
LEGITIMATE CONCERNS

*The use of the UN Security Council veto
and how to improve without reform*

**STOP
ILLEGITIMATE
VEToes**

REVISION HISTORY

Below, substantial updates to the report in the five most recent revisions are listed.

| Revision number and date | Updates |
|---------------------------------|------------------------------------------------------------------------------------------------------------------------|
| Revision 11 – 02/11/2017 | Added veto 42 and added categories to graphs accordingly. |
| Revision 12 – 24/11/2017 | Added vetoes 43 and 44. |
| Revision 13 – 29/12/2017 | Added veto 45, and made changes to analyses of results necessary due to this being the first veto coded as legitimate. |
| Revision 14 – 04/03/2018 | Added veto 46. |
| Revision 15 – 22/04/2018 | Added veto 47. |

ILLEGITIMATE VETOES?

IT HAS BEEN STATED AGAIN AND AGAIN. The United Nations does not work according to its original purposes. There is plenty of evidence to suggest that the UN repeatedly fails to act in a productive way. At the center of this criticism is one of the fundamental building blocks of the organization – the Security Council. Especially decried is the tremendous power vested in the hands of the veto holders among its members, known as the permanent five or P5 for short.

The team behind this report wants to contribute both an objective look at the use of the veto, and a suggestion for how to bring the work of the Security Council more in line with the purposes of the United Nations. In this report we lay out a simple recommendation to the P5: you may use the veto, but only in cases when not doing so would jeopardize the fundamental security or sovereignty of your state. This is a minor change of attitude, with potentially very positive effects.

We argue that the veto was introduced so that the permanent members could protect their security and sovereignty – and for that reason only. As we will show, our research suggests that the veto is used to protect fringe interests rather than core concerns. In the long run, continuing to do so will prolong conflicts and prevent the international community from handling international crises. In the end, the legitimacy of the United Nations is at stake.

THE VETO IN HISTORICAL CONTEXT

The veto power was first introduced during the founding conference of the UN in San Francisco in 1945. The reason for its introduction was to ensure the participation of the five major powers – today's P5. It was made clear by the P5 that this privilege was an absolute necessity for their participation in the organization. The ultimatum was accepted by the other founding states that had learned their lesson from the failure of the previous attempt at creating a global peace organization – the League of Nations. The purpose of the UN, as stated in the preamble of the Charter, is "to save succeeding generations from the scourge of war" and "to maintain international peace and security." All 193 member states of the United Nations have voluntarily committed themselves to these goals.¹

¹ For more information on the history of the UN see Gareis, Sven Bernhard (2012) *The United Nations; An Introduction*. Palgrave Macmillan.

In light of the historical context in which the veto was introduced, it seems clear that the veto should be regarded as a tool to ensure the establishment of the organization in the first place. The P5 needed the veto as a guarantee for their sovereignty, but its use must be seen in relation to the ends of the UN. Use of the veto to obstruct the purposes listed in the Charter cannot be seen as legitimate.

The veto privilege was not intended as an instrument for the P5 to dictate when the aims of the UN are to be pursued.

THE USE OF THE VETO SINCE 1991

THE MOTIVATIONS FOR THE USE OF THE VETO ARE QUESTIONABLE WHEN EXAMINED STATISTICALLY. This has proven to be a significant problem in the implementation of policy decided by the Security Council. The following three cases serve as illustrative examples of why the veto is used in a way that is counterproductive to the purposes of the United Nations.

Draft resolution S/2014/348 – Russian Veto

Between 2011 and 2014, Russia used the veto four times against draft resolutions concerning the situation in Syria. The most recent of these vetoes was cast on May 22nd, 2014, and blocked a French draft resolution aiming to refer the situation in Syria to the International Criminal Court. The stated reason for the veto was that involving the ICC would not improve the situation, and that the referral could serve as a pretext for armed intervention to which Russia remains heavily opposed. As this veto was not used to protect the sovereignty of the permanent member casting it, but rather that of another state, this is an example of what we consider an illegitimate veto. Russia remains a signatory to the Rome Statute (1998) establishing the ICC but has yet to ratify the treaty. Even so, Russia has previously voted for referrals to the ICC (resolutions 1593 (2005) and 1970 (2011)), suggesting that any concerns over the Court's intrusion into individual states sovereignty do not form a critical obstacle to ICC referrals in general. It is also worth noting that the veto was cast despite the fact that at the time of the draft resolution, the so-called Islamic State (IS) had already made advances into western Iraq, and the situation in Syria thus constituted a clear threat against international peace and security. In such circumstances the Security Council has an obligation to intervene in accordance with its mandate under the UN Charter.

