AN APPRAISAL OF THE ROLE OF VETO POWER IN ADMISSION OF STATES TO THE UNITED NATIONS*

Abstract

The United Nations is not only the largest multilateral organization in the world, but also the most influential and powerful intergovernmental organization in the world. It is for this reason that every sovereign and independent state yearns for membership of the United Nations. However, admission to the United Nations is not granted to sovereign and independent states as a matter of course upon fulfillment of the formal requirements, which are laid down in Article 4, paragraph 1 of the United Nations Charter, rather it is always subject to the whims and caprices of the existing members of the United Nations, especially the permanent members of the Security Council, who frequently use their veto power to decide which state becomes a member of the United Nations. This paper examined the nature of veto power of the permanent members of the Security Council and the role of veto power in the admission of new states to the United Nations. The research methodology adopted by the researcher is purely doctrinal, whereas analytical, descriptive and prescriptive approaches were employed. The paper found that arbitrary use of veto power by the permanent members of the Security Council is the major reason why some sovereign states have not been admitted to the United Nations. It was, therefore, recommended that article 27 of the United Nations Charter should be urgently amended in such a manner that veto power should not apply in cases relating to admission of states to the membership of the United Nations. This will not only ensure that veto power is no longer used by the permanent members of the Security Council to block admission of qualified states to the United Nations, but will also promote the universal character of the United Nations. Also, this paper recommended that the permanent members of the Security Council should refrain from using their veto power except where their vital national interest is at stake.

Keywords: Admission, General Assembly, Security Council, United Nations, Veto Power**.**

1. Introduction

The United Nations (UN) was established at the end of the World War II via the UN Charter which came into force on October 1, 1945.[1] It was established as an intergovernmental and international organization saddled with the responsibility for maintaining international peace and security, developing friendly relations among nations and achieving international co-operation in solving international problems.[2] The UN was also established to be the centre for harmonizing the actions of nations in the attainment of the above objectives. In carrying out the above responsibilities the UN is obligated to observe the principles of sovereign equality of all member states, nonintervention and prohibition of war or use of force among others. The UN is unarguably the most powerful intergovernmental and international organization in the world today, and this makes membership of the UN an aspiration of every independent state irrespective of its size and status. The UN Charter makes provision for two categories of membership, namely, original members and admitted members. According to Article 3 of the Charter, 'the original Members of the UN shall be the states which, having participated in the UN Conference on International Organization at San Francisco, or having previously signed the Declaration by United Nations of 1st January 1942, sign the present Charter and ratify it in accordance with Article 110.' From the above provision, the original members are those states that participated in the UN Conference on International Organization at San Francisco and the states that previously signed the Declaration by UN of 1st January 1942. But participation in the San Francisco Conference or signing of the Declaration by UN of 1942 was not sufficient to qualify any states as original members of the UN as those states must as well sign and ratify the UN Charter. The states which ratified the UN Charter before the Charter came into force became original members the day the Charter came into force, while those that ratified the Charter after

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[1]United Nations Charter 1945.

[2] *Ibid,* Art. 1.

it came into force, became original members the day they ratified it[3], and they are 51 states in number.[4] Membership by admission is the alternative way of acquiring the membership of the UN; and it is only available to those states which do not qualify for original membership. Article 4, paragraph 1 of the UN Charter provides that membership in the UN is open to all other peace-loving states which accept the obligations contained in the UN Charter and, in the judgment of the UN, are able and willing to carry out those obligations. But the fact that a state meets the above conditions does not *ipso facto* qualify it for membership of the UN. This is so because by virtue of Article 4, paragraph 2 of the UN Charter, no state shall be admitted to the UN without an express recommendation of the United Nations Security Council (UNSC). The provision makes the permanent members of the UNSC indispensable in issues relating to admission of states to the UN as they could always use their veto power to block the recommendation of any state for admission to the UN. Indeed, as a result of arbitrary use of veto power by permanent members of the UNSC, many states which were eminently qualified for membership of the UN were either denied admission to the UN or had their admission delayed. It is because of abusive use of veto power by Russia, China and the United States respectively that Kosovo, Taiwan and Palestine have been consistently denied admission to the UN.

