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How to overcome the “veto power” in the UN Security Council without changing the UN Charter.

## Do we need votes of all permanent members to make a Security Council decision?

[Art. 27 (3) UN Charter](https://www.un.org/en/about-us/un-charter/chapter-5) states: > Decisions of the Security Council on all other matters shall be made by an affirmative vote of nine members, including the concurring votes of the permanent members;

From January until August 1950, the Soviet Union had boycotted the UN Security Council in protest that representatives of the [Republic of China](https://en.wikipedia.org/wiki/Taiwan) and not of the People’s Republic of China held a permanent seat on the Council.

During this period, SC decisions were made without the voice of the Soviet Union, and they were accepted as legitimate, including by the Soviet Union itself.

Most importantly, this includes [UN SC Resolution #84 (1950) of 7 July 1950](https://en.wikipedia.org/wiki/United_Nations_Security_Council_Resolution_84), which authorized the deployment of troops under the UN flag into South Korea.

In [1950](https://treaties.un.org/doc/publication/ctc/uncharter.pdf) Article 27(3) included the word “seven” instead of “nine,” but all other wording remained the same.

In [advisory opinion](https://www.icj-cij.org/public/files/case-related/53/053-19710621-ADV-01-00-EN.pdf) of 21 June 1971 ([Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)](https://www.icj-cij.org/en/case/53)) International Court of Justice (ICJ) stated:

“in order to prevent the adoption of a resolution requiring unanimity of the permanent members, a permanent member has only to cast a negative vote.”

As we can see, both the practice of application of Art. 27 (3) and the judicial precedent converge on this issue.

## *Nemo iudex in causa sua* and obligatory abstention

[Art. 27 (3) UN Charter](https://www.un.org/en/about-us/un-charter/chapter-5) states: > in decisions under Chapter VI, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting.

Although, in practice, abstentions with reference to this article were previously only voluntary in the Security Council (see John Chappell, Emma Svoboda [Must Russia Abstain on Security Council Votes Regarding the Ukraine Crisis?](https://www.lawfareblog.com/must-russia-abstain-security-council-votes-regarding-ukraine-crisis)), the word “shall” clearly indicates that abstention in these cases is obligatory and is not a subject to the discretion of the member that is a party to a dispute.

See also Enrico Milano [Russia’s Veto in the Security Council: Whither the Duty to Abstain under Art. 27(3) of the UN Charter?](https://www.zaoerv.de/75_2015/75_2015_1_a_215_232.pdf)

Obligatory abstention from voting when considering a dispute by the Security Council is based on the generally recognized legal principle [nemo iudex in causa sua](https://en.wikipedia.org/wiki/Nemo_iudex_in_causa_sua) (“no-one is judge in his own cause”), see Jan Wouters, Tom Ruys [Security Council Reform: a New Vet for a New Century?](https://aei.pitt.edu/8980/1/ep9.pdf#page=16)

And, even repeated violations of the provisions of this article in the past, in no way can serve as an excuse for not applying this clear and direct rule in appropriate cases.

## In what case does a “dispute” legally exists

As stated above, [Article 27 (3)](https://www.un.org/en/about-us/un-charter/chapter-5) of the UN Charter states

in decisions under Chapter VI, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting

Thus, there are be two options:

1. A dispute under [Chapter VI](https://www.un.org/en/about-us/un-charter/chapter-6). It can be started as described in art. 35: > Any Member of the United Nations may bring any dispute, or any situation of the nature referred to in Article 34, to the attention of the Security Council or of the General Assembly. > A state which is not a Member of the United Nations may bring to the attention of the Security Council or of the General Assembly any dispute to which it is a party if it accepts in advance, for the purposes of the dispute, the obligations of pacific settlement provided in the present Charter.
2. A dispute under paragraph [3 of art. 52](https://www.un.org/en/about-us/un-charter/chapter-8): > The Security Council shall encourage the development of pacific settlement of local disputes through such regional arrangements or by such regional agencies either on the initiative of the states concerned or by reference from the Security Council.

## How to practically implement the requirement of the rule of obligatory abstention

How can a permanent member be removed from voting if there are grounds for this, but he himself does not agree to it?

This has *never* been done before in the history of the UN, and the prevailing opinion is that it is practically impossible to apply.

We believe that this can be achieved by using the rule of [paragraph 2 of art. 27](https://www.un.org/en/about-us/un-charter/chapter-5): > Decisions of the Security Council on procedural matters shall be made by an affirmative vote of nine members

In our view, the decision that a party to the dispute should abstain from voting is a *procedural* decision. And, accordingly, when it is adopted, the “right of veto” provided for in paragraph 3 of Article 27 does not apply.

Thus, the existence of a dispute and the obligation to abstain may be stated by a separate procedural decision of the Security Council adopted in accordance with [Art. 27 (2)](https://www.un.org/en/about-us/un-charter/chapter-5) of the UN Charter.

And after this, a vote can be held on the substance of the issue in accordance with the provisions of paragraph 3 of Article 27, in which the vote of the party to the dispute will not be taken into account.

This approach provides a functioning mechanism to overcome the veto power of permanent members in the Security Council.

This mechanism is crucial for enabling the Security Council to adopt decisions authorizing the use of armed forces under the UN flag to suppress aggression, such as that by the Russian Federation against Ukraine.