UN Security Council and the Israel and Hamas War: A Review

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Abstract

When the international community is unable to prevent a potential conflict from occurring, the UN Security Council becomes the first victim of the world's criticism, because of its perceived role as the guardian of peace despite its organisational limitations in maintaining world peace and security. Russia's invasion of Ukraine in February 2022 and the Gaza War following Hamas's attack on Israel on 7 October 2023, are two such current examples. This article argues that it is the power politics behind the Security Council that is more responsible for the UN's inability to restore peace rather than the institution itself. Notwithstanding the blame game, the UN Security Council plays an important role in shaping the world opinion to put pressure on powerful nations, especially the permanent members of the Council to come to terms to find a negotiated solution to a conflict.

Introduction

As the UN was trying to cope with growing impatience over the it's failure to either prevent Russia from invading Ukraine or contain the war through at least a ceasefire, Hamas attacked Israel on 7 October 2023. Repeated proposals in the UN Security Council demanding a ceasefire continue to reach a dead end

because of the veto power of the permanent members (P5). The story was the same when Russia invaded Ukraine. President Zelensky told the Security Council that since Russia has a veto, the UN Security Council is useless.² Robert Mood, the US Ambassador to the UN, during his briefing to the Security Council, remarked that it is the responsibility of the Security Council to

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maintain international peace and security.3 Earlier, the same US had vetoed a Security Council resolution calling for an immediate humanitarian ceasefire in Gaza.4 This resolution, if adopted, would have demanded an immediate ceasefire and the unconditional release of all hostages. In contrast, Russia and China vetoed a draft resolution condemning Hamas.⁵ In the case of the Gaza War, any resolution supported by the US that criticizes Hamas will be vetoed by Russia and China. On the other hand, a resolution calling Israel to cease fire will be torpedoed by the US. It is, therefore, quite common to blame the Security Council for not being able to prevent a conflict from occurring, spreading, and bringing it to a halt despite the well-known limitations. But should it only be the organisational limitation of the Security Council that is responsible for failing to address a threat to international peace and security? This article aims to explore this by analysing the limitations of the Security Council by using the Gaza War as a piece of case evidence. The author argues that while the Security Council has a definite role, the powers controlling the Security Council are responsible for maintaining world peace. The article brings forward a brief insight into the birth of the UN, and the functioning of the Security Council. In the final section, the prospects of maintaining international peace and security, regardless of the inherent limitations of the UN Security Council have been examined.

The UN, the Charter, and the Security Council

The evolution of the UN is connected to two developments of the international order—the League of Nations and the Westphalian System.⁶ The UN was established as a replacement for the League and has the authority and responsibility to ensure international peace and security including using all means under Chapter VII. However, it does not have any standing army under its command, to impose such an authority. The UN was expected to plug the gaps in the League, which eventually failed to prevent World War II. To

enforce peace and supervise ceasefire agreements, the UN had to look to the member states to contribute troops. Therefore, the UN by itself, is not capable of addressing the challenges of the threat to security without the support of the member states. The League faced many challenges because of internal divisions among the members and it failed. Finally, it had to be dissolved in 1946 and was replaced by the UN.⁷ The UN was conceived to respect state sovereignty as mentioned in the Westphalian System, which is reflected in Article 2 (1) of the UN Charter.⁸

