

The Veto: Problems and Prospects

Written by Thomas G. Weiss and Giovanna Kuele

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THOMAS G. WEISS AND GIOVANNA KUELE, MAR 27 2014

On 15 March 2014, the eve of the referendum about the status of Crimea whose results were a foregone conclusion (the eventual 97 percent pro-vote rivaled results from “elections” in the former Soviet Union), thirteen members of the Security Council (the three Western permanent members – France, the United Kingdom, the United States – and all ten elected members) urged countries not to recognize the results of the referendum, while only one country – China – abstained. However, that consensus came to naught as Russia, the fifth permanent member with a veto, voted against resolution 2014.

The most serious East-West confrontation since the end of the Cold War brings sharply back into relief an issue that was front-and-center for the first 45 years of United Nations history.[i] A single state can stand in the way of robust action, or even condemnation, of aberrant behavior that contravenes international law.

Is it possible to change the veto in the Security Council enjoyed by the five permanent members (P5)? If not, are there clever ways around it? The answer to both questions is “no.”

Why the Veto?

As has occurred over almost seven decades of UN experience (more often during the Cold War, less often since), some 232 actual or countless threatened vetoes loom large, circumscribing debate and policy options. For Ukraine it was Russia's, but there have been numerous other instances of single, double, and triple vetoes.

In fact, there have been a total of 190 resolutions vetoed since the Security Council's first meeting on 17 January 1946 – 162 through 1989 and 28 since.[ii] In fact between 1946 and 1956, the Union of Soviet Socialist Republics (USSR) vetoed 50 resolutions before other permanent members used the privilege. 161 resolutions were by a single member of the P5, but there were 16 double vetoes, and 13 triple ones. Diplomatic protocol and political practicalities make these numbers lower than they otherwise might have been because a threatened veto often means that other states return to the drawing boards rather than pushing immediately for a showdown. For instance over the last three years, there have actually been only three vetoes over Syria (all double-vetoes, by Russia and China) despite the real-time horror of 150,000 deaths and 9 million people forcibly displaced. Paralysis pervades despite overwhelming revulsion categorically expressed in the General Assembly and the Human Rights Council.

Two facts should be recalled for the damned-if-you-do-and-damned-if-you-don't provisions for the veto in Charter Article 27. First, the veto was agreed in San Francisco in 1945 because it was necessary to ensure US and USSR participation in the world organization. These countries that would soon be dubbed “superpowers” demanded a greater say than most other member states in decisions about international peace and security. The fact that Washington never joined the League of Nations, and Moscow withdrew, made imperative the securing of their active involvement in the second generation of universal intergovernmental organizations; the veto seemed like a reasonable carrot at the time.

Second – and this reality is often ignored – the logic of the veto is a variation on the Hippocratic Oath: UN decisions should do no harm – that is, at least not make matters worse. The idea of going to war against a major power, even for a land-grab or abuse of power, makes little sense if the result is World War III. Only if the danger were grave

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enough would a worldwide conflagration perhaps be justifiable; but Crimea does not qualify, nor did Iraq. Humanitarians might think that Syria should, but there are few who support that view.

In short, the veto means that the world organization is as ineffective in Syria and Crimea as it was in Iraq in 2003. The UN's constitution requires the P5 to agree or at least not object. Hence, proponents for the Iraq War complained that the UN was powerless to stop Saddam Hussein, whereas those against the war complained that the UN was powerless to stop Washington and London. Both sides were correct.

Altering the Charter?

No question has uselessly spilled more ink or printer toner than reforming the Security Council. The 1965 UN Charter amendment that increased the numbers of elected members from 6 to 10 is one of the few such changes which reflected the influx of new member states following decolonization (along with increased membership in the Economic and Social Council). The demand for further changes – increasing the numbers of elected and permanent members as well as eliminating or expanding the veto – has been a permanent feature of UN debate ever since. Unfortunately, while everyone agrees that the Security Council reflects the world of 1945 and not the 21st century's distribution of power, no one has a solution that satisfies the various factions.

Proposals for additional members include total numbers ranging from 19 to 25 (rather than the current 15), with variations of increased numbers of two-year elected members, the addition of new four-year renewable members, and the creation of four to six additional permanent members, with and without veto. The most frequently mentioned possible candidates for permanent membership – the so-called Gang of Four consisting of Germany, Japan, India, and Brazil – are resisted by at least some of the P5, and regional rivals are actively hostile or passively aggressive about various candidates.

