

## INSTITUTIONAL LIMITATIONS WITHIN THE UNITED NATIONS SECURITY COUNCIL: A CALL FOR REFORM

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### Abstract

*This article titled 'Institutional Limitations of the United Nations Security Council in the Maintenance of International Peace and Security' is aimed at examining the institutional limitations of the United Nations Security Council in maintenance of international peace and security and recommending the need for reform in light of modern realities. It is the findings of this research work that (i) the categories of membership which differentiate between permanent and non-permanent membership has led to dissatisfactions among UN member states which affects the effectiveness of the Security Council in the discharge of its primary objective of maintaining international peace and security. This work recommends that (i) Article 23 of the UN Charter should be amended to remove the disparity among member states in the Council, thus removing the dichotomy of permanent and non-permanent membership; (ii) that Article 27 of the UN Charter be amended to reflect a voting pattern of two-third majority in all decisions/resolutions of the Council. (iii) Article 23 of the UN Charter should be amended for the addition of more members into the Security Council, thereby giving more participation to member states from different regions of the world.*

### 1.0 Introduction

Before delving into the subject matter of this article it is imperative that recourse is made briefly towards discussing the evolution of the United Nations. Indeed, a discussion of the evolution of the UN will be incomplete if no mention is made of its roots in the League of Nations. Several philosophical and juristic writings had advocated for an international organization responsible for the maintenance of peace. The immediate source of League of Nations is traceable to a proposal that was made at the Peace Conference in Paris in 1919. The major powers at the time played critical roles in the drafting of the Covenant of the League. This no doubt failed to incorporate the contribution of other lesser known countries and political entities yet to qualify as states. As a matter of fact the draft emerged as a fusion of President Wilson's third draft and the British proposals emanating from the Phillimore Committee.

The League had several lofty ideals. Its core objective was to promote international cooperation and to achieve international peace and security. Collective security as provided in the Covenant was hinged on the notions of disarmament,<sup>1</sup> pacific settlement of disputes and the outlawry of war,<sup>2</sup> a collective guarantee of the independence of each member<sup>3</sup> and sanctions.<sup>4</sup>

Deplorably the League failed to live up to expectation as its disarmament programme failed to prevent the occurrence of a major world war. The League had three principal organs which included the Council,

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1 Covenant of the League of Nations, 1919, art 8.

2 UNC, art 11-15.

3 Ibid, art 10.

4 Ibid, art 16 & 17.

the Assembly and the Secretariat. The membership of the Council was limited to representatives of the Principal Allied and Associated Powers together with the representatives of four other members selected by the Assembly from time to time.<sup>5</sup> The Assembly was the plenary organ of the League. It met on an annual basis. It consisted of states signatories of the Versailles Treaty, neutral states and any fully self-governing state, dominion or colony. The Secretariat can qualify as an international civil-service, and a daring one at that.

Several reasons have been advanced for why the League failed in its mission and one of such was because it lacked a universal character and appeal. For instance, the United States of America as powerful as it is was not a part of the League. Rather the League was basically the exclusive preserve of European countries with over fifty nine countries. Another major reason for the failure of the League was because of the lack of readiness by members to fulfill their obligations under the covenant. It did not fail because of any defect in its laws. If this issue of unwillingness to fulfill obligations under the covenant had been properly addressed and dealt with from the very onset it is possible a major world war would not have happened. Eventually the League came to an end on 18<sup>th</sup> April 1946.

Under the Charter,<sup>6</sup> the primary responsibility of the Security Council is to maintain international peace and security. The Council has 15 Members, and each Member is entitled to one vote. Under the Charter, all Member States are obligated to comply with the decisions of the Council.<sup>7</sup>

Whenever there is a threat to peace or there are acts of aggression it is the duty of the Council to intervene. It does so by making recommendations or deciding what measures that should be taken.

The Economic and Social Council (ECOSOC) is saddled with the responsibility of handling economic, social and environmental challenges. It debates on issues of this nature and make policy recommendations thereafter.

It oversees the human and financial resources of the whole United Nations. This also covers the specialised agencies, commissions and regional commissions.<sup>8</sup>

The Council usually meets from time to time with prominent academics, business sector representatives and registered non-governmental organizations.

The Trusteeship Council is saddled with the responsibility of supervising the administration of Trust Territories placed under the Trusteeship System.<sup>9</sup> The Trusteeship System was created to protect the interest of those who inhabited areas designated as trust territories. It was meant to advance their interest and to ensure that they transit progressively towards independence or self-government.<sup>10</sup> The

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5 UNC, art 4.

