase the membership of the Security Council from fifteen to twenty-four by adding five permanent and four non-permanent members ;b) that the five new permanent members of the Security Council shall be elected according to the following pattern:(i) One from the developing States of Africa; (ii) One from the developing States of Asia; (iii) One from the developing States of Latin America and the Caribbean; (iv) Two from industrialized States; c) that the four new non-permanent members of the Security Council shall be elected according to the following pattern: (i) One from African States; (ii) One from Asian States;(iii) One from Eastern European States; (iv) One from Latin American and Caribbean States. Also recognized that an overwhelming number of Member States considered the use of veto in the Security Council anachronistic and undemocratic, and thus called for its elimination, decided a) to discourage use of veto, by urging the original permanent members of the Security Council to limit the exercise of their veto power to actions taken under Chapter VII of the Charter; b) that the new permanent members of the Security Council shall have no provision of the veto power.(20 Dec. 2018), <https://www.globalpolicy.org/security-council/security-council-reform/41310-razali-reform-paper.html>

²¹ Chairman of the Open-Ended Working Group on the Question of Equitable Representation and Increase in the Membership of the Security Council and Other Matters Related to the Security Council, Outline presented to the Working Group (Mar. 20, 1997).

²² G.A. Res. 53/30, U.N. Doc. A/RES/53/30 (Nov. 23, 1998).

²³ Report of the U.N. Secretary-General's High-Level Panel on Threats, Challenges and Change, A More Secure World: Our Shared Responsibility, para 252, U.N. Doc. A/59/565 (Dec. 2, 2004)

²⁴ UN Doc. G.A. Drft. Res., para 1, U.N. Doc. A/59/L.64 (July 6, 2005).

²⁵ Ibid.at para 2.

Council's working methods.²⁶ A third reform put forward by African states, the Ezulwini Consensus, proposed granting two African nations permanent membership in order to redress the lack of representation from developing nations in the Council.²⁷ After one year, Costa Rica, Jordan, Liechtenstein, Singapore, and Switzerland put forth the S5 plan, which mainly focused on administrative and procedural changes to increase "accountability, transparency and inclusiveness of the Council's work, with a view to strengthening its legitimacy and effectiveness." This plan also called for P5 members to voluntarily refrain from using the veto in matters of "genocide, crimes against humanity and serious violations of international humanitarian law."²⁸ Above mentioned reform proposals convey both the awareness within the U.N. about the requirement to reform the UN Security Council and the difficulty of attaining real reforms that are produced outside of the UNSC itself.²⁹

Since then, many member-states have been supporting expansion of the Security Council to cure the democratic and representative deficit from which the Council suffers. Disagreement on whether new members should be permanent or have veto power has become a major obstacle to Security Council reform. Brazil, India, Japan and Germany want a permanent seat in the Council otherwise threatening to decrease their financial or military troop contributions to the UN. To culminate the dominance of northern industrialized nations in the powerful UN organ, African countries have also expressed the need for permanent representation in the Council. India's Permanent Representative to the UN Syed Akbaruddin, delivering a statement on behalf of the G-4 countries said, "All of us adhere and believe in the principles of democracy, transparency, accountability, representativeness and reforms that help making the Security Council more legitimate, more effective and more efficient." ³⁰

International Organizations like the World Trade Organization or the International Monetary Fund have become more inclusive of emerging countries and have been slowly getting acclimatized to their economic impact. The world is no longer a place for the permanence.

However, it seems that United Nations Security Council continues to think otherwise and this powerful institution is not yet too keen to embrace the might of the emerging nation states. The term "Permanent Member" is redundant for contemporary times, it implies that the status quo of power and clout have been frozen for eternity. This needs to be changed with the change in the political climate of the world. The composition of the five permanent members of the council could be seen as the

²⁶ Uniting for Consensus, G.A. Drft. Res., para 1, 7, U.N. Doc. A/59/L.68 (July 21, 2005).

²⁷ Ezulwini Consensus, G.A. Drft. Res., para c, U.N. Doc. A.59/L.67 of July 14, 2005.

²⁸ Ibid. at Annex para 14.

²⁹ For more reform proposals put forward within the UN, see Overarching Process Draft Proposal (Mar. 17, 2008), <http://www.ReformtheUN.org> For the critical account of the process *see* Edward Luck, How Not to Reform the United Nations, *Global Governance* 11, p.407, 409, (2005) (describing six steps: a call for reform by the Secretary-General; the establishment of a commission to study the matter; a proposal of policy steps by the Secretary-General; facilitated talks among members; a culminating event to convene members to approve reform; the adoption of public statements about renewed commitments to reform).