Concerning the veto, some proposals favor no new vetoes for permanent members while others insist upon them – no second-class citizens for Africa, the argument goes, even new permanent ones. Some proposals favor eliminating the veto, but the P5 must agree to voluntarily give up such power. Those wishing to bet on that likelihood are hard to find with odds below zero.

The cacophony, jealousies, and vested interests that have plagued this issue since 1965 remain. Will the inability to move ahead with dramatic reforms compromise UN credibility? No more than in the past.

Finessing the Charter?

Is there a way around the veto? When the Security Council is paralyzed, the General Assembly can address that crisis. “Uniting for Peace” was first passed by the General Assembly in 1950 to circumvent the blockage of the Security Council in the conflict in Korea; the USSR's obstructionist policy systematically deployed its veto after its return following a temporary boycott – during which pouting, the council had authorized the US-led action against North Korea. The “Uniting for Peace” procedure has fallen into disuse; it has been used only sporadically, a total of ten times, mainly because it transfers power to the General Assembly. The P5 are especially uneasy about the assembly's abrogating to itself a decision about when the Security Council has failed to meet its primary responsibility to maintain international peace and security, in contradiction with the spirit and law of the UN Charter.

To be constitutionally valid, “Uniting for Peace” must be triggered by the Security Council, which can refer a matter to the General Assembly by a procedural vote requiring only 9 positive out of 15 possible votes (procedural questions are not subject to the veto). It is unlikely that such a procedural vote will result for Crimea for two reasons. First, it would take a large expenditure of diplomatic energy – in the fourth year of unspeakable carnage and suffering, Syria has not yet resulted in such a proposal even though the General Assembly (along with the Human Rights Council) has overwhelmingly condemned the Bashar al-Assad regime on several occasions. Second, other P5 members will not push Russia because a precedent for the goose would later entail problems for the gander – for instance, Washington would not want a replay when Israel next uses force in Palestine and the United States wishes to keep the United Nations at arms-length.

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Lawyers and political analysts are reluctant to revise the “Uniting for Peace” procedure as a gimmick around the Security Council’s deadlock in exceptional circumstances – what exactly is an illegitimate use of the veto? A variety of proposals have been tabled to preserve checks and balances; the most often discussed would be to require a qualified majority in both the Security Council and the General Assembly. Such measures remain in the domain of speculation.

The use of force bears scrutiny because it is lawful under the UN Charter only if authorized by the Security Council with a Chapter VII decision or if justified by the provisions in that chapter for self-defense (Article 51). Clearly the first condition does not apply in Crimea as it did not in Iraq or Kosovo (because of threatened vetoes) but did in Libya. Conceivably Moscow could claim self-defense (with a stretch of imagination to be sure, but that is not infrequent on First Avenue) because its Black Sea installations and its national security were menaced by a coup d’état in Kiev and increasing instability. While pre-emptive self-defense has not yet surfaced as a justification, it yet may despite the absence of any widespread violence. In any event, self-defense resembles Potter Stewart’s definition of pornography; and like it, everyone can justify his or her own definition.

Hypocrisy of course is not in short supply, among major or minor powers. Moscow frequently inserts into press releases the fact that the US- and UK-led coalition went to war in Iraq in 2003 without a UN imprimatur. In spite of the UN’s lengthy involvement – first in authorizing the Persian Gulf War and subsequently in a host of sanctions and other Chapter VII measures against Saddam Hussein’s administration – the coalition in the Iraq War acted no differently nor took international law more seriously than the Kremlin today.[iii]

Russia customarily mentions Kosovo in the next breath, but that crisis was different, not least because the Independent International Commission on Kosovo concluded that “the NATO military intervention was illegal but legitimate.”[iv] It was “unilateral” because it was illegal under the Charter regime, but it was not “unilateral” (meaning one state or only a few) because NATO voted unanimously to intervene in its region the same way that on numerous occasions the Economic Community of West African States has decided to intervene robustly in its region while the Security Council dawdled.

Realists insist that great powers invariably do what great powers do: act to protect their perceived self-interests regardless of international law or the opinion of the international community of states. That may not always be true, but it certainly applies to the right and use of the veto at the high table of great powers in the Security Council.