The UN Charter is the founding document of the UN and was signed in San Fransisco on 26 June 1945 with 50 original signatories, which has now 193 Member States. It was later ratified on 24 October 1945, giving formal birth to the UN.9 Blaine Sloan, who was Director of the UN General Legal Division, quoting the late Sir Humphrey Waldock, one-time President of the International Court of Justice, opined, that since all members of the UN are parties to the Charter, the Charter is technically a multilateral convention, but in reality, it is the constitution of the UN.10 The Preamble of the Charter that is mentioned at the beginning and the purposes and principles have been defined in Articles 1 and 2 of Chapter I. There are seven purposes of the UN Charter. However, the first and primary purpose of the UN Charter is to maintain international peace and security. The responsibility for this rests on the UN Security Council, which is one of the six organs of the UN including the General Assembly and the International Court of Justice. The functions and powers, voting and procedure of the Security Council are enshrined in Articles 24 to Article 32. Article 27 stipulates that the decision of the Security Council on all matters will be made by an affirmative vote of the permanent members. It implies that no resolution can be passed if a negative vote is cast by any permanent member. At the time of its adoption, there were seven non-permanent members of the Security Council. The amendment of 17 December 1963 by the General Assembly which came into force on 31 August 1965 expanded the non-permanent members of the Security Council from six to ten, providing decisions of the Security Council on procedural matters to be made by nine affirmative votes including concurring votes by the P5.11

It is the responsibility of the Security Council to determine the existence of any threat to international peace and security (Article 39 of the Charter). ¹² Upon bringing to its notice any new threats to international peace and security, the Security Council discusses the validity of the threat and determines what action is to be taken. ¹³ Lise Morje Howard, Professor of Government and Foreign Policy

at Georgetown University observed that unless there is strong consensual support or political will among the five P5 members, the outcome is generally negative. Because the action of the Security Council is influenced by several situational factors. Howard further states that "the UN is merely a venue for powerful states to achieve their goals"

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in the international political arena."¹⁴ The UN also does not have any ratified procedure for mandate formulation. Mandates are drafted and formulated following an unofficial tradition called the 'Pen Holder System'¹⁵. This system of continuous leadership by specific Council members (P3–UK, France and USA), on specific issues developed around 2008-2009 and was firmed in by 2010. Once a threat is determined, there is consensus, and a resolution is passed, the next step will be to look for the support of the member states for the appropriate action to be taken. However, since there is no military force directly under the command of the UNHQs, implementation of the Security Council resolution is a challenge, more importantly when either of the P5 members is indirectly a party to the conflict. Interestingly, during the drafting of the UN Charter, to address the weakness of the League, the idea of creating a UN Army directly under the command of the UN Military Staff Committee was conceived, it was the US that volunteered to around 40,000 soldiers to set up the UN Army. But Moscow got worried, and the UN Army never saw the light of the day.

Israel-Hamas War and the UN Security Council

The Security Council, on its part, has passed several resolutions related to the release of hostages, and cease-fire to deliver humanitarian aid. The most notable one was when the Security Council backed the resolution of large-scale aid to Gaza but not a cease-fire. The evidence shows that the war is continuing only because of the organisational constraints of the Security Council, imposed by the veto powers. It implies that if the element of veto was absent, the Security Council would have had more power to wield. This will be true to only a certain extent as regardless of what the Security Council decides if the powerful nations back one of the parties, the bombardment of Gaza by Israel will continue. For example, while the US publicly desires that Israel should make a credible effort to protect civilians, it does not ask Israel to stop the bombardment. Meanwhile, a \$95 Billion aid bill for Israel, Ukraine, and Taiwan, is in front of the US House

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of Representatives.¹⁹ Therefore, mere stern words for public consumption will not help unless the US goes beyond this. As reported by Michael Hanna of the Financial Times, as Israel gets ready to launch an assault on Rafah, the worst-case scenario looms ahead, only the US can stop it by applying pressure

which it has been reluctant to so far.20

To assess the efforts of the Security Council in addressing the challenges of the Gaza War requires a brief insight into the history of the Security Council's dealing with its limitations is given in the succeeding paragraphs. These were mostly ad hoc, totally personality-based and hence temporary. There were also several failed attempts to place institutional measures for reforming the Security Council.

