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Power Shift: The UN Security Council Has Lost Its Clout

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POWER SHIFT: THE UN SECURITY COUNCIL HAS LOST ITS CLOUT

*Ved P. Nanda**

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I. INTRODUCTION

As world leaders were convening in New York to address the 77th session of the United Nations during the week of September 20, 2022, *Foreign Policy Magazine* issued a report entitled, “A Crisis of Faith Shakes the United Nations in Its Big Week.”¹ After

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1. Robbie Gramer & Anusha Rathi, *A Crisis of Faith Shakes the United Nations in Its Big Week*, FOREIGN POL'Y (Sept. 19, 2022, 10:33 AM), <https://foreignpolicy.com/2022/09/19/unga-united-nations-russia-ukraine/> [<https://perma.cc/PWX5-UZS4>].

noting that “[a] series of disastrous conflicts – including in Ukraine, Syria, and Ethiopia – have laid bare the limits of the U.N.’s ability to diplomatically intervene and make peace[.]” the report cited Richard Goban, U.N. Director at the International Crisis Group, who said: “In many, many places – whether it’s Afghanistan, northwest Syria, Ukraine – the U.N. has shown it does not have the political space to fulfil the ideas of its original charter[.] A lot of time now, the U.N.’s role has been reduced to geopolitical ambulance-chasing.”²

Addressing the General Assembly, U.N. Secretary-General António Guterres lamented: “Our world is in peril – and paralyzed. Geopolitical divides are . . . [u]ndermining the work of the Security Council[; u]ndermining international law[; u]ndermining trust and people’s faith in democratic institutions[; and u]ndermining all forms of international cooperation. We cannot go on like this.”³ On the same day, the Prime Minister of Japan, Fumio Kishida, blamed the Security Council’s failure to respond to Russia’s invasion of Ukraine on Russia’s veto and called for U.N. reforms to allow the organization to better defend global peace and order.⁴

The fault indeed lies with the inaction of the United Nations Security Council, which under the U.N. Charter is granted the primary responsibility to maintain peace and security in the world and is the only U.N. body empowered to take binding decisions, to impose international sanctions, and to initiate military action.⁵ It has miserably failed to perform its assigned functions. Often deadlocked and dysfunctional since the onset of the Cold War, the Council was dormant in 1959, drifted until a short period following the Cold War, and continues to flounder.⁶

2. *Id.*

3. António Guterres, *Secretary-General’s Address to the General Assembly*, UNITED NATIONS (Sept. 20, 2022), www.un.org/sg/en/content/sg/speeches/2022-09-20/secretary-generals-address-the-general-assembly [<https://perma.cc/5EV6-TWU3>].

4. Mary Yamaguchi, *Japan PM Calls for UN Reforms to Address Russian Aggression*, AP NEWS (Sept. 20, 2022), <https://apnews.com/article/russia-ukraine-united-nations-general-assembly-charters-security-council-4d2e9cc6f38cd624ff9f70fa42abf7a7> [<https://perma.cc/J47S-CN33>].

5. See U.N. Charter art. 24, ¶ 1.

6. For a list of all vetoes cast in the Security Council see *Security Council–Veto List*, DAG HAMMARSKJÖLD LIBRARY [hereinafter

The Security Council is especially dysfunctional because it suffers from a crisis of legitimacy for two reasons. First, its current configuration is anachronistic: there is no permanent representation from Africa or Latin America, there is only one permanent representation from Asia (China), influential countries are not represented, and it reflects the geopolitical reality at the time of its creation in post-World War II. Second, the veto power is used excessively and irresponsibly by the five permanent members—China, France, Russia, the United Kingdom, and the United States, or the “P5”—who hold the power to veto measures brought before the Security Council, and thus block action on any matter under consideration.⁷

As the UN Charter’s envisaged collective security architecture collapsed, the deeply divided Security Council has been unable to effectively address several crises, including serious situations of atrocity crimes. None of the several proposals for structural reform of the Security Council – membership, composition, and the veto power – or reform of its decision-making processes⁸ has found acceptance by U.N. members.⁹ The P5’s veto power presents a major hurdle, as their concurrence or abstention will be essential for the adoption of any reform proposal.

The former U.N. High Commissioner for Human Rights, Ms. Navi Pillay, cited conflicts in Afghanistan, the Central African Republic, Congo, Iraq, Libya, Mali, Somalia, South Sudan, Sudan, Ukraine, and Gaza to pronounce: “I firmly believe that greater responsiveness by this Council would have saved hundreds of thousands of lives,” adding that “[n]one of these crises erupted without warning.”¹⁰ She identified the problem: “[s]hort-term

Veto List], www.un.org/Depts/dhl/resguide/scact_veto_table_en.htm [https://perma.cc/CVN8-NFNK].

7. *Id.*

8. For a brief discussion of the reform proposals, see RICHARD GOWAN & NORA GORDON, N.Y. UNIV. CTR. ON INT’L COOP., *PATHWAYS TO SECURITY COUNCIL REFORM 4-21* (2014).

9. Brett Schaefer, *A Narrow Path to Reforming the Security Council*, GIS REPORTS ONLINE (Nov. 18, 2022), www.gisreportsonline.com/r/security-council-reform/ [https://perma.cc/J84M-PGJW].

10. Associated Press, *UN Human Rights Chief Criticizes Security Council over Global Conflicts*, THE GUARDIAN (Aug. 22, 2014, 1:19 PM), www.theguardian.com/world/2014/aug/22/un-human-

geopolitical considerations and national interest, narrowly defined, have repeatedly taken precedence over intolerable human suffering and grave breaches of and long-term threats to international peace and security.”¹¹ She criticized the use of the veto power in the Security Council, for “to stop action intended to prevent or defuse conflict is a short-term and ultimately counterproductive tactic.”¹²

Numerous tragedies that remained unaddressed by the Council include the killing fields of Cambodia, the Rwanda Genocide, the Balkan atrocities, the massacres in Srebrenica, the second Iraq War, the Syrian Civil War, mass atrocities in the Darfur region of Sudan, Myanmar’s Rakhine state, South Sudan, and Russia’s annexation of Crimea, among others.¹³ There is no

rights-chief-criticises-security-council-over-global-conflicts
[<https://perma.cc/Y3VS-7QGJ>].

11. *Id.*

12. *Id.*

13. Kenneth Quinn, *Transforming Cambodia’s “Killing Fields” into Farm Fields: American Diplomacy and Combatting Genocide*, AM. DIPL. (Nov. 2021), <https://americandiplomacy.web.unc.edu/2021/11/transforming-cambodias-killing-fields-into-farm-fields-american-diplomacy-and-combatting-genocide/> [<https://perma.cc/ZXQ4-YQQW>]; *Ignoring Genocide*, HUM. RTS. WATCH, www.hrw.org/reports/1999/rwanda/Geno15-8-01.htm [<https://perma.cc/F2F6-ECFK>]; Klejda Mulaj, *Dilemmas of Reacting to Mass Atrocities*, 7 DEMOCRACY & SEC. 140, 151 (2011); *UN Officials Recall ‘Horror’ of Srebrenica as Security Council Fails to Adopt Measures Condemning Massacre*, U.N. NEWS (July 5, 2015), <https://news.un.org/en/story/2015/07/503712> [<https://perma.cc/W8U9-NZYV>]; Poorvi Chitalkar & David M. Malone, *Recurring Pathologies of the UN Security Council: The Instructive Case of Iraq*, 55 J. INDIAN L. INST. 307, 309 (2013); Said Benarbia, *Syria and the UN Security Council: A Decade of Abysmal Failures*, OPINIO JURIS (Apr. 28, 2021), <http://opiniojuris.org/2021/04/28/syria-and-the-un-security-council-a-decade-of-abysmal-failures/> [<https://perma.cc/Q7TP-2Z2E>]; Mikael Nabati, *The U.N. Responds to the Crisis in Darfur: Security Council Resolution 1556*, AM. SOC. OF INT’L. L. INSIGHTS, Aug. 11, 2004, www.asil.org/insights/volume/8/issue/18/un-responds-crisis-darfur-security-council-resolution-1556 [<https://perma.cc/AN8D-PD5H>]; *Myanmar: UN Security Council Resolution a Small but Important Step in Addressing Human Rights Crisis*, AMNESTY INT’L (Dec. 21, 2022), www.amnesty.org/en/latest/news/2022/12/un-security-council-myanmar-coup/ [<https://perma.cc/XWJ5-MKKT>]; *South Sudan: Security Council Urged to Support Implementation of Roadmap to Transition*, U.N. NEWS (Dec. 13,

end to the Syrian and Ethiopian conflicts, and the unprovoked invasion of Ukraine by a Permanent Member, Russia, is a daunting challenge.

