



Expert debate series “Prism Security Debates”

Position statement:

«The limits of possible: What can Ukraine achieve as a non-permanent member of the United Nations Security Council?»

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1. Stages of development of cooperation in the field of security

The right to security, as one guaranteed by the UN Charter, is a universal right, and Ukraine, as the organization's member state, has a right to petition this organization in situations that require international regulation or intervention. As Ukraine is not a part of any security bloc, under the conditions of a military threat, addressing the UN is a priority.

For the first time after the collapse of the USSR, the necessity to petition the UN emerged in the early 1990s, when the Russian Federation tried to revert the Crimean peninsula becoming a part of the independent Ukraine. Then, Ukraine petitioned the UN Security Council and received clear confirmations of its territorial integrity within the internationally recognized borders (Resolution S/26118). At that time, the international situation was favorable for Ukraine. The wave of emancipation of the former Soviet republics and the UN's quite successful role during Iraq's aggression against Kuwait were helping to increase the organization's importance and authority.

In 2003, during the conflict around Tuzla sandbank and Russia's construction of a dam in the Kerch Strait, Ukraine again faced the necessity to ask the influential international institutions for assistance. The conflict was settled owing to the "personal diplomacy" between Kuchma and Putin, but, obviously, the resolution was not final. In this case, what manifested was the Ukrainian political leaders' inclination to resolve conflicts "without washing dirty linen in public" and, by doing so, to try to retain good neighborly relationship with Russia. In addition, at that time, the "Treaty on friendship, cooperation, and partnership" between Ukraine and Russia as of 1997 had already been in effect, and, based on it, the disputes were subject to "settling by means of consultations and negotiations between the High Contracting Parties".

The two episodes with Russia's encroachment in Crimea demonstrated two different variants of the UN involvement. Both showed that Moscow was not satisfied with Ukraine's existing sovereignty in Crimea, and thus could become a warning for the Ukrainian politicians. Yet, in 2013, neither Ukrainian elites nor the people in general had an acute feeling of danger or even considered a possibility that a part of their territories could be annexed. So, the events that began in March of 2014 and still continue in a form of the "hybrid war" in the East of Ukraine came quite unexpectedly.

On March 13, 2014, the Verkhovna Rada of Ukraine approved the Petition to the UN, which stated that the Russian Federation, in fact, attempted to annex a part of the territory of Ukraine, and committed an unprovoked act of aggression¹. Even then, it was obvious that Russia's actions were in breach of not only the international norms of maintaining security, but also of the existing bilateral treaties, and also of "the spirit and the letter" of international commitments to Ukraine, recorded in the Budapest Memorandum.

Based on legal definitions, Russia's actions completely fall under the definition of aggression, as formulated by the UN General Assembly on December 14, 1974 in Resolution number 3314. Moscow has occupied a part of the territory of Ukraine and continues its aggression against Ukraine in some regions of Donetska and Luhanska oblasts. It should be taken into account that not using threats of using force, and not using the force itself, is an imperative in international law. Correspondingly, when Russia appeals to the "historical affiliation of Crimea" or "fair expression of will of the residents of the peninsula," from the legal point of view such arguments are null and void².

Because of the Russian veto in the UN SC, the consideration of the Ukrainian issue was transferred to the General Assembly. In its turn, the General Assembly approved Resolution 68/262 as of March 24, 2014, with which it confirmed sovereignty and territorial integrity of Ukraine, recognized the referendum in Crimea conducted on March 16, 2014, as unlawful, and called the countries of the world and international organizations not to acknowledge any changes in the status of the Autonomous Republic of Crimea and the city of Sevastopol³.

The Resolution was supported by 100 UN member states out of 193, which showed ambiguity in support to preservation of the UN norms and rules in the world. The majority of countries that abstained were from South America, Asia, and Africa; they did so due to pragmatic considerations and out of the desire to distance themselves from the conflict that reminded many of the confrontation of the Cold War.