Draft resolution S/1997/199 – US Veto

As with several of the US vetoes, this was to block a draft resolution that concerned the Middle East and Israel in particular. The short draft, put forward by France, Sweden, Portugal and the United Kingdom, criticized Israeli settlements in its preamble and called upon Israel to refrain from "settlement activities", to abide with applicable international law, and for all parties to continue the peace negotiations. The United States motivated its use of the veto by stating that the Security Council is not the forum for such debate, and that the draft would obstruct peace negotiations. While the US administration under President Clinton had expressed disappointment in the Israeli settlements, the fact remains that this veto was used not to protect core US interests. As a consequence, action by the Security Council was stopped for reasons other than a threat to the security or sovereignty of a permanent member.

Draft resolution S/1997/18 – Chinese Veto

On the December 4th, 1996, a cease-fire agreement was signed between the Guatemalan government and the rebel group Unidad Revolucionaria Nacional Guatemalteca in Oslo, Norway. A report was filed by the UN Secretariat, which stated that a UN presence in Guatemala would be necessary to ensure an effective cease-fire. A group of 11 states who were part of the Group of Friends of the Guatemalan Peace Process, among them the US and the UK, put forth a draft resolution calling for 155 medical officers and military observers to ensure a peaceful transition. China voted against this resolution, stating that Guatemala had opposed them in the UN previously, and that they had gone against China's interests in inviting a delegation of authorities from Taiwan to a peace ceremony in Guatemala City. China thus obstructed a potentially important draft resolution through the use of a veto referring to an unrelated issue.

THIS REPORT IS BASED ON AN INVESTIGATION CARRIED OUT IN THE SUMMER OF 2014. A research team analyzed the vetoes that had been cast since December 26th, 1991. This time period was chosen as it was considered relevant only to include the vetoes cast by the members of the P5 constellation as it looks today. This is to ensure that the investigation reflects the current political climate of the Security Council.

The investigation was initially based on a simple coding, where a veto could be categorized as legitimate, illegitimate or uncertain. A legitimate veto is defined as one cast to directly protect the central security or sovereignty *of the veto-wielding member state*. Casting a veto on behalf of the security of another state is thus deemed illegitimate. An uncertain veto is one where no, or ambiguous, evidence has been found regarding the motivations of the permanent member in question.

The material analyzed consisted of the records from Security Council meetings kept and made available by the United Nations on their web page. These included statements made by the members of the UN Security Council, both in support of and in opposition to the draft resolution presented. This allowed us to draw the conclusions outlined by this report.

A review of the initial study was conducted in 2015, in which each veto was more thoroughly examined and recoded when appropriate. The product of this project became the Report Companion, a compendium of background and analysis of each veto, available on our web page. In early 2016 the vetoes were once more examined, this time in order to gather data on additional variables. The results are found in figures 4 and 5, and the accompanying analysis.

THE EVIDENCE MAKES OUR CASE OBVIOUS. The use of the veto in recent times has been dominated by questionable choices on the part of the P5. Out of the 47 vetoes examined, the motivations for the use of the veto were coded as uncertain in one case and as legitimate in one other case. The remaining 45 were all coded as illegitimate.