How ironic that, as Russia's aggression in Ukraine was flagrantly violating the U.N. Charter and its founding principles, Russia's UN Ambassador was serving as the Security Council's President in February 2022.¹⁴ Addressing the Council, Ukrainian President Volodymyr Zelensky warned: "We are dealing with a state that turns the right of veto in the UN Security Council into a right to kill[, undermining] the whole architecture of global security."¹⁵ He asked, "[s]o where is the security that the Security Council must guarantee? There is no security [although] there is a Security Council," and added, "[i]t is obvious that the key institution of the world, which must ensure the coercion of any aggressors to peace, simply cannot work effectively. If this continues, the finale will be that each state will rely only on the power of arms to ensure its security, not on international law, not on international institutions. Then, the UN can simply be dissolved."¹⁶

Zelensky himself had offered an alternative as he addressed the U.S. Congress earlier: he called for creating "new tools to respond quickly and stop . . . [t]he full-scale Russian invasion of Ukraine, which began on February 24th."¹⁷ He explained:

2022), <https://news.un.org/en/story/2022/12/1131672> [<https://perma.cc/H6PB-78HY>]; *UN Security Council Action on Crimea Referendum Blocked*, U.N. NEWS (Mar. 15, 2014), <https://news.un.org/en/story/2014/03/464002-un-security-council-action-crimea-referendum-blocked> [<https://perma.cc/3PVK-E3GU>].

14. Stéphanie Fillion, *As Tensions Mount on Ukraine's Border, Russia Assumes Presidency of the Security Council*, PASS BLUE (Feb. 2, 2022), www.passblue.com/2022/02/02/as-tensions-mount-on-ukraines-border-russia-assumes-presidency-of-the-security-council/ [<https://perma.cc/H3RK-JLMJ>].
15. Volodymyr Zelenskyy, President of Ukr., *Speech by the President of Ukraine at a Meeting of the UN Security Council* (Apr. 5, 2022), www.president.gov.ua/en/news/vistup-prezidenta-ukrayini-na-zasidanni-radi-bezpeki-oon-74121 [<https://perma.cc/FUT5-NSS6>].
16. *Id.*; see also *Ukraine's President Calls on Security Council to Act for Peace, or 'Dissolve' Itself*, U.N. NEWS (Apr. 5, 2022), <https://news.un.org/en/story/2022/04/1115632> [<https://perma.cc/67F2-6AKN>].
17. Catie Edmondson, *Annotated Transcript: Zelensky's Speech to Congress*, N.Y. TIMES (Mar. 16, 2022), www.nytimes.com/2022/0

So we need new ones, new institutions, new alliances, and we offer them. We propose to create an association, U-24, United for Peace, a union of responsible countries that have the strength and consciousness to stop conflicts immediately, provide all the necessary assistance in 24 hours if necessary, even weapons, if necessary. Sanctions, humanitarian support, political support, finances, everything you need to keep the peace and quickly save the world, to save lives. In addition, such association, such union could provide assistance to those who are experiencing natural disasters, man-made disasters, who fell victims to humanitarian crisis, or epidemics.¹⁸

And in January 2020, the Cambridge University Press had offered a proposal to replace the Security Council with an Executive Council consisting of 24 members under the authority of the General Assembly that would provide a balanced voice for all member states.¹⁹ The Council would be responsible for collective security implementation and effective operation of the United Nations.²⁰ The veto power would be eliminated and replaced by a two-thirds majority of the voting power of all members on important matters.²¹

A paralyzed Security Council is unable to address today's pressing challenges, including massive human rights violations as well as climate change and public health crises. This has led to the erosion of the Council's clout and calls for reforming it,²² but all such efforts face a major hurdle – use of the veto power by one

3/16/us/politics/transcript-zelensky-speech.html [https://perma.c
c/4ZPQ-J376].

18. *Id.*

19. Augusto Lopez-Claros et al., *UN Executive Council: Beyond an Outdated Paradigm*, in *GLOBAL GOVERNANCE AND THE EMERGENCE OF GLOBAL INSTITUTIONS FOR THE 21ST CENTURY* 131, 139 (2020).

20. *Id.*

21. *Id.* at 140-41.

22. *See, e.g.*, Jonas von Freiesleben, *Reform of the Security Council: 1945-2008*, in *GOVERNING & MANAGING CHANGE AT THE UNITED NATIONS: REFORM OF THE SECURITY COUNCIL FROM 1945 TO SEPTEMBER 2013* 1, 1 (Lydia Swart & Estelle Perry eds., 2013); JOSEPH E. SCHWARTZBERG, *TRANSFORMING THE UNITED NATIONS SYSTEM: DESIGNS FOR A WORKABLE WORLD* 64 (2013); JAN WOUTERS & TOM RUYSS, *SECURITY COUNCIL REFORM: A NEW VETO FOR A NEW CENTURY* 3 (2005).

of the P5 members. It has also led to a shift of power from the Security Council, primarily to the General Assembly, but also to the regional organizations.

The Uniting for Peace Resolution, which was adopted in 1950 by the General Assembly, received renewed interest after Russia vetoed a draft resolution condemning its acts of aggression in Ukraine, stymieing any possible action on the crisis.²³ The Security Council called for a General Assembly Emergency Special Session on February 27, 2022,²⁴ and since that time the Assembly has taken several bold actions, which are discussed below. This article examines the nature and scope of the power shift and its implications. Section II briefly notes the origin of the veto power and reviews the recent General Assembly initiative pursuant to the Uniting for Peace doctrine to hold accountable the Council Member using a veto and its implications. Next, Section III reviews the Security Council's failure to take effective action and some alternate responses; Section IV follows with the Conclusion.

II. THE VETO POWER AND THE GENERAL ASSEMBLY'S INITIATIVES BYPASSING THE VETO

A. *The Origin of the Veto Power in the Security Council*

Article 27 of the U.N. Charter entitles the five permanent members of the Security Council.²⁵ This decision was taken at the 1945 San Francisco Conference where the founders negotiated the

23. See Michael Ramsden, *Uniting for Peace: The Emergency Special Session on Ukraine*, HARV. INT'L L. J. ONLINE (2022), <https://harvardilj.org/2022/04/uniting-for-peace-the-emergency-special-session-on-ukraine> [https://perma.cc/K7H7-WH5P].

24. *Security Council Vote Sets Up Emergency UN General Assembly Session on Ukraine Crisis*, U.N. NEWS (Feb. 27, 2022), <https://news.un.org/en/story/2022/02/1112842/> [https://perma.cc/RV5W-5WPP].

25. U.N. Charter art. 27, ¶ 3 (“Decisions of the Security Council on [non-procedural] 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 [Peaceful Settlement of Disputes] and under paragraph 3 of art. 52 [Encouragement of Settlement of Local Disputes Through Regional Arrangements or Regional Agencies], a party to a dispute shall abstain from voting.”).