2. Meaning and Nature of Veto Power

The word 'veto' is one of the Latin words that were anglicized without any modification. In Latin, the word 'veto' means 'I forbid' and it is derived from another Latin word, 'vetare', which means 'to forbid'.[5] From this brief etymological analysis, one could readily deduce the meaning of the word veto: a power or a right to refuse, reject or disallow something. Thus, the Oxford Advanced Learners Dictionary defines the word 'veto' as 'the right to refuse to allow something to be done, especially right to stop a law from being passed or a decision from being taken.'[6] It also defines veto as the right 'to stop sth [something] from happening or being done using your official authority.'[7] Osborn's Concise Law Dictionary concisely defines veto as the power or right to prevent or reject some proposals or actions.[8] Under the municipal system, the term 'veto' may be viewed as a constitutional concept by which one branch of government prohibits an action by another branch, especially a chief executive's refusal to sign into law a bill passed by the legislature.[9] A case in point is section 58(4) of the Constitution of the Federal Republic of Nigeria, 1999, as amended, which empowers the President of the Federal Republic of Nigeria to withhold his assent if he is of the opinion that a bill presented to him for assent by the National Assembly should not be passed into law.[10] A similar provision could be found in Section 7 of Article I of the Constitution of United States of America which empowers the President to approve or disapprove every bill which has been passed by the House of Representative and the Senate before it shall become a law.[11] It is important to note that the word 'veto' was neither used in the Nigerian Constitution nor in the Constitution of the United States, but was only read into them. The right or power to exercise or use veto is termed 'veto power', while the person that has the authority to use veto is referred to as 'veto-wielder' or 'veto-holder'.

[3] *Ibid*, Art. 110, para. 4.

[4] C L MacNeely., *Constructing the Nation-state: International Organization and Prescriptive Action* (Westport, CT: Greenwood Publishing Group, 1995), p. 43.

[5] M Breyer, *Ancient Rome* (Westminster, CA: Teacher Created Resources, 2004), p. 32.

[6] S Wehmeier and M. Ashby (eds), *Oxford Advanced Learners Dictionary* of Current English (6th edn, Oxford: Oxford Universty Press, 2000), p. 1329.

[7] *Ibid.*

[8] S Bone (ed), *Osborn's Concise Law Dictionary* (9th edn, London: Sweet & Maxwell, 2001), p.400.

[9] B A Garner (ed), *Black's Law Dictionary* (8th edn, St. Paul, Minnesota: Thompson West, 2004), p.1596.

[10] The Constitution of Federal Republic of Nigeria, 1999, as amended, s. 58(4). It should, however, be pointed out that the president's power under section 58(4) is a qualified veto. A qualified veto is a veto that is conclusive unless overridden by an extraordinary majority of the legislature.[10] Thus, subsection (5) of section 58 of the Constitution provides that where the president withholds his assent, the bill will nonetheless become law if it is passed again by each of the houses of the National Assembly by two-third majority.

[11] The Constitution of the United States of America, 1789, as amended, art. 1, s. 7. Note that the House of Representative and the Senate may override the President.

3. Origin of veto power in International Law

Veto power is one of the various modes of decision-making in international organizations. Other modes include consensus or unanimity, weight vote, simple majority and special majority. Under international law, veto power may be perceived as a politico-legal concept which is aimed at creating and maintaining balance of powers among the world's most powerful states. The essence of balance of power is to ensure that no one nation or combination of nations dominated international relations and politics.[12] The origin of veto power in international law may be loosely traced to the Concert of Europe created by the Congress of Vienna of 1815.[13] Although neither permanent membership nor veto power was expressly created in the Concert of Europe, the consensus and unanimity principle that prevailed under the Concert of Europe was arguably the precursor of the modern-day veto power, because any proposal of the Concert that was objected to by any state party to the Concert did not stand.[14]. It was, however, the League of Nations Covenant that formally and firmly established the concept of veto under the contemporary international law. The concept of veto existed under the League of Nations in the form of unanimity principle; thus, according to Article 5(1) of the League of Nations Covenant, 'Except where otherwise expressly provided in the Covenant or by the terms of the present Treaty, decisions at any meeting of the Assembly or of the Council require the agreement of all the Members of the League represented at the meeting.'[15] It follows from the above that any member of the Assembly or the Council could veto any proposal at the Assembly's or Council's meeting by casting a negative vote.[16] But this was not a plus to the League as various authors attributed the failure of the League of Nations to its unanimity principl, which prevented the members of the Assembly and Council from reaching agreements on any serious issues.[17] The unanimity principle that prevailed under the League of Nations was retained under the UN system, albeit, in a different form – the unanimity of the permanent members of the UNSC. According to Brownlie, 'the veto [in the UNSC] was seen as an improvement on the unanimity rule, which prevailed in the organs of the League of Nations.'[18]