6 UNC, art 24.

7 UNC, art 24..

8 Ibid, art 62-66.

9 Ibid, art 75.

10 Ibid, art 76.

Trusteeship Council consists of the five permanent members of the Security Council, which includes China, France, Russian Federation, United Kingdom and United States. The aims of the Trusteeship System have been achieved such that all Trust Territories have attained independence self-government, either as separate States or by joining neighbouring independent countries.

The Council suspended operation on 1 November 1994 when Palau attained independence—the last remaining United Nations trust territory, on 1 October 1994. Having achieved virtually all its goals the Council then adopted a resolution on 25 May 1994, amending its rules of procedure to drop the obligation to meet annually and agreed to meet as occasion required such as by its decision or the decision of its President, or at the request of a majority of its members or the General Assembly or the Security Council.

The International Court of Justice (ICJ) is the principal judicial organ of the United Nations (UN). It was established in June 1945 by the Charter of the United Nations and began work in April 1946.<sup>11</sup> The seat of the Court is at the Peace Palace in The Hague which is in Netherlands. Of the six principal organs of the United Nations, the ICJ is the only organ not located in New York (United States of America).

The Court's role is to settle legal disputes submitted to it by States in line with international law and to give advisory opinions on legal questions referred to it by authorised United Nations organs and specialised agencies.<sup>12</sup>

The Court is made up of 15 judges, who are elected for terms of office of nine years by the United Nations General Assembly and the Security Council. It is assisted by a Registry, being its administrative organ. Its official languages are English and French.<sup>13</sup>

The Secretariat consists of international staff working in duty stations around the world carrying out the diverse day-to-day work of the Organisation. It services the other principal organs of the United Nations and administers the programmes and policies laid down by them. The head of the Secretariat is the Secretary General, who is appointed by the General Assembly on the recommendation of the Security Council for a five-year term that is renewable.

The Secretariat handles different types of duties just the same way the United Nations does. Some of these duties include administering peacekeeping operations to mediating international disputes, from surveying economic and social trends and problems to preparing studies on human rights and sustainable development.

Although the United Nations has its headquarter in New York it also has important offices in Addis Ababa, Bangkok, Beirut, Geneva, Nairobi, Santiago and Vienna, and all over the world.

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11 UNC, art 7.

12 Ibid, art 95.

13 Ibid, art 97.

Article 39 under Chapter VII of the UN Charter gives the Security Council primary mandate to maintain international peace and security. The Council can achieve this in two ways. It can establish peacekeeping operation on the one hand or enforce peace in areas of conflict. It has the power to mandate UN Peacekeeping operations. Their tasks differ from situation to situation, depending on the nature of the conflict and the specific challenges it presents. It is true that UN Peacekeeping operations differ, notwithstanding there are similarities in terms of the kinds of tasks they are mandated to handle by the Security Council. In some cases they may be deployed to stop the outbreak of conflict. In some other case they may be tasked to stop the spill-over of conflict across borders. Recourse shall now be made to discussing a key institutional limitation—veto power.

## **2.0 Veto Power**

### **2.1 Origins of the Veto Provisions**

A definition of what veto power is shall be a good starting point here. Veto power has been defined as the power or right vested in one branch of a government to cancel or postpone the decisions, enactments, etc., of another branch, especially the right of a president, governor, or other chief executive to reject bills passed by the legislature.<sup>14</sup> The United Nations Security Council power of veto refers to the veto power wielded solely by the permanent five members of the United Nations Security Council (China, France, Russia,

United Kingdom and United States) enabling them to prevent the adoption of any substantive resolution, as well as decide which issues fall under the substantive title.<sup>15</sup>

The idea of states having a veto predates post Second World War. Nations could exercise veto power over the actions of international organizations even before 1945. Under the League of Nations in 1920, each member of the League Council, whether permanent or non-permanent, could exercise veto on any non-procedural issue.<sup>16</sup>

At the beginning of the League of Nations in 1920, there were 4 permanent and 4 non-permanent members, but by 1936 the number of non-permanent members had increased to 11. Consequently, there were 15 vetoes. This was a serious procedural defect in the League which hampered decision making. The UN founding members knew too well not to repeat the same mistake. They had to discuss extensively on best approach to take on this. Eventually after extensive discussions, including at Dumbarton Oaks (August–October 1944) and Yalta (February 1945), the United Nations Charter veto provision among the permanent five birthed.<sup>17</sup> The outcome of these discussions is that the UK, US, USSR, and France all favored the veto power, and that they were motivated in this not only by a belief

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<sup>14</sup> Dictionary.com, 'Veto,' <<https://www.dictionary.com/browse/veto>> accessed 3 August 2024.