³⁰ Indian Express on 28 March 2018

refusal of the UN to move ahead with times, the four victors of the Second World War, the U.S., Russia, UK and France, plus China--is too much a reflection of the past³¹

The Britain and France first got their "permanent" status in 1945 primarily due to their colonial legacies, their governments ruled over hundreds of millions of people world-wide, best illustrated through such sayings as "The sun never sets over the British Empire" and that France had a "civilizing mission". These empires have now ceased to exist as entities of colonial rule. The case of China also compels one to question the "permanence" of permanent members. As for the major period the turmoil of Cold War, starting from revolution in 1949, the Beijing government lost its Security Council seat and its seat in the UN for twenty-two years. The government of Taiwan, a small island off the China coast, held this seat for a very long period of twenty-two years. In 1971, Beijing secured its seat back. Similar case is of Russia. In 1991 the once most powerful Soviet Union dissolved and its Security Council seat passed to a new nation: Russia, comparatively much smaller than its predecessor. The apparently seamless congruence nonetheless cannot obfuscate the incomprehensibility of this decision, further compounded by the fact that today Russia is not a superpower either militarily or economically. Even the United States is losing its dominance power. It is now a debtor rather than a creditor nation. It still has predominant military power but its once outstanding economy has lost its sheen. Since 1993 several commissions have been instituted to suggest changes that would enable the council to adapt the council to today's world. They have come up with several proposals, but none of them got the requisite support. That criterion cannot be fulfilled until all the five permanent members – the P5 -- agree. Several countries from the global south, India, Brazil, South Africa, Nigeria, Egypt, are plausible candidates for a permanent seat, but it has proved impossible to find an agreement.³²

The Council must reflect the global contemporary power realities of today and should therefore be reformed in order to attain higher state of performance or effectiveness; otherwise it will lose its legitimacy. Undoubtedly more representatives in Security Council will ensure safer world for member countries. The mechanism to fight international terrorism is applied once the Security Council takes the decision to do so otherwise it remains a fossilized ineffective institution. Thus the membership ought to be increased to make it more representative to suit to the present need of its very establishment.

B. Veto Power

The power of veto over the period of time has prevented the adoption of a number of resolutions by the Security Council. From 1945 to 1992, "the use of the power of veto was significant; it was exercised by the Soviet Union 114 times; by the United States 69 times; the United Kingdom 30 times; France 18 times; and China on three occasions. The Security Council was thus rendered

³¹ John Vandaele, Security Council Could Produce Insecurity, (15 Nov.2018), <http://www.globalpolicy.org/component/content/article/196-membership/42659.html>

³² Ibid.

ineffective during the Cold War.”³³ The council did not generate a single resolution about the war between the U.S. and Vietnam because of the dominance of two superpowers. After the Cold War, the council became very active, passing more resolutions.³⁴

In the post-Cold War period also the flaws of the UN decision making procedure relating to the use of force are evident in the Kosovo crisis in March 1999, when the Russian veto didn't let even putting up a resolution authorizing force before the Security Council. In March 2003, France pointed out that it would veto a resolution authorizing force against Iraq. The crisis established that the UN could play its role effectively but it could also be unsuccessful in some situations. The inadequacies of the UN system help to explain the unique U.S. role in the world as it is emerging in the post-Cold War period regardless of the objectives of its Charter.³⁵ Not only in 2003 Iraq war³⁶ but also the threats of stopping the financial support of the United Nations if General Assembly ratification of Palestinian statehood, the USA exhibited the power to evade the UN and its bodies and giving priority to its own interests.³⁷ “The result is that the United Nations is often impotent in the face of international crises.” The states have accused the “United States of hijacking the United Nations by using, or threatening to use, its veto power: support American policy, the United States seems to be saying, or risk turning the United Nations into a debate club.”³⁸

Just after Cold War era, bi-polarity headed to what was thought to be American predominance. But with time the U.S. is a member of the Council like no other in near future. “Arguably, the U.S. is the member of the exclusive club of the P-5 that has the least to lose with any reform of the Council; its participation is a sine qua non for any major effort in the field of international peace and security.”³⁹ Many academic and political analysts have opinion that the absence of any challenger confirms this observation as U.S. will have only China as its future rival. Thomas Weiss argues that currently Washington's domestic and foreign policies have a considerable impact on the agenda of the Council and its actions. Considering the USA's current impact and record, “the idea that the remaining superpower will continue to participate, politically or financially, in an institution whose

