

World Order, Human Rights, and the Security Council Veto

Written by Aidan Hehir

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AIDAN HEHIR, SEP 2 2014

On the 12th August, Sara Davies and Alex Bellamy published an article titled “Don’t Be Too Quick To Condemn the UN Security Council Veto”. In it, the authors argue that the recent criticisms levelled at the UN Security Council, and specifically the veto power wielded by the Permanent Five (P5) members – Russia, China, the US, the UK, and France – overlook the positives which accrue from the powers vested in this body.

Certain counterfactual claims made in the article are dubious, while those related to the contemporary positives derived from the P5’s powers cohere with a view of international politics which preferences order over justice, a view both would claim to reject, yet one which actually pervades the concept they – Bellamy, in particular – have been closely associated with promoting, namely the Responsibility to Protect (R2P). Whilst R2P has been championed as a revolutionary concept, it has affected negligible institutional reform [1] and has not in any way altered the exceptional powers of the Security Council, powers which continue to inhibit the protection and promotion of human rights. The defence of the Security Council veto outlined in their article, therefore, illuminates the thinking behind the consistent – and I suggest, failed – attempts to advance the cause of human rights whilst maintaining the institutional and legal status quo.

The first questionable claim advanced in the article is that without the veto, the UN would have “suffered the same fate” as the League of Nations. The disintegration of the League of Nations, they claim, demonstrates that the status of the great powers must be recognised in an international organisation – as it is in the UN – lest these states become frustrated, leave, and thus precipitate the demise of the organisation. The great powers had all left the League of Nations by the onset of World War II and, therefore, when “it was most needed”, the League was bereft of the key players. This is a curious line of argument; the collapse of the League of Nations had many catalysts, but clearly chief amongst them was the rise of violent, expansionist, ideological extremism in Europe – particularly fascism – which fractured the (fragile) post-Versailles consensus. Staying in the League of Nations would hardly have been more attractive had the League’s Covenant included a provision whereby each great power at the League Council [2] could have vetoed the policies put forward by the other, as they would surely have done; is it in anyway plausible that Hitler, Mussolini, Emperor Hirohito, or Stalin would have been keen to stay in the League of Nations if their respective plans for regional domination were consistently vetoed by the French and/or British? The veto, had it existed, would surely have been routinely employed in a tit-for-tat manner, and quite how this could have forestalled the outbreak of World War II, or the demise of the League, is unclear.

The second claim relates to the veto’s influence on holding the UN together throughout the Cold War; Davies and Bellamy note, “It is difficult to imagine how the UN would have survived the Cold War were it not for the veto”. Again, this seems a strange line of argument; the UN was, as is widely accepted, essentially rendered impotent on the big issues throughout the Cold War precisely because the Security Council was divided between ideological belligerents wielding vetoes. Article 24.1 of the UN Charter outlines the remit of the Security Council noting,

In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.

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Very obviously, the Security Council failed both to maintain international peace and security and to act on behalf of UN member states during the Cold War. As a result of the use of, and the threatened use of, the veto, the “UN” response to intra-state mass atrocities during this period – such as Indonesia (1965-66), Cambodia (1975-79), or Syria (1980-82) – was predominately politically motivated inertia, while in cases of inter-state aggression – such as the Six Day War (1967), the Indo-Pakistani War (1971), and the Iran-Iraq war (1980-88) – the organisation was similarly side-lined due to divisions amongst the P5. The most obvious institutional casualty of the veto at the UN was the Military Staff Committee – established to enable the UN to coordinate multinational UN forces – which was rendered stillborn (Grove 1993).

The fact that the UN existed during the Cold War, therefore, did not ameliorate the suffering of millions of people worldwide who were essentially pawns in a grand game of geo-politics. Given the inter- and intra-state conflict which occurred during the Cold War – and, despite the grandiose “Never Again!” pledges routinely made, the resultant mass suffering caused – one may well wonder what preserving the existence of the UN actually achieved, particularly with respect to the promotion and protection of human rights.

In response, one could argue – though Davies and Bellamy do not explicitly do so – that the existence of the Security Council and the UN itself helped to prevent war between the great powers – and thereby prevented massive loss of life – but this, too, is a highly dubious counterfactual claim. [3] Arguably, the key reasons the great powers did not attack each other had little to do with the UN or the Security Council veto and much more to do with post-World War II military fatigue, economic uncertainty, and, critically, the logic of mutually assured destruction.

