

India, Collective Security and the Veto Power

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1. The Background and Why the Topic Matters

‘Collective security’ as envisaged under the United Nations Charter forms the cornerstone of the mandate of the United Nations (‘UN’) to uphold international peace and security.¹ This has ultimately been made the primary responsibility of the UN Security Council,² which makes the exercise of the veto power relevant to the health of the world’s collective security system.³

As a founding member of the UN, India has played an important role in its functioning and has demonstrated commitment to its cause. With India’s growing presence in international politics, her status as an emerging world power⁴ and a voice for the developing world,⁵ it becomes important to examine India’s view on the collective security system under the UN Charter and the exercise of the veto power as part of its operation. Additionally, this brief considers the role that India should play in ensuring effective authorisation as well as implementation of collective security measures, a question of growing importance as the Security Council has found itself paralysed in recent crises such as the tragic war in Syria.

India’s perspective on collective security has evolved since her status as a founding member of the League of Nations under the British Empire, where India agreed to

an early version of this policy. Article 11 of its Covenant declared that the League would be responsible for adopting appropriate measures in situations of war or threat of war that immediately affect any of its members or are declared as matters of concern to the whole League.⁶ Indian leaders were largely critical of the League’s inaction in numerous instances, like the Japanese attack on Manchuria and the Italian invasion of Ethiopia.⁷ The League’s response to the Manchurian crisis was seen as a symbol of its failure to achieve its mandate.⁸ Nevertheless, as a founding member of the UN, India pledged her support for the newly-formed organisation,⁹ reflecting her continued faith in the principle of collective security as enshrined in the UN Charter.

2. India on Collective Security

Strengthened by her newly-achieved independence and comforted by the broad membership of the UN, India accepted the UN Charter and its collective security system.¹⁰ India insisted that the objectives of collective security are not, and should not be, limited to Chapter VII of the Charter.¹¹ There are multiple factors that can challenge the international peace and security of the world, and they may not necessarily involve the direct use of hard power or armed force.¹² In reducing conflict

¹ United Nations Charter, 24 October 1945 (<http://www.legal-tools.org/doc/6b3cd5/>). See Article 1(1) on the purpose of the United Nations to “maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace”.

² *Ibid.*, Article 24(1).

³ *Ibid.*, Articles 27(2) and (3). Most non-procedural decisions require the concurring votes of permanent members provided with a veto power.

⁴ Stephen P. Cohen, *India: Emerging Power*, Brookings Institution Press, Washington, D.C., 2001, p. 299.

⁵ Archis Mohan, “India and the United Nations: The quest for equity”, in *In Focus*, Ministry of External Affairs, India, 20 September 2013 (<http://www.legal-tools.org/doc/02ed6b/>).

⁶ Covenant of the League of Nations, 28 April 1919 (<http://www.legal-tools.org/doc/106a5f/>).

⁷ Swadesh Mehta, *India’s Attitude Towards the Collective Security System under the United Nations 1947-62*, Jawaharlal Nehru University, 1965, p. 17 (<http://www.legal-tools.org/doc/b317dd/>).

⁸ *History of the League of Nations (1919–1946)*, United Nations Office at Geneva Library, Registry, Records and Archives Unit (<http://www.legal-tools.org/doc/edac16/>).

⁹ United Nations General Assembly, Statement by Vijaya Lakshmi Pandit, Permanent Mission of India to the UN, Second Session, 85th Plenary Meeting, UN Doc. A/PV.85, 19 September 1947 (<http://www.legal-tools.org/doc/ae1758/>).

¹⁰ Mehta, 1965, see *supra* note 7.

¹¹ *Ibid.*, p. 200.

¹² *Ibid.*

and ensuring peace and security in the world, India's focus has been on the solution of issues such as political subjugation and racial inequality. She has also opted for diplomatic, political and peaceful means instead of hard sanctions to ensure security,¹³ in search of a political and peaceful solution to the conflict, as in the case of imposing sanctions on Libya.¹⁴

However, the contemporary situation differs given the nature of the threats facing the world, ranging from terrorism, genocide and civil wars, to scourges carried out by venal dictators.¹⁵ In light of these realities and India's considerable military and economic growth,¹⁶ her role in collective security has also changed. Her participation in collective security measures is most evident in peace-keeping missions. Until 2000, India had contributed more than 67,000 personnel to 37 out of 56 UN peace-keeping missions.¹⁷ India's firm belief in the collective security system stems from her conviction of the indispensability of the United Nations organisation.¹⁸

One thing has remained consistent in India's stance towards collective security, namely her view that the use of the veto power in the Security Council should be limited or curtailed, and that, as long as it continues, it should be equitable, that is, available to all.¹⁹ According to Article 27(3) of the UN Charter, all decisions of the Council, except those procedural in nature, require concurring or abstaining votes of the permanent members.²⁰ Hence, collective security action, being a non-procedural decision under Article 39 of the Charter, requires the consent or abstention of the permanent members of the Security Council. This restricts the authorisation of collective security

measures in situations when it is required but lacks support from one permanent member, for reasons of national interest or otherwise.

