

The Impact of Veto Power on the Enforcement of International Law: A Case Study of the Israeli-Palestinian Conflict

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Abstract

The conflict between Israel and Palestine has been an international attention and has become one of the most complicated issues in the international politics. Veto power exercised by one of the five permanent members of the United Nations Security Council has been an element influencing the obstruction of resolutions addressing this conflict and international law violations. The concept of veto has allowed the permanent member, particularly the United States, to prioritize its political interest over international peace and security. This article explores the role of the veto power within the United Nations Security Council in obstructing the enforcement of international law, specifically in the context of conflict between Israel and Palestine. This article also discusses on how the United States has consistently exercise its veto to block any resolution that supports Palestine, aggravating the situation of the conflict, as well as the violations of international law. Through a normative juridical approach, this article examines the legal implications of veto power, particularly regarding its impact on the enforcement of international law.

Keywords: International law, Israeli-Palestinian conflict, United Nations Security Council.

INTRODUCTION

The conflict between Israel and Palestine is both a military and political struggle over the territory and national sovereignty of the former Mandatory Palestine a geopolitical entity that existed between 1920 and 1948 in the territories of Palestine under the terms of the League of Nations Mandate for Palestine. In general, this conflict has been an international attention and has become one of the most complicated issues in the international politics. Not only involves between the two sides, this conflict also has had a substantial impact on human rights, as the violation committed by Israel has aggravated the humanitarian situation in the region, and has also raised moral and legal questions concerning the obligations and responsibilities of various parties, both those involved and those authorized to handle this case.

International organization such as the United Nations (UN) are established with the ultimate aim of maintaining international peace and security by taking collective actions to prevent and eliminate threats, to suppress the acts of aggressions or other violations of the peace, as well as to achieve these aims by peaceful means in accordance with the principles of justice and international law (United Nations Charter, <https://www.un.org/en/about-us/un-charter/chapter-1>). One of the main organs of the UN that performs roles and has the authority to maintain peace and security is the Security Council, as the Chapter VII: "Action with Respect to Threats of Peace, Breaches of the Peace, and Acts of Aggression (United Nations Charter, <https://www.un.org/en/about-us/un-charter/chapter-7>)", states that "The Security Council shall determine the existence of any threats to peace, breach of the peace, or act of aggression and shall make recommendation, or decide what measures shall



be taken in accordance with Article 41 [non-military measure] and 42 [military measure], to maintain or restore international peace and security.”

In practice, however, despite the Security Council’s peace-keeping mandate, it has not always been consistent to its purpose of maintaining international peace and security. There is one legal power that can unilaterally stop an official action called a veto. Albeit there is no “veto” word mentioned in the UN Charter, the veto power finds its origin in the Article 27, which states that “Each member of the Security Council shall have one vote. (United Nations Charter, <https://www.un.org/en/about-us/un-charter/chapter-5>)” The veto held by the five permanent members of the Security Council, videlicet the United States, Russia, United Kingdom, China, and French, is used to veto any decision except procedural decision. For procedural matters, at least nine of the fifteen Security Council members must vote in favor, and for other important issues, nine votes are also required, including those of the five permanent members. If any of these permanent members veto a resolution, it effectively nullifies the resolution to be adopted, irrespective of the level of support it receives from other members of the Security Council.

In the most of frequent case, the veto often impedes the process of decision-making, and this is further influenced by the political and economical interest of the permanent members, which ultimately leads to conflict settlement or resolutions being hampered or even no solution has proven effective in producing results. Consequently, the effectiveness of the Security Council in addressing urgent global issues might be questionable. Ur Rahman, Bukhari, and Nasir (2023) argue that this veto has and can allow certain states, not just the five permanent members, to dictate the world order in favor of their collective and separate goals and agendas. The repeated interference and the impacts of veto wielders have resulted in dictatorship, hegemonies, and other similar power structure in the international system.

