

*Md. Shah Alam*

## 'VETO' POWER IN THE SECURITY COUNCIL : AN EVALUATION

### **Introduction**

The permanent-member status and the right of 'Veto' in the UN Security Council, accorded to five Big Powers, are a derogation from the principle of sovereign equality of states. Such derogation has admittedly been accepted in international law for the sake of a greater cause—maintenance of international peace and security. The circumstances under which the United Nations was established demanded that certain special rights and duties in the Charter of the new Organisation be given to the Big Powers, namely, the USA, the USSR, the UK, China and France, for the purpose of ensuring stable peace. Accordingly, it was decided that these five Big Powers would become permanent members of the Security Council, the UN organ primarily responsible for international peace and security, and that no decision in the Council on substantive matters could be taken if any one of the permanent members opposed it. That any such possible decision could be blocked by the negative vote of a permanent member came to be popularly known as the 'right of veto'.

Since the very inception of the United Nations, the permanent members' right of 'veto' has always been a subject of questionings and controversies.<sup>1</sup> Has this right justified itself? Should it be retained as it is or necessary modification is to be made or the system should

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1. J.G. Starke, *An Introduction to International Law* (Butterworths, London, 1972), p. 608.

be totally done away with? Is there any scope, within the legally permissible range, to obviate the negative effects of 'veto'? To answer these and other relevant questions, we have to consider the following matters :

I. the peculiar international situation in which the 'veto-laden' United Nations came into existence;

II. legal correlation between the principle of sovereign equality of states and the right of 'veto';

III. actual exercise in the past of 'veto' right by the permanent members with all its consequences for peace and security;

IV. change of circumstances, if any, that has taken place in the international arena in the last forty years;

V. Big Powers' present stand on the question of 'veto', and the legal and practical problems involved therein;

VI. sustainability of the United Nations as an effective international organisation for maintaining peace, in case the principle of Big-Power unanimity provided for in the 'veto' system is broken;

VII. possibility of finding ways and means, in and beyond the Security Council, for neutralising the dead-locking effects of the 'veto' right actually exercised.

### **Circumstances Leading to the Creation of the United Nations and Conferment of Special Rights Upon the Big Powers**

The United Nations was not established under normal circumstances in peace time. The whole process of its formation was witness to a horrible war that shook the entire humanity. The victorious powers in the war fought together not merely to quieten one or more aggressors, but also to champion certain ideals that were vital for the survival and rational development of human civilisation. One of these ideals was maintenance of world peace and security. The Allied Powers despite their sharp political and ideological differences developed amongst themselves a strong spirit of war-time cooperation

which was to lie at the very foundation of a definite institutional arrangement to ensure peace and security for future generations. This spirit and a strong desire for permanent peace were manifest in the establishment of the United Nations.

The fact that the powers such as the USSR, the USA and the UK played the decisive role in crushing fascism and nazism and that they as victor powers were actually responsible for the establishment of the Organisation for guaranteeing peace left their definite marks on the character of it. The ideals these powers fought for and the forces they fought against raised them in the eyes of the world community to a position of reliable guarantors of peace. This made possible general acceptance, though not without reservation, of an organisation which conferred upon the five big powers certain special rights i.e., permanent membership and the right of 'veto' in the Security Council.

Though the inclusion of the 'veto' right in the Charter was formally proposed by the US President F. Roosevelt at Yalta<sup>2</sup> and accepted by

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J. Stalin and W. Churchill, it was initially the Soviet position which more than any other underscored the need for big-power unanimity in the decisions that concerned international peace and security. This position was based on an allegedly realistic view of the role of military power in international relations.<sup>3</sup> Under the proposed organisational

2. The Heads of the States of the USSR, the USA and the UK discussed the burning issues of war and peace at the Summit meeting held at Yalta in the Crimea from Feb. 4 to 11, 1945. The provisions on the voting procedure of the Security Council which could not be agreed upon earlier at the Conference at Dumbarton Oaks, Washington D.C., were referred to the Summit which adopted the famous 'Yalta Voting Formula' introducing, *inter alia*, the 'veto' system.
3. Leland M. Goodrich, *The United Nations* (Crowell, New York, 1959), p. 23.

structure, this meant that in the Security Council the five permanent members, considered to be big military powers, would have a 'veto' right on substantive decisions.

The central idea behind the right of 'veto' is that since the permanent members as big powers naturally bear the main burden of responsibility for maintaining peace and security, no one permanent member should be compelled by a vote of the Security Council to follow a course of action with which it disagrees. In other words, the possibility of division amongst the big powers on particular issues of collective security was foreseen<sup>4</sup> and, so, the requirement of unanimity on substantive issues was provided for. This requirement of unanimity of all permanent members on matters other than those of procedure, is based on the assumption that unity of view and action on the part of the big powers is a necessary condition of proper functioning of the United Nations, that no permanent member of the Security Council can properly be expected to submit to decisions of which it disapproves.<sup>5</sup>

### **The Smaller Power's Criticism and the Big Powers' Defence of 'Veto'**

The ability of one of the permanent members to prevent the United Nations from performing some function prescribed in the Charter led to serious criticism by the smaller and middle-grade powers of the Council's voting procedures and to demands for some modification in the method of voting. The entire question was so hotly debated at San Francisco in 1945 that the Conference called to give final shape to the draft of the Charter nearly ended in disaster.<sup>6</sup>

Australian delegate Dr. Evatt led the attack against the veto, seeking to narrow its applicability and widen the scope of questions

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4 J.G. Starke, *op. cit.*, p. 608.

