

**SECURITY COUNCIL REFORM: A NEW VETO FOR A NEW CENTURY?**

JAN WOUTERS AND TOM RUYS



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# Security Council Reform: A New Veto for a New Century?

JAN WOUTERS<sup>1</sup> AND TOM RUYS<sup>2</sup>

## Introduction

Sixty years after the birth of the United Nations, UN reform is high on the international political agenda. One of the most controversial issues, if not the single most sensitive one, concerns the structure and practice of the Security Council as the primary actor regarding international peace and security. Indeed, criticism of the Council's lack of representativeness and transparency has not diminished in recent years, despite a shift towards more openness. On the contrary, as the Council has become ever more active, criticism has increased correspondingly.

One of the traditional stumbling blocks has been the existence of the veto power of the Council's permanent members, which enables any one of the so-called P-5 (France, the United Kingdom, the United States, China and Russia) to block any resolution that is not merely procedural in nature. The veto is considered fundamentally unjust by a majority of States and is thought to be the main reason why the Council failed to respond adequately to humanitarian crises such as in Rwanda (1994) and Darfur (2004). It is thus not surprising that most States wish to abolish or restrain the veto. Equally unsurprising is the fact that the P-5, whose concurring votes and ratifications are required for even the smallest amendment of the UN Charter (pursuant to articles 108 and 109) reject any limitation of the veto outright.<sup>3</sup> For this reason, many States have abandoned radical reform proposals and have adopted a pragmatic approach, pleading in particular for voluntary restraint on the veto use. Furthermore, the focus of the discussion seems to have shifted to the question whether the possible enlargement of the number of permanent seats should result in a parallel expansion of the veto or not.

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Yet one cannot afford to be overly pragmatic on this point. The approaching reform process presents a unique opportunity, which will not be repeated in the near future. During the past sixty years, the UN Charter was amended only three times, including one time in 1963 to increase the number of elected members on the Security Council from 6 to 10.<sup>4</sup> What is at stake is the very survival, legitimacy and efficiency of the collective security system in the 21<sup>st</sup> century. Therefore at least a substantive debate on the veto power is needed, which is exactly what the current contribution aims to stimulate.

The first chapter presents an overview of the creation of the veto power, having regard to some initial interpretation problems. Subsequently, some controversial aspects of the actual use of the veto will be examined. A third chapter will consider the various national positions on veto reform. In light of the foregoing, a fourth chapter will evaluate whether the veto still serves its original purpose or whether it has become obsolete. The contribution ends with some final recommendations.

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4. W. KARL, B. MÜTZELBURG and G. WITSCHER, 'Article 108', in B. SIMMA, H. MOSLER and B. RANDELZHOFFER (eds.), *The Charter of the United Nations: a Commentary*, Vol. II (Oxford: OUP) (2002; 2<sup>nd</sup> ed.), at 1356-1357.



# 1. Creation and Scope of the Veto Power

## 1.1 Creation

The voting arrangements in the Security Council resulted from a compromise between the United States, the Soviet Union and the United Kingdom, at the conference of Yalta in February 1945.<sup>5</sup> This proposal subjected voting in the Council to unanimity of the permanent members, both with regard to enforcement action and the peaceful settlement of disputes, although in the latter case States party to the dispute were obliged to abstain.

During the negotiations at the San Francisco Conference (25 April – 26 June 1945), numerous small and medium-sized States protested against the privileged status of the five permanent members as a form of victors' justice and an unacceptable infringement on the sovereign equality of States. Nevertheless, the P-5 made it clear that the complete and unconditional acceptance of the permanent membership and the veto power was a *conditio sine qua non* for their participation in – read: the creation of – the new world organisation.<sup>6</sup> Indeed, the great powers were convinced that they should permanently play a dominant role in order to make the new body viable.<sup>7</sup> Moreover, the veto was needed to rule out the possibility that the Council would harm relations between the permanent members by making a decision against the will of one of them. The Allied Powers attempted to reassure other countries by pointing out that despite the veto right, the operation of the Council would be less subject to obstruction than was the case under the League of Nations, where unanimity among all members was required.<sup>8</sup> Furthermore, they accepted that their privileged status entailed a primary responsibility with regard to the maintenance of international peace and security and argued that it was not to be assumed that “the permanent members, any more than the non-permanent members, would use their ‘veto’ power wilfully to obstruct the operation of the Council”.<sup>9</sup>

5. B. SIMMA and S. BRUNNER, ‘Article 27’, in B. SIMMA, H. MOSLER and B. RANDELZHOFFER (eds.), *supra* note 2, 435.

6. H. KÖCHLER, *The voting procedure in the United Nations Security Council* (Vienna: International Progress Organisation) (1991), at 10; F.L. KIRGIS, ‘The Security Council’s First Fifty Years’, (1995) 89 *A.J.I.L.*, at 507.

7. B. FASSBENDER, *UN Security Council Reform and the Right of Veto: a constitutional perspective* (The Hague: Kluwer) (1998), at 163.

8. ‘Statement by the Delegations of the Four Sponsoring Governments on Voting Procedure in the Security Council’, June 7 1945, UNCIO vol. XI, at 754; reprinted in B. SIMMA and S. BRUNNER, *loc. cit.*, *supra* n. 3, at 467-469.

9. *Ibid.*

In the end, the founding members were forced to accept the codification of the proposed balance of power through the insertion of Article 27 UN Charter. The second paragraph of this article stipulates that decisions of the Council on procedural matters shall be made by an affirmative vote of nine members. According to the third paragraph, decisions on all other matters require an affirmative vote of nine members, including “the concurring votes of the permanent members”, provided that, in decisions relating to the peaceful settlement of disputes, a party to a dispute shall abstain from voting. Article 27(3), which carefully avoids the term ‘veto’, was adopted with 30 votes in favour, 2 against, and 15 abstentions.<sup>10</sup> An Australian amendment, which would have ruled out the use of the veto with regard to the peaceful settlement of disputes, was rejected at San Francisco by 20 votes to 10, with 15 States abstaining. Ironically, France had earlier suggested a similar restriction of the veto power in May 1945.<sup>11</sup> It abandoned this idea when it was awarded permanent membership.

## 1.2 Interpretation of Article 27 UN Charter and the ‘double veto’

During the San Francisco Conference there was much confusion about the exact scope of Article 27 of the Charter. For this reason, the subcommittee on the clarification of the voting formula submitted a formal questionnaire to the four sponsoring nations (China, US, UK and USSR).<sup>12</sup> In response, these four States handed over a public statement, the so-called ‘San Francisco Declaration’, with which France later concurred.<sup>13</sup>

The San Francisco Declaration states that the veto cannot be used to prevent the Council from considering and discussing a dispute or a situation. However, as regards the difference between procedural and non-procedural matters, the Declaration adopts a broad approach to the veto right, by stating that “decisions of the Security Council may well initiate a ‘chain of events’ which might, in the end, require the Council under its responsibilities to invoke measures of enforcement”. Such a chain of events might even start with the Council’s decision to initiate an investigation or to make a recommendation to parties to a dispute. As a result, preliminary considerations of such questions would require the blessing of all permanent members. In relation to possible disagreement over the

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10. San Francisco, 12 June 1945, UNCIO vol. XI, at 495.

11. Statement of the Permanent Representative of Mexico to the United Nations, April 21, 1998, available at <http://www.globalpolicy.org/security/docs/mexrefmp.htm>.

12. L. GROSS, ‘The double veto and the four-power statement on voting in the Security Council’, (1953-54) 67 *Harvard L. Rev.*, at 255.

13. *Loc. cit.*, supra n. 6; France concurred on June 8, 1945, UNCIO, vol. XI, at 753.

procedural or non-procedural nature of a vote, the Declaration considers it 'unlikely' that matters of great importance will arise on which a decision will have to be made as to whether a procedural vote would apply. However, the Declaration leaves no doubt that were such a matter to arise, the preliminary question would be subject to the concurring votes of the P-5.

The broad interpretation of the veto right and the institutionalisation of the 'double veto', i.e. the possibility that a permanent member would ask for a preliminary vote on the nature of a question and consequently veto it, made the Declaration unacceptable for the rest of the national delegations.<sup>14</sup> Therefore, the text was not incorporated in or attached to the UN Charter.

The legal nature of the four-power Declaration and the possibility of the 'double veto' remained the object of vigorous debates during the late 1940s and early 1950s.<sup>15</sup> Legal scholars were divided on the question whether the document constituted an authentic interpretation of the Charter and whether or not it was binding for permanent members.<sup>16</sup> In 1946 the General Assembly adopted Resolution 40(I), in which it voiced its concern that misuse of the veto could obstruct the functioning of the Security Council, therefore recommending the Council to accept practices and procedures to assist in decreasing the difficulties in the application of Article 27.<sup>17</sup> One year later, the General Assembly established an Interim Committee to come up with a list of procedural issues.<sup>18</sup> The Committee's report was consequently endorsed by the General Assembly in Resolution 267 (1948). In this resolution the Assembly recommended to the Security Council that the decisions enumerated in the annex be deemed procedural. Among the suggestions figuring on the list were the decisions to consider and discuss a dispute or a situation brought before the Council, as well as recommendations of States for membership of the UN. The General Assembly moreover recommended the P-5 to exercise the veto only when they considered the question "of vital importance, taking into account the interest of the United Nations as a whole, and to state upon what ground they consider this condition to be present".

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14. E.g. 'Statement of the Permanent Representative of Mexico to the United Nations', *loc. cit.*, supra n. 8; 'Egypt's position on Security Council reform on behalf of the non-aligned movement', available at <http://www.globalpolicy.org/security/reform/egypt.htm>.