The inability of the UN Security Council to act decisively regarding Israel-Palestine conflict may also raise questions and doubts about the implementation of international law. According to the Geneva Conventions and other international legal instruments, violation of human rights, such as attacks on civilians and illegal occupation of territory, should be sanctioned by the international community. While the international law serves as a normative foundation for peace and security, and albeit various international legal instruments have been created to protect the fundamental rights of civilians in armed conflicts, in practice, however, it is highly dependent on the political interest of members of the Security Council and thus far this has been demonstrating the contradiction in the system. Thus, the Security Council frequently fails to apply these principles due to the vetoes and the conflicting interests of each superpower. This article aims to explore and assess how the veto power within the UN Security Council impedes the enforcement of international law, particularly in relation to the conflict between Israel and Palestine.

RESEARCH METHOD

The type of research conducted in this article is the normative juridical research method, focusing on the study of applicable norms or regulations in international law. This method prioritizes the analysis of existing legal provisions to understand the legal issues

being examined, collecting data through a review of secondary data, which includes primary legal sources such as the UN Charter, the Geneva Conventions, *jus cogens* norms, *erga omnes* obligations, among others, as well as secondary legal materials, such as academic literature discussing the use of veto power, the Israeli-Palestinian conflict, violations of international law, and other relevant documents.

DISCUSSION AND ANALYSIS

The Use of Veto in the Israeli-Palestinian Conflict.

From a classical standpoint, the veto power is a form of contradiction to the equality of state sovereignty, which is one of the main principles of the UN according to its Charter (United Nations Charter, <https://www.un.org/en/about-us/un-charter/chapter-1>). Five of the UN Security Council permanent members exercise their veto powers by disregarding the norms and principles of international law, and instead prioritizing their own interests and political agendas. In addition to the case of Palestine's membership and its independence being denied by the United States, another case in point is the decision to recognize Kosovo as a sovereign state. While the UN Charter states that the admission of new member in the UN is contingent upon the decision of the UN General Assembly, which must be based the recommendation of the UN Security Council, including by the recommendation of the five permanent members, in 2007-2008, the UN Security Council debated Kosovo's support for independence, yet Russia casted its veto to block any resolution that provided any support for Kosovo, and despite the negotiations between the United States, Russia, and the European Union, no agreement was produced at these discussions. Thus, the disputes occurred in these discussions have obstructed Kosovo's membership in the UN (United Nations, 2007).

Returning to the use of veto in general thus far, as of April 24, 2024, the five permanent members of the UN Security Council have collectively exercised their veto power on 281 occasions, with frequency of each country, in order from the most to least, as follows: Russia has used its veto 129 times, the United States 86 times, the United Kingdom 29 times, China 19 times, and France 18 times. Evidently, from January 26, 1976 to March 22, 2024, the United States has vetoed 29 resolutions regarding the Israeli-Palestinian conflict (United Nations, 2024), and mostly these resolutions discuss support for Palestine and simultaneously to stop the Israeli occupation in the region. The impact of the veto used by the United States has also automatically aggravated the situation. In February 18, 2011, the United States used its veto power against the resolution regarding the condemnation of Jewish settlements established in the West Bank (UN Security Council, 2011). In December 2017, the United States also used its veto power against a resolution regarding the condemnation of the decision of the United States in recognizing Jerusalem as the capital of Israel (UN Security Council, 2017). Furthermore, the discussion at the 9548th meeting of the UN Security Council on March 22, 2024 regarding Israeli-Palestinian conflict also yielded no results (UN Security Council, 2024). Albeit the Council member expressed their deep concerns over the ongoing violence and humanitarian situation, no consensus or binding decisions were taken. The discussion largely reaffirmed existing standpoints, with appeals for renewed negotiations and compliance to international

law. The lack of agreement on actionable measures, mainly due to differences in stance amongst members, led to no immediate resolutions to the conflict.

