

UDC 327(477)  
DOI: [https://doi.org/10.18485/iipe\\_ria.2022.73.1186.6](https://doi.org/10.18485/iipe_ria.2022.73.1186.6)  
Biblid 0543-3657, 73 (2022)  
Vol. LXXIII, No. 1186, pp. 125–146  
review article  
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## THE UKRAINE CRISIS 2022 – AN ALARM FOR THE REFORM OF THE UN SECURITY COUNCIL?

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*Abstract:* The 2022 Ukraine crisis pointed out many shortcomings and absurdities of the UN system. Russia's veto has paralyzed the Security Council and disabled the maintenance of international peace and security. Other mechanisms used by the United Nations were not adequate to stop the conflict between Russia and Ukraine. The author analyses the Ukraine crisis as an indicator for the reform of the Security Council. Various aspects, possibilities, and initiatives of the Security Council's reform exist. The complex process of the UN Charter's revision and the right of veto of five permanent members are cited as major impediments to the Security Council's reform in this paper. The Ukraine crisis is a new San Francisco moment that will fail due to the lack of political will of the permanent members of the Security Council. The paper concludes that the Security Council should use more realistic solutions in order to empower its capacities and prevent future breaches of international peace and security.

*Keywords:* Russia; Ukraine; the Security Council; reform; veto; United Nations; permanent member; Ukraine crisis.

### Introduction

The third decade of the 2000s changed the world dramatically. The World Health Organisation announced the pandemic of COVID-19 on March 11, 2020.

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The paper presents the findings of a study developed as a part of the research project "Serbia and Challenges in International Relations in 2022", financed by the Ministry of Education, Science, and Technological Development of the Republic of Serbia, and conducted by the Institute of International Politics and Economics, Belgrade.

The pandemic caused a serious health crisis as well as many social, political, legal, economic, political, and strategic implications. The whole world saw a light at the end of the tunnel in 2022 when it seemed that the pandemic was declining and everyday life was gradually returning. Dreams and hopes of returning to normal life changed on February 24, 2022, when the conflict between Russia and Ukraine started. The conflict in the heart of Europe hit the world (un)expectedly. The Ukraine crisis caused Europe's largest refugee crisis since World War II, with more than 6.8 million Ukrainian refugees recorded across Europe (UNHCR 2022).

The conflict between Russia and Ukraine is not just a conflict between two countries or some kind of regional conflict. It is a conflict that has the potential to affect the whole world. Russia and Ukraine provide 30% of the world's wheat and barley, one-fifth of its maize, and over half of its sunflower oil. The consequences of conflict might affect 1.7 billion people, which is over one-fifth of humanity (*UN News* 2022a). The conflict has the potential to cause multiple complex strategic implications. Ben-Gad (2022, 390) considers it a conflict of "Russia vs Ukraine vs Europe vs US vs China". In the West, the conflict in Ukraine has been characterised as an "aggression", "invasion", or "war". For Russia, the conflict is a "special military operation" with the aim of "protecting the people who have for eight years been exposed to humiliation and genocide by the regime in Kiev" (...), "demilitarization and denazification of Ukraine" as well as an operation to "bring to justice those who have committed numerous bloody crimes against peaceful civilians, including Russian citizens" (*TASS* 2022).

Russia is a permanent member of the UN Security Council, which gives a whole new dimension to this conflict. It has the right of veto. The veto can be considered a game-changer and makes Russia practically untouchable. The Ukraine crisis has pointed out the weaknesses of the United Nations, especially its inability to react and solve conflicts in which the permanent members of the Security Council take part. The paper examines: Is the conflict between Russia and Ukraine an opportunity for the reform of the Security Council, a "new San Francisco moment" (Gowan 2022)? Can the reform of the UN Security Council be the best cure for the efficiency of the United Nations, or perhaps some other solution might exist? Does the United Nations have the capacity to survive the Ukraine crisis? The world of today is not the same as the world after the establishment of the United Nations. The paper points out the multiple imperfections and absurdities of the UN system and the Security Council and offers potential solutions for its more efficient functioning.

### **Permanent Membership in the Security Council and the Right of Veto**

The Security Council is "the most dynamic organ in the organisation with the greatest powers and functions established in Chapters V to VIII of the UN Charter" (de la Serna Galván 2011, 150). The Security Council has "primary responsibility

for the maintenance of international peace and security”, which includes the right to take forcible action (whether military or in the form of sanctions) under Chapter VII of the Charter. Unlike the UN General Assembly, which is comprised of all member states, the Security Council has a very limited membership – only 15 members, out of which 5 are permanent members. Due to its very limited membership, the Security Council has been criticised for having a democratic deficit. As an undemocratic body, it is hard to expect it to operate democratically and reach democratic outcomes in its decision-making process. Farrall (2009, 918) considers that it is hard to expect that the Security Council will make decisions that serve the interests of democracy.