Charter.²⁶ Any attempt there to weaken the veto power was rejected by the P5.²⁷ Professor Francis O. Wilcox, who served as a consultant to the Congressional members of the American delegation at San Francisco,²⁸ recounted:

At San Francisco, the issue was made crystal clear by the leaders of the Big Five: it was either the Charter with the veto or no Charter at all. Senator Connally dramatically tore up a copy of the Charter during one of his speeches and reminded the small states that they would be guilty of that same act if they opposed the unanimity principle. “You may, if you wish,” he said, “go home from this Conference and say that you have defeated the veto. But what will be your answer when you are asked: ‘Where is the Charter?’”²⁹

It is worth recalling, however, the Joint Statement of the United States, United Kingdom, Soviet Union, and China, with which France associated itself, made at the conference in response to a questionnaire: “It is not to be assumed, however, that the permanent members, any more than the non-permanent members, would use their ‘veto’ power willfully to obstruct the operation of the Council.”³⁰

Assuming that none of the P5 members has ever used the veto power “willfully to obstruct the operation of the Council,” it

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26. *The San Francisco Conference*, UNITED NATIONS, www.un.org/en/about-us/history-of-the-un/san-francisco-conference [https://perma.cc/YE6H-29PK].
 27. See Shamala Kandiah Thompson, Karin Landgren & Paul Romita, *The United Nations in Hindsight: Challenging the Power of the Security Council Veto*, JUST SEC. (Apr. 28, 2022), www.justsecurity.org/81294/the-united-nations-in-hindsight-challenging-the-power-of-the-security-council-veto/ [https://perma.cc/VP5U-GYTA] (“The U.N. would not have been founded without the five permanent members having the power of the veto; indeed, the organization was designed so that all major decisions would require the support, or at least the acquiescence, of the big powers.”).
 28. Francis O. Wilcox, *The Yalta Voting Formula*, 39 AM. POL. SCI. REV. 943, 943 (1945).
 29. *Id.* at 954.
 30. U.N. Conference on International Organizations, *Statement by Delegation of Four Sponsoring Governments on voting procedure in Security Council, presented to Subcommittee III/1/B*, ¶ 8, UNCIO Doc. 852 III/1/37(1) (June 8, 1945).

has been exercised in the face of egregious violations of human rights, including atrocity crimes³¹ and its mere exercise has often resulted in the Council's inability to discharge its "primary responsibility for the maintenance of international peace and security."³²

B. Abuse of the Veto Power and the Creation of the Uniting for Peace Resolution

Three hundred vetoes have been employed as of October 2022.³³ Most of the vetoes cast in the early period were by the Soviet Union, which cast the first one on February 16, 1946 on a draft resolution on the withdrawal of foreign troops from Lebanon and Syria.³⁴ Over the years the Soviet Union/Russia and the United States have been responsible for most of the vetoes, with China casting several recent vetoes.³⁵ The United Kingdom and France have not cast a veto since December 23, 1989 when they thwarted the effort to condemn the United States for its invasion of Panama.³⁶

One of the first casualties of the Cold War and the ideological tussle between East and West was a functioning Security Council, as the Soviet Union exercised its right to veto 41 times between February 6, 1946 and October 1949.³⁷

In January 1950, the Soviet Union abstained from participating in the Security Council to protest the occupation of

31. See Myres S. McDougal & Richard N. Gardner, *The Veto and the Charter: An Interpretation for Survival*, 60 YALE L.J. 258, 277 (1951). See generally Jennifer Trahan, *Questioning Unlimited Veto Use in the Face of Atrocity Crimes*, 52 CASE W. RES. J. INT'L L. 73 (2020).

32. U.N. Charter art. 24, ¶ 1.

33. Veto List, *supra* note 6 (most recent veto recorded September 30, 2022). For the 300th Russian veto (on the draft resolution proposed by the U.S. with Albania) that condemns the Russian referendums on occupied Ukrainian territories, see U.N. SCOR, 77th Sess., 9143d mtg. at 2, U.N. Doc. S/PV.9143 (Sept. 30, 2022).

34. See S.C. Res. 87 (Feb. 16, 1946); *UN Security Council Working Methods: The Veto*, SEC. COUNCIL REP. (Dec. 16, 2020), www.securitycouncilreport.org/un-security-council-working-methods/the-veto.php [<https://perma.cc/94JA-B5C8>].

35. *UN Security Council Working Methods: The Veto*, *supra* note 34.

36. *Id.*

37. Veto List, *supra* note 6.

the Chinese seat by its government-in-exile in Taiwan, instead of the Communists, who were in power in Peking.³⁸ The Soviet absence allowed the Security Council to adopt substantive resolutions regarding the Korean War, including Resolution 83, adopted on June 27, 1950, in which the Security Council “determined that the armed attack upon the Republic of Korea by forces from North Korea constitutes a breach of the peace,” and after having called “for an immediate cessation of hostilities,” and having called upon North Korean authorities “to withdraw forthwith their armed forces to the 38th parallel,”³⁹ and since the authorities in North Korea had not complied with the Security Council’s calls, the Council recommended “that the Members of the United Nations furnish such assistance to the Republic of Korea as may be necessary to repel the armed attack and to restore international peace and security in the area.”⁴⁰

Subsequently, the Soviet Union realized the futility of its non-participation and after its delegation resumed participating in the Security Council, U.S. Secretary of State Dean Acheson took a creative initiative in order to circumvent the potential Soviet vetoes.⁴¹ The U.S. delegate sent a note to the U.N. Secretary-General on September 20, requesting inclusion of an item, “United Action for Peace,” to the Assembly’s agenda.⁴² The note reads in part:

In the view of the United States, the Assembly’s contribution can be enhanced both with respect to the

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38. *Soviets Boycott United Nations Security Council*, HISTORY, www.history.com/this-day-in-history/soviets-boycott-united-nations-security-council (Jan. 9, 2020) [<https://perma.cc/YF69-9DEU>].
 39. S.C. Res. 83 (June 27, 1950) (emphasis omitted). The Security Council had made these calls in S.C. Res. 82 (June 25, 1950).
 40. S.C. Res. 83, *supra* note 39.
 41. Christian Tomuschat, U.N. Audiovisual Library of International Law, Uniting for Peace General Assembly Resolution 377 (V): Introductory Note, <https://legal.un.org/avl/ha/ufp/ufp.html> [<https://perma.cc/DQ4K-CFYZ>].
 42. Memorandum from the United States, Explanatory Memorandum on the Item “United Action for Peace” Submitted by the United States for Inclusion in the Agenda of the fifth Regular Session of the United Nations General Assembly, U.N. Doc. A/1377, at 2-3 (Sept. 20, 1950).

avoidance of conflicts and with respect to the restoration of peace if need arises.

The General Assembly should be enabled to meet on very short notice in case of any breach of international peace or act of aggression if the Security Council, because of lack of unanimity of the permanent members, is unable to discharge its primary responsibility for the maintenance of peace and security. To this end, the United States proposes that the Assembly make provision for emergency special sessions to be convoked in 24 hours⁴³

This U.S. note led to the subsequent adoption of the Uniting for Peace Resolution by the General Assembly on November 3, 1950.⁴⁴ This resolution was designed to circumvent the Soviet veto on measures related to assisting the Republic of Korea against the aggression of North Korea.⁴⁵ After reaffirming “the importance of the exercise by the Security Council of its primary responsibility for the maintenance of international peace and security, and the duty of the permanent members to seek unanimity and to exercise restraint in the use of the veto,” in its preamble, the operative part of the Resolution states:

If the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, breach of the peace, or act of aggression, the General Assembly shall consider the matter immediately with a view to making appropriate recommendations to Members for collective measures, including in the case of a breach of the peace or act of aggression the use of armed force when necessary.⁴⁶

Pursuant to the resolution, the General Assembly would be able to make recommendations in its residuary responsibility related to international peace and security, which was confirmed by the International Court of Justice in its 1962 advisory opinion

43. *Id.* at 2.

44. G.A. Res. 377 (V) A, at 10 (Nov. 3, 1950).

45. Tomuschat, *supra* note 41.

46. G.A. Res. 377 (V) A, *supra* note 44.

in the *Certain Expenses Case*.⁴⁷ There, the Court stated that the Security Council's primary responsibility for the maintenance and restoration of international peace and security is not "exclusive,"⁴⁸ leaving the General Assembly with secondary responsibility. The Court further clarified the General Assembly's recommending power under article 12(1) of the U.N. Charter, which prohibits the Assembly from making any recommendation regarding a situation or dispute while the Security Council is exercising "the function assigned to it" regarding such situation or dispute.⁴⁹ The Court, in the 2004 *Construction of a Wall* advisory opinion, said:

It is often the case that, while the Security Council has tended to focus on the aspects of such matters related to international peace and security, the General Assembly has taken a broader view, considering also their humanitarian, social and economic aspects.⁵⁰

This clearly implies that the General Assembly may consider a matter in parallel with the Security Council.

Voting in the Security Council was viewed as a problem at the Second Session of the General Assembly, as it specifically requested its Interim Committee "to consider the problem of voting in the Security Council."⁵¹ And the Committee discussed several reform proposals offered by members. Early on, it was clear that the exercise of the veto by the permanent members would hinder the Council's operation in achieving its primary objective of maintaining international peace and security. Norman J. Padelford, a member of the U.S. delegation at the Dumbarton Oaks Conference and an executive officer at the San Francisco Conference on International Organization, wrote in 1948: "No feature of United Nations activity has raised more doubts about the ability of international organization to assure peace and security than the recurrent appearance of the veto in

47. *Certain Expenses of the United Nations*, Advisory Opinion, 1962 I.C.J. 151, 165 (July 20).

