

THE VETO IN THE UN SECURITY COUNCIL: HISTORY, RATIONALE, AND (AB)USE

Abstract

The UN Security Council (UNSC) is the body endowed with the primary responsibility and powers to undertake collective action in order to “save future generations from the scourge of war”. Yet, the powers invested in the UNSC came with a caveat – each of the five permanent members (P5) of the Security Council would have a veto power regarding any proposed decision in this body concerning international peace and security. This paper deals with the UNSC veto – its history, justification, and the implications of its existence and (ab)use by the P5. In the first part of this paper, the voting in the UNSC, as regulated in Article 27 of the UN Charter, is explained and interpreted. Afterwards, the veto powers of the P5 are detailed, focusing on those veto powers that are not explicitly mentioned in the UN Charter (the so-called: “double veto”; “meta veto”; “behind the scene veto”, “reverse veto” and “indirect veto”), before delving into the history behind the creation of the Council and the veto in particular. Lastly, the paper turns to the idea of the “unreasonable veto”, or the (ab)use of the P5’s veto powers.

Keywords: *UN Security Council (UNSC); veto; permanent five (P5); UN Charter; international peace and security.*

I. INTRODUCTION

When the United Nations (UN) were founded eighty-one years ago, the guiding ideal for which they were created was to “save future generations from the scourge of war”, in other words, to maintain international peace and security, and, in order to reach this goal, to undertake collective action, with the use of force if necessary.¹ The UN body that is endowed with the primary responsibility to maintain international peace and security is the Security Council (UNSC).² While a third World War so far has not taken place, the world was far from being without wars in the last eight decades. There was some increased optimism that the UN, and the Security Council in particular, would finally become more effective and up to its mandate after the end of the Cold War. Unfortunately, three decades later, despite some initial progress in this direction, this is not where the world is heading. In fact, the past three years have been the deadliest since the Cold War ended.³ Furthermore, according to some studies, the UNSC, as a political body with huge statutory flexibility under the UN Charter, takes action in only around 50-66% of all armed conflicts throughout the world.⁴ In general, there are two main reasons why the Council is not acting with more urgency and dedication to achieve UN’s main

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¹ Charter of the United Nations, 24 October 1945, 1 UNTS XVI, Preamble, Article 1.

² *Ibid*, Article 24.

³ Davies, S., Engström, G., Pettersson, T. & Öberg, M. (2024). Organized Violence 1989-2023, and the Prevalence of Organized Crime Groups. *Journal of Peace Research* 61(4), 673-693; IISS (International Institute for Strategic Studies). (2024). *Armed Conflict Survey 2024*. Routledge.

⁴ See the studies used in Ljupcho Stojkovski, *The UN Security Council Through the Numbers: How Does the Council Maintain International Peace in Practice?*, *Journal of Balkan Studies* 5 (2025), 29-48, pp. 34-36.

goal. One has to do with the lack of political will of this body, which is most clearly evidenced in the Rwandan genocide in 1994, where the Council did not take any action, although it was well aware of what was going on on the ground. The second reason is related to decision-making in the UNSC, particularly the veto power of the permanent five (P5), like we have witnessed on numerous occasions during the past decades, for instance, with Russia's and China's vetoes over Syria, or, most recently, the USA's vetoes over the Israeli war in Gaza. Thus, this paper will deal with this second reason for the Council's inaction, namely, the veto – its history, justification, and the implications of its existence and (ab)use by the P5. In the first part of this paper, the voting in the UNSC, as regulated in Article 27 of the UN Charter, will be explained and interpreted. Afterwards, the veto powers of the P5 will be detailed, focusing on those veto powers that are not explicitly mentioned in the UN Charter, before delving into the history behind the creation of the Council and the veto in particular. Lastly, the paper will turn to the (possibility of) abuse of the veto by the P5.

II. VOTING IN THE UN SECURITY COUNCIL

Voting in the Security Council is regulated by Article 27 of the UN Charter, and was agreed upon at the second meeting at the creation of the UN in Yalta, Crimea, in February 1945 (hence the name “Yalta formula”). According to this formula, all member states of the Council will have the right to one vote (paragraph 1), and decisions will be considered adopted if 9 (and before the amendments to the Charter in 1965, 7) member states have affirmatively declared their support for them. For ‘procedural questions’, 9 votes from any member states of the Council (permanent or temporary) are sufficient, while for ‘all other matters’ or ‘substantive questions’, as they are otherwise called today,⁵ a qualified majority is required, i.e. the affirmative votes of at least 9 member states, which must also include the concurring votes of the five permanent members (paragraphs 2 and 3). This means that any of the five permanent member states can block the adoption of a decision in the Council, i.e. it has the right of veto (although the “veto” is not explicitly mentioned in the Charter itself).⁶

However, the text of paragraph 2 of Article 27 itself is silent about which situations would be considered “procedural” and which “substantive”. As a result, the General Assembly attempted on several occasions in the early years of the UN to further clarify and interpret Article 27 of the Charter. Thus, in 1947, the General Assembly established a special Committee to study the problem of procedural questions and their voting. In July 1948, the Committee issued a document entitled “The Problem of Voting in the Security Council” (A/578) in which it published a detailed list of 98 types of possible decisions that concerned procedural or substantive questions.⁷ The Assembly supported these findings of the Committee in Resolution 267(111) of April 1949, and proposed them to the Security Council. But the Council did not accept any of these recommendations and “continued to categorize the decisions exactly *opposite*” to what was proposed in the Resolution.⁸ Instead, through practice developed on a case-by-case basis, a certain list of matters was created that are today treated as procedural (and are recorded as such in the Repertoire of Practice of the Security Council), such as: the inclusion of certain items on the agenda; the order of the agenda; postponement of a certain item from the agenda; the removal of an item from the agenda on which the Council is sitting;

⁵ Loraine Sievers, Sam Daws, *The Procedure of the UN Security Council*, Oxford University Press, 4th ed., 2014, p.295.

