

## **The Effect of the United States' and Russia's Veto Power on the UN Security Council's Ability to Protect Human Rights**

*Dr. Marcia Denny\**

### **Abstract:**

This paper examines whether the exercise of the veto power by the United States and Russia, in recent times, has inhibited or limited the United Nations Security Council (UNSC) in the performance of its mandated functions. In particular, the paper focuses on whether the veto action of these permanent UNSC members has, in fact, caused a continuation of, if not exacerbation of, human rights abuses or humanitarian crises in Syria and the Occupied Palestinian Territories.

United Nations leaders, including Secretary-General Antonio Guterres and UN High Commissioner for Human Rights, Prince Zeid Ra'ad Al Hussein of Jordan, have emphasized that the exercise and enforcement of human rights guarantees are essential for international peace and security to be achieved. They recognize that human rights protection must be obtained through the enforcement actions of the United Nations Security Council. If the Council is unable or unwilling to act in the face of mass atrocities as a result of the use of the veto power of the permanent five members, then the Council itself becomes an actor in the perpetuation of those atrocities.

The paper looks briefly at the mandate for human rights protection contained within the UN Charter, including a brief summary of the Charter organs' obligations in this regard. Primary focus is on the UN Security Council's obligation to secure and maintain international peace and whether or not that entails the duty to protect human rights. With that in mind, an analysis of the way in which the UNSC's permanent members use the veto power ensues. An examination of why they use the veto and with what result is undertaken, particularly as to Russia

---

\*Visiting Assistant Professor - Public International Law KILAW

## **The Effect of the United States' and Russia's Veto Power on the UN Security**

in Syria and the United States in the Occupied Palestinian Territories (also referred to as Palestine herein).

In addition, currently advanced solutions to the veto-power dilemma will be briefly analyzed including – (1) renewed application of the obligatory abstention rule of UN Charter Article 27, paragraph 3; (2) voluntary veto abstention as an obligation of the P5 in situations involving genocide and large-scale human rights abuses in coordination with the responsibility to protect; and (3) renewed use of the UN General Assembly's Uniting for Peace Resolution No. 377A of November 3, 1950.

## I. Introduction

Speaking to the UN Human Rights Council on February 26, 2018, the outgoing UN High Commissioner for Human Rights, Prince Zeid Ra'ad Al Hussein of Jordan, decried the horrors of violence and mass killing in Syria, Ituri and Kasais in the Democratic Republic of Congo, Taiz in Yemen, Burundi, Northern Rakhine in Myanmar as the most “prolific slaughterhouses of humans in recent times because not enough has been done to prevent the rising horrors.”<sup>(1)</sup> The High Commissioner said the five permanent members of the UNSC are responsible, second only to the criminal actors themselves, for the continuation of so much pain around the world “as long as the veto is used to block any unity of action when it is needed the most . . . It is time, for the love of mercy, that China, Russia and the United States . . . end the pernicious use of the veto.”<sup>(2)</sup>

On 18 April 2017, while addressing the United Nations Security Council (UNSC) on this matter, Secretary-General Antonio Guterres noted that human rights are intrinsically related to international peace and security.<sup>(3)</sup> According to Mr. Guterres, peace is dependent on the exercise and enforcement of human rights guarantees. Citing United Nations Charter Article 24, he linked the enforcement of human rights to the UNSC’s obligation to prevent armed conflict. As noted in the UN Security Council Meeting Coverage and Press Release from that UNSC, 7926<sup>th</sup> meeting, Mr. Guterres said, “The world is facing unprecedented peace and security challenges resulting from the failure of prevention and insufficient implementation of human rights obligations, including social and economic rights.”<sup>(4)</sup> The Meeting Coverage pointed out that Security Council members disagreed “over the degree to which the Council should tackle human rights questions.” This paper analyzes

---

(1) UN Human Rights Council Report, 26 Feb 2018, accessed on 15 April 2018 at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22707&LangID=E> .

(2) Id., and US News, “UN Rights Chief Slams ‘Pernicious’ Security Council Veto Use,” 26 Feb. 2018, accessed on 15 April 2018 at <https://www.usnews.com/news/world/articles/2018-02-26/un-rights-chief-slams-pernicious-security-council-veto-use> .

(3) UN Security Council – Meeting Coverage and Press Releases, Meeting 7926, 18 April 2017, accessed on 15 April 2018 at <https://www.un.org/press/en/2017/sc12797.doc.htm> .

(4) Id.

the question of the UNSC's ability or power under the UN Charter to act to protect human rights, first by looking at the nature of the obligation to protect human rights contained within the Charter itself, then, at whether the functions and powers of the UNSC, specifically, include protection against human rights abuses.

If an obligation to protect human rights is within the functions of the UNSC, as is generally accepted today, this paper will then examine the effect the exercise of the veto power by any one of the UNSC's permanent five members (known commonly as the P5)<sup>(5)</sup> has on the Council's ability to perform this function. Vetoes on human rights related resolutions were registered by Russia and China in regard to the Syrian crisis, and most recently by the United States in relation to the relocation of the US Embassy in Israel to Jerusalem. In particular, this paper examines whether the exercise of the veto power by Russia in the Syrian crisis and the United States in the continuing situation in Palestine has inhibited or limited the UNSC in the performance of this function. In addition, solutions to this veto-power dilemma, which have been recently advanced by experts, will be briefly analyzed including – (1) renewed application of the obligatory abstention rule of UN Charter Article 27, paragraph 3; (2) voluntary veto abstention as an obligation of the P5 in situations involving genocide and large-scale human rights abuses in coordination with the responsibility to protect; and (3) renewed use of the UN General Assembly's Uniting for Peace Resolution No. 377A of November 3, 1950.

### **II. Human Rights under the UN Charter**

The Preamble of the United Nations Charter provides, in part, "WE THE PEOPLES OF THE UNITED NATIONS DETERMINED . . . to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small . . . AND FOR THESE ENDS to practice tolerance and live together in peace with one another as good neighbours, and to

---

(5) The permanent members include the United States, the Russian Federation, the United Kingdom, France, and China.

unite our strength to maintain international peace and security . . . HAVE RESOLVED TO COMBINE OUR EFFORTS TO ACCOMPLISH THESE AIMS. Accordingly, our respective Governments . . . have agreed to the present Charter . . . and do hereby establish an international organization to be known as the United Nations.”<sup>(6)</sup>

Under Chapter 1, Article 1, paragraph 3 of the UN Charter, “promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion” is a primary purpose of the United Nations.<sup>(7)</sup> Article 55, outlining the obligations of economic and social co-operation between members, provides that in order to create the stability and well-being necessary for peaceful and friendly relations among nations the UN shall promote . . . “universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.”<sup>(8)</sup> Under Article 56, all members pledge to take “joint and separate action” to achieve that purpose.<sup>(9)</sup>

The intent of United Nations founders to protect human rights and fundamental freedoms appears from the Charter to be one of the primary motivations for its creation, as well as one of the organization’s essential functions and obligations. However, whether or not a clear binding obligation to protect human rights exists under the Charter, remained controversial for a number of years after its entry into force.<sup>(10)</sup> States maintained that the treatment of persons within their borders was a domestic matter within the realm of domestic jurisdiction and sovereign states’ rights protected by Charter Article 2(7).<sup>(11)</sup> Article 2(7) prohibits the United Nations from interfering in any matter that is “essentially with the domestic jurisdiction of any state.” Renowned international law jurist, Professor Hersch Lauterpacht, rejected the view

---

(6) United Nations Charter, Preamble, entered into force 24 October 1945.

(7) UN Charter, Art. 1, (3).

(8) *Id.*, Art. 55.

(9) *Id.*, Art. 56.

(10) B. Fassbender, *Securing Human Rights? Achievements and Challenges of the UN Security Council*, edited by B. Fassbender, (Oxford Univ. Press, 2011), p. 22.