The United States also responded to criticism coming from various Member State of the UN by applying Negroponte Doctrine, which opposes UN Security Council resolutions that condemns Israel without also condemning groups of terrorists. On July 26, 2002, the United States Ambassador to the UN, John Negroponte, declared in a closed meeting of the Security Council that the United States will veto any resolutions related to Israel-Palestinian conflict, especially resolutions condemning Israel. Since then, this doctrine has been applied to block all resolutions related to the conflict. The Negroponte Doctrine is perceived by the official of the United States as a counterbalance to resolutions denouncing Israel passed by the UN General Assembly. Thus, Israel, by some means, always gets support from the United States, regardless how strong the international pressure or criticism against Israel. Meanwhile, the Palestinians, are always disregarded by both the United States and Israel (Gasimova, 2012: 269-288). Moreover, the United States also does not grant Palestine to become the UN member (United Nations, 2024), nor recognize its independence, albeit it has been officially recognized by 143 members of the UN (UN experts, 2024).

Assessment of the Appropriateness of Veto Power in International Law and its Impact to International Law.

As stated above, the United States has consistently exercised its veto power to block any resolutions that criticize Israel and which provide support for Palestine, even in reality those actions violate the international law, including the Geneva Convention. One of such instances of aforementioned case is on February 18, 2011, the United States casted its veto against a resolution supported by 14 of 15 members of the UN Security Council, and the reasoning behind the veto is that the resolution would only hinder the peace negotiation process (UN Security Council, 2011). Yet, in reality, when a veto is used to block a resolution that aimed to maintain peace, it can be seen as an impediment to the enforcement of the international law.

There are at least two reasons why the act of exercising veto is considered a violation of international law and its fundamental principles. First, the main issue here is the violation of several treaties, such as Fourth Geneva Convention and Hague Convention. Article 49 of the Fourth Geneva Convention prohibits the “forcible transfer of population from the occupied territory” (International Committee, 1949), and Article 46 and 47 of the Hague Convention prohibits the act of confiscation of private property and forbid the act of pillaging (International Committee, 1907). The establishment of Israeli settlement in the West Bank and East Jerusalem, as well as the act of pillaging, are considered violations of this provision and considered as a violation of both Fourth Geneva Convention and Hague Convention, as well as a war crime in accordance with the Rome Statute of the International Criminal Court (International Criminal Court, 1998). Israel also violates some points from the Article 2 of Genocide Convention, namely: (a) “killing members of the group”; (b) “causing serious bodily or mental harm to members of the group”; (c) “deliberately inflicting on the group conditions of life calculated to bring about its physical

destruction in whole part or in part”, and; (d) “imposing measures intended to prevent births within the group” (International Court of Justice, 2024).

Second, there are principles called *jus cogens*-peremptory, inviolable norms of international law-and *erga omnes*-the obligations that States owe to the international community as a whole-that are also affected. *Jus cogens* refers to certain fundamental principles that are applicable internationally. Trahan (2020) summarized that international law can be perceived in terms of a hierarchical structure, with *jus cogens* norms as the supreme hierarchy, as there are no exceptions permitted from the norm except through the creation of a new norm equivalent to *jus cogens*. This classification finds its roots from the “Article 53 of the Vienna Convention on the Law of Treaties 1969” which states that “any treaty is void if it conflicts with a peremptory norm of general international law,” and that “a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.” (United Nations, 1969).

Starting from the late 1990s, an increasing recognition of *jus cogens* norms can be observed in the doctrine, the jurisprudence of international courts and tribunals, as well as the results of effort of the UN International Law Commission (ILC). Based on what is stated by ILC, the elements of *jus cogens* are often referenced as follows: “the prohibition of aggressive use of force”; “the right to self-defense”; “the prohibition of genocide”; “the prohibition of torture”; “crimes against humanity”; “the prohibition of slavery and slave trade”; “the prohibition of piracy”; “the prohibition of racial discrimination and apartheid”; “the prohibition of hostilities directed at a civilian population, which is the basic rules of the international humanitarian law”, and other possible example; “the right of self-determination.”(United Nations, 2019). Additionally, ILC stated, based of the description of International Court of Justice (ICJ), that “the basic rules of international humanitarian law applicable in armed conflict as ‘intransgressible’ in character, it would seem justified to treat these as peremptory. (United Nations International Law Commission, 2001)”