The Security Council makes decisions on procedural and substantive matters. Article 27(2) of the UN Charter states that decisions of the Security Council on procedural matters “shall be made by an affirmative vote of nine members”. When it comes to substantive matters, decisions “shall be made by an affirmative vote of nine members, including the concurring votes of the permanent members; provided that, in decisions under Chapter VI, and under paragraph 3 of Article 52, a party to the dispute shall abstain from voting” (UN 1945, Article 27(3)). This formulation of Article 27(3) of the UN Charter gives the permanent members the power of veto. Although the word “veto” is not explicitly used in Article 27(3), the fact that decisions on substantive matters require an affirmative vote of nine members, including the concurring votes of the permanent members, means that the absence of the concurring votes of any permanent member has the power to block the adoption of a draft resolution. Article 27(3) applies only to resolutions that invoke Chapter VI of the UN Charter “Pacific Settlement of Disputes” (UN 1945). It does not apply to resolutions that invoke Chapter VII, “Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression”.

How did the veto become a part of the United Nations? The United Nations was established after the League of Nations, the world’s first universal organisation. Under the Covenant of the League, decisions could be made only by unanimous vote. This rule applies both to the League’s Council, which is the equivalent of the UN Security Council, and to all members of the Assembly. The League of Nations was not able to reach a consensus on a response to crises. The founders of the United Nations were learning from the failure of the League of Nations. That is why they decided that all the organs of the United Nations should make decisions by some type of majority vote. The rule of unanimity applies only to the five permanent members of the Security Council in the case of substantive matters. The veto has “in some ways saved the UN because it was created to take binding action and have teeth; the League of Nations failed because it did not have the power to implement its initiatives” (Dallas 2018, 7). The idea behind the veto was good, but the permanent members often use the veto power for their own national purposes.

Veto power can be considered the most important characteristic of the Security Council. It makes a difference between its permanent and non-permanent members. The veto of the permanent members is a result of the world after WWII, and it has been a privilege and reward for the winners of the war. Veto power and “the structure and voting pattern in the Security Council flagrantly render the principles of majority rule, popular sovereignty, and political equality impotent, therefore killing the zeal of other member states, who have long registered their resentment” (Christopher et al. 2021, 323). Article 2 of the UN Charter states that “the Organisation is based on the principle of the sovereign equality of all its Members” (UN 1945). The right of veto makes the permanent members of the Security Council more equal than the other members. The veto is considered “fundamentally unjust” by a majority of the UN members and “the main reason why the Council failed to respond adequately to humanitarian crises” (Wouters and Ruys 2005, 3). The injustice is even more drastic in situations where a permanent member is included in a conflict.

The conflict between Russia and Ukraine has attracted a lot of media attention and has cast a lot of shadows on the image of Russia, especially in the Western states. It has also heaped scorn on the United Nations and the Security Council’s roles and reputation. Problems started on February 25, 2022, when the Security Council rejected a draft resolution intended to end the Russian military offensive against Ukraine. The draft resolution was submitted by Albania and the United States. It gained support from 11 members of the Security Council, but Russia, as a permanent member, used a veto (UN PR 2022a). This was enough to make the solution to the conflict within the United Nations very difficult. China, as a permanent member, abstained, as did nonpermanent India and the United Arab Emirates. According to the draft, Russia’s military offensive against Ukraine is characterised as a violation of Article 2, paragraph 4 of the UN Charter, which states that “all Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or any other manner inconsistent with the Purposes of the United Nations”.

The draft would also have the Security Council decide that Russia should immediately cease its use of force against Ukraine and withdraw all its military forces immediately, completely, and unconditionally from that country’s territory (UN PR 2022a). The draft would have the Security Council deplore the decision of Russia related to the status of certain areas of Ukraine’s Donetsk and Luhansk regions on February 21, 2022, and decide that Moscow must immediately and unconditionally reverse that decision as it violates the sovereignty and territorial integrity of Ukraine.

The voting has caused strong rhetoric from many sides. Ms Linda Thomas Greenfield, the US Ambassador to the UN, said that Russia “can veto the resolution, but not Member States’ voices, the truth, or principles, nor can it veto the Charter or the principle of accountability”. She emphasised that the “responsible Council

Member States will stand with Ukraine”, adding that the matter will be addressed in the General Assembly, where the Russian Federation’s veto does not apply (UN PR 2022a). The French Ambassador to the UN emphasised that “the Russian Federation is alone”, riding roughshod over its responsibilities to the Council and violating the United Nations Charter. China stressed that the issue of Ukraine is not one that emerged overnight. It represents the interplay of various factors over a long period of time. Mr Zhang Jun, the Ambassador of China to the UN, stressed that Ukraine should be a bridge between the East and the West, not an “outpost for major Powers” (UN PR 2022a).

Russia justified its veto for many reasons. The Russian Ambassador to the UN stated that Ukraine, with the West’s support, did not implement the Minsk agreements and that neo-Nazis and militias continue to kill civilians, adding to such blood-chilling crimes as sniper attacks on Maidan protestors. Russia considers that the West is making Ukraine a pawn in their game, adding that it is difficult to compete with the United States in terms of the number of its invasions. As a result, Washington is in no position to moralise (UN PR 2022a).