4. Creation of veto power of the Permanent Members of the UNSC

The word 'veto' is not used anywhere in the UN Charter. Its usage only relates to the voting arrangements in the UNSC which requires the unanimity and concurrency of the permanent members of the UNSC before the Council could adopt certain resolutions. These voting arrangements resulted from a compromise between the United States, the former Union of Soviet Socialist Republics (now represented by Russia) and the United Kingdom, at the conference of Yalta of 1945,[19] and they are contained in Article 27 of the UN Charter. Paragraph 3 of the said Article 27 provides that 'decisions of the Security Council on all other matters shall be made by an affirmative vote of nine members including the *concurring votes of the permanent members*.'[20] The requirement of the 'concurring votes' of the permanent members of the Council in all non-procedural or substantive matters is what has given rise to veto power of the permanent members of the UNSC. Therefore, veto power of the UNSC is the permanent members' power to nullify any draft resolution on non-procedural matters just by casting a negative vote. Veto power of the permanent members of the UNSC unarguably is the most controversial aspect of the UN policy. In fact, its controversies predated the UN Charter itself as issues relating to veto generated heated argument and debated at the Dumbarton Conference of 1944 among the participating

[12] R F Hamilton and H H Herwig, *The Origins of World War I* (New York: Cambridge University Press, 2003), p.46.
[13]H Afflerbach and D Stevenson (eds), *An Improbable War?: The Outbreak of World War I and European Political Culture before 1914* (New York: Berghahn Books, 2012), p. 47.
[14] R F Hamilton and H H Herwig, *op cit*., p.47.
[15] Covenant of the League of Nations, 1919, as amended, Art. 5, para.1. This Article merely incorporate the unanimity principle that prevailed under the Concert of Europe. See Chapter one.
[16] N Schrijver, 'Reforming the UN UNSC in Pursuance of Collective Securityne any major reform', Journal of Conflict & Security Law (2007), Vol. 12 No. 1, 128.
[17]F S Northedge, *The League of Nations: Its Lifes and Its Times, 1920 – 1946* (New York: Holmes & Meyer, 1946), pp. 187-189.
[18] I brownlie, the powers and functions of the United Nations UNSC (Lagos: NIALS, 1999), p.3.
[19] B Simma and S Brunner, 'Article 27' in B Simma and B Randelzhofer (eds), *The Charter of the United Nation: A Commentory* (2nd edn, Oxford: Oxford University Press, 2002), p. 435.
[20] Emphasis mine

states.[21] Indeed, various aspects of veto power of the permanent members of the UNSC generated considerable controversies during the early years of the UN, especially the issue of the distinction between procedural matters and non-procedural matters. This controversy was partly created by the UN Charter itself because the Charter neither draws any clear-cut line between procedural matters and non-procedural matters nor provides any guide as per how to distinguish between them. Thus, according to Shaw, 'The question of how one distinguishes between procedural matters from non-procedural matters has been a highly controversial one'.[22] Therefore, Article 27 of the Charter appears to be self-defeating because the purpose of separating procedural matter from non-procedural matters is being defeated[23].

The need to harmonize Article 27 of the Charter with regard to the distinction between procedural matters and non-procedural matters is a palpable one, and the United Nations General Assembly (UNGA) has made enormous contributions in this direction. Hence, by resolution 117(II) of 1947 the Assembly mandated the Interim Committee it earlier established via resolution 111 (II) of 13 November 1947 to investigate the problems of the voting procedure in the UNSC. The Committee in its report entitled 'The Problem of Voting in the UNSC'[24] tried to streamline the controversies surrounding veto power of the UNSC, especially as it related to the procedural and substantive matter by drawing a list of Procedural matters. The Committee, among other things, recommended that the question whether or not an issue is a procedural matter is procedural and so should not be subjected to the veto. By Resolution 267 (III) 1949, the UNGA adopted the Committee's report and called on the UNSC to accept and act in accordance with the report. However, the Assembly observed that the list is not conclusive and therefore, other matters can be considered procedural if the members of the Council conclude so.[25] Unfortunately, the permanent members refused to accept the recommendations of the Committee and continued to exercise their veto power arbitrarily and unrestrictedly.[26] Moreover, the question whether a matter is procedural or not, usually regarded as a preliminary question, is itself subject to the veto.[27] This practice otherwise termed 'double-veto' has been criticized by various international law experts.[28] Although the issues of 'double veto' was not expressly mentioned in Article 27, it was actually agreed upon at San Francisco Conference and therefore, formed part of the San Francisco Declaration, a public statement issued by the four sponsoring nations, namely China, United States, United Kingdom and Soviet Union, to clarify the unresolved issues in respect of the voting arrangements of the UNSC.[29]