15. See e.g. Y.-L. LIANG, 'The so-called double veto', (1949) 43 *A.J.I.L.*, 134-144; A.W. RUDZINSKI, 'The so-called double veto; some changes in the voting practice of the Security Council', (1951) 45 *A.J.I.L.*, 443-461.

16. See H. KELSEN, 'Organization and procedure of the Security Council of the United Nations', (1946) 59 *Harvard L. Rev.*, at 1103; L. GROSS, *loc. cit.*, supra n. 10, at 256-262.

17. GA Res. 40(I), December 13, 1946.

18. GA Res. 117 (II), November 21, 1947.

The controversy about the ‘double veto’ is still unresolved today. Whereas the UN Charter itself suggests that the preliminary question on the procedural nature of a decision, which requires the concurring votes of the P-5, is only intended for cases of doubt,<sup>19</sup> practice on the matter is by no means clear.<sup>20</sup> The San Francisco Declaration, which has been considered by the permanent members as binding on them, though not on the non-permanent members, may offer some guidance.<sup>21</sup> The General Assembly Resolution 267 (1948) can also be seen as a supplementary means of interpretation, although its interpretative value is diminished by the fact that the Soviet Union voted against it, together with five other Member States.<sup>22</sup> In practice, the double veto problem has mainly arisen with regard to proposals to establish subsidiary organs for carrying out studies or investigations, when it could be argued that such a decision might eventually require the Council to take enforcement action.<sup>23</sup> Due to an informal agreement between the P-5, the double veto has not been used since 1959.<sup>24</sup>

As regards abstention from voting, the permanent members have adopted a flexible approach. Indeed, ever since the Soviet Union’s abstention over the Spanish question in 1946, there has been a uniform practice according to which abstention by one or more of the P-5 does not prevent the adoption of a resolution.<sup>25</sup> This reasoning applies to an explicit abstention or non-participation in a voting round, as well as to voluntary absence from Council meetings. Some disagreement exists whether this practice constitutes an interpretation of Article 27(3) UN Charter or a progressive modification of the Charter. Yet regardless of what the answer may be, this procedure is now “generally accepted” by the UN membership.<sup>26</sup>

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19. B. SIMMA and S. BRUNNER, *loc. cit.*, supra n. 3, at 444.

20. J.P. COT, A. PELLET, J. PERREZ DE CUELLAR and P. TAVERNIER, *La Charte des Nations Unies: commentaire article par article* (Paris: Economica) (1991; 2<sup>nd</sup> ed.), at 499; L. GROSS, *loc. cit.*, supra n. 10, at 270.

21. L. GROSS, *loc. cit.*, supra n. 10, at 278.

22. B. SIMMA and S. BRUNNER, *loc. cit.*, supra n. 3, at 440, 443.

23. S.D. BAILEY and S. DAWS, *The procedure of the UN Security Council* (Oxford: Clarendon Press) (1998; 3<sup>rd</sup> ed.), at 248.

24. B. SIMMA and S. BRUNNER, *loc. cit.*, supra n. 3, at 446.

25. B. FASSBENDER, *op. cit.*, supra n. 5, at 178.

26. *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa)*, Advisory Opinion of 21 June 1971, 1971 I.C.J. Rep. (1971), at 22.

## 2. Use and Abuse of the Veto Power

### 2.1 The numbers

According to data collected by *Global Policy Forum*,<sup>27</sup> some 257 vetoes have been cast in the period between 1946 and 2004. As a result, a little over 200 draft resolutions have been rejected. The dubious honour of having cast the most vetoes goes to Russia (formerly the Soviet Union), which invoked the privilege 122 times. With 80 vetoes, the United States is entitled to the silver medal. Next in line are Britain and France with 32 and 18 vetoes, respectively. China used the veto merely 5 times, which is less than once every decade. This overall picture is very different if we look only at the last fifteen years, i.e. the post-Cold War period. Indeed, between 1989 and 2004 the United States holds the record with 18 vetoes. All other permanent members used their veto only two times, the only exception being the Russian Federation, with three negative votes. Quite significantly, in the vast majority of cases, permanent members stood alone in their efforts to block a draft resolution. Only 27 resolutions were rejected as a result of two or more concurring vetoes. A positive evolution is that in recent years the number of vetoes has decreased to only a third of that during the Cold War period, a trend which is all the more remarkable as the number of resolutions adopted by the Council has increased dramatically.

Examining the use of the veto power is not an easy undertaking. First of all, objective analysis is hampered by the fact that States often fail to provide clarification of their exact motives for casting a vote. Even when States do give a public explanation, this will not necessarily correspond to the real reason.<sup>28</sup> Secondly, and still more problematic, is the use of the so-called 'hidden veto', whereby a permanent member threatens to use its veto if a certain measure or statement is put to the vote. The hidden veto is used mainly in closed-door informal consultations, rather than in open meetings,<sup>29</sup> which makes it extremely difficult to gain information on its use and assess its effect on the work of the Security Council. Nevertheless, we will attempt to provide an overview of the main problems regarding the exercise of the veto power in light of the wording and spirit of Article 27 UN Charter. The 'double veto' will not be discussed any further, as it has not been used since 1959 (cf. *supra*).

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27. Available at <http://www.globalpolicy.org/security/membership/veto/vetosubj.htm>.

28. S.D. BAILEY and S. DAWS, *op. cit.*, supra n. 21, at 228.

29. C. NAHORY, 'The hidden veto', May 2004, available at <http://www.globalpolicy.org/>.

## 2.2 Application for membership

According to Article 4(2) UN Charter, the admission of a State to membership of the United Nations “will be effected by a decision of the General Assembly upon the recommendation of the Security Council”. Thus, the Security Council was given the right of initiative on the grounds that the admission of former enemy States would touch upon essential aspects of world security.<sup>30</sup> This right of initiative is considered subject to the veto power of the P-5.

As early as February 1946, it became clear that the veto power led to a complete deadlock in the admissions procedure.<sup>31</sup> The cause for this deadlock consisted in the disagreement between the United States and its western allies on the one hand and the Soviet Union on the other, in relation to the question whether applications should be dealt with as a whole (US) or whether each candidacy should be considered individually (USSR). Between 1946 and 1955, discord among permanent members prevented the admission of all but a small number of new members.<sup>32</sup> Eventually, the impasse was brought to an end in 1955, when the P-5 reached a ‘package deal’ on the joint admission of sixteen new members, leaving aside the more controversial States.<sup>33</sup> By linking the various applications, the permanent members deliberately acted against the prevailing legal doctrine, affirmed by the International Court of Justice, that it was inadmissible to render the admission of a State dependent upon the condition of the admission of another State.<sup>34</sup>

All in all, approximately one quarter of all the vetoes cast since the creation of the United Nations have been directed against applications for membership. Thus, the Soviet Union used its veto no less than 51 times to block the applications of Kuwait, Mauritania, Vietnam, North Korea, South Korea, Japan, Spain, Laos, Cambodia, Libya, Nepal, Ceylon, Finland, Austria, Italy, Portugal, Ireland and Jordan. The United States moreover blocked the application of Vietnam six consecutive times. China used its veto twice: to reject the membership of Mongolia in 1955 and to reject the Bangladeshi application in 1972.

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30. K. GINTHER, ‘Article 4’, in *op. cit.*, supra n. 3, at 184; *Competence of the General Assembly for the Admission of a State*, Advisory Opinion of 3 March 1950, *I.C.J. Rep.* (1950), at 8-10.

31. K. GINTHER, *loc. cit.*, supra n. 28, at 179.

32. J. KAUFMAN, *United Nations decision making* (Rockville: Sijthoff & Noordhoff) (1980), at 50.

33. S.D. BAILEY and S. DAWS, *op. cit.*, supra n. 21, at 224.

34. *Conditions of Admission of a State to Membership in the United Nations (Article 4 of the Charter)*, Advisory Opinion of 28 May 1948, *I.C.J. Rep.* (1948), at 56, 63; K. GINTHER, *loc. cit.*, supra n. 28, at 179; GA Res. 197 (III).

The unbridled recourse to the veto to block new Member States is hard to reconcile with the goal of universality of the UN. Moreover, it is clear that this exercise of the veto has frequently worsened rivalries, rather than promoting unity. This was evident for example in 1955, when the Republic of China vetoed the admission of Mongolia, which it considered to be an integral part of China. In revenge, the Soviet Union vetoed the application of Japan.<sup>35</sup> Quite significantly, in 1948, the US delegate proposed to the General Assembly's Interim Committee to include applications for membership on the list of items that would not be considered subject to the veto.<sup>36</sup> In a similar vein, both the US Senate and the General Assembly (in 1948 and 1949) requested that the permanent members would refrain from using the veto with regard to recommendations under Article 4(2) of the Charter.<sup>37</sup>

In light of the steady increase in UN membership, the fading of the Cold War and the anachronistic character of the 'enemy State' concept, the use of the veto against applications for membership no longer undermines the working of the UN as it once did; indeed, the last veto of this type was cast by the United States in 1976. Nevertheless, the possibility still looms on the horizon, as is demonstrated by the controversy on the status of Taiwan. In 1997 and 1999 for example, China vetoed draft resolutions to establish an observer mission in Guatemala and to renew the UN mission in Macedonia, on the grounds that these countries had engaged in diplomatic relations with Taiwan, which China considers to be a part of its territory.<sup>38</sup> China has moreover threatened to use its veto against further extensions for the small peacekeeping force in Haiti because of its suspected ties with Taiwan.<sup>39</sup> China seems anxious that Taiwan might be accorded observer status in the United Nations and will undoubtedly veto all efforts to accept it as a fully-fledged UN Member.

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35. S.D. BAILEY and S. DAWS, *op. cit.*, supra n. 21, at 224.