5. L. Oppenheim, *International Law (A Treatise)*, 8th Edition, Ed. by H. Lauterpacht, Vol. I (English Language Book Society and Longmans Publication, 1966), pp. 433-434.

6. Stephen S. Goodspeed, *The Nature and Function of International Organization* (Oxford University Press, New York, 1967), pp. 143-144.

which could be considered procedural.<sup>7</sup> Article 27(2) of the Charter excluded any possibility of exercise of the 'veto' right by a permanent member on such questions and required affirmative vote of any seven members.<sup>8</sup> At the backdrop of serious controversies and debates in the Conference at San Francisco over many aspects of 'veto', a Sub-Committee under the Conference Committee on Structure and Procedures of the Security Council was appointed to bring about certain clarification of the disputed issues. A questionnaire composed of twenty-two doubtful points and one addendum were prepared and submitted to the Delegations of the four Governments sponsoring the Conference—the USA, the USSR, the UK and China.

Statement of the four sponsoring powers on voting procedure in the Security Council made in response to the questionnaire presents considerable interest. It is a statement of their general attitude towards the whole question of unanimity of the permanent members in the decisions of the Security Council. The Statement making frequent references to Yalta voting formula<sup>9</sup> attempts to justify the requirement of big-power unanimity in the decisions on matters other than those considered procedural (Sec. 2 of the Statement) and those relating to mere consideration and discussion by the Council of a dispute or situation (Sec. 3). The substantive decisions by the Security Council, argues the Statement (Sec. 4), may well have major political consequences and may even initiate a chain of events which might, in the end, require the Council under its responsibilities to invoke measures of enforcement which would be impossible, in practice, to implement if any one of the permanent members was against it.

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7. For details of Dr. Evatt's views on the issue, see H.V. Evatt, *The United Nations* (Oxford University Press, Melbourne, 1948), 148p.

8. Amendment which came into force on 31 August, 1966, increased the number of non-permanent members of the Security Council to ten and the total number to fifteen. Accordingly, votes required to take decisions were increased from seven to nine.

9. See note 2.

Sections 9 and 10 of the Statement giving further clarification on the matter observe<sup>10</sup> :

9. In view of the primary responsibilities of the permanent members, they could not be expected, in the present condition of the world, to assume the obligation to act in so serious a matter as the maintenance of international peace and security in consequence of a decision in which they had not concurred. Therefore, if majority voting in the Security Council is to be made possible, the only practicable method is to provide, in respect of non-procedural decisions, for unanimity of the permanent members plus the concurring votes of at least two (now four) of the non-permanent members.
10. For all these reasons, the four sponsoring Governments agreed on the Yalta formula and have presented it to this Conference as essential if an international organisation is to be created through which all peace-loving nations can effectively discharge their common responsibilities for the maintenance of international peace and security.

It is clear that the sponsoring Governments were quite categorical in their stand for 'veto'. After the clarification of the different aspects of the 'veto' given in the Statement by the four sponsoring Governments, smaller powers made further attempts, but without success, to narrow down the sphere of application of the 'veto' right. One of their major demands, not accepted by the big powers, was that the 'veto' should not be applicable to resolutions aiming at pacific settlement of disputes.<sup>11</sup> Smaller powers had to remain satisfied with that part of the Statement which gave some clarification on procedural and non-procedural matters and 'consideration and discussion of a dispute or situation', which supposedly put certain limitations on the

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10. *Basic Documents in International Law*, Ed. by I. Brownlie (Oxford, Clarendon Press, 1972) p. 43.

11. K.P. Saksena, "United Nations Then and Now", *World Focus* (Monthly Discussion Journal), Vol. 2, No. 9, New Delhi, Sept. 1981, p.4.

right of veto. They appreciated and accepted the doctrines of 'primary responsibilities' of the big powers and 'non-implementability of a decision' with which a big power is in disagreement, as justification of their 'veto' right. This they did, however reluctantly, for the greater sake of the establishment of an organization of the proposed nature.<sup>12</sup> Conscious of their role and influence, the big powers did not concede much. The smaller states on the other hand, had no alternative. The right of 'veto' was accepted as it is.

### **The Principle of Sovereign Equality of the States and the Right of 'Veto'**

Some crucial provisions of the UN Charter relating to decision-making in the Security Council and to any general review of the Charter of the Organisation, which is not possible without the consent of all the permanent members, are in direct contradiction with the recognised principle of sovereign equality of member states. The consent of all the permanent members is required as a condition of validity of the decisions of the Security Council. This means, no enforcement measures under Chapter VII of the Charter can legally be undertaken

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against any permanent member except with their consent. This clearly puts them in a less obligatory position<sup>13</sup> as regards the fulfilment "in good faith the obligations assumed by them in accordance with the present Charter."<sup>14</sup> But the general obligations of the Charter

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12. H. Kelson, *The Law of the United Nations* (Stevens and Sons Limited, London, 1951) p. 272.