⁶ Charter of the United Nations, 24 October 1945, 1 UNTS XVI, Article 27.

⁷ Hans Köchler, *The Voting Procedure in the United Nations Security Council: Examining a Normative Contradiction in the UN Charter and its Consequences on International Relations*, Studies in International Relations, XVII, Vienna, International Progress Organization, 1991, pp. 13,14.

⁸ *Ibid*, p.15. UN Doc. A/RES/267, 1949.

the suspension and adjournment of a meeting; the invitation to participate in a meeting; the conduct of a meeting; the convening of an emergency special session of the General Assembly, etc.⁹

Paragraph 3 of Article 27 also requires further explanation. Namely, this paragraph distinguishes between two types of abstention by all members of the Council – mandatory abstention and voluntary abstention. Mandatory abstention refers to 1) Article 52, paragraph 3, and Chapter VI of the Charter and 2) the obligation of members of the Council that are parties to a dispute before the Council not to participate in the vote in these cases. Voluntary abstention, on the other hand, implies abstention by member states because they simply do not want to vote (positively or negatively) on a particular issue.¹⁰ In practice, the conclusion is that the Council has not developed a consistent practice for this distinction in Article 27(3), and even mandatory abstention was not the result of any imposition by the Council as a body, but was voluntary and depended on the will of the member state.¹¹

As for the phrase “concurring votes” of the permanent members on substantive issues, included also in paragraph 3 of Article 27, at the San Francisco Conference this phrase was used synonymously with the term “unanimity”, and even though this issue was not explicitly addressed at the Conference, the prevailing understanding was that abstention by a permanent member was not sufficient to meet the criterion of unanimity.¹² Nevertheless, in the practice of the Council a different interpretation of this part of Article 27 was adopted,¹³ according to which abstention by a permanent State could be described as a “disguised form of consent”,¹⁴ and, thus, it is sufficient for the adoption of a decision by the Council.¹⁵ Finally, the same effect of an abstention from voting is also accomplished when one of the permanent five is not present at the vote itself, which, however, is virtually a theoretical possibility only.¹⁶ Hence, under Article 27, only an explicit negative vote by one of the permanent members – veto – is required to prevent the adoption of a decision.¹⁷

⁹ Loraine Sievers, Sam Daws, *The Procedure of the UN Security Council*, Oxford University Press, pp. 319, 320. This list of procedural matters is not the same as that contained in the San Francisco Declaration, nor that in the Annex to General Assembly Resolution 267 (III).

¹⁰ *Ibid*, pp. 339, 341.

¹¹ *Ibid*, p. 350

¹² Andreas Zimmermann, *Article 27*, in Bruno Simma, Daniel-Erasmus Khan, Georg Nolte, Andreas Paulus, Nikolai Wessendorf (eds.), *The Charter of the United Nations: A Commentary*, Oxford University Press, 2012, *Vol. I*, p.881.

¹³ Security Council Report, *The Veto*, Research Report, no.3, 2015, p.2, https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/research_report_3_the_veto_2015.pdf

¹⁴ Andreas Zimmermann, *Article 27*, in Bruno Simma, Daniel-Erasmus Khan, Georg Nolte, Andreas Paulus, Nikolai Wessendorf (eds.), *The Charter of the United Nations: A Commentary*, Oxford University Press, 2012, *Vol. I*, p.913.

¹⁵ *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, ICJ Reports 1971, p. 22.

¹⁶ Loraine Sievers, Sam Daws, *The Procedure of the UN Security Council*, Oxford University Press, p.350.

¹⁷ In the English version of the Charter, Article 27 makes a distinction between the “affirmative votes” of all members of the Council and the “concurring votes” of the permanent five members. This distinction implies that the five permanent members must cast an affirmative vote on a proposal. Similar vocabulary is also found in the Russian and Chinese versions of the text, but not in the French and Spanish versions of the Charter. Andreas Zimmermann, *Article 27*, in Bruno Simma, Daniel-Erasmus Khan, Georg Nolte, Andreas Paulus, Nikolai Wessendorf (eds.), *The Charter of the United Nations: A Commentary*, Oxford University Press, 2012, *Vol. I*, p. 912.