Despite criticism by Western states, Russia’s veto is not illegitimate. By Article 27 of the UN Charter, Russia, as a permanent member of the Security Council, just used its right. On the other hand, when it happens in practice, such a situation points out imperfections in the UN system. It raises questions and debates about the security mechanisms of the organisation and the necessity of change.

Volodymyr Zelenskyy, President of Ukraine, raised a few questions in his speech at the meeting of the UN Security Council on April 5, 2022. He pointed out, “So where is the security that the Security Council must guarantee? There is no security. (...) So where is the peace that the United Nations was created to guarantee? (...) The UN system must be reformed immediately so that the right of veto is not a right to kill” (President of Ukraine 2022).

### **What are the options for a Permanent Member of the Security Council as a side in a conflict?**

The case of the Ukraine crisis has become a serious challenge for the United Nations. Photos and news of suffering people in Ukraine overwhelmed the media and social networks. People worldwide felt empathy for the Ukrainians. The use of the Russian veto made the Security Council powerless. At the same time, there was a question: Does the United Nations have some other mechanisms to condemn a permanent member of the Security Council?

The situation of the paralysis of the Security Council due to the veto of one of its members is not a new one. Situations like this have happened since the first years of the establishment of the United Nations. The solution to this serious

problem has been found through the adoption of the United Nations General Assembly (UNGA) resolution 377A (V) (Uniting for Peace) in 1950. In cases when the Security Council, due to a lack of unanimity among its permanent members, fails to maintain international peace and security, the General Assembly “shall consider the matter immediately with a view to making appropriate recommendations to Members for collective measures, including in the case of a breach of the peace or act of aggression, the use of armed force when necessary, to maintain or restore international peace and security. If not in session at the time, the General Assembly may meet in an emergency special session within twenty-four hours of the request therefor. Such an emergency special session shall be called if requested by the Security Council on the vote of any seven members, or by a majority of the Members of the United Nations” (UNGA Res. 1950, A/RES/377(V)). As seen by contemporaries, the United for Peace has been “a result of the organic imbecility of the Security Council” (Woolsey 1951, 129).

After the failure of the Security Council caused by the veto of Russia, the General Assembly held an emergency special session on March 02, 2022. As a product of the session, the General Assembly adopted Resolution ES-11/1, which “deplores in the strongest terms the aggression by the Russian Federation against Ukraine in violation of Article 2 (4) of the Charter” and “demands that the Russian Federation immediately cease its use of force against Ukraine and to refrain from any further unlawful threat or use of force against any Member State”. Also, the Resolution “deplores the February 21, 2022, decision by the Russian Federation related to the status of certain areas of the Donetsk and Luhansk regions of Ukraine as a violation of the territorial integrity and sovereignty of Ukraine and inconsistent with the principles of the Charter” and “demands that the Russian Federation immediately and unconditionally reverse the decision related to the status of certain areas of the Donetsk and Luhansk regions of Ukraine” (UNGA Res. 2022, A/RES/ES-11/1).

The Resolution was sponsored by more than 90 countries and needed a two-thirds majority in the General Assembly to pass. Out of 193 UN members, 141 countries voted in favour of the resolution, which reaffirms Ukrainian sovereignty, independence, and territorial integrity. 35 abstained from voting, while only 5 members voted against it — Belarus, North Korea, Eritrea, Russia, and Syria (*UN News* 2022c).

Perhaps the only effect of the emergency special session and Resolution ES-11/1 has been the characterisation of the conflict as aggression, which has been avoided for a long time. That kind of action the General Assembly could take during its regular sessions. What were the practical effects of the emergency special session? The Security Council has powers to bind and coerce the membership, which includes the use of military force and the imposition of economic sanctions. The General Assembly has no coercive powers over the membership. Its decisions are

recommendatory. The emergency special session changed nothing regarding the actions of Russia. Ones more, this situation has shown the imperfections of the UN Charter and the deadlocks caused by it. When a permanent member of the Security Council is part of the conflict, emergency special sessions are not enough. In this context, the use of the Uniting for Peace mechanism “is a symptom of the UN’s institutional failure” and it “does not give the Assembly any more power than it possesses under the UN Charter” (Ramsden 2022). That power is moral and symbolic condemnation, which is not effective in complex cases like this.

### *Suspension from the Human Rights Council*

Another step towards dealing with the Ukraine crisis has been the suspension of Russia from the Human Rights Council. Russia joined the Human Rights Council in January 2021 as one of 15 countries elected by the General Assembly to serve three-year terms. Resolution 60/251 on the establishment of the Human Rights Council states that “...electing members of the Council, Member States shall take into account the contribution of candidates to the promotion and protection of human rights and their voluntary pledges and commitments made thereto; the General Assembly, by a two-thirds majority of the members present and voting, may suspend the rights of membership in the Council of a member of the Council that commits gross and systematic violations of human rights” (UNGA Res. 2006, A/RES/60/251). The main reason for the suspension has been a massacre in the city of Bucha by the Russian Military Forces.

The Ambassador of Ukraine to the UN compared Bucha with the Genocide in Rwanda, emphasising that it happened “largely due to the indifference of the world’s community, when the UN did not respond to warnings in the UN Security Council and in the General Assembly, a year before the tragedy that we commemorate exactly on this day”. In the case of Ukraine, he added, “it is not even a year, because the tragedy is unfolding right now before our eyes” (*UN News* 2022b).

