

# A CRITIQUE OF THE UNQUALIFIED VETO POWER

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*The veto power possessed by the five permanent members of the United Nations Security Council has remained the most controversial and heavily criticised aspect of the Council since its inception. However, despite decades of debate it remains unqualified, and this has played a major part in hindering the ability of the Council to effectively carry out its main role of maintaining international peace and security. This paper discusses the problems inherent to the current unqualified veto power. This includes its tendency to: undermine the principle of sovereign equality, place the interests of a single country over global peace and security, immunise the five permanent members from Council action, render the Council ineffective, and fail countries in need of humanitarian intervention. The paper concludes by recommending three reforms that may alleviate some of the difficulties with the veto power.*

## I INTRODUCTION

The veto power is the most controversial and heavily criticised aspect of the United Nations (UN) Security Council. Afforded to the five permanent members under article 27(3) of *The Charter of the United Nations (Charter)*, it allows China, Russia, the USA, the UK and France to quash any non-procedural resolutions regarding the maintenance of international peace and security with their negative vote.<sup>1</sup> This is irrespective of the level of international support for the resolution or the unanimity of the rest of the Council,<sup>2</sup> leading many States to label the power as anachronistic, undemocratic and a ‘tool of coercion unjustified in the twenty-first century.’<sup>3</sup> Accordingly, many have advocated for a reform of the veto power. While it is unlikely that the veto power will ever be abolished, it is arguable that it should be subject to qualifications for a number of reasons. First, an unqualified veto undermines the sovereign equality of States. Secondly, it enables the permanent members to protect their own, and their allies’, interests at the expense of maintaining peace and security. Thirdly, it allows the permanent members to avoid being subjected to the Council’s governance. Fourthly, it has contributed to the inability of the Council to respond effectively to major conflicts. Fifthly, and finally, the unqualified veto power has allowed a number of humanitarian crises to continue without the Council’s intervention.

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<sup>1</sup> Fakiha Mahmood, ‘Power Versus the Sovereign Equality of States: The Veto, the P-5 and United Nations Security Council Reforms’ (2013) 18 *Perceptions* 117, 117.

<sup>2</sup> Adam Roberts and Dominik Zaum, *Selective security: War and the United Nations Security Council since 1945* (Abingdon Routledge, 2008) 12.

<sup>3</sup> United Nations, ‘Need for Security Council Reform Given New Impetus By Recent Events, General Assembly is Told’ (Press Release, 30 October 2001) 1 <<http://www.un.org/press/en/2001/ga9943.doc.htm>>.

## II VETO POWER

The Veto Power has been a central feature of the operation of the UN Security Council ever since the Council's formation in 1946. With the exception of the People's Republic of China and the Russian Federation, the veto power was awarded to the main victors of World War II – France, the USA and the UK.<sup>4</sup> The first veto was cast in 1946 by Russia,<sup>5</sup> and since then it has been used collectively by the five nations over 260 times to quash any non-procedural draft resolutions put forward in the Security Council.<sup>6</sup> The initial reason for the inclusion of this power as a feature of the Council was to prevent the UN from taking any direct action against its founding members or their interests.<sup>7</sup> The drafters of the *Charter* assumed that the permanent five were to be chiefly responsible for maintaining peace and defeating aggressors, and therefore ought to control the use of UN forces.<sup>8</sup> Moreover, it was vital that these countries did not opt out of the new organisation, as they had done with the League of Nations. To that end, the veto power reassured the governments of these countries that, in matters of war and peace, their interests would not be overruled.<sup>9</sup> However, the unpopularity of the veto power soon began to emerge. In the 1990's, 185 UN Member States criticised the veto as inequitable,<sup>10</sup> and such criticism hardly seems to have subsided since.

## III SOVEREIGN EQUALITY

The existence of an unqualified veto has been heavily criticised by many States on the basis that it undermines the principles of sovereign equality and democracy.<sup>11</sup> Providing the permanent members with the power to unilaterally prevent a course of action establishes a hierarchy among member States that is inconsistent with other articles in the *Charter* which affirm sovereign equality as one of the basic pillars of the world body.<sup>12</sup> The veto is seen as undemocratic because it confers considerable power and privileges on certain countries.<sup>13</sup> It can act as a negotiation advantage and an instrument of pressure,<sup>14</sup> allowing the permanent members to dominate the UN.<sup>15</sup> Hassler argues that only a Council that is representative of the collective will of UN members has the requisite authority and credibility to legitimise decisions pursuant to article 24 of the

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<sup>4</sup> Sahar Okhovat, 'The United Nations Security Council: Its Veto Power and Its Reform' (Working Paper No 15/1, The University of Sydney, 2012) 8.