LEGITIMACY OF CAST VETOES

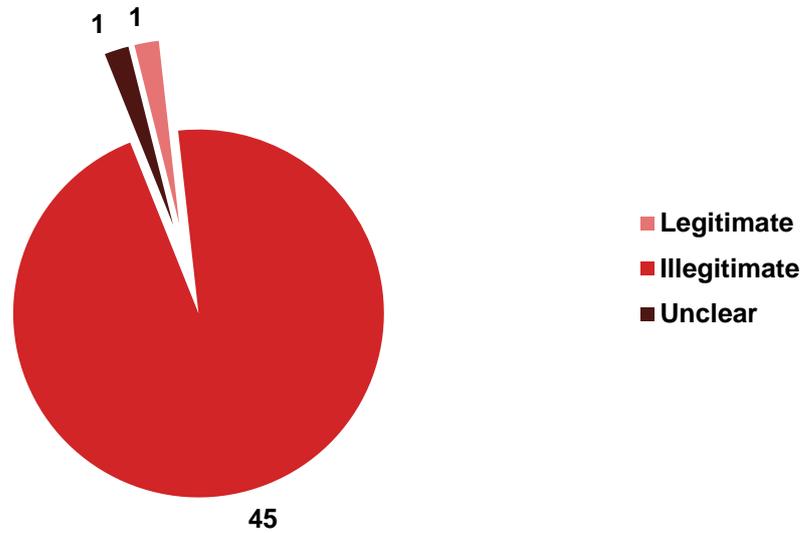


Fig. 1: The number of resolutions vetoed as coded in our analysis.

This means that almost all of the vetoes cast were for reasons other than the protection of a permanent member's central security or sovereignty. This presents considerable problems for non-permanent member states, both in the Security Council and outside. It is also part of the reason for why the Security Council is repeatedly criticized as being inefficient.

It should be noted in this context that all vetoes in this period were cast by three of the five permanent members. The UK and France have, for the entirety of the time since the end of the Cold War, refrained from using the veto. This leaves the responsibility with the remaining three permanent members, the United States of America, the Russian Federation and the People's Republic of China.

NUMBER OF VETOES BY PERMANENT MEMBER

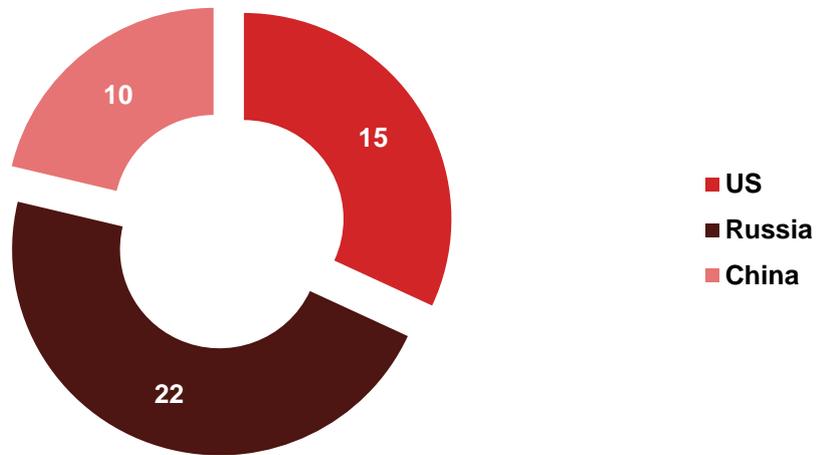


Fig. 2: The number of resolutions vetoed by the respective permanent members of the Security Council.

It is also of interest to consider the subjects of the draft resolutions that are vetoed. As is made clear by Figure 3, the Middle East is the geographical area most controversial to the P5 members, as no fewer than 27 out of the 39 draft resolutions concern to this area of the world. We suggest that if the permanent members changed their use of the veto, the United Nations would be better situated to deal constructively with conflicts that arise in the Middle East and elsewhere.

