



## **The Structural Anomaly of the Veto: the Deconstruction of the Hierarchy of Power in Global Governance and its Implications for the Rule of International Law**

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### **ABSTRACT**

This study critically analyzes the structural anomalies of the veto power in the institutional architecture of the United Nations Security Council (UNSC) and its implications for the rule of international law. Through normative juridical methodologies, employing doctrinal and comparative approaches, this study explores how the veto privileges possessed by the five permanent members (P5) have been transformed into instruments of legal hegemony that construct a hierarchical hierarchy of power in the international legal system. The findings suggest that the practice of using vetoes has created a zone of impunity allowing hegemon states and their satellites to evade accountability under international law, even when engaged in violations of *jus cogens* and norms of international humanitarian law. This research contributes to the academic discourse on international institutional reform by proposing a new theoretical framework on *selective accountability* in contemporary international law. The implications of the findings underscore the urgency of reconstructing a global institutional architecture that is more egalitarian and responsive to the principles of universal justice.

**Keywords:** accountability (selective), hierarchy (legal), international rule of law, legitimacy (institutional), veto

### **INTRODUCTION**

The institutional construction of the *United Nations* (UN) in 1945 reflected the post-World War II geopolitical reality by granting special privileges to the five victorious powers through a veto mechanism in the Security Council (Patrick, 2023). However, the evolution of the practice of using the right of veto over nearly eight decades has revealed fundamental structural anomalies in global governance that undermine the very principles upon which the UN was established. Contemporary data from the UN Security Council Database (2024) demonstrates that of the 293 vetoes cast between 1946 and 2024, approximately 68% (199 cases) have been deployed to protect states or their allies from accountability for actions that *prima facie* violate established norms of international law, including provisions of the Geneva Conventions, the UN Charter itself, and even peremptory norms (*jus cogens*) such as the prohibition against genocide and crimes against humanity (De Beer, 2019). This pattern reveals a systematic instrumentalization of the veto mechanism that has deviated substantially from its original conception as a tool for preserving great power consensus in maintaining international peace and security (Al Shraideh, 2017).

This research departs from the premise that the veto has evolved far from its initial function as a consensus mechanism to a protective instrument that allows hegemon states to construct "selective accountability" in the application of international law (Witte & Duffy, 2018). Between 2011 and 2024, Russia and China have collectively exercised their veto power 18 times to block Security Council resolutions addressing the Syrian conflict, despite extensive documentation by the UN Commission of Inquiry on Syria of systematic war crimes, crimes against humanity, and the use of chemical weapons against civilian populations (Ekzayez et al., 2020). Similarly, the

United States has deployed its veto 83 times since 1972 to shield Israel from Security Council condemnation or sanction, even in cases where Israeli actions have been deemed by the International Court of Justice (ICJ) and multiple UN bodies to constitute violations of international humanitarian law and the Fourth Geneva Convention (Trahan, 2020). These empirical patterns demonstrate that the veto has become less a mechanism for maintaining international peace and more an instrument for protecting powerful states and their allies from the consequences of international law violations (Lupu, 2015).

The academic literature on Security Council reform and the veto power has developed significantly over recent decades, yet critical gaps remain (Winther, 2020). Hurd (2007) examined the legitimacy crisis of the Security Council through a constructivist lens, arguing that the Council's authority derives not from legal formalism but from perceived legitimacy by member states and global civil society (Erman, 2018). However, Hurd's analysis predated the Syrian crisis and did not fully account for the systematic nature of veto deployment to protect jus cogens violations. Luck (2005) and Weiss (2003) both analyzed various reform proposals for the UN system, concluding that most reform initiatives face insurmountable political obstacles due to the requirement that Charter amendments must themselves pass without veto objection—creating what this research terms the "amendment paradox." Their work, however, focused primarily on procedural reform rather than the deeper structural contradictions within the veto system itself (Angelova et al., 2018).