36. UN Doc. A/AC.18/41, 10 March 1948.

37. US Senate Res. 239 of 11 June 1948, reprinted in (1949) 43 *A.J.I.L.*, at 634; GA Res. 296 (IV).

38. See N. WINFIELD, 'China vetoes Macedonia Peacekeepers' Extension by U.N.', 25 February 1999, available at <http://www.globalpolicy.org/security/issues/chinav99.htm>.

39. See F. HAQ, 'The veto: a case study. The China veto and the Guatemalan Peace Process', 20 January 1997, available at <http://www.globalpolicy.org/security/membership/chinavet.htm>.

## 2.3 Obligatory abstention

In accordance with Article 27(3) UN Charter, both elected and permanent members are obliged to abstain from voting in decisions regarding the peaceful settlement of disputes whenever they are a party to the dispute under consideration. This provision was a compromise solution between the idea that the Council should never adopt coercive measures against one of its permanent members on the one hand, and the general principle of *nemo iudex in sua causa* on the other hand.<sup>40</sup>

Obligatory abstention is only applicable when three cumulative conditions are fulfilled: (1) the Council must deal with a ‘dispute’, as distinct from a ‘situation’; (2) a member of the Council must be a ‘party’ to this dispute; and (3) the dispute has to be dealt with under Chapter VI (peaceful settlement), as distinct from Chapter VII of the UN Charter (action with respect to threats to the peace, breaches of peace and acts of aggression).<sup>41</sup> The problem is that no clear-cut guidelines exist in order to establish whether the aforementioned conditions are met. Firstly, the distinction between ‘disputes’ and ‘situations’ is a matter of great uncertainty. Both can exist simultaneously. The main difference is that a ‘situation’ refers to actual facts, whereas a ‘dispute’ is concerned with the political and legal communications of the actors involved.<sup>42</sup> Secondly, no agreement exists on the exact meaning of a ‘party’ to a dispute, although the term is understood as being narrower than that of an ‘interested’ party.<sup>43</sup> Finally, the Security Council does not always make explicit whether it is acting under Chapter VI or VII of the Charter.<sup>44</sup> As a result, Council members are able to circumvent the obligation to abstain by asserting that the decision in question falls under the latter Chapter.

In the early Charter era, it was assumed that the risk of abuse of Article 27(3) would be minimal.<sup>45</sup> This optimism seemed justified in the first United Nations years, when Member States appeared to make genuine attempts to adhere to the rule and to define its scope.<sup>46</sup> In 1947 for example, the United Kingdom

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40. B. SIMMA and S. BRUNNER, *loc. cit.*, supra n. 3, at 455.

41. Y.Z. BLUM, *Eroding the United Nations Charter* (Dordrecht: Martinus Nijhoff) (1993), at 195.

42. B. SIMMA and S. BRUNNER, *loc. cit.*, supra n. 3, at 459.

43. See P. TAVERNIER, ‘L’abstention des États parties à un différend (Article 27§3 in fine de la Charte) examen de la pratique, (1976) 22 *A.F.D.I.*, 283-289.

44. J.P. COT et. al., *loc. cit.*, supra n. 18, at 505.

45. J. DE ARECHAGA, *Voting and the handling of disputes in the Security Council* (New York: Carnegie Endowment) (1950), at 29.

46. Y.Z. BLUM, *loc. cit.*, supra n. 39, at 194.



abstained from voting on the Corfu Channel Question. In 1950-51, India abstained with regard to the India-Pakistan question. Both the United Kingdom and India expressly referred to Article 27(3).

Nevertheless, since the beginning of the 1960s, it has become increasingly rare for Council members to invoke abstention pursuant to article 27(3).<sup>47</sup> In several cases where Security Council members did abstain, they claimed to have acted on a strictly voluntary basis. Moreover, several situations arose in which Security Council members participated in a vote despite the fact it was difficult, if not impossible, to reconcile such conduct with the wording of Article 27(3). Such instances of alleged non-observance were only rarely discussed in the Council. Finally, efforts to arrive at definitions of the terms ‘dispute’ and ‘party’ failed, as States avoided labelling matters as ‘disputes’ in order to retain their vote.<sup>48</sup>

Although the problem of violation of Article 27(3) *in fine* exists both with regard to elected and permanent members, it is especially problematic when the party to the dispute in question belongs to the P-5. The Security Council records show that the P-5 have not shied away from using their veto in such contested situations.<sup>49</sup> Of the 18 (non-exhaustive) cases of non-observance listed by Blum, eight cases involved the use of the veto<sup>50</sup>:

- On 25 October 1948, the Soviet Union vetoed a resolution regarding the Berlin question;<sup>51</sup>
- On 22 August 1968, the Soviet Union vetoed a resolution concerning the Soviet invasion of Czechoslovakia;<sup>52</sup>
- On 21 March 1973, the United States vetoed a resolution concerning the status of the Panama Canal;<sup>53</sup>
- On 6 February 1976, France vetoed a resolution concerning the dispute between France and the Comoros about the Island of Mayotte;<sup>54</sup>
- On 12 September 1983, the Soviet Union vetoed a resolution concerning the shooting down by Soviet forces of a South Korean commercial airliner;<sup>55</sup>

47. R. HIGGINS, ‘The place of international law in the settlement of disputes by the Security Council’, (1970) 64 *A.J.I.L.*, at 2.

48. B. FASSBENDER, *op. cit.*, supra n. 5, at 190.

49. P. TAVERNIER, *loc. cit.*, supra n. 41, at 289.

50. See Y.Z. BLUM, *loc. cit.*, supra n. 39, at 207-211.

51. *U.N.Y.B.* (1948-49), at 286.

52. *U.N.Y.B.* (1968), at 302-303.

53. *U.N.Y.B.* (1973), at 168.

54. *U.N.Y.B.* (1976), at 179-181.

55. *U.N.Y.B.* (1983), at 219-223.

- On 21 April 1986, the United States vetoed a resolution condemning US air attacks against Libya;<sup>56</sup>
- On 22 December 1989, the United States vetoed a resolution censuring US military activities in Panama;<sup>57</sup>
- On 17 January 1990, the United States vetoed a resolution condemning the violation by US forces of the inviolability of the residence of the Nicaraguan ambassador in Panama City.<sup>58</sup>

Of particular significance is the French veto regarding Mayotte, one of the rare instances in which the question of obligatory abstention was discussed during the Council debates.<sup>59</sup> Here, Benin, Libya, Panama and Tanzania raised the question whether the French veto of a draft resolution was in conformity with Article 27(3). In response, the French representative argued that he ‘could give a rather impressive list of precedents where (...) in cases completely analogous and similar to the one (...) of today [members of the Council] did not hesitate to use their veto, and cases where this right has never been challenged by anyone’.<sup>60</sup> This statement is illustrative for the present application of the principle that at least with regard to the peaceful settlement of disputes no State should be judge in its own cause. On the one hand, the rule is still considered valid *opinio iuris*.<sup>61</sup> Its implementation in practice, however, is anything but consistent.<sup>62</sup>

## 2.4 The Use of the veto power to shield States from condemnation or sanctions

One of the main reasons why many States abhor the veto power is the fact that permanent members sometimes use the privilege to shield friendly States with whom they maintain close economic and diplomatic relations from condemnation or the imposition of economic sanctions. This sends out the manifestly wrong signal that States that stand close to one of the P-5 can get away with recurrent human rights violations and/or unlawful military incursions into neighbouring States. Regrettably, examples of this type are rife. In 1964 for example, Malaysia complained to the Council of aggression by Indonesia, as the latter country had dropped armed paratroopers on its territory. The Soviet

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56. U.N.Y.B. (1986), at 247-257.

57. U.N.Y.B. (1989), at 173-174.

58. U.N.Y.B. (1990), at 187.

59. See S.D. BAILEY and S. DAWS, *op. cit.*, supra n. 21, at 250-257.

60. B. FASSBENDER, *op. cit.*, supra n. 5, at 190.

61. *Ibid.*, at 191; Y.Z. BLUM, *loc. cit.*, supra n. 39, at 211.

62. J.P. COT et. al. , *loc. cit.*, supra n. 18, at 506; Y.Z. BLUM, *loc. cit.*, supra n. 39, at 211.

Union however vetoed a draft resolution that “deplored” the incident and called upon the parties to refrain from the threat or use of force.<sup>63</sup> More well-known cases are the Council’s deliberations regarding the apartheid regime in South Africa (and Southern Rhodesia), and human rights violations by Israel. With regard to South Africa, no less than 56 vetoes were cast (26 by the United Kingdom, 20 by the United States and 10 by France). In 1986 for example the UK and the US blocked draft resolutions that condemned South African attacks against Angola, Zambia, Botswana and Zimbabwe.<sup>64</sup> In 1987 and 1988, the same permanent members moreover vetoed the imposition of economic sanctions against the apartheid regime, despite persistent human rights violations.<sup>65</sup> The Israeli/Palestinian situation on the other hand accounts for nearly half of all vetoes exercised by the United States.<sup>66</sup> This particularly holds true for the post-Cold War period: of the 18 US vetoes cast since 1989, 14 relate to the Middle East conflict. In 2002 for example, the United States blocked a resolution condemning the killing by Israeli forces of several UN employees and the destruction of the World Food Programme Warehouse.<sup>67</sup> In 2003, it voted against a condemnation of the so-called Palestinian Wall,<sup>68</sup> a construction that was later found to be in contravention of international law by the International Court of Justice.<sup>69</sup> One year later, the United States vetoed a draft resolution condemning the extra-judicial killing of Ahmed Yassin, the wheelchair-bound leader of Hamas.<sup>70</sup> Leaders of several Western European and Arab States together with the UN Secretary-General had nevertheless sharply denounced this action.<sup>71</sup> On several occasions, the US justified its use of the veto on the grounds that the various draft resolutions were severely unbalanced since they did not unequivocally condemn terrorist attacks against Israeli civilians. This reasoning seems at least partially unfounded. First, the Security Council has frequently condemned attacks against Israeli civilians.<sup>72</sup> This was also the case with regard to the draft resolution condemning the assassination of Yassin, which condemned “all terrorist attacks against any civilians” and called on all sides to cease all acts of terrorism, provocation and destruction.<sup>73</sup> Secondly, these vetoes are repreh-

63. *U.N.Y.B.* (1964), at 138-139.