Another controversy surrounding veto power of the UNSC is the issue of whether a permanent member that abstained from voting could be deemed to have exercised its vote power under the Charter.[30] A situation like this could occur in three different ways, namely where a permanent member is absent at the time of the vote, where a permanent member voluntarily abstains or where a permanent member does not participate during voting.[31] The requirement of the 'concurring votes of the permanent members' before decisions on non-procedural matters could be made readily suggests that the concurrence of all the permanent members is to be obtained at all times because under the Vienna Convention on Law of treaties, 'a treaty shall be interpreted in good faith in accordance with the

[21] J Wouters and T Ruys, *UNSC reform: A New Veto for a New Century? (Egmont Paper 9)* (London: Academia Press, 2005), p. 5.
[22] M N Shaw, *International Law* (5th edn, Cambridge: Cambridge University Press, 2004), p. 1084.
[23] Consequently, matters that would ordinarily pass for procedural matter are now being subjected to veto power.
[24] A/578, July 15, 1948.
[25] S Okhovat, The United Nations UNSC: Its Veto Power and Its Reform, CPACS Working Paper, No. 15/1, December 2011 p. 8. Published in 2012 the by Centre for Peace and Conflict Studies, the University of Sydney p. 11, available at http://sydney.edu.au/arts/peace_conflict/docs/working_papers/UNSC_paper.pdf, accessed on 6/3/2014.
[26] H Köchler, 'The Voting Procedure in the United Nations UNSC: Examining a Normative Contradiction in the UN Charter and its Consequences on International Relations', 1991, p.15, available at http://www.i-p-o.org/Koechler-Voting_Procedure-UN_Security_Council.pdf, accessed on 8/7/2014.
[27] Repertory of the Practice of UN Organs, New York, 1966-1969, Sup. 4, vol. II p.318, accessible at http://legal.un.org/repertory/art27/english/rep_supp4_vol1-art27_e.pdf#pagemode=none. Accessed on 14/3/2014.
[28] According to Malcolm Shaw, 'This 'double veto' constitutes a formidable barrier.' See M N Shaw, *opcit.*, p. 1085.
[29] J Wouters and T Ruys, *above at note 21*.
[30] K Hossain, 'The Complementary Role of the United Nations UNGA in Peace Management', *Review of International Law and Politics,* Vol. 4, No: 13, 2008, 77-93.
[31] L Gross, 'Voting in the UNSC: Abstention and Absence from Meeting', Yale L. J. 209 -257, (1951), 253.

ordinary meaning to be given to the term of the treaty in their context and in the light of its object and purpose.'[32] This point was clearly buttressed by Kelsen when he observed that 'The permanent members of the UNSC are the five states designated in Article 23, paragraph 1. If the concurring votes of 'the' permanent members of the UNSC are required, the votes of these five members are meant.'[33] He further stated that this is 'the interpretation of Article 27 given by the statement of the Four Sponsoring Powers on the voting procedure of the UNSC' at San Francisco Conference.[34] However, ever since the Soviet Union's abstention over the Spanish question in 1946, there has been a uniform practice according to which abstention by one or more of the permanent members does not prevent the adoption of a resolution. This practice of the UNSC is definitely not in consonance with the provisions of the Vienna Convention on the Law of Treaties. Thus, according to Gardiner, 'it seems inconsistent with the ordinary meaning of 'concurring' to treat absence or abstention as concurrence.'[35] Also, Gross contended that 'mere practice', however acceptable, cannot alter the 'strict requirements' of the Charter's word.[36] However, the legality of this practice was upheld in the *Namibian Case* by the International Court of Justice

It is important to point out that voluntary abstention is distinguishable from compulsory abstention which is laid down in the proviso to Article 27(3).[37] According to the said proviso, 'in decisions under Chapter VI, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting.' The application of this proviso would not only limit the exercise of veto power by the permanent members, but would equally estop every member of the Council from voting in any matter relating to pacific settlement of dispute if the relevant state is a party to the dispute. However, this proviso would only apply to members of the Council who are parties to the dispute being considered by the Council. This proviso is rooted in one of the fundamental principles of natural justice, *nemo judex in causa sua*[38] as it is aimed at assuring the other party to the dispute that it would not be unduly prejudiced. Although this proviso appears to be well intended by the framers of the UN Charter, it is nevertheless inadequate because equity and fairness demand that a party to a dispute shall not only abstain from voting, but shall also not participate at all in any meeting of the Council where issues relating to such dispute would be discussed.