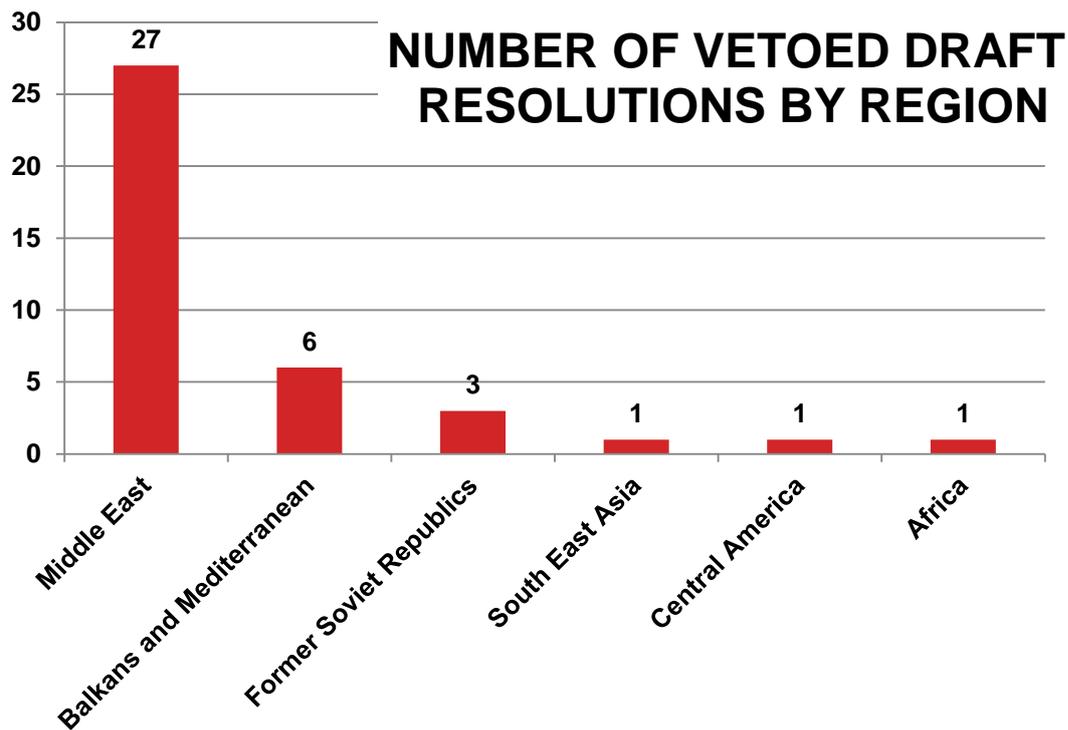


Fig. 3: The number of resolutions vetoed by the geographical area they concern.

As stated previously, the permanent members have given statements outlining their motivation for using the veto in every case examined. This allows us to categorize and analyze the stated reasons for why a permanent member chooses to use their extraordinary power. The results are presented in the following graph.

The most relevant finding for this report is that while sovereignty is brought up as a reason for the vetoing of several draft resolutions, it is only in one case² that it can be claimed that the draft resolution in question constitutes a direct threat to the sovereignty of the permanent member casting the veto. Another veto³ is coded as unclear, since the permanent member references sovereignty, but is unable to show the direct link between the draft resolution and its own sovereignty.

The issue of a permanent members own security is not brought up at all during this time. This is most likely a result of the veto mechanism working as intended when it comes to protecting the permanent members from adversarial draft resolutions from other Council members. There is, simply put, no need to bring up one's own security as a motivation for the veto, because there would be no point in presenting a draft resolution to the Council that would directly threaten the security of a permanent member.

² Veto ID 45 in our study. See our *Report Companion* for more information about the coding of this and the other vetoes.

³ Veto ID 10 in our study. See our *Report Companion* for more information about the coding of this and the other vetoes.