With development of hostilities in the East of Ukraine, the UN reaction remained passive because of circumstances: namely, due to the stalemate with voting in the Security

¹Address of the Verkhovna Rada to the UN, March 13, 2014 [online resource]. - Access mode: <http://zakon4.rada.gov.ua/laws/show/873-18>

² A separate work by O.Zadorozhnyi is dedicated to this issue. Українська революція гідності, агресія РФ і міжнародне право.-К.: 2014 (Ukrainian Revolution of Dignity, Russian aggression, and international law. K., 2014)

³ Resolution adopted by the General Assembly on 27 March 2014 [Online resource]. - Access mode: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N13/455/17/PDF/N1345517.pdf?OpenElement>

Council, there were no attempts to identify and punish the transgressor or even to take any measures to de-escalate the situation. To a considerable extent, the leadership of Russia construed such position of the UN as a green light for further implementation of their plans in Ukraine.

2. Current challenges in implementation of UN security policy

The United Nations Organization is the most legitimate and universal international body, whose task is to maintain peace and international security. Yet, the main challenge to its functions at the present stage, as the progress of the conflict around Ukraine shows, is **inefficiency of the existing mechanisms for achieving this goal. The UN activities are blocked by a veto of Russia, as a regular member of the Security Council.** At the same time, this very UN Security Council is the body responsible for maintaining world peace and safety (according to article 24 of the UN Charter), and is the only body of the UN that has a right to start preventative and coercive actions on behalf of the UN (article 42), including those using the united armed forces of the UN member states.

Six times the attempts to approve a resolution about Ukraine in the UN SC, including the one related to annexation of Crimea, formation of a tribunal about the catastrophe of Malaysian Boeing, about the act of terrorism in Mariupol – were turned down because of Russia's position. Other members of the body did not speak against participation of Moscow in voting on the resolutions in the Security Council, as provided for in clause 3, Article 27 of the UN Charter: "the party that is a part of the conflict shall not vote in resolving decisions based on Section VI and based on clause 3, Article 52"⁴.

The Russian representatives in the UN are using the so called "concealed veto", an example of which can be the statement of the Russian Minister of Foreign Affairs Sergey Lavrov about blocking of the resolution on sending UN peacekeepers to Donbas in case this issue were on the Security Council's agenda. What became a settled practice of the UN SC is that if a resolution is blocked times and times again, other regular members have a tendency to self-censorship and remove it from the agenda – the so-called "double concealed veto".

Such functional incapability of the UN Security Council was observed several times in the past. Its regular members frequently used the right of veto in the years 1946-2008: on the initiative of the USSR/Russia –124 times, of the USA – 82 times, Great Britain – 32, France – 18, China – 6 times⁵. But, as the bipolar confrontation recedes to the history and international relations get liberalized, "demand for peacekeeping" is growing considerably, and absence of an effective tool for this is a threat to stability of the entire international security system.

This causes an urgent necessity to "reboot" the UN as an effective international mechanism. Still – and this can also be viewed as another challenge to the UN activities –

⁴ UN Charter [Online resource].-Access mode: <http://www.un.org/en/documents/charter/>

⁵ Changing patterns in the Use of the Veto in the Security Council
<https://www.globalpolicy.org/component/content/article/102/32810.html>

there is no consensus in this issue between the permanent members of the Security Council. As the course of discussions on the organization's reformation shows, the greatest realistically achievable reform the members can agree on now is **increasing the number of Security Council members without giving the new members the right of veto**. At that, the USA, China, and Russia have almost the same vision of retaining the formula of using the right of veto in the UN SC.

All regular members of the UN are interested in retaining their privileges that the status of Security Council permanent member provides. For Russia, in conditions of shrinking of its external political environment, **the UN is something like one of few remaining centers of international influence, its last global organizational resource**. It is not a random whim that the President of Russia V. Putin decided to break isolation imposed on him and to speak, for the first time in ten years, at the 70th UN General Assembly in September of 2015. In parallel, a wide-scale informational campaign was launched, which included both the elements of blackmail of the world community – Russia's increased military support of the Syrian regime of president Bashar al-Assad, its attempt to appropriate a large contested area in the Arctic, and plain propaganda – like a proposal to move the UN headquarters from New York to Switzerland. Such behavior cannot possibly be something that a country that intends to seek compromises and avoid conflicts would do. Russia's pretenses to act as a "guard"⁶ for international order are very weak. In its confrontation with the West, it steps over the issues of high moral and emotional value. An example of this is its vetoing the UN resolution regarding establishment of the international tribunal for investigation of the catastrophe of flight MN-17 over Donbas, and acknowledgement of the genocide in Srebrenica.