III. P5's VETO POWERS

According to the text of the Charter, the permanent five can use the veto in four situations. First, the veto is applicable to all substantive decisions adopted by the Council (except for Chapter VI and Article 52, i.e. if one of them is a party to that dispute). As Morgenthau notes, within the context of international peace and security, the P5's right to veto has three implications – it protects the P5 from any centralized enforcement measures being taken against them; it protects, what they perceive to be at a certain point in time, their closest allies; it renders the theoretical subordination of the right to self-defense under Article 51 of the Charter to the UNSC practically ineffective.¹⁸ In addition to having a veto power for maintenance of international peace and security, the P5 can also veto the recommendation to the General Assembly for the election of a UN Secretary-General (Article 97 of the Charter). Furthermore, they have a veto on the admission of a new member state to the UN (Article 4) as well as the suspension of an incumbent member, and finally, a veto on any amendment to the Charter (Articles 108 and 109).¹⁹

However, apart from the four situations in the Charter in which the P5 have a formal right of veto, there are several other veto possibilities for the P5 that are not explicitly stated in the Charter, indicating the systemic privilege and power of the permanent five. Namely, the P5 also hold:

“Double veto”. According to Article 27, as it was explained, the veto of permanent members of the Council is applicable only to substantive, but not to procedural issues. Nevertheless, this Article does not regulate the so-called “preliminary question”, i.e. whether permanent members have the right of veto also when deciding whether a question will be considered procedural or substantive. This preliminary question was addressed at the San Francisco Conference, where the permanent five, referring to the so-called “chain of events theory”, declared that the veto should also be applied to these issues.²⁰ It follows that the permanent five have a double veto – first, in terms of how they will treat a question – whether it is procedural or substantive, and then, in case the question is substantive, the right to block any decision on that question with which they disagree.²¹ However, as the Council's practice on these matters has become consolidated, “the ‘double veto’ has ceased to be a problem and no such case has arisen since 1959.”²² In modern Council practice, “almost all procedural matters are decided without a vote”, because the agenda for which items will be placed on the agenda is usually agreed in advance at informal meetings.²³ Procedural votes are held only when a Council member objects to the consideration of a question.²⁴

“Meta veto”. According to paragraph 3 of Article 27, (all Member States, including) the permanent five have the duty to abstain from voting if they are a party to a *dispute* that is being

¹⁸ Referred to in Bardo Fassbender, *Veto*, Max Planck Encyclopedia of International Law, 2019, par.13.

¹⁹ Charter of the United Nations, 24 October 1945, 1 UNTS XVI. Richard Butler AC, *Reform of the United Nations Security Council*, Penn State Journal of Law & International Affairs, vol.1, iss.1, April 2012, pp. 29,30.

²⁰ According to the "chain of events" theory, the veto will not be used for procedural and peaceful settlement of disputes issues, but if it is not used for other ("substantive", for international peace) matters, it may be the beginning of a chain of events that could lead to "huge political consequences" for the organization and the world (i.e., to war between the great powers) or force the Council to abandon the resolution of a situation that has already begun and thus fail in its responsibilities. *Statement by the Delegations of the Four Sponsoring Governments on Voting Procedure in the Security Council*, 7 June 1945, part 1, paras.4 and 5; part 2, para.2, <http://www.hamamoto.law.kyoto-u.ac.jp/kogi/2005kiko/Statement%20of%20four%20sponsoring%20states.pdf>

²¹ Hans Köchler, *The Voting Procedure in the United Nations Security Council: Examining a Normative Contradiction in the UN Charter and its Consequences on International Relations*, Studies in International Relations, XVII, Vienna, International Progress Organization, 1991, pp. 5,13, 18-20.

²² Loraine Sievers, Sam Daws, *The Procedure of the UN Security Council*, Oxford University Press, p. 327.

²³ *Ibid*, p. 327.

²⁴ *Ibid*.

considered under Chapter VI or Article 52 of the Charter, i.e. under the provisions for the peaceful settlement of disputes in the Charter. This means that the mandatory abstention applies only to the existence of a “dispute”, and not to the existence of “situations” that are being considered under Chapter VII of the Charter, where the permanent five have the right to veto. But here too a similar dilemma arises as in the case of the double veto – who and how decides whether a situation will qualify as a “dispute” or a “situation”? According to the San Francisco Declaration of the four major powers, they decide whether a situation will qualify as a dispute or a situation. In the Namibia advisory opinion, the International Court of Justice confirmed this, stating that there must be a “prior determination by the Security Council”²⁵ concerning: firstly, whether the matter is a “situation”, i.e. a “more general” matter with broader implications,²⁶ or a “dispute” – a disagreement on the point of law or fact, conflict of legal views or of interests” – between two parties;²⁷ and secondly, if it is the latter, to determine which Council members “are involved as parties to such a dispute”.²⁸ Thus, this power of the UNSC gives the permanent five another, meta-veto.²⁹ Subsequent practice demonstrates this additional power of the permanent five.³⁰

“Behind the scene veto”. This type of veto, which can be found in the literature by various authors under different names such as “pocket veto”,³¹ “hidden veto”,³² “quiet veto”³³ or “informal veto”,³⁴ denotes the situation when one of the permanent members does not formally use its veto, but threatens to use it in private meetings if it is not satisfied with the issue proposed for public discussion, or with the measure that is to be adopted. The threat of using the veto contributes to softening the language of a resolution or not putting an issue on the Council’s agenda at all. Such threats are secret and are made in private meetings on the occasion of the discussion of a certain issue. Therefore, this veto is not recorded in the statistics of vetoes used by the permanent five,³⁵ which improves the Security Council’s public veto record compared to the Cold War, when there were not (so many) such private meetings, allows the permanent five to maintain a good image of themselves in the eyes of the world public, but

²⁵ ICJ, *Namibia*, ¶26.