13. L. Oppenheim, *op. cit.*, p. 413.

14. See Article 2(2) of the UN Charter.

are, in principle, equally binding on all members. It is a case of clear departure from the principle of equality before law.

Can the principle of sovereign equality of states be reconciled with the privileged right of 'veto'? Kelson taking a negative view of this observes that the 'veto' right of the five permanent members of the Security Council, which places the privileged powers above the law of the United Nations, establishes their legal hegemony over all other members of the Organisation and thus stamps on it the mark of an autocratic or aristocratic regime.<sup>15</sup> He further points out that "there is an open contradiction between the political ideology of the United Nations and its legal constitution. This contradiction may completely paralyse the great advantage that the Charter tried to gain over the Covenant (of the League of Nations) by conferring upon the Security Council a power almost equal to that of a government."<sup>16</sup>

Purely formalistic approach of Kelson may not always fit in the system of international law. The problem of correlation between the principle of sovereign equality and the 'veto' right is closely linked with the fundamental weakness of international law i.e., absence of a universally supreme authority to enforce its norms. Had there been such an authority, there would have been no necessity of any derogation from the principle of equality before law. Doctrines such as 'primary responsibility' of the Big Powers for peace and 'impracticability of taking enforcement measures' against a Big Power, for justifying their special rights, would have been quite unnecessary. But given the inherent weakness of international law, any exception to general rule like one in the Charter, if it is made with common consent and for a higher cause which this very law stands for, may serve as legal basis for creating rights which would otherwise be considered inconsistent with law.

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15. H. Kelson, *op. cit.*, p. 276.

16. *Ibid.*, p. 277



### Abuse of 'Veto' Power and Some Early Attempts at Readjustments and Adaptions

The scope for application of the right of 'veto' seemed almost unlimited, save certain matters mentioned earlier. A solemn assurance given by the sponsoring states in their Statement that the permanent members would not use their 'veto' power wilfully to obstruct the operation of the Council<sup>17</sup> proved insufficient, as later developments showed, to control the conduct of the permanent members. Many aspects of 'veto' could not be fully understood until actual issues for decisions came up in the Security Council when the practical questions of application or non-application of the 'veto' right arose.

After the war was over, the Security Council failed to undertake leading role on questions of peace and international security because of power rivalries and mutual distrust amongst the permanent members. The Commission at San Francisco which worked on the collective security provision of the Charter reported that the "the general scheme for future world security.....is based on the unanimity of the great powers, which will bear the brunt of future enforcement action....."<sup>18</sup> But the emergence of cold war among major powers in the post-war era struck at the root of the principle of unanimity.<sup>19</sup>

Too lavish an exercise of the 'veto' right in the early years of the United Nations, forty-nine times by November 1950,<sup>20</sup> mostly by the USSR, bore clear testimony to an ominous development. Though most of these 'vetoes' were applied in the cases of admission of the new members to the United Nations which did not involve vital interests of international peace and security, they gave the nations of the world sufficient reasons for worries. New ways and means for readjustments

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17. See Section 8, Part-I of the Statement of the four Sponsoring States, issued at the Conference in San Francisco.

18. S.S. Goodspeed, *op. cit.*, p. 159.

19. Sakti Mukherjee and Indrani Mukharjee, *International Organisation*, (World Press, Calcutta, 1979), p. 39.

20. See T. Hovet and J. Hovet, *A Chronology and Fact Book of the UN*, (Oceana Dobbs-Ferry, New York, 6th Edition, 1979.)

and adaptations to new circumstances within the permissible range in and outside the Security Council were sought for neutralising the effects of 'veto', to whatever extent possible.

Earlier, the rule of unanimity of all the members of the Council of the League of Nations, the predecessor of the United Nations, had also created considerable problem for its effective functioning. This is one of the reasons why there had to develop a body of constitutional conventions which relaxes the rule of unanimity of the League Council. C. Wilfred Jenks, in this connection, observes :<sup>21</sup>

.....the principle that no one is judge in his own case gradually met with increasing acceptance; the concept of matters of procedure proved to be an elastic one; new powers and functions were conferred upon the Council by instruments providing for decisions by a majority; the co-ordination of action taken by Members of the League individually in the implementation of their obligations under the Covenant did not necessarily require unanimity, as the application of sanctions during the Ethiopian war was to show; unanimity was not indispensable at the committee stage and it became almost a convention not to reopen certain matters (notably administrative and financial matters) in plenary.

Similar developments relaxing the rule of unanimity, to certain relief of the observers, can also be found in the practices of the United Nations. Some of them are discussed below.

