

THE SECURITY COUNCIL'S ENDLESS ENLARGEMENT DEBATE

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ABSTRACT: *Recent talks on UN Security Council reform mainly focused on enlargement issues based on the competing positions of the G4 (Germany, Japan, Brazil and India) and UfC (core members Italy, Pakistan, Mexico and Egypt); groups which seem unable to reach a compromise in the near future. Even if they did manage to cooperate such will not produce efficiency in the UNSC's work, since the main shortcoming of the Council is not a number of its members but the sacred veto power of its P5. Indeed, there are only five beneficiaries out of 194 UN members which are politically satisfied; the permanent members, which are relicts of World War II and since the Council continues to be formed by the P5, it is argued that the Council has lost its raison d'être. This work evaluates the international tensions derived from UNSC stagnation.*

KEYWORDS: UN Security Council, Reform, Enlargement, Permanent Members, Veto Power

INTRODUCTION

After the double veto by Russia and China on the resolution about the situation in Syria at the UN Security Council (UNSC) on 4 February 2012¹ the reform of the Council once again proved its necessity. The issue of reforms is on the global agenda for several years. The first feasible reforms of the Council happened in 1965 when its membership was enlarged from 11–15.² But given to the fact that the number of the UN members increased from 117–193 since 1965³ the necessity of the Council enlargement still remains relevant. The issue became more significant at the beginning of 1990s after the establishment of the UN 'Open-ended working group on equitable representation on and increase in the membership of the Security Council and other matters relating to the UNSC'. As a result of functioning for almost twenty years, main progress achieved according to the group's proposals were holding more open meetings for non-Council members and frequent briefings by the SC President

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on its activity. Despite twenty years of intensive negotiations and numberless proposals on the Council's enlargement the UN members could not achieve any progress. The UNSC represents Second World War realities despite dramatic changes in the world politics since that time. Along with the increase of the UN membership, the SC also acts in a world which is totally different from 1945. The new challenges for peace and security need more representative and reactive body. Even the drastic change in the Council's workload demonstrates the need for enlargement. If the number of the Council's formal meetings in 1993 was 153, in 2006 they increased up to 252 which demanded broader representation of the member states.⁴

But Syrian issue and many other veto-downed problems once again proved that the enlargement of the UNSC membership will not add significant efficiency to the Council's activity if the veto power still remains. Unfortunately, the member states are too much concentrated on the issue of, which countries have to become new permanent members of the Council, that, they go far beyond the discussion of the real problems of the SC. Today, the debates are mainly focused on hundred times repeated positions of G4 – Japan, Germany, Brazil and India – which are real candidates for new permanent seats at the Council and Uniting for Consensus group which argue G4's candidacy. In such a deadlock situation there are only five beneficiaries of ineffective discussions out of 193 member states – the permanent members (P5) of the UNSC with special privilege – the veto power allowing them to control all important decisions at the UN.

ENLARGEMENT AS A MAIN FOCUS OF REFORM PROPOSALS

Until today there have been made several interesting proposals on the Council's enlargement. At the beginning these proposals meant the expansion of the Council permanent membership up to ten presumably with the inclusion of Germany, Japan, India, Brazil and South Africa. But as a result of the opposition from China against Japan, Italy against Germany, Pakistan against India these proposals seemed to be not viable, despite the huge financial support to the UN by some of these candidates. For example, the share of assessed contribution to the UN by Japan is approximately 12.5 percent, which gives it the second largest scale of assessments

among the member states, after the United States.⁵ The share of Germany is more than 8 percent which makes it the third contributor from the top.⁶

Taking into account strong resistance from a number of developed countries, especially the members of the Uniting for Consensus (UfC) group the recent enlargement proposals are mainly based on increasing the number of non-permanent members and creating semi-permanent membership (seats for more than two years period). For example, one of the latest discussions on the issue at the UN on 21 February 2012 was dedicated to the UfC proposal. The proposal envisaged that an enlargement of the UNSC should only take place in the non-permanent category, creating this way a more representative, accountable and accessible Council. The UfC suggested creating a new category of seats with a longer mandate of up to six years in addition to the expansion of regular non-permanent seats. Subject to negotiation, the UfC suggested either a 3–5 year term without the possibility of immediate re-election or a 2 year term with the possibility of up to two immediate re-elections. To be eligible for re-election, Member States would have to give a break equivalent to the consecutive period served on the Council. The longer term seats would be allocated to the regional groups, while the regular non-permanent seats would instead be allocated to Small States (population under 1 million) and medium-sized States (population between 1 and 10 million).⁷

Despite the support from several countries like Pakistan, Mexico and Spain there were also states with critical position like Japan, Germany and India which argued the democracy and legitimacy in the expanded Council without permanent representation of all regions i.a. Africa and Latin America.⁸ Critics from these states were quite expected as they are main candidates to the permanent membership. The discussions demonstrated that Member States are still very much divided on the question of the UNSC reform.