Voting for the suspension of Russia has shown interesting results. Out of 193 members of the General Assembly, 93 states voted in favour, while 24 voted against. The number of states that abstained from voting was 58. In remarks before the vote, Gennady Kuzmin, Russia’s Deputy Ambassador to the United Nations, urged countries to “vote against the attempt by Western countries and their allies to destroy the existing human rights architecture” (*UN News* 2022b). Many developed countries, such as India, Brazil, South Africa, Mexico, Egypt, Saudi Arabia, the United Arab Emirates, Jordan, Qatar, Indonesia, etc., abstained from voting.

The results of the vote are not favourable for Russia. On the other hand, the results are not a triumph of the West. Russia, as a permanent member of the Security Council, had the total support of 24 states, which voted against it. That is quite a debacle. On the other hand, 93 out of 193 UN members voted in favour of

suspension. That is less than half of the membership. As such, it is not a reason for the satisfaction of the West.

### *Resolution 76/262 – “revolution” on the use of veto*

Perhaps the most revolutionary measure taken due to the Ukraine crisis has been Resolution 76/262 “Standing mandate for a General Assembly debate when a veto is cast in the Security Council”, adopted on the initiative of Liechtenstein on April 26, 2022. The idea of Liechtenstein for this Resolution is not a new one. It started in 2020, but its realisation has been stopped due to the pandemic. The situation in Ukraine has revived and made this idea possible.

The Resolution decides that the President of the General Assembly “shall convene a formal meeting of the General Assembly within 10 working days of the casting of a veto by one or more permanent members of the Security Council, to hold a debate on the situation as to which the veto was cast, provided that the Assembly does not meet in an emergency special session on the same situation” (UNGA Res. 2022, A/RES/76/262, Article 1). On an exceptional basis, it is decided to accord precedence in the list of speakers to the permanent member or permanent members of the Security Council, having cast a veto. Also, Resolution 76/262 invites the Security Council, in accordance with Article 24 (3) of the Charter of the United Nations, “to submit a special report on the use of the veto in question to the General Assembly at least 72 hours before the relevant discussion in the Assembly” (UNGA Res. 2022, A/RES/76/262, Article 3).

Gowan (2022) considers that Resolution 76/262 is “a tweak to the existing UN system rather than a major reform. It is still very unlikely – almost impossible – that the P5 will accept real limits on their vetoes”. On the other hand, many states had positive views of the Resolution. The Nordic and African Union states expressed unequivocal support. Mexico considers the resolution “an important step forward in strengthening United Nations accountability” (UN PR 2022b).

It is interesting to emphasise that not all permanent members of the Security Council welcomed Resolution 76/262. France stated that it is fully committed to the Security Council reforms, but the General Assembly cannot become a judge of the Security Council or its members – elected or permanent. Also, the representative of China pointed out that the Resolution gives the General Assembly a new mandate and is likely to cause procedural confusion and inconsistency in practice. China is not sure if such an arrangement would serve the Resolution’s intended purpose. The US was one of the rare permanent members of the Security Council to support the Resolution, claiming that veto authority comes with enormous responsibility (UN PR 2022b). Russia considers the veto an essential part of the Security Council. Without it, the “Council would simply rubber-stamp questionable decisions imposed by a nominal majority that would be hardly possible



to implement”. According to the representative of Russia, the veto is not the problem. The problem is certain Council members’ unwillingness to listen to others and achieve a compromise, thus compelling the use of the veto (UN PR 2022b).

The Security Council has been criticised due to a lack of transparency and making decisions behind closed doors. The Resolution has the potential to increase the transparency of the Security Council and to make this body less oligarchic and elitist. Of course, the permanent members are capable of using the veto. And for sure, they will use it. Resolution 76/262 has not made a fundamental change. It has just made the use of veto a little more complicated. The opinions of the permanent members — France, Russia, and China — on the Resolution are an indicator that any kind of reform of the Security Council is not an easy process. No matter how much some permanent members support the reform of the Security Council, none of them is ready for some modifications when it comes to the veto. Resolution 76/212 makes the most minor possible change, and the permanent members are not satisfied with it.

### *Removing Russia from the United Nations?*

Having in mind that all actions taken did not have much effect, there have been a lot of discussions regarding the possibility of removing Russia from the Security Council. Discussions were aroused after the speech of President Zelensky at the UN Security Council meeting on April 5, 2022. President Zelensky urged the UN to “remove Russia as an aggressor and a source of war from blocking decisions about its own aggression and its own war. And then do everything that can establish peace” (President of Ukraine 2022). Is this option possible?

Article 6 of the UN Charter states: “A Member of the United Nations which has persistently violated the Principles contained in the present Charter may be expelled from the Organisation by the General Assembly upon the recommendation of the Security Council” (UN 1945). Expulsion from the United Nations requires a decision of two main bodies — the General Assembly and the Security Council. The recommendation of the Security Council is the first step in this process, *conditio sine qua non*. Russia, as a permanent member, is not going to vote for its own expulsion from the UN. By the Charter, Russia is an integral part of the United Nations. Without Russia, the Security Council would not be the Security Council. None of this is the fault of Russia. This is just how the UN Charter works. Theorists consider that “suggestions to remove Russia from the Security Council are not only legally unfounded and unhelpful, but will distract from solutions in international law” (van de Riet 2022).