<sup>5</sup> *Ibid* 11.

<sup>6</sup> Asad Hashim, 'Veto Power at the UN Security Council' *Al Jazeera* (online) 6 February 2012.

<sup>7</sup> Okhovat, above n 4, 11.

<sup>8</sup> Paul Kennedy and Bruce Russett, 'Reforming the United Nations' (1995) 74 *Foreign Affairs* 56, 61.

<sup>9</sup> *Ibid*.

<sup>10</sup> Okhovat, above n 4, 24.

<sup>11</sup> Mahmood, above n 1, 131.

<sup>12</sup> See, eg, *Charter of the United Nations* arts 1(2) and 2(1).

<sup>13</sup> Mahmood, above n 1, 129.

<sup>14</sup> Sabine Hassler, *Reforming the UN Security Council Membership* (Taylor & Francis, 2012) 177.

<sup>15</sup> *Ibid*.

*Charter*.<sup>16</sup>

#### IV SELF INTEREST

The inequity that the veto creates is also highlighted by the fact that it allows permanent members to protect their own, and their allies', interests, even if it is contrary to the maintenance of peace and security.<sup>17</sup> For example, Israel has been shielded from UN condemnation and economic sanctions numerous times because of the threat or use of the veto by its ally, the USA.<sup>18</sup> The USA has been active in preventing the Council from adopting resolutions condemning Israeli settlement activities in East Jerusalem and denouncing the construction of the Palestinian wall,<sup>19</sup> notwithstanding its contravention of international law.<sup>20</sup> In three cases, the USA was able to prevent action against Israel despite all other fourteen members of the Council supporting the draft resolutions.<sup>21</sup> Similarly, China has used its power to shield regimes such as those in Sudan and Myanmar from UN-authorized action, in the interest of preserving economic ties.<sup>22</sup> Both Russia and China continue to veto draft resolutions regarding the situation in Syria in order to protect the Syrian government.<sup>23</sup> These instances suggest a need to qualify the veto power to prevent the arbitrary protection of some State actions or regimes, especially when it is antithetical to the maintenance of peace and security.

#### V IMMUNITY FROM COUNCIL ACTION

The practical effect of the absolute veto power is that it subjects some member States to the law while placing the permanent members above it.<sup>24</sup> The permanent members are able to operate largely free from UN control and governance since their negative vote can prevent the operation of the UN enforcement system against them.<sup>25</sup> This results in them being unaccountable to the Council and immune to formal condemnation.<sup>26</sup> For example, Russia vetoed a resolution concerning the shooting down of a South Korean

<sup>16</sup> Ibid.

<sup>17</sup> Jan Wouters and Tom Ruys, 'Security Council Reform: A New Veto for a New Century Studies' (2005) 44 *Military Law and Law of War Review* 139, 149.

<sup>18</sup> Roberts and Zaum, above n 2, 13.

<sup>19</sup> Okhovat, above n 12, 13.

<sup>20</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion)* [2004] ICJ Rep 136.

<sup>21</sup> Okhovat, above n 12, 13.

<sup>22</sup> Roberts and Zaum, above n 2, 69.

<sup>23</sup> Celine Nahory, Giji Gya and Misaki Watanabe, *Subjects of UN Security Council Vetoes* (2009) <[https://www.globalpolicy.org/images/pdfs/Z/Tables\\_and\\_Charts/vetosubj.pdf](https://www.globalpolicy.org/images/pdfs/Z/Tables_and_Charts/vetosubj.pdf)>; 'Russia and China veto UN resolutions on Syria Sanctions,' *Al Jazeera* (online) 1 March 2017 <<http://www.aljazeera.com/news/2017/02/russia-china-veto-resolution-syria-sanctions-170228170547908.html>>.

<sup>24</sup> Peter Nadin, *UN Security Council Reform* (Taylor & Francis, 1<sup>st</sup> ed, 2016) 24.

<sup>25</sup> David Caron, 'The Legitimacy of the Collective Authority of the Security Council' (1993) 87 *American Journal of International Law* 552, 565.