5. Emergence of 'Pocket Veto' or 'Hidden Veto' in the UNSC

The use of veto power by the permanent members of the UNSC has been in decline since the end of the Cold War. But this does not in any way indicate that they permanent members have stopped exploiting their privileged position in the Council. It only reflects the improved cooperation among the permanent members of the UNSC and its concomitant effect on the application of veto power by the permanent members. Thus, according to Malone, 'The much improved climate among the P-5 in the post–Cold War era can be gauged by the sharp decline in the use of the veto'.[39] In fact, from January 1990 to May 2014 only 29 vetoes have been used as against 244 vetoes that were used between February 1946 and December 1989.[40] Since the end of the Cold War, neither France nor the UK has publicly used their veto power.[41] As a result of this improved cooperation and relationship among the permanent members,

[32] Vienna Convention on the Law of Treaties, 1969, Art. 31, para. 1; Vienna Convention on the Law of Treaties between States and International Organizations, 1986, Art. 31, para. 1.

[33] H. Kelsen, *The Law of the United Nations: A Critical Analysis of Its Fundamental Problems: with Supplement* (New Jersey: The Lawbook Exchange Ltd, 1950), p.240.

[34] *Ibid.*

[35] R K Gardiner, *International Law* (London: Pearson Education Limited, 2003), p. 233.

[36] M S Mcdougal and R N Gardner, 'The Veto and the Charter: An Interpretation for Survival', 60 Yale L. J. 258, 1951, 261, 258-292.

[37] S S Kim, *China, the United Nations and World Order* (New Jersey: Princeton University Press, 2015), p 187.

[38] No one should be a judge in his own cause.

[39] D M Malone, 'Introduction' in D M Malone (ed), *The UN UNSC: From the Cold War to the 21st Century* (Boulder: Lynne Rienner Publishers, 2004), p. 7.

[40] See the Research Guides on the list of vetoes cast in the UNSC in 2014 as compiled by Dag Hammarskjöld Library, New York, available at http://research.un.org/en/docs/sc/quick/veto, accessed on 3/10/2014. Note however that there is resurgence in the use of veto power in the recent times, which signals the returning of cat and mouse relationship between the West and East.

[41] *Ibid.*

situations that would hitherto lead to the exercise of veto power were nipped in the bud. In practice, once any permanent member threatens to veto any draft resolution of the Council, there would always be a serious interplay of politics and diplomacy between the sponsors of the draft resolution and the permanent member in question so as to find a way of wriggling out of the the situation. This practice otherwise known as 'pocket veto' or 'hidden veto' or 'shadow veto' has become a commonplace in the UNSC in recent years.[42] Hence, the permanent members have continued to dominate and control the affairs of the UNSC, albeit, through the back door.[43] The permanent members of the Council normally resort to pocket vetoes to circumvent votes of censure and criticisms that would be cast on them by the members of the international community if they vetoed a popular draft resolution. For example, neither Russia nor China could veto UNSC's resolution 2118 (2013) on the elimination of the Syrian Chemical Weapons because of its popularity even though they had hitherto jointly vetoed three successive draft resolutions of the Council respecting Syrian crises.[44] Instead, they resort to pocket veto to mellow down the language of the resolution by demanding the deletion of all the paragraphs of the resolution which could be exploited or relied upon for military action against Syria before its adoption. They also demanded that the resolution should expressly reaffirm the Council's commitment to the sovereignty, independence and territorial integrity of the Syrian Arab Republic. And this was accordingly incorporated in paragraph two of the preambular part of the resolution.