³³ Alex Conte, *Security in 21st Century: The United Nations, Afghanistan and Iraq*, (Aldershots, Hants Ashgate, 2005)

³⁴ Supra Note 31

³⁵ Adam Roberts, *The Use of Force, in The UN Security Council: From the Cold War to the 21st Century*, Ed. By David Malone (Lynne Rienner Pub, Feb, 2004)

³⁶ Supra Note 33. Alex Conte further stated that the most important rule of the Security Council, the backbone of the international security architecture, is that the use of force between states is forbidden. There are two exceptions: self-defence, and military measures authorised by the council. Yet, when Iraq invaded Iran in 1980 the council did not really react because most of the P5, for one reason or another, liked Iran being attacked, one year after its Islamic revolution. When Iraq invaded Kuwait in 1990 on the other hand, the U.S. was able to convince almost all countries of the world to join it to force Iraq to respect the rule of law and oust Saddam Hussein from Kuwait. When the U.S. invaded Iraq, the council didn't do anything because the U.S. could block any resolution. So the three transgressions of rules, three different reactions. Since there are several examples of other resolutions not being implemented, you have to conclude that not only the rule making process but also the sanctioning of rules (resolutions) is skewed by the power of the P5, primarily the U.S.

³⁷ Gregory Khalil, *Just say no to Vetoes*, The New York Times, July 19, 2004 (15 Nov. 2017), <http://www.globalpolicy.org/component/content/article/189/38211.html>.

³⁸ Supra Note 33

³⁹ Thomas G. Weiss, *Overcoming the Security Council Reform Impasse: the Implausible versus the Plausible*, pp18-19, (12 Nov. 2018), <http://library.fes.de/pdf-files/iez/global/50099.pdf>

purpose would be to limit its power has no precedent”.⁴⁰ Therefore, among the P5, the USA has proved to be a bigger obstacle to the reform of the Council. It is not only unlikely to compromise, but is also capable of withdrawing from the Council or even the United Nations, if other members of the Security Council insist on reforms that are not in accordance with its interests.

The number of resolutions vetoed by the permanent members between 1946 and 2017 are to be analysed.⁴¹ (as depicted by Bar Graph). Almost half the vetoes were cast by the Soviet Union, with the vast majority of those being before 1965. Since 1966, out of the total 153 vetoes cast, 119 were issued by one of the council's three members: the US, the UK and France. From 1946 to 2016, vetoes were issued on 258 occasions, usage breaks down as follows:

- Russia and the Soviet Union have used the veto on 106 occasions, more than any other of the five permanent members of the Security Council.
- The United States has used the veto on 79 occasions between 1946 and 2016; and since 1972, it has used its veto power more than any other permanent member.

The following list describes the most recent veto by permanent members of the Security Council. France and the United Kingdom have not vetoed any resolutions since 1989.

- 18 December 2017: The **United States** vetoed a draft resolution calling on countries to avoid establishing embassies in Jerusalem tabled by Egypt.
- 17 November 2017: **Russia** vetoed a 30-day renewal of a commission investigating chemical weapons attacks in Syria.
- 16 November 2017: **Russia** vetoed the US draft to extend the JIM (Joint Investigative Mechanism) chemicals as weapons in the Syrian Arab Republic
- 24 October 2017: **Russia** vetoed a draft resolution renewing the JIM
- 12 April 2017: **Russia** a draft resolution on the 4 April chemical weapons attack that took place in Syria.
- February 28, 2017: **China** and **Russia** vetoed UN sanctions over chemical weapons in Syria.

As seen above the year 2017 saw the most vetoes cast in more than two decades, obstructing decisive action by the Council on the Syrian conflict. The use of the veto by some permanent members of the Council has undermined the credibility of the Council's decision-making process. Mostly permanent members have used the veto just to protect their own national rights and interests and the interests of their allies.

⁴⁰ Brian Frederking, *The United States and the Security Council :Collective Security since the Cold War*, Routledge, 1st edition, pp.43,44 (Oct.14, 2007),

⁴¹ List of vetoed UN Security Council Resolutions, (20 Dec. 2018), <http://research.un.org/en/docs/sc/quick/veto>.