Erika De Wet (2013) emphasizes pertaining to *erga omnes* obligations, which are duties and responsibilities that States owe to the international community as a whole. These obligations are acknowledged in the laws of states responsibility and are universally applied and differ from bilateral obligations—any state can be held accountable for violations, even if that state is not directly involved. *Erga omnes* obligations are also binding to all states inasmuch as they protect the collective interest of international community. Collective violations involve breaches of obligations designed to protect the collective interests of states (*erga omnes partes*) or the international community as a whole (*erga omnes*). Any infringement of *erga omnes* obligations may be challenged by the international community, as such violations threaten universal objectives in achieving peace, security, and human rights. Obligations derived from the treaties of regional or universal human rights confer *erga omnes partes* responsibilities upon participating states, along with broader *erga omnes* obligations under the customary international law. Key examples of *erga omnes partes* obligations are the prevention of genocide, protection of

fundamental human rights, and the enforcement of prohibitions on aggression (Crawford, James, 2002).

In the context of Israeli-Palestinian conflict, the principles of *jus cogens* and *erga omnes* are interrelated inasmuch as there are clear violations of all aspects of *jus cogens* that have been established by the ILC. Israel justifies its action as a form of self-defense (Erlangga, 2022: 197-212). Article 51 of the UN Charter does grant a state the right to defend itself if an armed attack occurs (United Nations Charter). However, in practice, Israel's action-act of aggression, attacks on civilians, and illegal occupation-concurrently violates international law and contradict with the *jus cogens* norms. Therefore, Israel's violations to the *jus cogens* norms cannot be justified with the right to self-defense, and when a permanent member of the UN Security Council uses its veto to block resolutions concerning serious violations of these norms, this also might be considered as a form of support to violate principles of *erga omnes* and the prolongation of *jus cogens* violations. The UN and its organs are bound by the supreme hierarchy of international law (Trahan, 2022). Therefore, the permanent members of the UN Security Council must not abuse their veto powers to facilitate *jus cogens*, and must not undermine the duty of the other Member States to act appropriately in response to serious violation of *jus cogens*. In addition, Jennifer Trahan (2020) emphasizes that arguments regarding the necessity to prevent and punish crimes against humanity, and the obligations not to veto any resolution with the purpose of minimizing or preventing those crimes will rest on the *erga omnes* obligations.

All States bear the responsibility to prevent and address crimes such as genocide, as well as to ensure that the violators are punished, in accordance to the Genocide Convention and the Geneva Conventions. The members of the UN have assigned the Security Council first level in importance of responsibility regarding this matter, entrusting it with the authority to determine apposite measures to maintain international peace and security. Through these actions, the Security Council is expected to prevent and stop such crimes and the suffering they inflict on humanity (Wenaweser, 2020). Trahan (2020) posits that if all Security Council permanent members are bound by the Genocide and Geneva Conventions, is it legally permissible for them to exercise their veto powers in situations involving genocide or other violations of these treaties? Consequently, one could argue that when one of the permanent members cast their veto in the face of genocide, it constitutes a breach of their treaty obligations.

From this case, it can be perceived that the international order, based on rules, norms and laws, colliding with the special powers held by the permanent members of the UN Security Council is akin to a legal system that grants immunity to the most powerful ones, thus creating dynamic of unfairness where the least powerful ones will always be oppressed. The United States abuses its veto power akin to a "get out of jail free card," (Nollkaemper, 2022). and utilizes veto on the reason of national or collective interests that benefit the United States and its closest allies, as well as a means to extricate themselves from undesired circumstances without incurring any repercussion, thereby resulting the situation more uncontrollable and simultaneously weakening global efforts to maintain peace. It is no surprise if the international community has begun to question the ineffectiveness of international law. Furthermore, Noura Erakat (2019) argues that one of

the reasons to be doubtful regarding the capacity of international law in addressing this conflict and furtherance the Palestinian struggle for independence is that the absence of a global sovereign in the international law system leads to the politicization of enforcement, allowing states to exercise discretion over whom to hold accountable, as well as when and in what manner punitive measures are applied.