These discussions were third in the eighth round of the inter-governmental negotiations on the UNSC reform which started in 2011. The five out of eight meetings has been decided to be dedicated to the five major reform initiatives, namely G4, the Uniting for Consensus group, the L.69 group, the Committee of Ten African Representatives (C-10), and Small Five Group (S-5).⁹ The positions of these groups are quite different that makes it necessary to discuss

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them separately. The positions of G4 and UfC are mere contradiction, since G4 seeks permanent seats for themselves at the Council, but the UfC proposes not to enlarge permanent seats in order to prevent G4 from this endeavour.

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L.69 emerged as a result of the draft resolution introduced mainly by India, Brazil, South Africa and Nigeria and its main elements were: expansion in both in permanent and non-permanent categories; greater representation of developed countries; representation of developing countries and those with transition economies reflective of contemporary world realities; comprehensive improvement in the working methods of the SC, including greater access of islands and small states.¹⁰

C-10 position's main feature is obtaining two permanent seats for the African states in the SC with the veto power.¹¹ The naming comes from the committee of ten Heads of State formed out of two countries from Africa's main five regions.

Small 5 (S-5) consists of the representatives of Jordan, Lichtenstein, Costa-Rica, Singapore and Switzerland. This is the only group that insists more on improving the working methods of the UNSC than on enlargement. Unlike other groups this group even proposes on the issue of veto power which is sacred theme for the P5 members. S5 strongly suggests that the permanent members of the UNSC provide explanations for the reasons of using the veto. In addition, S5 recommends that P5 refrain from using the veto in cases of genocide, crimes against humanity and "grave breaches" of international humanitarian law.¹²

As it is seen, except one group of countries other groups' main focus in the reforms of the SC is enlargement. Majority of the members are very much concentrated on the issue of enlargement than improving the work of the Council. African group even has gone far away of the main aim of the reforms by demanding veto power for their candidates for permanent membership which makes the debates even worthless. It is very disappointing that the member states after almost twenty years of intensive negotiations has not been able to reach an agreement on the issue. It seems that those countries which block the proposals on the enlargement of the Council on the basis of reasonable criteria, i.e. according to the level of financial support to the UN and personal support to the peace-keeping operations, the level of engagement in internation-

al affairs and solution of international problems and adequate regional representation, prefer continue to play a zero sum game in which they are ready to achieve nothing in order to leave their rivals also empty handed. The disagreement hinders the UN members to mobilize their efforts on the solution of the main problem of the Council, namely unfair veto power.

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VETO POWER AS A MAIN OBSTACLE FOR THE SECURITY COUNCIL'S EFFICIENCY

The notion of veto comes from the Article 27 of the UN Charter which provides that decisions of the UNSC on substantive matters shall be made by an affirmative vote of nine members including concurring votes of the permanent members. From the beginning the veto power was not welcomed by the UN members except P5. The Dutch at the Yalta conference warned that to give great powers a veto in the Council render the whole organization useless in disputes between great powers or between a great power and a small one. The Polish exile government in London about the same time objected to the proposed veto power of nations that were themselves parties to the disputes. Mexico and other eight Latin American countries at the Inter-American conference objected to the Big Four veto power. Australia's Herbert V. Evatt and New-Zealand's Peter Fraser led the opposition of 17 small nations to the veto. But at the final vote, once the United States and Soviet Union led the Big Five in conveying the attitude that without veto there would be no charter, 15 countries abstained and only two- Cuba and Colombia voted against.¹³

At the beginning of 1990s when the discussions about the UN reforms became one the main topics of the UN agenda, one could heard many critics against the veto power. But during the recent discussions the main focus on the Council's reforms is made on enlargement. The reason seems to be P5 countries resistance to accept any change to the current veto power. During discussions the permanent members of the UNSC (P5) deliver, as usual, short statements, on the one hand confirming their commitment to the UNSC reform in general terms, but on the other hand stating, for example, that the current veto structure cannot be changed. Only France and United Kingdom show more flexibility on the issue of veto not only

in words but also in practice. The analyses of the use of veto in the SC clearly demonstrate that France and UK refrain from using this right for several years. These two countries have not used the right since 1990.

