

INTERNATIONAL LAW AND INTERNATIONAL RELATIONS

Olexander Zadorozhny, PhD in Law

Taras Shevchenko National University of Kyiv, Ukraine

INCONSISTENCY WITH THE FOUNDATIONS OF INTERNATIONAL LAW OF THE RUSSIA'S PARTICIPATION AS AN AGGRESSOR STATE IN THE SECURITY COUNCIL OF THE UNITED NATIONS

The article deals with the legal problems caused by the RF's permanent membership as the aggressor in the UN Security Council. International legal aspects of steps that can be taken by the international community because of the situation are described. The analysis of international law rules on membership in the UN Security Council and the succession of states after the collapse of the Soviet Union lead to conclusions about the legal invalidity of participation of Russia in the Security Council. The main reason for the illegality of RF's membership in the UN and in the UNSC is regarded as the consequence of the implementation of so called "continuity doctrine" which does not correspond to the facts and to the rules of international law. The UN Charter does not describe the possibility for the state to become a member of the UN on the bases of succession or continuity. The RF did not stay the member of the USSR which stopped its existence. Besides the UN Charter does not include the possibility for the aggressor-state to be a permanent member of the UNSC.

Key words: Ukraine, Russia, the UN Security Council, aggression, "the continuator state".

Russia's military aggression against Ukraine (founder of the UN), launched in February 2014 by annexation of the Crimean peninsula – and further Russian aggression in eastern Ukraine raise the question of the participation of Russia in the UN Security Council. While Russia destroys world order established after World War II based on the replacement of expansion and war by political dialogue and cooperation, its representatives since the events in Crimea, abusing its right of veto blocked the key agency of the world system of collective security. This makes it impossible to perform the tasks assigned by the Charter to the UN Security Council (Regulation n. 1 and n. 2, Art. 24) – which bears the primary responsibility for the maintenance of international peace and security, performing powers provided for in Chapters VI, VII, VIII and XII of the Charter.

The aggressor, which blatantly violates all the basic principles of international law, can not contribute to the efficient implementation of Security Council's functions in the future. Russia undermines the authority of the UN Security Council, destroys its credibility and that threatens prevention of a new armed conflicts in all regions of the world and its ability to stop the existing ones. This calls not only the need to reform the Security Council, but also questions international legal grounds for participation of the Russian Federation in its work.

While Security Council blocked by Russia's use of the veto has failed to adopt any decisions, March 27, 2014 at a special meeting of the 68th session of the UN General Assembly by the open voting UN member-states (100 of which voted " for "11 -" against "and 58 – abstained) adopted a resolution on support for the territorial integrity of Ukraine¹. That is an important issue to note not only Russia's participation in the UN, but the principles of operation of the organization and decision-making within it.

Experts have long discussed problems of functioning UN Security Council, particularly in the context of the abuse of veto by permanent members².

1 General Assembly Adopts Resolution Calling Upon States Not To Recognize Changes In Status Of Crimea Region. *United Nations*. <<http://www.un.org/News/Press/docs/2014/ga11493.doc.htm>>.

2 Creery, J. (1994). Read the fine print first: Some questions raised at the Science for Peace conference on UN reform. *Peace Magazine, Jan–February, 20*; Childers, E. (1994). Symposium on The United Nations at Fifty:

For example, S.Hassler stressed that the permanent members of the Security Council should use the veto only in a way to comply with its commitments under the UN Charter. However, this requirement is not always respected¹.

In such circumstances, the rule of law is the equivalent of "sword law". According H.Köhler, the presence of several states veto in the UN Security Council leads to "complete arbitrariness" in implementation of international law, because only the interests of the permanent members is the criterion for the use or non-use (a) specific rules of international law and the UN Charter, and (b) the resolutions adopted by the Security Council under Chapter VII².

Russian scientists have also repeatedly pointed out the problems of the UN Security Council. For example, Russian researcher T.Hoverdovska said: "withdrawal of UN Security Council, in some cases from the solution of international conflicts and suppression of acts of aggression or cases when the permanent members do not vote on the essential questions blatantly violate the UN Charter and is contrary to international law. This significantly reduces the credibility of the UN and of the Security Council itself, has a negative impact on the system of collective security. Because of its universality UN Security Council must tougher, more quickly and clearly respond to the clear violation of the UN Charter and international law no matter what kind of state or states are offenders"³.