Interestingly, the positive developments which were made through the UN during the Cold War came from the General Assembly in the form of various human rights treaties and declarations which, though ultimately toothless (because of the Security Council veto), comprise a canon of law which, many argue, can today be used as a foundation upon which to construct a more equitable, human-rights-centred, international legal system. The General Assembly is not, of course, dependent on the assent of the great powers and often, if not invariably, passed these resolutions despite hostility from one or more of the P5.

With respects to the actual use of the veto, the author’s caution,

Although a veto is undoubtedly frustrating to those on the receiving end, the omnipotence of the veto is greatly exaggerated. Agreement in the Security Council is, and always has been, much more common. Even at the height of the Cold War – when the Security Council was divided along ideological lines – the number of vetoes never went beyond 20 in one calendar year.

While it is certainly true that the actual use of the veto is rare, this is only one way in which it is exercised. Counting vetoes does not give an accurate picture of P5 division; for example, no vetoes were used when NATO intervened in Kosovo in 1999, when the US and UK led coalition invaded Iraq in 2003, or when Russia invaded Georgia in 2008, the reason being these issues were not brought to the Security Council precisely because it was obvious they would be vetoed. Only in rare occasions do states bring resolutions to the Council that they are confident will be vetoed, and in these cases the motivation is to publicly embarrass the veto user. Actual use of the veto is not indicative of its actual influence; analogously, no state has actually used nuclear weapons aggressively since 1945, but it would be wrong to infer from this that they have not had a major influence on global politics since.

The authors then go on to defend the record of the Council by pointing to a number of areas where consensus has been achieved. [4] Yet, pointing to examples of consensus does not negate the argument that the veto often inhibits collective action by enabling the minority view to block the majority’s will. If there is consensus amongst Council members on how to act, then the veto is, by definition, not an issue. This, however, provides little insight into the widely noted problem with the Security Council, and specifically the veto, namely that the veto is problematic in those cases where the overwhelming majority of Council members, and indeed UN states, favour a certain course of action, but a veto is employed, thereby blocking the majority view. Examples of just such minority obstructionism abound [5]: in February 1999, China vetoed the renewal of the mandate for a highly successful UN peacekeeping mission in Macedonia because the government there had recognised Taiwan; in June 2009, Russia vetoed the

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renewal of the UN Mission to Georgia's mandate because of its dispute with Tbilisi; in February 2011, 14 members of the Security Council voted in favour of censuring the Israeli government for building settlements in Palestine, but their views were blocked by a single US veto. [6]

More recently, Russia and China have repeatedly blocked resolutions, calling for modest punitive sanctions against Assad's Syria while the country has degenerated in internecine horror. Indeed, frustrated with the Council's marked inability to take collective action over Syria, the General Assembly passed a resolution in August 2012 condemning the Council for its inaction. Yet, addressing this case, Davies and Bellamy claim, "tougher one-sided measures against the Assad regime might only have made the situation worse by strengthening the hands of groups even more callous than Assad". Again, this is a contentious counterfactual assertion; first, is it really the case that the Council's policies on Syria were prudent, or even motivated by prudence? Is it plausible that Russia's persistent refusal to support the majority view that Assad should incur some punishment for his flagrant committal of mass atrocities was impelled by a genuine concern in Moscow that such action would make the situation worse? Surely the more plausible explanation – and also the one with the more concrete empirical backing – is that Russia's political and economic ties with the Assad regime were the driving force. Throughout the course of Assad's brutal repression, Russia continued to sell arms to the regime and, in fact, has increased these arms sales in recent months. The second claim that the situation would be worse today if economic and political sanctions suggested in the various resolutions vetoed by Russia and China had been imposed is both fatalistic and dubious; fatalistic because it suggests that little could have been done to prevent the appalling and prolonged degeneration of the conflict, and dubious because the rise of the murderous Islamic State faction is, in fact, in large part a function of the frustration felt by many in Syria with the failure of the more moderate anti-Assad groups to garner international support and overthrow Assad. Davies and Bellamy's defence of the Security Council's widely lamented response to Syria certainly does not cohere with that of Navi Pillay – UN High Commissioner for Human Rights since the beginning of the crisis – who argued that "greater responsiveness by this council would have saved hundreds of thousands of lives".