An important sphere that is also under destructive influence **is the system of international guarantees built around the UN**. According to the Memorandum on guarantees of security due to Ukraine's joining the Treaty of Nuclear non-proliferation, signed in Budapest on December 5, 1994, Ukraine received guarantees from the Russian Federation, as one of the parties. Russian diplomacy goes far and deep into scholastics in trying to construe those guarantees in the light favorable for itself. For example, the Russian Federation Ministry of Foreign Affairs declared on April 1, 2014, that Russia's main commitment under the Budapest Memorandum is "only not using and not threatening to use nuclear weapon against countries without nuclear weapon", and therefore Russia's commitments to Ukraine were not violated⁷. Lavrov confirmed this point of view in the beginning of 2016. Also, we should mention the conference of member states of the Treaty on Nuclear Non-Proliferation that took place in the UN in May of 2015. There, the representative of Russia not only rejected the U.S.' proposals to reduce the nuclear

⁶ For example, see article of former Minister of Foreign Affairs I. Ivanov "Мир заждался диалога" ("The world is tired of waiting for dialogue" [Online resource]. – Access mode: http://russiancouncil.ru/inner/?id_4=6546#top-content

⁷ Statement of MFA of Russia regarding accusation in violation by Russia of its commitments under Budapest Memorandum as of December 5, 1994 // Ministry of Foreign Affairs of Russian Federation. – [Online resource]. – Access mode: - http://archive.mid.ru/brp_4.nsf/o/E2C2FECC50FBD22944257CAD0047429D

arsenals, but, on the contrary, threatened to "increase them under certain conditions"⁸. At that, such increase could take place in Crimea⁹.

Negative impact for the global process of nuclear disarmament is obvious. At 2015 session of the UN General Assembly, the progress achieved by the UN countries with Iran's nuclear program was called remarkable. Yet, this success became possible in spite of growing doubts in the guarantees granted to countries in exchange to wind-down of their nuclear programs.

Among the problems with functioning of the UN, we cannot leave one unmentioned – **the systemic crisis of underfunding.** The UN's total budget deficiency for humanitarian help purposes only is about 12.5 billion dollars. In spite of the conflict, with all negative consequences for the humanitarian sphere, Ukraine found itself among the countries that are short of financial support from the UN due to lack of funds. The reasons for this are both the increase in crisis on the global scale and the escalated necessity to reform the UN's budgetary sphere.

All challenges mentioned above are deeply entrenched, and dealing with them will require hard institutional changes. It seems to be quite a problematic issue in the short term – to agree on the mechanism to deprive a standing UN Security Council member of a right to vote in cases when they are a party in the conflict. There are certain legal bases for this, yet they are blocked by the necessity to officially recognize the violator as the source of armed aggression. This raises another issue – **officially identifying Russia's actions in relation to Ukraine.**

As Ukraine experienced an armed attack by armed forces units of the Russian Federation and (or) mercenaries that it controls, this conflict has all grounds to be officially qualified as an armed aggression¹⁰. The actions of the RF fall under the definition of aggression according to Resolution 3314 of the UN GA "Definition of aggression" as of December 14, 1974. The fact of aggression was already recognized by such organizations as the European Council, the Parliamentary Assembly of OSCE, NATO, and PACE. Instead, the UN Security Council, as an authorized body to officially identify Russia's actions against Ukraine as aggression, was still unable, for understandable reasons, to do so. What is more – during 2014, we could observe treating the war in Ukraine as an internal conflict. Ukraine itself, by using the words "anti-terrorist operation", in fact denies the fact of aggression, and, this way, undermines its legal stance for bringing Russia to responsibility.