48. *Id.* at 163.

49. *Id.* at 163-64.

50. *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 2004 I.C.J. 136, 150 (July 9).

51. Yuen-Li Liang, *Notes on Legal Questions Concerning the United Nations*, 42 AM. J. INT'L L. 887, 887-88 (1948).

the Security Council during the past two years.”⁵² He added: “Statements have not been wanting that the veto power has been ‘misused’ and ‘abused,’”⁵³ and “[by] the manner in which the veto has been exercised up to the present time, world opinion does have a legitimate complaint that the work of the organization has been impeded.”⁵⁴

C. *The Veto Problem Persists*

The problem has persisted ever since 1946 and there is no solution in sight, as the P5 members need to offer no explanation for using or allegedly abusing a negative vote and there is no accountability. A quick glance at three situations – Syria, Myanmar, and Ukraine – is provided here to illustrate the nature of the problem.

1. The Syrian Tragedy

Regarding Syria, Russia has thus far vetoed 17 Security Council resolutions since the beginning of the Syrian conflict.⁵⁵ On July 8, 2022, it cast its most recent veto on a resolution sponsored by Iran and Norway for humanitarian aid to Syria. The resolution would have renewed the provision of cross-border humanitarian aid for 12 months to Northwest Syria through Bab al-Hawa unless decided otherwise after 6 months.⁵⁶ Speaking

52. Norman J. Padelford, *The Use of the Veto*, 2 INT’L ORG. 227, 227 (1948).

53. *Id.* at 244.

54. *Id.* (citation omitted).

55. Richard Mills, U.S. Ambassador, Remarks at a UN General Assembly Meeting Following Russia’s Veto of a UN Security Council Resolution on the Syria Cross-Border Humanitarian Mechanism (July 21, 2022), <https://usun.usmission.gov/remarks-at-a-un-general-assembly-meeting-following-russias-veto-of-a-un-security-council-resolution-on-the-syria-cross-border-humanitarian-mechanism/> [https://perma.cc/5ZU4-3L4W].

56. S.C. Res. 538, ¶ 2 (July 8, 2022). A Russian alternate draft resolution also presented on July 8 received only two votes in favor – Russia and China – three against, and ten abstaining, and thus it was not adopted for having failed to obtain the required nine votes, with the concurrence by vote, or abstention of the P5 members. See generally *UN Documents: S/2022/541*, SEC. COUNCIL REP. (July 8, 2022), www.securitycouncilreport.org/un-documents/document/s-2022-541.php [https://perma.cc/D5D5-Y3LL]. The Security Council adopted S.C. Res. 2642 (July 12, 2022), which reauthorized the cross-border humanitarian aid

before the vote, the representative of Norway, Mona Juul, said that in sponsoring the resolution, they “were guided solely by the humanitarian needs of the Syrian people,” and the draft resolution “would ensure that humanitarian assistance reaches all those in need, facilitate further early recovery and encourage regular follow-up meetings on its implementation.”⁵⁷ Speaking on behalf of the ten elected members of the Security Council, the representative of Kenya⁵⁸ said that all ten “are in favor of a twelve-month renewal of the cross-border humanitarian aid mechanism . . . which would enable the humanitarian actors on the ground to operate effectively.”⁵⁹

Responding to the Russian veto, the Secretary General of Amnesty International, Agnès Callamard, called upon the General Assembly to take the necessary action for ensuring that aid continues to reach civilians in need: “The Syrian government and the Russian veto power must not stand in the way of providing humanitarian assistance to millions of Syrian in desperate in north-west Syria, as this amounts to violating their rights to life, to an adequate standard of living including housing, water and sanitation, and to health.”⁶⁰

Among the other 16 Russian vetoes on Syria, the following are a few selected examples to illustrate the veto problem:

The Syrian authorities were suppressing, with the use of force, the uprising and protests that spread in that country in the

mechanism in Syria for six months until January 10, 2023, and required another separate resolution to extend the mandate until July 10, 2023.

57. U.N. SCOR, 77th Sess., 9087th mtg. at 2, U.N. Doc. S/PV.9087 (July 8, 2022).

58. *See id.* at 1.

59. *Id.* at 3.

60. *Syria/UN: UN General Assembly Must Take Responsibility for Ensuring Aid Continues to Reach Civilians in Need*, AMNESTY INT’L (July 20, 2022), www.amnesty.org/en/latest/news/2022/07/syria-un-un-general-assembly-must-take-responsibility-for-ensuring-aid-continues-to-reach-civilians-in-need/ [<https://perma.cc/6NE2-XAWL>]; *see also* Amnesty Int’l, *Syria: ‘Unbearable Living Conditions’: Inadequate Access to Economic and Social Rights in Displacement Camps in North-West Syria*, MDE 24/577 0/2022 (July 5, 2022), www.amnesty.org/en/documents/mde24/5770/2022/en/ [<https://perma.cc/4RTF-7FAB>].

Spring of 2011.⁶¹ On October 4, 2011, Russia and China vetoed a draft resolution aimed at ending the use of force and violence and violation of human rights.⁶²

On February 4, 2012, Russia and China vetoed a resolution that would have condemned “continued widespread and gross violations of human rights and fundamental freedoms by the Syrian authorities, such as the use of force against civilians, arbitrary executions, killing and persecution of protesters and members of the media, arbitrary detention, enforced disappearances, interference with access to medical treatment, torture, sexual violence, and ill-treatment, including against children.”⁶³ This draft resolution was proposed following a report by the Human Rights Council based on the Independent International Commission of Inquiry on the Syrian Arab Republic established by the Council, stating that “[t]he substantial body of evidence gathered by the Commission indicates that . . . gross violations of human rights have been committed by Syrian military and security forces since the beginning of the protests in March 2011. The Commission is gravely concerned that crimes against humanity have been committed in [Syria]”⁶⁴

On May 22, 2014, Russia and China vetoed a draft resolution which would have condemned “the widespread violations of human rights and international humanitarian law by the Syrian authorities and pro-government militias, as well as the human rights abuses and violations of international humanitarian law by non-State armed groups” and would have referred the situation in Syria to the prosecutor of the International Criminal Court.⁶⁵

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61. See, e.g., Katherine Marsh & Simon Tisdall, *Syrian Troops Shoot Dead Protesters in Day of Turmoil*, THE GUARDIAN (Apr. 22, 2011, 11:06 AM), www.theguardian.com/world/2011/apr/22/syria-protests-forces-shoot [<https://perma.cc/FMB8-GY6Q>].
62. U.N. SCOR, 66th Sess., 6627 mtg. at 2, U.N. Doc. S/PV.6627 (Oct. 4, 2011).
63. S.C. Res. S/2012/77, ¶ 1 (Feb. 4, 2012) (vetoed by the Russian Federation and China).
64. Hum. Rts. Council, Rep. of the Indep. Int’l Comm’n of Inquiry on the Syrian Arab Republic, U.N. Doc. A/HRC/S-17/2.Add.1, at 1 (Nov. 23, 2011).
65. S.C. Res. S/2014/348, ¶ 1 (May 22, 2014) (vetoed by the Russian Federation and China).

On December 5, 2016, Russia and China vetoed a draft resolution for a seven-day ceasefire in Aleppo that would have allowed humanitarian assistance.⁶⁶

On February 28, 2017, Russia, along with China, vetoed a draft resolution that would have (1) condemned the use of chemical weapons, (2) demanded compliance with the Organization for the Prohibition of Chemical Weapons and (3) sought to impose sanctions against parties using chemical weapons in Syria during the civil war.⁶⁷

On November 16, 2017, Russia vetoed a draft resolution stating that “no party in Syria shall use, develop, produce, otherwise acquire, stockpile or retain, or transfer chemical weapons,” and would have condemned the use of toxic chemicals as weapons.⁶⁸

On September 19, 2019, Russia and China vetoed a draft resolution seeking a truce in northwest Syria, as it would have implemented a ceasefire for Idlib, Syria’s war-torn province, and would have called for a halt to a campaign of indiscriminate bombardment occurring in Idlib.⁶⁹ It also demanded humanitarian access and safe passage for medical personnel.⁷⁰

2. The Myanmar Problem

Unlike Syria, where Russia vetoed the Security Council resolution to defend the Assad regime, in the case of Myanmar it was China’s threat to veto that kept the Security Council from taking any action, for a threat to cast a veto serves a similar purpose as an actual veto.⁷¹ The plight of the Rohingya, many of whom still remain in Myanmar after 700,000 fled to Bangladesh, as well as the egregious violations of human rights by the junta that overthrew the democratically elected government in Myanmar in August 2021, arresting government ministers,

66. S.C. Res. S/2016/1026, ¶ 1 (Dec. 5, 2016) (vetoed).

67. S.C. Res. S/2017/172 (Feb. 28, 2017) (vetoed).

68. S.C. Res. S/2017/962, ¶ 3 (Nov. 16, 2017) (vetoed).

69. S.C. Res. S/2019/756, ¶ 1 (Sept. 19, 2019) (vetoed).

70. *Id.* ¶ 8.