²⁶ Hans Kelsen, *Law of the United Nations: A Critical Analysis of its Fundamental Problems*, Steven and Sons, 1951, pp.388-389; Leland M. Goodrich, Anne P. Simons, *The United Nations and the Maintenance of International Peace and Security*, Brookings Institute, 1955, p.230.

²⁷ PCIJ, *Mavrommatis Palestine Concessions [Greece v United Kingdom] [Jurisdiction]*, PCIJ Series A No 2, 12 1924, p.11.

²⁸ ICJ, *Namibia*, ¶26; Andreas Zimmermann, *Article 27*, in Bruno Simma, Daniel-Erasmus Khan, Georg Nolte, Andreas Paulus, Nikolai Wessendorf (eds.), *The Charter of the United Nations: A Commentary*, Oxford University Press, 2012, Vol. I, p.925.

²⁹ Hans Köchler, *The Voting Procedure in the United Nations Security Council: Examining a Normative Contradiction in the UN Charter and its Consequences on International Relations*, Studies in International Relations, XVII, Vienna, International Progress Organization, 1991, pp. 20-22.

³⁰ Andreas Zimmermann, *Article 27*, in Bruno Simma, Daniel-Erasmus Khan, Georg Nolte, Andreas Paulus, Nikolai Wessendorf (eds.), *The Charter of the United Nations: A Commentary*, Oxford University Press, 2012, Vol. I, p.925.

³¹ Philippa Webb, *Deadlock or Restraint? The Security Council Veto and the Use of Force in Syria*, *Journal of Conflict & Security Law* (2014), vol.19, no.3 471-488, p.476.

³² Celine Nahory, *The Hidden Veto*, *Global Policy Forum*, May 2004, <https://www.globalpolicy.org/security-council/42656-the-hidden-veto.html>

³³ Colin Keating, *Power Dynamics Between Permanent and Elected Members*, in Sebastian von Einsiedel, David M. Malone and Bruno Stagno Ugarte (eds.), *The UN Security Council in the 21st Century*, Lynne Rinner Publishers, 2016, p.143.

³⁴ Jess Gifkins, *Beyond the Veto: Roles in UN Security Council Decision-Making*, *Global Governance* 27 (2021), 1-24, pp. 6,7.

³⁵ Statistics on veto threats exist only if a draft resolution has been circulated as a document and discussed by the Council’s member states. Threats made at earlier stages are not recorded. Philippa Webb, *Deadlock or Restraint? The Security Council Veto and the Use of Force in Syria*, *Journal of Conflict & Security Law* (2014), vol.19, no.3 471-488, p.475.

it also contributes to creating a perception that the Security Council as an institution is the one that is failing and inactive.

“Reverse veto”.³⁶ This veto covers situations in which the Security Council has already taken a decision authorizing some measures to deal with the situation, such as imposing sanctions, embargoes, or no-fly zones, but in order to stop these already adopted measures, the Security Council must adopt a new Resolution. Of course, any one of the permanent five states can block the adoption of this new resolution that would require a return to the previous state, and thus (theoretically) leave a measure to last indefinitely, although all the other Council members might believe that the measure should be lifted (or modified). An example of a problem with this veto is the situation with Iraq in the 1990s, when two permanent members (the United States and United Kingdom) did not want sanctions on Iraq to be lifted, while the rest of the Security Council was in favor of such a measure.³⁷ In practice, the Security Council responds to the challenge of the reverse veto in two ways. One way is to lean towards adopting time-limited measures, which require a new decision to be taken for them to be continued (otherwise they would cease). This approach is applied much more in situations of military measures than of economic sanctions. The other approach is based on the Council assessing whether the objectives for which a measure was adopted have been achieved, after which the measure would automatically cease.³⁸

“Indirect veto”. This so-called veto originated with Soviet diplomats in the early years of the Cold War, when the Security Council was dominated by the West. According to this interpretation, the ability of a permanent state (then the USA) to convince the other (primarily non-permanent) members to vote against a draft resolution proposed by another permanent member (then the USSR) contributes to that permanent member not formally using its veto, and yet indirectly blocking the work of the Council. Of course, this interpretation does not specifically refer to the veto but to the general power (of persuasion) that any of the permanent five may have, and therefore is not very precise (especially if we know that this is a political body that decides by majority vote and that the distribution of power today is different from the Cold War, although the USA is still at the top), but it is some indication of the functioning of the Council, especially the P5 and their veto powers.³⁹

IV. HISTORY OF THE VETO

So, why was the UN Security Council designed in this way? What was the rationale for endowing the P5 with (so many) veto power(s)? The roots of the new post-war universal organization began during the Second World War. In 1941, Churchill and Roosevelt drafted the “Atlantic Charter”, in which they committed themselves to creating a broader and permanent system of general security. More intensive negotiations for the Council and for the UN in general began at the meeting in Dumbarton Oaks, USA, in 1943 between the three allies in the war - the USA, United Kingdom and the Soviet Union. In addition to these three countries, at the insistence of the USA, China was also included in the negotiations, which at that time was far from a world power and did not contribute to world security (which is why United Kingdom and Russia initially opposed its inclusion). The last member of the “Big Five”, France, was

³⁶ *Ibid*, p. 476.