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Years	China	France	USSR/ Russia	UK	US	Total
1946-1949	0	2	46	0	0	48
1950-1959	1	2	44	2	0	49
1960-1969	0	0	18	1	0	19
1970-1979	2	7	7	14	21	51
1980-1989	0	7	4	15	46	72
1990-1999	2	0	2	0	5	9
2000-2004	0	0	1	0	8	9
2005-2008	2	0	2	0	2	6
2009	0	0	1	0	0	1
2010	0	0	0	0	0	0
2011	1	0	1	0	1	3
2012	1	0	1	0	0	2
Cold War (1946-1989)	3	18	119	32	67	239
After Cold War (1990-2004)	6	0	8	0	16	30
Total	9	18	127	32	83	269

Source: <http://www.globalpolicy.org>

The table only demonstrates the figures when the veto power was imposed in fact. But it is also clear that veto power can serve for deterrence and coercive purposes without actually being cast. Unlike the actual use of veto, which has significantly declined in Post-Cold war era, it is widely known within the UN system that the informal threat of veto in the Council's private consultations has not diminished.¹⁴ This kind of veto called "hidden veto" – the quite threat of possible veto use.¹⁵ Taking the fact into account

many issues become “vetoed” even before entering the threshold of the UNSC’s hall. One of the most recent examples of the reality was the issue of Palestinian membership to the United Nations which was postponed because of the clear vision of the US opposition to granting membership to this entity.

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Returning to the use of veto in fact, after the end of Cold War this right is mainly used by US and mostly on the situations concerning the Israeli-Palestinian conflict and criticizing Israel; since 2002 the Negroponte doctrine has been applied for the use of a veto on resolutions relating to the ongoing Israel-Palestinian conflict. On July 26, 2002, John Negroponte, the United States Ambassador to the United Nations, stated during a closed meeting of the UN UNSC that the United States would oppose UNSC resolutions concerning the Israeli-Palestinian conflict that condemned Israel without also condemning terrorist groups.¹⁶ This became known as the Negroponte Doctrine, and has been viewed by officials in the United States as a counterweight to the frequent resolutions denouncing Israel which are passed by the UN General Assembly.

The United States is followed by Russia which regards the veto power as its property and will not refuse it willingly. In the early days of the United Nations, the Soviet Union minister for foreign affairs between 1957 and 1985, Andrei Gromyko, said “no” so many times that he was known as “Mr. Veto”.¹⁷ In fact, the Soviet Union was responsible for nearly half of all vetoes ever cast – 79 vetoes were used in the first 10 years. He regularly rejected bids for new membership because of the US’s refusal to admit the Soviet republics. Since the dissolution of the Soviet Union, Russia has used its veto power sparingly, but this state makes it clear in every opportunity that the reforms of the Council can not deprive P5 from their veto power. Most recent uses by Russia of veto were in 2008 on Georgia and 2011–2012 on Syria.

Another permanent member of the UNSC – China began to use its veto power more frequently during the last years. Until the recent years observers have noted a preference for China to abstain rather than veto on resolutions not directly related to Chinese interests. But the scene has changed during the last years. Four out of six vetoes which this country imposed on the SC resolutions happened within the last 5 years and none of these vetoes was directly connected with the China’s vital national interests. It seems that

this country tries to demonstrate political attitude adequate to its growing economic power and play more important role in international affairs.

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From classical viewpoint the veto power, first of all, is a vis-à-vis contradiction to the “sovereign equality of states” which is one of the main principles of the United Nations according to its Charter.¹⁸