3. India on the Veto Power

The requirement of concurrence of permanent members is termed a 'veto' or a negative vote, which can result in the stalling of any decision. The veto power has come under persistent criticism due to the nature of its use and its dated reflection of the world.²¹ For instance, it has been observed that clients and allies of the permanent members may act as shareholders of the veto power²² and demand its use for their benefit.²³

In relation to the permanent members of the Security Council, Article 27(3) is inherently unequal.²⁴ In practice, this built-in inequality is further accentuated by non-permanent membership, with the rotation implying limited experience and expertise to influence the decision-making process in the Security Council.²⁵

India has acknowledged that the veto is the most unpopular aspect of the Security Council's functioning. Politically, its abolition is acknowledged as being extremely difficult.²⁶ However, India has stated that the limited membership of the Security Council and the limited number of persons the members actually represent are a blow to its legitimacy and credibility.²⁷

According to India, the permanent members of the Security Council should not exercise the right of veto until the question of its extension to new permanent members has been decided upon.²⁸ The External Affairs Minister has stated in the Indian Parliament that there should be no distinction between the old and new members by not pro-

¹³ Kadira Pethiyagoda, *India's Approach to Humanitarian Intervention and the Responsibility to Protect*, Working Paper, Oxford Institute for Ethics, Law, and Armed Conflict, Department of Politics and International Relations, University of Oxford, 2003, p. 22.

¹⁴ United Nations Security Council, 6498th Meeting, "The situation in Libya", UN Doc. S/PV.6498, 17 March 2011 (<http://www.legal-tools.org/doc/1d6ab4/>).

¹⁵ Thomas M. Franck, "Collective Security and UN Reform: Between the Necessary and the Possible", in *Chicago Journal of International Law*, 2006, vol. 6, no. 2, p. 7.

¹⁶ Stephen P. Cohen and Sunil Dasgupta, "The Drag on India's Military Growth", in *Brookings Policy Brief Series*, 2010, no. 176.

¹⁷ Ministry of External Affairs, India, "Centre for United Nations Peacekeeping, New Delhi: Keynote address by Foreign Secretary", 21 August 2003 (<http://www.legal-tools.org/doc/ea448c/>).

¹⁸ Surya Narain Yadav and Indu Baghel, *India's Foreign Policy: Opportunities and Obstacles in the Past Cold War Era*, Global Vision Publication, 2009, p. 87; Permanent Mission of India to the United Nations, "India: Statement by the Mission to the UN" (<http://www.legal-tools.org/doc/f6fc84/>).

¹⁹ Informal Plenary Meeting of the Intergovernmental Negotiations on the Question of Representation on an Increase in the Membership of the Security Council and Other Matters Related to the Council: The Question of Veto, 9 March 2016, Statement by Ambassador Syed Akbaruddin (<http://www.legal-tools.org/doc/fed4ab/>).

²⁰ United Nations Charter, see *supra* note 1, Article 27(3).

²¹ Sushil Chandra Singh, "The Veto Problem in the UN", in *The Indian Journal of Political Science*, April-June 1958, vol. 19, no. 2.

²² Aleksandra Czajka, *The Analysis of the Veto Power in the United Nations Security Council*, Pompeu Fabra University Barcelona, Barcelona, 2011. See, for example, *The Guardian*, "Russia and China veto UN resolution against Syrian regime", 4 October 2011.

²³ Thomas M. Franck, "Collective Security and UN Reform: Between the Necessary and the Possible", in *Chicago Journal of International Law*, 2006, vol. 6, no. 2, p. 609.

²⁴ Jean-d'Amour K. Twibanire, "The United Nations Security Council: Imbalance of Power and the Need for Reform", in *International Journal of Political Science and Diplomacy*, 2016, vol. 2, no. 1.

²⁵ Bruno Simma *et al.* (eds.), *The Charter of the United Nations: A Commentary*, vol. 1, Oxford University Press, New York, 2002.

²⁶ Informal Plenary Meeting of the General Assembly Intergovernmental Negotiations on Security Council Reform, New York, 12 June 2017, Joint G4 statement by Brazil, Germany, Japan and India delivered by H.E. Ambassador Syed Akbaruddin (<http://www.legal-tools.org/doc/184c43/>).