³⁷ Nico Krisch, *Introduction to Chapter VII: The General Framework*, in Bruno Simma, Daniel-Erasmus Khan, Georg Nolte, Andreas Paulus, Nikolai Wessendorf (eds.), *The Charter of the United Nations: A Commentary*, Oxford University Press, 2012, *Vol. II*, p.1267.

³⁸ *Ibid*, p. 1268.

³⁹ Loraine Sievers, Sam Daws, *The Procedure of the UN Security Council*, Oxford University Press, p. 317.

included last, at the insistence of United Kingdom.⁴⁰ Furthermore, at the meeting in Crimea, in February 1945, the so-called “Yalta Formula”, i.e. the veto for the permanent five on all essential issues was agreed upon. Finally, at the San Francisco Conference in June 1945, an agreement was reached with the smaller states and the United Nations was formed.⁴¹

Three visions were in play during the discussions about how the Security Council should look and function.⁴² One was that of US President Roosevelt. According to him, the Council should have an expansive role and function as a “world policeman” which would take care of world peace. Roosevelt’s explanation for this was that as long as great powers, who at that time represented three-quarters of the world’s population, stuck together and were determined to maintain peace, no aggressor state would emerge to start a new world war. The second vision for the Council was that of British Prime Minister Churchill, for whom the Council would function best if it were organized as a collection of several regional councils. According to this minimalist version of the alliance of the great powers, the Security Council would be an “umbrella” organization of the major powers that would oversee three regional councils – one in Europe, one in Asia and one in the Americas – and each great power would be responsible for and project its power into one of the regional councils. The Security Council, apart from managing the work of these councils, would be responsible only for the most serious disputes between its members. The final vision for the Council was that of Soviet President Stalin. His version did not include any particular ideas about the Council’s future role, but was based on the idea that the alliance between the victors of World War II and great powers in general should continue in some form and that the territorial gains and interests of the Soviet Union should be preserved. For this reason, but also because of the fear that the Organization would fall under Western domination, the USSR’s version of the Council included unanimity in Council decision-making, i.e. the right of veto on all activities, as a *conditio sine qua non* for the organization. To ensure this, Stalin insisted that all 16 Soviet republics be granted membership and voting rights in the UN.⁴³ Hence, the Yalta formula was the product of a compromise between the United States and United Kingdom on the one hand, and the USSR on the other. The US and UK considered that “a veto power for the permanent members was incompatible with the fundamental principles of the UN” while the Soviet Union was “firmly resolved to resist procedures whereby it would have to submit to majority decisions on questions of essential importance.”⁴⁴ The compromise – which was clearly the product of realpolitik bargaining between the great powers, rather than any jointly-achieved normative or value-based solution – ultimately amounted to a veto, but Stalin would only gain UN membership for two more Soviet republics – Ukraine and Belarus.⁴⁵

During the negotiations in Dumbarton Oaks and San Francisco, the great powers agreed and insisted that the Security Council should be as flexible as possible – free from many principles, guidelines, definitions that could inhibit its scope for choosing the methods and

⁴⁰ The US tried to include Brazil in the “elite club”, as a country from the Latin American region. However, similar to China, United Kingdom and the USSR believed that Brazil would be another pawn state of the US and would make the Council pro-American. Therefore, Brazil’s membership was rejected and the permanent five were already known at that time.

⁴¹ David Bosco, *Five to Rule Them All: The UN Security Council and the Making of the Modern World*, Oxford University Press, pp. 24-38.

⁴² *Ibid.*; Daniel–Erasmus Khan, *Drafting History*, in Bruno Simma, Daniel-Erasmus Khan, Georg Nolte, Andreas Paulus, Nikolai Wessendorf (eds.), *The Charter of the United Nations: A Commentary*, Oxford University Press, 2012, Vol. I, p.11.

⁴³ *Ibid.*, p.12. David Bosco, *Five to Rule Them All: The UN Security Council and the Making of the Modern World*, Oxford University Press, pp. 14-23. In the end, the US and the UK gave him only three votes.

⁴⁴ Daniel–Erasmus Khan, *Drafting History*, in Bruno Simma, Daniel-Erasmus Khan, Georg Nolte, Andreas Paulus, Nikolai Wessendorf (eds.), *The Charter of the United Nations: A Commentary*, Oxford University Press, 2012, Vol. I, p.16.

