

## **Veto power – not the tool we love, but the tool we need?**

The issue of the veto power has recently come to the forefront of attention and debate both on the global and European level. This usually happens when current political events draw attention to something, today this is related to the Russian aggression against Ukraine (reviving the debate earlier related to other issues): among the debates within the European Union, its operation and future, the question of the right of veto belonging to individual member states had already featured prominently in the decision-making process of the EU, but the need for unanimity with regard to sanctions against Russia gives it special relevance. As well as in the United Nations, the need to circumvent Russia's veto power in the Security Council has led to new ideas, while reviving some older solutions.

## **The purpose and nature of the veto power in international relations**

Some form of veto option is a routine element in the operation of international organizations that require any sort of joint decision-making. This can appear in different ways and forms, and its general goal is to ensure balance in inter-state relations, as that system is still based on the basic unit of state sovereignty. The most well-known example of this is the veto power of the five permanent member states of the UN Security Council.

Naturally, the possibility of the veto often causes controversy, especially when it is actually used. However, it is worth examining what happens in extreme cases, i.e. when its application is excessively extensive or becomes “abusive”. The extensive use of veto can make any cooperative structure inoperable, as anyone can block decision-making in any way, which after a while leads to the insignificance of the given organization. The best example of this was the League of Nations, the most important international organization of the world order between the two world wars, where both the General Assembly and the Council generally required consensus for decision-making, making the organisation completely weightless on the way towards World War II.

Nobody wanted to repeat this mistake, and when creating the UN, states have narrowed down the right of veto: majority decision-making was introduced in both the General Assembly and the Security Council, and the right of veto was only available in the so-called “permanent members” of the latter, the leading great powers. Naturally, this opens new debates that continue to this day, during which you may hear many people talking about “exceptionalism” of the great powers, “double standard” in their favour etc., but at the same time it is important noting that maintaining the right of veto in this way is nothing

more than the way to keep these great powers in the structure. In the case of the League of Nations, it was actually not in the interests of the great powers to belong to the organization, since they had the possibility to achieve their goals with their own means even outside its framework. This meant that participation has not given them any additional means or opportunities – on the other hand, not belonging to it did not cause any significant disadvantage or difficulty, which fact was also well visible in the organization's membership and the attitude of the great powers towards it. While today, permanent membership in the UN Security Council and the veto power that comes with it is a serious political tool, and it is no coincidence that regardless of any criticism some permanent member states sometimes express towards the UN, leaving it has never become a serious goal or even ambition. We have to accept, that absence of veto power would significantly weaken the interest in participating in this global cooperation.

## UN Security Council reform proposals

Since the establishment of the UN, its reform has been constantly on the agenda, especially with regard to the Security Council. The first implemented reform took place in 1965, when the members of the organization at that time increased the number of non-permanent members of the Council from six to ten, the main reason for which was the increase in the number of members of the organization. In addition, many issues were on the agenda, such as efficiency, procedures, membership in the Council, and the question of the veto itself. Since 1992, the organization has been actively dealing with the issue of reform, which resulted in the birth of many drafts.

The so-called The Razali Plan, a proposal developed by the President of the 51st General Assembly, dealt with the expansion of the Council's membership and the development of the Council's operation. The plan would have added five permanent and four non-permanent members to the Council, increasing their number from 15 to 24, with equal geographical distribution in mind. In addition, he wanted to limit the right of veto, the new permanent members would not have received it, and the existing ones would have been able to use it only to a limited extent. In addition, he called on the Council to organize open meetings, as well as closer cooperation with the International Court of Justice, where appropriate, in the form of requesting advisory opinions.

In 2003, the UN Secretary-General at the time, Kofi Annan, proposed reforms in the form of two models: the so-called "Model A" would give the Council six new permanent members (two from Africa, two from the Asia-Pacific region, one from Europe and one from the Americas) and three non-permanent members, the former without veto power. The so-called "B-model" would have created a new category of eight members instead of the new permanent members, who have a mandate of four years instead of two and can be re-elected.