<sup>26</sup> Hassler, above n 14, 38.

commercial airliner by Soviet forces.<sup>27</sup> France's veto of a 1976 resolution concerning the dispute between itself and the Comoros about the island of Mayotte is another example of a permanent member being unaccountable to the Council by means of this power.<sup>28</sup> Wouters and Ruys argue that these examples demonstrate that at least in regard to the peaceful settlement of disputes, in the interests of accountability, 'no State should be judge in its own cause.'<sup>29</sup> To achieve this, the veto would need to be qualified.

The power has also allowed the permanent members to avoid scrutiny from the International Criminal Court (ICC) when a situation develops in their territory or involves their nationals.<sup>30</sup> For example, the US was able to use the threat of veto to achieve immunity from ICC prosecution for its peacekeepers in relation to the UN mission in Bosnia and Herzegovina, allowing them to operate outside the legal framework alluded to in the resolution.<sup>31</sup> Additionally, the veto power means that the Council will be very unlikely to refer leaders of the permanent member States to the ICC for criminal prosecution.<sup>32</sup> An example of this is the US's violations of the prohibition against torture in the context of counter-terrorism, which were revealed in a 2009 report by the UN Special Rapporteur.<sup>33</sup> The inaction of the Council in referring US officials to the ICC can be contrasted to the Council's response to the Sudanese former president, who was subject to ICC scrutiny for similar human rights abuses.<sup>34</sup> Although the US has not signed up to the *Rome Statute of the International Criminal Court* and would therefore be immune from prosecution regardless, neither has Sudan, and so the difference in treatment highlights a serious and significant double standard when some countries can operate free from laws and rulings to which other nations are subjected.<sup>35</sup> Therefore, to avoid some nations being arbitrarily exempted from Council administration, in the interests of legitimacy and accountability, the veto power should be subject to qualifications.

Those who oppose the restriction of the veto on these grounds argue that if the veto is heavily qualified the UN may experience the same fate as the League of Nations, with the major powers abandoning it or simply refusing to resource the actions they oppose.<sup>36</sup> The major powers may be unlikely to commit themselves to an organisation that could embark on an enforcement action they had voted against.<sup>37</sup> Indeed the permanent members, particularly Russia and the USA, have consistently stated that they will not accept

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<sup>27</sup> Wouters and Ruys, above n 17, 148.

<sup>28</sup> Ibid.

<sup>29</sup> Wouters and Ruys, above n 17, 149.

<sup>30</sup> Hassler, above n 14, 173.

<sup>31</sup> Roberts and Zaum, above n 2, 69.

<sup>32</sup> Ifa Cush, 'One law for the powerful...' (2009) 483 *New African* 39, 39.

<sup>33</sup> Martin Scheinin, *Report of the Special Rapporteur on the promotion and protection of the human rights and fundamental freedoms while countering terrorism*, UN Doc GE.09-17804 (28 December 2009)

<sup>34</sup> Ibid. However, it may be contended that Omar al-Bashir's status as a sitting President also contributed to this scrutiny.

<sup>35</sup> Nadin, above n 24, 24.

<sup>36</sup> Nadin, above n 24, 7.

<sup>37</sup> Ian Hurd, *After Anarchy Legitimacy and Power in the United Nations Security Council* (Princeton University Press, 2008) 82.

any reform that will place limits on their right to veto.<sup>38</sup> However, as Okhovat asserts, it is unlikely any member would risk leaving the UN given the current status of, and the level of support for, the organisation.<sup>39</sup> He also argues that the serious blow to the State's legitimacy it would experience if it were to leave acts as a strong deterrent.<sup>40</sup> Therefore, this argument against qualifying the veto is not persuasive, particularly in light of the veto's ability to seriously undermine sovereign equality.

## VI INEFFECTIVENESS

Another argument for qualifying the veto is that the veto power has been responsible for the Council's ineffectiveness in responding to numerous conflicts. It has prevented action from being taken in response to serious conflicts,<sup>41</sup> and has left the Council paralysed during the moments of greatest tension.<sup>42</sup> Additionally, the veto has contributed to the creation of a system of 'selective security,' where the Council becomes deeply involved in certain conflicts but plays a very marginal role in others.<sup>43</sup> This selectivity exists even in the face of obvious and objective necessity,<sup>44</sup> and is largely due to geopolitics and national interests.<sup>45</sup> For example, the stalemate during the Cold War hindered the Council in the execution of its primary responsibility, rendering it at times powerless to act and hence ineffective.<sup>46</sup> More recently the veto has been responsible for the silence of Council on the Syrian conflict, even in regards to the recent use of chemical weapons on civilians.<sup>47</sup> In Kosovo, the threat of the Russian veto ensured the Council was not able to resolve the question of the territory's political and legal status,<sup>48</sup> and the USA has vetoed nearly every resolution related to solving the Palestine-Israel conflict.<sup>49</sup> These examples demonstrate the impact the veto has on the ability of the Council to respond effectively to major conflicts, one of its primary roles, thus suggesting that it should be limited.