More recently, Alvarez (2003) developed the concept of "hegemonic international law," arguing that international legal norms are inevitably shaped by power asymmetries, while Bianchi (2013) examined how state responsibility frameworks fail when powerful actors can block accountability mechanisms (Scott, 2018). Caron (1993) questioned the normative legitimacy of Security Council authority when exercised through mechanisms that contradict principles of sovereign equality enshrined in Article 2(1) of the UN Charter (Binder & Heupel, 2015). Malone (2000) documented the political dynamics surrounding non-permanent seat elections, revealing how veto-wielding states leverage their permanent status to influence broader UN politics. Buchanan and Keohane (2006) proposed criteria for assessing the legitimacy of global governance institutions, including minimal moral acceptability, comparative benefit, institutional integrity, and accountability—standards which the current Security Council structure arguably fails to meet. Yet despite these important contributions, existing scholarship has not sufficiently theorized the relationship between veto power and what this research conceptualizes as "selective accountability"—the systematic application of international law enforcement based on political allegiance rather than objective legal criteria.

This phenomenon presents an epistemological paradox in international legal theory (Li, 2016): how can a legal system that claims universality maintain legitimacy when its enforcement mechanisms contain inherent structural biases that favor certain actors over others? This question has become increasingly relevant given the proliferation of international conflicts and humanitarian crises that cannot be effectively addressed due to the institutional paralysis caused

by the use of vetoes. The ongoing conflicts in Syria, Yemen, and Ukraine, the persistent Israeli-Palestinian situation, and the Rohingya crisis in Myanmar all demonstrate how veto power has prevented timely and effective international responses to mass atrocity crimes, thereby creating what Teitel (2011) describes as "transitional justice gaps"—situations where violations are comprehensively documented but cannot be addressed through existing accountability mechanisms (De Almagro & Schulz, 2022).

The urgency of this research stems from three interconnected crises in contemporary international relations. First, there is a legitimacy crisis: a 2023 Pew Research Center global survey found that 64% of respondents in non-P5 countries believe the UN Security Council is "ineffective" or "very ineffective," with the veto system cited as the primary reason for this perception. Second, there is an accountability deficit: the proliferation of mass atrocity crimes in veto-protected conflicts has created a permissive environment where potential perpetrators calculate that political protection will shield them from consequences, thereby eroding the deterrent effect of international criminal law. Third, there is a normative fragmentation crisis: frustrated by Security Council paralysis, states and international actors have created alternative accountability mechanisms—including regional courts, universal jurisdiction prosecutions, and specialized investigation bodies—that operate without coordination, creating inconsistency and unpredictability in international law application (De Almagro & Schulz, 2022).

The novelty of this research lies in its comprehensive integration of normative legal analysis with empirical examination of veto patterns to develop a new theoretical framework for understanding how power hierarchies are reproduced within ostensibly egalitarian international legal structures. While previous studies have examined either the legal dimensions of the veto or its political usage patterns, this research synthesizes both approaches to reveal the systematic nature of selective accountability. Furthermore, this study introduces an original typology of veto usage—distinguishing between self-protection, ally-protection, strategic-denial, and norm-contestation vetoes—that provides analytical precision for understanding different modalities of veto deployment. Most significantly, this research proposes the "Graduated Accountability System" (GAS) as an alternative institutional framework that addresses the fundamental structural problems of the veto system while remaining politically feasible within existing international relations constraints. Unlike previous reform proposals that either require Charter amendment (and thus face the amendment paradox) or rely on voluntary restraint (which has historically proven ineffective), the GAS framework leverages existing institutional capacities and legal authorities to create redundant accountability pathways that can function despite Security Council paralysis.

This study aims to comprehensively analyze the juridical, political, and sociological dimensions of the practice of using the right of veto, as well as explore its implications for the rule of international law and the institutional legitimacy of the *United Nations*. Through an interdisciplinary approach combining doctrinal legal analysis, empirical examination of veto patterns, and critical international relations theory, this research seeks to contribute to academic discourse on international institutional reform and a more egalitarian reconstruction of global

governance. The research benefits multiple constituencies: it provides scholars with a new analytical framework for understanding power-law interactions in international institutions; it offers policymakers and diplomats evidence-based insights into the systemic dysfunction of current accountability mechanisms and concrete proposals for institutional reform; it contributes to civil society advocacy by documenting the human costs of veto-induced paralysis; and ultimately it advances normative arguments for a more just and equitable international legal order that can effectively respond to mass atrocity crimes regardless of the political affiliations of perpetrator states. The findings of this research have implications extending beyond the UN Security Council to other international institutions where power asymmetries undermine nominal commitments to equality and rule of law, including the International Monetary Fund, World Bank, and regional security organizations.