⁴⁵ *Ibid.*, p.17.

measures of work.⁴⁶ In this sense, the “flexible machinery” that the Security Council was supposed to be would mean that the Council would have complete discretion as to when it would be activated, it would decide for itself what constituted a “threat” to peace within the meaning of Article 39 of the Charter, and it would decide for itself what measures it would take, if any, in case there is a threat to peace. This reasoning was supplemented by the argument that the Council and the actions involving the use of force that it would take are (primarily) political, not legal, acts,⁴⁷ though, of course, the Council is bound by international law.⁴⁸ The founders of the UN did not see the Security Council as an exclusive international instrument for addressing various security threats that might arise in the future. According to the US vision, the existence of the International Court of Justice and regional arrangements would help the Council by dealing with a variety of [minor] disputes and difficulties without bringing them to the Council, thereby ensuring that the Council is not overloaded with work.⁴⁹

The veto proposal specifically arose from two ideas. One, that international peace depends on the unanimity of those powers that have the power to wage (a new) world war, and the second, according to which those who had the power to wage such a war would not agree to create an organization that would have the power to force them to a certain behavior.⁵⁰ The compromise had to be found between the “democratic” rule that all states are sovereign and hence equal, and the recognition of the actual power and the establishment of a “dictatorship” of the great powers by granting exclusive voting privileges. The compromise solution was to be manifested in the scope of the organization's obligations and responsibilities, as well as its composition, and to reflect the inequalities in power among members, but also to offer dignified respect for the views and interests of less powerful countries.⁵¹ Several proposals were put forward for how this could be done through a Security Council vote. The first option suggested that the five permanent states would not have to be unanimous on an issue, but that a qualified majority – three-quarters or four-fifths – would suffice. The second alternative proposed precisely, by name, to predict which two or three of the most powerful powers of the permanent five must vote in favor of a particular issue. A third advocated that decisions be made by majority vote, both among the permanent and non-permanent members. Finally, the fourth proposal highlighted the combination – which is still accepted today – of unanimity among the permanent five supplemented by the necessary number of votes from the smaller countries to prevent the “dictatorship” of the larger powers.⁵² In addition to these four, there were also various proposals for how large the majority should be. Thus, Ecuador proposed that it should consist of 8 votes (since then 11 in total), Egypt proposed 9 (of which 4 votes are from the permanent members on substantive issues), and Cuba proposed a simple majority for

⁴⁶ Edward C. Luck, *UN Security Council: Practice and Promise*, Routledge, 2006, pp. 24, 25.

⁴⁷ Edward C. Luck, *A Council for All Seasons: The Creation of the Security Council and Its Relevance Today*, in Vaughn Lowe, Adam Roberts, Jennifer Welsh, Dominik Zaum (eds.), *The United Nations Security Council and War: The Evolution of Thought and Practice Since 1945*, Oxford University Press, 2008, pp. 67, 68, 70, 71.

⁴⁸ ICTY Appeals Chamber, *The Prosecutor/Dusko Tadic*, Case No. IT-94-1-AR72, 2 October 1995, par.28.; Alexander Orakhelashvili, *The Impact of Peremptory Norms on the Interpretation and Application of United Nations Security Council Resolutions*, *The European Journal of International Law*, vol.16 no.1, 2005, 59-88; Nico Krisch, *Introduction to Chapter VII: The General Framework*, in Bruno Simma, Daniel-Erasmus Khan, Georg Nolte, Andreas Paulus, Nikolai Wessendorf (eds.), *The Charter of the United Nations: A Commentary*, Oxford University Press, 2012, Vol. II, p.1259, 1260.

⁴⁹ *Ibid*, p. 70.

⁵⁰ James B. Reston, *Votes and Vetoes*, *Foreign Affairs*, October 1946 <https://www.foreignaffairs.com/articles/1946-10-01/votes-and-vetoes>

⁵¹ Dwight E. Lee, *The Genesis of the Veto*, *International Organization*, vol.1, no.1, 1947, .33-42, p.33.

⁵² *Ibid*, p.35.

procedural issues, and a two-thirds majority (including two-thirds of the permanent members) for substantive issues.⁵³

Nevertheless, the veto was a *conditio sine qua non* for the permanent five and for the existence of the UN in general. Without it, there would have been no UN.⁵⁴ The Big Five, despite all the criticism and different proposals from the smaller powers, ultimately retained the veto and the agreement on the organization that they had already reached, setting an ultimatum to the smaller states that without the veto, the United Nations would not exist.⁵⁵

V. NO ABUSE OF THE VETO?

The adopted proposal for voting in the Security Council – a unanimous vote of the permanent members plus two additional votes from the non-permanent members – was initially not acceptable to the states participating in the San Francisco Conference. Seventeen of the 44 states at the Conference (including France) proposed amendments to the voting procedure that suggested everything from the complete elimination of the rule of unanimity by the great powers and its replacement with various types of qualified majority, to proposals that would make the application of this rule clearer.⁵⁶ The amendment to abolish unanimity was not adopted (10 votes in favor, 20 against, and 15 abstentions). Despite the great opposition to the veto, the main concern of the smaller states was not that the Council would become an overpowering, elite club of the big five. The main concern was precisely its potential impotence – what if the Council did not act when it should act to maintain international peace? Or as the New Zealand delegate to the San Francisco Conference asked – what to do when “one permanent member arbitrarily disagrees and prevents a particular action [to maintain international peace]?”⁵⁷

These concerns and all the remaining questions and dilemmas of the smaller states were addressed in the joint “Statement of the Delegations of the Governments of the Four Sponsors of the Security Council”. Although in the Statement the great powers directly answered only one question in particular (the question of deciding in the event of a dilemma whether a question was procedural or substantive) and with the offered interpretation of Article 27 de facto increased their powers,⁵⁸ they nevertheless offered some justification for their privileged position. By emphasizing their primary responsibility for the maintenance of international

⁵³ Andreas Zimmermann, *Article 27*, in Bruno Simma, Daniel-Erasmus Khan, Georg Nolte, Andreas Paulus, Nikolai Wessendorf (eds.), *The Charter of the United Nations: A Commentary*, Oxford University Press, 2012, Vol. I, p.878.