Another important point against P5’s veto power is that, these countries do not use veto proceeding the principles and norms of international law but rather for their own political interests. One of the examples is the decisions on admission of new members to UN. According to the UN Charter new members can be accepted by the General Assembly according to the recommendation of the UNSC including P5.¹⁹ In 2007 the United States tried to introduce a resolution in the UNSC, seeking UN membership for Kosovo. But Russia threatened to use its veto to bar Serbia’s UN administered Kosovo from the world body. Russian Foreign Minister Sergey Lavrov has dismissed US attempts to resolve the Kosovo problem by posing the question: ‘Why don’t we solve the case of Western Sahara first?’ – a longstanding dispute where the United States is backing its ally Morocco against the Polisario seeking an independent nation state in North Africa.²⁰ The event clearly demonstrates that even such important matter as admission of new members is not grounded on the principles of international law but purely depends on backing allies and preserving areas of dominance. How the candidate for membership has been emerged (by peaceful secession, aggression, self-proclamation and etc.) does not have any significance with regards to national positions of P5 countries. Admission of members has not to be a political decision but rather a legal issue. In this regard, it would be more acceptable if the General Assembly accepts members not according to the UNSC’s recommendations but based on the International Court of Justice’s advisory opinion.

The fact that the P5 countries act purely on the national interests is not a secret as it was several times confirmed by these countries representatives, especially the United States. For example, John Bolton, the US Under-Secretary of State for International Or-

ganisations, who gave an unusually frank and chilling description of the United Nations, stated that:

“There is no United Nations. There is an international community that occasionally can be led by the only real power left in the world, and that is the United States, when it suits our interest, and when we can get others to go along... When the United States leads, the United Nations will follow. When it suits our interest to do, we will do so. When it does not suit our interest we will not.”²¹

Furthermore, the reason for which this right was established does not already exist in its scope as in 1945. When this right was created the P5 described it as *condicio sine qua non* stating that ‘in a view of a primary responsibilities of the permanent members, they could not be expected, in the present condition of the world, to assume the obligation to act in so serious a matter as the maintenance of international peace and security in consequence of a decision in which they have not concurred.’²² But today not all P5 countries constitute the main provider of peace and security in the world both financially and materially.²³ Top five providers of assessed contributions to the UN peacekeeping operations in 2011–2012 have been United States (27.14 percent), Japan (12.53 percent), United Kingdom (8.15 percent), Germany (8.02 percent) and France (7.55 percent)²⁴ and five main countries which provide the UN operations with peacekeepers are Bangladesh, India, Nepal, Nigeria and Pakistan²⁵ which have replaced France, UK, Canada and Netherlands during the recent years. Except the United States none of the members of P5 plays crucial role in the protection and provision of peace and security in the world either financially or technically. The Council now authorizes the action when others take the burden which the Council, led by P5, was expected to. In other words, the permanent members permit action when, far from having special responsibility for maintenance of international peace and security.

In addition to above mentioned, it has to be noted that the contemporary world is quite different from the world of 1945. The Second World War became a matter of history and the coalition of victors collapsed in the Cold War period. Germany and Japan regained economic power and notable regional influence and became security providers in the world and also main contributors to the United Nations activity. As a result of decolonization and collapse of soviet system the number of the UN members drastically increased.

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The strength and position of “Great Powers” of 1945 declined. In a world, the circumstances which led to the incorporation of the veto Charter have vanished; and most of the arguments used to defend the veto are no longer persuasive: that the UN organization stems from a wartime coalition in which the unanimity rule prevailed; that the Allied powers saw continued observation of this rule as an important means to provide the enemy-states starting another war of aggression; that they were not ready to give up a right they have enjoyed under the League of Nations Covenant; these are considerations which can not justify the veto anymore. It has become doubtful that five states who were chosen, or established themselves, as permanent members of the UNSC in 1945 still represent that group of states whose action alone can maintain world peace.²⁶ As it was rightly mentioned by the Government of Colombia veto ‘is mechanism of non-cooperation in a system of collective security which necessarily requires cooperation. Veto has lost practically all its *raison d’être*, having become a privilege lacking any proportion.’²⁷

The facts above proves the necessity to change the SC not only in quantity but also in quality, enlargement with preservation of P5’s veto power will not bring any quality to the Council’s activity. Today’s international reality requires at least limiting the use of the veto to vital national security issues.