<sup>15</sup> The IPFS Website:

[https://ipfs.io/ipfs/QmXoyvizjW3WknFiJnKLwHCnL72vedxjQkDDP1mXWo6uco/wiki/United\\_Nations\\_Security\\_Council\\_veto\\_power.html](https://ipfs.io/ipfs/QmXoyvizjW3WknFiJnKLwHCnL72vedxjQkDDP1mXWo6uco/wiki/United_Nations_Security_Council_veto_power.html). accessed 3rd August 2024.

<sup>16</sup> League of Nations Covenant, art 5(1).

<sup>17</sup> Edward C Luck 'Creation of the Council' in Lowe and Others (eds), *The United Nations Security Council and War: The Evolution of Thought and Practice since 1945* (Oxford University Press 2008) 61–85.

in the desirability of the major powers acting together, but also by a concern to protect their own sovereign rights and national interest.<sup>18</sup>

The veto power exercised by the five permanent members of the UNSC is found in Article 27 which states:

1. Each member of the Security Council shall have a vote.
2. Decisions of the Security Council on procedural matters shall be made by an affirmative vote of nine members.
3. Decisions of the Security Council on all other matters shall be made by an affirmative vote of nine members including the concurring votes of the permanent members; provided that, in decisions under Chapter VI, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting.<sup>19</sup>

Consequently, by virtue of Article 27 of the United Nations Charter, Security Council decisions require a different majority depending on their nature. For decisions on procedural matters an affirmative vote of 9 members will be needed, while substantive decisions require an affirmative vote of 9 members, which includes the concurring vote of the permanent members. In the event that a permanent member votes against a Resolution, the Resolution cannot be adopted.

Prior to the commencement of the United Nations, the world powers had presumed that there will be cooperation amongst them and there will be little to no need to use the veto power. Time has proven them wrong.

Below are instances where veto power was exercised by the great powers:<sup>20</sup>

- 1) Between 16 February 1965 to 28 February 2019, the veto was mainly used by Russia and the United States. Russia used it 112 times and the United States used it 81 times.
- 2) The formal veto was used 249 times up until 28 February 2019. The use of the formal veto drastically declined after 1995 when it was used only 38 times. This gives an average of 8.3 vetoes a year until 1995, and only 1.5 vetoes a year after.
- 3) Between 1996 and February 2019, the United States has used the formal veto 15 times, Russia 21 times and China 11 times. France and the United Kingdom did not exercise their veto rights during this period.
- 4) 59 vetoes have been used to block admission of member states: non-peace loving states of World War II such as Italy and Japan.

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<sup>18</sup> Winston S. Churchill, *The Second World War, vol. 6: Triumph and Tragedy* (Cassell, London 1954) 181-2 and 308-13; Harry S. Truman, *Year of Decisions: 1945* (London, 1955) 194-5, 201, and 206- 7; Charles de Gaulle, *War Memoirs: Salvation 1944-1946 – Documents, tr. Murchie and Erskine* (London, 1960) 94-5.

<sup>19</sup> UNC, art 27 (1-3).

<sup>20</sup> Dag Hammarskjöld Library, 'United Nations, Research Guides & Resources— UN Documentation: Security Council - Veto List,' <<https://research.un.org/en/docs/>> accessed 3 August 2024; United Nations, 'UN Security Council Documentation,' <<http://research.un.org/en/docs/sc>> accessed 3 August 2024.

Since 16 February 1946 when the Union of Soviet Socialist Republics (USSR) cast the first veto on a draft resolution regarding the withdrawal of foreign troops from Lebanon and Syria the veto has been recorded 292 times.<sup>21</sup>

In the early years of the UN, the USSR cast exercised more veto, with a large amount of these used to prevent the admission of a new member state. Over the years, the USSR/Russia has cast a total of 141 vetoes, or close to half of all vetoes.<sup>22</sup> The US cast the first of its 83 vetoes to date on 17 March 1970. The USSR had by that point cast 107 vetoes<sup>23</sup> Since 1970, the US has used the veto far more than any other permanent member, mostly to block decisions that does not favour Israel. The UK has exercised the veto 32 times, the first of such being on 30 October 1956 during the Suez crisis.<sup>24</sup> France applied the veto for the first time on 26 June 1946 with respect to the Spanish Question and has cast a total of 18 vetoes.<sup>25</sup> China has used the veto 14 times, with the first one, on 13 December 1955, cast by the Republic of China (ROC) and the remaining 13 by the People's Republic of China after it succeeded ROC as a permanent member on 25 October 1971.<sup>26</sup>

Post-Cold War era has seen the emergence of new trends in how the P5 members use veto power. France and the UK have not cast a veto since 23 December 1989.<sup>27</sup> However they defended the USA when it invaded Panama. Surprisingly China, which has historically used the veto the least, has become increasingly active on this front and cast 11 of its 14 vetoes since 1997.<sup>28</sup> Russia cast 22 vetoes in this period, whereas the US has resorted to the veto 16 times since the end of the Cold War.<sup>29</sup>

Till date various nations of the world continue to criticize veto power. What is even worrisome is that since 1945 several other nations have risen to prominence and achieved economic and political power of global status yet are deprived of the right to counter the decisions reached by the P5. Veto power has been described as anachronistic in nature.