With respects to the issue of division amongst the P5, the authors claim, "The veto allows Security Council members to set aside those issues on which they cannot agree but to remain engaged on those others – the great majority of cases – where they can". While this seems much civilised, it gives a false impression of what happens when the P5 fail to achieve consensus. [7] In fact, often when the P5 cannot agree on a particular issue, these issues are not "set aside", but simply dealt with outside the Council, and the UN is side-lined. For example, the Security Council proved incapable of collectively addressing the situation in Kosovo in 1999, Iraq in 2003, and Georgia in 2009, but this did not stop the great powers involved from engaging in unilateral aggression. These interventions clearly would not have garnered Security Council support and, far from being "set aside", were executed anyway. Indeed, the Russian invasion of Ukraine and annexation of Crimea earlier this year are clear evidence that failure to achieve consensus does not result in issues being "set aside".

The authors then present a gloomy vision of life without the veto:

International peace and security would not be well served if no veto had existed and Russia was able to influence eight other members to validate the annexation of Crimea; if the US was able to persuade eight other states that no Palestinian state should ever exist; or if nine states agreed that Israel did not have a right to exist.

First, this suggests that the alternative to the present system would be one where great powers pressurize or bribe others to support their perspective. Yet, at present, voting at the Security Council routinely evidences non-permanent members being "influenced" or "persuaded" to support one or more of the P5. In this sense, the P5 already "influences" member states to vote certain ways, often for craven reasons. At times, this is manifest in P5 members "persuading" each other, such as in 1994, when the US won support for Resolution 940 on Haiti by agreeing to support China's application for a World Bank loan and Russia's establishment of a Commonwealth of Independent States military force in Georgia.

Secondly, the idea that a system without the veto would usher in a world where certain de facto states were not recognised – they proffer Palestine as an example – is also strange, given that the veto currently facilitates just this;

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for example, Kosovo and Taiwan are not members of the UN precisely because there are certain veto-wielding members of the P5 who will not allow them to join for purely political reasons. At present, the veto power of the P5 enables them to exercise selective recognition and the perpetuation of states which they individually support. The veto powers of the P5 do not, therefore, support self-determination.

Thirdly, this greatly inflates the importance of declaratory acts; in the hypothetical example of Israel being stripped of the right to exist, how would a vote in favour of this actually impact on the existence of Israel? So long as the US and the majority of western states support Israel – and would be prepared to do so militarily – how many states would actively support actually wiping Israel off the map? Very few, if any, surely. The primary means by which states defend themselves from being wiped out is through their own military or by cultivating an alliance with militarily powerful states. It is worth remembering that after the fabled Treaty of Westphalia was signed in 1648, ostensibly recognising the sovereign inviolability of existing states, the number of states actually declined over the next two centuries as larger states subsumed their smaller neighbours. Since the inception of the Security Council, the same logic of national defence through military might, rather than international law, has prevailed, hence Israel's nuclear weapons programme and determination to maintain an alliance with the US. Israel may consider a move towards a simple majority voting system at the Security Council to constitute a potential means by which they could be censured with more frequency, but hardly an existential threat.

Finally, while both authors have written extensively about the need for a more human-centred world order – through their respective support for R2P – the ethos articulated in this article actually facilitates an international system where order is valued above justice and in which the livelihoods of the overwhelming majority of the world are prey to the interests of the militarily and economically powerful who behave in such a way as to perpetuate and consolidate their own exalted position. The basic ethos of “keep the great powers satisfied and on-board whatever the cost” is the kind of justification for great power exceptionalism that was advanced by Von Metternich and others at the time of the Congress of Vienna in 1815 and unfortunately again during the establishment of the UN. The authors may well recoil from an association with this tradition, but while the philosophical and theoretical foundations of their argument may differ to that of the power-politics approach, the global institutional configuration which they support is essentially one which purveyors of this deterministic, power-centred vision would find little to be concerned about.

The idea of great power exceptionalism is synonymous with an amoral, fatalistic worldview which concedes minimal ground internationally to the achievement of individual human rights. Adherents to this outlook rarely concede any relevance to human rights or the “Responsibility to Protect” precisely because such a system is designed to preserve order, not promote justice, and is orientated towards placating the great powers at the expense of the majority of the world's population. Unlike Davies and Bellamy, however, this view does not envisage such a power-centred order as one in which the privileged powers can somehow be persuaded to behave better through moral advocacy. Yet this is precisely what R2P entails; the efficacy of the concept is dependent on a faith in the power of “norms” promoted primarily by enlightened non-state actors to fashion a new political disposition amongst the P5, whilst maintaining their exalted position. The P5 enjoy their exalted position not because they are recognised as having exceptional moral rectitude and an unrivalled ability to dispense justice, but because of their military might, an asset they did not achieve by acceding to the wise council and humanitarian appeals of non-state actors. Therefore, supporting the “legalized hegemony” (Simpson 2004:68) of the P5, and the logic of great power exceptionalism, makes sense if one considers order based on a parity of power to be the most we can hope for internationally; supporting the veto power of the P5 makes far less sense if one believes in the imminence of a world where human rights are respected and protected.