(11) *Id.*, p. 22-23; L. Damrosch, L. Henkin, S. Murphy, and H. Smit, *International law, Cases and Materials*, West Casebook Series, Thomson Reuters, 5<sup>th</sup> Ed. (2009), p. 958.

that the human rights protections of the Charter were only promotional and not obligatory as follows:

“Members of the United Nations are under a legal obligation to act in accordance with [the purposes expressed in the Charter’s statement of purposes]. It is their legal duty to respect and observe fundamental human rights and freedoms . . .”<sup>(12)</sup>

Professor Lauterpacht asserted that the provisions of the Charter “not only authorize the various organs of the United Nations to take steps for encouraging and promoting the realization of that crucial purpose of the Charter . . . There is laid down here a clear duty of collective action.”<sup>(13)</sup> Not all states agreed with this perspective, many considered human rights to be subject to the Charter’s Article 2(7) reservation of “domestic affairs’, there was little support for an active role for the United Nations, let alone the Security Council, in the field of human rights.”<sup>(14)</sup> Over time, states accepted that the Charter obligated them to certain international human rights protections, the determination of which is continually evolving.<sup>(15)</sup>

### **a. UN Human Rights Treaty System**

In 1948, in order to more fully define and achieve the goal of human rights protection expressed in the Charter, the UN General Assembly adopted the Universal Declaration of Human Rights (UDHR), with no dissenting vote.<sup>(16)</sup> On recommendation of the UN General Assembly, this proclamation of fundamental rights, freedoms, and protections was later codified in two treaties – the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, which set out binding legal rules for member states.<sup>(17)</sup> Numerous other more specific protection treaties followed

---

(12) H. Lauterpacht, *International Law and Human Rights* (1950) p. 147.

(13) *Id.*, p. 159.

(14) D. Shraga, “The Security Council and Human Rights – from Discretion to Promote to Obligation to Protect,” note 6, p. 30.

(15) *Id.*

(16) M. Shaw, *International Law*, 7<sup>th</sup> Ed., (Cambridge Univ. Press, 2014), p. 203.

(17) See A. Cassese, *International Law*, 2<sup>nd</sup> Ed., (Oxford Univ. Press, 2005), p. 332; International Covenant on Civil and Political Rights adopted 16 December 1966, entered into force 23

including the International Convention on the Elimination of All Forms of Racial Discrimination, Convention on the Elimination of All forms of Discrimination against Women, Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, and Convention on the Rights of the Child, to name a few.<sup>(18)</sup> The Convention on the Prevention and Punishment of the Crime of Genocide was adopted around the same time as the UDHR; currently, this treaty has 149 member parties.<sup>(19)</sup> Many of these conventions have treaty bodies serving to supervise the implementation of treaty obligations by member states; some also have modified complaint processes.

Taken with the human rights protections of the UN Charter, the UDHR is now considered to set out the general human rights duties of all UN member states.<sup>(20)</sup> An expert jurist noted, “[The] international protection of human rights denotes an ensemble of procedures and mechanisms which . . . are primarily designed to protect human beings against their own State. Protection is generally needed at home. Human rights have been brought into being as a supplementary line of defence in case national systems should prove to be of no avail.”<sup>(21)</sup>

### **b. Charter Organs and Human Rights**

The UN Charter specifically grants three of its six organs powers related to human rights protection – (1) the General Assembly, by initiating studies and recommendations to assist in the realization of human rights and fundamental freedoms;<sup>(22)</sup> (2) the Economic and Social Council, by initiating studies and reports and making recommendations to the

---

March 1976, currently 170 parties, accessed on 26/3/18 at <https://treaties.un.org>; International Covenant on Economic, Social, and Cultural Rights adopted 16 December 1966, entered into force 3 January 1976, currently 167 parties, accessed at <https://treaties.un.org> on 26/3/18.

(18) See UN Treaty Collection accessed at <https://treaties.un.org> on 26/3/18.

(19) Convention on the Prevention and Punishment of the Crime of Genocide adopted 9 December 1948, entered into force 12 January 1951, accessed at <https://treaties.un.org> on 26/3/18.

(20) T. Buergenthal, “The Evolving International Human Rights System,” *Am. J. Int’l Law* Vol. 100 783, 787 (2006).

(21) C. Tomuschat, *Human Rights. Between Idealism and Realism*, 2<sup>nd</sup> Ed. (Oxford University Press, 2008), p. 97.

(22) UN Charter, Art. 13(1).

## **The Effect of the United States' and Russia's Veto Power on the UN Security**

---

General Assembly, to UN members and to specialized agencies for the purpose of promoting respect for and observance of human rights and fundamental freedoms and preparing draft conventions regarding the same;<sup>(23)</sup> and (3) the Trusteeship Council by encouraging respect for human rights in the non-self governing territories<sup>(24)</sup> (this Council is now no longer operational because no designated non-self governing territories exist today).

Under the Charter, the UNSC is given primary responsibility for the maintenance of international peace and security.<sup>(25)</sup> Its decisions are binding on and must be implemented by all member states.<sup>(26)</sup> If in conflict, states' obligations under the UN Charter take priority over any other international agreement.<sup>(27)</sup> Of the UNSC's 15 member states, 10 are elected to two-year terms on a rotating basis from designated regions, and 5 are permanent members. The permanent members are the Russian Federation (replacing the former USSR), the United States, China, the United Kingdom, and France.

The UNSC may take recommendatory action under Chapter VI of the Charter for the pacific settlement of disputes, but matters under Chapter VII involving threats to, or breaches of, the peace or acts of aggression entail the binding decision-making powers of the Council.<sup>(28)</sup> Before the UNSC can take measures to enforce world peace, it must first determine the existence of any threat to the peace, breach of the peace or act of aggression.<sup>(29)</sup> The Security Council must act in accordance with the purposes and principles of the United Nations in performing this duty.<sup>(30)</sup> No express mandate for human rights protection is referenced in the Charter for the UNSC. As a consequence, during the years since its creation, disagreement ensued as to whether the UNSC, as the enforcement organ of the United Nations, was endowed

---

(23) *Id.*, Art. 62.

(24) *Id.*, Art. 76.

(25) *Id.*, Art. 24(1).

(26) *Id.*, Art. 25.

(27) *Id.*, Art. 103.

(28) Shaw, *supra* note 16, p. 898.

(29) UN Charter, Art. 39.

(30) *Id.*, Art. 24(2).



by its founders with the specific function and power to protect human rights and fundamental freedoms. Is the protection of human rights and fundamental freedoms included in the UNSC's mandate to maintain international peace and security?

### **III. Whether the UNSC considers the protection of human rights to be included in its mandate to maintain international peace and security**

According to Mr. Sidney Bailey (a well-known commentator on international affairs and the United Nations), during the first four decades of its existence, the UNSC "did its best to avoid taking up human rights issues."<sup>(31)</sup> For many years, the Council placed great importance on the Article 2(7) non-intervention rule, however, he noted, "increasingly since 1989, [it] has taken the view that the agreement of the parties, or a determination under Chapter VII of the Charter whether or not enforcement measures are applied or grave breaches of international humanitarian law have occurred, may sometimes override the non-intervention provisions of Article 2.7."<sup>(32)</sup> Expert international law jurist, Professor Philip Alston stated, "the Council has a long history of refusing to consider itself as an organ for the promotion of respect for human rights, except in so far as a given situation constitutes a threat to international peace and security."<sup>(33)</sup>

The UNSC has sole authority for determining what constitutes a threat to the peace, breach of the peace or act of aggression, and for deciding what measures shall be taken to maintain or restore peace and security.<sup>(34)</sup> As Professor David P. Forsythe pointed out, "It is up to the UNSC to decide what actions are required for the maintenance or restoration of international peace and security, or for the advancement of human rights and fundamental freedoms that might be linked to

---

(31) S. Bailey, *The UN Security Council and Human Rights* (St. Martin's Press, 1994), p. 11, stating also that the Security Council "has not yet developed consistent procedures for dealing with such matters."

(32) *Id.*; UN Charter, Chapter VII includes Articles 39, 41, and 42 referenced *infra*.

(33) P. Alston, "Critical Appraisal of the UN Human Rights Regime," *The United Nations and Human Rights, A Critical Appraisal*, (Oxford Univ. Press, 1992), Chap. 1, p. 9.

(34) UN Charter, Art. 39, 41, and 42.