ABUSE OF THE VETO POWER AS A BREACH OF THE UN CHARTER

Article 24 of the UN Charter provides that in order to ensure prompt and effective action by the United Nations, its members confer on the UNSC primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the UNSC acts on their behalf. The Article further provides that in discharge of these duties the UNSC shall act in accordance with the Purposes and Principles of the United Nations. The specific powers granted to the UNSC for the discharging of these duties are laid down in Chapters VI, VII, VIII and XII. This is to say that the UNSC has primary responsibility for maintenance of international peace and security conferred to it by the member states and while accomplishing this responsibility the Council shall act in accordance with the purposes and principles of

UN. If the UNSC can not exercise its main functions due to the veto used by one or more of its members it is the direct breach of the UN Charter. For example, if the UNSC cannot act in accordance with responsibilities bestowed to it and do not take appropriate measures to prevent or stop an act which constitutes a real threat to international peace and security due to the veto it is the violation of the Article 24 of the Charter. There are dozens of facts in the history of the UNSC history when the Council did not act when a situation obviously required international action. For example:

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- Since the establishment of the State of Israel in 1948, a *de facto* state of war has existed between that state and most of its neighbors. Its occupation of Palestinian and other Arab territories in the 1967 war has been regularly and overwhelmingly condemned by the UN General Assembly and resisted by the inhabitants of the occupied territories. One of the recent attacks of Israel on its neighbors was against Lebanon in 2006. Judging by the concern expressed by the UN members and the extent of the efforts by the United Nations to deal with the conflict, there is hardly any doubt that the conflict continues to threaten international peace and security. In spite of this persistent threat, the possession by Israel of weapons of mass destruction, and repeated and blatant breaches of the peace committed by the State of Israel, the Council has never determined that the situation in Israel-Palestine constitutes a threat to the peace, which could pave the way for U.N. enforcement measures for the removal of that threat. Since 1967 alone, the United States vetoed over 40 attempts by the Council to address this situation.²⁸ Even modest attempts to reduce the level of violence in the area, such as through an international monitoring mechanism, have been vetoed by the United States.²⁹
- In 1992–1993 after the collapse of the Soviet Union former soviet republics Armenia and Azerbaijan engaged in a conflict which has been lasted for 20 years. As a result of the conflict over the Nagorno-Karabakh region of Azerbaijan 20 percent of the territories of Azerbaijan was occupied. The UNSC adopted four resolutions in 1993 (822, 853, 874 and 884) which demanded immediate release of occupied territories and removal of Armenian troops from the territories

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of Azerbaijan which have not been implemented until today. Despite the fact that Armenia tries present this conflict as an exercise of the right of self-determination of the Armenian population of Nagorno-Karabakh region there dozen of facts proving Armenia's direct participation in the conflict.³⁰ The international community recognizes the Nagorno-Karabakh region (which constitutes five percent of occupied Azeri lands) and surrounding occupied territories as a territory of Azerbaijan. Even though clear fact of aggression against the member state of UN which demanded the UNSC's action under the Chapter VII, the Council did not went beyond of adopting the resolutions of recommendatory character. It is impossible for Azerbaijan to get an obligatory resolution from the Council due to the anticipatory veto power of P5, especially Russia which is not interested in the resolution of the conflict in order to keep the region and especially the oil rich Azerbaijan under the control. As a result of enormous diplomatic efforts Azerbaijan could only achieved the adoption of the resolution A/RES/62/243 by the General Assembly on the agenda item "The situation in the occupied territories of Azerbaijan" in 2008 which once again confirmed that the armed conflict in and around the Nagorno Karabakh region of the Republic of Azerbaijan continued to endanger international peace and security and demanded the immediate, complete and unconditional withdrawal of all Armenian forces from all the occupied territories of the Republic of Azerbaijan.

- In August 2008 Russia bombed Georgia which is also former Soviet Republic and has two unresolved conflicts in its territory as a result of imperialist policy of Russia. When the Saakashvili administration tried to get back its separatist region South Ossetia under Georgia's control the Russian government did not hesitate to intervene with its military in order to remind pro-American Saakashvili regime who is the dominant power in the region. As a result of the conflict Georgia could not only return back its internationally recognized territory, but even got a heavy slip from its former "big brother". Russia punished Georgia not only by bombings, but also by recognizing the independence of

South Ossetia and Abkhazia.³¹ Georgia was punished by Putin's administration in different ways, including by vetoing a resolution on extension of the mandate of the UN Mission in Georgia in 2009 which was established in 1993.³² The UN Security Council was a deaf-mute when its permanent member was bombing a small state in its south by ignoring norms and principles of international law and threatening international peace and security.