In 2005, a group of member states (Afghanistan, Belgium, Bhutan, Brazil, the Czech Republic, Denmark, Fiji, France, Georgia, Germany, Greece, Haiti, Honduras, Iceland, India, Japan, Kiribati, Latvia, the Maldives, Nauru, Palau, Poland, Portugal, the Solomon Islands, Tuvalu and Ukraine) initiated the so-called G4 plan, which aimed to increase representation and better involve developing countries. It would have increased the number of members of the Council from 15 to 25, of which six would have been permanent and four non-permanent members, without the right of veto, as in the previous plans. As a reaction to this, another group (Argentina, Canada, Colombia, Costa Rica, Italy, Malta, Mexico, Pakistan, the Republic of Korea, San Marino, Spain and Turkey) initiated the so-called "Uniting for Consensus" plan, which, according to its purpose, would have made the Council more democratic, transparent, efficient and responsible. The five permanent members would have remained, but in addition to them, according to the proposal, the General Assembly would elect twenty re-elected non-permanent members for two years, per regional group. In addition, the proposal wanted to achieve better transparency of decision-making, as well as the tightening of the right of veto and its eventual abolition.

In addition to these, the African states also submitted a proposal, which was the so-called Ezulwini Consensus, which sought to balance the developed and developing world in the Council, logically by strengthening African participation. A special element of this would have been the addition of two African states (who would be elected by the African Union) to the circle of permanent members, as well as five new permanent members, all of whom would also have the right to veto. In addition, four new non-permanent member positions would be created, increasing the total number of members of the Council from 15 to 26.

In 2006, a group of small states ("S5 Plan" or Small Five Group), i.e. Costa Rica, Jordan, Liechtenstein, Singapore and Switzerland, submitted a reform proposal aimed at the operational mechanism of the Council and would have increased transparency, for example the Council and by holding institutionalized, open meetings between the states concerned, the reporting obligation of the Council and the involvement of expert groups, as well as the obligation to justify the exercise of the veto power.

Apart from the abovementioned, several other proposals or a package of proposals have also appeared in recent years, which have tried to achieve some kind of change both in terms of the number of members and the rights of membership, and sometimes they even try to achieve changes in the operation and formation of regional groups important for the operation of the UN. Their failure can basically be traced back to the fact that the member states' ability to reach consensus on this issue is determined by their ability to secure their own interests, and it is not easy to reach an agreement between competing or outright opposing interests.

### **Veto power in the European Union**

The right of veto also appears during the operation of the European Union, typically in matters that affect the sovereignty of the member states. The explanation for this is very simple: although the European Union can act on its own in many matters based on its founding treaties as if it were a unified state, it is not given this opportunity in some areas. In the case of these, the founding treaties require consensus-based decision-making, giving the possibility for member states to raise a veto. It is immediately worth noting here that operation of international organizations usually does require consensus, i.e. the agreement of all states (as those are cooperative structures of sovereign states), the current structure of the European Union already realizes a significant development compared to those, as it predominately requires majority decision-making in matters falling within EU competences, with the icing on the cake being the possibility of developing its own legal system (so-called "Union law"), which is generally unknown in the case of other international organizations.

The process of adopting the multi-year financial framework (commonly known as the "EU seven-year budget") in 2020, as well as the establishment of EU sanctions currently related to the Russian-Ukrainian war, are well-known examples of the pressure of consensus within the EU. Both long-term financial planning and general and security-related foreign policy issues are ones on which member states wanted to retain the final say and the ability to pull the brakes if needed.

How exactly does the veto work in this case? Three EU institutions play a role in EU decision-making. First, the European Commission, which takes initiatives, based on which the decisions are adopted by the European Parliament (consisting of directly elected representatives) and the Council (which represents the governments of the member states), both based on an established procedure, mostly by some kind of majority vote. This is the general rule in matters belonging to EU competence. In others, related to the sovereignty of the member states, the European Parliament is often disregarded, the Council alone decides on the Commission's proposal, and in such cases unanimity is required there: this is where the veto power of the member states opens up. This kind of veto actually rarely happens, since member states' government leaderships usually make sure that a non-agreeable issue's proposal is not being put to vote before the Council, they try to negotiate it on lower levels first, until they can reach a mutually acceptable agreement.

