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The Origins and History of the Veto and Its Use

[Un]less the Security Council can unite around the aim of confronting massive human rights violations and crimes against humanity ... then we will betray the very ideals that inspired the founding of the United Nations.¹

INTRODUCTION

This chapter traces the origins of the veto power of the permanent members of the UN Security Council from the negotiations leading into the San Francisco Conference to the finalization of the UN Charter. It then examines an early response to Security Council paralysis – resolutions in the late 1940s by the General Assembly calling for veto restraint, as well as the “Uniting for Peace” resolution in 1950, which provides a mechanism for the General Assembly to make recommendations related to international peace and security when the Security Council’s work is blocked. Even though expectations for the Security Council have probably gone beyond the intentions of the drafters of the UN Charter, especially since the end of the Cold War it is clear that when there is sufficient political will, this body has the legal ability to prevent and/or stop many situations of catastrophic consequences to communities, countries, and regions around the world. Concomitantly, when the Council does not take on such a role, there is widespread disenchantment with its performance. Despite numerous efforts, attempts to reform the composition of the Council have, to date, largely failed to reach fruition. The lack of responsiveness to the commission of mass atrocity crimes (genocide, crimes against humanity, and/or war crimes), which have occurred virtually unimpeded (just taking the last few

decades) in places such as Rwanda, Darfur, Syria, Sri Lanka, Myanmar, and Yemen, has come at a staggering toll in terms of lives lost. Much of the time, inaction by the Council can be specifically traced to use of the veto, or the threat of the veto, by one or more of the permanent members. Recent, broadly endorsed, encouraging initiatives aimed at curtailing veto use in the face of atrocity crimes provide strong evidence that the international community wants the Security Council to be more effective in these situations. Yet, because of the voluntary nature of these initiatives (waiting for all permanent members to join them), this chapter makes the case that it is time to reconsider existing hard law legal obligations, and recognize that these in fact impose limitations on the use of the veto in the face of atrocity crimes.

1.1 THE UN CHARTER NEGOTIATIONS

1.1.1 Positions on the Veto Leading into the San Francisco Conference

By December 1943, US President Franklin Delano Roosevelt had a vision of the “great powers” as the “Policemen” who would maintain international peace and security in the future: “Britain, Russia, China and the United States and their allies represent more than three-quarters of the total population of the earth. As long as these four nations with great military power stick together in determination to keep the peace there will be no possibility of an aggressor Nation arising to start another world war.”2 His vision translated into what became, with the addition of France, the permanent members of the United Nations Security Council. As permanent members, pursuant to the UN Charter, these states would have veto power over substantive votes, which both ensured, in 1945, their participation in the newly forming organization, but also over the years has generated a vast amount of controversy and discontent as to the Security Council’s performance, particularly, as to the use of the veto power.

In the early negotiations of what would become the UN Charter, the US, UK, USSR, and China agreed they would have veto in the Security Council on substantive votes.3 What emerged as a principle point of contention in their

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3 Although France was accepted as a permanent member of the Security Council, France was not present during negotiations at the Dumbarton Oaks Conference or the Yalta Conference. See infra notes 15–17 and accompanying text. China was also not at Yalta (and appears to have played a much lesser role in the negotiations than the US, UK, and USSR), and was only at a resumed session of the Dumbarton Oaks Conference. Edward C. Luck, UN SECURITY COUNCIL: PRACTICE AND PROMISE 12 (2006) (“Because Moscow refused to meet with a Chinese delegation representing the Chiang Kai-Shek regime, the Dumbarton Oaks
negotiations – primarily conducted by the US, USSR, and the UK – was whether this should extend to voting (and hence veto use) as to situations to which they themselves were a party.5

The Soviet Union refused to agree to any plan in which they might not have veto power even as to matters involving themselves. However, the US and the UK initially had qualms about such an approach. Ultimately, as detailed below, the US and the UK acquiesced to the Soviet Union’s position during negotiations at the Yalta Conference, held February 4–11, 1945.6 The USSR’s position was based on the “principle of unanimity,” which it viewed as requiring consensus in all instances. The USSR argued that without unanimity or consensus among the “great powers,” there would be discord that could undermine international peace and security. Of course, the veto would also permit the permanent members to maintain power on perhaps the most crucial matters that would face the newly forming organization. Ultimately, other states later argued against including the veto, and, alternatively, against including the veto as to matters under Chapter VI of the Charter (pacific settlement of disputes),7 and when a permanent member was a party to the dispute including under Chapter VII, but did not prevail.