## **The Effect of the United States' and Russia's Veto Power on the UN Security**

---

security.”<sup>(35)</sup> The UNSC alone determines the meaning of Charter wording regarding its powers and functions, “there is no clear system of international judicial review . . . the Council [is] the final arbiter of its own actions.”<sup>(36)</sup>

Professor Forsythe noted that in the 1960s and 1970s, the UNSC made decisions that seemed to uphold a view that the denial of human rights, even inside territories, might constitute a threat to international peace and security and lead to the use of Chapter VII enforcement actions.<sup>(37)</sup> After issuing a number of non-binding resolutions that failed to mention the human rights violations in Southern Rhodesia (now Zimbabwe),<sup>(38)</sup> the UNSC adopted Resolution 253 (1968), “arguably” the first Council resolution adopted under Chapter VII to address human-rights concerns.<sup>(39)</sup> Specifically in Resolution 253, the UNSC condemned the “measures of political repression, including arrest, detentions, trials and executions which violate fundamental freedoms and the rights of the people of Southern Rhodesia,” and for the first time imposed mandatory sanctions to force protection of human rights.<sup>(40)</sup> In Resolution 418 (1977), the UNSC condemned the racial discrimination and oppression associated with apartheid in South Africa, mandating an arms embargo under Chapter VII.<sup>(41)</sup> Finally, in Resolution 794 (1992), the UNSC recognized that the magnitude of the human rights tragedy in Somalia, in fact, constituted a threat to international peace and security; as a result, the Council affirmatively invoked Chapter VII authorizing members “to use all necessary means to establish as soon as possible a secure environment for humanitarian relief operations in

---

(35) D. Forsythe, “The UN Security Council and Human Rights – State Sovereignty and Human Dignity,” *International Policy Analysis*, Friedrich Ebert Stiftung, May 2012, p. 2.

(36) *Id.*

(37) *Id.*

(38) *Id.*, p. 11-12, and UN Security Council Resolutions 216, S/RES/216, 12 Nov. 1965 and 217, S/RES/217, 20 Nov. 1965.

(39) UN Security Council Resolution 253, S/RES/253, 29 May 1968, adopted unanimously; see also B. Ugarte and J. Genser “Evolution of the Security Council’s Engagement on Human Rights,” *The United Nations Security Council in the Age of Human Rights*, edited by J. Genser and B. Ugarte (Cambridge Univ. Pres., 2014), p. 12.

(40) See note 33 *supra*.

(41) UN Security Council Resolution 418, S/RES/418, 4 November 1977

Somalia . . .” including additional military forces.<sup>(42)</sup>

Dr. Daphna Shruga, of the UN Office of Legal Affairs, noted that “[b]y the end of the 20<sup>th</sup> century, the recognition of human rights as a quintessential element of a stable world order and their massive violation as a ‘threat to the peace,’ [as well as] the consequential diminishing of states’ domaine reserve [areas reserved to the domestic jurisdiction of states], place the Security Council at the centre of the human rights protection system.”<sup>(43)</sup> The UNSC’s recent Resolution 1973 (2011) specifically cited the humanitarian and human rights abuse crisis in Libya as constituting a continuing threat to international peace and security; the Resolution mandated action under Chapter VII for a no-fly zone, arms embargos, and asset freezes.<sup>(44)</sup> This is the first time the UNSC declared Chapter VII enforcement for a humanitarian crisis wholly within the target nation absent the government’s consent.<sup>(45)</sup>

However, the UNSC’s willingness to act in situations involving human rights abuses has been inconsistent.<sup>(46)</sup> In UNSC Resolution 713 (1991), the Council determined that abuses amounting to ethnic cleansing in Bosnia constituted a threat to the peace, but it failed to take action to stop it. In UNSC Resolution 955 (1994), the Council determined that genocide in Rwanda constituted a threat to international peace and security, but it failed to act to prevent that genocide.<sup>(47)</sup> More recently the UNSC has failed to end human rights’ crises in Syria, Yemen, Burundi, and Northern Rahkine in Myanmar. This UNSC paralysis in the face of grave human rights abuses and mass atrocities is primarily the result of the use of the veto by its five permanent members.

After the UNSC failed to act to prevent or halt the mass atrocities of the 1990s, Canada spearheaded the International Commission on Intervention and State Sovereignty (ICISS) in 2000 to investigate ways

---

(42) UN Security Council Resolution 794, S/RES/794, 3 December 1992

(43) D. Shruga, *supra* note 13, p.

(44) UN Security Council Resolution 1973, S/RES/1973, 17 March 2011.

(45) See note 54, *infra*.

(46) Forsythe, *supra* note 30, at p. 8.

(47) D. Shelton, *An Advanced Introduction to International Human Rights Law*, (Edward Elgar Publishing Ltd, 2014), p. 276.

to protect human populations.<sup>(48)</sup> The Commission's report originated the concept of "responsibility to protect," which was the focus of the 2005 World Summit; the Summit's Outcome Statement was adopted by consensus in the UN General Assembly.<sup>(49)</sup> The responsibility to protect principle (often referred to as R2P) affirms that each state has "the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity."<sup>(50)</sup> Under the principle, if any state fails to protect their populations from the named crimes, states commit "to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter."<sup>(51)</sup> In addition, should that occur, the UNSC is given the responsibility to act according to the means provided in Chapter VI and VII.<sup>(52)</sup>

The UNSC affirmed its commitment to the responsibility to protect in the following three non-binding, recommendatory declarations: Resolution 1674 (2006), Resolution 1894 (2009), and Resolution 2150 (2014) (condemning the crime of genocide).<sup>(53)</sup> In Resolution 1674, the Council stated its motivation, in part, "Acknowledging that peace and security, development and human rights are the pillars of the UN system and the foundations for collective security and well-being, and recognizing in this regard that development, peace and security and human rights are interlinked and mutually reinforcing." In Resolution 1706, the UNSC applied the Summit's Outcome Document formulation of the responsibility to protect to determine that the situation in Darfur constituted a threat to international peace; thereupon, the Council called for continued military peacekeeping action under Chapter VII.<sup>(54)</sup>

---

(48) Security Council Report, "Research Report on the Veto," No. 3, 19 October 2015, accessed on 15 April 2018 at [http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/research\\_report\\_3\\_the\\_veto\\_2015.pdf](http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/research_report_3_the_veto_2015.pdf), p. 4.

(49) 2005 World Summit Outcome (UN document A/60/L.1, 24 Oct. 2005). The UN General Assembly has by Resolution A/RES/63/308, 7 Oct. 2009, decided to "continue its consideration of the responsibility to protect."

(50) *Id.*, para. 138.

(51) *Id.*, para. 139.

(52) *Id.*

(53) UNSC Resolution 1674, S/RES/1674, 28 April 2006; UNSC Resolution 1894, S/RES/1894, 11 November 2009; UNSC Resolution 2150, S/RES/2150, 16 April 2014.

(54) UNSC Resolution 1706, S/RES/1706, 31 August 2006.

In addition, the responsibility to protect was cited by the UNSC in Resolution 1973, the first resolution of its kind mandating the use of military force against a current sitting government and a UN member state for the purpose of human protection.<sup>(55)</sup>

Even though the UNSC has used the responsibility to protect as a determinative rationale for Chapter VII action, it does not appear that this principle has reached normative status within the UNSC. Rather, the Council appears to evaluate its use as a reason to act on a case-by-case basis. Currently, the lack of willingness by Russia and China to sanction Syria on responsibility to protect grounds, evidenced by their use of the veto, shows that the principle has not yet received the crucial political support and legal acceptance within the UNSC that is needed to respond to mass atrocities.<sup>(56)</sup> One commentator asserts –

“[T]he UNSC has been repeatedly criticized, inter alia, over double standards in choice of action, lack of effectiveness in making decisions, and lack of representativeness. . . . This has created a climate where the authority and legitimacy of the UNSC are challenged by voices accusing it of being dominated by the unfairly superior P5 who either overstretch their functions or ensure the UNSC does too little too late according to their interest.”<sup>(57)</sup>

Professor Alex Bellamy, of the University of Queensland, noted, “The most obvious failure to comply with international expectations associated with R2P has been in Syria, where the Security Council has been too weak and divided to lead a timely and decisive response.”<sup>(58)</sup> Professor Bellamy suggested that R2P has become a normative standard evidenced by more international responses to genocide and mass atrocities but also by critical reaction to failures to protect, such as in Syria.<sup>(59)</sup>

---

(55) UNSC Resolution 1973, S/RES/1973, 17 March 2011; see A. Bellamy, “International Responses to Human Protection Crises: Responsibility to Protect and the Emerging Protection Regime,” *RCCS Annual Review*, Vol. 7:7, 2015, para. 2.

(56) N. Banteka, “Dangerous Liaisons: The Responsibility to Protect and a Reform of the U.N. Security Council,” *Columbia Journal of Transnational Law*, Vol. 54:382 (2016), p. 396.

(57) *Id.*, p. 401.