Some commentators have argued, however, that the complex nature of international crises means that the veto power cannot be the sole explanation of the Council's inaction in these circumstances and should therefore be left alone. Roberts and Zaum assert that, for example, the Council's failure to act more fairly and decisively in the Iran-Iraq war

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<sup>38</sup> Mahmood, above n 1, 130.

<sup>39</sup> Okhovat, above n 4, 26.

<sup>40</sup> Ibid.

<sup>41</sup> Roberts and Zaum, above n 2, 68.

<sup>42</sup> Hurd, above n 37, 174.

<sup>43</sup> Roberts and Zaum, above n 2, 68.

<sup>44</sup> Kenneth Manusama, 'The High Level Panel Report on Threats, Challenges and Change and the Future Role of the United Nations Security Council' (2005) 18 *Leiden Journal of International Law* 605, 609.

<sup>45</sup> Hassler, above n 14, 87.

<sup>46</sup> Ibid.

<sup>47</sup> Okhovat, above n 4, 11; 'Syria War: Russia and China veto sanctions' *BBC News* (online) 28 February 2017 <<http://www.bbc.com/news/world-middle-east-39116854>>.

<sup>48</sup> Roberts and Zaum, above n 2, 13.

<sup>49</sup> Okhovat, above n 4, 13; Mahmood, above n 1, 135.

cannot simply be explained by the threat or use of veto.<sup>50</sup> The wider context of international relations and the fact that four out of the five permanent members were hostile to Iran were more relevant.<sup>51</sup> Additionally other factors such as resistance to outside involvement and the willingness of States to provide resources and trained personnel to resolve conflicts are significant in explaining the inaction.<sup>52</sup> However, just because the veto is not the only factor contributing to inaction does not mean that it should be exempt from reform. Since the veto has been identified as the *major* factor preventing the Council from taking effective, timely action to safeguard peace and security, to keep it unqualified would be contrary to the purpose of the Council itself.<sup>53</sup>

## VII HUMANITARIAN INTERVENTION

The Council's perceived failings in regards to a number of international crises, especially ones relating to genocide, suggests that there should be a moratorium on the veto as it relates to matters concerning mass atrocity crimes. In these circumstances, responsibility to protect may justify discarding the veto privilege.<sup>54</sup> This proposition has been entertained by a number of member States, including the veto-holding nation of France,<sup>55</sup> and the UN High-Level Panel.<sup>56</sup> There are numerous examples where the veto has resulted in silence from the Council in regards to intervention to prevent or address large-scale loss of life.<sup>57</sup> The most infamous failures are in relation to the humanitarian crises in Rwanda in 1994 and Darfur in 2004,<sup>58</sup> where the Council was unable to authorise the use of force to protect vulnerable populations.<sup>59</sup> In Darfur a threat of a veto from China and Russia blocked direct UN intervention in response to the large-scale murder and raping of civilians.<sup>60</sup> In the case of the Rwandan genocide, vetoes by France and the USA prevented the establishment of a robust intervention force.<sup>61</sup> Five years after the events in Rwanda, the UN Independent Inquiry into the genocide concluded that a force numbering 2,500 could have halted or at least limited the massacres that took place following the shooting of the Rwandan President's airplane.<sup>62</sup> The report stated that the Council itself bears responsibility 'for the hesitance to support new peacekeeping oper-

<sup>50</sup> Roberts and Zaum, above n 2, 69.

<sup>51</sup> Ibid.

<sup>52</sup> Ibid.

<sup>53</sup> Okhovat, above n 4, 17.

<sup>54</sup> International Commission on Intervention and State Sovereignty, International Development Research Centre, *The Responsibility to Protect* (2001) <<http://responsibilitytoprotect.org/ICISS%20Report.pdf>>.

<sup>55</sup> Tovah Lazaroff, 'France: Restrain Security Council Veto Power for Mass Atrocity Crimes' *The Jerusalem Post* (online) 9 September 2014.