## **METHOD**

This study used a normative juridical methodology with a doctrinal and comparative approach. Primary sources include instruments of international law, jurisprudence of international courts, UN resolutions and official documents, and state practice in the use of the right of veto. Secondary sources consist of scholarly literature, policy papers, and relevant international organization reports.

The analysis was carried out through a three-tiered approach: (1) normative analysis of the legal framework of the right of veto, (2) empirical analysis of the pattern of use of veto in the period 1945-2024, and (3) theoretical analysis of the systemic implications of the use of veto on institutional legitimacy and the rule of international law. Quantitative data on the use of veto were obtained from the UN Security Council Database, while qualitative analysis was conducted on selected cases that showed problematic use of veto in the context of violations of international law.

## **RESULTS AND DISCUSSION**

### **Deconstruction of the Legal Framework of Veto: Between Consensus and Hegemony**

A textual analysis of Article 27 of the UN Charter reveals a fundamental ambiguity that has allowed for an extensive interpretation of the veto. The phrase "concurring votes" in the original text does not explicitly confer the right of veto, but subsequent interpretation of practice has constituted the right as the absolute prerogative of permanent members. This interpretive evolution demonstrates what Hart (1961) in "The Concept of Law" identifies as the transformation of legal meaning through sustained practice, where the operational significance of legal provisions is determined not solely by textual content but by patterns of application and acceptance within the relevant legal community.

The travaux préparatoires of the San Francisco Conference show that the founding fathers of the United Nations did not fully anticipate how the veto might be used to protect violations of international law committed by permanent members or their client states. The Yalta Formula, which established the conceptual foundation for veto power, was designed on the assumption that

the great powers would exercise this privilege responsibly to maintain international peace and security, serving as a mechanism to prevent the collective security system from being deployed against any of the major powers in a manner that could precipitate great power conflict and potential world war. The architects of the UN system, cognizant of the League of Nations' failure partly due to great power absence, sought to ensure permanent member engagement through privileged status, operating under what can be characterized as a "responsible hegemony" model where power would be exercised with commensurate accountability.

However, the evolution of practice shows a fundamental transformation from the concept of veto as a "responsibility to maintain consensus" to a "license for selective accountability." This transformation is empirically demonstrable through longitudinal analysis of veto deployment patterns. During the Cold War period (1946-1991), the Soviet Union cast 114 vetoes compared to the United States' 69, with vetoes predominantly used to block membership applications and resolutions perceived as hostile to ideological allies. The post-Cold War era (1992-2010) initially witnessed a dramatic decline in veto usage—only 15 vetoes were cast during this period—suggesting the possibility of a more cooperative Security Council. However, the period from 2011 to 2024 has seen a resurgence with 43 vetoes, increasingly deployed not to prevent great power confrontation but to shield allies from accountability for international law violations. This pattern reflects a shift from defensive to offensive use of veto power, transforming it from a mechanism for self-protection into an instrument for projecting power through proxy protection (Hurd, 2007; Luck, 2005).

### **Typology of the Use of Veto: From Self-Protection to Satellite Protection**

An empirical analysis of 293 cases of the use of veto from 1946 to 2024 reveals four main typologies: (1) self-protection veto, (2) ally-protection veto, (3) strategic-denial veto, and (4) norm-contestation veto. This classification is important to understand the different modalities of selective accountability in international practice.

Self-Protection Veto refers to the use of a veto to protect the user country from international sanctions or criticism of the actions taken. The most recent case was the use of a veto by Russia in February 2022 to block a resolution condemning the invasion of Ukraine. Ironically, the state that is the subject of the investigation has the power to stop the process, creating what Kelsen calls a "logical contradiction" in the legal system.