In 1943, the US had put forth a proposal regarding how Security Council voting might work in its “US Plan for the Establishment of an International Organization for the Maintenance of International Peace and Security.”8 The US plan included the possibility of requiring a three-quarters majority (suggesting the US did not originally insist on veto power), or “unanimity of all members with indeterminate tenure” for voting, and exclusion from voting of a state involved in the conflict at issue. The UK appeared supportive of the veto but with constraints: “Sir Alexander Cadogan [UK Permanent Under-Secretary meetings had to proceed in two tripartite phases, the first including the Soviet Union and the second, the brieler, China.”)4

4 “China’s role in the whole process was merely symbolic while France had no say.” JAMES A. PAUL, OF FOXES AND CHICKENS: OLIGARCHY AND GLOBAL POWER IN THE UN SECURITY COUNCIL 23 (2007).
5 There have been two shifts in the composition of the permanent members, with the Russian Federation in 1991 assuming the seat previously held by the USSR, and the People’s Republic of China assuming in 1971 the seat previously held by the Republic of China (Taiwan). Id. at 27–28. The Charter still states that the Republic of China and the USSR are the permanent members. UN Charter, Art. 23.
6 The conference took place at the Black Sea resort of Yalta, in Crimea, with the US represented by President Franklin D. Roosevelt, the UK represented by Prime Minister Winston Churchill, and the USSR represented by Premier Joseph Stalin.
7 LUCK, supra note 3, at 13–14. See Charter of the United Nations (1945), 592 UNTS 119 (1945) (hereinafter UN Charter), Chapter VI. There is an exclusion from voting under Chapter VI for a party to a dispute. See note 6 infra.
8 Memorandum by the Secretary of State to President Roosevelt, December 29, 1943, FRUS, 1944, General Vol. 1, at https://history.state.gov/historicaldocuments/frus1944vol1/d176.
The Origins and History of the Veto and Its Use

for Foreign Affairs] stated that he had been instructed to propose that voting in the Council be on the basis of a two-thirds vote in all cases [including the unanimous votes of all permanent members] and further that states which are parties to disputes should not vote."9 China accepted such an approach.10

The Soviet Union argued against such voting procedures. For instance, in the Informal Minutes of Meeting No. 14 of the Joint Steering Committee held September 13, 1944, at the Dumbarton Oaks Conference in Washington, DC, Soviet Ambassador Andrei Gromyko maintained that “in the Soviet opinion the American and British proposal as to voting in the Council would violate the principle of unanimity.”11 Instead, the Soviet Union demanded the requirement of consensus among permanent members, even where a permanent member was a party to the dispute. Initially, the US and the UK refused to concede to the Soviet proposal.

Summarizing the disagreement, in a memorandum to President Roosevelt and US Secretary of State Cordell Hull on September 21, 1944, Under-Secretary of State Edward R. Stettinius wrote:

The problem with which we are most concerned is whether a permanent member of the Council should vote on matters relating to a dispute to which it is a party and, in consequence of the unanimity rule, have the power of veto. The Soviets insist they should have this right and that permanent members should have the power of veto on all questions, except procedural matters, including the question of whether a dispute may be considered in the Security Council. The British maintain that no state party to a dispute should be entitled to vote.12 The US archives of the Dumbarton Oaks conversations reveal that both sides were unwilling to compromise on their positions at the Conference.13

9 Memorandum by the Under Secretary of State (Stettinius) to the Secretary of State, August 22, 1944, FRUS, 1944, General Vol. 1, at https://history.state.gov/historicaldocuments/frus1944v01/d420.
10 Tentative Chinese Proposals for a General International Organization, August 23, 1944, FRUS, 1944, at https://history.state.gov/historicaldocuments/frus1944v01/d422.
11 Informal Minutes of Meeting No. 14 of the Joint Steering Committee Held at 10:30 a.m. at Dumbarton Oaks, September 13, 1944, FRUS, 1944 “Dumbarton Oaks Conversations,” 798, at https://history.state.gov/historicaldocuments/frus1944v01/pg_798.
12 Memorandum by the Under Secretary of State (Stettinius) to President Roosevelt and the Secretary of State, September 21, 1944, FRUS, 1944, Vol. 1, at 834–36, at https://history.state.gov/historicaldocuments/frus1944v01/pg_835.
13 In a memorandum by Stettinius to Hull, entitled “Progress Report on Dumbarton Oaks Conversations – Twenty-first day,” September 13, 1944, Stettinius assessed that there was “[n]o indication of any inclination on the part of the Soviet group to recede from the principle of unanimity of the great powers . . . .” Memorandum by the Under Secretary of State (Stettinius) to the Secretary of State: Progress Report on Dumbarton Oaks Conversations – Twenty-first day, September 13, 1944, FRUS, 1944, at https://history.state.gov/historicaldocuments/frus1944v01/d459.
The “principle of unanimity” was repeatedly pointed to by the Soviet Union. In a letter to President Roosevelt, Stalin wrote: “otherwise, we will be brought to naught the agreement at the Teheran Conference . . ., first of all the unanimity of agreement of four powers [the USSR, US, UK, and China] necessary for the struggle against aggression in the future.” (Although France did not participate at the Dumbarton Oaks Conference or Yalta, France was included as a permanent member by the time of the Yalta Conference at the insistence of the UK. Indeed, at the beginning of negotiations at Dumbarton Oaks, there was already general support to include France as a permanent member.)