64. *U.N.Y.B.* (1986), at 162-167.

65. *U.N.Y.B.* (1987), at 134-135; *U.N.Y.B.* (1988), at 139.

66. G. KHALIL, ‘Just Say no to vetoes’, *New York Times*, 19 July 2004.

67. S/PV.4842, Security Council meeting of 20 December 2002. See S. ZUNES, ‘US declares Open Season on UN workers’, *Present Danger*, at 13 January 2003.

68. S/PV.4842, Security Council meeting of 14 October 2003.

69. *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion of 9 July 2004, available at <http://www.icj-cij.org/>.

70. S/PV.4934, Security Council meeting of 25 March 2004.

71. See T. DEEN, ‘US Blocks UN Rebuke of Israel assassination’, *Inter Press Service*, 23 March 2004.

72. E.g. SC Res. 1397(2002); SC Res. 1435 (2002).

73. S/2004/240, Draft resolution of 24 March 2004.

sible because they fail to recognise the fact that certain human rights cannot be derogated from even in times of war or other public emergencies and because they ignore the idea that the application of international humanitarian law generally does not depend on reciprocity. Such conduct strongly undermines the maintenance of international peace and security as well as the progressive implementation of international law, by preserving a climate of impunity.

## 2.5 The Use of the veto to prevent UN peacekeeping/peacemaking

Permanent members have not only exerted their prerogatives to shield friendly States from condemnation or economic sanctions, they have also used it to stall peacekeeping or peace enforcement operations. It was already mentioned that China temporarily impeded the continuation of UN peacekeeping missions in order to penalise UN Member States maintaining close relations with Taiwan. More importantly, the threat of permanent members to use the veto (the ‘hidden’ veto) is partly responsible for some of the most tragic failures in the sixty-year history of the United Nations. The most obvious example relates to the 1994 Rwandan genocide, which lasted for four months and left 800,000 people dead. When the Security Council considered the possibility of intervening to halt the massacres, two permanent members, France and the United States (the latter partially motivated by the loss of 18 soldiers in Somalia in 1993) blocked the establishment of a robust intervention force.<sup>74</sup> The two countries moreover used their hidden veto to weaken the definition of the crisis under international law, carefully avoiding the term ‘genocide’.<sup>75</sup> As Human Rights Watch pointed out: “The Americans were interested in saving money, the Belgians were interested in saving face, and the French were interested in saving their ally, the genocidal government”.<sup>76</sup> Five years after the events, the Report of the UN Independent Inquiry on Rwanda concluded that “a force numbering 2,500 should have been able to stop or at least limit” the massacres which took place following the shooting of the Rwandan President’s airplane.<sup>77</sup> Nevertheless, Security Council members deliberately limited the mandate and size of the existing peacekeeping operation and delayed the establishment of a new mission. In the words of the Report: “The Security Council itself bears responsibility for the hesitance to support new peacekeeping operations” and “for its lack of political will to stop

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74. C. NAHORY, *loc. cit.*, supra n. 27.

75. *Ibid.*

76. Human Rights Watch, *Leave none to tell the story: genocide in Rwanda*, (New York: Human Rights Watch) (1999).

77. Report of the Independent Inquiry into the actions of the United Nations during the 1994 genocide in Rwanda, 16 December 1999, S/1999/1257, at 30.

the killing”.<sup>78</sup> A somewhat similar situation was present in 1998 and 1999, when large-scale fighting between Serbs and ethnic Albanese Kosovars in the Federal Republic of Yugoslavia (FRY) turned into ethnic cleansing of the latter population group, causing hundreds of thousands of people to flee their homes. Despite the situation on the ground, China and Russia made it clear that they would veto any authorisation to use armed force by the United Nations.<sup>79</sup> Eventually, as President Milosevic continued to dismiss attempts for the peaceful settlement of the conflict and following the discovery of 45 men and boys massacred in the village of Rajac, NATO launched an aerial bombing campaign against the FRY (Operation Allied Force). The US-led NATO intervention led to harsh debates on the legality and the legitimacy of so-called humanitarian interventions without Security Council authorisation.<sup>80</sup> Moreover, the operation undermined the newly established optimism regarding the role of the Security Council as a peace enforcer following the 1990 Gulf War and gravely damaged relations between the various permanent members.<sup>81</sup> The Russian Federation even proposed a draft resolution to condemn the intervention, yet its proposal was defeated by 12 votes to three (China, Russia and Namibia were the only Council members to support the draft resolution).<sup>82</sup>

Most recently, in the course of 2004, Russia and China threatened to use their veto with regard to the Sudanese region of Darfur, where Arab militias committed large-scale killing and raping of civilians, aided and abetted by government officials.<sup>83</sup> The motives for the two countries’ position were apparently purely commercial: China and Russia were both involved in a lucrative arms trade with Sudan; China moreover owned some 40 percent share of Sudan’s main oil field.<sup>84</sup> As a result, direct UN intervention was blocked, despite death toll estimates of up to 400,000 people.<sup>85</sup> In the face of dozens of alarming reports pro-

78. *Ibid.*, at 33, 37.

79. R. WATSON, ‘UN left on sidelines’, *BBC News*, 3 April 1999.

80. E.g. B. SIMMA, ‘NATO, the UN and the Use of Force: Legal Aspects’, (1999) 10 *E.J.I.L.*, 1-22; T. GAZZINI, ‘NATO’s role in the collective security system’, (2003) 8 *J.C.S.L.*, 231-263.

81. M.T. VO, ‘Shouldered aside in Kosovo, UN rethinks global role’, *Christian Science Monitor*, 18 June 1999.

82. See D. KRITSIOTIS, ‘The Kosovo crisis and NATO’s application of armed force against the Federal Republic of Yugoslavia’, (2000) 49 *I.C.L.Q.*, 330-359, at 347.

83. Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General, 25 January 2005, available at <http://www.ohchr.org/english/docs/darfurreport.doc>.

84. Human Rights Watch, ‘The United Nations and Darfur’, at <http://www.hrw.org/wr2k5/darfur/3.htm>.

85. J. LOBE, ‘Bush once again cites ‘genocide’ in Darfur’, *Inter Press Service Agency*, 1 June 2005; D. CLARK, ‘In Darfur, the UN veto is proving as deadly as the gun. Only a transfer of power to the General Assembly will end this misery’, *The Guardian*, 14 August 2004.

viding evidence of massive human rights violations, Council action would for a long time remain limited to investigations, veiled threats, and support for a monitoring force of the African Union.<sup>86</sup>

## 2.6 Other controversies regarding the use of the veto

The ‘categories’ listed above provide a general overview of the most problematic uses of the veto power. Of course this list is not exhaustive; no exercise of the veto has ever fully escaped criticism. Finally, two other controversial aspects should be mentioned. The first is the recourse to the veto by a permanent member which intervenes in a third country in contravention with the prohibition on the use of force of Article 2(4) UN Charter and which is not held by the duty to abstain enshrined in Article 27(3) (for example, because the issue is dealt with by the Council under Chapter VII). Examples of this type are the US vetoes in response to complaints of aggression by Nicaragua in 1984-1986 and regarding the invasion of Grenada in 1983, as well as the Soviet vetoes with regard to its invasion of Hungary in 1956 and Afghanistan in 1980.

Secondly, the permanent members have also cast 43 vetoes to block nominations for the post of Secretary-General under Article 97 UN Charter.<sup>87</sup> These vetoes were cast during closed sessions of the Council<sup>88</sup> and are not incorporated in the general numbers spelled out above. Examples include vetoes against the re-election of Kurt Waldheim in 1981 and Boutros Boutros-Ghali in 1996.<sup>89</sup> A particularly alarming precedent was the Soviet threat to veto the re-election of Trygve Lie in 1950. Indeed, due to the political tension generated by the Korean War, the Soviet Union had taken an uncompromising stance and used its veto to thwart every attempt at an agreement.<sup>90</sup> Given the inability of the Security Council to reach a compromise, the General Assembly eventually prolonged Lie’s term in office by three years until a boycott by communist States led Lie to resign in February 1953.<sup>91</sup>

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86. Human Rights Watch, *loc. cit.*, supra n. 80; See SC Res. 1547 (2004); SC Res. 1556 (2004); SC Res. 1564 (2004); SC Res. 1574 (2004); SC Res. 1590 (2005); SC Res. 1591 (2005). On 31 March 2005, the Security Council decided to refer the situation in Darfur (since 1 July 2002) to the Prosecutor of the International Criminal Court (SC Res. 1593 (2005)).

87. Available at <http://www.globalpolicy.org/security/membership/veto/vetosubj.htm>

88. W. FIEDLER, ‘Article 97’, in B. SIMMA, H. MOSLER and B. RANDELZHOFFER (eds.), *op. cit.*, supra n. 2, at 1198-1199.

89. F. DELON, ‘Le rôle joué par les Membres Permanents dans l’action du Conseil de Sécurité’, (1992) *Recueil des Cours*, at 352.