⁵⁴ Hans Köchelr, *The Voting Procedure in the United Nations Security Council: Examining a Normative Contradiction in the UN Charter and its Consequences on International Relations*, Studies in International Relations, XVII, Vienna, International Progress Organization, 1991, p.10.

⁵⁵ The ultimatum of the great powers is best captured in the famous and dramatic speech of one of the American negotiators at the Conference, Senator Connally: “You may go home from San Francisco if you wish and report that you have defeated the veto....Yes, you can say you defeated the veto, but you can also say, ‘We tore up the Charter!’” The senator ended his speech by tearing his copy of the draft Charter into pieces and staring hostilely into the faces of each of the representatives of the smaller states individually. David Bosco, *Five to Rule Them All: The UN Security Council and the Making of the Modern World*, Oxford University Press, p. 36.

⁵⁶ Dwight E. Lee, *The Genesis of the Veto*, International Organization, vol.1, no.1, 1947,33-42, pp. 37,38.

⁵⁷ David Bosco, *Five to Rule Them All: The UN Security Council and the Making of the Modern World*, Oxford University Press, pp. 35,36. Similarly, Edward C. Luck, *A Council for All Seasons: The Creation of the Security Council and Its Relevance Today*, in Vaughn Lowe, Adam Roberts, Jennifer Welsh, Dominik Zaum (eds.), *The United Nations Security Council and War: The Evolution of Thought and Practice*, Oxford University Press, 2008, pp. 68, 69.

⁵⁸ Hans Köchelr, *The Voting Procedure in the United Nations Security Council: Examining a Normative Contradiction in the UN Charter and its Consequences on International Relations*, Studies in International Relations, XVII, Vienna, International Progress Organization, 1991.

peace, they provided a justification for why it was right for them to have a stronger voice than the non-permanent members of the Council. They emphasized that “they cannot be expected ... to assume the obligation to act in so serious a matter as the maintenance of international peace and security in consequence of a decision in which they niot concurred.”⁵⁹ However, all permanent members made statements in which they morally committed themselves that the veto would not be abused and used contrary to the purposes of the UN as set out in the Charter and to the detriment of small states, but would be used rarely, with a “great sense of responsibility”⁶⁰ and in the “interests of the world organization”.⁶¹ In a joint statement, they stressed that “it is not be assumed that the permanent members, any more than the non-permanent members, would use their ‘veto’ power willfully to obstruct the Operation of the Council”⁶². Also, in an address to the General Assembly in 1946, the US representative stated that “the unanimity requirement [among the P5] in the Security Council does not relieve the permanent members of the responsibilities and obligations they have assumed under the UN Charter”.⁶³

Yet, we have witnessed over the past eighty years since the UN was conceived that in practice, the Council’s permanent members have not been acting (fully) in that manner and that the veto has been abused from time to time, that is, it has been used not for the interests of the UN, but for the strict national interests of a permanent member. Contrary to some claims, the P5 are not legally bound not to use the veto in some situations.⁶⁴ Nevertheless, that does not mean that they should use it however they see fit. The P5 bear the primary responsibility for the maintenance of international peace and security and, as all other UN members, have an obligation to fulfill their UN obligation in good faith and not use the UN, including the veto, only or primarily as a tool to pursue their national interests. This unreasonable use of the veto can best be noticed when a permanent member puts a veto for reasons that are not directly related to the situation being discussed in front of the UNSC, that is, not for reasons related to the maintenance of international peace and security, but to some national interests of that permanent member. Examples of these kinds of vetoes include China’s veto in 1999 regarding the potential extension of the UNPREDEP mission in Macedonia, after the latter recognized Taiwan some time beforehand, or the “behind the scene” (i.e. the threat of) veto of the USA regarding the UNMIBH mission in Bosnia in 2001, if the UNSC failed to support a blank exemption from investigation and prosecution of its nationals by the ICC.⁶⁵ Most recently, one could categorize as unreasonable the USA’s vetoes over Israel’s war in Gaza or Russian vetoes

⁵⁹ Philippa Webb, *Deadlock or Restraint? The Security Council Veto and the Use of Force in Syria*, *Journal of Conflict & Security Law* (2014), vol.19, no.3 471-488, p. 473, *Statement by the Delegations of the Four Sponsoring Governments on Voting Procedure in the Security Council*, 7 June 1945, sec. 1, par 9.

⁶⁰ James B. Reston, *Votes and Vetoes*, *Foreign Affairs*, October 1946 <https://www.foreignaffairs.com/articles/1946-10-01/votes-and-vetoes>

⁶¹ Dwight E. Lee, *The Genesis of the Veto*, *International Organization*, vol.1, no.1, 1947, 33-42, p. 42.