Many times the UN Security Council is debarred from taking action by its permanent members, who can veto any council resolution.⁴² “Sometimes the realist critique applies: the veto powers cannot agree on what the rules are, when to implement the rules, and how to enforce the rules given noncompliance. China does not want collective action against Sudan or North Korea, Russia does not want collective action against Iran; the United States does not want collective action against Israel or Pakistan.” Hence the Council is not able to react when terrorism, weapons proliferation, and human rights violations occur.⁴³

The United States does not want India and Pakistan to engage in preventive self-defense toward each other. The United States does not want China to unilaterally enforce Security Council resolutions without explicit authorization. The United States does not want Russia to cite terrorism or a humanitarian disaster and intervene into another country. The United States does not want Iran and North Korea to reject international weapons inspections. The United States does not want Syria or the Democratic Republic of Congo to torture prisoners. The United States does not want Sudan to escape ICC Jurisdiction. And yet the United States act in these ways.⁴⁴

The International Court Of Justice while Giving its Advisory Opinion on *Legal Consequences Of The Construction Of A Wall In The Occupied Palestinian Territory* (9th July2004) ⁴⁵said it had jurisdiction in part because the United States had frustrated the Security Council's work. Israel's actions constitute a "threat to international peace and security," according to the court, and in such instances, the Security Council must act. But the Security Council had been prevented from acting, the court said, by American vetoes. In unanimously holding that it had jurisdiction, the court reasserted a significant power in the General Assembly: when the Security Council fails to act because of a permanent member's abuse of veto power, the General Assembly may do so, including asking the court's advice.⁴⁶

Taken together, these holdings chart a path for the international community to counter the United States' veto power. Although the opinion was nonbinding (the court cannot compel enforcement), the court emphasized that the law upon which its opinion is based does indeed bind. This sends a strong message to the United States: either refrain from obstructing the rule of law with your veto, or risk alienation from mainstream global opinions and forums. Once other powers engaged the United States

⁴² Supra Note 37

⁴³ Supra Note 40

⁴⁴ Jeremy Matam Farall, *United Nations Sanctions and Rule Of Law*, p. 59, (Cambridge University Press, 2007).

⁴⁵ 21 Nov.2017, <http://unispal.un.org/UNISPAL.NSF/0/B59ECB7F4C73BDBC85256EEB004F6D20> In determining that all sections of Israel's wall built in occupied Palestinian territory (including East Jerusalem) must be dismantled, the court delivered pronouncements. First, "the United Nations, and especially the General Assembly and the Security Council, should consider what further action is required to bring to an end the illegal situation resulting from the construction of the wall." Second, "all nations are under an obligation not to recognize the illegal situation arising from the construction of the wall, and not to render aid or assistance in maintaining that situation."

⁴⁶ Ibid.

in a tango of mutual deterrence; now, suggests the court, the rule of international law should play that role.⁴⁷

Also the problem is that if the Security Council reacts differently for the friends of the U.S. or the permanent members as compared to others, it will undermine the credibility and legitimacy of the Security Council. When 3,000 people are killed in New York on 9/11, the Council takes action immediately but doesn't do anything when 10,000 Rwandans are killed every day for three months which implies that developing countries' security is of a lesser importance. And if multilateral institutions cannot take care of the security needs of the people, the latter will lose confidence in them and then take recourse to some other means. The Security Council will have to apply same standards to all members and see that the law and not the politics of force, prevails.

The Security Council remained a mute spectator (refused to take any measures such as sanctions or the use of force) to crisis in Syria, although larger than crisis in Libya, which deepened with the presence of ISIS there in 2014 and 2015. But there was no intervention by any international organization as President Assad had two P5 friends China and Russia thwarted the Security Council Resolution in 2013 condemning Syria's actions) and U.S.A. was not willing to intervene till then. The U.S.A. got militarily involved with the emergence of ISIS and Russia's military intervention on behalf of Syrian government in late 2015. Then Secretary-General Ban ki-Moon himself criticized the failure of the Council, "Syrian tragedy shames us all", adding: "We are at a make-or-break moment."⁴⁸ The Council's action has been paralyzed as over 20 resolutions have been passed since the start of the Syrian war in 2011 and Russia has vetoed to stop 11 of them from going through. The war in Syria has entered eighth year, more than 340,000 people have been killed and millions driven from their homes,⁴⁹ with no solution to eradicate terrorism and end to suffering of people.

Participating in an open debate of the Security Council on its working methods, India's Permanent Representative to the UN Syed Akbaruddin criticized the UN Security Council's veto-wielding members for obstructing the designation of terrorists without giving any explanation, seemingly hitting out at China for repeatedly blocking its bid to list Pakistan-based Masood Azhar as a global terrorist. China in the past has used its veto power when it came to designating terrorists or extremist groups having links with the Pakistani establishment. He said, "Most of the time, one does not even know which countries have exercised their veto." He said the veto power being exercised by permanent members of the Security Council who do not give any explanation, have been

⁴⁷ Ibid.