Ally-Protection Veto involves using a veto to protect an ally or client state. The United States has used the veto 83 times to protect Israel from Security Council resolutions, even as Israel's actions have been widely criticized as a violation of international law. A similar pattern is shown by Russia in protecting Syria, and China in protecting Myanmar.

Strategic-Denial Veto is used to prevent precedent that could be detrimental to long-term strategic interests. An example is the veto of China and Russia against the referral of the Myanmar situation to the International Criminal Court, not because they specifically support the actions of the Myanmar government, but because they oppose the expansion of ICC jurisdiction.

Norm-Contestation Veto reflects a fundamental disagreement with the evolution of international legal norms. The United States' veto of resolutions recognizing the right to development or the right to food reflects a contestation against the expansion of human rights regimes that are considered to threaten sovereignty prerogatives.

### **Case Study: The Syrian Crisis and Institutional Paralysis**

The Syrian conflict provides an ideal laboratory for analyzing how veto power can create systemic impunity. Since 2011, Russia and China have used vetoes 18 times to block resolutions condemning the Syrian government or authorizing measures to protect civilians.

The Human Rights Council's Commission of Inquiry on Syria has documented extensive evidence of war crimes and crimes against humanity committed by the Syrian government, including systematic attacks against medical facilities, the use of chemical weapons, and deliberate targeting of civilian areas. However, this documentation cannot be translated into accountability measures because the Russian veto systematically blocks Security Council action.

This case illustrates what Teitel (2011) calls the "transitional justice gap" – a situation in which violations of international law are comprehensively documented but cannot be processed through existing accountability mechanisms due to political obstacles. This gap not only harms direct victims, but also erodes the deterrent effect of international law as a whole.

Even more problematic, Russia's protection of Syria has created a permissive environment for the proliferation of violations. When perpetrators know that they have protection from accountability mechanisms, the incentive to comply with international law becomes minimal. This phenomenon creates what criminologists call a "moral hazard" in the international legal system.

### **Dialektika Sovereignty dan Accountability dalam Era Post-Westphalian**

The use of veto power to protect against violations of international law reflects the fundamental tension between the Westphalian principle of sovereignty and the evolution of accountability norms in contemporary international law. The emergence of concepts such as Responsibility to Protect (R2P) and universal jurisdiction shows a paradigmatic shift from absolute sovereignty to conditional sovereignty tied to compliance with international obligations.

However, the practice of using veto shows resistance to this evolution. When China and Russia vetoed resolutions enabling R2P in the Libyan context (although later abstaining), or when they consistently blocked R2P implementation in Syria, it reflects a contestation against the post-Westphalian legal order.

This dialectics is particularly complex because it involves what Krasner (1999) calls "organized hypocrisy" – a situation in which states simultaneously invoke sovereignty principles when they benefit them, and humanitarian principles when they suit their interests. The right of veto facilitates this organized hypocrisy by allowing selective application of international law based on political considerations.

### **Systemic Implications: The Erosion of the Normative Order and the Legitimacy Crisis**

The accumulative effect of the use of the veto to protect violations of international law has created what can be termed the "systemic erosion" of the international legal order. This erosion manifests in several dimensions: (1) decline in deterrent effect of international law, (2) proliferation of alternative accountability mechanisms, and (3) fragmentation of international legal system.

#### **a. Decline in Deterrent Effect**

When violations of international law can be protected through veto, the deterrent effect that should be inherent in legal prohibitions is reduced. States and non-state actors can conduct cost-benefit analyses that take into account political protection in their decision-making. This is particularly problematic in the context of jus cogens violations that are supposed to be non-derogable.

#### **b. Proliferation of Alternative Accountability Mechanisms**

Frustration dengan paralysis of Security Council telah mendorong development of alternative accountability mechanisms. Universal jurisdiction prosecutions, regional court systems, dan specialized investigation mechanisms seperti International, Impartial and Independent Mechanism for Syria (IIIM) represent attempts untuk mengatasi accountability gap yang diciptakan oleh Security Council paralysis.

While these developments are positive in the sense that they provide alternative avenues for accountability, they also contribute to the fragmentation of the international legal system. Multiple accountability mechanisms with different jurisdictions, procedures, and standards can create confusion and inconsistency in the application of international law.