71. Thomas H. Andrews (Special Rapporteur on the Situation of Human Rights in Myanmar), *Rep. on the Situation of Human Rights in Myanmar: Note by the Secretary-General*, ¶ 90, U.N. Doc. A/77/2955 (Oct. 12, 2022) [hereinafter Myanmar Report].

parliamentarians, and activists, have created a deepening crisis.⁷² And the Security Council is missing in action.

An October 12, 2022, report of the Special Rapporteur on the Situation of Human Rights in Myanmar, Thomas J. Andrews, to the Human Rights Council, presents a grim picture:⁷³

The number of internally displaced people now exceeds 1.3 million. Nearly one million have become so since the coup. Millions in desperate need of humanitarian assistance are being denied food, medicine, and essential services by the junta. An effort by ASEAN to address this crisis has proven inadequate. A new approach by UN Member States to address this crisis is literally a matter of life or death for millions.⁷⁴

He notes that:

[a]t least 84 political prisoners remain on death row and at risk of immanent execution. More than 12,000 remain arbitrarily detained in deplorable conditions. The junta has intensified its attacks on civilians, using fighter jets, helicopters, and heavy artillery to bomb villages and camps for internally displaced persons. An estimated 28,000 homes have been destroyed in an ever-widening campaign of arson and attacks targeting civilian populations the junta perceives to be aligned with opposition groups.⁷⁵

On the plight of the Rohingya, the Special Rapporteur reported:

June 20, 2022, marked ten years since the start of the campaign of state-sponsored violence and ethnic-cleansing against the Rohingya and other Myanmar Muslim populations in Rakhine State that led to the confinement of approximately 130,000 Rohingya in squalid IDP camps, where they have remained for the past decade. Inside these de facto internment camps, which are surrounded by barbed wire fences, Rohingya suffer from severe deprivation and have little access to education, medical services, or

72. *Id.* ¶ 78.

73. *Id.* at 2.

74. *Id.* ¶ 4.

75. *Id.* ¶ 3.

livelihood opportunities. This year, new restrictions have been imposed on renovations and construction in camps, further imperiling the camp populations.⁷⁶

He added that August 24, 2021, marked “[t]he beginning of the military’s genocidal offensive against Rohingya civilians in northern Rakhine State that resulted in the death of thousands of Rohingya and caused more than 700,000 to flee to Bangladesh as refugees.”⁷⁷ Among his recommendations, the Special Rapporteur called upon the Security Council:

. . . to pass a resolution that (i) imposes a comprehensive arms embargo on Myanmar, including on jet fuel to the military; (ii) imposes targeted economic sanctions on the Myanmar military, its leaders, and its sources of revenue; and (iii) refers the situation in Myanmar to the International Criminal Court. The prospect of a veto by one or more Security Council members should not deter other members from placing a resolution before the Council for consideration, debate, and a vote.⁷⁸

Andrews’ predecessor, Yanghee Lee, had earlier called for an investigation into allegations of war crimes and crimes against humanity in Myanmar’s Rakhine and Chin states, as reported in an Office of the High Commissioner for Human Rights press release.⁷⁹ She stated that “[w]hile the world is occupied with the COVID-19 pandemic, the Myanmar military continues to escalate its assault in Rakhine State, targeting the civilian population.”⁸⁰ She added that the Myanmar military is systematically violating

76. *Id.* ¶ 77.

77. Myanmar Report, *supra* note 71, ¶ 78.

78. *Id.* ¶ 90; *see also Myanmar Spiraling ‘From Bad to Worse, to Horrific,’ Human Rights Council Hears*, U.N. NEWS (Sept. 21, 2022), <http://news.un.org/en/story/2022/09/1127361> [<https://perma.cc/D984-4ND6>].

79. Press Release, Office of the U.N. High Commissioner for Human Rights, Myanmar: “Possible War Crimes and Crimes Against Humanity Ongoing in Rakhine and Chin States” – UN Special Rapporteur Yanghee Lee (Apr. 29, 2020), www.ohchr.org/en/press-releases/2020/04/myanmar-possible-war-crimes-and-crimes-against-humanity-ongoing-rakhine-and [<https://perma.cc/EV74-CNXU>]

80. *Id.*

the most fundamental principles of international humanitarian law and human rights.⁸¹

The Security Council has remained silent, but for the issuing of a single statement by the Council President for November 2017, Sebastiano Cardi, in which the Council condemned attacks against the Myanmar security forces by the Arakan Rohingya Salvation Army on August 25, 2017,⁸² and also strongly condemned violence and abuses, “including by the Myanmar security forces,” that had occurred since then, resulting in the displacement of more than 607,000 people, the vast majority of them Rohingya.⁸³

The Statement read that these violations and abuses include “those involving the systematic use of force and intimidation, killing of men, women, and children, sexual violence, and including the destruction and burning of homes and property.”⁸⁴ It added:

The Security Council stresses the primary responsibility of the government of Myanmar to protect its population including through respect for the rule of law and the respect, promotion and protection of human rights.

The Security Council calls upon the Government of Myanmar to ensure no further excessive use of military force in Rakhine State, to restore civilian administration and apply the rule of law, and to take immediate steps in accordance with their obligations and commitments to respect human rights, including the human rights of women, children, and persons belonging to vulnerable groups, without discrimination and regardless of ethnicity, religion, or citizenship status . . . to prevent and respond to incidents of sexual violence, and encourages in this

81. *Id.*

82. Meetings Coverage, Security Council, Security Council Presidential Statement Calls on Myanmar to End Excessive Military Force, Intercommunal Violence in Rakhine State, SC/13055 (Nov. 6, 2017) [hereinafter Myanmar Meeting Coverage].

83. *Id.*

84. S.C. Pres. Statement 2017/22 (Nov. 6, 2017).

regard the Government of Myanmar to work with the Special Representative on Sexual Violence and Conflict.⁸⁵

In response to the statement, Myanmar's representative expressed "serious concern," as it "would not help to resolve the issue as it placed undue political pressure on Myanmar and as some elements infringed the work of other United Nations organs [and] that on 25 August, terrorist attacks by the Arakan Rohingya Salvation Army, had triggered a tragedy, with foreign militants fighting beside the rebels."⁸⁶ As Special Rapporteur Andrews reported five years later, the situation has gotten much worse.⁸⁷

C. Russia's Aggression Against Ukraine

Russia's invasion of Ukraine on February 24, 2022, presented the United Nations with a special challenge: a permanent member of the Security Council had egregiously violated the territorial integrity and sovereignty of another member state, and breached a fundamental Charter tenet, the sacrosanct prohibition on the use of force embodied in Article 2, paragraph 4: "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state or in any other manner inconsistent with the Purposes of the United Nations."⁸⁸ As the following discussion shows, the Security Council failed to provide an effective response even to such flagrant disregard of the UN charter.

The day following the invasion, the Security Council met to consider a draft resolution proposed by the United States and Albania⁸⁹ which condemned Russia's act of aggression and

85. *Id.* at 1-2.

86. Myanmar Meeting Coverage, *supra* note 82, at 1.

87. *See generally* Myanmar Report, *supra*, note 71.

