The Implications and Limitations of the Veto Power in the United Nations:
A Critical Analysis of the Use of Veto by China and Russia in the Case of Syria

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Introduction

I. The fundamental rationale of the veto power: what are Chinese and Russian vital interests in the Syrian case?

II. The veto versus the evolving UN purposes and principles: ‘not illegal but illegitimate’ use of veto by China and Russia

Conclusion
Introduction

This paper seeks to examine, as a case study, if and to what extent Chinese and Russian vetoes against the current situation in Syria are consistent with the evolving UN purposes and principles. It argues that their vetoes should be considered ‘not illegal but illegitimate’ under the UN Charter.

It is divided into two parts. First, it examines the fundamental rationale of the veto power, focusing on China and Russia’s vital interests. Secondly, it discusses illegitimacy of their vetoes in light of the evolving UN purposes and principles.

I. The fundamental rationale of the veto power: what are Chinese and Russian’s vital interests in the Syrian case?

China and Russia have exercised their vetoes against four draft resolutions with regard to the Syrian case. These drafts stipulated, among

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1 This paper covers the Syrian conflict from its beginning in March 2011 to the present. Hereafter, it uses the word ‘the Syrian case’.

2 The first draft resolution on the Syrian case, co-sponsored by the UK, France, Germany and Portugal, came to a vote on 4 October 2011. S/2011/612, 4 October 2011. Nine members voted in favor, four abstained (Brazil, India, Lebanon and South Africa), but China and Russia vetoed against the draft. S/PV.6627, 4 October 2011, p. 2.

The second draft resolution, presented by Morocco on behalf of the Arab States and co-sponsored by 18 member states, was put for a vote on 4 February 2012. S/2012/77, 4 February 2012. The draft resolution secured 13 positive votes, including India and South Africa. However, China and Russia cast their vetoes again to block the Arab-backed resolution. S/PV.6711, 4 February 2012, p. 2.

On 19 July 2012, the UK, the US, France, Germany, and Portugal introduced a draft resolution under Chapter VII of the UN Charter. S/2012/538, 19 July 2012. The draft text secured 11 affirmative votes, but Pakistan and South Africa abstained, while China and Russia again voted against. S/PV.6810, 19 July 2012, p. 2.

In May 2014, approximately 70 member states submitted a draft resolution which decided to refer the situation in Syria to the ICC. The voting result was 13 votes in favor, 2 votes against (China and Russia). S/2014/348, 22 May 2014, S/PV.7180, 22 May 2014, p. 4. The fourth Chinese and Russian vetoes on the ICC referral will not be examined in this paper, as it is distinguishable from the previous three vetoes which related mainly to the application of “economic” sanctions against Syria.
others, the threat of sanctions against the Assad regime and/or inclusive political process. However, China and Russia have never specifically pointed to their own vital interests to justify their vetoes.³

This is an extremely important point. As the drafting history of the UN Charter shows, the protection of the permanent members’ vital national interests is one of the most fundamental rationales for the veto system.⁴ Most notably, this fundamental rationale has also been recognized in the recent ‘code of conduct’ proposals for ‘Responsibility not to Veto’ (RN2V), such as in the ICISS report (2001),⁵ the High-Level Panel Report (2004),⁶ and French proposals (2013).⁷ Each proposal includes an exceptional clause that the Five Permanent Members (P5) can use their veto power in mass atrocity situations when they perceive their vital national interests at stake.