This results in one more complication, namely – that with **sending the UN peacekeepers to Ukraine.** Yet in March of 2014, the Vice Secretary General of the UN for political issues Jeffrey Feltman emphasized that the situation was deteriorating not only on the territory of

⁸ MFA of RF: Actions of the USA can push Moscow to increasing nuclear arsenals [Online resource]. – Access mode: <http://tass.ru/politika/1974156>

⁹ Lavrov's agency says they can deploy nuclear weapons in Crimea / [Online resource]. – Access mode: <http://www.unian.ua/politics/1054034-u-lavrova-zayavili-scho-mojut-rozmistiti-yadernu-zbroyu-u-krimu.html>

¹⁰ Ukrainian Revolution of Dignity, Russian aggression and international law. P. 887

the Autonomous Republic of Crimea, but also in the eastern regions of Ukraine.¹¹ Preventative deployment of the UN peacekeeping forces or of a regional organization with the UN mandate would help prevent infiltration of mercenaries and heavy weapons to the territory of Eastern Ukraine. But it took almost a year for the Ukrainian authorities to officially address the UN and EU as to sending peacekeeping forces into the country (lately, they clarify that the issue in question is an evaluation mission). Presently, according to the Permanent Representative of Ukraine in the UN, Volodymyr Yelchenko, the negotiation process in the UN regarding this issue has not yet started, as “search of approaches for resolving this issue” is pending. Obviously, to bring it to the Security Council’s agenda, one needs to have effective tools to overcome Russia’s veto.

3. New incentives for cooperation in the sphere of security in short and middle term perspectives

Cooperation between Ukraine and the UN on this stage can be provisionally divided into the one directly related to efforts to resolve the conflict in the East of Ukraine and the post-conflict cooperation, as well as traditional fields of work under the UN, where Ukraine showed to be an active and responsible member state.

Ukraine continues to address the UN about sending its peacekeepers to the conflict zone in the East. The Ukrainian President Petro Poroshenko, based on the resolution of the Council of National Security and Defense, addressed the UN and EU with this request on March 13, 2015. In theory, Moscow’s veto in the Security Council can be bypassed by using Resolution of the UN General Assembly 337 as of 1950 "Uniting for Peace", which empowers the General Assembly with a more active role in case where the members of the Security Council disagree. This will require considerable efforts from the UN’s leading member states, yet the chance for success is confirmed by the fact that in 2014 they signed the Hague Convention of Great 7 in support to the sovereignty of Ukraine.

On request of the Ukrainian party, since January 23, 2016, the UN Evaluation Mission started to work in Ukraine, including the representatives of the UN Development Program, the UN Children's Fund and the UN Mine Action Service. It is planned that the mission will conduct meetings with the officials of central bodies of executive power in Kyiv, and also will travel to Donbas to study the local needs, in particular in the sphere of humanitarian mine disarmament.

Ukraine is also interested in opening the UN Support Office in Kyiv, the entity that could conduct verification of Minsk agreements’ implementation in the parts where lack of OSCE efforts is felt.

Due to the armed conflict in Donbas, the activities of international organizations related to Ukraine shifted their focus considerably to the **economic factors, in particular**

¹¹ 7134th meeting of the Security Council, 13 March 2014, S/PV.7134 [Online resource]. – Access mode: http://www.un.org/en/ga/search/view_doc.asp?symbol=S/PV.7134.

fundraising for restoration of the infrastructure and economy of the regions that were damaged because of the hostilities. Under the UN auspices, various organizations are working to provide support in the relevant sectors (education, health, livelihood and early recovery, water supply, food supply program, housing supply, etc.). **The UN is an important donor of Ukraine:** it supports approximately 15 foundations and programs, whose activities help resolve important economic and social issues.

A very important field of cooperation with the UN and the IAEA affiliated with it is **prevention of further proliferation of nuclear weapons.** The threat to use the territory of Ukraine as a base for deployment of tactical weapons is forcing Ukraine to stand even stronger for stricter control over non-dissemination of weapons of mass destruction, and adherence to the UN Security Council's sanction regimes. Even early in its independence, Ukraine started a number of initiatives in the UN to facilitate integration of the former USSR countries into the international system. In particular, "21st century world – without nuclear weapons", which provided for establishing a special status with international guarantees of security for the countries that gave up nuclear weapons. Therefore, Ukraine could make a modified motion to initiate nuclear disarmament, where it could find an unconditional support from such countries as the US and Japan.

Ukraine, being elected a **non-permanent UN Security Council member for the period of 2016-2017**, plans to intensify activities aimed to reform the UN Security Council. At the intergovernmental forum on reformation of the UN Security Council, Ukraine emphasized that it could tell from its experience how helpless the Security Council is when one of the five regular members is an aggressor – and that this situation needs to be changed¹².