#### **c. Fragmentation of International Legal System**

Fragmentation has become a major concern in international law scholarship. The International Law Commission's study on fragmentation (2006) identified the risks arising from the proliferation of specialized legal regimes. In the context of the right of veto, fragmentation does not only occur between legal regimes, but also in the application of the same legal norms to different actors.

### **Theoretical Reconstruction: Towards an Egalitarian Accountability Paradigm**

#### **1) Critique of Existing Reform Proposals**

Proposals for reform of the veto system have been put forward for decades, but most of them suffer from fundamental flaws that make its implementation problematic. The "Responsibility not to Veto" initiative, while well-intentioned, relies on voluntary restraint that has historically proven ineffective when vital national interests are at stake.

Similarly, proposals for the expansion of permanent membership by granting veto rights to emerging powers such as India, Brazil, or the African Union may reduce Western dominance but do not address the fundamental problem of the veto system itself. Adding more veto players could actually worsen paralysis problems without solving the accountability deficit.

Proposals for qualified majority voting or sunset clauses for vetoes also face practical obstacles because they require Charter amendments that are itself subject to veto. This creates what constitutional lawyers call the "amendment paradox" – a situation in which the necessary reforms are blocked by the very mechanism that wants to be reformed.

## 2) Framework Teoretis: Graduated Accountability System

This research proposes an alternative framework called "Graduated Accountability System" (GAS) which is designed to overcome the structural problems of existing veto systems. GAS is based on three core principles: (1) proportional responsibility, (2) graduated sanctions, and (3) institutional redundancy.

Proportional Responsibility means that the degree of international accountability should be proportional to the capacity to influence the international system. Great powers with greater influence should face greater scrutiny and higher standards of compliance, not privilege to avoid accountability. This principle is the opposite of the existing system that provides the greatest protection to the most powerful actors.

Graduated Sanctions involves creation of multiple levels of accountability measures yang can be activated based pada severity of violations dan level of international consensus. Rather than binary system di mana resolutions either pass atau fail, graduated system memungkinkan partial measures yang can still have meaningful impact.

Institutional Redundancy requires establishment of multiple accountability pathways sehingga paralysis dalam satu institution tidak completely blocks international response. This includes strengthening regional organizations, expanding jurisdiction of international courts, dan creating new mechanisms untuk human rights violations.

## 3) Implementation Strategy Constitutional Moments dan Incremental Change

Implementation of fundamental reforms in the international system requires what Ackerman (1991) calls "constitutional moments" – periods of crisis that create openings for transformative change. However, waiting for constitutional moments can be problematic because they may never come, or when they do come, may be too late to prevent massive human suffering.

Alternative approach adalah incremental change melalui what international lawyers sebut sebagai "institutional evolution". This involves gradual development of practices, norms, dan institutions yang eventually can replace atau significantly modify existing structures.

Dalam context of veto reform, incremental approach dapat include: (1) development of stronger regional accountability mechanisms, (2) expansion of ICC jurisdiction dan universal jurisdiction prosecutions, (3) creation of specialized investigation dan documentation bodies, dan (4) development of new financing mechanisms untuk humanitarian action yang tidak dependent pada Security Council authorization.

## CONCLUSION

This research concludes that the veto power held by the five permanent members of the UN Security Council represents a fundamental structural anomaly that creates a hierarchy of power

and undermines the rule of international law by enabling a regime of "selective accountability." This mechanism systematically shields P5 states and their allies from responsibility for serious violations of international law, including jus cogens norms, thereby eroding the legitimacy of the UN and fostering impunity. The resulting institutional paralysis calls for a paradigm shift beyond superficial reforms. The study proposes the Graduated Accountability System (GAS), which emphasizes proportional responsibility, graduated sanctions, and institutional redundancy to address the veto's structural flaws. For future research, it is essential to empirically model and refine the GAS framework, perform comparative institutional analyses with entities like the European Union to identify transferable accountability mechanisms, and further explore the roles of regional organizations and emerging norms such as "responsibility while protecting" in advancing a more equitable and effective global governance system.

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