Given this ‘vital interest’ exception, it seems that China and Russia could

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³ Indeed, China has explicitly stated that it ‘has no self-interest in the Syrian issue’. S/PV.6810, 19 July 2012, p. 13; S/PV.6734, 12 March 2012, p. 19.
⁴ See, e.g., deliberations among Roosevelt, Churchill and Stalin at Yalta Conference. Foreign Relations of the United States, The Conference at Malta and Yalta 1945, (United States Government Printing Office, 1955) pp. 660-667. Significantly, they did not forget to refer to their special responsibilities for the maintenance of peace in situations where their vital interests are not at stake. Ibid, p. 589. As for proposals on veto restriction in situations where the P5’s vital interests are not involved, see, e.g., A/RES/267 (III), para.3(c), 14 April 1949.
have justified their vetoes in terms of the national interest of their own definition, but they never did. This reluctance appears to suggest that China and Russia thought that this line of vital-interest argument could no longer be considered tenable by the UN members in cases of gross and systematic human rights violations. More specifically, with the evolutionary development of human rights in international law since 1945, the P5 have been increasingly forced to consider the growing political costs of casting their vetoes based on their own vital interests in cases of serious violations of international human rights law and of international humanitarian law.

Then, what do they see as their specific vital interests? A closer look at China and Russia's statements on the vetoed draft resolutions reveals that a real intention of casting their vetoes was and has been to avoid, at all costs, what Russia called a “quick regime change” by UN intervention in Syria.

What has made the two states insist on the avoidance of regime change? First of all, they have their own political, economic, and/or strategic interests in Syria. For instance, Syria is a major importer of Russian fire arms and defense equipment and hosts a strategically positioned Russian naval base at Tartus on the Mediterranean Sea which is the only naval base outside the former Soviet Union. China also has been said to be the second largest non-Arab investor

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9 S/PV. 6627, 4 October 2011, pp. 4-5.
in Syria.\textsuperscript{11}

The second reason why the two veto-wielders have greatly been concerned about regime change is that a collapse of the Syrian government might become “another Libya”\textsuperscript{12} which would set dangerous precedents for UN intervention in their own internal matters, such as Chechnya for Russia and Tibet, Xinjiang, and Taiwan for China. These are essential part of their main vital interests never explicitly stated, and it is against this background that they have been compelled to use their vetoes.

It should be noted, however, that the P5 need to bear, in exchange for the veto privilege (‘veto as a right’), the special responsibilities for the maintenance of international peace and security (‘veto as a responsibility’).\textsuperscript{13} Moreover, the P5’s special responsibilities have been emphasized since 1945, and in fact, the P5 themselves pledged in the San Francisco Conference that they would use their vetoes in moderation.\textsuperscript{14}

Then, have China and Russia made contribution, by their use of veto, to resolving the Syrian crisis, thereby assuming their responsibilities as the P5 while “taking into account the interest of the UN as a whole”?\textsuperscript{15}


\textsuperscript{12} See the statement of the US (S/PV.6710, 31 January 2012, p. 13)


\textsuperscript{14} See, e.g., the statements of the US (UNCIO, vol. XI, pp. 131-132, 493), France (\textit{Ibid}, pp. 456-47)

\textsuperscript{15} A/RES/267 (III), para.3(c), 14 April 1949.
II. The veto versus the evolving UN purposes and principles: ‘not illegal but illegitimate’ use of veto by China and Russia

To protect their vital interests, China and Russia have justified their joint vetoes, by arguing that, among other things, the draft resolutions would be infringement on the basic UN principles of state sovereignty, territorial integrity, peaceful settlement of disputes and non-intervention in other states.\textsuperscript{16} Their arguments were basically a backlash against the overthrow of the Qaddafi regime by NATO-led intervention based on Resolution 1973 in March 2011,\textsuperscript{17} and seem to be based mainly on the notion of ‘sovereignty as a right’ rather than ‘sovereignty as a responsibility’, and thereby aimed at what can be called ‘state-oriented’ peace.\textsuperscript{18}

In my view, their vetoes should be considered ‘not illegal but illegitimate’ under the Charter for the following four reasons. First, most of the other Council members voted in favor of the draft resolutions threatening to impose sanctions and supporting the Arab League’s initiatives. For instance, France strongly criticized the Assad regime for having lost all legitimacy by killing their own people.\textsuperscript{19} In addition, India, Brazil, and South Africa (IBSA), which have expressed concerns over regime change especially since the commencement of NATO-led air strikes, abstained one or two of these resolutions, but never voted