So far, the most realistic mechanism by which the permanent members could be “punished” is their credentials and representation in the General Assembly. Rule 27 of the General Assembly’s Rules of Procedure states that “the credentials of

representatives and the names of members of a delegation shall be submitted to the Secretary-General if possible, not less than one week before the opening of the session. The credentials shall be issued either by the Head of the State or Government or by the Minister for Foreign Affairs”. This process is usually just a formality, but there is precedent for the General Assembly to factor in a regime’s fidelity to the UN Charter in assessing whether to accept or reject credentials. The credentials of the South African apartheid regime were rejected by the Assembly due to its violation of the UN Charter. Theorists wonder “whether isolating Russia in this way is politically wise” (Ramsden 2022). This kind of action might cause more complications than benefits regarding the solution to the Ukraine crisis. In light of the conflict solution, the best option is the presence of Russia in the United Nations.

### **A Necessity of the Security Council’s Reform**

The Ukraine crisis has highlighted the difficulties regarding the veto of the permanent members of the Security Council. It points out the absurdities of the UN system and the power of one country over the whole membership of the United Nations. The Security Council is not able to perform its functions and maintain international peace and security. An emergency special session of the General Assembly was not an effective mechanism, only moral condemnation. Suspension from the Human Rights Council has the character of public shaming. Even Resolution 76/262 will not cause many benefits because the permanent members will use their veto in the future.

The Ukraine crisis raised a serious question about the necessity of the United Nations. Does the world need a universal organisation that is not able to perform its main function – to save succeeding generations from the scourge of war? Is it time for the reform of the United Nations and the new Security Council? Is it time for the modification of the veto?

Having in mind the situation in Ukraine and all previous crises where the Security Council has failed, reform is a necessity. What might be the most important aspects of the Security Council reform?

The literature shows no consensus on the issue of the reform of the Security Council. The current debate has been focused on certain reform areas:

- increment of the number of permanent and non-permanent members of the Security Council and the regional representation,
- reform of the veto right,
- reform of the working methods.

One of the questions which requires the most attention is the veto. Reform of the veto has been a topic since the early years of the United Nations. Over the years, there have been many suggestions for its reform. One frequently recurring proposal

consists of waiving the veto power in all proceedings arising under Chapter VI of the UN Charter on the peaceful settlement of disputes. This proposal was launched by Australia during the negotiations in San Francisco. China made a similar proposal that provides for a further restriction to the exercise of the veto and limits it to Security Council actions taken under Chapter VII of the Charter. The Chinese proposal was launched in 1948, which proves the difficulties of the veto since the establishment of the UN. This idea received support from many UN members, including the Non-Aligned Movement and many Latin American countries. A very reasonable suggestion was made by the African Union and several individual UN members. It suggests that the veto power should only prevent the Security Council from adopting a resolution if it were cast by two or more permanent members simultaneously. This suggestion is perhaps the most reasonable one because it restricts the power of a single permanent member (Wouters and Ruys, 2005, 21–22). Other suggestions have proposed the elimination of the veto with regard to specific issues such as requests for an Advisory Opinion from the International Court of Justice, admission, suspension, and expulsion of the member states, the appointment of a Secretary-General and the amendment of the UN Charter (Wouters and Ruys 2005, 22).

Another serious question is related to the enlargement of the Security Council. Originally, the Council had 11 members. Due to the 1966 amendments, the number of members was extended to 15. Having in mind that the number of UN members has almost multiplied by four since the establishment of the UN and the 1966 amendment, the current 15 members of the Council are not enough. The representation in the UN Security Council is not proportional, neither geographically nor in terms of population or number of UN members per region. No country from Africa or Latin America has a permanent membership. Although more than half of the world's population lives in Asia, only China is a permanent member. The global ambitions of the EU are growing and this organisation hopes for a permanent seat in the UN Security Council (Janssen 2021).

It is very questionable if some current permanent members of the Security Council have the capacity to be permanent members, having in mind that their power today is much more modest than it was in 1945. On the other hand, Germany, Japan, Brazil, India, and some other states have increased their power and become important global and regional players. Their contribution to the UN budget is not negligible either. Their growing influence, alongside their contribution to the UN budget, makes them perfect candidates for the potential new permanent members of the Security Council.

### *The Complexity of the UN Charter revision*

There is a lot of space and options for reform of the Security Council. Why did nothing happen in the meantime? The main reason is the complexity of the

UN Charter revision. Article 109 states that a “General Conference of the Members of the United Nations for the purpose of reviewing the present Charter may be held at a date and place to be fixed by a two-thirds vote of the members of the General Assembly and by a vote of any nine members of the Security Council”. Paragraph 2 of Article 109 states that “any alteration of the present Charter recommended by a two-thirds vote of the conference shall take effect when ratified in accordance with their respective constitutional processes by two-thirds of the Members of the United Nations including all the permanent members of the Security Council”.