It is evident that there is a form of “double standard” in this case, wherein a set of rules are applied differently and more strictly to one group than to another. The Security Council shows this double standard in its treatments of Israel, despite Israel’s acts of aggression that violate the international laws, yet the affected parties are continuously oppressed (Azmi, et al. 2023, 37-58). Some other examples of this “double standard” is that Israeli nearly have no restrictions on their freedom of movement within the occupied territory of Palestine, where they are even permitted to settle. In contrast, Palestinians are prohibited to enter Israel without special permission from the Israel’s authorities (Erakat, 2019:233). Lastly, Israel, as a country that violates international law should be subjected to consequences of its actions. However, the Security Council, unfortunately, is impeded from addressing these violations due to the veto from the United States. It is also clear that the enforcement of international law cannot be done effectively inasmuch as the UN Security Council is influenced by the national interest of its member states, with five of the members possess veto powers.

Regardless of the motives that each permanent member has behind their veto power, the most important significant aspect to acknowledge is that those who have committed to abide by the rules that have been created, whether it may be in UN Charter or any legal instrument and treaties, may persist in violating the agreements so long as they possess veto powers. Sumina and Gilmore (2018) stated that there are several mechanism of international law enforcement that have been implemented, yet they have no outcomes. First, the Security Council may invoke the Chapter VII of the UN Charter authority to establish a special tribunal to investigate alleged war crimes. However, this authority is constrained due to the absence of established standards for humanitarian intervention, leading to the potential stagnation of the process, and it may be regarded as overly political, influenced by the interests and veto powers of the UN Security Council. Second, the UN Security Council could impose sanctions for prolonging the humanitarian crisis in occupied Palestinian territory. Each member state has the power to apply economic pressure upon Israel to provide humanitarian aid, and to ceasefire. However, UN Security Council actions are difficult to carry out due to the political interests and veto powers of its members. One potentially successful mechanism is increase in efforts both by international community and the UN to provide humanitarian aid and urging negotiations between conflicting parties. Sumina and Gilmore also added that the prosecutions of international civil society could help when standard approaches of international criminal prosecutions have proven unsuccessful. This is a call to the international community to realize the urgency and act before the humanitarian crisis in occupied Palestinian territory becomes more unmanageable.

The future success of the UN in this matters also relies on adherence of each Member State to existing laws. One possible solution that may be able to end the conflict between

Israel and Palestine, and to stop the abuse of veto power, as well as more effective and efficacious enforcement of the international law, is reformation of the Security Council system, such as restricting the use, or even abolishing the veto system in the UN Security Council. Ur Rahman, Bukhari, and Zaman (2023) argue that main reason for the abolition of veto is due to its undemocratic, ineffective, and unjust nature, wherein a member state with veto possesses the ability to unilaterally block a resolution, resulting in disadvantages to the least powerful actors. Albeit it may seem a threadbare, the abolition of veto power would allow member states of the UN Security Council to engage in deliberations concerning world peace and security on an equal footing, without fear of intimidation or threats from powerful actors. Additionally, the UN Charter can be reformed in such a way that permanent members that hinder any efforts towards maintaining peace and security should be removed from their positions immediately.

CONCLUSION

The UN Security Council's veto system, particularly as exercised by the United States in the Israeli-Palestinian conflict, undermines the enforcement of international law and prolongs the global injustices. The use of veto power, particularly by the United States within the UN Security Council, has significantly impeded the enforcement of international law in the Israeli-Palestinian conflict. Despite the existence of legal frameworks, such as the Geneva Convention, and the international norms, such as *jus cogens*, the veto has been used to block any resolution that could hold Israel accountable for its action in violating international law. This selective employment of international law and norms not only undermines the principles of justice and equality, but also perpetuates a double standard, favoring political interests over humanitarian considerations. As a result, the conflict remains unsolved, and the efforts of the international community in promoting peace and security are severely hindered. For international law to be more effective on its enforcement, reforms in the Security Council, especially the restriction or abolition of veto power, are essentials. Such changes would promote fairness and allow for a more balanced enforcement of international law, contributing to a more just resolution of the conflict and prevention of further violations.

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