(58) A. Bellamy, “The UN Security Council and the Problem of Mass Atrocities,” *Global Insecurity Futures of Global Shaos and Governance* (A. Burke, R. Parker editors, Palgrave Macmillan, 2017), Chap. 17, p. 315

(59) *Id.*

## The Effect of the United States' and Russia's Veto Power on the UN Security

---

On the subject of security or human rights, Professor Forsythe noted, states do not discard their own domestic, national interest concerns including their objectives for power, influence, independence, national security, and material gain.<sup>(60)</sup> “When the Council deals with peace and justice issues, narrow national interests are rarely absent.”<sup>(61)</sup> Permanent members may be unwilling to put their military personnel at risk, and, for those back home, the rights of people far away may not weigh as heavy as the potential for national casualties and expenses; international political and economic alliances also have a powerful effect on the use of the veto power.<sup>(62)</sup>

The variation in the UNSC's willingness in some situations and reluctance in others to respond to human rights or humanitarian crises raises questions about the factors that drive intervention decisions in the UNSC.<sup>(63)</sup> Dr. Martin Binder, of the University of Reading, identified three main factors that determine whether and how forcefully the members of the UNSC respond to a humanitarian crisis as follows: “to what extent (1) the crisis creates moral pressure to come to the rescue of threatened populations and to defend international norms; (2) the crisis affects the material interests of the Council members in negative ways [this includes an assessment of the realistic chance of success in consideration of economic risks and the obligations to either weak or powerful allies]; and (3) the members of the Council have invested material and immaterial resources in the crisis in the past (sunk costs)[which might lead the UNSC to continue rather than to lose what was already invested].”<sup>(64)</sup> Dr. Binder also noted the impact of mass media reporting or the “CNN Effect as a final factor motivating the UNSC to make an intervention decision.”<sup>(65)</sup> He stated, “Media

---

(60) Forsythe, *supra* note 35, p. 4 citing J. Stoessinger, *The United Nations and the Superpowers: China, Russia, and America*, 4<sup>th</sup> Ed., (New York: Random House, 1977).

(61) *Id.*

(62) *Id.*

(63) M. Binder, “UN Security Council Intervention in Humanitarian Crises: A Framework for Explanation,” *The United Nations and the Politics of Selective Humanitarian Intervention*, (Palgrave Macmillan, 2017), Chap. 2, p.30.

(64) *Id.*, p. 32.

(65) *Id.* p. 48.

reporting can force governments to intervene in humanitarian crises or violent conflicts even if doing so goes against their will.”<sup>(66)</sup> Through media coverage, citizens develop empathy with victims of conflicts and crises and press their governments for action.

Professor Forsythe said, “The Achilles heel of the UN Security Council, the sine qua non, is the need for political will and political agreement. Only if Council members – and above all the permanent five (P-5) with the veto – can agree on the need for action, and the form of action, can that body function as intended.”<sup>(67)</sup>

#### **IV. The UNSC Veto and Examination of the Use of the Veto in UNSC Human Rights Failures**

UN Charter, Article 27 states that, in substantive matters, UNSC decisions require an affirmative vote of 9 of the Council’s 15 members “including the concurring votes of the permanent members.” Thus, all five permanent members must be in agreement; there is no decision if any one of them casts a negative vote.<sup>(68)</sup> This veto power, as it has come to be known, was written into the Charter to satisfy the demands of those states wielding the most authority at the end of World War II; these nations were not willing to accept the Charter without the veto’s inclusion.<sup>(69)</sup> The power was intended to prevent the United Nations from taking direct action against any of its principal founding members.<sup>(70)</sup> However, it has now become a tool for the P5 to protect their own national interests or those of their strategic allies.<sup>(71)</sup>

In total, the USSR, now Russia, has cast its veto 141 times, the United States 84 times, the United Kingdom 32, China 13, and France 18 times.<sup>(72)</sup> During the period from the end of the Cold War (around 1990)

---

(66) Id.

(67) D. Forsythe, *supra* note 35 p. 2.

(68) UN Charter, Art. 27.

(69) Shaw, *supra* note 15, p. 877; Forsythe, *supra* note 30, p. 2.

(70) See note 82, *infra*.

(71) Id.

(72) Id., and at [http://www.securitycouncilreport.org/un-security-council-working-methods/atf/cf/{65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9}/working%20methods\\_the%20veto.pdf](http://www.securitycouncilreport.org/un-security-council-working-methods/atf/cf/{65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9}/working%20methods_the%20veto.pdf), accessed on 15 April 2018.

## The Effect of the United States' and Russia's Veto Power on the UN Security

---

to date, Russia cast 22 of its vetoes, 19 of them since 2007, the US cast 17, and China cast 13 of its vetoes.<sup>(73)</sup> In 1998-99 regarding the Kosovo crisis, Russia and China made it clear that they would veto any use of force against authorities in Belgrade considered responsible for the ethnic cleansing by Serbian forces.<sup>(74)</sup> In 2003-06 regarding the crisis in Darfur, Sudan, again Russia and China asserted that they would veto any resolution authorizing the use of military force against the junta in Khartoum perpetrating mass atrocities.<sup>(75)</sup> More recently, the use of the veto power by the P5 was considered to be a major impediment in addressing human rights situations<sup>(76)</sup> resulting from conflicts in Syria, Gaza-Palestine, Georgia, Crimea, Eastern Ukraine, Yemen, and the Northern Rakhine Province in Myanmar.<sup>(77)</sup> Threatened and actual vetoes by Russia have prevented UNSC action in Syria, Crimea, Georgia and eastern Ukraine.<sup>(78)</sup> Any proposed action regarding the Palestinian conflict has been met with the threat of veto by the United States.<sup>(79)</sup> This paper will examine the use of the veto in two situations – the Syrian crisis and the Palestine situation.

On April 10, 2018, Russia used its veto power for the 12<sup>th</sup> time to block action directed at its Syrian ally. This Russian veto prevented the adoption of a US-drafted resolution to investigate the perpetrator of chemical weapons use in Syria. From 2011 to date, Russia has used its veto four times to block the initiation of such investigations. Russia's use of the veto power to stop action during Syria's seven-year conflict is summarized as follows<sup>(80)</sup>:

---

(73) *Id.*

(74) Security Council Report, *supra* note 48, p. 3.

(75) *Id.*

(76) S. Smith, "Reviving the Obligatory Abstention Rule in the UN Security Council: Reform from the Inside Out," *New Zealand Yearbook of International Law*, Vol. 12: 15 (2014), p. 15.

(77) *Id.*

(78) *Id.*, p. 16.

(79) *Id.*, see note 6, p. 16, "Since the conclusion of the Six-Day War in 1967, the United States has vetoed more than 40 [now 43] proposed Security Council resolutions related to the Israeli-Palestinian conflict."

(80) Arab News, "Russia's 12 UN vetoes on Syria," 10 April 2018, accessed on 15 April 2018 at <http://www.arabnews.com/node/1282481/middle-east> ; see also Security Council Report, "the Security Council Veto," accessed on 15 April 2018 at [http://www.securitycouncilreport.org/un-security-council-working-methods/atf/cf/{65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9}/working%20methods\\_the%20veto.pdf](http://www.securitycouncilreport.org/un-security-council-working-methods/atf/cf/{65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9}/working%20methods_the%20veto.pdf) .



- April 10, 2018, Russia vetoed a draft resolution to set up an expert body to investigate chemical weapons use after a suspected gas attack on the rebel-held town of Douma killed an estimated 70 people and wounded hundreds;
- During the period from October 24 – November 17, 2017, Russia used its veto three times to block draft resolutions on renewing a UN-led investigation of chemical weapons attacks;
- April 12, 2017, Russia vetoed a draft resolution demanding that Assad's government cooperate with an investigation into a suspected chemical attack in Khan Sheikhun;
- February 28, 2017, Russia and China vetoed a draft resolution proposed by the United Kingdom, France and the United States to impose sanctions on Syria over chemical weapons use;
- December 5, 2016, Russia and China vetoed a resolution calling for a truce in Aleppo;
- October 8, 2016, Russia vetoed a proposal by France and Spain to halt the bombing of Aleppo;
- May 22, 2014, Russia and China blocked a French proposal for the UNSC to refer Syrian crimes to the International Criminal Court;
- July 19, 2012, Russia and China vetoed a resolution threatening sanctions against Syria if the use of heavy weapons was not stopped;
- February 4, 2012, Russia and China vetoed a draft resolution that condemned the Syrian government's crackdown on its opposition;
- October 4, 2011, Russia and China vetoed a proposed resolution condemning grave human rights violations in Syria and threatening measures against the Syrian government.