(a) *Voluntary Abstention from Voting :*

The voluntary abstention of a permanent member from voting has consistently been interpreted as not constituting a bar to the validity of a Security Council decision.<sup>22</sup> The legality of this practice was

21. C.W. Jenks, "Unanimity, The Veto, Weighted Voting, Special and Simple Majorities and Consensus as Modes of Decision in International Organisations", *Cambridge Essays in International Law* (Stevens and Sons, London, 1965), p. 49

22. J.G. Starke, *op. cit.*, pp. 607-608.

upheld by the International Court of Justice in the Advisory Opinion of June 21, 1971, on the "Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa)", in which it ruled that a Security Council Resolution of 1970 declaring illegal the continued presence of South Africa in South West Africa was not invalid by reason of the abstention from voting of two permanent members.<sup>23</sup>

Earlier during Korean crisis, an interesting development took place in the Security Council. The USSR at that time was physically absent from the Council. The subsequent Security Council Resolutions recommending assistance to the South Korean authorities and providing for a Unified United Nations Command under US direction, were taken without the Soviet Union's concurrence.<sup>24</sup> Thereupon, Soviet Union challenged the validity of the Resolutions. In reply, the President of the Security Council ruled that for purposes of determining whether the Soviet Union had or had not concurred, an absence had necessarily to be disregarded in the same way as, in practice, an abstention from voting.<sup>25</sup>

#### (b) *Procedural and Non-Procedural Matters*

Unlike substantive matters, the decisions on procedural matters are made by an affirmative vote of any nine members, which might not include one or more permanent members. This is one sphere capable of providing certain channels for limiting the scope of the use of 'veto', for the demarcation line between procedural and non-procedural matters is not free from ambiguity. The Statement by the four Sponsoring Powers (*supra*) succeeded in only partly clarifying the problem by listing some items as procedural. They include all questions under Articles 28-32 of the Charter, such as the time and place of the meetings, the establishment of subsidiary organs, the modification of rules

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23. *I.C.J. Reports*, 1971, 16, at p. 22.

24. J.G. Starke, *op. cit.*, p. 616.

25. *Ibid.*

of procedure, and invitations to non-members of the Council and of the United Nations to participate in the deliberations of the Council.

There is no legally binding document adopted so far which would provide an exhaustive list of either procedural or non-procedural matters. Framers of the Charter were conscious of the problem that could arise out of this in future. But the solution to this which was given in the Statement of the Sponsoring Powers further complicated the issue of 'veto'. The Statement observed, "the decision regarding the preliminary question as to whether or not such a matter is procedural must be taken by a vote of seven (now nine) members of the Security Council, including the concurring votes of the permanent members."<sup>26</sup> One scholar commenting on this observed :<sup>27</sup>

However, it seems that—unless the view is taken that the concurring vote of the permanent members is required only for a decision that a question is one of substance—the solution, which does not constitute an authentic interpretation of the Charter, apparently adopted by the Sponsoring Powers may in effect obliterate the distinction between procedural and substantive questions in as much as it gives to any permanent member the power to stamp every question as one of substance.<sup>28</sup> On the other hand, to deprive a permanent member of that right might result in conferring upon any seven (nine) members of the Security Council the power to treat any question as procedural. A solution to this problem may be found in the President's power to make a ruling that a resolution is adopted if, in the opinion of at least seven (nine) members of the Council, it is clearly procedural.<sup>29</sup> A more rational solution of an otherwise insoluble difficulty would seem to confer upon the International Court of Justice at the request of seven (nine) members of the Council (who are of the opinion that a permanent

26. Section 2, Part..II of the Statement (note 17).

27. L. Oppenheim, *op. cit.*, p. 433.

28. This has been popularly termed as right of 'double veto'.

29. *Official Records of the Security Council*, 507th Meeting, 29th September, 1950.

member or members have abused their right in the matter) the competence to determine whether a particular question is procedural or substantive.

The General Assembly has been greatly concerned with the problem of the 'veto' and has repeatedly advised the Security Council on the necessity of limiting its use. On December 13, 1946, the Assembly adopted a resolution which, *inter alia*, recommended that the Council does its best to adopt procedures and practices which would, in effect, broaden the category of procedural matters. In 1947, the Assembly turned over the entire problem to its Interim Committee for study and recommendations. This in effect constituted an effort to circumvent the effects of 'veto',<sup>30</sup> The Interim Committee Report and the subsequent Resolution on it adopted by the General Assembly on April 14, 1949, is of the greatest significance, for it clearly establishes a guide for limiting the use of 'veto'.<sup>31</sup> In the Resolution, thirtysix items are listed as procedural and twenty-one more carry the recommendation that they be decided by a vote of any nine members, whether the decisions are considered procedural or not e.g., the admission of new members to the United Nations.

The Resolutions of the GA bear the character of recommendation and, hence, are not binding upon the members of the Security Council. So the voting procedure in the Council has not undergone any change in the pattern recommended by the General Assembly Resolution of April 14, 1949. Nevertheless, the Resolution made considerable impact upon the broad public opinion in its appreciation and understanding of the problem which has indirect influence on the behaviour of the members in the Council.