²⁷ Informal Meeting on the Intergovernmental Negotiations on the Question of Equitable Representation on and Increase in the Membership of the Security Council and Other Matters Related to the Council, 22 February 2016, Statement by Ambassador Syed Akbaruddin (<http://www.legal-tools.org/doc/43d269/>).

²⁸ *India Today*, "India for compromise solution on Veto power in UNSC reforms", 9 July 2010.

viding the veto power to newer members, so as to avoid the creation of two separate classes within the Security Council.²⁹

India's concerns about the veto power have been consistent since the inception of the Charter.³⁰ India believes that the exercise of the veto has the effect in some cases of inhibiting the implementation of the majority-will in the Council, and thus advises moderation and restraint in the exercise of the veto.³¹ Additionally, she holds the view that unrestrained use of this power is to be condemned as much as the abuse of any other power.³²

India has been critical of the abuse of the veto power and the way its scope has been expanded to subsidiary bodies of the Security Council such as the sanctions committees, where the veto has been extended to all 15 members of the committees who can block, object to, or place on hold any request of a Member State, in effect killing any proposal on the grounds that consensus is required.³³ Highlighting the demographic changes since 1945, India has stated that as both the total population of the UN's membership and the number of UN Member States have increased more than three times, opposition to a corresponding or smaller increase of the size of the Security Council is not reasonable.³⁴

India has consistently maintained that the world's international institutions, in particular, the UN and its Security Council, require fundamental change to reflect contemporary realities.³⁵ She has stressed the role of developing countries in this reform process.³⁶ India remains convinced that, until comprehensive reform of the Security Council is undertaken, the overall reform of the UN can only be regarded as piecemeal and incomplete.³⁷ An important component concerns the exercise of veto.

Article 39 of the UN Charter authorises the Security Council to make the crucial determination of the existence of a "threat to the peace, breach of the peace, or act of aggression" and to decide which of the measures enu-

merated in Articles 41 and 42 to invoke in dealing with the problem.³⁸ This places the responsibility for ensuring the peace and security of the entire world on a select few countries that hardly represent the contemporary global reality. This affects the legitimacy of the Security Council's mandate.³⁹

Working groups on Security Council reform have stated that the Council needs to be more representative, and have proposed adding additional seats and limiting the veto power of the permanent members.⁴⁰ India along with G4 nations have pushed for reform of the Council by increasing the number of seats for both the permanent and non-permanent members: the G4 seek four permanent seats for themselves, and one more seat for the African continent.⁴¹ As a member of the Non-Aligned Movement, India had also suggested restricting the use of the veto to matters under Chapter VII, and requiring at least two vetoes to be cast for a resolution to be defeated.⁴²

4. What Should India Do?

The United Nations Charter lays down a vision of a world of international peace and security⁴³ where there are enforcement measures to ensure that this is the reality. One of the most powerful of these measures is collective security, which indicates a resolve of the international community to fight against what is understood as an international wrong. The decision on when and how to use this measure was left to the victorious states at the end of World War II. Their leaders were, in effect, expected to shape the future of international peace and security through their strength and expertise.

But the international community is dynamic, not static. It has evolved into a world very different from when the United Nations Charter was adopted in June 1945. This has affected our understanding of the foundation of the exercise of the responsibility that was given to the powerful nations – the permanent members of the Secu-

²⁹ Sushma Swaraj, "India will become a permanent member of UN Security Council with veto power", in *Zee News*, 7 April 2017.

³⁰ United Nations General Assembly, 1st Session, 14th Plenary Meeting, Statement by Ramaswamy Mudaliar, 18 January 1946.

³¹ *Ibid.*

³² United Nations General Assembly, 1947, see *supra* note 10.

³³ Statement by Ambassador Syed Akbaruddin, 2016, see *supra* note 19.

³⁴ Statement by Ambassador Syed Akbaruddin, 2016, see *supra* note 27.

³⁵ 16th Ministerial Meeting of the Non-Aligned Movement, Statement by E. Ahamed, Indian Minister of State for External Affairs, 25 May 2011 (<http://www.legal-tools.org/doc/4b81aa/>).

³⁶ *Ibid.*

³⁷ Preparatory Ministerial Meeting of the Non-Aligned Movement, Intervention by Mr. S. M. Krishna, Minister of External Affairs at the Interactive Debate on 'Lasting Peace through Joint Global Governance', 28 August 2012 (<http://www.legal-tools.org/doc/3122e7/>).

³⁸ United Nations Charter, see *supra* note 1, Article 39.

³⁹ Ian Hurd, "Myths of Membership: The Politics of Legitimation in UN Security Council Reform", in *Global Governance*, 2008, vol. 14, pp. 199–201.