90. W. FIEDLER, *loc. cit.*, supra n. 86, at 1200-1201.

91. GA Res. 492 (V), 1 November 1950.

### 3. Veto reform proposals

#### 3.1 Background

Ever since the creation of the United Nations, the composition, working methods and voting procedure of the Security Council have provoked strong criticism from the vast majority of UN Member States. Together with the manifest failure of the Council to fulfil its tasks as primary actor regarding international peace and security in the Cold War era, this dissatisfaction led UN Member States to adopt the Uniting for Peace resolution in the General Assembly in 1950,<sup>92</sup> providing for an alternative mechanism in the case of Security Council paralysis.<sup>93</sup> Thirteen years later, continuing unrest resulted in the 1963 amendment of the UN Charter, expanding the number of non-permanent seats from 6 to 10.<sup>94</sup> The effect of this reform was rather short-lived: as UN Membership continued to expand, from 113 countries in 1963 to 191 today, the Council's composition remained blatantly unrepresentative, especially with regard to the developing world. Moreover, the organ was still perceived as overly secretive and undemocratic.

Under the incessant pressure of the Non-Aligned Movement, the General Assembly in 1993 established an 'Open-ended Working Group on the Question of Equitable Representation on and Increase in the Membership of the Security Council and Related Matters'<sup>95</sup> to consider the issue.<sup>96</sup> Conflicting national positions, evidenced by the Working Group's annual reports to the General Assembly, have so far prevented it from drafting concrete recommendations. Nevertheless, expectations are that the existing deadlock will be tackled – at least partially – when UN Member States convene in New York in September 2005 to discuss a fundamental reform of the world organisation. Indeed, the idea that the sixty-year-old United Nations is in urgent need of restructuring has gained momentum. Reports commissioned by the Secretary-General, such as the Report of the High Level Panel on Threats, Challenges and Change (hereafter: the High Level Panel)<sup>97</sup> and the Sachs Report<sup>98</sup> have paved the way for negotiations. At least one reform proposal with regard to the Security Council seems

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92. GA Res. 377 (V), 3 November 1950

93. H. KOCHLER, *op. cit.*, supra n. 4, at 17.

94. GA Res. 1991 (XVIII), 17 December 1963.

95. GA Res. 48/26, 3 December 1993.

96. B. FASSBENDER, *loc. cit.*, supra n. 1, at 342-343.

97. Report of the High Level Panel on Threats, Challenges and Change, 'A more secure world: our shared responsibility', 29 November 2004, available at <http://www.un.org/secureworld/>.

98. UN Millennium Project, 'Investing in development: a practical plan to achieve the millennium development goals', January 2005, at <http://www.unmillenniumproject.org/reports/fullreport.htm>.

to have acquired broad support, i.e. to increase the number of non-permanent members on the Council, especially to augment representation of the developing world. Two stumbling blocks, however, prove extremely hard to overcome.<sup>99</sup>

The first controversy relates to the question whether the increase in the number of elected members should meet with a parallel increase in permanent seats. Four States – Germany, Japan, India and Brazil – (the so-called G-4) have formed an alliance to lobby for such a seat for themselves as well as for two African countries.<sup>100</sup> Given the importance of these States in terms of population and financial support for the United Nations, their candidacy has attracted the approval of numerous other UN Members. Three of the existing P-5, France, the United Kingdom and Russia, together with the majority of EU Member States and several other States, have explicitly endorsed the four applications.<sup>101</sup> Further support for the increase in permanent seats can be found in the ‘Ezulwini consensus’ of the African Union, which pleads for ‘no less than two permanent seats’ for African countries, to be allocated within the AU.<sup>102</sup> Moreover, China has announced its support for India’s bid for a permanent seat<sup>103</sup> and the United States has done the same with regard to Japan.<sup>104</sup>

Nevertheless, expansion of the P-5 is unlikely to go smoothly. Indeed, proposals of this kind meet with fierce opposition from the main rivals of the four allied applicants: i.e. Italy (regarding Germany), Mexico and Argentina (regarding Brazil) and Pakistan (regarding India). Moreover, opinion on which or how many countries should get permanent seats remains divided. Thus, whether China and the United States will accept a seat for States other than India and Japan respectively remains to be seen.<sup>105</sup>

99. See B. FASSBENDER, *loc. cit.*, supra n. 1.

100. See e.g. ‘Reform ’05. Joint position paper by Brazil, India, Japan and Germany on Security Council reform’, New York, 31 March 2005; ‘Draft Resolution on Security Council reform’, 13 May 2005, and ‘Draft Resolution on Security Council reform’, 8 June 2005, available at <http://www.globalpolicy.org/>.

101. See e.g. J. WOUTERS and T. RUYLS, ‘Hervorming van de Veiligheidsraad. Op zoek naar een Europees perspectief’, (2005) 59-6 *Internationale Spectator*, 295-298; B. RIEGERT, ‘Europe’s UN Security Council Ambitions’, *Deutsche Welle*, 23 September 2004.

102. ‘Common African position on the proposed reform of the United Nations’, adopted by the Executive Council of the African Union on 7-8 March 2005.

103. ‘China supports India’s bid for UNSC seat: Wen’, 15 April 2005, available at <http://www.chinaembassy.org.in/eng/>.

104. N.S. NATH, ‘US backs Japan for permanent seat in UN Security Council’, 18 May 2005, available at <http://www.allheadlinenews.com/articles/2232940098>.

105. Both countries have rejected the G-4 proposal: See e.g. ‘China vows to vote against UNSC expansion plan’, 22 June 2005, or ‘Top Chinese diplomat criticizes UNSC proposal by G-4’, 6 June 2005, at <http://www.chinaembassy.org.in/eng/>; R.N. BURNS, ‘On-the-record briefing on UN reform’, 16 June 2005, available at <http://www.state.gov/>.



The second stumbling block relates to the veto power. Here a twofold question must be answered: (1) should the veto be curtailed or should it be left unabridged; (2) should the veto also be awarded to possible new permanent members or not? These two questions are addressed in the following section.

### 3.2 Proposals

As regards the existing veto power of the P-5 it is crystal clear that a majority of UN Member States support the abolition of this prerogative.<sup>106</sup> Such a reform is being promoted by the African Union, the Arab League, the Group of Non-Aligned Nations, but also by numerous western countries.<sup>107</sup> Apart from the P-5 hardly any State explicitly supports the existing veto power (Poland, Australia and Singapore figuring among the rare exceptions<sup>108</sup>). Nevertheless, as the P-5's concurring votes and ratifications are needed to achieve an amendment of the United Nations Charter, most States have abandoned elimination proposals and have put forward less far-reaching suggestions.

One frequently recurring proposal consists in waiving the veto power in all proceedings arising under Chapter VI of the UN Charter on the peaceful settlement of disputes. As indicated above, this idea was launched by Australia during the negotiations at San Francisco and was initially supported by France. A suggestion similar to the Australian amendment was made by China in January 1948.<sup>109</sup> A variation of the proposal, which provides for a further restriction to the exercise of the veto, limits it to Security Council actions taken under Chapter VII of the Charter. This idea was advanced by the Non-Aligned Movement<sup>110</sup> and was taken over by individual countries such as Spain, Brazil, Pakistan, Colombia, Costa Rica, Ghana, Jamaica, Mexico, Peru, Lithuania, and the Slovak Republic.

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106. The national positions on Security Council reform and the question of the veto can be found on the websites of the various permanent missions to the UN, at <http://www.un.int/index-en/webs.html>; statements in the Open-Ended Working Group can moreover be consulted at <http://www.globalpolicy.org/security/reform/reports.htm>; see also 'Need for Security Council reform given new impetus by recent events, General Assembly is told', 1 November 2001, GA/9943, available at <http://www.unis.unvienna.org/unis/pressrels/2001/ga9943.html>.

107. See I. WINKELMANN, 'Bringing the Security Council into a new era', (1997) 1 *Max Planck Y.B.*, 75-83.

108. See Polish position paper, UN Doc. A/AC.247/1997/CRP.9 of 12 June 1997; B. FASSBENDER, *loc. cit.*, supra n. 1, at 352.

109. See Statement of the Permanent Representative of Mexico to the United Nations, April 21, 1998, available at <http://www.globalpolicy.org/security/docs/mexrefmp.htm>.

110. Letter from the Permanent Representative of Egypt, 28 July 1999, UN Doc. A/53/47, Annex X.

A third proposal, advocated by the African Union and several individual UN Member States (e.g. Italy, Mongolia, Singapore and Tunisia), suggests that the veto power should only prevent the Council from adopting a resolution if it were cast by two or more permanent members simultaneously.<sup>111</sup> This would strongly restrict a single permanent member's power, as past practice shows that concurring vetoes have only been exercised 27 times. Some States have also suggested excluding the veto with regard to specific types of decisions, such as requests for an Advisory Opinion of the International Court of Justice or the dispatching of UN observers. Mexico has made clear it would like to see the deletion of all references to the Security Council in the Charter articles relating to the admission, suspension and expulsion of Member States, the appointment of a Secretary-General and the amendment of the UN Charter.<sup>112</sup> These decisions, it argues, should be left solely to the General Assembly. Other suggestions involve the possibility of the General Assembly overruling the use of the veto by a two-thirds majority (suggested by Uruguay and Colombia), or a new attempt to codify procedural matters in the sense of Article 27(2) UN Charter.

Nevertheless, even these reform proposals stand little chance of being incorporated into the Charter, as the permanent members, most notably the United States and Russia, have repeated time and again that they will not accept any limitations to the veto.<sup>113</sup> Consequently, several States have adopted a more pragmatic approach, calling for restrictions that are self-imposed and/or do not require Charter amendment. Thus, the 'Group of Ten' – Austria, Australia, Belgium, Bulgaria, the Czech Republic, Estonia, Hungary, Ireland, Portugal and Slovenia – urged the permanent members to only use their veto with regard to matters of vital importance and for example not with regard to the decisions listed as procedural in General Assembly Resolution 267 (III).<sup>114</sup> The 'Group of Ten' advocated moreover that the veto should be excluded with regard to the admission or expulsion of Member States, or the appointment of the UN Secretary-General. The latter recommendations also appear in submissions by several individual States, such as Tunisia, to the Open-ended Working Group. Another, less ambitious idea was advanced in the Report of the High Level Panel, made

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111. B. FASSBENDER, *op. cit.*, supra n. 5, at 268.