Ad hoc-ism

Despite the organisational limitation and power play by the P-5, there are instances of the Security Council measuring up to the challenges. The Gaza crisis of 1956 and the secessionist movement by Katanga (Congo) in 1960 were two shining examples. Soon after the US withdrew its financial assistance for constructing the Aswan Dam on the Nile, Egyptian President Gamal Abdel Nasser nationalised the Suez Canal company on 26 July 1956. What followed thereafter was the triggering of military intervention by Israel from the direction of Sinai on 29 October 1956. This was part of a secret plan 'Operation Musketeer', between France, the UK and Israel. The plan was to force Israel to withdraw to initiate negotiations with Egypt and if Egypt did not agree, then France and UK were to take control of the canal. Secretary General Dag Hammarskjold took the initiative to convene the General Assembly under the 'Uniting for Peace' resolutions procedure. Hammarskjold's initiative combined with a veiled threat to resign if the Security Council did not support him, and the ability to control the ensuing discussion led to the establishment of the United Nations Emergency Force (UNEF) on 7 November 1956. 21 With France and the UK on one side and the US not wanting to allow the USSR to take the upper hand, there was an impasse. With skilful manoeuvring within the dynamics of inter-state relationships among the P5, Hammarskjold broke the impasse.

The second instance was when the Security Council was caught in the power play between the West and the Soviet Union soon after Belgium, the

colonial master of Congo, announced Congo's independence on 30 June 1960. This was followed by Moise Tshombe, the head of the provincial government of Katanga declaring the independence of Katanga on 10 July 1960. President Joseph Kasavubu and Prime Minister Patrice Lumumba of Congo appealed to the UN on 12 July 1960 for assistance, citing Belgium's involvement in inciting the secessionist movement of Katanga. Dag Hammarskjold, the Secretary-General, exercising his power under Article 99 of UN Charter XV called for an immediate meeting of the Security Council. On 14 July 1960, the Security Council adopted resolution 143 calling for the withdrawal of Belgian troops and authorising the Secretary-General "to take all necessary steps" to provide the government with "such military assistance as may be necessary" until the national security forces are able "to fully meet their tasks." ²²

In both cases, the UN, through its dynamic Secretary General, took the initiative to force the General Assembly and the Security Council's permanent members to take action to prevent a war.

Institutional Measures

The most notable concrete proposal to reform the UN Security Council was recommended by Secretary-General Kofi Annan in his report 'In Larger Freedom: Towards Development, Security and Human Rights for All' submitted to the General Assembly on 21 March 2005 in preparation for the Millennium +5 Summit in September 2005.²³ The recommendations comprised two models, both aimed at enlarging the members of the Security Council without any veto powers. The proposal could not get enough traction because the opponents felt that it recommended only enlarging the Security Council, while real reform should be by taking away the right to veto.²⁴ The urgency of Security Council reforms could not be greater than in the present times, with the continuing wars in Ukraine and Gaza.²⁵ All members including P5 seem to express overwhelming support for any proposal for Security Council reform but fall short when it comes to the formal acceptance of a proposal. Annan's proposal of 2005 appeared to have been highly ambitious aiming at an increase in the number of seats in the Security Council, a probable reason for its failure.

Article 108 of the UN Charter allows for changes to the Charter, but any change must be ratified by two-thirds of UN members in the General Conference as provided in Article 109. Despite that, the P5 can effectively veto the changes to the Charter, if it calls for sharing of their power of vetoing or taking away their right to veto. On the positive side, two-thirds votes may

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make it politically difficult for the P5 to stand in the way. Therefore, in hindsight, Kofi Annan's 2005 plan if it was focused more on getting widespread support of the Generally Assembly based on Article 109, would have had a better chance to at least start the reform process rolling.26

What Next?