In 2004 O. Zadoin and O.Orlov wrote that nowadays extremely serious a threat to the existing world order and its "Basic Element" – the United Nations – is "anti-systemic" action of some states. That is, it is the actions related to the violation of the rules of conduct in the international arena, formed on the basis of the UN Charter, rules and principles of international law. Clearly, the UN, despite the genius of its principles is completely helpless in cases where major powers, members of the elite club of permanent members of the Security Council, become aggressors or entities that violate imperative norms of international law. That those states are the creators and guarantors of the existing world order is now enshrined in their principle of unanimity in the UN Security Council. However, the same state (say more – only they) can destroy it, as other real force capable of such a "feat" does not exist in nature⁴. As you can see, the above thoughts of the scientists were prophetic. But hardly the authors predicted that the destroyer of modern security systems will not be the US routinely demonized by many representatives of Russian science, including legal, but just the same the Russian Federation.

In the context of the reform of the UN Security Council there are various proposals: an increase in the number of permanent members (with veto power, and without it)⁵, increasing the number of non-permanent members of the UN Security forming principle change and the introduction of restrictions on the use of the veto⁶. H.Köhler offered a slightly different approach to membership in the UN Security Council: "To form a new global system under a reformed Security Council with a participation of regional entities. They – as permanent members of the old postwar system – represent a new UN Security Council on the basis of equitable geographical distribution and shared responsibility for global affairs. No state of any region, as no regional grouping has no privileges to use because it can profoundly destabilize the world order"⁷.

Creating a More Democratic and Effective UN. *Global Policy Forum. December 02*; Weiss, T. (2003). The Illusion of UN Security Council Reform. *Washington Quarterly. Autumn 2003*.

1 Hassler, S. (2012). *Reforming the UN Security Council Membership: The illusion of representativeness*. Routledge, 175.

2 Köchler, H. (1995). The Principles of International Law and Human Rights, in: Köchler, H. (1995). *Democracy and the International Rule of Law. Propositions for an Alternative World Order. Collected papers prepared on the occasion of the 50th anniversary of the United Nations*. Springer: Vienna/New York, 43.

3 Говердовская, Т. (2010). *Значение реформирования Совета Безопасности ООН для поддержания международного мира и безопасности*. Автореф. дисс. к. ю. н. Москва, 2.

4 Задохин, А. (2004). Реформа ООН: мифы и реальность. *Observer*, 3 (170).

5 Shourie, D. (2005). India makes strong case for UNSC expansion. *Hindustan Times. November 13*.

6 Борзяков, С. (2014). Право говорить «нет». Постпред России в Совбезе ООН отверг попытку лишить ядерные державы возможности применять вето. *Взгляд. 21 марта*.

7 Köchler, H. (1997). *The United Nations and International Democracy: The Quest for UN reform*. International Progress Organization, 31.

Since 1994 was made 16 reports of the open group on equitable representation in the Security Council, expanding the membership of and other matters relating to UNSC. Unfortunately, they are abstract, the working group could only identify ways to reform, which ultimately were not supported¹.

However, the international community must now find as faster response to the challenges faced because of the situation when the state aggressor is both a permanent member of the UN Security Council. With the right of veto such a state is blocking its work, degrading the functions of the main body of the global security system responsible for the maintenance of peace to the discussion club-area for the exchange of statements of the representatives of the Member States.

The need for reform of the UN Security Council (through increasing the number of permanent members, the introduction of double veto, limiting the use of the veto to prevent the use of the veto power, aggression, etc.) really long overdue. This is required not only by the latest developments related to the crisis in Syria and Ukraine, but also by a fundamental change in circumstances, economic and political shift in emphasis in the world since the adoption of the UN Charter.

In this context question arises about the validity of international legal grounds for Russia's membership in the United Nations itself. Membership in the UN governed by Chapter II («Members») of the Charter. On the basis of Articles 3 and 4 of the Charter one can come to the following conclusions: first, is the only UN member States that were original members of the organization (Art. 3) or later acceded to it under the provisions of Art. 4; Secondly, in the case of adoption to the State Members, it must meet certain requirements (to be "peaceful country" and assume obligations under the UN Charter); thirdly, the decision as to the member states is adopted by resolution of the UN General Assembly on the recommendation of the Security Council (para. 2, Art. 4). However, Russia was not an original member of the UN (unlike Ukraine and Belarus), and was not accepted as a member by the Resolution of the UN General Assembly on the recommendation of the Security Council, and does not meet the requirements for peacefulness.

The UN Charter does not provide for membership in this international organization under the succession. That is why all former republics of Yugoslavia, including Serbia (as part of the Federal Republic of Yugoslavia in 2000), were forced after the collapse of Yugoslavia to join the UN one by one. The same procedure was supposed for Russia after the Soviet Union collapse, because it is the only procedure prescribed by the UN Charter². The Resolution of the CIS Council on 12/21/1991, by which the Council (except Georgia) have expressed its consent to continue the USSR membership in the UN, can not be regarded as complying with the provisions of the UN Charter.