112. Statement of the Permanent Representative of Mexico to the United Nations, April 21, 1998, available at <http://www.globalpolicy.org/security/docs/mexrefmp.htm>.

113. E.g. Statement by a Representative of the Russian Federation, 24 March 1999, available at <http://www.globalpolicy.org/security/docs/russia99.htm>; Statement by Cameron R. Hume, US Minister Counsellor for Political Affairs, 23 May 1996, at <http://www.globalpolicy.org/security/docs/hume.htm>; B. FASSBENDER, *op. cit.*, supra n. 5, at 273-275.

114. 'Proposals on decision-making in the Security Council, including the veto', 25 June 1998, Annex XVI to UN Doc. A/52/47.

public in November 2004.<sup>115</sup> The Panel, recognising that despite its anachronistic character there is ‘no practical way of changing the existing members’ veto powers’, proposed the introduction of a system of ‘indicative voting’, whereby members of the Security Council could call for a public indication of positions on a proposed action. Thus, the actual vote would be preceded by a non-binding voting round, in order to make the Council’s decision-making procedure less secretive and to increase the accountability of the veto use. Yet, even this mild modification of the Council’s procedures may not prove workable for some of the P-5.

The second controversy regarding veto reform relates to the extension of the veto to possible additional permanent members. In this regard, Germany, Japan, India and Brazil have argued that there can be no discrimination between first-rate and second-rate permanent members. Thus, in their view the veto power should also be awarded to possible newcomers: “New permanent members should have the same responsibilities and obligations as the current permanent members.”<sup>116</sup> The African Union and the League of Arab States have taken a similar stance: as long as the veto is not abolished it is a ‘matter of common justice’ that it should be made available to all permanent members.<sup>117</sup> The extension of the veto power is supported by France and Russia.<sup>118</sup> The United States on the other hand argues that the veto should remain with the P-5 alone.<sup>119</sup> Finally, China and the UK have so far refrained from making a public statement on the issue.<sup>120</sup>

Several individual States, e.g. Italy, Spain, Australia and Mexico Mexico (the so-called “Uniting for Consensus Group”), oppose a horizontal extension of the veto on the ground that such a development would increase the risk of Security Council paralysis without adding to its efficiency or legitimacy. The

115. Report of the High Level Panel on Threats, Challenges and Change, ‘A more secure world: our shared responsibility’, 29 November 2004, available at <http://www.un.org/secureworld/>, par. 256-257.

116. See ‘Draft Resolution on Security Council reform’, 13 May 2005, and ‘Draft Resolution on Security Council reform’, 8 June 2005, available at <http://www.globalpolicy.org/>. Remark: The G-4 have nevertheless signaled their willingness to give up on this claim in return for permanent membership. See ‘United we stand’, *The Economist*, 30 July 2005.

117. ‘Common African position on the proposed reform of the United Nations’, adopted by the Executive Council of the African Union on 7-8 March 2005; Letter from the Permanent Representative of Lebanon to the United Nations, 23 May 1997, Annex VIII to UN Doc. A/AC.247/1997/CRP.7.

118. E.g. Statement by a Representative of the Russian Federation, 24 March 1999, available at <http://www.globalpolicy.org/security/docs/russia99.htm>.

119. R.N. BURNS, ‘On-the-record briefing on UN reform, 16 June 2005, available at <http://www.state.gov/>.

120. I. WINKELMANN, *loc. cit.*, supra n. 105, at 82.

High Level Panel Report voiced a similar position. In order to alleviate the various concerns, Germany has pledged its support for the pragmatic restrictions on the veto use as proposed by the 'Group of Ten'. To this, Germany has added the recommendation that States should explain the use of the veto to the General Assembly, and that new permanent members should not be allowed to use the veto during an interim period of 15 years.<sup>121</sup> This idea was copied in a draft resolution on Security Council reform, presented by the G-4 on 8 June 2005.<sup>122</sup> Finally, it must be noted that the different proposals to expand the number of permanent members all agree that such an extension should be reviewed after a period of 10-20 years (15 years according to the G-4). The G-4 proposition argues that Security Council members would not be allowed to use the veto with regard to this review process.

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121. UN Doc. A/AC.247/2000/CRP.4; Annexes XIV and XXII to UN Doc. A/52/47, available at <http://www.globalpolicy.org/security/reform/scref98.htm>; S.R. WEISMAN, 'U.S. firm in rebuff of German bid at UN', *International Herald Tribune*, 9 June 2005.

122. 'Draft Resolution on Security Council reform', 8 June 2005, available at <http://www.global-policy.org/>.

## 4. The death of the veto?

### 4.1 *Raison d'être* and Flawed assumptions

How should one evaluate the exercise of the veto power and the various reform proposals? For most UN Member States, Article 27 UN Charter is a codification of the painful reality that some States are more equal than others. This idea is obviously at odds with the principles laid down in the UN Charter, such as Article 1(2), pursuant to which the UN aims at developing friendly relations among nations based on respect for the principle of equal rights of peoples, and Article 2(1) which affirms the principle of sovereign equality as one of the basic pillars of the world body.

And yet the *raison d'être* underlying the veto privilege does strike a chord. This motivation, put forward by the four sponsoring States in 1945, is based on the need to guarantee peaceful relations among the world's main powers and to assure the new body of their support in order to make it sufficiently credible and vigorous. This goal, the Allied Powers argued, could only be achieved by introducing a mechanism to safeguard the vital national interests of the most important UN Member States. The reverse side was the responsibility of these privileged members to take up the responsibility to maintain international peace and security through the United Nations. The concerns underpinning the insertion of Article 27 were well-founded in light of the demise of the League of Nations. This organisation never managed to live up to its aspirations due to the requirement of unanimity among all members of its Council on the one hand, and the lack of support of various powerful States on the other hand (the United States never participated in the organisation, whereas Japan, Germany and Italy withdrew from it in the 1930s). Eventually, the League was unable to avert the Second World War. Thus, the founding fathers of the UN somehow struck a compromise deal: the requirement of unanimity of all Security Council members was rejected as this would paralyze the exercise of its functions; the position that none should be awarded a veto was equally rejected on the ground that this would deprive the organ of the indispensable support of its core members. Over the past sixty years this plan has worked, at least to some extent. None of the P-5 has abandoned ship. Moreover, no direct military confrontation has occurred between them (although the Korean War may be considered a dubious case). This was especially important in the context of the Cold War, and in particular in the earlier Charter years, when the Soviet Union was the only communist country among the P-5, positioned against four hostile regimes. It is probably not an exaggeration to say that the existence of the veto was one of the principal reasons why the UN made it through the darker days of the Cold War period.

Nevertheless, the fact that the logic behind the veto is not wholly unfounded does not prevent its implementation from being fundamentally problematic. Three closely interrelated issues have to be addressed: first, the question of which States are to be considered as important enough with regard to international peace and security to be awarded the veto right; secondly, the assumption that the veto power will spur members to assume larger responsibilities in the United Nations; and thirdly, the assumption that States will only use the veto when matters of vital national interest are at stake.

The first issue touches upon the compromise logic of the veto: the veto must be awarded to a sufficient number of States to guarantee its strength but to few enough in order to assure its efficiency. In this regard, it has to be admitted that the current allocation of the veto is a product of the Allied victory in the Second World War and no longer reflects the modern-day distribution of economic and military power. The British and French colonial empires have long ceased to exist and the break-up of the Soviet Union has seriously reduced Moscow's power. Furthermore, although the P-5 still possess the bulk of the world's nuclear weapons arsenal, four other countries have developed or acquired the A-bomb. Given the unparalleled power of American foreign policy, which is sometimes referred to as 'Pax Americana',<sup>123</sup> it is not so difficult to arrive at the conclusion made by the controversial US ambassador John Bolton, who declared that: "If I were redoing the Security Council today, I'd have one permanent member because that's the real reflection of the distribution of power in the world."<sup>124</sup> Indeed, the United States owns 24 of the 34 aircraft carriers that cruise the world's oceans, it spends as much on its military as all other States taken together, and its currency seems as good as untouchable. Still, Bolton's somewhat biased analysis cannot be upheld, not only because it lacks every aspiration of legitimacy, but also because it fails to recognise the inherent dynamism of the international order. Thus, the United States is bound to one day lose its position as the world's sole superpower.<sup>125</sup> Already some are warning of a second Cold War between the United States and China, if the latter country's economic growth were to be translated into a military build-up.<sup>126</sup> Moreover, the European Union, the biggest trading entity in the world, has recently made important progress in the development of its Common Foreign and Security Policy (CFSP), for example through the creation of autonomous EU military and

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123. See e.g. R. COOPER, *The Breaking of Nations: Order and Chaos in the Twenty-first Century* (London: Atlantic Books) (2004), at 155-187.

124. See M. STEYN, 'Nuts and Bolton', *The Spectator U.K.*, 19 March 2005.

125. See e.g., C.A. KUPCHAN, *The End of the American Era* (New York: Knopf) (2002), 391 p.

126. See R.D. KAPLAN, 'How we would fight China', *The Atlantic Monthly*, June 2005; H. KISSINGER, 'Conflict is not an option', *International Herald Tribune*, 9 June 2005.

police missions and the establishment of a European Defence Agency (although the problems surrounding the ratification of the draft EU Constitution do not warrant an overly optimistic view on the future of European integration).