Human Rights Watch reports that, by the end of 2017, more than 400,000 people have died in the Syrian conflict, 5 million have sought refuge abroad, and over 6 million were internally displaced; in addition, at least 500,000 people are still living in besieged areas.<sup>(81)</sup> Clearly,

---

(81) Human Rights Watch, World Report accessed on 18 April 2018 at <https://www.hrw.org/> =

## **The Effect of the United States' and Russia's Veto Power on the UN Security**

---

Russia's persistent use of the veto not only halted UNSC efforts to stem this crisis but also, more seriously, contributed to the continuation of mass atrocities in Syria.

Professor Bellamy remarked, "Syria stands as a stark reminder, should one be needed, that the Council is a political body – one that is subject to the competing interests, values, and power relations of its member states."<sup>(82)</sup> Syria is a longstanding political and economic Russian ally (and previously an ally of the USSR). As a consequence of that, Russia has consistently opposed the use of UNSC action against the Syrian government. Russia views United States or western backed UNSC initiatives as a disguised method to affect a pro-western regime. Russia, it seems, would rather stand by and do nothing while the Syrian government gases its own people.

The action of Russia in the UNSC on the Syrian crisis also reflects what is referred to as the "hidden" or "pocket" veto. These terms are used to define the chilling effect that the threatened use of the veto has on other UNSC members. P5 members often exercise the pocket veto in private meetings where they exert their influence behind closed doors without public scrutiny. In April 2011, France and the United Kingdom attempted to get members to agree on a resolution for action in Syria. In private discussions, Russia (and China) strongly opposed UNSC intervention because it maintained that the situation did not pose a threat to international peace and security but involved protesters trying to destabilize the country; Russia's opposition resulted in no proposed resolution at that time.<sup>(83)</sup> Increasingly, Russia and other P5 members are using the pocket veto to keep an issue off the UNSC agenda "to protect their international legitimacy," which might be at risk were the issue to face a public vote.<sup>(84)</sup>

The United States has used its veto power 43 times against UNSC proposed resolutions that would negatively impact Israel. From the

---

= [world-report/2018/country-chapters/syria](http://world-report/2018/country-chapters/syria) .

(82) Bellamy, *supra* note 58, p. 316.

(83) See note 85, *infra*.

(84) *Id.*

year 2000 to date, 11 out of 12 United States vetoes involved resolutions proposing action against Israel.<sup>(85)</sup> Ms. Sahar Okhovat, Senior Policy Officer for the Refugee Council of Australia, said that by the use of its veto power –

“[T]he USA has provided political cover and protection for Israel, its strategic ally in the volatile region of the Middle East. The USA has been active in preventing the UNSC from adopting resolutions condemning Israeli settlement activities in East Jerusalem, asking for the withdrawal of Israeli forces from Gaza, calling the construction of a security wall in the West Bank illegal and many other cases that involved condemnation of the actions carried out by Israel.”<sup>(86)</sup>

Most recently, the United States vetoed a non-binding resolution (supported by all of the other 14 UNSC members) that would have rejected President Trump’s purported recognition of Jerusalem as Israel’s capital. In December 2017, President Trump declared that he would move the United States Embassy in Israel from Tel Aviv (where it has always been) to Jerusalem. This effectively means that the United States now recognizes Jerusalem as the capital of Israel negating 70 years of international consensus following the 1947 United Nations partition plan, in which Jerusalem was considered an international city and not a capital of any state. In 1967, Israel took control of the city and, in 1980, passed a law that declared Jerusalem to be the united capital of Israel. The UNSC responded with a resolution condemning Israel’s annexation of East Jerusalem as a violation of international law.<sup>(87)</sup> In 1995, the United States Congress passed a law requiring that the United States’ embassy be moved to Jerusalem, respecting Israel’s choice of capital. However, all US presidents since then - Clinton, Bush, and Obama (except Trump) - have declined to move the

---

(85) Security Council Report, *supra* note 74.

(86) S. Okhovat, “The United Nations Security Council: Its Veto Power and Its Reform,” The Centre for Peace and Conflict Studies, University of Sydney, CPACS Working Paper No. 15/1, Dec. 2011, p. 13, accessed on 18 April 2018 at [https://sydney.edu.au/arts/peace\\_conflict/docs/working\\_papers/UNSC\\_paper.pdf](https://sydney.edu.au/arts/peace_conflict/docs/working_papers/UNSC_paper.pdf)

(87) O. Liebermann, “Why moving the US embassy to Jerusalem is do controversial,” CNN 6 December 2017, accessed on 18 April 2018 at <https://www.cnn.com/2017/01/24/middleeast/donald-trump-us-embassy-israel-explainer/index.html>

embassy, citing national security interest. Every six months, the sitting president has used his presidential waiver to avoid the embassy move until December, when President Trump declined to do so.<sup>(88)</sup> Thereafter, violent clashes between Palestinians and Israelis erupted resulting in numerous injuries and deaths.<sup>(89)</sup>

In a report to the UN General Assembly on February 27, 2013, the Head of the United Nations Office for the Coordination of Humanitarian Affairs in the Occupied Palestinian Territory stated that the restrictive policies on movement, “home demolitions, and land confiscation carried out by Israel led to staggering poverty and spiraling unemployment among Palestinians, and undermined their ability to be self-sustaining.”<sup>(90)</sup> Human Rights Watch identifies at least five categories of international human rights law violations as a consequence of Israeli occupation including unlawful killings; forced displacement; abusive detention; the closure of the Gaza Strip and other restrictions on movement; and the continued advancement of Israeli settlements, which result in discriminatory policies that disadvantage Palestinians. Clearly, the use of the veto power by the United States to protect its ally, Israel, has led to substantial and continuing human rights suffering and abuses as well as a seemingly unending humanitarian crisis in Palestine.

### V. Solutions to Human Rights Protection Failures from Veto Use

As shown in the previous section, the political will of a single permanent member of the UNSC can lead to the paralysis of international action. Under international law, if the UNSC is unwilling or unable to protect civilians from humanitarian crisis and mass atrocities, nothing can be done.<sup>(91)</sup> Some commentators see heightened tensions between

---

(88) *Id.*

(89) I. Tharoor, “The many casualties of Trump’s Jerusalem move,” *Washington Post* 11 Dec. 2017 accessed on 18 April 2018 at [https://www.washingtonpost.com/news/worldviews/wp/2017/12/11/the-many-casualties-of-trumps-jerusalem-move/?utm\\_term=.3b5834d5a205](https://www.washingtonpost.com/news/worldviews/wp/2017/12/11/the-many-casualties-of-trumps-jerusalem-move/?utm_term=.3b5834d5a205).

(90) United Nations Meeting Coverage and Press Releases, GA/PAL/1257, 27 Feb. 2013, accessed on 18 April 2018 at <https://www.un.org/press/en/2013/gapal1257.doc.htm>.

(91) G. Gunatilleke, “R2P and the Normative Accountability of the UN Security Council,” *E-International Relations Publishing*, 9 Sept. 2016, accessed on 15 April 2018 at <http://www.e-ir.info/2016/09/09/r2p-and-the-normative-accountability-of-the-un-security-council/>.

the United States and Russia (similar to their rivalry displayed during the Cold War) as leading to the current limited ability of the UNSC to “defuse crises.”<sup>(92)</sup> The only way to amend the UN Charter to alter the veto power, as it exists today, is for all P5 to agree; amendment has been recognized as nearly impossible to accomplish.<sup>(93)</sup> However, states and commentators have advanced a number of reforms aimed at limiting veto use. Several of those are summarized below.

**a. Veto Use as a possible violation of Article 27(3)**

As previously noted, UN Charter Article 27 sets out the voting rules for the UNSC. Paragraph 3 of Article 27 mandates voting abstention in the following situations: “in decisions under Chapter VI, and under Paragraph 3 of Article 52, a party to a dispute shall abstain from voting.” Chapter VI sets out the rules for UNSC action when a dispute between states, if it continues, would likely endanger the maintenance of international peace and security.<sup>(94)</sup> Article 34 provides, “The UNSC may investigate 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.” Articles 36 and 37 of Chapter VI, allow the UNSC to make settlement recommendations to the parties, but if the parties fail to settle, and the UNSC determines that the continuance of the dispute will likely endanger the maintenance of international peace and security, it may determine to take action under Article 36. Thus, if the vote before the UNSC concerns a decision under Chapter VI, a Council member that is a party to the dispute must abstain from voting.<sup>(95)</sup> This caveat, known as the ‘obligatory abstention’ rule, exempts decisions under Chapter VII; in other words, no obligatory abstention exists when a

---

(92) Council on Foreign Relations, “The UN Security Council,” 7 Sept. 2017, accessed on 15 April 2018 at <https://www.cfr.org/background/un-security-council> .