⁴⁸ UN Doc.SC/12526 on 21 September 2016,(2 Dec 2018) <https://www.un.org/press/en/2016/sc12526.doc.htm>.2018), (2 Dec 2018), <https://www.un.org/press/en/2016/sc12526.doc.htm>.

⁴⁹ Agence France-Presse, Beirut, [Syria war has killed more than 340,000 since 2011](#), Hindustan Times, 25 Nov. 2017 at 15. He stated that the conflict broke out with peaceful protests against strongman President Bashar al-Assad, but his crackdown paved the way for a fully-fledged war. A multitude of regional and foreign powers have since intervened in the maelstrom, which has destroyed much of the country's infrastructure and displaced millions.

anonymously blocking the designation of several terrorists. He further said that there were 14 sanctions committees, which cumulatively listed 678 individuals and 385 entities subject to such measures. Each of those decisions had been made "beyond the gaze" of public knowledge with no explanation of the inputs that had informed them. For example, in practical terms, decisions of these sanctions committees can be placed on hold or blocked by any of the 15 Member States of these Committees." Accordingly the anomalies not only affected the efficiency and credibility of the work of the Council, but also impacted the larger membership that was required to implement its decisions.⁵⁰ It seems the UN Security Council is a device to serve the caprice of its five permanent members. So long as responsibility for the maintenance of peace and security is left to the whims of only the most powerful and self-interested countries in the international order, the world cannot expect quality efforts to combat international terrorism.

There is no obvious workable way to reform the existing UN decision making procedure as far as the use of force is concerned. Most proposed changes to the UN Charter's provisions regarding the composition or procedures of the Security Council involve increasing the number of permanent members. If they all had the veto, that would further reduce the already limited chances of obtaining agreement on controversial measures. Any proposal to reduce the existing number of states armed with the veto, or to limit the occasions on which the veto may be used, has to surmount the major procedural obstacle that, if the proposal is to be passed, each veto-wielding state will have to consent.

The reform debate has additionally caused proposals that stop close to Charter amendments, but which leads to alternative formulas to finesse the veto. The permanent members could themselves exercise greater restraint i.e. by restraining the veto only to issues under Chapter VII enforcement action, and even for one type of coercive decision like humanitarian intervention to refrain in matters where imperative interests are not involved. Of course, a "gentlemen's agreement" about such restriction would offer no guarantees. But public engagements even if circumscribed and cautious however have a way of exerting pressure on signatories.⁵¹

Another alternative which is rarely utilized but frequently discussed would be "the General Assembly in Emergency Special Session under the 'Uniting for Peace' procedure". It has been used only three times to sanction military action – the last in the early 1960s for the Congo – reduces its importance in the eyes of many commentators. As the League's Assembly before it, the General Assembly also understands that the idea of coalitions of the willing, which anyway is one of the oldest aims of diplomats. In cases where biting boycotts were set up against Italy in the Abyssinian and against South Africa during the apartheid era, both have acted in the security field by putting up

⁵⁰SC/13197 on 6 Feb. 2018, Calls for Greater Inclusion of Elected Security Council Members, Limited Veto Use in Addressing Atrocity Crimes Dominate Open Debate on Working Methods.

⁵¹Supra Note 33 at p.173.

programs and recommending that members take part in them. In cases where the Security Council got paralyzed by the veto, the original 'Uniting for Peace' resolution even had a clause considering the voluntary creation of a UN force.⁵²

Another approach for the reform can be, curtailing the exercise of the veto by requiring any exercise of the power to be accompanied by a written explanation of the reasons for it and/or that the use of the veto be changed in such a manner that it could be overruled either by a specific number of positive votes of Security Council members or by a two-thirds majority of the General Assembly.⁵³

It is submitted that the veto should be used with utmost control and that its use should be confined to actions taken under Chapter VII of the Charter. The use of the veto should be changed in such a way that it could be overruled either by particular number of positive votes of Security Council members or by a two-thirds majority of the General Assembly and there should be an explanation of the reasons for the veto to be given to the Assembly. At the open debate on the Working Methods of the UN Security Council, Germany argued for widespread reform: "We must not stop at addressing working methods. What is required is structural reform of Security Council that makes it more representative of the world we live in today. The desire for real meaningful reform is evident more than ever. The overwhelming majority of states...see that true structural reform is the best way forward. Anything else will only address the symptoms and not the root causes."⁵⁴ And Malaysia also stated that "[i]t has been 30 years since provisional rules have been amended. They are a relic of WWII and the Cold War. The UNSC has refused to move with [the] times." Malaysia further said that "UNSC members have to rise against entrenched national interests and that it is time for the Council to move beyond weak arguments focused solely on maintaining the status quo . . . Look at what has happened in the Middle East. Can the Council claim to be at the forefront of taking responsibility for what has happened in Palestine and Syria? No. Why is this so?"⁵⁵