The High Panel Report states that the institution of the veto has anachronistic character that is unsuitable for the institution in an increasingly democratic age with no practical way of changing the existing members veto power.<sup>30</sup> The main criticism against the exercise of veto power by the P5 is that matters decided in the Security Council can be vetoed by any of the P5 members.

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<sup>21</sup> Security Council Report, 'UN Security Council Working Methods,' <<https://www.securitycouncilreport.org/un-security-council-working-methods/the-veto.php>> accessed 3 August 2024; 0 (S/PV.23) Letter from the Heads of the Lebanese and Syrian delegations to the Secretary-General dated 4 February 1946.

<sup>22</sup> Nahory (n 52).

<sup>23</sup> Ibid.

<sup>24</sup> United Nations Security Council, Letter dated 28 February 2014 from the Permanent Representative of Ukraine to the United Nations addressed to the President of the Security Council (S/2014/136) <[https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s\\_2014\\_136.pdf](https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2014_136.pdf)> accessed 4 August 2024; S/3710 Letter dated 29 October 1956 from the USA to the President of the Security Council concerning the Palestine question (Suez Crisis).

<sup>25</sup> Ibid; 6 (S/PV.49) The Spanish question (Specifically, the question of actions to be taken with regards to Francoist Spain).

<sup>26</sup> (S/3502) Admission of new Members Mongolia (Mongolian People's Republic and the end of the Sino-Soviet Treaty of Friendship and Alliance).

<sup>27</sup> Ibid; S/21048 The situation in Panama (United States invasion of Panama).

<sup>28</sup> Ibid.

<sup>29</sup> Ibid.

<sup>30</sup> C Nahory (n 52).

The Permanent five have been given power without responsibility whereas the non-permanent members were given responsibility but no power.<sup>31</sup>

In the 1994 mayhems of Rwanda, the word ‘genocide’ would have required intervention by parties to the 1948 Genocide Convention.<sup>32</sup> Thus, the atrocities in Rwanda were defined as ‘acts of genocide, a definition not requiring such severe action. The use of the hidden veto blocked the ability of the Security Council to take effective, timely action to safeguard peace and prevent the massive loss of life.

History has shown that the permanent five act in pursuit of their respective interest and not necessarily in accordance with the ideals and aspirations set out in the United Nations Charter. The situation during the Cold War when the Security Council was paralyzed by the conflict between two of its permanent members, the United States and the Soviet Union is an example of this. Likewise, the crisis in Ukraine is a current illustration of this. On 15 March 2014, Russia vetoed a Letter from the Permanent Representative of Ukraine to the United Nations addressed to the President of the Security Council.<sup>33</sup>

The use of veto power is contrary to certain principles of the UN Charter. The principle of power politics in the Security Council does not tally with the general legal principles enshrined in the United Nations Charter.

Clyde Eagleton, in analyzing the role of power politics in the legal procedure of the United Nations has heavily criticized the United States, which put into the United Nations Charter the veto, ‘to enable us to escape submission to law.’<sup>34</sup> The Carnegie Endowment for International Peace likewise saw veto power as something negative. As a matter of fact, it was argued that its effect is not to foster cooperation; it is to prevent action.<sup>35</sup> It has been argued that such an inconsistent application of the principles of the United Nations Charter because of power politics renders them de facto obsolete and undermines the good intentions of the United Nations system.<sup>36</sup> Ironically, it is the permanent members of the Security Council and their allies who have launched military aggressions and thus jeopardized world peace.<sup>37</sup> It has therefore become obvious that the Security Council cannot effectively carry out its mandate.

To summarize, while there exist some benefits of the veto power, its disadvantages far outweigh its advantages. To this end, it is imperative that the veto power be reformed. It is submitted that the veto power should be amended from absolute to limited. In other words it should not be abolished.

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<sup>31</sup> Kishore Mahbubani, ‘The Permanent and Elected Council Members,’ in David M. Malone (ed), *The UN Security Council: From the Cold War to the 21st Century* (Boulder 2004).

<sup>32</sup> UNGA, ‘Prevention and Punishment of the Crime of Genocide,’ 9 December 1948, A/RES/260.