⁴⁰ Jean Krasno, "Legitimacy, Representation, and Accountability: A Proposal for UN Security Council Reform", in *Yale Journal of International Affairs*, 2006, vol. 1, no. 2, pp. 94–95. See also Michal Hatuel-Radoshitzky, "Criticism of the UN Security Council Veto Mechanism: Ramifications for Israel", in *The Institute for National Security Studies*, Insight No. 765, 10 November 2015.

⁴¹ Joint Press Statement, Ministerial Meeting of the G4 Countries (Brazil, Germany, India and Japan) in the Margins of the 68th Session of the UN General Assembly, New York, 26 September 2013 (<http://www.legal-tools.org/doc/e2f049/>).

⁴² Shairi Mathur, *Voting for the Veto: India in a Reformed UN*, The Foreign Policy Centre, 2005, p. 12; Hennie Strydom, "The Non-Aligned Movement and the Reform of International Relations", in *The Max Planck Yearbook of United Nations Law*, 2007, vol. 11, p. 20.

⁴³ United Nations Charter, see *supra* note 1, Article 1.

riety Council – to ensure international peace and security. From an Indian perspective, the current situation therefore amounts to an extended period of morally illegitimate use of the power bestowed upon select powerful states. India believes there is an urgent need to reassess the veto power of the permanent members of the Security Council, and to ensure reform that enables effective use of collective security measures by the Council.

A permanent member should not be able to prevent the Security Council from playing its role to maintain or restore international peace and security. The interest of humankind in international peace is, at the end of the day, more fundamental than the more limited interests of any one government.

India continues to call for a more open, inclusive and participatory membership and decision-making process of the Security Council, more accountable to the contemporary world. This would help improve the system of collective security, thus serving the wider needs and interests of humankind. India should continue to push for an open and more inclusive Security Council which could increase the legitimacy of the authorisation of collective security actions.

In certain situations – such as grave humanitarian crises – India should exert pressure on permanent members of the United Nations Security Council to not use the veto power. Along this line, France has proposed that the permanent members should voluntarily refrain from using their veto when dealing with mass atrocity crimes.⁴⁴

It is appropriate to remind ourselves that in the outcome of the 2005 World Summit, the UN General Assembly adopted a resolution that highlighted the responsibility of the UN to undertake “collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter”, including Chapter VII.⁴⁵

In the 2009 UN General Assembly debate on the responsibility to protect, India expressed her support for

the use of peaceful means to prevent atrocities. She expressed concerns over interference by Western powers in the name of humanitarian crises which could jeopardise sovereignty, but said that measures under Article 42 of Chapter VII should be implemented on a case-by-case basis and in co-operation with relevant regional organisations with the proviso that such action should only be taken when peaceful means are inadequate and national authorities manifestly fail in discharging their duty.⁴⁶ The responsibility to protect stipulation that force can only be used once the approval of the Security Council has been obtained appealed to India’s preference for authorised interventions.⁴⁷

Furthermore, India can initiate the realisation of the full potential of Article 43 of the UN Charter by pushing for a permanent UN force⁴⁸ which could de-polarise the current military interventions of the UN that are based on mere *authorisation* of use of force by the UN, *implemented* by a small group of like-minded states outside the UN. A permanent, multinational force under the control of the UN can enhance the effective implementation of collective security action, even when not backed by dominant contributors.

In consonance with India’s policy to exhaust all means of pacific settlement of disputes before authorisation of the use of force, India could also push for mandatory utilisation of provisions under Chapter VI of the UN Charter. The growing complexity in the international arena makes it pertinent for India to lead by example in this respect, and to undertake the aforementioned measures for a more inclusive and effective UN.

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⁴⁴ French Embassy in London, “French Ambassador calls for UN veto reform amid Syria tragedy”, 23 June 2014 (<http://www.legal-tools.org/doc/266e0a/>). See also, Gareth Evans, “Limiting the Security Council’s veto power”, in *The Japan Times*, 6 February 2015.

⁴⁵ United Nations General Assembly, 60th Session, Resolution 60/1, UN Doc. A/RES/60/1, 24 October 2005, paras. 138–139 (<http://www.legal-tools.org/doc/0fc107/>).

⁴⁶ United Nations General Assembly, 63rd Session, 99th Plenary Meeting, Official Records, UN Doc. A/63/PV.99, 24 July 2009, Statement of Ambassador Hardeep Singh Puri, Permanent Representative of India to the United Nations (<http://www.legal-tools.org/doc/05cc09/>).

⁴⁷ Pethiyagoda, 2003, see *supra* note 14, p.17.

⁴⁸ Stephen M. De Luca, “The Gulf Crisis and Collective Security under the United Nations Charter”, in *Pace International Law Review*, 1991, vol. 3, no. 1, p. 39.