The significant question is if the Security Council is owned by all its fifteen members, by the P-5, by the 193 UN member states, or as suggested in the opening words of the UN Charter by "We the Peoples". Moreover, the provisional rules of procedure and subsequent working methods of the

⁵² Ibid.

⁵³ Report of the Open-ended Working Group on the Question of Equitable Representation on Increase in the Membership of the Security Council and Other Matters related to the Security Council, Official Records, Fifty-ninth Session, and Supplement No 47 (A/59/47). Some delegations commented on the recommendation made by the High-level Panel that a system of "indicative voting" should be introduced, whereby members of the Council could call for a public indication of positions on a proposed action, which to their mind required further discussion. Reference was also made to the recommendation of the High-level Panel that permanent members should pledge themselves, in their individual capacities, to refrain from the use of the veto in cases of genocide and large-scale human rights abuses. (22 Nov 2018), <http://www.undemocracy.com/A-59-47.pdf>

⁵⁴ Video: Open Debate on the Working Methods of the U.N. Security Council, Statement by U.N.G.A. Representative from Germany. The Azerbaijan Representative to the UNSC (Nov. 26, 2012), (20 Jan. 2018), <http://webtv.un.org/meetings-events/treaty-bodies/watch/part-2-debate-on-working-methods-security-meeting/1990652676001/?term=&lan=russian?lanoriginal>

⁵⁵ Ibid. Statement by the U.N.G.A. Representative from Malaysia.

Council have failed the international community; the question of ownership becomes pertinent. It is submitted that if the Security Council wants to contribute to security in the world against international terrorism, it needs credibility and legitimacy and for that the above mentioned reforms are required. General Assembly President Peter Thomson (Fiji) pointed out that the world had changed dramatically since the founding of the United Nations, with a quadrupling of its membership amid the global rise of terrorism, violent extremism and asymmetric warfare. In that context, advancing Security Council reform would remain a key priority for the Assembly's seventy-first session, as it was critical to ensure that the organ remained capable of delivering on the purposes, principles and promises of the United Nations Charter.⁵⁶

No matter how flawed, the Security Council is still the only UN body with the capability to issue binding resolutions and having the effective measures against international terrorism to maintain international peace and security.

SUGGESTIONS

Veto Power and Membership

The Security Council has gone through the process of development and modification since its inception due to change in relationships and geopolitical situations between the States, the political situations and economic powers of member States. From the challenges of the post-War world, the global order has drastically changed from American unilateralism to the upsurge of multilateral institutions such as BRICS (Brazil, Russia, India, China and South Africa). Even the developing nations, like India, play more important role in the international economy and politics now. After 9/11 attacks in 2001 the nature of security threats has also changed and the new security situation requires reforms in the Council without delay. The recent suicide attacks in Brussels, Paris and the Arab world, and the rise of terrorist groups like ISIL /ISIS, Al-Qaida etc. manifest that Security Council is facing unprecedented threats of international terrorism. This global threat requires coordination from more countries as well as their involvement to fight it. Moreover the Security Council doesn't represent the majority of the world, as it only represents the interests of Western nations as well as those of Russia and China. The under representation of Asian, African, and South American nations is causing them to be resentful. Also P5 nations use this veto power to represent their interests alone, disregarding the interests of rest of the international community. Since 1945 the Security Council has remained unchanged even though the UN General Assembly membership has enlarged from 51 to 193. The UK and France are no longer world powers and Russia has just come out of political and economic crises. However, the three nations have retained their elite status and leading roles in maintaining peace and security which arguably they no longer have the ability to play. All critical decisions are still being taken by the veto exercising permanent members of the Council and that is preventing the UNSC from

⁵⁶ GA/11854 on 7 November 2016.

coming up with effective mechanisms to deal with global crises. For instance there is no consensus in the Security Council on how to tackle the present crisis in Syria. Recently General Assembly adopted the draft in its seventy-first session, 92nd meeting on 19 July, 2017 on oral decision titled “question of equitable representation on and increase in the membership of the Security Council and related matters”.⁵⁷ The UN should not dither over the reform but should avail this opportunity to remove the logjam.