The veto right of the permanent members is a fact that creates practical problems regarding potential UN reform. Any amendment to the UN Charter will take effect when ratified by the member states, including the permanent members. In this case, even if the whole UN membership has an agreement on some reform issue, the veto of one permanent member is worth more than the agreement of the rest of the organisation.

Before any serious actions regarding the reform of the United Nations, the agreement of all five permanent members should exist. Currently, among the permanent members, there is no consensus on potential new permanent members of the Security Council and much less consensus exists regarding the right of veto. If the formulation of Article 109 paragraph 2 was “any alteration of the present Charter recommended by a two-thirds vote of the conference shall take effect when ratified in accordance with their respective constitutional processes by two-thirds of the Members of the United Nations”, the process of reform would be much easier. Consent from two-thirds of the member states could be achieved on many reform topics. Having in mind that the rest of Article 109 paragraph 2 states “including all the permanent members of the Security Council”, many reform topics are impossible to achieve.

Some permanent members of the Security Council, like France, the US, and the UK, are more open to the reform topic. It is necessary to add that they are open to some extent. In the debate on the Security Council reform, held in November 2021, the US representative emphasised that “the United States remains open to an expansion of the Council for both permanent and non-permanent members” but “noting that expansion should neither diminish the Council’s effectiveness nor alter or expand the veto” (UN PR 2022c). France supported the enlargement of the Security Council but considered the veto of potential new permanent members an “extremely sensitive” topic (UN PR 2022c). Resolution 76/262 made a minor change regarding the use of the veto and some permanent members have not been satisfied with it. This shows that permanent members are not ready or willing to lose the veto power.

The UN General Assembly established the Open-ended Working Group in 1993 with the aim of “considering all aspects of the question of an increase in the membership of the Security Council and other matters related to the Security Council” (UNGA Res. 1993, A/RES/48/26). The Working group had some initial success, which was a good starting point for commencing intergovernmental negotiations (IGN) based on proposals by the member states on the question of equitable representation and an increase in the membership of the Security Council and other matters related to the Council. The result of ING should be a solution that can garner the widest possible political acceptance by the member states. The IGN consists of several international organisations – the African Union, the Arab League, the G4 nations, the Caribbean Community, the Uniting for Consensus Group, and the L.69 Group of Developing Countries. Each of these groups and organisations has different positions and priorities regarding the reform of the Security Council. The IGN shared a similar fate as numerous other bodies and groups established with the aim of reform within the UN. Its work has become “slow-moving and repetitive” and many member states “have become fatigued by the process” (Center for UN Reform Education 2022). It has been focused mostly on the Security Council expansion. In the meantime, the focus of the members had switched towards reform of working methods and the use of the veto. Many member states are turning to other forums and groups to address the ideas and possibilities of the Security Council reform.

With the revitalisation of the General Assembly, agreement and understanding on the most important aspects of the reform of the Security Council do not exist. Even if it exists, there is one issue that makes the whole process much more complicated – the right of veto. A veto is not just a “key obstacle” to the Security Council’s fulfilment of its mission (Dervis and Ocampo 2022). It is also a key obstacle to its reform and a better and more effective United Nations.

Having in mind the right of veto and the procedure for the revision of the UN Charter, it seems that every significant attempt at reform ended at the San Francisco conference. Reform of the Security Council requires good political timing and a compromise that all permanent members will agree on. The Ukraine crisis is a political moment that creates serious tension and divisions between the East and the West. As such, it is the worst possible moment for reform of the Security Council. Perhaps some limited reforms regarding global governance might be possible in the near future. Despite failing Ukraine, the UN security architecture “is still functioning in a way that the League of Nations Council did not in the later 1930s” (Gowan 2022).

It seems that the Ukraine crisis will share the same destiny as the war in Iraq. It will cause a lot of theories and debates on the necessity of the reform of the United Nations and the Security Council. While Western permanent members might be more progressive in public in favour of reform, their narratives will have

the aim of embarrassing and public shaming Russia. Narratives about Security Council reform have been used as a political and diplomatic tool for the past seven decades. Without the real and strong political will and consent of all permanent members of the Security Council, any aspect of the reform of the United Nations is not possible.

### **More Realistic Scenarios Regarding the Empowerment of the Security Council**

Due to the complexity of the UN Charter and the lack of political will of the member states, reform of the Security Council is not a task that is going to happen any time soon. The Ukraine conflict has caused even more animosity between the East and the West. The compromise solutions regarding the reform now look like a dream. Having in mind the economic, security, strategic, and food-related consequences of the Ukraine crisis, reform of the Security Council is currently not a top priority. In the future, it will be necessary for the Security Council to play its role much more efficiently. It should not be an organ that is paralysed by differences among the permanent members. It has to be an organ that performs its role in the interest of humankind. Perhaps two possible ways for the future empowerment of the Security Council might be to focus on its working methods and the possible establishment of the Emergency Platform.