(c) *The "Uniting for Peace" Resolution*

The "Uniting for Peace" Resolution of the General Assembly of Nov. 3, 1950, marks a major success in the search of the United

30. L. Oppenheim, *op. cit.*, p. 434.

31. S.S. Goodspeed, *op. cit.*, p. 145.

Nations for finding ways and means to counteract the activities of a veto-dead-locked Security Council. This document has conferred additional powers on the General Assembly to recommend collective enforcement measures for dealing with any potential threat to peace, in case the Security Council is rendered ineffective by the operation of 'veto'. This is a significant constitutional development within United

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*The "Uniting for Peace" Resolution is evidentiary of world community's resolve to look for new ways for keeping the world Organisation dynamic and effective as far as possible without interfering with its basic principles and organisational structure.*

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Nations system,<sup>32</sup> Two most important points of the Resolution are stated below :

1. If the Security Council, due to a lack of unanimity of permanent members, fails to exercise its primary responsibility in any case where there appears to be a threat to the peace, breach of the peace, or an act of aggression, the Assembly is to consider the matter immediately (by a special emergency session if the Assembly is not already in session)
2. The Assembly may then consider recommendations to members for collective measures, including in the case of a breach of the peace or act of aggression the use of armed force when necessary, to maintain or restore international peace and security.<sup>33</sup>

Pursuant to this Resolution, was set up a Peace Observation Commission to observe and report on the situation in any area where international tension threatened international peace and security, and a Collective Measures Committee, to consider methods which might

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32. Sakti Mukharjee and Indrani Mukharjee, *op. cit.*, p. 34.

33. S.S. Goodspeed, *op. cit.*, p. 227.

be used collectively to maintain and strengthen international peace and security.

Of the subsequent special emergency sessions of the General Assembly that were called under the "Uniting for Peace" Resolution, one on Suez crisis (1956) involving Israel, Egypt, France and Great Britain represents perhaps the high water mark of its work on peace and security.<sup>34</sup> After the Security Council action had proved impossible because of the 'veto', a special emergency session of the Assembly was convened on Nov. 1, 1956, by a vote of seven members of the Security Council. At this session, the Assembly adopted Resolutions for a cease-fire by all parties involved, and for the creation of a UN Emergency Force to guarantee peaceful condition in the Suez area, with the ultimate consequence that peace and order were restored.

The "Uniting for Peace" Resolution altered the basic relationship between the two principal organs of the United Nations, viz., the General Assembly and the Security Council toward the maintenance of world peace.<sup>35</sup> The Resolution was opposed and sharply criticised by the USSR as weakening the Security Council by taking away its exclusive responsibility for peace and security and evading the principle of unanimity as envisaged in the Charter by the provision of 'veto'. The USSR saw in the Resolution a move to amend the Charter without going through the regular amending process.<sup>36</sup>

The "Uniting for Peace" Resolution is evidentiary of world community's resolve to look for new ways for keeping the world Organisation dynamic and effective as far as possible without interfering with its basic principles and organisational structure. It has been a move in keeping with the general development of the UN system which increasingly tends to shift more responsibility to the General Assembly. But

34. J.G. Starke, *op. cit.*, p. 603.

35. M.P. Tandon, *Public International Law* (Allahabad Law Agency, Allahabad, 1961), p. 441.

36. S.D. Bailey, "UN Voting: Tyranny of the Majority"? *The United Nations System and its Functions* (selected readings), Ed. by R.W. Greg and M. Barkun (Affiliated East-West Press Pvt. Ltd., New Delhi, 1970). pp. 208-209.

it is to be kept in mind that the main concern for international peace and security still rests with the Security Council and the measures undertaken by the General Assembly under the "Uniting for Peace" Resolution bear the character of recommendation.

### **Problems of Desirability and Practicability of Any Major Modification or Annulment of 'Veto' Right**

While process of possible readjustments and adaptations to facilitate better performance of the different organs of the United Nations, especially the Security Council, is continuing, it is pertinent to study whether the Security Council can continue to function effectively on its present voting procedure with only minor adaptations and relaxation, wherever possible, or whether major reforms involving serious modification or even annulment of the right of 'veto' are to be effected.

The original duty of the United Nations, especially the Security Council, has remained to be the same—maintenance of world peace and security. The big powers' role in the matter has not undergone any substantial change. This directly links the question of annulment or modification of the 'veto' right with the positions still upheld by the Big Powers on the issue. It also raises the question of sustainability of the United Nations as an effective Organisation for maintaining peace, in case the principle of big-power unanimity is broken.

In the international game of politics, where two rival blocs reign supreme, the opinions of the USA and the USSR as regards the 'veto' power claim special consideration.

The original Soviet position<sup>37</sup> on the question has not undergone any change. It is clear and seems to be quite rigid. It is against any sort of modification or change in the present system. The USSR

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37. *The Conference of the Representatives of the USSR, USA and UK at Dumbarton Oaks* (August 21-September 28, 1944). A Collection of Documents published in Russian by the Soviet Foreign Ministry, Ed. by A. A. Gromyko, Moscow, 1978, p. 201.





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considers the 'veto' right as the cornerstone of the entire UN system.<sup>38</sup> The 'veto' is a guarantee against converting the United Nations into an instrument of politics designed to serve the interests of any particular state or group of states.<sup>39</sup> The Soviets view any proposal or suggestion on possible changes in the 'veto' system with intense suspicions. Answering to sharp criticism of frequent use of 'veto' by the USSR in the early years of the United Nations, Soviet politicians, publicists and writers observe that such use was dictated by the necessity of foiling imperialists' design to use the Organisation for their own interests at the cost of international peace and security.<sup>40</sup>

The American position of support of 'veto', originally not as rigid as that of the Soviet Union,<sup>41</sup> has tightened lately toward stabilising the present system. This is partly explained by the decline of her influence both in the Security Council and in the General Assembly.