Under the UN Charter the Security Council has been given the primary responsibility for the maintenance of international peace and security and the only organ whose decisions are binding upon all members. Article 27 gives the power to permanent five (P5) to quash any non-procedural draft resolution with their negative votes. In the beginning this veto power was given to prevent any direct action against any of these five founding members but now it has become a tool in the hands of P5 for either protecting their national interests or allies. That’s why the Security Council has largely been a bystander in the recent crisis in Syria which has deepened with time and millions of people have died. The Security Council’s objective and its stated role is undeniably a failure. After the genocide in Rwanda, again such large scale civilian deaths have occurred. The Council could not take any serious action because of Russian veto and its alliance with Syria. It is a matter of concern that though having elaborate mechanism to combat international terrorism yet the Security Council is playing little or no role in such situations, due to the availability of veto power. The P5 is exercising the veto power in whatever manner they want and this outlook is not consistent with the principles and objectives of the Charter. This has led to the failure of Security Council in addressing the important issue of international terrorism in fair and balanced way. It has been successful in the past but now its role is more perceived by its repeated failure to deal with international terrorism as threat to peace and security. The researcher feels that serious consideration should be given to change in the Council’s structure so that veto power is not used as per whims and fancies of permanent members.

As discussed earlier the years of debate, criticism and several proposals for change have not culminated into any concrete outcome. The reform efforts over the past years have been in a deadlock as the P5 have a veto over any proposed changes and they have also worked well as a team to protect their power. The major reform in 1965, the Council was expanded from 11 to 15 members due to the combined lobbying and voting power of the Non-Aligned states but P5 and their veto remained intact. In 1997, the chairman of the Open-Ended Working Group on Security Reform, Ismael Razali, proposed an enlargement of the Council to a total of 24 seats, whereas ten would be permanent, these reform efforts couldn’t succeed. The then Secretary-General Kofi Annan emphasized the importance of a Council reform in his 2005 report “In Larger Freedom” and the reform debate again picked up and new blocs of states were founded. The most active of them was the G-4, backing permanent seats for India, Japan, Germany and Brazil in addition to two African countries and this effort to reform the

⁵⁷ UN Doc.GA/11931 on 19th July, 2017

Council also didn't succeed due to disagreement amongst member states and resistance from members of the P5. The Uniting for Consensus plan also calling for membership reform, a reform put forward by African states, the Ezulwini Consensus, and the S5 plan, no such proposal for reform could succeed but these efforts have expressed the view that most countries in the General Assembly support a restructuring of the UNSC.

The great powers have influenced the Security Council to their advantage and paralyzed it to some extent. Russia's refusal to impose sanction on Syria; the United States every time vetoed the resolutions that condemned Israeli actions; France blocked resolutions against Morocco are the glaring examples of exercise of veto power by P5 as per their vested interests. The Security Council is losing its credibility as custodian of world peace. If the Security Council cannot intervene in cases of international terrorism attacks threatening international peace and security then its very existence would be called in question. It must react swiftly and effectively in such situations.

- A. It is suggested that the "Council-membership" should fairly reflect the global changes of today and become more representative in global power structure. The simple and reasonable plan to reform would be to add five more permanent members and empower them with veto and provide that instead of one, two vetoes would be required to block any resolution. Those five permanent members could be Germany, Japan, India, Brazil and South Africa to give more representation to the developing states.

Brazil, Germany, India, and Japan comprise the group of G4 nations, mutually supporting one another's bid for permanent seats. The United Kingdom, France and Russia support G4 membership in the U.N. Security Council. Most of them are regularly elected onto the Security Council by their respective continental groups: Japan was elected for eleven two-year terms, Brazil for ten terms, and Germany for three terms. India has been elected to the council seven times in total. South Africa secured a seat as a non-permanent member of the UN Security Council for the third time in 2018. Researcher is of firm belief founded on the basis of analysis of functioning of UN Security Council in respect of dealing with international terrorism that restructuring of it would empower the institution to effectively save the world from the after effects of terrorism. The table shown below⁵⁸ depicts that the P5 members of the Security Council, along with the G4 and South Africa, accounted for eight of the world's ten largest defense budgets. They also account for 9 of the 10 largest economies by nominal GDP which could be one of the grounds for including G4 along with South Africa in UN Security Council as permanent members with veto power.