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The other provision of the UN Charter which is not obeyed by the P5 members in cases of the abuse of veto power is the Article 2 (2) which requires all member States, 'in order to ensure to all of them the rights and benefits resulting from membership, [to] fulfil in *good faith* the obligations assumed by them in accordance with the present Charter.'³³ The obligation of good faith is a general principle of international law.³⁴ According to Article 26 of the Vienna Convention on the Law of Treaties (Vienna Convention), '[e]very treaty in force . . . must be performed by [its Parties] in good faith'.³⁵ The UN Charter is a treaty. Its members must therefore fulfill their treaty obligations in good faith, including when acting within organs established by that treaty. In the case of the UN Security Council when this body acts or in-acts in contradiction of the principles and purposes of the United Nations Charter due to the use or threat to use veto power, the P5 members abuse their right of veto which demonstrates that they do not act in *good faith* in relation to their obligations assumed by them in accordance with the Charter.³⁶

As it is known the provisions of the treaty, which the UN Charter is, can not be interpreted separately from each other. In this regard, if the UN Charter gives the Security Council permanent members the right of veto this right shall not be realised in contradiction of other provisions of the Charter. While exercising their right of veto P5 members have to abide with the other provisions of the Charter, namely Articles 2 and 24. Otherwise, this act constitutes the breach of treaty obligations.

HOW TO ABIDE VETO?

The abolition or limitation of veto power is in the interests of all UN members, except P5. Even the real candidates to the new permanent seats at the Security Council have to be interested in

its abolition as all reasonable proposals on the Council's enlargement excludes the possibility of creation of new permanent seats with the veto power since this privilege brings no efficiency to the Council's work but makes it rather disorganized and incompetent.³⁷

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In addition, the P5 countries made it very clear that they will not accept the enlargement of veto to the new permanent members. The draft resolution (A/59/L.64) introduced by G4 in 2005 which envisaged enlargement of veto power to the new permanent members encountered with strong disagreement of the P5. The United States had urged the UN members to reject the G4's proposal, saying 'improvements in the world body's management and oversight were greater priorities that should be adopted first'.³⁸

However, any reform of the veto will be very difficult, if not impossible. In fact, Articles 108 and 109 of the United Nations Charter grant the P5 veto over any amendments to the Charter, requiring them to approve any modifications to the UNSC veto power that they themselves hold: it is highly unlikely that any of the P5 would accept a reform of the UN Charter that would be detrimental to their own national interests.

But still it is possible to overcome this power. The first effort to limit the veto came even at Dumbarton Oaks in 1945 when Australia proposed to exclude the veto from all arrangements relating to the peaceful settlement of disputes but failed to attract enough support.³⁹

One of the most successful ventures in relation to limiting the veto power came from within the P5 when in 1950 US Secretary of State, Dean Acheson, developed a proposal designed to neuter the Soviet Union's veto power in relation to the Korean War. In what became known as the "Uniting for Peace" procedure, Acheson came up with the idea of turning to the UN General Assembly to respond to aggression and threats to international peace and security when the Council was prevented from fulfilling its obligations because of the threat of a veto.⁴⁰ Since the transfer of an issue from the Security Council to the General Assembly is considered a procedural matter it was therefore not subject to the P5 veto. Since then, the Uniting for Peace procedure has been used on more than ten occasions to facilitate UN action short of the use of force but its use has been rare in recent decades with the last occasion being in 1997 to take action against Israel.⁴¹ Uniting for Peace procedure can be

invoked by 2/3 majority of the General Assembly members. As this resolution constitutes only possible way at the UN to overcome the SC's inability to provide peace and security in the world as a result of the use of veto the UN Secretary General in its report in 1998 recommended member states which can not find justice at the SC to sue broader support at the General Assembly through the Uniting for Peace resolution.⁴² Despite the fact that this resolution was adopted as a result of the US proposal and leadership they refrained to invoke it subsequently. The most recent example of Syria demonstrates it clearly. The reason why the US does not invoke the UfP resolution is that they are not interested in the matter as much as to carry it to the General Assembly under this procedure which undermines the Security Council authority. And furthermore, they do not want to create so many precedents as the same action can be taken by other P5 members when the US vetoes the SC decision.

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Another way of overcoming the veto power was just ignoring the position of the SC P5 as in 1999 in Kosovo and in 2003 in Iraq which can not be a good solution for the issue. This kind of unilateral action deprives UN its credibility and authority as a universal body responsible for peace and security in the world.