The paralysing effect of the rule requiring unanimity of the permanent members of the Security Council for non-procedural decisions led, in the early years of the Organisation, to a strong movement for a revision of Article 27(3) of the Charter.<sup>42</sup> Such a movement, though it did not die down completely, weakened considerably in the subsequent years. In view of the position taken by the USSR and the USA, scheme for any such revision of the Charter seems difficult to implement both legally<sup>43</sup> and politically. In the absence of a consensus, any attempt at a general review of the Charter, whether involving 'veto' or not, "might do more harm than good to the world Organisation—to wit, that it might destabilise the existing structure rather than contribute to its reinforcement which,

38. *Mizhdunarodnaye Pravo* (International Law), A Text Book prepared by a Group of Authors, Ed. by L.A. Modzarian and N.T. Blatova, (Yuridicheskaya Literatura, Moscow), p. 436.
39. *Kurse Mizhdunarodnaya Prava* (A Course on International Law), A publication in Six Volumes of the Institute of State and Law under the Soviet Academy of Sciences, Vol. V (Nauka, Moscow, 1969), p. 60.
40. *Ibid.*, pp. 60-61.
41. S.S. Goodspeed, *op. cit.*, pp. 91-92, 95.
42. H. Kelson, *op. cit.*, p. 277.
43. Article 108 of the UN Charter requires the consent of all the permanent members of the Security Council for any amendment of the Charter.

after all, is the motivation behind any such general review."<sup>44</sup> The issue of necessity of any such review must therefore be weighed against the practicability of its implementation.

At the 25th Anniversary Session of the General Assembly, many representatives voiced the need for a thorough revision of the Charter. A recurring theme in the proposals made there related to the revision of 'veto'. The Soviet Union opposing the idea commented that it would be impossible in the context of present international situation, vitiated by mutual distrust and hostilities, to secure major revision of the Charter.<sup>45</sup>

M.S. Rajan is of the opinion that it is both undesirable and impracticable to tamper with the 'veto' provision as it is. There is no doubt that "it is a necessary evil, but that was the price the small and the middle powers were willing (however reluctantly) to pay in 1945 for keeping the great powers within the new world organisation; and occasional rhetoric apart, that is still the position."<sup>46</sup> He maintains that, perhaps, more than any other single provision in the Charter, the 'veto' has been responsible for the Charter's having remained a living document and the UN itself a living organisation. Rajan further observes.<sup>47</sup>

.....certainly, if consensus can be evolved among the permanent members to modify the veto power to make it less obstructive to the will of the majority of members on crucial issues of war and peace, it is all to the good. But efforts to do so in the past have proved in vain. And with the relations amongst the permanent members being what they are at present, I see little prospect of any such consensus evolving in the foreseeable future.

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44. M.S. Rajan, "United Nations : Functions and Achievements", *World Focus*, Vol. 2, No. 9, New Delhi, Sept. 1981, p. 8.

45. Sakti Mukherjee and Indrani Mukharjee, *op. cit.*, p. 235.

46. M.S. Rajan, *op. cit.*, p. 11.

47. *Ibid.*

To quote another recent authoritative observation :<sup>48</sup>

It (veto) has become in someways a stumbling block, but it is designed to prevent, under the Charter, the Security Council from committing the whole membership to a war against one great military power, which would be disaster especially now we have nuclear weapons.

.....I think one also has to see the veto as to some extent balancing the General Assembly where everybody has exactly the same voting rights and voting power.....that the Comoro Islands or the Seychelles, for example, have the same voting power as the US. In the Security Council, which deals with the primary matter of peace and security there is a form of weighted voting and, quite apart from the fact that the two major, most powerful countries (USA and USSR) in the world would not have joined without it, I think it is to some extent a guarantee that the Security Council does not run away with itself and commit the whole membership to a course which could be disaster.

Perhaps, much importance has often been attached, not always justly, to the quantitative aspect of the use of 'veto', when one has

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*The use or non-use 'veto' is not, however, the main obstacle to the Security Council reaching its full stature as an organ for maintaining peace and security.*

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attempted to discuss its ills. Statistics<sup>49</sup> shows that, of the eighty-seven times that 'veto' was used by 1958, fifty of them related to the admission of new members to the United Nations. Again, if in the first fifteen years of the Organisation (by the end of 1961), 'veto' was used one hundred and one times, next fifteen years saw its use only

48. Text of the transcript of the WPIX (NY) TV programme in which Brian E. Urquhart, Under Secretary General of the United Nations for special political affairs, talks to R. Heffner, 22 Oct. 1982.

49. See T. Hovet and J. Hovet, *op. cit.*

thirty-two times. This tendency of lesser frequency of the use of 'veto' continued in the subsequent years. Though this positive tendency is far from proving any major break-through in the problem of big-power unanimity, it is definitely indicative of certain success in the attempts to arrest an uneasy development, characteristic of the early years of the United Nations.