One other tactic is sometimes mentioned. Is it possible to get the P5 to agree not to use their veto in particular conscience-shocking cases? Many observers, including the so-called S5 of small states (Costa Rica, Jordan, Lichtenstein, Singapore, and Switzerland), have answered affirmatively at least regarding mass atrocities. They seek, so far quite unsuccessfully, to build on the plea from the International Commission on Intervention and State Sovereignty (ICISS) that “the Permanent Five members of the Security Council seek to reach agreement not to apply their veto power where their vital state interests are not involved, to obstruct the passage of resolutions authorizing military intervention for human protection purposes for which there is otherwise majority support.”[v]

That sleight of hand is unlikely to work because numerous sins have been justified under a “humanitarian” rubric, which is why humanitarian intervention remains contested. The Kremlin has referred to this oldest justification for humanitarian intervention in Crimea, namely the protection of nationals. The ICISS pointed to the international legal literature beginning in the 1840s that reflected intervention in Greece in 1827 by England, France, and Russia to halt Turkey’s massacres of populations associated with insurgents, and in Syria in 1860 by France to protect Maronite Christians. After another three interventions by European powers in the Ottoman Empire, by the 1920s the legal rationale for intervention had broadened to include the protection of nationals.[vi]

Russia resorted to that argument in justifying its 2008 military actions against Georgia and its occupation of South Ossetia and Abkhazia; Moscow referred to the “responsibility to protect” (R2P) as its rationale, but only briefly as diplomatic guffaws followed. As in Crimea, Russian speakers were in the majority in these two regions of Georgia – along with evidence of Moscow’s issuing passports to prove citizenship and no evidence of mass atrocities against Russian speakers.

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Most observers agree that R2P's potential strength, like all norms, is demonstrated by its legitimate use; but its misuse demonstrates traction as well because normative imitation is a form of flattery.[vii] As such, abusing the principle – as in the case of the United States and the United Kingdom for Iraq in 2003, Russia for Georgia in 2008, and France for Burma in 2008 – also helped to clarify what it was not. R2P was not an acceptable rationalization for the war in Iraq after the original justifications (links to Al-Qaeda and weapons of mass destruction) evaporated; nor for Moscow's imperial aims in its weaker neighbor; nor for intervention after a hurricane when the local government was hampering emergency aid but not murdering its population.

To paraphrase a catchy slogan from endless debates about terrorism, “my vital interest is your humanitarian procedural matter.” It is impossible to define away significant differences in political views among great powers.

Conclusion

Permanent Security Council membership and the veto in particular appear anachronistic relics; but they are here to stay because every proposed change raises as many problems as it solves. If it was not clear earlier, the crises in Crimea and Syria demonstrate now why Russia will not agree to set aside the veto just as ongoing troubles in the Middle East indicate unequivocally why the US Senate will not agree to any such change.

The growing confrontation over Russia's annexing Crimea follows three years of *nyet* to prevent international action to halt Syria's abattoir. It is redolent not only of the Cold War but also of the paralysis in the UN Security Council during that period because of actual or threatened vetoes by permanent members. Alas, there were no procedural gimmicks or structural constitutional changes then or today. The death knell for Security Council reform, especially the veto, has tolled.

[i] Thomas G. Weiss, David P. Forsythe, Roger A. Coate, and Kelly-Kate Pease, *The United Nations and Changing World Politics* (Boulder, CO: Westview Press, 2014).

[ii] Dag Hammarskjöld Library, “Security Council-Veto List,” available at http://www.un.org/depts/dhl/resguide/scact_veto_en.shtml.

[iii] John S. Duffield and Peter J. Dombrowski, eds., *Balance Sheet: The Iraq War and US National Security* (Palo Alto: Stanford University Press, 2009).

[iv] Independent International Commission on Kosovo, *Kosovo Report: Conflict, International Response, Lessons Learned* (Oxford: Oxford University Press, 2000), 4. See also: Michael Byers and Simon Chesterman, “Changing Rules about Rules? Unilateral Humanitarian Intervention and the Future of International Law,” in *Humanitarian Intervention: Ethical, Legal and Political Dilemmas*, ed. J. F. Holzgrefe and Robert O. Keohane (Cambridge: Cambridge University Press, 2003), 177-203.

[v] ICISS, *The Responsibility to Protect* (Ottawa: International Development Research Centre, 2001), 75.

[vi] Thomas G. Weiss and Don Hubert, *The Responsibility to Protect: Research, Bibliography, Background* (Ottawa: International Development Research Centre, 2001), 15-26.

[vii] Cristina Badescu and Thomas G. Weiss, “Misrepresenting R2P and Advancing Norms: An

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