E. Blum in his article on the issue of Russia's membership in the Organization, said: "At the end of the Soviet Union, its membership in the United Nations shall automatically cease, and Russia would have to be admitted to membership in the same manner as the newly independent republic (except Belarus and Ukraine)"³.

The same author, analyzing the affirmation of the Russian representative that Russia "continues» (continuing) the membership of the Soviet Union at the UN, points out: "The statement of – done in three days (and possibly sixteen days) after the collapse of the Soviet Union – that it "continues" its legal existence and its membership in the UN, must be considered – notwithstanding its obvious political advantages – seriously wrong from a legal point of view"⁴.

I.Lukashuk on this occasion said: "Alma-Ata Declaration CIS in 1991 stated that" after the formation of the Commonwealth of Independent States the Union of Soviet Socialist Republics ceases to exist. " On the question of succession to treaties the same declaration contained a clear answer: CIS members ensure "compliance with international obligations arising from treaties and agreements of the former USSR." This shows that all members of the Commonwealth equally regarded as the legal successor of the USSR. However, the implementation of this decision was practically impossible. The Soviet Union was one of the pillars of the existing international political and legal system. Especially great was its role in the military-political structure, as well as in the UN system. The elimination of the Soviet Union put it all at risk. None of the successors could not qualify for membership in the UN by succession, let alone a permanent member

1 Чирагов, М. Отмена права вето. *Эхо Москвы*. <<http://echo.msk.ru/blog/chirag/1069662-echo/>>.

2 Мережко, О. (2014). Відсутність правових підстав для членства Російської Федерації в ООН; у кн.: *Українська революція гідності, агресія РФ і міжнародне право*. Київ, 944-949.

3 Blum, Y. (1992). Russia Takes Over the Soviet Union's Seat at the United Nations. *European Journal of International Law*, vol. 3, 360.

4 Blum, Y. (1992). Russia Takes Over the Soviet Union's Seat at the United Nations. *European Journal of International Law*, vol. 3, 360.

of the Security Council. Russia has encountered serious difficulties in ensuring its rights. The problem was solved by using the concept of "Russia – the state-continuator of the USSR." It means that the USSR place in world politics is taken by Russia. It is a basic, general legal successor of the Union, and it relies primary responsibility for fulfilling its obligations"¹. Thus, political reasons for Russia's membership in the United Nations were explained and the lack of international legal grounds fixed.

R. Myullerson justifying the legitimacy of Russia's membership in the UN, also relied not on legal arguments: "Firstly, after the collapse of the Soviet Union, Russia remains one of the largest countries in the world geographically and demographically. Second, Soviet Russia after 1917 and especially after the Soviet Union in 1922 were considered as a continuation of the same state that existed during the Empire. This objective factors which demonstrate that Russia is a continuation of the Soviet Union. The third reason (subjective factor) – the behavior of the state and the recognition of continuity by third countries"².

As for the status of Russia as a permanent member of the UN Security Council, according to Art. 23 of the Charter of one of the permanent members of the UN Security Council is the Union of Soviet Socialist Republics, not Russia³. The authors of the Charter of the United Nations recognized that five countries – China, France, the Union of Soviet Socialist Republics, the United Kingdom and the United States – because of their key role in the creation of the United Nations will continue to play an important role in maintaining international peace and security. A special status of permanent members of the Security Council, as well as a special right to vote, known as the "veto" were granted to the 5 states. Today it is obvious that the Russian Federation (which in fact takes place of the USSR in that international entity) dose not continue to play an important role in maintaining international peace and security, but is in fact a state-aggressor and a threat to peace and stability.

Moreover, Russia is trying to use the UN Security Council as a tool for spreading false information and distorted facts, questioning the existing international law than negates the very essence of the UN Security Council. Such actions of the Russian Federation erode the foundations of world order based on the UN Charter and the special responsibility of the Security Council and its permanent members for maintaining international peace and security. Russia deliberately abused its status as a permanent member of the UN Security Council and that does not justify the trust that the international community express to permanent members of the UN Security Council.

It should be emphasized that the repeated reference by representatives of the Russian Federation that Russia's right for the veto is given to it by "the blood of the Russian people shed during the Second World War" is one that ignores a huge contribution of Ukrainian and other peoples of the USSR in the victory over fascism and is basically offensive and unacceptable for Ukraine⁴.

From a legal point of view, Russia's membership in the UN Security Council is most often explained by the Resolution on 12/21/1991 by the Council of CIS, which stated that "the Commonwealth support Russia in the fact that it continues membership of the USSR in UN, including permanent membership in the Security Council and other international organizations. " As noted above, the resolution was signed by 11 CIS states except Georgia. Thus, the legal possibility of disregarding the position of even one state that was part of the Soviet Union, is questionable.