<sup>33</sup> United Nations Security Council (n 216); (S/2014/136) <[https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s\\_2014\\_136.pdf](https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2014_136.pdf)> accessed 4 August 2024.

<sup>34</sup> Clyde Eagleton, ‘The Task of the International Lawyer,’ *American Journal of International Law*, 41 (1947) 437.

<sup>35</sup> The Secretariat of the United Nations (Under the auspices of the Carnegie Endowment for International Peace), (New York: 1964) 52.

<sup>36</sup> Benjamin Cohen, *The United Nations: Institutional Development, Growth and Possibilities* (Cambridge: Mass 1961) 15.

<sup>37</sup> Robert E. Riggs, ‘The United States and Diffusion of Power in the Security Council,’ *International Studies Quarterly*, 22(4) (1978) 513-544.

### **3.0 United Nations Security Council's Resolutions in Peacekeeping Operations**

There are about sixty-two peacekeeping operations as well as three advance or observer missions carried out by the Security Council. These have been executed in different regions, areas and sub regions of the world

In Africa, for example there has been peace keeping operations in Angola called the United Nations Observer Mission in Angola (MONUA) between 1996- 1999. The United Nations Observer Mission in Angola (MONUA) was established on 30 June 1997 to assist the Angolan parties in consolidating peace and national reconciliation, enhancing confidence-building and creating an environment conducive to long-term stability, democratic development and rehabilitation of the country. MONUA was terminated on 26 February 1999 as it was concluded that the conditions for maintaining a UN presence in Angola had ceased to exist.<sup>38</sup> Chapter VIII of the Charter provides for the involvement of regional arrangements and agencies in the maintenance of international peace and security provided such activities are consistent with the purposes and principles outlined in Chapter I of the Charter.<sup>39</sup>

### **3.1 Peacekeeping Mandates**

UN peace operations are deployed on the basis of mandates from the United Nations Security Council. Over the years, the range of tasks assigned to UN peace operations has increased significantly due to changing forms of crisis and conflicts and to best deal with threats to international peace and security. While each UN peace operation is different, there is some level of uniformity in the types of mandated tasks assigned by the Security Council. Depending on their mandate, peace operations may be required to:

- 1) Prevent the outbreak of conflict or the spill-over of conflict across borders;
- 2) Stabilize conflict situations after a ceasefire, to create an environment for the parties to reach a lasting peace agreement;
- 3) Assist in implementing comprehensive peace agreements;
- 4) Lead states or territories through a transition to stable government, based on democratic principles, good governance and economic development.<sup>40</sup>

### **3.2 The Basic Principles of United Nations Peacekeeping**

Although the practice of United Nations peacekeeping has evolved significantly over the past six decades, three basic principles have traditionally served and continue to set United Nations peacekeeping operations apart as a tool for maintaining international peace and security:<sup>41</sup>

- 1) Consent of the parties
- 2) Impartiality
- 3) Non-use of force except in self-defence and defence of the mandate

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<sup>38</sup> United Nations, 'Peacekeeping Operations,' <<https://main.un.org/securitycouncil/en/content/repertoire/peacekeeping-missions>> accessed 5 August 2024.

<sup>39</sup> Ibid.

<sup>40</sup> United Nations, 'Mandates and the Legal Basis for Peacekeeping' <<https://peacekeeping.un.org/en/mandates-and-legal-basis-peacekeeping>> accessed 7 August 2024.

<sup>41</sup> United Nations, 'United Nations Peacekeeping Operations Principles and Guidelines' (2008) 31 <[https://peacekeeping.un.org/sites/default/files/capstone\\_eng\\_0.pdf](https://peacekeeping.un.org/sites/default/files/capstone_eng_0.pdf)> accessed 10 August 2024.



These principles are inter-related and mutually reinforcing.

1) Consent of the parties.

United Nations peacekeeping operations are deployed with the consent of the main parties to the conflict. This requires a commitment by the parties to a political process and their acceptance of a peacekeeping operation mandated to support that process.<sup>42</sup>

2) Impartiality.

UN peacekeeping operations must implement their mandate without favour or prejudice to any party. Impartiality is crucial to maintaining the consent and cooperation of the main parties, but should not be confused with neutrality or inactivity. United Nations peacekeepers should be impartial in their dealings with the parties to the conflict, but not neutral in the execution of their mandate.<sup>43</sup>

3) Non-use of force except in self-defense and defense of the mandate.

The principle of non-use of force except in self-defense is traceable to the first deployment of armed United Nations peacekeepers in the year 1956. Self-defense as a concept has subsequently evolved to include resistance to attempts by forceful means to prevent the peacekeeping operation from discharging its duties under the mandate of the Security Council. United Nations peacekeeping operations are not an enforcement tool. However, it is widely understood that they may use force at the tactical level, with the authorization of the Security Council, if acting in self-defense and defense of the mandate.