⁶² Hans Köchelr, *The Voting Procedure in the United Nations Securiry Council: Examining a Normative Contradiction in the UN Charter and its Consequences on International Relations*, *Studies in International Relations*, XVII, Vienna, International Progress Organization, 1991, crp. 12,13. *Statement by the Delegations of the Four Sponsoring Governments on Voting Procedure in the Security Council*, 7 June 1945, sec. 1, par.8.

⁶³ Hans Köchelr, *The Voting Procedure in the United Nations Securiry Council: Examining a Normative Contradiction in the UN Charter and its Consequences on International Relations*, *Studies in International Relations*, XVII, Vienna, International Progress Organization, 1991, p. 10.

⁶⁴ See for example John J. Heieck, *RN2V revisited: How the Duty to Prevent Genocide as a jus cogens Norm Imposes a Legal Duty not to Veto on the Five Permanent Members of the Security Council*, in Richard Barnes, Vassilis Tzevelekos (eds.), *Beyond Responsibility to Protect: Generating Change in International Law*, Intersentia, 2016, 103-122.

⁶⁵ Ian Johnstone, “When the Security Council is Divided: Imprecise Authorizations, Implied Mandates, and the ‘Unreasonable Veto’” in Marc Weller (ed.), *The Oxford Handbook of the Use of Force in International Law*, Oxford University Press, Oxford, 2015, 245-248, p.246.

in the war in Syria. This categorization is, of course, not easily made and could probably be accurately established only with a hindsight. Nevertheless, there is no doubt that the veto was not intended, nor it should be used by the P5 to pursue their national priorities, but for the cause of a more peaceful world, as (some of) the P5 themselves argued when the UN was being created.

VI. THE WAY FORWARD

The design of the UN Security Council, including its voting system pursuant to Article 27 of the Charter, was of a revolutionary character – not only did it institute majority voting, which was not the case with its predecessor, the League of Nations, when all decisions in both the Assembly and the Council were adopted unanimously (pursuant to Article 5 of the Covenant), but also because, up until this change, no sovereign state could be bound by the decisions of an international organization without its consent.⁶⁶ The permanent five have received privileged status but also an incentive to maintain this status and, thus, remain part of the organization. So, despite the justified criticism for the abuse of the veto power by the P5 on some occasions, the existence of the veto power probably best protects the survival of the UN itself.⁶⁷ Thus, while the normative environment in which the Council operates today has expanded from the beginning of its existence eight decades ago⁶⁸ and the Council should do much more than it has been doing, calls for abolishing the veto completely⁶⁹ could potentially do more harm than good. That being said, however, as the UN emphasized in the 2024 Pact for the Future, the “question of the veto is a key element of Security Council reform” and States “will intensify efforts to reach an agreement on the future of the veto, including discussions on limiting its scope and use.”⁷⁰ Unfortunately, most reform proposals and discussion (including in the Pact for the Future) focus on enlarging the Council,⁷¹ and the attempts to restrain the use of veto, at least in some instances, have rather slim chances of success.⁷² However, these attempts and discussions should not be discarded, at the very least to (publicly) remind the P5 of their promises and the well-established claim that “with greater power comes greater responsibility”, but also that if they (continuously) abuse their entitled position, the whole world, including themselves, could lose.

⁶⁶ Bardo Fassbender, *The Right of Veto in the UN Security Council* in Hans Köchler (ed.), *Sovereignty and Coercion: The United Nations in the Web of Power Politics- Statements and Papers from an International Roundtable Consultation in Istanbul*, International Progress Organization, 2025, 31-40, p.32.

⁶⁷ *Ibid*, p.37; Edward C. Luck, *A Council for All Seasons: The Creation of the Security Council and Its Relevance Today*, in Vaughn Lowe, Adam Roberts, Jennifer Welsh, Dominik Zaum (eds.), *The United Nations Security Council and War: The Evolution of Thought and Practice*, 2008, pp. 80-82.

⁶⁸ The shift from ‘negative’ to ‘positive’ peace; from ‘international’ peace understood as interstate’ peace to ‘international’ as ‘global’ peace; the development of international human rights, international humanitarian law, and international criminal law, etc. See more in Ljupcho Stojkovski, “Collective Security, Selective Security, Concert or Something Else? What Kind of Institution is the UN Security Council?” in Tolga Sakman (ed.), *“Securitized World Order and New Security Spaces”*, Nobel Akademik Yayincilik, 2024, 225-238.

⁶⁹ Augusto Lopez-Carlos, *The Origins of the UN Veto and Why it Should be Abolished*, Global Governance Forum, 2022, <https://globalgovernanceforum.org/origins-un-veto-why-it-should-be-abolished/>

⁷⁰ UN Doc. A/RES/79/1 2024, *Pact for the Future, Global Digital Compact and Declaration on Future Generations*, Action 39.

⁷¹ Ljupcho Stojkovski, “Some Perspectives on the UN Security Council Reform Proposals”, *Iustinianus Primus Law Review*, vol.14, is.1, 2023.

⁷² *Ibid*; Ljupcho Stojkovski, “The Importance of the Responsibility not to Veto Debate”, in Vasilka Sancin (ed.), *“Are we “Manifestly Failing” R2P”*, 2017, Faculty of Law, University of Ljubljana, Litteralis Ltd, 87-110.

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