\textsuperscript{16} See, e.g., the statements of Russia (S/PV.6627, 4 October 2011, pp. 3-4; S/PV.6710, 31 January 2012, p. 24; S/PV.6711, 4 February 2011, p. 9; S/PV.6810, 19 July 2012, pp. 2, 8-9), China (S/PV.6627, 4 October 2011, p. 5; S/PV.6710, 31 January 2012, p. 25; S/PV.6810, 19 July 2012, p. 13)
\textsuperscript{17} See, e.g., the statements of Russia (S/PV.6627, 4 October 2011, pp. 3-4), China (\textit{Ibid}, p. 5)
\textsuperscript{18} As for the concept of ‘state-oriented’ peace in comparison to ‘human-oriented’ peace, see, e.g., V. Gowlland-Debbas, ‘Security Council Change: The pressure of emerging international policy’, \textit{International Affairs}, vol. 65 (1), (2009-2010) pp. 119-139.
\textsuperscript{19} See, e.g., the statement of France (S/PV.6627, 4 October 2011, p. 3)
against them, thereby distancing themselves from the Chinese and Russian vetoes.20

Secondly, China and Russia have strictly adhered to the traditional notion of sovereignty. It is important to remember that since 1945 there has been a gradual reinterpretation of ‘peace’ to be maintained under Article 1 (1) of the Charter: a further normative shift from ‘state-oriented’ to ‘human-oriented’ peace, from ‘sovereignty as a right’ to ‘sovereignty as a responsibility’. Indeed, China and Russia’s isolation and IBSA members’ ambivalence demonstrate that the pursuit of ‘human-oriented’ peace has slowly but surely been accepted as the evolving UN purposes and principles among the member states.

Thirdly, China and Russia’s vetoes and their strict adherence to ‘state-oriented’ peace have eventually caused a massive flow of nearly four million Syrian refugees21 into its neighbouring states such as Lebanon, Jordan, Turkey, Iraq and Egypt. This refugee crisis, with the death toll in Syria rising to nearly 220,000, has inevitably led to a growing threat to regional and international peace and security that the Security Council in general and the P5 in particular have to address.

Last but not least, the Chinese and Russian concerns over regime change have not been convincing to the other Council members, because the primary purpose of the vetoed draft resolutions was not to overthrow the Assad

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20 Brazil was no longer a non-permanent member of the Security Council when the votes on the second, third, and fourth vetoed draft resolutions were taken.
regime by military intervention, but to disable its ability to keep harming its own civilians by economic sanctions in order to fulfill the mandate of human protection.  

Given these four reasons, China and Russia have failed to bear their special responsibilities as the P5 to contribute to the maintenance of international peace and security. Significantly, the China-Russia joint veto has brought the Security Council’s paralysis over the Syrian crisis, and its inability to timely respond to the deteriorating humanitarian situation has damaged the credibility and authority of the UN Security Council. Thus, their vetoes should be regarded as ‘not illegal but illegitimate’ under the UN Charter.

**Conclusion**

The foregoing analysis indicates that, along with the normative shift from ‘state-oriented’ to ‘human-oriented’ peace, there has been an emerging consensus among the UN members that the P5 should not use their veto in mass atrocity situations especially since the R2P doctrine was unanimously adopted at the 2005 UN World Summit.  

Given this consensus, China and Russia’s vetoes in the Syrian case can be regarded as their attempts to resist a...
gradual normative shift from ‘veto as a right’ to ‘veto as a responsibility’.

Many scholars have tended to tolerate all threat or use of vetoes on substantial matters by the literal interpretation of Article 27, paragraph 3, of the Charter. However, given the 70th anniversary of the UN creation, it is essential to scrutinize to what extent the recent ‘code of conduct’ proposals for RN2V have been supported by the evolving UN purposes and principles, with particular emphasis on the members’ statements and their voting patterns in the Security Council. It is in this research project that this paper focuses on the illegitimacy of Chinese and Russian vetoes with regard to the Syrian case.

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