#### **4.0 Institutional Limitations to the Power of the Security Council in the Maintenance of International Peace and Security**

The debate about the limits of the Security Council enforcement powers is traceable to the Dumbarton Oaks proposals and the *travaux préparatoires* of the UN Charter. The Security Council was meant to be a political organ with powers as wide as that exercised by the police, empowered to maintain international peace and security.<sup>44</sup> The UN itself was likewise structured from the beginning to be ‘a universal instrument of geopolitics.’<sup>45</sup>

Although the question of legal limits on the Council’s powers is more properly discussed in conjunction with the question of judicial review, these are two separate issues.<sup>46</sup> Duggard, in an article entitled, *Judicial Review of Sanctions*, asked whether the Security Council is bound by the law or it is omnipotent and *legibus solutus*.<sup>47</sup> The answer to the question is that the Security Council is not sovereign and not above the law.<sup>48</sup>

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<sup>42</sup> Ibid, 31.

<sup>43</sup> United Nations, ‘United Nations Peacekeeping Operations Principles and Guidelines’ (2008) 31 <[https://peacekeeping.un.org/sites/default/files/capstone\\_eng\\_0.pdf](https://peacekeeping.un.org/sites/default/files/capstone_eng_0.pdf)> accessed 10 August 2024.

<sup>44</sup> UNC, art 24.

<sup>45</sup> R A Falk, *The United Nations and the Rule of Law* (4th ed: TLCP 1994) 625.

<sup>46</sup> M Skubiszewski, ‘The International Court of Justice and the Security Council’ in V Lowe and M Fitzmaurice (eds), *Fifty Years of International Court of Justice: Essays in Honour of Robert Jennings* (1996) 626-627.

<sup>47</sup> A Duggard, ‘Judicial Review of Sanctions’ in Gowlland-Debbs (eds), *United Nations Sanctions and International Law* (2006) 86.

<sup>48</sup> Ibid, 86.

The contradiction between the UN's principle of sovereign equality of member states and the seemingly unfettered power of the Security Council is one that has gained notoriety amongst scholars. As a matter of fact, it is very unlikely that an organisation based on the principle of sovereign equality of its Member States would confer unlimited powers to any of its organs.<sup>49</sup> This position was restated in the early jurisprudence of the International Court of Justice (ICJ),<sup>50</sup> and also by the International Criminal Tribunal in Yugoslavia (ICTY) Appeals Chamber, in the Tadic's case.<sup>51</sup> It is argued that Article 25 of the UN Charter serves as a specific legal basis for the Council's obligation to respect the Charter. Under such interpretation of Article 25, States should accept and carry out only those decisions of the Council which are *intra vires* and consistent with the Charter.<sup>52</sup> The import of this is that where Council decisions are *ultra vires*, states should not be under compulsion to accept and carry them out. The question here is whether this has been the true position of things in practice? Having stated the legal limitations that may affect the Security Council in the maintenance of international peace and security, the major limitations will now be discussed:

#### **(i) Inadequate Representation in the UN Security Council**

There are about 193 countries in the United Nations. The Security Council which is the most powerful arm is made up of fifteen members out of which only five have veto power. This structure is not democratic in any sense, neither does it represent all regions of the world properly.

In 1956 there was an attempt to reform the Security Council. 18 Latin American Countries were the major actors in this regard. The present fifteen state composition of the Security Council was ratified by two-third of UN member states in 1965.<sup>53</sup> The pressure to reform continued in the period between 1970 and 1990 as the members of the Non-Aligned Movement (NAM) developed a platform with the objective 'to work towards further democratisation of the UN' and secure the widest participation of member states in United Nations decision-making.<sup>54</sup> No progress, however, could be made at that time due to the superpower competition that hindered any attempts at reform. In fact, the deadlock in the Security Council prevented any change, be it to the benefit of the poorer countries or the industrialised world, as any aspirations of the Western states to add new members to the UNSC were equally blocked.<sup>55</sup>

#### **(ii) Permanent Membership and the Use of Veto**

The UNSC right from inception was invested with special powers and responsibilities.<sup>56</sup> The permanent members were given the privilege chart the course of international peace and security, as well as to veto

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49 M B Simma, 'From Bilateralism to Community Interest in International Law,' (1994) 250 RCADI, VI, 270.

50 Advisory Opinion ICJ Reports (1948) 64.

51 *Prosecutor V. Tadic*, No.IT-94-1-AR72 at para. 28.

52 A Zamanek, *The Legal Foundations of the International System*, Geneva Course on Public International Law (1997) 266 RCADI, 96.