#### *The Emergency Platform*

The Secretary-General presented “Our Common Agenda”, a response to the request for recommendations made by the UN member states, leaders, civil society, and many partners of the United Nations on the occasion of the 75<sup>th</sup> anniversary of the United Nations. Originally, the Agenda was created as a strategy for fighting COVID-19. Its initial aim is “to re-embrace global solidarity and find new ways to work together for the common good” (UN 2021, 3). Also, the Agenda is focused on the triple crisis of climate disruption, biodiversity loss, and pollution on a global level. Some theorists consider the Emergency Platform “an important proposal given the failures of international coordination during the pandemic across the health, economic, social, and peace and security domains” (Tørres and de Langen 2021, 3).

An interesting part of the Agenda is related to the possible establishment of an Emergency Platform to respond to complex global crises. The platform would be “triggered automatically in crises of sufficient scale and magnitude, regardless of the type or nature of the crisis involved” (UN 2021, 65). Once activated, the Platform would bring together leaders from the member states, key country groupings, international financial institutions, regional bodies, civil society, the private

sector, subject-specific industries or research bodies, and other experts. The activation of the Platform would depend on the seriousness of the crisis, including the scope of the crisis, identification of actors who can be a part of it, funding and financing, and mechanisms that might help solve the crisis, as well as criteria for deactivation of the crisis.

The proposed Emergency Platform has the aim of fitting into the prevention idea. The United Nations should be focused more on prevention. It is necessary to reduce strategic risks (nuclear weapons, cyber warfare, autonomous weapons), strengthen international foresight, reshape responses to all forms of violence, invest in prevention and peacebuilding (including the Peacebuilding Fund and Peacebuilding Commission), support regional prevention and put women and girls at the centre of security policy (UN 2021, 6). The Security Council should be the backbone of conflict prevention.

The idea of the Emergency Platform bringing together numerous subjects, from leaders of the member states to financial institutions, civil society, the private sector, and researchers, might be useful as a part of prevention efforts. The establishment of the Emergency Platform may perhaps contribute to preventive diplomacy as some sort of negotiation, mediation, or conciliation. Civil society and researchers can provide some new facts or point out new aspects of problems unknown or not well known to heads of state or heads of international and regional organisations. Lately, non-state actors are finding mechanisms, directly or indirectly, to influence the decisions of states and international organisations. Also, their influence on the development of international law and international politics is significant. They are gaining “more and more elements of international subjectivity as their scope expands, as well as the rights they enjoy and the obligations they fulfil” (Vučić 2020, 27). The United Nations should use a wide range of non-state actors, as it is proposed in the Emergency Platform, in order to improve its goals and functioning.

If done well, the establishment of the Emergency Platform can produce good results. Adopting “a comprehensive and holistic approach to wider crisis prevention and response – drawing on the capabilities of all governmental actors (at national, regional, and sub-regional levels) and non-state actors (from across civil society and the private sector) – could potentially revolutionize how the international system copes with a range of future political, economic, social, and environmental crises could potentially revolutionize how the international system copes with a range of future political, economic, social, and environmental crises” (Group of authors 2022, 34). Its role and relations with the Security Council must be clearly defined. In order to be successful, it has to be a relationship of coordination instead of competition. The involvement of numerous actors in some issues may result in more confusion than resolution. Also, it can create competition with the Security Council.

### *Working methods of the Security Council*

Another realistic mechanism to empower the Security Council could be the improvement of its working methods. The Security Council has been criticised for making decisions behind closed doors, its exclusivity and a lack of transparency (Gordanić 2021, 48). The member states consider that “a more accountable and transparent Council would be better placed to meet its core tasks of preventing and resolving conflicts” (UN PR 2022d). Regarding the working methods of the Security Council, some changes could be made regarding its transparency and improvement of relations with the General Assembly and other UN bodies.

Lately, there have been some small improvements when it comes to the transparency of the Security Council. Since the mid-90s, NGOs have slowly established a regular process of consultations with the Security Council members and have broadened the Arria formula. These consultations are strictly informal, but some time ago, this kind of communication was unimaginable. NGOs work in the fields and have contacts and information that might be precious to the Security Council. Also, NGOs have influenced some decisions of the Council in soft policy areas, especially when it comes to the rights of women and children in armed conflicts (Gordanić 2021, 61). In Our Common Agenda, the Secretary-General considers that the United Nations should work “with a wider community of governmental, academic, civil society, private sector, philanthropic, and other actors to strengthen strategic foresight, preparedness for catastrophic risks, and anticipatory decision-making that values instead of discounts the future” (UN 2021, 45).