<sup>56</sup> Hassler, above n 14, 178; Wouters and Ruys, above n 17, 136.

<sup>57</sup> Gareth Evans and Mohamed Sahnoun, 'The Responsibility to Protect' (2002) 81 *Foreign Affairs* 99, 99.

<sup>58</sup> Wouters and Ruys, above n 17, 141.

<sup>59</sup> Thomas Weiss, 'The Sunset of Humanitarian Intervention? The Responsibility to Protect in a Unipolar Era' (2004) 35 *Security Dialogue* 135, 141.

<sup>60</sup> Wouters and Ruys, above n 17, 141;

<sup>61</sup> Wouters and Ruys, above n 17, 151.

<sup>62</sup> United Nations, *Report of the Independent Inquiry into the Actions of the United Nations During the 1994 Genocide in Rwanda*, UN document S/1999/1257 (16 December 1999) 30.

ations,<sup>63</sup> and ‘for lack of political will to do more to stop the killing.’<sup>64</sup>

The lack of Council reaction to the genocides in Rwanda and Darfur, that collectively killed over 120,000 people,<sup>65</sup> represents a serious threat to international order and justice. It demonstrates that the unqualified veto power undermines the ability of the Council to prevent or address such large-scale loss of life, and consequently taints the credibility of the Council as a pillar of peace and stability.<sup>66</sup> If the veto was prohibited in this context, the permanent members would be compelled to confront and solve the problems.<sup>67</sup> Instead of eschewing the issue and allowing the atrocities to continue unabated, they would be forced to find solutions that the members could support.<sup>68</sup>

A number of commentators have suggested, however, that even in these circumstances, the veto must remain because the permanent members are the most powerful nations in the world.<sup>69</sup> They argue that without the political will, resources and military backing of the permanent members, the humanitarian action will not be successful.<sup>70</sup> This was reflected in the rationale behind the introduction of the veto. It was thought that the organisation would fail if the support and resources of the States most capable of providing the UN with a military backbone were not forthcoming,<sup>71</sup> and was believed to have the merit of precluding irresponsible decisions by States that had neither the power nor disposition to enforce them.<sup>72</sup> Therefore it is argued that if military intervention to protect human beings is to be successful, it is necessary to have the major powers’ support, making any limitations on the use of veto unproductive.<sup>73</sup> Additionally, it has been argued that the ‘Uniting for Peace’ procedure can be invoked to overcome a paralysis of the Council on issues of humanitarian intervention by allowing the General Assembly to authorise collective measures in relation to the matter.<sup>74</sup>

However these arguments are not persuasive for a number of reasons. First, as Wouters and Ruys argue, while the permanent five may have reflected the distribution of power after World War Two, it no longer necessarily reflects the modern day distribution of economic and military power.<sup>75</sup> The French and British colonial empires have long ceased to exist and the break up of the Soviet Union has reduced Moscow’s

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<sup>63</sup> Ibid 32.

<sup>64</sup> Ibid 37.

<sup>65</sup> Wouters and Ruys, above n 17, 151.

<sup>66</sup> Weiss, above n 59, 141.

<sup>67</sup> Bardo Fassbender, *UN Security Council Reform and the Right of Veto: A Constitutional Perspective* (Kluwer Law International, 1998).

<sup>68</sup> Hassler, above n 14, 26;

<sup>69</sup> Evans and Sahnoun, above n 57, 108.

<sup>70</sup> Ibid.

<sup>71</sup> Nadin, above n 24, 10.

<sup>72</sup> Hassler, above n 14, 34.

<sup>73</sup> Weiss, above n 51, 146.

<sup>74</sup> *Uniting for Peace* GA Res 377A (V), UN GAOR, 5<sup>th</sup> sess, Agenda item 68, Supp No. 3, UN Doc A/RES/5/37 (3 Nov 1950).

<sup>75</sup> Wouters and Ruys, above n 17, 158.

power.<sup>76</sup> The USA's power is undeniable, but its military and civilian police contributions to UN peacekeeping missions is significantly less than other nations such as India and Pakistan.<sup>77</sup> Many other States are particularly powerful today including Japan and Germany, who surpass a number of permanent members in their contributions to the UN peacekeeping budget.<sup>78</sup> Additionally, a number of States outside of the permanent five possess nuclear weapons.<sup>79</sup> Therefore while the UN may not be able to function properly as a whole without the support of the world's most powerful states, it is questionable whether their lack of involvement in response to a humanitarian crisis would necessarily result in a failure if a vast majority of other member States are united in action.