Worth mentioning is the fact that admission and other relevant cases which were vetoed did not involve vital interests of universal peace and security, and did not tend to plunge the world to an all-out war, though the use of force in separate regions of the world could not be prevented. The use of 'veto', it seems, has not caused great harm to the capacity of the Security Council as the 'guardian' of peace which is its real test of effectiveness. Moreover, it can be noted, the stabilisation of Soviet position in international politics, progressive improvements in East-West relation, emergence of Sino-Soviet rivalries,<sup>50</sup> enhancement of the role of third world countries in international politics, increasing importance of world public opinion are some of the factors that resulted in recent years in the limited use of 'veto'.

The use or non-use of 'veto' is not, however, the main obstacle to the Security Council reaching its full stature as an organ for maintaining peace and security. Even if there were no 'veto', it is probable that some alternative methods of obstructing the Security Council's work would have been resorted to, leading to equal abuses and absurdities, or that, as occurred in the League of Nations, certain powers might have quitted the Organisation.<sup>51</sup> Fundamental problem is one of big-power understanding on major issues of war and peace. This is a problem of international politics and ideology. In any case, it is necessary to recognise the areas of common interest and work together in good faith.<sup>52</sup> Mutual mistrust is a thing which can render any

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50. S. Mukherjee and I. Mukherjee, *op. cit.*, pp. 48-49.

51. J.G. Starke, *op. cit.*, p. 609.

52. L. Goodrich, *op. cit.*, p. 329.

institutional arrangement for peace, whatever good, inoperative. V.K. Krishna Menon rightly observed that the 'misuse' of the power of 'veto' was no disease in itself, but the symptom of a disease, namely, lack of great-power understanding—the fundamental assumption of the United Nations. He had, therefore, urged the member-nations to attempt to cure the 'disease' instead of merely tinkering with its symptoms.<sup>53</sup>

The foregoing discussions seem to confirm the view that annulment or modification of 'veto' is no solution to the problems of peace, rather such a step might lead to serious consequences the full implications of which are difficult to comprehend at present. Such a move may compell one or more permanent members to quit the Organisation or may create situation whereby attempts for legal use of force against a permanent member might be undertaken. This will seriously undermine the existence of the United Nations and the cause of peace.

#### **New Developments and Suggestions for Improved Working of the Security Council**

Doors are, however, always open for changes made through usages and adaptions gradually introduced in the practice of the Security Council or by making structural readjustments in the Council or devising means in the areas beyond the Council. Such attempts with success were made in the past (supra) and are continuing to the present day. To use the words of the former Secretary General, Kurt Waldheim :<sup>54</sup>

One of the great strengths of the UN has been its capacity to adapt to changing circumstances.....It has not functioned perfectly as we all know, but it has grown to meet new problems and develop new procedures for dealing with old ones. This has been nowhere

53. M.S. Rajan, *op. cit.*, p. 11.

54. See foreword by Kurt Waldheim to the book, *Paths to Peace: The UN Security Council and its Presidency*, Ed. by Davidson Nicol (Pergamon Press, New York, 1981).

more evident than in the Security Council. One thinks of the peace-keeping techniques that have developed, the conciliation and mediation efforts that have been implemented, and of the many procedural innovations.

One encouraging development, observed in recent years in the United Nations, is that the concept of consensus as the most appropriate basis for important decision has attracted an increasing measure of attention.<sup>55</sup> The member-states often resort to consensus proceedings in the Security Council<sup>56</sup> for reaching unanimous decision through

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negotiation and compromise. The net effect of this has been to improve the mutual confidence of the states and to avoid putting into vote, as far as possible, the sharply divided issues. It has considerably reduced the occasions of tension and uneasiness that the frequent use of 'veto' would produce.

Among various suggestions for compositional readjustments of the Security Council, one to increase further the number of non-permanent members of the Council<sup>57</sup> is gaining ground. This is supposed to give more weight to the opinions of the smaller and medium powers in the decision-making mechanism of the Council. A marked increase in the number of member-states and strengthening of the position of the third world forces provide sufficient justification for such a step. There is presently a non-aligned group's move to enlarge the strength of non-permanent members of the Security Council from the present ten to sixteen, with a corresponding increase in the number of votes required

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55. C.W. Jenks, *op. cit.*, p. 55.

56. R. Hiscocks, *The Security Council* (Longman, 1973), p. 105.

57. By the amendment of 1965, number was once increased from five to ten.



for decision-making. It seems, the permanent members whose concurrence is a must for any such amendment are not, with the probable exception of China, enthusiastic about it. But it is possible that eventually they would relent, because of the pressures of the small and middle powers.<sup>58</sup>

It should, in any case, be noted that whatever positive results it might bring, the mere increase in the number of non-permanent members does not solve the problem of 'veto'. It simply weakens the position of the big powers as against the smaller and medium-grade powers. But the fundamental contradiction of the contemporary politics is not between the smaller and medium-grade powers on the one hand and the big powers on the other. It is between the big powers themselves that such contradiction exists.