The reason for the veto and the threat of it can of course be any reason and purpose. E.g. with petroleum products-related possible sanctions against Russia, member states had to face direct economic interests of some member states, which has led to actual threats of veto. During the debate of the 2020-2027 budget debate, Hungarian and Polish governments have tried to take advantage of need of consensus, trying to use the opportunity to kill off the parallel legislative proceeding of creating a new EU rule of law proceeding. While all these situations have caused considerable noise in the media and drew significant attention, in the end both of those (similarly to many others) have ended with a deal and veto has not been raised.

## Can the veto power be bypassed?

A natural question following all the abovementioned is, whether veto power can be circumvented. The answer is not simple, the experience is that creative solutions can always be found, but those always mean some kind of trick, in most cases with questionable effect and a high political price.

In the case of the UN Security Council, in order to avoid the permanent member's veto, the idea arose that the entire council should be bypassed. Because of the permanent Soviet vetoes during the Korean War, the General Assembly adopted the famous "Uniting for Peace" resolution in 1950 ( <https://legal.un.org/avl/ha/ufp/ufp.html> ), the essence of which was that the Security Council paralyzed by vetoes is simply "replaced" by the General Assembly, by a two-thirds majority resolution. It was used a few times, and then its relevance faded, as the comfortable Western two-thirds majority in the UN slowly disappeared with the joining socialist and colonial states gaining independence. However, the Russian-Ukrainian war seems to revive it, it has been applied numerous occasions and it seems there is a forming ambition to use it for e.g. creating a new international criminal for the situation, which would normally require a decision by the Security Council. ( <https://c4ep.eu/international-criminal-justice-is-patient/> )

In the case of the European Union, the issue is much more complicated, because veto power can be exercised within the framework of an institution that cannot be excluded from the decision-making process or bypassed at all. One of the possible ways is to somehow replace the veto-enforced, consensus-based decision-making with a form of majority decision-making with regard to the given issue the EU wants to regulate, i.e. finding a way to classify the given issue as part of the EU's competences. In other words, turning foreign policy sanctions into an element of a policy under EU competence in some way: in the case of crude oil imports, there are two EU areas for this, one being the common trade policy, the other being energy policy, and some ideas had appeared in the media at that time, speculating about the possibility of creating some kind of EU customs applicable to those products, which does not require consensus. This way, the import of oil from Russia would become impossible (for market reasons) so that the sanctioning measures would not even be necessary.

While this seems to be a simple trick, in reality, it is not that easy. According to the practice of the European Court of Justice, it is problematic if the EU tries to package sanctions policy as a trade policy, and in the field of energy policy, the founding treaty itself establishes the goals of the EU, regulation of imports not being included among those, in fact it expressly states those being in member state competence. This means that any attempt like the from the EU could face an annulment proceeding in front of the EU Court of Justice, and the European Commission probably does not take the risk of a failure of such a legal proceeding.



## Is veto power it good or not?

The veto power is basically a useful tool within any organizational structure. To put it that way, it is the ultimate means of enforcing consensus, the last line of defence of sovereignty within a given international structure. A cooperative system operated by sovereign states will always have veto power as a last resort, until their sovereignty is lost, converting the system itself into a new sovereign. In the case of a federal state, for example, the member states do not have such veto power, they have to cooperate within the federal institutions assigned to represent them (e.g. the Senate in the case of the United States), which may practice something like that as part of balance of power within the federal governmental structure – but in their case their individual member states' lack of sovereignty is not a question any more.

This is also true for the right of veto existing within the European Union. As long as it is not a federal state, but still more of an international organisation, we have to accept it working accordingly, veto power included. And it is very important to note that the fact that we do not agree with what and how a specific member state government uses it for in specific situations, is not in itself a satisfactory argument against the existence of the veto power at the level of the system itself. All the proposals currently supporting the removal of member states' veto power will become serious if those additionally demonstrate a plan for the transformation and “federalization” of the European Union itself.

Yes, those who have thoughts on this matter must also deal with the dreaded "f" word.

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