88. U.N. Charter art. 2, ¶ 4.

89. Ukraine's representative told the Russian representative, who chaired the Security Council on February 2022 and who had said several times that there would be no invasion, "Your words have less value than a hole in a New York pretzel." Meetings Coverage, Security Council, Security Council Fails to Adopt Draft Resolution on Ending Ukraine Crisis, as Russian Federation Wields Veto, SC/14808 (Feb. 25, 2022). For the text of speeches delivered that day in the Security Council meeting, *see generally* U.N. SCOR, 8979th mtg, U.N. Doc. S/PV.8979 (Feb. 25, 2022).

decided that Russia “shall immediately cease its use of force against Ukraine and shall refrain from any further unlawful threat or use of force against any UN member state.”⁹⁰ While reaffirming “its commitment to the sovereignty, independence, unity, and territorial integrity within its internationally recognized borders,” it also decided that Russia “shall immediately, completely, and unconditionally withdraw all of its military forces from the territory of Ukraine within its internationally recognized borders.”⁹¹ Eleven members voted for the resolution, with three abstaining, but Russia voted “no,” and it was thus not adopted.⁹²

In response to the Russian veto, two days later, on February 27, the Security Council considered a resolution to call an emergency special session of the General Assembly, stating that “the lack of unanimity of its permanent members . . . has prevented it from exercising its primary responsibility for the maintenance of international peace and security.”⁹³ Because such resolutions are considered procedural, and hence not subject to veto by the P5 members, it was adopted even with Russia’s negative vote.⁹⁴ The Council took this action after 40 years – the last time the Council had called for such a session was in 1982, and it was only the eighth time such a move was taken.⁹⁵ This action was taken under the framework of the Uniting for Peace Resolution and, since 1950, the Assembly has held 11 such sessions.⁹⁶

90. S.C. Res. S/2022/155, ¶ 3 (Feb. 25, 2022) (vetoed).

91. *Id.*

92. *S/2022/155: Overview of Other*, SEC. COUNCIL REP., www.securitycouncilreport.org/un-documents/document/s-2022-155.php [<https://perma.cc/XY7Y-RSBT>].

93. S.C. Res. 2623 (Feb. 27, 2022).

94. LUISA BLANCHFIELD & MATTHEW C. WEED, CONG. RSCH. SERV., IN11876, UNITED NATIONS SECURITY COUNCIL AND GENERAL ASSEMBLY RESPONSES TO THE RUSSIAN INVASION OF UKRAINE 2 (2022).

95. *Id.* at 2.

96. *Id.*; Ved Nanda, *The Security Council Veto in the Context of Atrocity Crimes, Uniting for Peace, and the Responsibility to Protect*, 52 CASE W. RES. J. INT’L L. 119, 140 (2020).

On February 28, the General Assembly convened a special emergency session under the Uniting for Peace framework, adopting several resolutions,⁹⁷ which will be discussed below.

On March 23, the Security Council defeated a draft resolution proposed by Russia along with Belarus, North Korea, and Syria, designed to resolve the humanitarian crisis in Ukraine, demanding civilian protection and unhindered humanitarian access there, with two votes in favor and 13 members abstaining.⁹⁸ The U.S. representative described the Russian attempt to submit this resolution while it alone had created the crisis, as “unconscionable.”⁹⁹

Russia cast another veto on September 30, 2022, when the Security Council met to consider a draft resolution proposed by the United States along with Albania demanding that Russia’s decision to unlawfully annex four regions of Ukraine be immediately and unconditionally reversed as it is “a threat to international peace and security.”¹⁰⁰ The resolution described the referendums held by Russia in the four regions of Ukraine – Luhansk, Donetsk, Kherson, and Zaporizhzhia – as illegal and an attempt to modify Ukraine’s internationally recognized borders.¹⁰¹ It called on all States, international organizations, and agencies not to recognize the Russian declaration on annexation, and called on Russia to “immediately, completely and unconditionally withdraw all of its military forces” from Ukrainian territory.¹⁰²

UN Secretary-General António Guterres said that, “the Charter is clear. Any annexation of a State’s territory by another State resulting from the threat or use of force is a violation of the principles of the UN Charter.”¹⁰³ Russia’s representative, Vasilij

97. See G.A. Res. ES-11/1 (Mar. 2, 2022).

98. S.C. Res. S/2022/231, at 1 (Mar. 24, 2022) (not adopted); Meetings Coverage, Security Council, Security Council Fails to Adopt Text Demanding Civilian Protection, Unhindered Humanitarian Access in Ukraine, as 13 Members Abstain, SC/14838 (Mar. 23, 2022).

99. *Id.*

100. *Russia Vetoes Security Council Resolution Condemning Attempted Annexation of Ukraine Regions*, U.N. NEWS (Sept. 30, 2022) [hereinafter *Russia Vetoes Condemnation*] <https://news.un.org/en/story/2022/09/1129102> [<https://perma.cc/YKG5-4ER3>].

101. *Id.*

102. *Id.*

103. *Id.*

Nebenzya, responded that there had been overwhelming support from residents in the four regions that Russia now claims as its own territory, adding that “the residents of these regions do not want to return to Ukraine. They have made an informed and free choice, in favour of our country,” and “there will be no turning back, as today’s draft resolution would try to impose.”¹⁰⁴

Ten members voted for the resolution, with four abstaining and Russia voting against it.¹⁰⁵

III. THE SECURITY COUNCIL’S FAILURE TO TAKE EFFECTIVE ACTION AND ALTERNATE RESPONSES.

A. Syria

While Syria’s egregious violations of human rights and international law are continuing, including attacks on civilians and civilian infrastructure by the government of Syria and its allies, and the Organization for the Prohibition of Chemical Weapons has documented the illegal use of such weapons by the Assad regime and some armed groups, there has been no accountability because vetoes do not allow the Council to take effective action.¹⁰⁶ Russia’s 17 vetoes on the Security Council have limited the Council’s response to passing several resolutions on humanitarian access, peace talks, and chemical weapons in Syria.¹⁰⁷ The international community has responded by the UN Human Rights Council’s establishing an Independent International Commission of Inquiry on the Syrian Arab Republic¹⁰⁸ documenting war crimes and crimes against humanity in its reports. A German court, acting under universal

104. *Id.*

105. *Id.*

106. *See 13 Million People Displaced After 11 Years of Conflict*, GLOB. CTR. FOR THE RESP. TO PROTECT (Dec. 1, 2022), www.globalr2p.org/countries/Syria [<https://perma.cc/4Z5L-3DPK>].

107. *Id.*

108. *See Independent International Commission of Inquiry on the Syrian Arab Republic*, UNITED NATIONS HUM. RTS. COUNCIL, www.ohchr.org/en/hr-bodies/hrc/iici-syria/about-co-i [<https://perma.cc/E9Y2-4MYW>].

jurisdiction, has convicted high-ranking former Syrian government officials on charges of crimes against humanity.¹⁰⁹

The UN General Assembly in several resolutions has condemned the Syrian regime for human rights violations, violence against civilian populations, and egregious violations of human rights; and deplored the Security Council's failure to act on Syria.¹¹⁰ However, it took a giant step to assist in the investigation and prosecution of those perpetrating atrocities in Syria when, on December 21, 2016, it established the International, Independent, and Impartial Mechanism that, in the words of the permanent representative of Liechtenstein, Ambassador Christian Wenaweser, "in close cooperation with the Commission of Inquiry, would collect, consolidate, preserve and analyse evidence of violations of international humanitarian law and human rights violations and abuses and prepare files to facilitate and expedite future criminal proceedings, without prejudice to where and when such proceedings will take place."¹¹¹ Despite the opposition of the Syrian government, the draft resolution was adopted by a vote of 105 in favor to 15 against, with 52 abstentions.¹¹²

The argument is valid that the General Assembly has the power to establish such a mechanism under Charter Article 10, which authorizes it to "discuss any questions or any matters within the scope of the present Charter."¹¹³ Also, Article 22 entitles it to "establish such subsidiary organs as it deems necessary for the performance of its functions."¹¹⁴ Undoubtedly, the creation of this Mechanism constitutes a power shift from the Security Council to the General Assembly.

109. *13 Million People Displaced After 11 Years of Conflict*, *supra* note 106.

110. For several such resolutions, see generally *UN General Assembly Documents*, SEC. COUNCIL REP., www.securitycouncilreport.org/n_documents_type/general-assembly-documents [<https://perma.cc/S93Z-YXRQ>].

111. U.N. GAOR, 71st Sess., 66th plen. mtg. at 19, U.N. Doc. A/71/PV.66 (Dec. 21, 2016).

112. *Id.* at 29-30.