Whenever the international community (through the UN) is not able to either prevent a conflict or halt it, the UN Security Council becomes the first unintended victim. An ineffective Security Council is cited as one of the reasons for the failures of even the well-intended peace operations.²⁷ Whenever any powerful nation especially the P5 is either directly involved or supporting one or more parties to the conflict, there is bound to be a deadlock in the Security Council. The power of the Security Council is provided by the UN Charter, which draws its validity from the member states. Therefore, to make the Security Council more effective, the factors that make it ineffective must be either removed or modified. That the UN Charter needed changes, was felt soon after the UN was established, with 50 signatories. Michael M Gunter, professor at Tennessee University, opines that the UN Charter became partially obsolete before entering into force because the atomic explosion took place after the document was signed.28 Mr Ramaswamy Mudaliar who signed the document on behalf of India, had given in writing during the 14th Plenary Meeting, 18th January 1946, that India had signed the Charter unwillingly and on condition that the Charter would be reviewed after ten years.²⁹ There were several attempts to reform the Security Council. The successful amendment of 1965, apart from increasing the number of non-permanent members, did not make any difference to the effectiveness of the Security Council. It also did not attempt to dilute the power of the P5 members to block any proposal if it did not suit their political interest. Essentially, as long as one of the P5 members exercises its veto power, the Security Council resolution can never be passed. Apart from this, when if a P5 member is a party to the conflict either directly or indirectly, as put in by Ukraine's President, the Security Council is rendered helpless to do anything except make lofty statements.

As seen from examples of Gaza in 1956 and Congo in 1960, the Security Council was at loggerheads. However, the use of skilful diplomacy by a dynamic

leadership could find a way around the same limitations. The personal result of the determined initiatives of a well-respected UN leader at that time could have been reflected upon by all the subsequent UN Secretary Generals. It is possible to make the Security Council work if the P5 members are serious in their support of any peace proposal. Conversely, the P5 while allowing the Security Council to function by abstaining from voting, can continue to

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support for continuation of the conflict. "This is what happened in the case of Gaza War. UN Security Council Resolution 2728 of 2024 calling for an immediate ceasefire in Gaza is a remarkable step with 14 members' affirmative voting and the US abstaining. Sadly, instead of halting the offensive, Prime Minister Netanyahu lamented about the US abandoning Israel and announced the invasion of Rafah in early April to secure the release of the hostages. The US abstaining could imply its silent support for Israel from outside the Security Council. Adopting the resolution is only crossing the first hurdle. Implementation will be a bigger challenge. As of now, other than isolation of Israel by the international community using other means, there seems to be no other option. Because an attempt to enforce it will only create a bigger crisis". Therefore, the real power to make or break peace is with the powerful nations and not the UN Security Council. As evidence suggests, even taking away the veto power of the P5 may not guarantee a safer world because the implementation of a resolution will be equally challenging.

When Hamas attacked Israel on 7 October, the world opinion was with Israel which is changing even while the UK and US continue to support Israel. By now, close to 30,000 Palestinians have been killed and most of Gaza has been destroyed and millions rendered homeless. The world's response has been calling for an end to the violence and even South Africa dragging Israel to the International Court of Justice for committing genocide.³² Without downplaying the act of genocide, the Biden administration seemed to have come around to asking Israel indirectly to protect civilians.³³ The harshest comment came when Vice President Kamala Harris rebuked Israel in her remarks on 3 March 2024 followed by the President Biden in his State of the Union Address of 7 March 2024.³⁴ On 20 February 2024, the US again vetoed the Algerian draft Security Council resolution calling for a

cease-fire. This is the third time Washington has rejected a cease-fire proposal since Hamas attacked Israel on 7 October 2023. However, the alternative draft by the US suggesting an immediate truce, is a strong signal for Israel not to take the US support as guaranteed.³⁵

Ending war does not mean only the end of military aggression. Saving the surviving Palestinians from hunger and the misery of war is equally important. Amidst Israel's bombardment of Gaza, humanitarian aid continues to flow, and the United Nations Relief and Works Agency (UNRWA) team is still functioning. The change has come in, among other factors, because of the Security Council flagging the issue and creating a huge public opinion to bring pressure on the powerful nations, especially the US. One can now hope for a solution with the US going beyond public rhetoric. Such hope could be brighter if Donald Trump was to win the Presidential election.³⁶ While the UN Security Council can be credited for what it has been able to achieve so far, it is likely to remain hostage to the power play for some more time to come.

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