Ukraine's latest proposals on reforming the UN SC are in line with the vision of the Eastern European countries in general and take into account the experience from the conflict with Russia. Among other things, they provide for the following:

- reservation of one non-permanent sit in the SC for the countries of the Eastern European group (France and Great Britain are against the region-based reforming);
- improving the capabilities of implementing sanctions by the UN SC;
- the Security Council's permanent members voluntarily giving up their right of veto in regard of blocking the SC actions to prevent or stop mass violence, genocide, crimes of war, and crimes against humanity;
- permanent members reaffirming their commitments based on article 27 (3) of the UN Charter, which binds a party of an armed conflict to abstain from voting;
- in the long-term perspective, to lobby cancellation of the veto right completely¹³.

Traditionally, since the Soviet times, in its work in the UN Ukraine viewed the issues related to the Security Council as central and aimed to become a non-permanent member of this structure. Yet, in the context of Ukraine's current needs, the priorities should be reconsidered – it seems we should focus more on the General Assembly. In the situation,

¹² Ukraine is for reformation of the Security Council of the UN [Online resource]. – Access mode: http://dt.ua/POLITICS/ukrayina-vistupaye-za-reformuvannya-radibezpeki-oon-163998_.html.

¹³ Proposals of member countries for intergovernmental negotiations regarding the reform of the UN SC, July 31, 2015 [Online resource]. – Access mode: <http://www.un.org/pga/wp-content/uploads/sites/3/2013/11/Security-Council-reform-IGN-31-July-2015.pdf>

where any potential compromise in the SC is practically blocked, shifting efforts towards the GA seems a natural thing to do for Kyiv – in the current situation, we have more chances for better results there.

4. Conclusions and recommendations

The activities of the UN in the armed conflict situation in the East of Ukraine show a number of disappointing results: the UN Security Council's legal and organizational mechanism turned out to be useless; the world order and international law provisions have been disrupted. Their collapse can only be prevented by focused efforts of the international community to mend the order and to bring the transgressor to responsibility. If the international community of countries ignores violation of international laws and principles by Russia in relation to Ukraine, eventually this will cause the rise of chaos in the system of international relations. The method and consequences of resolving the conflict situation in the East of Ukraine and the one related to annexation of Crimea, in fact, determine the perspective of the international world order constructed today.

For Ukraine, cooperation with the UN in the sphere of safeguarding security in the conditions of crisis focuses primarily on the measures with capacity to resolve this crisis. The key problem in using the UN security mechanisms is the very structure of making relevant decisions – because the issues of peace and safety are within the competence of the Security Council, where Russia has the right of veto. The latter is, in fact, a party in the conflict – so there is a considerable risk that any decisions necessary to facilitate the situation's resolution will be blocked by it, as a party interested in further destabilization of the situation in Ukraine. For this reason, in the current conditions, Ukraine faces two main tasks that will determine the content of its cooperation with the UN: **first, to pressure Russia with vision to change its policy in the UN to a more constructive one, or to reduce its influence over the process of decision-making; second, extending the use of tools other than the UN SC to solve its security problems.**

In the UN, Ukraine enjoys support of many member states, in particular, the permanent Security Council members – the U.S., Great Britain, and France. These countries, in fact, establish a unified front, and this can also work for the purpose of making Russia take a more constructive stance toward Ukraine. We also should note the initiative of France (also supported by Great Britain) related to voluntary restriction of the veto right for the permanent UN SC members, when the issue on the agenda is mass crimes of war or genocide.

Taking into account the scale and complexity of the conflict, and also the high probability that its final resolution will take a lengthy period of time, it seems that strategic steps focused on systematic weakening of Russia's influence over the UN decision-making process are important.