113. U.N. Charter art. 10.

114. *Id.* art. 22.

B. Myanmar

As mentioned earlier, in response to Myanmar's brutal military campaign against the Rohingya, with killings, rapes, and burning of houses, which led to the exodus of Rohingya to Bangladesh, the Security Council was unable to condemn the Myanmar government, apparently because of the threat by China to veto such condemnation.¹¹⁵ But the General Assembly did strongly condemn Myanmar's abuse of the Rohingya, in a resolution adopted on December 27, 2019.¹¹⁶ It called on Myanmar's government to take the necessary measures "to combat the incitement of hatred against Rohingya Muslims and persons belonging to other minorities and to publicly condemn such acts and combat hate speech."¹¹⁷ It also called upon the Myanmar government to "create the conditions necessary for the safe, voluntary, dignified and sustainable return of all refugees, including Rohingya Muslim refugees."¹¹⁸

After the military took over in February 2021, it engaged in a campaign of violence.¹¹⁹ Expressing deep concern about the arbitrary detention and arrest of government officials, including Aung San Suu Kyi, and human rights defenders, journalists, civil society members, and foreign experts, the General Assembly adopted a resolution on Myanmar on June 18, 2021,¹²⁰ condemning in the strongest terms "the excessive and lethal violence by the Myanmar armed forces." It called for the military to "end the state of emergency, to respect all human rights of all the people of Myanmar and to allow the sustained democratic transition of Myanmar," to "immediately and unconditionally release . . . those arbitrarily detained, charged or arrested," and "to immediately stop all violence against peaceful demonstrators,

115. See *Myanmar Coup: China Blocks UN Condemnation as Protest Grows*, BBC (Feb. 3, 2021), www.bbc.com/news/world-asia-55913947 [<https://perma.cc/5RK2-THKC>].

116. G.A. Res. 74/246, at 2 (Dec. 27, 2019).

117. *Id.* ¶ 8.

118. *Id.*

119. Richard C. Paddock, *Myanmar's Coup and Its Aftermath, Explained*, N.Y. TIMES (Dec. 9, 2022), www.nytimes.com/article/myanmar-news-protests-coup.html [<https://perma.cc/5925-NC4N>].

120. U.N. GAOR, 75th Sess., 83d mtg. at 15, U.N. Doc. A/75/PV.83 (June 18, 2021).

as well as members of civil society, women, youth and children, and others.”¹²¹ It further called upon all member states “to prevent the flow of arms into Myanmar.”¹²²

In introducing the draft resolution, Ambassador Wenaweser said that the military “has not heeded the many calls to exercise restraint, cease violence, release all those detained arbitrarily, and stand down to allow democracy to be restored in Myanmar.”¹²³ The draft, he said,

highlights the need for accountability for the grave crimes committed against the people of Myanmar, in particular, the Rohingya, which are under scrutiny by various international justice mechanisms, and it stresses the principle of command responsibility in connection with the ongoing attacks on the civilian population. It calls on all Member States to prevent the flow of arms into Myanmar and issues a clear call for an inclusive and peaceful dialogue among all parties¹²⁴

The condemnation of Myanmar’s military takeover and excessive use of force and the call for an arms embargo against the country were certainly the responsibility of the Security Council to respond to the crisis, but a major shift was evident by the General Assembly’s undertaking this task.

While the General Assembly filled the void left by the Security Council’s inaction on the situations in Syria and Myanmar, it is the Ukraine war which clearly showed the power shift as the General Assembly sought to hold the Security Council itself accountable.

C. Ukraine

Following the Security Council’s call for the General Assembly to convene an emergency special session, the General Assembly adopted a resolution on March 2, 2022, reaffirming “that no territorial acquisition resulting from the threat or use of force shall be recognized as legal.”¹²⁵ The Assembly “deplore[d] in

121. G.A. Res. 75/287, at 3 (June 18, 2021).

122. *Id.* at 4.

123. *Id.* at 2.

124. *Id.* at 2-3.

125. G.A. Res. ES-11/1, *supra* note 97, at 2.

the strongest terms” Russia’s aggression, demanding that Russia “immediately cease its use of force against Ukraine and . . . refrain from any further unlawful threat or use of force against any Member State,”¹²⁶ and that Russia “completely and unconditionally withdraw all of its military forces from the territory of Ukraine within its internationally recognized borders.”¹²⁷ It also deplored “the involvement of Belarus in this unlawful use of force against Ukraine and call[ed] upon it to abide by its international obligations,”¹²⁸ and condemned all violations of international humanitarian law and of human rights.¹²⁹

The General Assembly adopted another resolution on March 24, addressing the dire humanitarian consequences of Russia’s aggression,¹³⁰ strongly condemning any attacks directed against civilians, other protected persons, and civilian objects, and demanding “an immediate cessation of the hostilities” by Russia against Ukraine, especially any attacks against civilians and civilian objects.¹³¹ It further demanded that all parties protect civilians who flee armed conflict and violence and that the parties ensure the safe access of humanitarian personnel and their means of transport, supply, and equipment.¹³²

On April 7, 2022, the General Assembly suspended Russia’s membership in the Human Rights Council.¹³³

A special development reflecting the power shift from the Security Council occurred with the General Assembly’s adoption by consensus on April 26, 2022, of a standing mandate for an Assembly debate when the Security Council is paralyzed because of a veto by a P5 member.¹³⁴ The resolution mandates that “the President of the General Assembly shall convene a formal meeting of the General Assembly within 10 working days of the casting of a veto by one or more permanent members of the Security Council, to hold a debate on the situation as to which the veto

126. *Id.* ¶¶ 2-3.

127. *Id.* ¶ 4.

128. *Id.*

129. *Id.* ¶ 11.

130. G.A. Res. ES-11/2 (Mar. 24, 2022).

131. *Id.* ¶ 2.

132. *Id.* ¶¶ 6-7.

133. G.A. Res. ES-11/3 (Apr. 7, 2022).

134. G.A. Res. 76/262 (Apr. 28, 2022).

was cast, provided that the Assembly does not meet in an emergency special session on the same situation.”¹³⁵ Under the resolution, the General Assembly invited the Security Council “to submit a special report on the use of the veto in question to the General Assembly at least 72 hours before the relevant discussion in the Assembly.”¹³⁶

Liechtenstein’s Ambassador Christian Wenaweser, who conceived of this initiative, said on April 21, 2022: “[W]e were close to launching this initiative in March of 2020 when we were hit by the lockdown The lockdown is over . . . so that’s one of the reasons why we’re doing it now.”¹³⁷ He added: “It’s not about putting anyone on the spot, but about accountability. It’s about being given a voice in what we think are issues over which we have ownership. The Charter of the United Nations says clearly that the Security Council does its work on behalf of the membership.”¹³⁸ In presenting the initiative in the General Assembly, he described it “as an expression of our commitment to multilateralism, with this Organization and its principal organs at the forefront,” adding that “there has never been a stronger need for effective multilateralism than today,” and that “there has never been a stronger need for innovation in order to secure the central role and voice of the United Nations in this respect.”¹³⁹

Liechtenstein’s “veto initiative” must be seen as a reform of the Security Council veto power without amending the Charter, which is seemingly an impossible task.

Following Russia and China’s veto on May 26 of a draft resolution in the Security Council, the General Assembly held a session on June 8, 2022, pursuant to the mandate under resolution

135. *Id.* ¶ 1.

136. *Id.* ¶ 3.

137. Christian Wenaweser, ‘*This is Not About Russia, This Is About Multilateralism*’, IPS (Apr. 21, 2022), www.ips-journal.eu/interviews/this-is-not-about-russia-this-is-about-multilateralism-5887 [<https://perma.cc/QZ2F-6K9K>].

138. *Id.*

139. *UN General Assembly Mandates a Meeting in Wake of Any Security Council Veto*, U.N. NEWS (Apr. 26, 2022), <https://news.un.org/en/story/2022/04/1116982> [<https://perma.cc/6DAF-9UC6>].