53 O G Ofuaku and O Ukaga, 'The United Nations Security Council Reform: A Critical Analysis of the Enlargement Option,' *Journal of Third World Studies* (2001) 18(2) 149-169.

54 D Bourantonis, 'Reform of the UN Security Council and Non-Aligned States,' *International Peacekeeping*, (1998) 5(1) 90.

55 D Bourantonis, 'Reform of the UN Security Council and Non-Aligned States,' *International Peacekeeping*, (1998) 5(1) 90.

56 UNC, art 24.

the resolutions proposed by other members.<sup>57</sup> The UN Charter does not specifically provide for the qualifications required of a country to become a permanent member. However one can deduce that since the function of the Security Council is to maintain peace and security it suggests that the permanent members would be the member-states most capable of performing this function.<sup>58</sup> However, this position is not watertight because neither France nor Great Britain conformed to this condition in 1945 when the UN Charter came into existence, not to mention China that at the time was in the midst of struggle between two rival governments claiming to represent the same nation. It can therefore be said that the appointment of the permanent members was somewhat arbitrary and based on geopolitical considerations more than on any measurement of conformity.<sup>59</sup> Thus, it was argued that the arrangement reflected some sort of balance of power at the international level to the extent that the UN members at the time considered it reasonably fair and legitimate.<sup>60</sup>

More than fifty years since after the establishment of the UN and we see that the geopolitical situation has changed. However, the three nations have retained their exclusive status in the Security Council, claiming leading roles in maintaining peace and security in the world, the role, one might argue, they no longer have the capacity to play. The Charter does not provide for replacement of permanent members of the Security Council or the addition of new ones. Therefore, it is not clear which states are now eligible to become permanent members of the Security Council and as such the basis for the use of the veto power.<sup>61</sup>

In search of a solution to this uncertainty, the Non-Aligned Movement (NAM) members, suggested that the new permanent members should be selected on the basis of a combination of criteria, including the criteria of selection of non-permanent members contained in the Article of the Charter which they outlined are ‘consistency in support for, and participation in, and financial contribution to, UN activities in the field of international peace and security, regional geographical representation and economic potential for regional roles, are the most important criteria in judging the suitability of states that have applied for permanent membership.’<sup>62</sup> As simple as this criteria is, it has its own lapses and challenges. For example, Japan contributed about 8.5% of the UN budget in 2001.<sup>63</sup> At the same time India is one of the UN largest contributors of peacekeeping troops.<sup>64</sup> It is, therefore, worth underlining that the election of the country with most economic potential in the region to the Security Council as a permanent member may give grounds to regional hegemony and tensions. That is to say that where either Japan or India is selected into the Council it automatically pits the selected country against the other in an endless cycle of likely tensions and upheavals. Another frequently evoked criterion is

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57 UNC, art 23.

58 Ibid.

59 Ibid, art 8.

60 Ibid, art 9.

61 UNC, art 9.

62 D Bourantonis (n 258), 94.

63 United Nations Peacekeeping, ‘How we are funded’ <<https://peacekeeping.un.org/en/how-we-are-funded>> accessed on 20 August 2024.

64 Elnar H Dyvik, ‘Top contributors of troops to UN peacekeeping efforts globally in 2023,’ Statista, <<https://www.statista.com/statistics/871432/largest-contributors-of-troops-to-united-nations-peacekeeping/>> accessed 21 August 2024.

population but it appears irrational to elect countries to the Security Council based on the size of their population. Meanwhile, the economic power remains an important criteria of legitimacy of the Security Council, as maintaining international peace and security is impossible without commitment of adequate resources, the lion's share of which is to be provided by the permanent members of the UNSC.

### **(iii) Security Council: Enlargement and Reforms**

The current size of the Security Council is a serious limitation. It makes little logical sense that an organization with over 190 members bows to the whim and caprices of just five members. Consequently, the enlargement of the Security Council is admittedly a necessary measure of reinforcement of its legitimacy.<sup>65</sup> However, the degree of the expansion is vigorously debated. Some important issues in the debate are the lack of democratic nature and transparency of the Security Council. Democratisation would dictate that all permanent members are democratic states and that the work of the Security Council is transparent at all its stages. Neither of this condition is satisfied at the moment. China is a non-democratic permanent member with the right of veto and Article 30 of the UN Charter gives the Council the right to determine its own work procedures. Furthermore, it is common sense that a democratic institution should strive for wider and not narrower representation. Deplorably the permanent 5 seek to limit the number of both permanent and non-permanent members of the Security Council. As Fassbender points out, "The Northern industrialised states want to limit an increase in the overall membership of the Security Council since any such increase may diminish their influence and so goes official reasoning, impede the Council's ability to fulfill its mission speedily and effectively".<sup>66</sup> As a matter of fact, from the different versions of the reform proposal the number of the expanded Security Council membership never reached 30 members and the Non-Aligned Movement (NAM) members document, in particular, suggests the increase up to 26 members.<sup>67</sup> Suggestions have also been made to establish a new category of permanent members that will not have the right of veto.<sup>68</sup> The failure of Security Council reformation resulting in its enlargement and democratisation also militate against the Security Council in its role of maintaining international peace and security.