(93) UN Charter, Article 108 mandates that all permanent members of the Security Council ratify any Charter amendment. Smith, *supra* note 62, p. 17, and Ohatvat, *supra* note 85, p. 25.

(94) UN Charter, Art. 33.

(95) “Also covered by the voting prohibition are decisions made under Art. 52(3), which allows the Security Council to formally or informally encourage pacific settlement of local disputes through regional arrangements or agencies.” *Id.*, p. 18.

decision involves a “threat to the peace, breach of the peace, or act of aggression,” so a P5 member will never be subject to an enforcement action without having the opportunity to cast its veto. The obligatory abstention rule reflects the principle of *nemo iudex in causa sua* - no one ought to be a judge in one's own cause.

Two recent journal articles discuss the current effectiveness of the obligatory abstention rule of Article 27(3).<sup>(96)</sup> Both Professor Stephen Smith, of the University of Otago, New Zealand, and Professor Enrico Milano, of the University of Milano, Italy, noted that the obligatory abstention rule has neither been used consistently nor recently.<sup>(97)</sup> They stated that even though the rule was discussed and used on eight occasions from 1947-1951, raised in debate a few times from 1960 to 1982, and once in a case in 1992 (Lockerbie), 16 instances of non-compliance have been documented from 1952 to 1990.<sup>(98)</sup> Professor Smith attributes this ‘persistent evasion of the rule’ to two reasons: (1) the difficulty in identifying the parties to a dispute – even if not directly involved, a state may be indirectly involved to the extent it has interests at stake; and (2) the matter is not a “dispute” as contemplated under Chapter VI, or the decision in question may fall under Chapter VII.<sup>(99)</sup> Even though the rule has not been recently used, both professors maintain that it “is not dead.”<sup>(100)</sup>

Professor Smith set out a case for reviving the operation of the obligatory abstention rule as a method to limit the use of the P-5 veto power. Professor Milano believes that an operating obligatory abstention rule would have denied Russia the ability to cast its veto against the UNSC draft resolution to condemn the referendum held in Crimea (the referendum was held prior to Russia's annexation of that province removing it from Ukraine).<sup>(101)</sup> Professor Milano said,

---

(96) E. Milano, “Russia's Veto in the Security Council: Whither the Duty to Abstain under Art. 27(3) of the UN Charter,” *ZaoRV* Vol. 75:215 (2015), accessed on 15 April 2018 at [http://www.zao-erv.de/75\\_2015/75\\_2015\\_1\\_a\\_215\\_232.pdf](http://www.zao-erv.de/75_2015/75_2015_1_a_215_232.pdf), and S. Smith, *supra* at note 76.

(97) Milano, p. 222-223; Smith, note 76, p. 19.

(98) Milano, p. 222-223; see also Smith, note 76, p. 23-26.

(99) Smith, note, 76, p. 19.

(100) Smith, note 76, p. 26; Milano, p. 230.

(101) Milano, p. 216 and 231.

“There are reasons to believe that a revitalized role for the Security Council in the settlement of many disputes around the world should be accompanied by the affirmation of principles of fairness and effectiveness in its decision-making processes. Resuming the functioning of the duty to abstain under Art. 27, para. 3, would go exactly in that direction and would render the Council a more credible, effective and impartial institutional actor in the performance of its task of promoting international peace and security.”<sup>(102)</sup>

### **b. Abstain from Veto Use under a Responsibility to Protect inspired Code of Conduct**

In October 2015, to more fully implement R2P, France and Mexico co-sponsored a proposal to the UN General Assembly to establish a “code of conduct” for P5 members. This proposal called for the voluntary and collective suspension of the veto power in cases of mass atrocities.<sup>(103)(104)</sup> France’s then Minister of Foreign Affairs, Laurent Fabius, originally outlined the proposal as follows:

“The criteria for implementation would be simple: at the request of at least 50 member states, the United Nations Secretary General would be called upon to determine the nature of the crime. Once he had delivered his opinion [finding that mass atrocity exists], the code of conduct would immediately apply. To be realistically applicable, this code would exclude cases where the vital national interests of a permanent member of the Council were at stake.”<sup>(105)</sup>

---

(102) Milano, p. 231.

(103) Security Council Report, *supra* note 48, p. 5; Permanent mission of France to the United Nations in New York, “France and the UN Reform,” 26 March 2018, accessed on 18 April 2018 at <https://onu.delegfrance.org/France-and-the-UN-Reform-8615> .

(104) In 2006 a group of countries known as the “S5”, including Costa Rica, Jordan, Liechtenstein, Singapore and Switzerland, initiated a draft resolution, which called on the P5 not to use the veto when the UNSC is faced with crises involving genocide, crimes against humanity and serious violations of international humanitarian law. See G.A. Draft Res., 17 March 2006, A/60/L.49. No action was taken on this draft; which was renewed in 2012 by a similar draft restricting crimes affected by veto suspension to genocide, war crimes and crimes against humanity. See G.A. Rev. Draft Res., 3 May 2012, A/66/L.42/Rev.1. This draft was withdrawn after the UN Office of Legal Affairs determined that it was not procedural and would require a two-thirds vote of the General Assembly to be passed. See M. Golden, *infra* note 105, p. 119.

(105) L. Fabius, “A Call for Self-Restraint at the U.N.,” NY Times, 4 Oct. 2013, accessed on 18 =

## The Effect of the United States' and Russia's Veto Power on the UN Security

---

To date, 80 countries support the initiative.<sup>(106)</sup> In 2015, before the 70<sup>th</sup> UN General Assembly, then President Hollande of France officially committed France to the code, stating, “France will never use its right of veto where there have been mass atrocities.”<sup>(107)</sup> In July 2015, the Accountability, Coherence and Transparency Group (ACT), which includes 27 states<sup>(108)</sup>, advanced a code of conduct similar to the French proposal.<sup>(109)</sup> The ACT initiative calls on member states to “pledge to support timely and decisive action by the Security Council aimed at preventing or ending the commission of genocide, crimes against humanity or war crimes” by committing not to vote against “credible” draft resolutions seeking to end or prevent such crimes.<sup>(110)</sup> As of February 12, 2018, the ACT initiative has been signed by 113 member states, including 2 permanent UNSC members - France and the United Kingdom, and 2 observers.<sup>(111)</sup> In her 2017 Columbia Journal of Transnational Law article, “Could a Code of Conduct Work?” Merrow Golden noted, “even if the French Proposal will not result in any legal obligation on the P5, it can still have great political weight if P5 members were to voluntarily commit themselves to it.”<sup>(112)</sup>

In this context, it is import to recognize that during the 8175<sup>th</sup> UN

= April 2018 at <http://www.nytimes.com/2013/10/04/opinion/a-call-for-self-restraint-at-the-un.html?mcubz=1> .

(106) Permanent mission of France, *Id.*; Global Centre for the Responsibility to Protect claims that as of 27 June 2017, the France/Mexico Initiative is supported by 96 UN member states, see “UN Security Council Code of Conduct,” accessed on 18 April 2018 at [http://www.globalr2p.org/our\\_work/un\\_security\\_council\\_code\\_of\\_conduct](http://www.globalr2p.org/our_work/un_security_council_code_of_conduct)

(107) F. Hollande, Statement at the Opening of the UN General Assembly, 24 Sept. 2013, accessed on 18 April 2018 at <http://gadebate.un.org/68/france> , as cited by M. Golden, “Could a Code of Conduct Work?,” *Columbia J. of Transnational Law*, 2017, Vol. 57:101, p. 103.

(108) ACT includes 27 countries – Austria, Chile, Costa Rica, Denmark, Estonia, Finland, Gabon, Ghana, Hungary, Ireland, Jordan, Liechtenstein, Luxembourg, Maldives, New Zealand, Norway, Papua New Guinea, Peru, Portugal, Rwanda, Saint Vincent and the Grenadines, Saudi Arabia, Slovenia, Sweden, Switzerland, Tanzania and Uruguay, with Switzerland acting as its coordinator. See <http://centerforunreform.org/sites/default/files/FACT%20SHEET%20ACT%20June%202015.pdf#overlay-context=node/633%3Fq%3Dnode/633> , accessed on 18 April 2018.