12/24/1991 Russian President, based on the abovementioned decision of the Council of CIS Heads of State, addressed to the UN Secretary General message in which informed that Russia continues membership of the USSR, including the Security Council, and in all other bodies and organizations of the UN system. The Secretary-General expressed the view that this appeal was of an informative nature, stated the reality and did not require formal approval from the Council. Thus, no approvals or approvals procedure were not carried out, there was no decision of the General Assembly or Security Council, which were only informed about this transformation. The modern interpretation of the legal basis of Russia's membership in the UN SC ("In December 1991 the Russian Federation, as successor to the Soviet Union in the international arena, officially took the place of the Soviet Union in the Security Council after the passage of

1 Лукашук, И. (1996). *Международное право. Общая часть*. Учебник. Москва: БЕК, 326-327.

2 Mullerson, R. (1993). *The Continuity and Succession of States, by Reference to the Former USSR and Yugoslavia*. 42 *AJIL*, 476.

3 Charter of the United Nations and ICJ. *UN official site*.
<<http://treaties.un.org/doc/Publication/CTC/uncharter.pdf>>.

4 Задорожній, О. (2014). Сумнівність перебування Російської Федерації в Раді Безпеки ООН. *ЕспресоTV*.
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the necessary procedures established by the UN Charter") is contrary to the facts and violates the rules of international law¹.

It is important to emphasize another aspect of analyzed problem. The Russian Federation would more or less legally "take a seat" of the USSR in the UN Security Council only in the imaginary case: if from the Soviet Union withdrawn all the republics except Russia itself – in that case it would be possible to talk about "continuity" of the Russian Federation regarding the USSR. But this did not happen, the Soviet Union ceased to exist as a state and a subject of international law.

In this context, one should pay attention to the legal consequences of the decision on 09.10.2009 of the The Council of Heads of State of the Commonwealth of Independent States on the basis of an inventory of international agreements signed within the CIS and the decisions taken by the Commonwealth for further participation of Georgia in connection with its exit from the CIS and subject to the consent of Georgia, decided to participate in Georgia's international treaties and decisions of the Commonwealth. According to the document, the decisions taken by the Council of Heads of State, Heads of Government Council, the Council of Ministers of Foreign Affairs and Economic Council of the Commonwealth of Independent States ceased their validity for Georgia starting from 18.08.2009².

However, it is clear that since the introduction of the aforementioned Resolution of CIS Council of 12.21.1991 it has been a fundamental change in circumstances, and Ukraine's consent for Russia's stay in the UN Security Council while performing aggression against Ukraine (and still somehow "contribute to the maintenance of international peace and security"), today is unfounded.

However, as of today neither Ukraine nor any other government officially raised concerns that Russia's membership in the UN has no any international legal grounds.

Even more difficult is to exclude Russia from the Security Council or from the United Nations or the termination of its membership in the UN through appropriate action within the Organization. According to Art. 6 UN Charter Member which has systematically violated the principles contained in the present Charter may be expelled from the UN General Assembly (in accordance with Art. 18 – two-thirds) on the recommendation of the Security Council.³ As noted, the Russian Federation during 2014 systematically violates all principles enshrined in the Charter – the principle of non-use or threat of force, the principle of settling international disputes by peaceful means, the principle of non-interference in affairs that are domestic jurisdiction of states, the principle of cooperation of the sovereign equality of States, the principle of good faith obligations under international law, the principle of respect for human rights and fundamental freedoms. Therefore, notwithstanding that we can confidently assert the presence of fundamental legal grounds to exclude Russia from the UN, however, again, the aggressor has veto power on the UN SC's decisions, including recommendations.

The same applies to a possible vote to terminate the rights and privileges belonging to Russia as a member of the United Nations (Art. 5 of the Statute) or to the possible exclusion of Russia from the UN Security Council.

Thus, the most powerful subjects of international law, despite the combined efforts could not effectively resist the aggressor. Naturally, this will inspire other potential offenders. Thus, Russian aggression leads to the erosion of the foundations of the world legal order, which can lead to serious consequences, first of all – the new military conflicts.

Thus, the reform of the Security Council aimed at depriving the aggressor of the right to vote, for various reasons is not a matter of the nearest future. However, it can be argued that all of the conditions for raising the issue are present because of the lack of international legal grounds of Russia's membership in the UN. In addition, this situation is part of a global problem – the need to reform the UN Security Council as an entity that aims to provide and ensure international peace and security.

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