Prior to the emergence of R2P, Bellamy supported NATO's intervention in Kosovo in 1999 and the more general legitimacy of subverting the Security Council's authority when grave humanitarian crises erupt and the veto is employed or threatened. Citing Russia and China's place amongst the P5 as grounds for subverting the Security Council he asked, “Why should undemocratic states with poor human rights records prevent a group of democratic states from protecting people in foreign countries?” (Bellamy 2002:212) [8] No doubt a good question, but this willingness to support action without the consent of the great powers does not square with the views articulated in the recent article, or the support for R2P and the status quo since. If, as Bellamy asserts was the case in 1999, the veto has inhibited the majority from undertaking a morally just act that saves lives and halts mass suffering, is it not

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inconsistent to later defend this legal provision?

The authors note that much of the recent criticism levelled at the P5 charges that the veto has been responsible for the Security Council's "inability to ensure global co-operation to protect the world's most vulnerable populations". This is a criticism with which I heartily agree; in a speech to the Security Council prior to the end of her term as UN High Commissioner for Human Rights, Navi Pillay launched a stinging rebuke of the Security Council's record, noting, "Short-term 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". She focused, in particular, on the shameful response to Syria, but also, it should be noted, to the Security Council's ineffective response to a range of contemporary situations including Iraq, Gaza, Afghanistan, Central African Republic, Mali, Somalia, Sudan, South Sudan, Libya, and Ukraine. That the P5 veto has contributed to myriad cases of mass human suffering and been unable to prevent unilateral aggression by the great powers and their allies is surely obvious.

The Security Council is corrupt, undemocratic, and an unedifying conflation of craven geopolitics and political power. As I have argued elsewhere, the manner in which the P5 consistently abuse their now patently anachronistic status degrades the UN as a whole, inhibits the realisation of a world where human rights are respected and enforced, and breeds a corrosive cynicism about international law and the possibility of progress (Hehir 2012). To justify the existence of this body is to facilitate – whether willingly or not – a fatalistic "might is right" ethos which simply perpetuates the existence of a system which has repeatedly failed to protect its weakest members and inured an atavistic approach to world politics. The veto power of the P5 is simply incompatible with the protection and promotion of human rights.

Notes

[1] Two new offices closely linked to R2P have been created; the Office of the Special Adviser on the Prevention of Genocide and the Office of the Special Adviser on R2P (see here). For an analysis of the efficacy of the Special Adviser on the Prevention of Genocide, see Aidan Hehir (2011) 'The Special Adviser on the Prevention of Genocide: Adding Value to the UN's Mechanisms for Preventing Intra-state Crises?', *Journal of Genocide Research*, Vol. 13/3, pp. 271-286.

[2] This body initially comprised the UK, France, Italy, and Japan. Germany became a member in 1926.

[3] One could argue that the conflict between the Soviet Union and China in 1969 itself disproves this claim.

[4] Certain areas of collective action cited as examples of good practice are themselves questionable, such as the Security Council's record of referring cases to the International Criminal Court, the protection of populations from mass atrocities, and counter-terrorism and nuclear/chemical disarmament in Iran and Syria.

[5] It is worth noting, again, that these are just examples of where the veto was actually used; many more cases of the deleterious impact of the (less public) threatened veto exist.

[6] For a list of all vetoes cast, see here.

[7] It is additionally unclear on what basis the "great majority of cases" claim is made. Certainly the Resolutions-passed versus Resolutions-vetoed ratio favours the former, but this cannot be deemed to constitute an accurate illustration of the extent to which division amongst the P5 inhibits their collective decision-making because, as noted earlier, private divisions are, by definition, not formally recorded.

[8] Though published in 2002, the book was evidently written prior to the December 2001 publication of the International Commission on Intervention and State Sovereignty's report; R2P is not mentioned anywhere in the book.

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