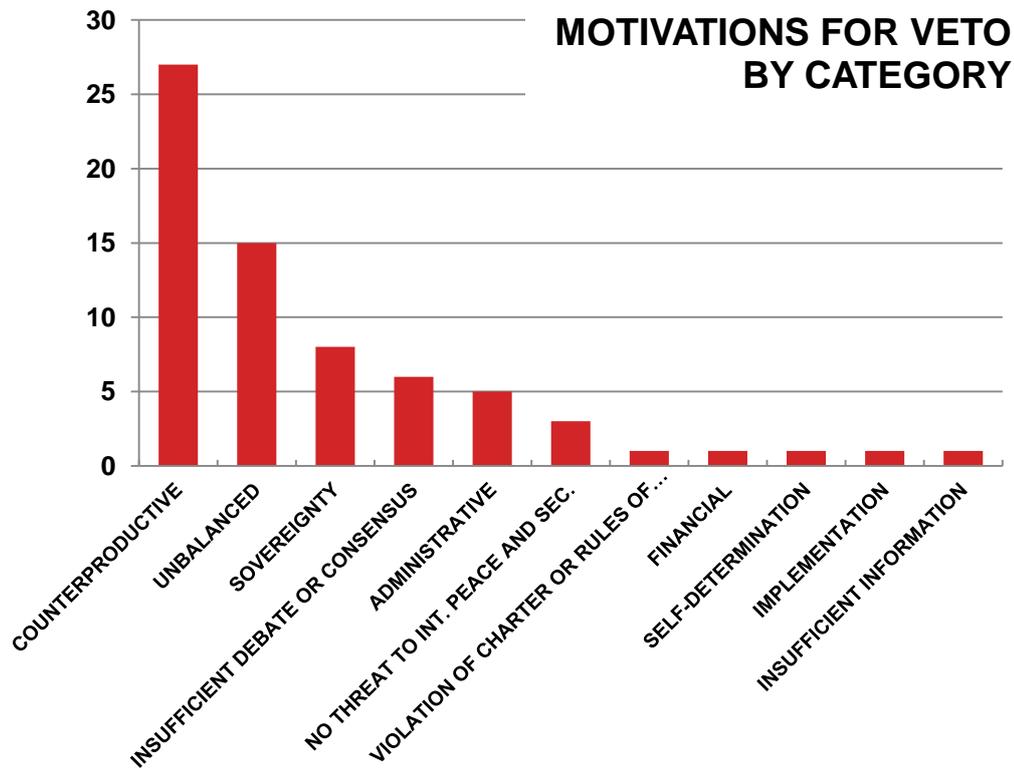


Fig. 4: The types of motivations given for the use of the veto and the frequency with which the motivations have been given. Note that several motivations for the veto may have been given for each draft resolution, resulting in the total number of motivations being higher than the total number of vetoes.

The final graph in this report shows the different kinds of actions that were proposed in the vetoed draft resolutions. The most common action stopped by vetoes is a statement from the Council in some form, such as a condemnation of state actions or the call for states to comply with international law. This is to be expected since draft resolutions often contain statements in addition to more direct actions.

The other categories are less common, but in the aggregate they provide a picture of what the UN and the Security Council would have done if there had not been a veto in the individual cases. Every veto is an action withheld, as is evident from this graph.