6. Use of Veto Power to Block Admission of New States to the UN

Admission of new states to the membership of the UN is regulated by Article 4 of the UN Charter and its paragraph 1 provides that 'Membership in the UN is open to all other peace-loving states which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations.' From the above provision, any aspirant to the membership of the UN shall:

1. be peace loving;
2. be a state;
3. accept the obligation of the Charter; and
4. be able and willing to carry out these obligations.[45]

On the other hand, Article 4, paragraph 2 laid down the procedure for the admission of new states to the UN and according to it, '[t]he admission of any such state to membership in the UN will be effected by a decision of the UNGA upon the recommendation of the UNSC.' It is quite obvious from the above provision that the issue of admission of new states to the membership of the UN requires an active participation of both the UNSC and the UNGA: the UNSC makes the recommendation, while the UNGA carries out the actual admission. It is germane to note that Article 4 is silent on the question of whether or not veto power of the permanent members of the UNSC is applicable to issues relating to the UNSC's recommendation under paragraph 2 of Article 4. Thus, this question generated a lot of controversies among the permanent members of the UNSC during the early years of the UN. While the then Soviet Union contended that veto power of the permanent members was applicable to the UNSC's recommendation under Article 4, other permanent members especially the trio of UK, US and France thought otherwise.[46] It was, however, the contention of the Soviet Union that emerged as the practice of the UN since both the UNGA and the UNSC have always treated negative votes of the permanent members on issues relating to admission as vetoes.[47] Really, there is nothing on the face of the UN

[42]As Butler noted, 'It would simply be impossible to calculate how many times the decision-making process of the UNSC, in an informal, private session, has been shaped by the threat of a veto to be cast in a formal session by one of the Permanent Members.' See R A C Butler, 'Reform of the United Nations UNSC', Penn. St. J.L. & Int'l Aff., Vol. 1, Iss. I, 2012, 30.

[43] M Patel, 'UN resolution on Syria masks the real problem, the need to reform the UNSC veto', Michigan Journal of International law, 14th November 2013, available at http://mjilonline.org/?p=829, accessed on 18/3/2014.

[44] M Nichols, 'Russia, China veto U.N. UNSC resolution on Syria', *Reuters*, 19th July 2012. http://www.reuters.com/Article/2012/07/20/us-syria-crisis-un-idUSBRE86I0UD20120720 Accessed on 21/3/2014.

[45] L Gross, *Essays on International Law and Organization, Volume 1* (Leiden: BRILL, 1983), p.587.

[46] This reflected the initial tension between the East and the West which latter snowballed into the cold war.

[47]J Quigley, 'Who Admits New Nembers to the United Nations? (Think Twice before you Answer)', *The Geo. Wash. Int'l L. Rev.*, Vol. 44 (2012), 186.

Charter suggestive that veto power of the permanent members of the UNSC is not applicable to Article 4, paragraph 2 of the UN Charter since veto power was neither excluded by the said paragraph 2 nor caught by the proviso to Article 27(3) of the Charter.

The Western bloc used their majority veto in the UNSC to prevent the admission of states that had strong tie with the Soviet Union into the United Nation; and in an attempt to claw back its own pound of flesh from the West, the Soviet Union arbitrarily used its veto power to block the admission of all other states to the UN. This arbitrary use of veto power by the Soviet Union seriously affected the UN as states that were eminently qualified for the membership of the UN were denied admission. For example, between 1946 and 1971 the Soviet Union had used its veto power forty-nine times to block admission of new states to the UN, while the then Republic of China made use of its veto power only once to stop the admission of the Mongolian People's Republic to the UN.[48] Because of the rate at which Andrei Gromyko, the then Soviet Union Foreign Affairs Minister, was using the Soviet Union's veto power at the UNSC, he became known as 'Mr Nyet' ('Mr No').[49] The issue of abuse of veto power of the permanent members of the UNSC was indeed one of the teething troubles that confronted the UN. Hence, according to Duxbury, 'In the early years of the UN, one of the major issues confronting the Organization was the difficulty in solving the deadlock between the Soviet Union and the Western powers over the admission of new members.'[50] The UNGA considered the incessant use of veto power by the Soviet Union as an abuse of power since its reasons for the use of veto power were not founded on the UN Charter. In an attempt to check this arbitrary use of veto power by the Soviet Union, the UNGA approached the International Court of Justice (ICJ) for advisory opinion on whether a member of the UNSC or the Generally Assembly can base its vote on ground other than those conditions specified in Article 4, paragraph 1 of the UN. The ICJ by nine to six votes opined that a member of the UN which is called upon, by virtue of Article 4 of the Charter, to pronounce itself by its vote, either in the UNSC or in the UNGA, on the admission of a state to membership in the UN, is not juridically entitled to make its consent to the admission dependent on conditions not expressly provided by paragraph 1 of the said Article.[51] The ICJ observed in particular that 'a Member of the organization cannot, while it recognizes the conditions set forth in that provision to be fulfilled by the State concerned, subject its affirmative vote to the additional condition that other States be admitted to membership in the UN together with that State.'[52]