(109) Security Council Report, *supra* note p. 4-5; M. Golden, *supra* note 107, p. 103 note 4, and p. 126.

(110) *Id.*

(111) Global Centre for the Responsibility to Protect, *supra* note 106.

(112) M. Golden, *supra* note 107, p. 137.



Security Council Meeting of February 6, 2018, the Ambassador to the United Nations for Kuwait, Mansour Al-Otaibi, serving as Council President for the month, stated as follows:

“The abuse of the veto by a certain number of permanent Council members has undermined the credibility of the Council’s decision-making process. Some permanent members had used the veto during past years to protect their own national rights and interests and the interests of their allies. Member States of the Council had pledged to not obstruct any resolution that addressed crimes against humanity and war crimes. Use of the veto must be restrained in those situations and when dealing with humanitarian issues.”<sup>(113)</sup>

### **c. Reactivate Uniting for Peace UN General Assembly Resolution**

The “Uniting for Peace” UN General Assembly Resolution 377A(V) originated against the backdrop of the Korean War in June 1950, when the USSR vetoed a UNSC draft resolution extending military support for South Korea.<sup>(114)</sup> The Resolution, in part, provides as follows:

“[I]f the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, breach of the peace, or act of aggression, the General Assembly shall consider the matter immediately with a view to making appropriate 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>(115)</sup>

Some commentators believe that by allowing the UN General Assembly a basis for regulating international security, “[the Uniting for Peace

---

(113) United Nations Meetings Coverage and Press Releases, Security Council 8175<sup>th</sup> Meeting, 6 Feb. 2018, SC/13197, accessed on 18 April 2018 at <https://www.un.org/press/en/2018/sc13197.doc.htm> .

(114) L. Johnson, “Uniting for Peace”; Does It Still Serve Any Useful Purpose,” *Am. J. Int’l L. Unbound*, 15 July 2014, accessed on 15 April 2018 at <http://www.asil.org/blogs/uniting-peace/-does-it-still-serve-any-useful-purpose> .

(115) UN Security Council Resolution 377A(V), A/RES/377(V) A, 3 November 1950

Resolution] may therefore provide a solution in instances where the international community supports a 'humanitarian intervention' that is otherwise stymied by a Council Member's veto."<sup>(116)</sup> Others maintain that it cannot be revived for current purposes for several reasons as follows:<sup>(117)</sup> (1) it is unnecessary because the UN General Assembly may recommend voluntary, non-use of force, collective action (including peacekeeping) by member states without using the Uniting for Peace Resolution;<sup>(118)</sup> and (2) under the UN Charter, Articles 2(4) and 51, the use of force is only authorized for individual or collective self-defense if repelling an armed attack and until the UNSC acts under Chapter VII, thus, any General Assembly recommendation for the use of force outside these parameters would be not only ultra vires but also internationally unlawful.<sup>(119)</sup>

### **VI. Conclusion**

International human rights law is formulated to protect people against the actions of their own state governments. Now approaching the status of an international norm is the idea that without respect for and the protection of human rights, international peace and security is unattainable. In the face of claims of state sovereignty and non-intervention in domestic affairs, this necessarily means that only a universal, intergovernmental organization such as the United Nations, with the power to bind state behavior, can serve the purpose of promoting, protecting, and enforcing human rights. The obligation to do so is now well recognized as a primary function of the United Nations under the UN Charter.

The UNSC, as the only United Nations organ authorized to make such binding decisions, has, on at least one occasion, determined that human rights abuses and a humanitarian crisis within the borders of a single, non-consenting country, constituted a threat to international

---

(116) M. Ramsden, "'Uniting for Peace' and Humanitarian Intervention: the Authorising Function of the U.N. General Assembly," *Washington International Law Journal*, April 2016, Vol. 2:267, p. 270.

(117) L. Johnson, *supra* note 113, p. 5-10.

(118) *Certain Expenses of the United Nations*, Adv. Opin., 1962 I.C.J. Rep. 151,166 (July 20).

(119) L. Johnson, *supra* note 117.

peace and security. This threat was of such magnitude the UNSC found it necessary to direct Chapter VII military action. However, the UNSC's willingness to act similarly in other human crises has been inconsistent. In fact, the UNSC has remained paralyzed and unable to resolve situations involving enduring mass atrocities – such as Syria, and to some extent, Palestine. Most commentators point to the self-serving use of the veto power by the P5 members of the UNSC as the primary cause for this paralysis.

Russia has used its veto 12 times to block UNSC resolutions aimed at Syria where its citizens are experiencing some of the most egregious human rights abuses and mass atrocities of modern times. The United States has used its veto 43 times to protect Israel from the UNSC's attempts to stop it from committing what seems like never ending harm to the human rights and fundamental freedoms of Palestinian people and subjecting them to a perpetual humanitarian crisis.

Some commentators point to state disparity in population and military capability to justify the continued use of the veto as follows:

“Although the difference in material capabilities of states should have no bearing on the legitimacy of a state's view on what constitutes a human rights abuse, it may be relevant to the enforcement of measures to address such abuse. The point here is that while the Council may suffer a number of defects, at least it attributes greater weight to the choices of bigger states who have the political and material capabilities necessary to carry out the difficult role of managing international security.”<sup>(120)</sup>

Conversely, most commentators, including United Nations leaders, condemn the veto as the prerogative of the powerful P5 to, in some cases, place national strategic interests above human protection and international peace. The alternatives or solutions currently suggested, however, are not yet implementable because the obligatory abstention rule and the espoused P5 code of conduct involve voluntary action

---

(120) M. Ramsden, *supra* p. 271-272, citing D. Bosco, *Five to Rule Them All: the UN Security Council and the Making of the Modern World*, p.19 (2009).

## **The Effect of the United States' and Russia's Veto Power on the UN Security**

of the UNSC. Russia, China, and the United States, will likely not voluntarily promise to curtail their veto use. The renewed application of the Uniting for Peace Resolution is also not practical, as it would not be workable in a situation calling for use of force.

## **VII. References**

### **Treaties**

- United Nations Charter, entered into force 24 October 1945
- International Covenant on Civil and Political Rights adopted 16 December 1966, entered into force 23 March 1976
- International Covenant on Economic, Social, and Cultural Rights adopted 16 December 1966, entered into force 3 January 1976
- Convention on the Prevention and Punishment of the Crime of Genocide adopted 9 December 1948, entered into force 12 January 1951, accessed at

### **Case Law**

- Certain Expenses of the United Nations, Adv. Opin., 1962 I.C.J. Rep. 151,166 (July 20)

### **United Nations Resolutions**

- UN Security Council Resolution 253, S/RES/253, 29 May 1968
- UN Security Council Resolution 216, S/RES/216, 12 Nov. 1965
- UN Security Council Resolution 217, S/RES/217, 20 Nov. 1965
- UN Security Council Resolution 418, S/RES/418, 4 November 1977
- UN Security Council Resolution 794, S/RES/794, 3 December 1992
- UN Security Council Resolution 1973, S/RES/1973, 17 March 2011
- UN Security Council Resolution 1674, S/RES/1674, 28 April 2006
- UN Security Council Resolution 1894, S/RES/1894, 11 November 2009
- UN Security Council Resolution 2150, S/RES/2150, 16 April 2014
- UN Security Council Resolution 1706, S/RES/1706, 31 August 2006
- UN Security Council Resolution 1973, S/RES/1973, 17 March 2011
- UN Security Council Resolution 377A(V), A/RES/377(V) A, 3 November 1950