While voting at the Security Council was only one of the points of contention in the Charter negotiations, disagreement over Security Council voting threatened to undermine talks to form the United Nations. Both sides echoed the importance of the matter of Security Council voting procedures for the success of the UN and as a matter of importance for their states. The Soviet Union conceded on various points during negotiations, but would not abandon their position on Security Council voting.

14 The Chairman of the Council of People’s Commissars of the Soviet Union (Stalin) to President Roosevelt, in Foreign Relations 1944, Vol. 1, at https://history.state.gov/historicaldocuments/frus1944v01/pg.86. The Teheran Conference occurred in Teheran, Iran, from November 28 to December 1, 1943, with negotiations between Stalin, Roosevelt, and Churchill. It followed the Cairo Conference, and preceded the Yalta and Potsdam Conferences.
18 In a memorandum to President Roosevelt near the end of the Dumbarton Oaks conversations, Stettinius remarked that, in addition to the Security Council’s voting procedure, agreement had not been reached on “determination of initial members,” “treatment of matters within the domestic jurisdiction of member states,” “human rights and fundamental freedoms,” and “provision for the amendment of the Charter.” Memorandum by the Under Secretary of State (Stettinius) to President Roosevelt and the Secretary of State, in Foreign Relations 1944, Vol. 1, September 21, 1944, at https://history.state.gov/historicaldocuments/frus1944v01/pg.855.
19 Extract from the Personal Diary of the Under Secretary of State (Stettinius), in Foreign Relations 1944, Vol. 1, September 18, 1944, at https://history.state.gov/historicaldocuments/frus1944v01/pg.823; Extracts from the Personal Diary of the Under Secretary of State (Stettinius) in Foreign Relations 1944, Vol. 1, September 14, 1944, at https://history.state.gov/historicaldocuments/frus1944v01/d465.
20 During a meeting between USSR Ambassador Gromyko, Under Secretary of State Stettinius, and President Roosevelt, Ambassador Gromyko offered to accept the Economic and Social Council, to concede on the proposal for an international air force, and to “yield on everything else,” except the
At one point, the UK and US discussed an informal formula that would have postponed negotiations on the matter of voting to a future UN conference.21 Yet, President Roosevelt and Prime Minister Churchill ultimately rejected it, as Churchill believed the Soviets would refuse to delay a decision on voting.22

The US delegation sent a proposal for voting to the USSR in the negotiation ahead of the Yalta Conference. While it included the veto, the US was still proposing that a party to a dispute should abstain from voting on the resolution in question, including permanent members, thereby removing the veto in those instances.23 The Soviets, however, refused to accept the removal of the vote in cases where the permanent member was a party to the dispute, a refusal made clear in letters from Stalin, while the UK was amendable to the US proposal.24 Stalin again emphasized that “there must be full agreement of powers which are permanent members.”25 Stalin argued that removal of the

Footnotes:

21 Extracts from the Personal Diary of the Under Secretary of State (Stettinius), September 8, 1944, FRUS, 1944, at https://history.state.gov/historicaldocuments/frus1944v01/d452.
22 President Roosevelt to Under Secretary of State (Stettinius), September 15, 1944, FRUS, 1944, at https://history.state.gov/historicaldocuments/frus1944v01/pg_510.
23 The memorandum from the US delegation proposed the following text: 

Proposal for section c of the chapter on the security council

C. Voting
1. Each member of the Security Council should have one vote.
2. Decisions of the Security Council on procedural matters should be made by an affirmative vote of seven members.
3. Decisions of the Security Council on all other matters should be made by an affirmative vote of seven members including the concurring votes of the permanent members; provided that, in decisions under Chapter VIII, Section A, and under paragraph 1 of Chapter VIII, Section C, a party to a dispute should abstain from voting.