### **(iv) Security Council/ General Assembly Relationship**

The Security Council has responsibility for the maintenance of international peace and security.<sup>69</sup> The Security Council has fifteen members which include five permanent members known as the P5 and ten elected non-permanent members.<sup>70</sup> There is a fierce competition for Security Council seats which are elected by the General Assembly for two year terms, with due weight given to geographical representation.<sup>71</sup> The Security Council Presidency rotates among all 15 members on a monthly basis in the English alphabetical order of their names.

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65 O G Ufuaku and O Ukaga (n 257) 160.

66 B Fassbender, UN Security Council Reform and the Right of Veto: A Constitutional Perspective (Hague: Kluwer Law International 1998) 235.

67 D Bourantonis (n 258) 102

68 Ibid.

69 UNC, art 24.

70 *ibid*, art 23.

71 *Ibid*.

The General Assembly may consider and make recommendations on the general principles of cooperation for maintaining international peace and security, including disarmament; discuss any question relating to international peace and security except where a dispute or situation is currently being discussed by the Security Council, make recommendations on it; take action if the Security Council fails to act, owing to the negative vote of a permanent member in a case where there appears to be a threat to the peace, breach of the peace or act of aggression.<sup>72</sup> The General Assembly is undoubtedly the UN's most democratic body, since it includes all member states. Yet, the Great Powers often belittle the assembly and call it irrelevant although its work better reflect the will of the world's peoples than does the oligarchic Security Council.<sup>73</sup>

Despite its numerous responsibilities as well as the total number of states in the General Assembly the decisions of the Security Council which has a very limited number of member states, supersedes that of the General Assembly. This is a problem considering the fact that the General Assembly consist of 193 member states which are sovereign states compared to the fifteen member states in the Security Council. Therefore, since the UN is built on democratic ideals and the equality of states, it should therefore be more just and equitable that the decisions of the Security Council not override that of the General Assembly which has more number of states as members.

Ineffective Security Council relationship with the General Assembly is another factor militating against the Security Council in the maintenance of international peace and security.

## **5.0 Conclusion**

This work discussed several institutional limitations. It discussed the division of membership in the UN Security Council into permanent and non-permanent categories which undermines the principles of equality among nations. The five permanent members, i.e., France, China, Russia, the United Kingdom, and the United States enjoy privileges for life including veto power that gives them enormous power in global decision-making processes. It examined the veto power held exclusively by the P5 which impedes the smooth running of the UNSC. It also discussed how the UNSC is not diverse in terms of its geographical composition.

## **6.0 Recommendations**

The following recommendations are made for reform of the United Nations Security Council:

1. It is recommended that Article 23 of the UN Charter be amended to reflect a uniform membership thereby removing the inequality of member states in the council. That is to say the categorisation in the Charter between permanent and non-permanent members should be removed so that each and every member of the Council should be equal and elected in every two years. This will lead to equality in the Council and democracy between states will be enhanced. Every member of the United Nations will also have the right to be voted into the Security Council.

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<sup>72</sup> Ibid, art 11.

<sup>73</sup> United Nations, 'Functions and Powers of the General Assembly <<https://www.un.org/en/ga/about/background.shtml>> accessed 11 August 2024.



2. This research work recommends that Article 27 of the UN Charter be amended to reflect a new voting procedure of two-third majority in all resolutions of the Council. In other words the veto power enjoyed by the five permanent members should no longer be allowed. Every member of the Council should be entitled to equal votes. More so, no member should be allowed to exercise veto power again. This will allow for democratic principles of majority and equality to be properly entrenched in the Council.

3. There is the need to achieve balance in regional representation in terms of membership at the Security Council. To this end, it is recommended that the proposed amendment of Article 23 should restructure the membership of the Security Council from 15 members to 25 members. The rationale for this is to allow five member states represent each of the five regions of Africa, Asia, Europe, North America and South America. This will allow for equal regional representation in each of the world's five regions. It is recommended too that the membership should be rotated every two years. By doing this no region will feel sidelined or marginalized. Their interests too will be protected by their regional representatives. They will also have the opportunity to join the Council when it is their turn as per the rotational system.