Notwithstanding the advisory opinion of the ICJ in the *Conditions of Admission case*, the Soviet Union continued to use its veto power arbitrary to block the admission of qualified states to the membership of the UN.[53] This prompted some members of the UN to call on the UNSC and the UNGA to discountenance any veto cast outside the conditions laid down in paragraph 1 of Article 4. Although their call was not acceded to by the UNSC and the UNGA as the duo continued to treat negative votes of the permanent members as vetoes even when they were cast outside the ground provided for under paragraph 1 of Article 4, the call was very useful because it prompted the General Assemble to approach the ICJ the second time over questions relating to admission of new states to the UN. So, in 1949, just about one year after the ICJ handed down its advisory opinion in the *Conditions of Admission case,* the UNGA returned to the ICJ again for another advisory opinion on whether the UNGA could admit a state to the membership of the UN pursuant to Article 4, paragraph 2 of the Charter without the recommendation of the UNSC either by reason of the candidate failing to obtain the requisite majority or of the negative vote of a permanent member upon a resolution to recommend. The ICJ, by twelve votes to two, opined that the admission of a State to membership in the UN, pursuant to paragraph 2 of Article 4 of the Charter,

[48]See the Subjects of the UN UNSC as compiled by the Global Policy Forum, available http://www.globalpolicy.org/component/content/Article/102/40069.html, accessed on 25/3/2014.
[49]R V Dijk et al (eds) *Encyclopedia of the Cold War* (London: Routledge, 2013), p.338.
[50] A Duxbury, *The Participation of States in International Organizations: The Role of Human Rights and Democracy* (New York: Cambridge University Press, 2011), p. 92.
[51] Conditions of Admission of a state to membership in the United Nations (Article 4 of the Charter), Advisory Opinion, 1948, ICJ Rep., 57, para. 66.
[52]But the court made no comment on the issue of whether negative votes cast on non-Charter criteria could be challenged and this terribly marred the otherwise incisive opinion of the court. See J Quigley, *op cit.*, p. 188.
[53]*Ibid*., p. 185.

cannot be effected by a decision of the UNGA when the UNSC has made no recommendation for admission, by reason of the candidate failing to obtain the requisite majority or of the negative vote of a permanent Member upon a resolution so to recommend.[54] The *Competence case*, just like the *Conditions for Admission case,* did very little to resolve the problem created by the arbitrary use of veto power by the Soviet Union to block the admission of otherwise qualified states to the UN. In fact, the Competence Case compounded the problem because of ICJ's unqualified and blanket remark that the UNGA's competence to admit states to the UN is tied to a favourable recommendation by the UNSC. The remark which was seen as a tacit approval of the Soviet Union's abuse of its veto power, clearly made a nonsense of the Court's earlier opinion in the *Condition for Admission Case* that a Member of the UN which is called upon, by virtue of Article 4 of the Charter, to pronounce itself by its vote, either in the UNSC or in the UNGA, on the admission of a State to membership in the UN, is not juridically entitled to make its consent to the admission dependent on conditions not expressly provided by paragraph 1 of Article 4.

As the crisis generated by the arbitrary use of veto power by the Soviet Union could not be remedied judicially, a search for a political solution became inevitable. Thus, after a protracted negotiation between the West and East on how to resolve the crisis, a political deal was struck in 1955. Under this deal otherwise known as a 'package deal', both sides agreed to allow a number of states (16 states) to be admitted to the UN.[55] According to Quigley, '[t]he crisis was eventually resolved at the political level with agreement in 1955 to admit each side's candidates in what was popularly called a 'package deal'.[56] The package deal refers to a process by which the UNSC lumped 16 states together in a single recommendation, thereby avoiding the exact application of the substantive criteria of paragraph 1 of Article 4.[57] The relevance of the 'package deal' lay in the fact that it was the first decisive step towards the achievement of the intended universal membership of the UN.[58] Although the package deal was generally considered a plus to the UN, it was nevertheless in conflict with the ICJ's opinion in the *Conditions for Admission case* since some of the states that were admitted under the package were not qualified under paragraph 1 of Article 4 of the Charter.[59]