How is this conundrum to be solved? Adding six new permanent members with veto power will hardly do the job. On the contrary, the more countries obtain the veto, the harder it will get to impose restrictions on its use. On the other hand, adding new permanent members without veto power will only reaffirm the outdated authority of the victors of the Second World War.<sup>127</sup> In the end, the solution that would best reflect both balance of power and legitimacy would be to award one veto to every region. Unfortunately, the world is anything but ready for regional representation on the Council. This also holds true for the most integrated region, the European Union, despite calls for a permanent EU seat made by e.g. Italy, the Netherlands, Sweden, Austria, Poland, the European Parliament and the High Representative for the EU's CFSP.<sup>128</sup> In the meantime, a positive evolution can be discerned, i.e. the generally agreed proposal that the extension in permanent membership should be reviewed after 10-20 years. This would allow a periodical reform to take place, taking account of shifts in the international order (economic, political and military), of the use or non-use of the veto power and of the commitment of States to the principles and functioning of the United Nations. This last aspect brings us to the second dilemma, i.e. the assumption that the veto prerogative is an incentive for States to support the UN.

As mentioned above, the idea that the veto power would stimulate the permanent members was one of the main justifications invoked by the P-5 in 1945. This is obvious from the language of the San Francisco Declaration, which refers to the 'primary responsibilities of the permanent members'.<sup>129</sup> Moreover, Article 23(1) UN Charter mentions contributions of Member States to the United Nations as one of the criteria on the basis of which the General Assembly should elect the ten non-permanent members of the Security Council (apart from equitable geographical distribution). If a strong commitment to the UN is required from elected members, it must *a fortiori* be present in the case of the permanent members.

Unfortunately, the record of the P-5 and the four allied applicants for permanent membership is rather mixed. On the one hand, their financial contributions to the world body are beyond reproach: the P-5 provide approximately 40% of the

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127. I. WINKELMANN, *loc. cit.*, supra n. 105, at 83.

128. See J. WOUTERS and T. RUYSS, *loc. cit.*, supra n. 99.

129. UNCIO vol. XI, at 754; reprinted in B. SIMMA and S. BRUNNER, *loc. cit.*, supra n. 3, at 467-469.

UN's regular budget.<sup>130</sup> If one adds the contributions by the four leading candidates, then this figure rises to almost 70%. Much less satisfactory are the numbers of military and civilian police contributions to UN Peacekeeping missions.<sup>131</sup> Over the past five years, none of the permanent members has made it to the top ten of 'blue beret' providers. Data of January 2005 reveal that the highest ranked permanent member is China, which occupies the 16<sup>th</sup> place with 1,038 troops (compared to 8,183 from Pakistan or 3,335 from Ghana). The overall picture is the same with regard to Germany, Japan and Brazil. Only India does better: it has consistently appeared in the top five over the past few years. It must moreover be noted that several of the P-5 have not exactly been front-runners in relation to the progressive development and implementation of human rights norms, international humanitarian law and international criminal law, or with regard to, say, disarmament and environmental protection. These issues are nevertheless inextricably linked to international peace and security.<sup>132</sup> Illustrative are the refusal of Russia, the United States and China to ratify the Rome Statute of the International Criminal Court or the 1997 Ottawa Mine Ban Treaty, the Chinese refusal to ratify the International Convention on Civil and Political Rights, the American refusal to ratify the Convention on the Rights of the Child or the Protocols Additional to the Geneva Conventions etc. Again, the introduction of a periodical review of new permanent members, as proposed among others by the High Level Panel,<sup>133</sup> would make an important contribution. According to the High Level Panel, permanent seats should be reserved for those countries that rank as top three contributors in terms of financial contributions to the regular or voluntary budget and in terms of troops. Moreover, the Panel stresses that expansion should also increase the democratic and accountable nature of the Council. The same approach can be found in the list of criteria for Council expansion presented by the United States in June 2005.<sup>134</sup> Apart from more 'traditional criteria', such as economic and military power, population size and contributions to the UN, the American proposal also mentions commitment to counter-terrorism and non-proliferation, as well as commitment to democracy and human rights. These criteria could arguably provide a valuable contribution with regard to Council expansion and subsequent review.

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130. Available at <http://www.globalpolicy.org/finance/tables/reg-budget/assessedlarge04.htm>.

131. Available at <http://www.un.org/Depts/dpko/dpko/contributors/>.

132. K. ANNAN, 'In larger freedom: towards development, security and human rights for all', 21 March 2005, UN Doc. A/59/2005, at 5.

133. Report of the High Level Panel on Threats, Challenges and Change, 'A more secure world: our shared responsibility', 29 November 2004, available at <http://www.un.org/secureworld/>, par. 254.

134. R.N. BURNS, 'On-the-record briefing on UN reform, 16 June 2005, available at <http://www.state.gov/>.



The third elementary flaw with regard to the veto power is the assumption that States will only use it when their vital national interests are at stake. As we have seen, Article 27 UN Charter does not provide much guidance or control: paragraph 2 limits the veto to non-procedural matters, paragraph 3 obliges permanent members to abstain from voting on decisions under Chapter VI when they are themselves a party to the dispute under consideration. The Charter does not provide further clarification on the meaning of the terms ‘procedural matters’, ‘party’ or ‘dispute’, nor do the Provisional Rules of Procedure of the Council.<sup>135</sup> Nevertheless, it was clear from the start that the use of the veto power should be limited to matters of vital importance to a permanent member. This follows from the San Francisco Declaration, which – as stated above – proclaims that: “It is not to be assumed, however, that the permanent members (...) would use their ‘veto’ power wilfully to obstruct the operation of the Council”.<sup>136</sup> In 1948, the United Kingdom moreover called upon the P-5 to exercise the veto only when they considered the question “of vital importance, taking into account the interest of the United Nations as a whole, and to state upon what ground they consider this condition to be present”.<sup>137</sup> This language was subsequently copied in General Assembly Resolution 267 (1948). In 2004, the High Level Panel on Threats Challenges and Change similarly urged the P-5 to limit the use of the veto to matters where vital interests are genuinely at stake.<sup>138</sup>

## 4.2 Bringing the Veto on Track

In the end, the question one needs to address is which items can be considered important enough to fly the flag of ‘vital national interest’. Mexico and many other States certainly reject the idea that the admission of new UN Member States can be considered as such. Moreover, four out of five permanent members have shared this idea. Indeed, in 1948, the United States, the United Kingdom, France and China declared that they were prepared to refrain from applying the right of veto in this regard.<sup>139</sup> The US representative stated at the time that the recourse to the veto to block admissions had caused “grave injustice to a number of States fully qualified for membership in the United Nations”. He also declared that recommendations in accordance with Article 4(2) UN Charter

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135. Provisional Rules of Procedure of the Security Council, S/96/Rev.7, adopted on 9 April 1946.

136. UNCIO vol. XI, at 754; reprinted in B. SIMMA and S. BRUNNER, *loc. cit.*, supra n. 3, at 467-469.

137. UN Doc. A/AC.18/17, 10 February 1948.

138. Report of the High Level Panel on Threats, Challenges and Change, ‘A more secure world: our shared responsibility’, 29 November 2004, available at <http://www.un.org/secureworld/>, par. 256.

139. (1948-49) *U.N.Y.B.*, 426-427.

were “not likely to affect the vital interests of the Great Powers to an extent sufficient to justify recourse to the right of veto.” In 1996 however, another US Representative drew a wholly different picture: “There is relatively recent evidence, in the Balkan States and elsewhere, that considerations of regional and international security can have a direct and important bearing on all membership issues.”<sup>140</sup> It is submitted that the latter argument should not be passed over lightly. Admission of a new UN Member State is indeed a measure with far-reaching consequences, not least because it is considered an important element in the international recognition of Statehood.<sup>141</sup> Given the importance of Statehood and sovereign inviolability as basic pillars of the international order, a case can therefore be made that the admission of new Member States potentially does touch upon crucial security interests. The examples of Chechnya, Tibet, Taiwan, the Occupied Palestinian Territories and the former Yugoslav Republics all demonstrate the delicate nature of such recognitions. Consequently, we are of the opinion that references to the Security Council should not be deleted from Article 4(2) UN Charter, nor should the veto right be excluded in these matters.

The same conclusion seems warranted with regard to the (re-)election of the Secretary-General of the United Nations. Given the importance of this person with regard to international peace and security and the need to coordinate his activities closely with the Security Council, it is vital that the person elected be acceptable to all permanent members. Indeed, a Secretary-General who enjoys the support of the overwhelming majority of UN Member States, but who is *persona non grata* for one or more of the P-5 is likely to do the organisation more harm than good. This, however, does not mean that the permanent members would be allowed to use their veto randomly. The exercise of the veto should at all times be supported by substantial motivation, explaining the reasons why a resolution would affect the vital interests of the Security Council member in question. Such a procedure could be formalised through an indicative voting round as suggested by the High Level Panel, although it seems preferable that States would explain their motivations directly to the UN membership in the General Assembly. Naturally, this requirement should not only hold for the election procedure of the Secretary-General, but for all Security Council deliberations, whether on the admission of new UN Member States or Chapter VII resolutions. Thus, whereas the veto should be left intact under Article 4(2) and Article 97 UN Charter, the introduction of an accountability mechanism is the minimal concession that permanent members should make if they wish to endow the Security Council with the legitimacy and support it requires.

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140. Statement by C.R. Hume, US Minister Counselor for Political Affairs, 23 May 1996, available at <http://www.globalpolicy.org/security/docs/hume.htm>.