### **BOOKS**

- 1. P. Alston, "Critical Appraisal of the UN Human Rights Re-

- gime,” *The United Nations and Human Rights, A Critical Appraisal*, (Oxford Univ. Press, 1992)
- S. Bailey, *The UN Security Council and Human Rights* (St. Martin's Press, 1994)
  - A. Bellamy, “The UN Security Council and the Problem of Mass Atrocities,” *Global Insecurity Futures of Global Shaos and Governance* (A. Burke, R. Parker editors, Palgrave Macmillan, 2017)
  - M. Binder, “UN Security Council Intervention in Humanitarian Crises: A Framework for Explanation,” *The United Nations and the Politics of Selective Humanitarian Intervention*, (Palgrave Macmillan, 2017)
  - A. Cassese, *International Law*, 2nd Ed., (Oxford Univ. Press, 2005)
  - L. Damrosch, L. Henkin, S. Murphy, and H. Smit, *International law, Cases and Materials*, West Casebook Series, Thomson Reuters, 5th Ed. (2009)
  - B. Fassbender, *Securing Human Rights? Achievements and Challenges of the UN Security Council*, edited by B. Fassbender, (Oxford Univ. Press, 2011)
  - H. Lauterpacht, *International Law and Human Rights* (1950)
  - M. Shaw, *International Law*, 7th Ed., (Cambridge Univ. Press, 2014)
  - D. Shelton, *An Advanced Introduction to International Human Rights Law*, (Edward Elgar Publishing Ltd, 2014)
  - D. Shraga, “The Security Council and Human Rights – from Discretion to Promote to Obligation to Protect,” , *Securing Human Rights? Achievements and Challenges of the UN Security Council*, edited by B. Fassbender, (Oxford Univ. Press, 2011)
  - C. Tomuschat, *Human Rights. Between Idealism and Realism*, 2nd Ed. (Oxford University Press, 2008)
  - B. Ugarte and J. Genser “Evolution of the Security Council's Engagement on Human Rights,” *The United Nations Security Council in the Age of Human Rights*, edited by J. Genser and B. Ugarte (Cambridge Univ. Pres., 2014)

- ARTICLES

- N. Banteka, "Dangerous Liaisons: The Responsibility to Protect and a Reform of the U.N. Security Council," *Columbia Journal of Transnational Law*, Vol. 54:382 (2016)
- A. Bellamy, "International Responses to Human Protection Crises: Responsibility to Protect and the Emerging Protection Regime," *RCCS Annual Review*, Vol. 7:7, (2015)
- T. Buergenthal, "The Evolving International Human Rights System," *Am. J. Int'l Law* Vol. 100 783, 787 (2006)
- D. Forsythe, "The UN Security Council and Human Rights – State Sovereignty and Human Dignity," *International Policy Analysis*, Friedrich Ebert Stiftung, (May 2012)
- M. Golden, "Could a Code of Conduct Work?," *Columbia J. of Transnational Law*, Vol. 57:101 (2017)
- L. Johnson, "Uniting for Peace"; Does It Still Serve Any Useful Purpose," *Am. J. Int'l L. Unbound*, 15 July 2014, accessed on 15 April 2018 at <http://www.asil.org/blogs/uniting-peace/does-it-still-serve-any-useful-purpose>
- E. Milano, "Russia's Veto in the Security Council: Whither the Duty to Abstain under Art. 27(3) of the UN Charter," *ZaoRV* Vol. 75:215 (2015)
- S. Okhovat, "The United Nations Security Council: Its Veto Power and Its Reform, The Centre for Peace and Conflict Studies, University of Sydney, CPACS Working Paper No. 15/1 (Dec. 2011)
- M. Ramsden, "'Uniting for Peace' and Humanitarian Intervention: the Authorising Function of the U.N. General Assembly," *Washington International Law Journal*, Vol. 2:267 (April 2016)
- S. Smith, "Reviving the Obligatory Abstention Rule in the UN Security Council: Reform from the Inside Out," *New Zealand Yearbook of International Law*, Vol. 12: 15 (2014)
- ELECTRONIC RESOURCES
- UN Human Rights Council Report, 26 Feb 2018, accessed on 15 April 2018 at <http://www.ohchr.org/EN/NewsEvents/Pages/Dis->

playNews.aspx?NewsID=22707&LangID=E .

- US News, "UN Rights Chief Slams 'Pernicious' Security Council Veto Use," 26 Feb. 2018, accessed on 15 April 2018 at <https://www.usnews.com/news/world/articles/2018-02-26/un-rights-chief-slams-pernicious-security-council-veto-use>
- UN Security Council – Meeting Coverage and Press Releases, Meeting 7926, 18 April 2017, accessed on 15 April 2018 at <https://www.un.org/press/en/2017/sc12797.doc.htm>
- Security Council Report, "Research Report on the Veto," No. 3, 19 October 2015, accessed on 15 April 2018 at [http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/research\\_report\\_3\\_the\\_veto\\_2015.pdf](http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/research_report_3_the_veto_2015.pdf)
- Arab News, "Russia's 12 UN vetoes on Syria," 10 April 2018, accessed on 15 April 2018 at <http://www.arabnews.com/node/1282481/middle-east>
- Security Council Report, "the Security Council Veto," accessed on 15 April 2018 at [http://www.securitycouncilreport.org/un-security-council-working-methods/atf/cf/{65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9}/working%20methods\\_the%20veto.pdf](http://www.securitycouncilreport.org/un-security-council-working-methods/atf/cf/{65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9}/working%20methods_the%20veto.pdf)
- Human Rights Watch, World Report accessed on 18 April 2018 at <https://www.hrw.org/world-report/2018/country-chapters/syria>
- O. Liebermann, "Why moving the US embassy to Jerusalem is do controversial," CNN 6 December 2017, accessed on 18 April 2018 at <https://www.cnn.com/2017/01/24/middleeast/donald-trump-us-embassy-israel-explainer/index.html>
- I. Tharoor, "The many casualties of Trump's Jerusalem move," Washington Post 11 Dec. 2017 accessed on 18 April 2018 at [https://www.washingtonpost.com/news/worldviews/wp/2017/12/11/the-many-casualties-of-trumps-jerusalem-move/?utm\\_term=.3b5834d5a205](https://www.washingtonpost.com/news/worldviews/wp/2017/12/11/the-many-casualties-of-trumps-jerusalem-move/?utm_term=.3b5834d5a205)
- United Nations Meeting Coverage and Press Releases, GA/PAL/1257, 27 Feb. 2013, accessed on 18 April 2018 at <https://www.un.org/press/en/2013/gapal1257.doc.htm>
- G. Gunatilleke, "R2P and the Normative Accountability of the UN



- Security Council,” E-International Relations Publishing, 9 Sept. 2016, accessed on 15 April 2018 at <http://www.e-ir.info/2016/09/09/r2p-and-the-normative-accountability-of-the-un-security-council/>
- Council on Foreign Relations, “The UN Security Council,” 7 Sept. 2017, accessed on 15 April 2018 at <https://www.cfr.org/background-er/un-security-council>
  - Permanent mission of France to the United Nations in New York, “France and the UN Reform,” 26 March 2018, accessed on 18 April 2018 at <https://onu.delegfrance.org/France-and-the-UN-Reform-8615>
  - L. Fabius, “A Call for Self-Restraint at the U.N.,” NYTimes, 4 Oct. 2013, accessed on 18 April 2018 at <http://www.nytimes.com/2013/10/04/opinion/a-call-for-self-restraint-at-the-un.html?mcubz=1>
  - Global Centre for the Responsibility to Protect, “UN Security Council Code of Conduct,” accessed on 18 April 2018 at [http://www.globalr2p.org/our\\_work/un\\_security\\_council\\_code\\_of\\_conduct](http://www.globalr2p.org/our_work/un_security_council_code_of_conduct)
  - F. Hollande, Statement at the Opening of the UN General Assembly, 24 Sept. 2013, accessed on 18 April 2018 at <http://gadebate.un.org/68/france>
  - <http://centerforunreform.org/sites/default/files/FACT%20SHEET%20ACT%20June%202015.pdf#overlay-context=node/633%3Fq%3Dnode/633> , accessed on 18 April 2018
  - United Nations Meetings Coverage and Press Releases, Security Council 8175th Meeting, 6 Feb. 2018, SC/13197, accessed on 18 April 2018 at <https://www.un.org/press/en/2018/sc13197.doc.htm>

**Table of Contents**

<b>Subject</b>	<b>Page</b>
<b>Abstract</b>	141
I. Introduction	143
II. Human Rights under the UN Charter	144
a. Human Rights and the UN Charter	146
b. UN Human Rights Treaty System	147
III. Whether the UNSC considers the protection of human rights to be included in its mandate to maintain international peace and security	149
IV. The UNSC Veto and Examination of the Use of the Veto in UNSC Human Rights Failures	155
V. Solutions to Human Rights Protection Failures from Veto Use	160
a. Veto Use as a possible violation of Article 27(3)	161
b. Abstain from Veto Use under a Responsibility to Protect inspired Code of Conduct	163
c. Reactivate Uniting for Peace UN General Assembly Resolution	165
VI. Conclusion	166
VII. Referances	169