Moreover, not all responses to humanitarian issues require the deployment of forces or the positive action of States. Other responses include statements of condemnation or the imposition of sanctions, and the veto has prevented even these from occurring. For example the veto was cast successfully in 1987 and 1988 to prevent economic sanctions being imposed on Apartheid South Africa.<sup>80</sup> Therefore having the support of the permanent members need not be essential to responding to some humanitarian issues. Additionally the Uniting for Peace resolution has been infrequently invoked because of a reluctance to bypass the Council.<sup>81</sup> It was not used in the cases of Rwanda or Darfur, questioning the ability for it to practically address such issues.<sup>82</sup> Furthermore the recommendations passed by the General Assembly are not binding and thus cannot guarantee any action, which undermines them as a viable alternative for resolving international crises.<sup>83</sup>

### VIII RECOMMENDATIONS AND CONCLUSION

The absolute veto power possessed by the permanent members has been found to prevent effective Council action, promote selectivity in response to international crises and reject sovereign equality. It allows some States to be immune from the Council's reach, using the power to protect their own interests, and has caused inaction in response to mass atrocity crimes. All of these undermine the credibility of the Security Council as an international body and threaten its ability to adequately maintain peace and security. Therefore in the interest of fulfilling the Council's purpose and goals, the veto power should be subject to qualifications.

What qualifications should be adopted has been the subject of much debate. How-

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<sup>76</sup> Ibid.

<sup>77</sup> Wouters and Ruys, above n 17, 159; United Nations, *Contributions to the United Nations Peacekeeping Operations* (Feb 2017) <[https://www.un.org/en/peacekeeping/contributors/2017/feb17\\_1.pdf](https://www.un.org/en/peacekeeping/contributors/2017/feb17_1.pdf)>.

<sup>78</sup> Evans and Sahnoun, above n 57, 107; United Nations Peacekeeping, *Financing Peacekeeping* (2016) <<https://www.un.org/en/peacekeeping/operations/financing.shtml>>.

<sup>79</sup> Wouters and Ruys, above n 17, 158.

<sup>80</sup> Hassler, above n 14, 105.

<sup>81</sup> Okhovat, above n 12, 27.

<sup>82</sup> Evans and Sahnoun, above n 57, 107.

<sup>83</sup> Okhovat, above n 4, 27.



ever based on the issues presented in this paper, I suggest three main qualifications. First, in the interests of democracy, the veto power should be reformed in such a way as to prevent only one permanent member from vetoing a resolution when the rest of the Council is united. This would aid in circumnavigating the situation where it is only the self-interest of one of the permanent members that is preventing action from being taken. For example if this were in place in regards to a number of proposed resolutions relating to the Israel-Palestinian conflict, then action may have effectively been taken by the Security Council, as the USA would not have been able to block action with its sole exercise of veto. Having the qualification that the rest of the Council be united is a high threshold to reach, which if achieved, provides a strong basis for suggesting that action should be taken.

Secondly, the power to veto should be waived in relation to responding to significant humanitarian crises such as mass killings, so as to increase the likelihood that the Security Council will be authorised to take action. Determining at what point an act or situation becomes a ‘mass atrocity crime’ is potentially controversial and may be difficult for the members to reach consensus on. However I would suggest that certain crimes, such as genocide, war crimes, and crimes against humanity, are all crimes within this category, and are ones that are already defined by the UN.<sup>84</sup> Thus the moratorium could easily apply to these crimes, and further discussion and debate could be had by the members to determine if any other crimes should fall within the ambit of the moratorium.

Thirdly, the veto power should not be exercisable by a permanent member when Council action is being contemplated with regard to it. This would go some way to remedying Wouters and Ruys’ concern that ‘no State should be judge in its own cause.’ Of course, whether these qualifications would actually be accepted and passed by the permanent members of the Council is another issue in itself. However, this does not mean that the veto power *should* not, for all the reasons raised above, be subject to reform.

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<sup>84</sup> *Convention on the Prevention and Punishment of the Crime of Genocide*, opened for signature 9 December 1948, 78 UNTS 276 (entered into force 1 January 1951) art 2; *Rome Statute of the International Criminal Court*, opened for signature 17 July 1998, 2187 UNTS 90 (entered into force 1 July 2002) art 8.