Proposed Formula for Voting Procedure in the Security Council of the United Nations Organization and Analysis of the Effects of that Formula, February 6, 1945, at https://history.state.gov/historicaldocuments/frus1945v06/d357 (emphasis added). The references to Chapter VIII became Chapter VII. The requirement of a vote by seven members existed when the Security Council was comprised of eleven members, as it was initially; it was only by amendment in 1965 that the Council expanded to the current fifteen members, with a voting requirement of nine affirmative votes. In 1965, Article 23 was amended to enlarge the Security Council from eleven to fifteen members, and Article 27 was amended to increase the required number of Security Council votes from seven to nine.

24 The Acting Counsellor of the British Embassy (Wright) to the Special Assistant to the Secretary of State (Pasvolsky), January 14, 1945, FRUS, 1945, at https://history.state.gov/historicaldocuments/frus1945v06/d89.
25 Marshal Stalin to President Roosevelt, December 27, 1944, FRUS, 1945, at https://history.state.gov/historicaldocuments/frus1945v06/d84. Stalin wrote to President Roosevelt: “the principle of unanimity of permanent members is necessary in all decisions of the Council in
veto for permanent members, even when they are parties to the dispute, could “put certain powers in opposition to other great powers,” allowing aggression. He took the position that “small countries” would also benefit because “a split among great powers, united for tasks of maintenance of peace and security for all peace-loving countries is pregnant with the most dangerous consequences for all these nations.”

Following the letter from Stalin rejecting the US proposal, sentiment began to waver within the US administration about the issue of disqualifying a permanent member from voting on a matter to which it was a party. One memorandum recorded that President Roosevelt: “said that he was still worried as to what the situation would be if a controversy arose between, say, the United States and Mexico, and the matter was taken up by the Security Council without the United States having a vote in whatever decisions might be taken.” Yet, thereafter, the US apparently reverted back to the position that a permanent member should not vote, and thus have no veto, as to a dispute to which it was a party.

At the Yalta Conference, Stalin once again made clear that he saw the Soviet Union as a “great power” entitled to exceptionalism. According to the Bohlen Minutes of the Yalta Conference: “Marshal Stalin said that he was prepared in concert with the United States and Great Britain to protect the rights of the small powers but that he would never agree to having any action of any of the Great Powers submitted to the judgment of the small powers.” Later in that same dinner, Churchill again began to waver.
The voting procedure was finally agreed on at Yalta, by the USSR, US, and UK, with the veto available even when a permanent member was a party to a dispute.

1.1.2 Positions on the Veto at the San Francisco Conference

The idea of the permanent members of the Security Council having veto power generated considerable backlash at the United Nations Conference on International Organization or San Francisco Conference, where fifty delegations from forty-eight countries gathered from April 25 to June 26 at the War Memorial Opera House to finalize negotiations of the UN Charter. As might have been predicted, small and middle-sized states pushed back against the inequitable distribution of power that would be created by bestowing veto power on the permanent members of the Security Council, and, indeed, the concept of having “permanent members” of the Security Council – which

See note 3 supra.

Bohlen Minutes, February 7, 1945, FRUS, 1945, at https://history.state.gov/historicaldocuments/frus1945Malta/d373 (hereinafter Feb. 7, 1945, Bohlen Minutes); see also Buel W. Patch, Veto Power in United Nations, CQ Researcher (Sept. 18, 1946), at http://library.cqpress.com/cqresearcher/document.php?id=cqresrre19460918#H2_1 (agreement at Yalta on the voting formula). See note 66 supra (procedural votes not subject to veto). The report given on February 6, 1945, by Under-Secretary of State Stettinius with the revised American proposal reflected that agreement had been reached:

Mr. Molotov [Soviet Minister of Foreign Affairs] said that yesterday we have heard Mr. Stettinius give a full report and explanations of the President's proposals and that this report and explanation had been satisfactory and had made the issue clear to the Soviet Delegation. He said that they had always also followed closely Mr. Churchill's remarks on the subject. He added that after hearing Mr. Stettinius' report and Mr. Churchill's remarks, which had clarified the subject, the Soviet Government felt that these proposals fully guaranteed the unity of the Great Powers in the matter of preservation of peace. Since this had been the main Soviet purpose at Dumbarton Oaks and they felt that the new proposals fully safeguarded this principle, he could state that they were entirely acceptable and that they had no comments to offer. He felt that there was full agreement on this subject.

Feb. 7, 1945, Bohlen Minutes, at 712.