### *Relationship between the General Assembly and the Security Council*

Due to their powers, the relationship between the General Assembly and the Security Council has been turbulent. Lately, the encroachment of the Security Council on the competence and jurisdiction of the General Assembly and the other UN bodies has been noticed. The encroachment indicates the tendency of the Security Council to “broaden, arbitrarily, the definition of what constitutes a threat to international peace and security, particularly with respect to thematic debates touching on social, humanitarian, or economic and development issues” (Sievers and Daws 2014, 582). The Security Council started to discuss issues of AIDS, climate change, and human rights. According to the UN Charter, these issues belong to the General Assembly. Considering them as a threat to peace has caused dissatisfaction among the member states. This kind of practice is a violation of the principles of the UN Charter and a reduction of the authority of the other UN bodies. It is “imperative to prevent the Security Council from encroaching on the Assembly’s mandate, a trend that had led to inconsistencies and a lack of harmony between the two bodies, which sometimes left the Assembly paralysed” (UN PR 2006). The General



Assembly has been marginalised since the end of the Cold War. The encroachment of the Security Council makes it even more marginalised. This causes a negative reputation for the Organisation of the United Nations. States are gradually losing confidence in the UN and turning to different forms of regional cooperation (Gordanić 2018, 338). Also, by taking responsibility from the General Assembly and other UN bodies, the Security Council is unnecessarily burdening its agenda. By doing the jobs of other bodies, the Security Council is not capable of focusing on its own responsibility – the maintenance of international peace and security.

The General Assembly receives and considers annual and special reports from the Security Council (UN Charter, Article 15). Over the years, there have been critics and improvements regarding the length and quality of the Council's annual report. So far, the Council has never submitted a special report to the Assembly. In cases such as the Ukraine crisis, submitting a special report might be an opportunity to increase transparency and take at least moral responsibility for failing international peace and security.

The General Assembly and the Security Council share many responsibilities and election processes within the UN. In many of these cases, the General Assembly depends on the previous recommendations of the Security Council. One of many examples is the already mentioned expulsion from the UN. Ideally, the functions of the General Assembly should be expanded and less dependent on the Security Council. This is also one important aspect of the reform of the United Nations. Until the reform process happens, the Security Council needs to learn to cooperate with the General Assembly and the other UN bodies. The General Assembly should be the organ of discussion, and the Security Council needs to be the organ of action. The relationship between the two most important bodies in the UN system needs to be more balanced in order to restore the reputation of the UN and achieve the objectives envisaged by the Charter.

### **Conclusion**

The Ukraine crisis is an important test for the United Nations. It pointed out all the shortcomings of the UN Charter. It has proved that the veto of one permanent member is capable of making the Security Council, the world's most powerful body, completely powerless and pointless. It emphasised the division between Eastern and Western members of the United Nations. It has proved that there is no effective mechanism when the permanent member is a party to the conflict. By using its veto right, Russia did not do anything wrong or unreasonable. Within the United Nations, all actions by Russia regarding the use of the veto have been legitimate. Any other permanent member would do the same if they were in the place of Russia. Simply put, all actions by Russia within the United Nations have been consistent with the UN Charter. The Ukraine crisis, unfortunately,

pointed out the absurdities of the UN Charter and proved that it is time for change – within the UN as well as within the Security Council.

A moment for a new San Francisco has arrived. The reform of the United Nations and the Security Council has become a necessity. Of course, an important task, such as a reform of the Security Council, requires an agreement between permanent members of the Security Council. It requires excellent political timing as well as political will. Unfortunately, the Ukraine crisis is not a good moment for reform. Divisions between Russia and Western states are sharp, and such a climate could easily send the world into a new Cold War. For the welfare of all members of the United Nations, the Security Council has to focus on more realistic options in order to improve its functioning. It has to work on its transparency, working methods, and more harmonic relationship with the General Assembly. In the future, the Security Council should be focused on conflict prevention and cooperation with other actors, including non-state actors. The establishment of the Emergency Platform might be a good mechanism for improving conflict prevention. It might be a good option for facilitating the work of the Council.

The UN Charter is, without a doubt, a precious legal document. Its interpretations over time have proved their quality. The world has changed drastically since the establishment of the United Nations. Some UN Charter principles, particularly the existence of permanent membership in the Security Council, have been overturned. The new age requires a new UN Charter and a new Security Council. When the right time arrives, all member states should require reform of the Security Council, which needs to include the elimination of the veto and more balanced relations with the General Assembly and other UN bodies.

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## УКРАЈИНСКА КРИЗА 2022 – АЛАРМ ЗА РЕФОРМУ САВЕТА БЕЗБЕДНОСТИ УЈЕДИЊЕНИХ НАЦИЈА?

*Апстракт.* Украјинска криза 2022. године истакла је многе недостатке и апсурде система Уједињених нација. Вето Русије паралисао је Савет безбедности и онемогућио вршење његове улоге. Други механизми предузети у оквиру Уједињених нација нису били довољни да утичу на активности Русије. Аутор анализира ситуацију у Украјини као индикатор за реформу Савета безбедности УН. Рад испитује различите аспекте и могућности реформе Савета безбедности и као највеће препреке сматра процес ревизије Повеље и право вета пет сталних чланица. Украјинска криза нови је Сан Франциско моменат који ће пропасти због недостатка политичке воље сталних чланица Савета безбедности. Рад закључује да би Савет безбедности требао користити реалистичнија решења како би побољшао своје капацитете и спречио будућа кршења међународног мира и безбедности.

*Кључне речи.* Русија; Украјина; Савет безбедности; реформа; вето; Уједињене нације; стални члан Савета безбедности; Украјинска криза.

*Received:* 20 August 2022

*Accepted:* 30 September 2022