There is also Advisory opinion 151 "Certain expenses of the United Nations" adopted by the International Court of Justice in 1962 which concluded that, according the Article 24 of the United Nations Charter, the Security Council bestowed "primary responsibility" for action to maintain peace and security. From this, the judges deduced that a "secondary responsibility" must have been vested in the General Assembly. This means that if the Security Council can not fulfill its obligations as a primary body responsible for maintaining peace and security, the General Assembly shall act as a second responsible body.⁴³

Last but not least, as it mentioned in the previous part of the paper if the P5 members use their right of veto in contradiction of Article 2 and 24 of the UN Charter, i.e. they abuse their right and do not fulfil their obligations under the treaty in good faith, furthermore they can not perform the responsibility conferred to them, the other parties to the Charter can terminate the fulfilment of the treaty under the reason of breach of the principle *pacta sunt servanda* by the P5.

CONCLUSION

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It is obvious that the Security Council will not become more efficient just if it has 25 members instead of 15. The US will still block any decisions which contradict Israeli interests, including granting membership to Palestine, which is officially recognized by 130 UN members. And the same approach will also be demonstrated by Russia preferring legitimize killing of thousands of innocent peoples by totalitarian regimes under the pretence of defending state sovereignty. It will also block any resolution on the conflicts in post-soviet states. It is clear that the Security Council reforms will not have any crucial results without the elimination or significant limitation of the veto power which is also a relict of Second World War as the SC P5.

Even the Charter makes impossible to eliminate the veto power, it is possible for member states to abide the power in certain situations as was described above. But all above mentioned ways of overcoming the veto power does not bring any credibility to the United Nations and the Security Council. The P5 countries have to understand that while agreeing on the right of veto for them the UN members also put the great responsibility of maintaining the international peace and security on their shoulders. The veto power shall not be regarded separately from the main responsibility of the P5 states which also constitutes the most important purpose of the United Nations. If an organisation can not achieve its core purpose its whole credibility falls under question. Therefore, the UN member states have to focus on the issue of veto as strong as on the issue of enlargement. Only a proper debate about the defects of the veto might at the least yield a "more constructive interpretation" of the nature of the veto and its application. The UN members have to demonstrate their will and decisiveness based on the majority's interest and rightful demand for changing the current Council's structure and the permanent members' inviolable right. Continuous and high level calls for the elimination of veto power by the majority of member states can play a role of public opinion forcing the UN P5 to accept at least the proposals on the limitation of this privilege. At the same time, an informed public awareness of the potential for the Security Council to be bypassed might lead to pressure for exercise of the power in accordance with the Charter

aims and responsibilities bestowed to the permanent members of the Council.

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- 12 Small Five Group proposal on Security Council Reform – November 2011, available at <http://www.unelections.org/?q=node/2385>.
- 13 Joseph Preston Baratta. *"The politics of World Federation"*. (Praeger Publishers 2004), p. 120.
- 14 Kishore Mahbubani. 'The Permanent and Elected Council Members'. In David Malone (ed.). *The UN Security Council*. (Boulder, CO: Lynne Rienner, 2004), p. 259.
- 15 Celine Nahory. "Hidden veto", available at: <http://www.globalpolicy.org/component/content/article/185/42656.html>.
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- 17 Tarik Kafala. "The veto and how to use it", http://news.bbc.co.uk/2/hi/middle_east/2828985.stm.