It is also important to note that the package deal did not conclusively settle the problems posed by the use of veto power to block the admission of states to the UN. Hence, the Soviet Union continued to apply its veto power after the package deal although less frequently. Similarly, even the United States that hitherto declared that it would not use its veto privilege to block admission of any state to the UN where the state's application is supported by the requisite majority vote of the UNSC reneged on this declaration in 1975 when it used its veto power several times to block the admission of the South Vietnam and North Vietnam.[60] Although the last time veto power was used to block the admission of a state to the UN was in 1976,[61] the permanent members of the UNSC have continued to use their pocket veto to block admission of qualified states to the UN. For example, the United States has continued to block admission of Palestine to the UN via its pocket veto.[62] In the same vein, China had never hesitated

[54]Competence of the General Assembly for the Admission of a State to the United Nations, Advisory Opinion, ICJ Rep., 1950, p.4. For a detailed discussion of this case, see G Dahlhoff, *International Court of Justice, Digest of Judgments and Advisory Opinions, Canon and Case Law 1946 - 2012: (2-Volume set)* (Leiden: Martinus Nijhoff Publishers, 2012), pp. 105-109.
[55]A/RES/995 of 14th December, 1955.
[56]J Quigley, above note 47 at p.211.
[57] A Brugère 'Thomas Grant, Admission to the United Nations, Chapter 4 and the Rise of Universal Organization' *EJIL* 21 (2010), 792.
[58] L Gross 'Progress towards Universality of Membership in the United Nations', 50 Am. J. Int'l L. 791 (1956).
[59] T Grant, *Admission to the United Nations, Chapter 4 and the Rise of Universal Organization* (Leiden: Martinus Publishers, 2009), p.334.
[60]See the Subjects of the UN UNSC as compiled by the Global Policy Forum, available <http://www.globalpolicy.org/component/content/Article/102/40069.html>, accessed on 15/02/2021.
[61] *Ibid*
[62]F L Kirgis, *International Organizations in their Legal Setting* (2nd edn, St. Paul: West Publishing Co., 1993), p.148.

to block admission of Taiwan to the UN through its pocket veto on the ground that Taiwan forms part of China.[63] Only recently, Russia blocked admission of Kosovo to the UN by means of pocket veto.[64]

7. Conclusion and Recommendations

During the negotiation of the United Nation Charter, the permanent members of the UNSC undertook to use their veto power cautiously and for the common good. Unfortunately, this undertaking is more honoured in the breach than in the observation as permanent members of the UNSC have continued to use their veto power arbitrarily and irresponsibly. Thus, veto power had not only been used to delay admission to states that were eminently qualified for membership of the UN, but had also been used to deny admission to states that were otherwise qualified for membership of the UN. Of course, it is because of the veto power that nations like Taiwan, Palestine, and Kosovo have not been admitted to UN even though they meet all the conditions for membership of the UN as provided in Article 4, paragraph 1 of the UN Charter and as affirmed by the ICJ in the *Conditions of Admission case.* Veto power was also ignobly used by the United Kingdom to block expulsion of South Africa from the UN in the hay days of its apartheid policies. Against the backdrop of the foregoing, it is recommended that article 27 of the UN Charter should be urgently amended in such a manner that veto power should not apply in cases relating to admission of states to the membership of the UN. This will not only ensure that veto power is no longer used by the permanent members of the UNSC to block admission of qualified states to the UN, but will also promote the universal character of the UN. It is further observed that the manner in which the permanent members of the UNSC are using their veto power to pursue their national interests, even at the expense of international peace and security, has become very worrisome thereby necessitating the call to limit the use of the veto power in the pursuit of national interests. The general notion is that the permanent members should refrain from using their veto power unless their 'vital' national interests are at stake. In fact, there was a mutual understanding to that effect at the Yalta Conference of 1945, where the voting method of the UN was finalized, but this mutual understanding is always ignored by the permanent members of the UNSC in the exercise of their veto power. Thus, it is recommended that the UN Charter should be amended to clothe this mutual understanding in legal garment – to make it binding.

[63]As of 2007, the United Nations UNGA had rejected Taiwan's quest for membership of the United Nations 15th consecutive time. See L Trevelyan, 'UN Rejects Membership for Taiwan', *BBC News,* September 19, 2007, available at <http://news.bbc.co.uk/2/hi/asia-pacific/7003811.stm>, accessed on 15/02/2021.
[64] S Okhovat, *above note 25 at* p. 25.