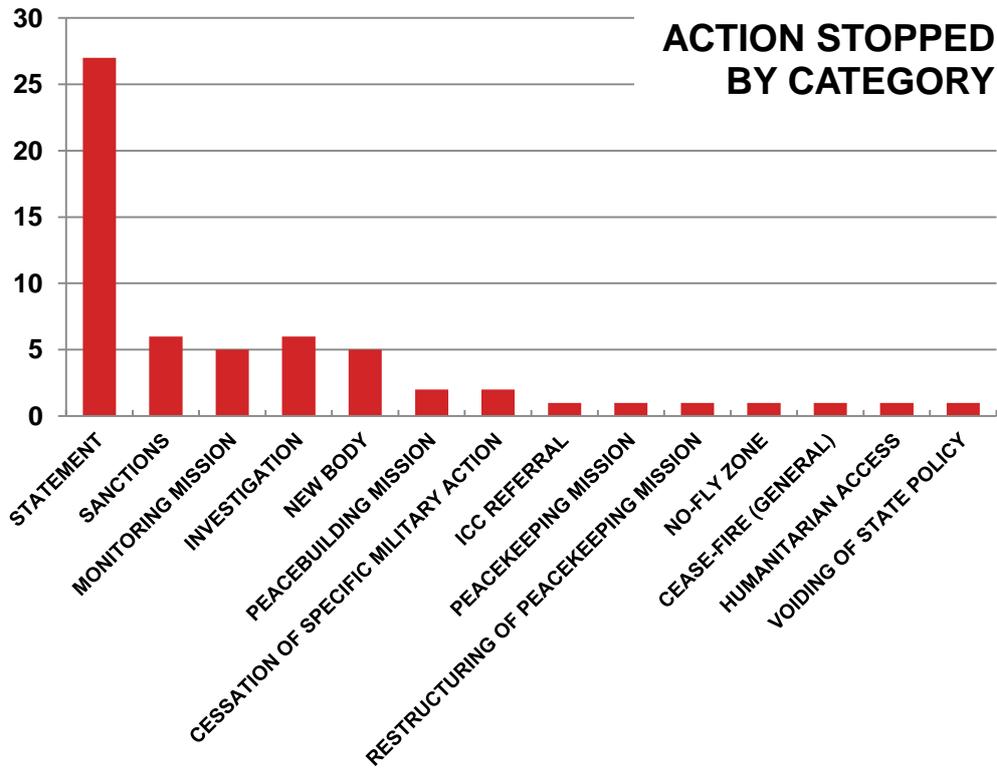


Fig. 5: The types of actions that have not been taken, and the frequency with which draft resolutions proposing such actions have been vetoed. Note that each draft resolution may contain more than one proposed action.

OUR PROPOSAL

Current international law does not place any restraints on the use of the veto by the permanent members, except for the rule that parties to a dispute "shall abstain from voting" in matters concerning the dispute⁴.

This regulation is insufficient to ensure the responsible use of the veto. We therefore propose a simple, yet powerful definition of the legitimate veto.

Our proposal is that the permanent members refrain from using the veto unless they consider a draft resolution as a direct threat to the permanent member's essential security interests or sovereignty.

We consider a direct threat to a permanent member's essential security interests to be any such action or inaction that would put into jeopardy the health or lives of citizens on the state's own territory. As for threats to a permanent member's sovereignty, we include actions or inaction that would endanger the permanent member's ability to function as a state.

We also propose that this definition is agreed upon by the permanent members of the Security Council, and that it is up to the P5 to ensure that the rule is followed. An agreement such as this would not entail difficult reform, and it would make it the interest of the permanent members that the rules are complied with.

THIS AGREEMENT COULD PRESENT A SOLUTION TO THE INEFFICIENCY OF THE SECURITY COUNCIL. At the same time, it is only a minor modification from what was arguably the initial motivation for the existence of the veto. A more thorough reform, as suggested by some critics, is both unrealistic and potentially ineffective. With the acceptance of the veto constraint agreement, a large effect can be achieved with a minimum of adjustment to the routines already in place.

As promised at the outset, this report has shown how the use of the veto in recent decades has been questionable. At this point, we would once again like to highlight that many of the motivations for the use of the veto in the past 26 years would

⁴ *Articles 27 (3) and 52 (3), and Chapter VI, in the UN Charter.*

become illegitimate with this agreement in place. This is because the permanent members will no longer be able to cast vetoes on behalf of allies or to protect lesser interests than their own security or sovereignty. The playing field will thus become more level, allowing the UN to act more efficiently to protect international peace and security, as is its purpose.

THE LEGITIMATE VETO

WE CALL FOR A CHANGE IN ATTITUDE, NOT REFORM. We believe such a change to be sufficient for considerable improvement in how the United Nations works. If the permanent members vow to use the veto more sparingly and only to protect their own security and sovereignty, there would be a number of benefits.

Such a reduction would greatly increase the ability of member states outside of the P5 to predict the viability of a draft resolution in the Security Council. It would also allow more controversial, but effective, draft resolutions to be passed. The common problem of close allies of the P5 facing little to no real responsibility for non-compliance with international law would furthermore be mitigated, as the allied veto would no longer be a legitimate protection from sanctions.

Finally, and perhaps most importantly, it would give the Security Council the benefits of democracy. A decision would no longer be subject to the fringe interest considerations by the P5. Even the permanent members themselves would likely benefit from this, as controversial decisions would no longer be doomed at the outset. Their interest to participate in the drafting of resolutions would also increase. This, we argue, would mean that the UN would become more efficient in acting to relieve disasters and prevent conflicts.

A Security Council better equipped to deal with internal controversies would make the world more peaceful, as envisioned in the UN Charter.