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- 18 The Charter of the United Nations, Article 2.1.
- 19 The Charter of the United Nations, Article 4.
- 20 Thalif Deen. "How veto powers stymied", available at <http://www.globalpolicy.org/component/content/article/185/42658.html>.
- 21 Speaking at Global Structures Convocation, Washington, D.C., February 1994 (Cited by Phyllis Bennis, *Calling the Shots: How Washington Dominates Today's UN*, Olive Branch Press, New York, (1996), p. 15).
- 22 See Statement by the Delegations of Four Sponsoring Governments on Voting Procedure in the Security Council (San-Fransisco Declaration), June 7, 1945, para 19.
- 23 It has to be noted that even in 1945 not all P5 members can be accepted as a world's great powers. France was trying to restore order on the just liberated territory and was far from the notion of great power. The same was with China which was totally weakened by the war and Japanese occupation and was the threshold of a new civil war.
- 24 UN Document A/64/220, available at: http://www.un.org/ga/search/view_doc.asp?symbol=A/64/220.
- 25 <http://www.un.org/en/peacebuilding/orgcommittee.shtml>.
- 26 Bardo Fassbender. "UN Security Council Reform and the Right of Veto: A constitutional perspective". (Kluwer Law International, 1998), p. 264.
- 27 Statement by Colombia, June 29, 1993 in Question of equitable representation... Report of the Secretary –General , UN Doc. A/48/264.
- 28 Phyllis Bennis. *Calling the Shots: How Washington Dominates Today's UN*. (Olive Branch Press, New York, 1996), p. 27.
- 29 Elias Davidson. "The Security Council's obligations of good faith". *Florida Journal of International Law*, vol. 15, No. 4 (Summer 2003), p. 553.
- 30 For example, in the aftermath of the Presidential elections in Armenia in March 1998 the OSCE/ODIHR Election Observation Mission in Armenia released Final Report in which it expressed extreme concern "that one of the mobile boxes has crossed the national borders of the Republic of Armenia to collect votes of Armenian soldiers posted abroad (Kelbadjar)", thus confirming the deployment of Armenian troops in the Kelbadjar district of Azerbaijan, which was occupied in April 1993. Also the Report of the Political Affairs Committee of the Parliamentary Assembly of the Council of Europe, dated 19 November 2004, declared that: "Armenians from Armenia had participated in the armed fighting over the Nagorno-Karabakh region besides local Armenians from within Azerbaijan. Today, Armenia has soldiers stationed in the Nagorno-Karabakh region and the surrounding districts, people in the region have passports of Armenia, and the Armenian government transfers large amount of budgetary resources to this area". Furthermore, the Council of Europe Parliamentary Assembly Resolution 1416 of 2005 expressed its regret

that “considerable parts of the territory of Azerbaijan are still occupied by Armenian forces and separatist forces are still in control of the Nagorno-Karabakh region”. The Assembly “reiterates that the occupation of foreign territory by a member state constitutes a grave violation of that state’s obligations as a member of the Council of Europe and reaffirms the right of displaced persons from the area of conflict to return to their homes safely and with dignity.” By referring to “member state” the Assembly once again confirmed that its member – Armenia is an occupier of the territories of Azerbaijan.

*Shafa V.
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- 31 “Russia recognizes South Ossetia and Abkhazia to save people’s lives”. Available at: http://english.pravda.ru/russia/kremlin/26-08-2008/106214-russia_ossetia_abkhazia-o/.
- 32 “Russia vetoes extension of UN Mission in Georgia”. Available at: <http://www.un.org/apps/news/story.asp?NewsID=31151&Cr=georgia&Cr1=>.
- 33 The Charter of the United Nations, Article 2.2, (emphasis added).
- 34 Ian Brownlie, *Principles of Public International Law*. (Clarendon Press, Oxford, 1990), p. 19.
- 35 Vienna Convention on the Law of Treaties, May 23, 1969, art. 26, 1155 U.N.T.S. p. 331.
- 36 For more analyses on the issue see Elias Davidson “The Security Council’s obligations of good faith”, *Florida Journal of International Law*, vol. 15, No. 4 (Summer 2003), p. 541–573.
- 37 Ambassador Razali Islamail in his resolution of March 20, 1997, likewise proposed that veto be not extended to new members, explained it in the following way: “... as sustained and virtually universal condemnation has been expressed against veto. I find it inconsistent and unacceptable both logically and morally to extend such a power to new permanent members of the Security Council. To do so would be to compound an inequity.”
- 38 Jonas von Freiseleben “Reform of the Security Council”. p. 7. Available at: <http://globalsolutions.org/files/public/documents/ManagingChange-1.pdf>.
- 39 Nico Krisch. “The Great Powers and the Security Council”. In Vaughan Lowe, Adam Roberts, Jennifer Welsh, and Dominik Zaum. (eds.) *The United Nations Security Council and War* (Oxford: Oxford University Press, 2008), p. 136.
- 40 Dominik Zaum. “The Security Council, the General Assembly, and War”. In Vaughan Lowe, Adam Roberts, Jennifer Welsh, and Dominik Zaum (eds.) *The United Nations Security Council and War* (Oxford: Oxford University Press, 2008), p. 157.
- 41 Citizens for global solutions, “The responsibility not to veto: a way forward”. Available at: <http://globalsolutions.org/files/public/documents/>

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- 42 Report of the UN Secretary General on “Revitalization of the work of the General Assembly” – A/52/856, 17 April 1998.
- 43 Thomas M. Frank. “Collective security and UN Reform: between the necessary and possible”. *Chicago Journal of International Law*, Winter 2006, vol. 6, Issue 2, p. 601.

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