S. D. Bailey & S. Daws, The United Nations: A Concise Political Guide 15 (3rd ed. 1995). The number fifty is frequently used, although forty-eight appears more accurate. The difference depends on whether one counts Ukraine and Byelorussia, which sent delegations, but were not in fact independent states.


See, e.g., Luck, supra note 3, at 112 (“[v]igorous challenges were voice in San Francisco to the size of the Council . . . [and] to the notion of permanent seats set aside for the self-selected few . . .”).
was seen as a form of “victors’ justice” and an infringement on the concept of sovereign equality of states. 37

Thus, for example, during a June 20 meeting of Commission III (charged with drafting the part of the Charter pertaining to the Security Council), 38 the Australian Ambassador argued against the veto power on the grounds that “each one of the five powers can prevent a decision being reached . . . .” 39 Peru expressed concern that the veto would amount to the “right of certain interests, political or economic, to stop rule of reason and concession.” 40 There was general concern that a single vote could make it impossible for the Security Council to adopt “any decision of importance, upon which the peace of the world may rest.” 41 El Salvador expressed concern about a lack of procedures in place under the Charter if the permanent members could not all agree on an “emergency affecting the peace of the world.” 42 Australia argued that if the UN failed to settle disputes, just as the League of Nations had failed, disputes would still need to be settled, and they would be settled outside the UN system, in a manner contrary to the principles of the United Nations. 43 Belgium voiced concern that the veto “gave any one of the five powers a right to invoke its provisions when wishing to obstruct the action of the Organization.” 44 Cuba opined that the Security Council’s failure to act could amount to an encouragement of war. 45

38 The drafting of the Charter was divided into four parts, each taken up by a “Commission.” “Commission one dealt with the general purposes of the organization, its principles, membership, the secretariat and the subject of amendments to the Charter. Commission two considered the powers and responsibilities of the General Assembly, while Commission three took up the Security Council. Commission four worked on a draft for the Statute of the International Court of Justice.” United Nations, 1945: The San Francisco Conference, supra note 35.
39 Verbatim Minutes of the Fourth Meeting of Commission III, Opera House, June 20, 1945, Doc. 1149, at 20. Australia also presented an amendment which would have ruled out use of the veto regarding peaceful settlement of disputes, but it was rejected. Wouters & Ruys, supra note 37, at 6. Ironically, France had earlier suggested a similar restriction, prior to when it was awarded permanent membership. Id.
43 Verbatim Minutes of the Fourth Meeting of Commission III, supra note 39, at 25.
45 Id. at 7.
Small and middle-sized states also criticized the permanent members’ inability to articulate the reasoning behind having veto power, particularly their failure to answer with specific responses questions put to them in a questionnaire about concerns for the veto’s implications. Some states found the logic behind the veto to be a paradox. Cuba argued: “if unanimity really existed among the great powers [then] the veto was superfluous.” Belgium took the view that providing the veto to some states and not others “belied the principle of sovereign equality.” Other states objected to “a too rigid designation of permanent members in the Charter [which] might hamper the ability of the United Nations to adapt to the changing nature of power in the international system in the future.”

States also objected to the absence of a provision disqualifying a permanent member from voting on a matter when it was a party to the dispute. For instance, a report of proceedings reflected that: “[a] general consensus of all delegations seems to have existed at all times concerning the abstention from voting which is required of every member of the Security Council who is a party to a dispute submitted to the Council.”

The USSR then argued that the issue of whether a matter could even be discussed at the Council related to international peace and security should be subject to the veto, but did not prevail.

In the end, the “great powers” made it clear their participation in the UN hinged on obtaining veto power on substantive votes, including Chapter VII matters to which they were a party. Indeed, one of the US delegates famously threatened that without the veto power, other states could forget about having a UN, and dramatically tore up his draft of the Charter. Tom Connally, a Democrat from Texas, described the incident:

Continuation of the Report on the Activities of Committee III/I Concerning Sections A, B, C, and D of Chapter VI of the Dumbarton Oaks Proposals, supra note 41, at 9, in Vol. XI, at 612. In response to the questionnaire, the four sponsoring nations (China, US, UK, and USSR) “handed over a public statement, the so-called ‘San Francisco Declaration’, with which France later concurred...” Wouters & Ruys, supra note 37, at 6, citing source.


See Patch, supra note 33. Some “branded the proposed curb on discussion a ‘Russian gag rule.’” Id. Note, however, that a permanent member can veto that a matter is procedural, in order to use the veto once the matter is discussed on substance.

Id. Chapter VII governs “Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression.”