⁵⁸ Peter Nadin, United Nations Security Council Reform, United Nations University (2014.09.12), (12 Dec 2017), <https://unu.edu/publications/articles/united-nations-security-council-reform.html>.

Table:**current permanent members**

	Troop Contributi on	Budget Contributio ns	GDP (Nomina l)	Counc il Terms	Populati on
United States	118	23. (1st)	1 st	–	318 million (3rd)
United Kingdom	281	5.179% (5th)	6 th	–	64 million (22nd)
China	1,645	5.148% (6th)	2 nd	–	1.361 Billion (1st)
France	950	5.593% (4th)	5 th	–	66 million (21st)
Russia	102	2.438% (11th)	8 th	–	144 million (9th)
aspirant permanent members					
Brazil	1,724	2.934% (10th)	7 th	20 years	201 million (5th)
Germany	235	7.141% (3rd)	4 th	10 years	81 million (16th)
India	7,868	0.666%	10 th	14 years	1.241 billion (2nd)
Japan	269	10.833% (2nd)	3 rd	20 years	127 million (10th)
South Africa	1,675	0.372%		4 years	53 million (25th)

Brazil is the largest country in Latin America in terms of population, GDP and land area. It has the fifth largest population, seventh largest GDP and has the fifth largest land area in the world. It is one of those five countries (the others being India, China, Russia and the United States) which are ranked among the top ten internationally both in terms of physical size, population, and GDP. Moreover, South America is one of three inhabited continents (the other two being Africa and Oceania) without permanent representation on the Security Council.

Germany is the third largest contributor to the U.N. regular budgets and as such desires for a permanent Security Council seat. Germany, as a unified state, has been elected to the Security Council as a non-permanent member three times and three times when it was divided (twice for the West, once for the East).

India is the second-largest and one of the largest constant contributors of troops to the United Nations peacekeeping mission. The country has the world's second-largest population and is the world's largest liberal democracy. It is also the world's fifth-largest economy by nominal GDP. At present, India is a nuclear-weapon state and keeps the world's second-largest active armed force (after China).

Japan is the second-largest contributor to the UN's regular budget and has third largest GDP. Japan has been one of the largest Official development assistance donor countries. Japan and India are being considered the most likely candidates for the new permanent seats.

South Africa has the third-largest economy on the continent and is one of the largest contributors of military and civilian personnel to UN peacekeeping missions. Since we don't have any representation from the Africa continent, South Africa will fill that gap and make the Council more representative.

- B.** Another suggestion is to regulate the veto power, to restrict it in situations of crime against humanity. Disagreement of the veto powers has rendered the SC incapable of acting. in the dispute of Israel and Palestine and the Syrian Civil War, resulting in innumerable and unnecessary casualties. A possible solution is a limitation of the veto right, restricting it in situations of crimes against humanity vis genocide. Though it would require detailed definition, still on the request of $\frac{1}{4}$ members, the UN Secretary-General could be called upon to determine the nature of the crime. Once he has decided, then it would be expected to exclude those cases from the use of veto power even if the important national interests of a permanent member of the Council were at stake. This exclusion should get the support by a two-thirds majority of the General Assembly. It would make evident the UN's primacy to protect human life and preserve the fundamental credibility of the Security Council. In opinion of the

researcher this would be the simple and effective way to limit the absolute power of veto and restrain its use in most flagrant situations of human suffering. Veto power cannot be disassociated from the responsibility towards human life and be an absolute right with no limits whatsoever.

Having examined the situations where UN Security Council has been ineffective, researcher is of strong conviction that the road to reform would not be easy as the three powerful members of the UNSC — Russia, China, and the U.S. have opposed every major reform of the Council. And every decision to reform even if reached with consensus would be vetoed by the permanent members. Thus in the interest of humanity it is for the permanent members themselves to make sure that the Council gets more democratic and representative character and be better equipped to effectively combat the global challenge of international terrorism.

In view of the researcher the U.N. Security Council has effective mechanism but in the face of today's world it needs to be restructured and to represent each of the regions of the world. If that mechanism does not get applied in the crucial situation of international terrorism due to veto power then the Security Council would lose its power to be a universally accepted institution for maintaining peace and security for human beings.

It is evident as per UN Charter; the international terrorism has been declared a serious threat to international peace and security by UN Security Council. Since the primary responsibility and constitutional competence lies with the Council to maintain international peace and security, with incorporation of above mentioned suggestions regarding the concept of international terrorism, the mechanism and the role which has been carved out for the Council, it will become from fossilized to the most legitimate institute to legally respond to the most serious and challenging threat of international terrorism.