All this comes in the form of a change in attitude to the veto. Suggesting that the United Nations make more in-depth reforms than this would, in our view, be unrealistic and could potentially be counterproductive. This is because the aim of such proposals – unfair structures – would still likely be in place, even after the changes take effect. The issue of legitimacy would therefore not be solved. Changing states' attitudes is a middle-of-the-road approach that should be acceptable to all parties in the foreseeable future.

This is a fully developed policy that would serve as an important step toward a fully functioning and legitimate Security Council. In the long run it would serve to improve the organization of the United Nations as a global protector of peace and security.

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FOR MORE INFORMATION, PLEASE VISIT OUR WEBPAGE:

WWW.STOPILLEGITIMATEVETOES.ORG.

STOP ILLEGITIMATE VETOES IS A CAMPAIGN RUN BY THE CHALLENGE GROUP.

THE CHALLENGE GROUP is a society for young people envisioning a more efficient UN. We are politically and religiously independent and are initiating this campaign as a voice for the next generation – the continual improvement of the United Nations is our core concern.

APPENDIX: LIST OF VETOED DRAFT RESOLUTIONS

| ID | Year | Draft resolution | Veto member | Legitimate veto |
|-----------|-------------|-----------------------------|--------------------|------------------------|
| 1 | 1993 | S/25693 | Russia | No |
| 2 | 1994 | S/1994/1358 | Russia | No |
| 3 | 1995 | S/1995/394 | USA | No |
| 4 | 1997 | S/1997/18 | China | No |
| 5 | 1997 | S/1997/199 | USA | No |
| 6 | 1997 | S/1997/241 | USA | No |
| 7 | 1999 | S/1999/201 | China | No |
| 8 | 2001 | S/2001/270 | USA | No |
| 9 | 2001 | S/2001/1199 | USA | No |
| 10 | 2002 | S/2002/712 | USA | Unclear |
| 11 | 2002 | S/2002/1385 | USA | No |
| 12 | 2003 | S/2003/891 | USA | No |
| 13 | 2003 | S/2003/980 | USA | No |
| 14 | 2004 | S/2004/240 | USA | No |
| 15 | 2004 | S/2004/313 | Russia | No |
| 16 | 2004 | S/2004/783 | USA | No |
| 17 | 2006 | S/2006/508 | USA | No |
| 18 | 2006 | S/2006/878 | USA | No |
| 19 | 2007 | S/2007/14 | Russia | No |
| 20 | 2007 | S/2007/14 | China | No |
| 21 | 2008 | S/2008/447 | Russia | No |
| 22 | 2008 | S/2008/447 | China | No |
| 23 | 2009 | S/2009/310 | Russia | No |
| 24 | 2011 | S/2011/24 | USA | No |
| 25 | 2011 | S/2011/612 | Russia | No |
| 26 | 2011 | S/2011/612 | China | No |
| 27 | 2012 | S/2012/77 | Russia | No |
| 28 | 2012 | S/2012/77 | China | No |
| 29 | 2012 | S/2012/538 | Russia | No |
| 30 | 2012 | S/2012/538 | China | No |
| 31 | 2014 | S/2014/189 | Russia | No |
| 32 | 2014 | S/2014/348 | Russia | No |
| 33 | 2014 | S/2014/348 | China | No |
| 34 | 2015 | S/2015/508 | Russia | No |
| 35 | 2015 | S/2015/562 | Russia | No |
| 36 | 2016 | S/2016/846 | Russia | No |
| 37 | 2016 | S/2016/1026 | China | No |

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|-----------|------|-----------------------------|--------|-----|
| 38 | 2016 | S/2016/1026 | Russia | No |
| 39 | 2017 | S/2017/172 | Russia | No |
| 40 | 2017 | S/2017/172 | China | No |
| 41 | 2017 | S/2017/315 | Russia | No |
| 42 | 2017 | S/2017/884 | Russia | No |
| 43 | 2017 | S/2017/962 | Russia | No |
| 44 | 2017 | S/2017/970 | Russia | No |
| 45 | 2017 | S/2017/1060 | USA | Yes |
| 46 | 2018 | S/2018/156 | Russia | No |
| 47 | 2018 | S/2018/321 | Russia | No |