141. See A. Aust, *Modern Treaty Law and practice* (Cambridge: CUP) (2000), at 47.

This minimal concession is clearly a necessary step, but it is not the only one. Indeed, one must also consider whether Chapter VI issues can ever touch upon the vital interests of a permanent member, so as to trigger the veto right. It has been seen above how numerous countries, including China and France (in earlier times), have suggested rejecting the veto power in matters relating to the peaceful settlement of disputes. The only argument raised by those objecting to this proposal is the belief that Chapter VI and Chapter VII matters are not separable into distinct baskets.<sup>142</sup> However, this is not a substantial reason for rejecting proposals to restrict the veto, but merely a practical impediment. After sixty years of Security Council practice, it is more than time to clarify which types of resolution fall within the ambit of Chapter VI or Chapter VII. Such a step is in any event necessary to guarantee a better compliance with the obligatory abstention rule, enshrined in Article 27(3) UN Charter. It would also allow the Council to develop a more coherent and transparent practice. Once this conundrum would be solved, there would be no pertinent reason to reject a restriction of the veto right to Chapter VII issues. If permanent members were to refuse this, they should as a minimum accept that resolutions adopted under Chapter VI could only be blocked by at least two concurring vetoes.

Clarification is moreover required on a number of related subjects. In light of the problems regarding non-compliance with the obligatory abstention rule, Security Council members should attempt to define the contested terms ‘dispute’ and ‘party’ in Article 27(3) UN Charter. A generally accepted definition of procedural and non-procedural issues would similarly assist in solving the ‘double veto’ controversy. The fact that this ‘double veto’ has not been used for several consecutive decades is in itself unsatisfactory, as nothing presently guarantees that the provision of Article 27(2) UN Charter will not be abused. All these definitions should be incorporated in resolutions by the General Assembly, which the permanent members should explicitly endorse.

Finally, one last step is needed in order to prevent the most worrisome type of veto exercise, i.e. those vetoes that impede the Security Council from intervening in countries where large-scale killings of civilians are taking place. Indeed, the events of the past fifteen years indicate that the P-5 have not shied away from casting such vetoes in order to protect countries with which they have close cultural, economic and/or political ties. Whether a non-binding accountability mechanism would end this reprehensible practice remains uncertain. Yet, these instances – regardless of their frequency – are not reconcilable with

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142. Statement by C.R. Hume, US Minister Counselor for Political Affairs, 23 May 1996, available at <http://www.globalpolicy.org/security/docs/hume.htm>.

the aims of the UN Charter, nor with the importance of basic human rights in the present state of international relations. Indeed, one must not forget the enormous progress that international human rights, humanitarian law and international criminal law have made since 1945. When the United Nations was established, sovereign inviolability was thought to be the single most important pillar of the world order, and how States behaved within their own respective territories and competences was thought to fall absolutely within that State's domestic affairs, beyond the grasp of the international community. Fortunately the world has grown wiser in the past decades, resisting impunity and raising the standard that heads of State and government officials should live up to, by adopting a great variety of treaties in the areas of human rights, international humanitarian law and international criminal law, and by providing a number of enforcement mechanisms, such as international criminal tribunals. The principle of Article 2(7) UN Charter, which states that apart from Chapter VII action the United Nations will not intervene in "matters which are essentially within the domestic jurisdiction" of a State, has increasingly been eroded as a result of a narrowing interpretation of 'domestic affairs'.<sup>143</sup> Furthermore, the traditional 'national security' concept has shifted to a more comprehensive 'human security' concept, taking account of the well-being and safety of individual human beings. This trend is evident in the emergence of the so-called 'responsibility to protect' as a premise of international law.<sup>144</sup> The latter concept entails that States have the duty to protect the welfare of their inhabitants. When a State fails to fulfil this commitment, the international community must step in.

In short, the veto was created in order to ensure the United Nations of the cooperation of the world's most powerful States, as well as to establish a spirit of cooperation between those States, not to hide gross human rights abuses under the cloak of 'national interest'. To prevent such abuses from occurring without having to amend the UN Charter, the High Level Panel asked the permanent members to 'pledge themselves to refrain' from the use of the veto in cases of genocide and large-scale human rights abuses.<sup>145</sup> Thomas Franck suggested incorporating follow-up provisions in Security Council resolutions, signalling that if a State fails to carry out the said obligations, then force will be deemed to have been authorised, if at least nine members of the Council

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143. G. NOLTE, 'Article 2(7)', in B. SIMMA et al. (eds.), *op. cit.*, supra n. 3, 148-171, at 171.

144. The International Commission on Intervention and State Sovereignty, 'The Responsibility to Protect', December 2001, available at <http://www.iciss.ca/pdf/Commission-Report.pdf>. ; "A more secure world: our shared responsibility: Report of the High Level Panel on Threats, Challenges and Change", 29 November 2004, UN Doc. A/59/565.

145. Report of the High Level Panel on Threats, Challenges and Change, 'A more secure world: our shared responsibility', 29 November 2004, available at <http://www.un.org/secureworld/>, par. 256.

would approve this.<sup>146</sup> Given the non-binding character of these proposals, the present authors believe it would be better to establish a mechanism allowing for a veto to be overruled in the advent of genocide, ethnic cleansing or large-scale massacres of civilians. An interesting proposal in this respect was launched by the European Parliament in a resolution of 29 January 2004 which declared: “The possibility must be created of circumventing the veto (...) should an independent body endowed with legitimacy under international law (for instance, the International Court of Justice or the International Criminal Court) establish that there is an imminent danger of [genocide, war crimes and crimes against humanity] being committed.”<sup>147</sup> Another possibility would be to prohibit the permanent members from exercising the veto prerogative whenever a permanent Commission of Inquiry, consisting of eminent and independent experts, entitled to pronounce on the nature and scope of ongoing crises (as was the case with regard to Darfur<sup>148</sup>), would find that genocide, ethnic cleansing or large-scale massacres of civilians were occurring. This would entail the establishment of a permanent body, like the International Fact-Finding Commission established under the 1977 First Additional Protocol to the Geneva Conventions, but one which would not be confined to mere fact-finding through field visits and contacts with civil society, but which would also have the competence to make legal qualifications. As regards the structure of such an organ within the UN framework, several options could be considered. A first possibility would be to create a new organ under the authority of the General Assembly on the recommendation of the Secretary-General.<sup>149</sup> A second possibility would have the commission of inquiry resort under the newly proposed Human Rights Council<sup>150</sup>, which would replace the existing Human Rights Commission. In any event, the body would have to be a non-political one, consisting of legal experts. In order to preserve an institutional balance of power, one could envisage subjecting the actions of this com-

146. T.M. FRANCK, ‘Humanitarian and other interventions’, (2005) 43 *Col. J. of Transnat’l L.*, 321-336, at 335.

147. European Parliament, ‘Resolution on the relations between the European Union and the United Nations 2003/2049 (INI)’, 29 January 2004, *O.J.* (21 April 2004), C-96/79, par. 20.

148. Established SC Res. 1564 (2004); report available at <http://www.ohchr.org/english/docs/darfurreport.doc>.

149. If the body were to reside directly or indirectly under the General Assembly, one might wonder if this competence would not violate Article 12 UN Charter, which states that the General Assembly shall not make recommendations on a particular dispute or situation while the Security Council is exercising its functions in this respect, unless the Council so requests. In order to solve this conundrum, the creation and mandate of the Commission of Inquiry would have to be incorporated in the Charter of the United Nations.

150. K. ANNAN, ‘In larger freedom: towards development, security and human rights for all’, 21 March 2005, UN Doc. A/59/2005, par. 181-183.

mission to a two-third majority vote in the Security Council. The veto right would not apply. This proposal – arguably the most far-reaching of the suggestions spelled out in this section – may seem politically unachievable to some, yet there is no morally acceptable argument to reject it.

## 5. Concluding remarks

Ever since the Great Powers gave birth to the United Nations, the veto debate has been extremely emotionally charged. Often the debates have resembled those of a squabbling couple, with both parties – the P-5 and other UN Member States – presenting their views and not giving much attention to the validity of the other’s arguments. As the veto again turns out to be the decisive issue of Charter reform,<sup>151</sup> it is time for the two sides to get back on speaking terms.

Non-Council UN Member States should abandon claims that the veto has become obsolete since the end of the Cold War<sup>152</sup> and recognise that “trying to get rid of the veto is like trying to get rid of politics”.<sup>153</sup> These States have to admit that the United Nations cannot function properly without the support of the world’s most powerful States. Therefore, safeguarding the essential interests of the latter States is the necessary price to pay. Moreover, it should be conceded that the Security Council is not the only UN body in need of reform and that occasionally objectionable voting behaviour is not restricted to the P-5 alone.

The permanent members on their side – including possible newcomers – must recognise that their primary responsibilities with regard to international peace and security require them to use the veto with caution, taking account not only of their national interests, but also the interests of the wider international community. More importantly, given the growing importance attached to the concept of ‘democracy’ in UN circles,<sup>154</sup> the permanent members should make some effort to make the Council not only more representative, but also to make it more democratically accountable. In this regard, the proposals spelled out in this contribution (rejection of the veto in Chapter VI issues, creation of an accountability mechanism and the introduction of an overruling mechanism with regard to large-scale massacres of civilians) would certainly strengthen the legitimacy of a 21<sup>st</sup> century Security Council. Permanent members should understand that such measures are not a sacrifice on their part, but rather an investment in a better and safer world.

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151. B. FASSBENDER, *loc. cit.*, supra n. 5, at 275.

152. See e.g. K.L. SELLEN, ‘The United Nations Security Council veto in the new world order’, (1992) 138 *Military Law Review*, 187-262.

153. L. GROSS, *loc. cit.*, supra n. 10, at 280.

154. In the report of Kofi Annan on UN reform for example, the term democracy surfaces no less than 29 times. The report even proposes creating a ‘Democracy Fund’ to support democratic reform in developing countries; see K. ANNAN, ‘In larger freedom: towards development, security and human rights for all’, 21 March 2005, UN Doc. A/59/2005.