1. To intensify efforts for supporting the reform of the UN institutions in charge of the security issues.

Presently, Ukraine is not only lobbying extension of the general composition of the Security Council and increasing the number of its permanent members, but also supports

the lobby for the UN permanent members' voluntary moratorium to use the right of veto. This very position – a call to accept voluntary moratorium, not to cancel the veto – seems the most beneficial for Ukraine. On the one hand, not all permanent members, including those that support Ukraine, wish to discard the right of veto, therefore it is not productive for Ukraine to step forward with proposals deemed dubious by its supporters. On the other hand, the process of reforming the Security Council – even if a considerable part of the UN members will support it in this format – will take a lot of time, and for Ukraine, it is important to receive immediate results. Instead, **the division of standing SC members by their attitude to voluntary moratorium will become an additional factor of pressure against the countries that refuse to support this idea, as it will considerably impair their image in the organization and will deprive them of the moral ground to speak from the standpoint of a defender of collective interests of a broad circle of the UN members.**

2. To support approval of resolutions related to maintaining security outside the SC. An example can be the idea raised at the General Assembly about the international tribunal for considering the issue of the downed Malaysian airplane. **A threat of losing control over decisions that UN takes in relation to the conflict in Ukraine, will force Russia to take an even more rigid position in the SC, and this stance will impair the image of the country and further reduce the small support that Moscow positions have now from other organization members.**

3. To continue lobbying for a resolution to send the UN peacekeeping mission to Ukraine not only through the SC, but also within the General Assembly's framework. As an alternative - to consider a possibility of sending a mission to secure the elections security (in case of the advancement with implementation of the Minsk agreements), like it was done for Côte d'Ivoire, or a special mission for disarmament, demobilization, and reintegration.

In theory, it is possible to use Resolution 377 (v) as of November 3, 1950, which entitles GA to act in the issues of peace and security independently, in cases where resolution of such issues is blocked in SC by its permanent members.

Yet, it is crucial for Ukraine to concentrate its efforts on using the GA mechanisms because the competence of GA includes administration and financing of peacekeeping operations (in this aspect, it seems that the work in the Fourth and Fifth committees of GA is especially important: they prepare documents for plenary sessions for political and administrative / financial issues, correspondingly).

In addition, discussion of the format of the peacekeeping operation in the GA committees will facilitate spreading of the information about this conflict, which will be clarifying the position of Ukraine, and, correspondingly, will strengthen our positions in the organization in countering the Russian influence. This will cause additional pressure on the RF, which, under a threat of totally losing control over decision-making in the UN, can somewhat succumb in the SC.

Finally, GA has a decisive role in the actions of the UN focused on the post-conflict rebuilding, which will become a topical issue on the Ukrainian agenda upon resolution of the conflict, and it is advisable to prepare for discussion of this problem in advance.

4. The Ukrainian authorities should more actively rely on the provisions of Resolution of the UN GA 68/262¹⁴, which provide for implementation of regulations of the Draft clauses on responsibility of international organizations that indicates in Article 45 “countries and international organizations shall cooperate with the goal to end, using legitimate means, any serious violations”¹⁵. A reference to Resolution 68/262 is also very important in the context of Ukraine being forced to conduct the constitutional reform (decentralization) and to abandon its prospective NATO membership, which is in breach of the principles of the Helsinki Final Act.

5. To intensify the practice of forming «clubs» in the UN – groups of countries that agree to join efforts to achieve the voting results they desire on this or that issue. Traditionally, Ukraine concentrated its efforts on the group of Eastern European states. Its support is an important factor of the Ukrainian policy in the UN today as well, but it is advisable to concentrate efforts on participation in the groups of developing states (the countries of the world's South), that constitute the majority in the UN. With shifting the center of mass in the efforts focused on settling the conflict in Ukraine into the General Assembly, partnership relations and mutual commitments as to supporting positions of one another in votings can become an important basis for achieving positive results in the UN.

6. To develop the coordination plan of mutual support with Germany (chair in OSCE) and Japan (chair in G7) based on their interest in reformation of the United Nations Organization.

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¹⁴ For detailed overview of legal arrangements contained in the Resolution see. Саяпин С. Территориальная целостность Украины в свете Резолюции 68/262 Генеральной Ассамблеи ООН / Журнал конституционализма и прав человека, 2014; № 1-2. С. 66-74 (Sayapin S. Ukraine's territorial integrity in the light of Resolution 68/262 of the Un General Assembly / Journals of Constitutionalism and Human Rights, 2014, No.1-2. Pp.66-74)

¹⁵ Report of International Law Commission. UN http://www.un.org/ru/documents/decl_conv/conventions/pdf/intorg_responsibility.pdf