76/262,¹⁴⁰ the first time the “veto initiative” was invoked.¹⁴¹ The Security Council’s resolution would have strongly condemned the international ballistic missile launch by North Korea on March 24, 2022, and other ballistic missile launches earlier, all in violation of Security Council resolutions and would have expanded existing sanctions against North Korea. With Russia and China’s negative votes, the remaining 13 Council members all voted in favor.¹⁴²

While several participants criticized the use of the veto, the General Assembly heard speeches by Russia and China, both blaming the U.S. for the security situation on the Korean Peninsula and for a precarious humanitarian situation in North Korea.¹⁴³

The Assembly next met on July 21, 2022, under its new standing mandate to hold a debate after Russia cast a veto on July 8 on a resolution for cross-border humanitarian assistance in Syria.¹⁴⁴ Russia said that the resolution was flawed, “in that it does not outline a specific way to end the renewal if Council members deem progress to be insufficient.”¹⁴⁵ Syria’s representative pointed to a major shortcoming of the resolution because “[n]o mechanism exists to ensure humanitarian aid does not fall into the hands of terrorists on the Council’s list.¹⁴⁶ But Ireland’s representative called the veto ““an unconscionable act,” placing the critical lifeline for four million Syrians at risk while Norway’s delegate stressed, we cannot have another situation where people, humanitarian organizations and United Nations

140. U.N. GAOR, 76th Sess., 78th plen. mtg. at 10, U.N. Doc. A/76/PV.78 (May 26, 2022).

141. *Id.* at 15.

142. S/PV.9048, at 3 (May 26, 2022).

143. See Adrian Steube, *The Veto Initiative’s First Tests: Is the Step Toward Reform Working?*, PASS BLUE (Aug. 3, 2022), www.passblue.com/2022/08/02/the-veto-initiatives-first-tests-is-the-step-toward-reform-working [<https://perma.cc/82P3-LN5N>].

144. See Meetings Coverage, General Assembly, Speakers Debate Terms, Merits of Cross-Border Aid Operations in Syria’s North-West, as General Assembly Considers Security Council Text Vetoed by Russian Federation, GA/124536 (July 21, 2022).

145. *Id.*

146. *Id.*

staff in north-west Syria ‘have to sit and wait while Security Council negotiations have to run into overtime.’”¹⁴⁷

The Assembly again met on October 10 in a special session after Russia’s veto on the Security Council resolution condemning its annexation of Ukraine’s territory.¹⁴⁸ It adopted a resolution declaring that Russia’s actions violated Ukraine’s sovereignty and territorial integrity, are invalid under international law, and inconsistent with the UN Charter.¹⁴⁹ It demanded that Russia “immediately, completely, and unconditionally withdraw all of its military forces from the territory of Ukraine within its internationally recognized borders.”¹⁵⁰ The resolution also “call[ed] on all States, the UN and international organisations not to recognize any of Russia’s annexation claim and demand[ed] the immediate reversal of its annexation declaration.”¹⁵¹ It was adopted by 143 states voting in favor, five against – Belarus, The Democratic People’s Republic of Korea, Nicaragua, Russia, and Syria—and 35 abstentions.¹⁵²

The debate over the resolution began on October 10 with the General Assembly President saying that “the UN Charter, the Secretary-General, and the Assembly itself had been clear – Russia’s invasion and attempted annexation of Ukrainian territory by force, ‘is illegal.’”¹⁵³ Russia had proposed that the draft resolution be voted on by secret ballot.¹⁵⁴ Albania had

147. *Id.*

148. General Assembly: Eleventh Emergency Special Session of the General Assembly (Resumed: 12th Plenary meeting) (Oct. 10, 2022), <https://media.un.org/en/asset/k1z/k1zt3lnr03> [<https://perma.cc/8WK3-FSS9>].

149. For a brief report, see Samantha Lock, *Biden Hails UN General Assembly Vote Condemning Russia Annexations in Ukraine*, THE GUARDIAN (Oct. 14, 2022, 9:38 PM), www.theguardian.com/world/2022/oct/13/biden-hails-un-general-assembly-vote-condemning-russia-annexations-in-ukraine [<https://perma.cc/C6NY-5MZC>].

150. *Id.*

151. *Ukraine: UN General Assembly Demands Russia Reverse Course on ‘Attempted Illegal Annexation’*, U.N. NEWS (Oct. 12, 2022), <https://news.un.org/story/2022/10/1129492> [<https://perma.cc/YZ2A-QQHJ>].

152. *Id.*

153. *Id.*

154. *Id.*

opposed this, but its proposal for an open recorded vote was adopted by 107 votes in favor, 13 against, and 39 abstaining.¹⁵⁵

U.S. Secretary of State Antony Blinken said in a statement that the vote “is a powerful reminder that the overwhelming majority of nations stand with Ukraine, in defense of the UN Charter and in resolute opposition to Russia’s ongoing war against Ukraine and its people.”¹⁵⁶

The Assembly’s mandate for a debate after the use of a veto has obviously not deterred Russia, as discussed above. But it does promote transparency and accountability as a P5 member casting a veto explains its rationale.

D. Responsibility to Protect

In September 2005, the UN World Summit adopted the Responsibility to Protect concept, whose basic element is that the state has the responsibility to protect its population from genocide, war crimes, ethnic cleansing, and crimes against humanity, and their incitement.¹⁵⁷ Under the doctrine, when peaceful means are inadequate and national authorities are “manifestly failing” to protect their populations from these crimes, the world leaders acknowledged that they are prepared to act collectively “in a timely and decisive manner,” through the Security Council, in accordance with the Charter on a case-by-case basis.¹⁵⁸

While the Security Council acted decisively to apply the concept in Libya as it authorized member states “to take all necessary measures . . . to protect civilians and civilian populated areas under threat of attack,”¹⁵⁹ it also established a no-fly zone.¹⁶⁰

That was in 2011. Since then, conflicts have raged in Syria, Somalia, and several other states, and now Russia has invaded

155. *Id.*

156. Lock, *supra* note 149.

157. G.A. Res. 60/1, 2005 World Summit Outcome, ¶¶ 138-40 (Sept. 16, 2005). On the evolution of the concept, see generally Ved P. Nanda, *From Paralysis in Rwanda to Bold Moves in Libya: Emergence of the “Responsibility to Protect” Norm Under International Law – Is the International Community Ready for It?*, 34 HOUS. J. INT’L L. 1, 23-26 (2011).

158. G.A. Res. 60/1, *supra* note 157, ¶ 139.

159. S.C. Res. 1973, ¶ 4 (Mar. 17, 2011).

160. *Id.* ¶ 6.

Ukraine. But the Responsibility to Protect concept has never been applied since Libya and the Security Council has taken no effective action. However, as a September 15, 2022, report of the General Secretariat of the Organization of American States by OAS Special Adviser on the Responsibility to Protect, Jared Genser, entitled, “The Responsibility to Protect and the Organization of American States: A Path Forward for Atrocity Prevention and Response in the Americas,” shows, regional organizations have stepped forward to play a critical role in addressing mass atrocity crimes. The OAS report aptly summarizes:

[T]here are dozens of options that comprise the [Responsibility to Protect] toolbox, such as sending an envoy or fact finding mission, commissioning a human rights report, mobilizing humanitarian support for suffering populations, or adopting resolutions with recommendations to relevant part. These kinds of measures were deployed early to successfully stop the escalation of mass atrocities being committed in such countries as Côte d’Ivoire, Guinea, Kyrgyzstan, and Kenya, among others.¹⁶¹

IV. CONCLUSION

The Security Council’s paralysis caused by P5 members’ exercise of the veto has resulted in the Council’s inability to take any effective action on myriad challenges faced by the world community. As discussed above, the General Assembly has indeed begun to fill the void. The new landmark mandate adopted on April 26, 2022, under the Uniting for Peace framework, is a promising development; and the October 12 resolution condemning Russia’s annexation of the four occupied regions is a significant first step, as it puts the P5 members who use the veto under a global spotlight. However, the General Assembly, with its secondary powers on international peace and security, supplemented by the Uniting for Peace mandate can be more aggressive. Why should it not ask, for example, for divestment from Russia, impose more stringent economic sanctions, and stop

161. Jared Genser (Special Adviser on the Responsibility to Protect), *The Responsibility to Protect and the Organization of American States: A Path Forward for Atrocity Prevention and Response in the Americas*, O.A.S. Doc. OEA/Ser. D/XV.26, at 2 (Sept. 15, 2022).

UN procurement under the procurement portal, ungm.org, which shows more than 1,000 Russian vendors to compete for UN contracts. Similar steps should be taken on Syria and Myanmar. With the Security Council losing its clout, the General Assembly, regional organizations, and states need to shoulder a bigger responsibility pertaining to international peace and security.