On the other hand, one significant result the numerical increase in the strength of non-permanent members is capable of effecting, is political or psychological rather than juridical, the importance of which cannot be overlooked. Such increase will complicate the task for a permanent member to rally around its 'veto' any considerable portion of non-permanent members' support. Under present voting system, a singular opposition by a permanent member to any Security Council resolution will make it 14:1 while an increase could make it 19:1 or even more. Bigger ratio, though it has no legal consequence for 'veto', is capable of putting certain pressure on the permanent members. The argument that the Asian and African representatives in the Security Council often prefer, as many occasions have so proved, to promote African or Asian interest through the issues of their choices rather than to further the Council's main objective<sup>59</sup> has to be weighed against this outcome.

There have been other suggestions for bringing about changes of the nature of increase in the number of permanent members with or

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58. M.S. Rajan, *op. cit.*, p. 11.

59. Mukherjee and Mukherjee, *op. cit.*, p. 52.

without 'veto' or even without voting right. Atlantic Council Working Group on the UN in its recommendations, for example, observed that some 'middle powers' of the world should be included within the Security Council as associate permanent members without having any right to vote.<sup>60</sup>

Any suggestion for increasing the number of permanent members immediately raises the question of any smaller or middle power acquiring a position in international politics and military might more important than or at least equal to that of the permanent members, by which it could claim 'primary responsibility' for peace and, hence, special status as provided for in the UN Charter. This is a problem of entirely different nature and there seems to be no concrete criteria for its evaluation and solution.

Of course, in the post-war years many countries of the world have made spectacular advances in economic and military fields enhancing thereby their international position, as many others, among them permanent members, have dwindled to less important positions. But whatever the changes, the basic power structure of the world has remained more or less the same. It does not justify any increase, on the basis of 'primary responsibility' criteria, of the number of permanent members with or without 'veto', nor it is necessary at present for the purpose of world peace and security. Such a move will rather lead to unnecessary complication and uncertainties.

The area which still holds good prospect for narrowing the sphere of application of 'veto' and the potentialities of which are yet to be fully explored is one on procedural and non-procedural matters (supra). The recommendations on this issue contained in the General Assembly Resolution of 1949 have remained basically unimplemented. They merit making renewed efforts for implementation. The 1949 Resolution besides enlisting thirty-six items as procedural, recommen-

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60. The ACWG on UN, *The Future of the UN* (Westview Press, Boulder, Colorado, 1977), pp. 38-47,.

ded a host of others, whether considered procedural or not, that they be decided by a vote of any seven (nine) Council members. Included among them are the following important decisions: the admission of new members to the United Nations; whether a matter is or is not procedural; the determination of whether a question is a situation of a dispute; calling upon the parties to a dispute to settle it by peaceful means of their own choice; the investigation of any dispute or any situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security; the recommendation that a legal dispute be referred to the International Court of Justice.<sup>61</sup>

The matters mentioned above, as important they are and essentially substantive in character, do not in effect involve any enforcement measures of executive actions. Naturally so, any possible opposition by a permanent member to these decisions is not likely to create any crisis situation. If we believe mutual confidence among the permanent members to have registered any improvement and the post-war international tension relaxed, these recommendations definitely merit fresh appraisal and consideration.

The only item capable of creating certain complication is one to decide whether a matter is or is not procedural. Here arises the question of 'double veto'.<sup>62</sup> But it can be strongly argued that in case of clear enumeration of items of substance, it is not likely to seriously interfere with the vital issues of peace and security. Even the Statement of the Sponsoring Powers observed that it was unlikely that there would arise in the future any matter of great significance on which such decisions would have to be made (Part-II, Sec. 2 of the Statement)

#### 8. Concluding Observations

The UN General Assembly is gaining in importance, especially under the "Uniting for Peace" Resolution of 1950. It is a positive

61. S.S. Goodspeed, *op. cit.*, pp. 145-146.

62. Note 28.

development in the United Nations system. Its potentialities in the field of the maintenance of peace are yet to be fully explored. The General Assembly of course, is not to replace the Security Council as the main organ for maintaining peace, but it can definitely assume

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more responsibilities of the Security Council, in case the latter is inactivated by 'veto'.

The changes, directly or indirectly affecting 'veto', made through usages, innovations and adaptations to circumstances without interfering with the fundamentals of the United Nations, are possible only on the basis of mutual confidence of the states. Any innovation or adaptation proved worthy in practice may make way to many others. To mark one encouraging development, innovations and adaptations presumably made in keeping with the progressive development of international life, find constant support in the world public opinion<sup>63</sup> which has currently grown to be a powerful element adding new dimension to a healthy growth of international norms and institutions.

Legally speaking, the Security Council is the main international forum to decide upon the questions of war and peace. But in reality, these problems far transcend the legal boundaries of the Security Council. They are decided elsewhere in the broader politics. The nuclear weapons, balance of power between rival socio-political blocs, decolonisation and consequent unleashing of new forces in international politics are some of the factors that really determine the problems of war and peace. 'Veto' power of the permanent members,

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63. H. Kelson, *op. cit.*, p. 271.

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in this broader spectrum, seems to have not that importance which is usually attached to it. It is rational, therefore, not to indulge much in various speculations about its past, present and future. Not to give way to any unforeseen circumstances or forces capable of threatening the very existence of the United Nations, its basic organic structure should be left undisturbed, so that, the Organisation can at least continue to act as a viable forum for developing mutual understanding among the states and for mobilising the forces of international cooperation. Only this can, in the long run, serve the cause of real peace.