



WAR IN UKRAINE: THE SHIFT OF THE UNITED NATIONS' CENTER OF GRAVITY FROM THE SECURITY COUNCIL TO THE GENERAL ASSEMBLY

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ABSTRACT:

On 24 February 2022, Russian President Vladimir Putin decided to launch a vast offensive by Russian armed forces on land, air, and sea across the entire territory of Ukraine, under the guise of what was justified as a "special military operation". Such a war initiated by Russia against Ukraine highlighted the deficiencies of the United Nations when a permanent member of the Security Council is involved. Since the beginning of armed hostilities, the Security Council, a body of limited composition assuming primary responsibility for the maintenance of international peace and security, remained paralyzed in its actions by the Russian veto. On the contrary, the General Assembly, the plenary body, experienced renewed vitality, that enabled it to intervene in aid to Ukraine and to adopt a series of important albeit non-binding resolutions. The center of gravity of the United Nations thus shifted from an immobilized Security Council to a revitalized General Assembly capable of recalling the essential principles of international law, at a time when they are being so blatantly disregarded.

Keywords: United Nations Organization; Security Council; General Assembly; Russia; Ukraine; war; international peace and security.

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1 INTRODUCTION¹⁵⁰

After a gradual reinforcement of the Russian military presence on the Ukrainian border and while Europe, already busy with the delicate management of the Covid-19 pandemic, had to deal with the migration crisis orchestrated by Belarus¹⁵¹, on 21 February 2022, the Russian President, Vladimir Putin, officially announced the recognition of the independence of the Ukrainian republics of Donetsk and Lugansk¹⁵². A few days later, on 24 February, a vast offensive by the Russian armed forces on land, air and sea was launched across the entire territory of Ukraine, under what was justified as a “special military operation” aimed at saving the country from the neo-Nazis and protecting the population who, for eight years, had allegedly been the victim of intimidation, and even genocide, by Kiev, while insisting on the fact that Ukrainians and Russians would form one and the same people.

Such arguments failed to convince¹⁵³. From the beginning of the Russian military offensive in Ukraine, there has been an increasing number of condemnations of a blatant violation of the cardinal principle of the prohibition of the use of armed force between States laid down in Article 2, paragraph 4, of the United Nations (UN) Charter, not only by the Council of Europe¹⁵⁴, of which the two countries were members before the exclusion of Russia in March 2022, but also by the European Union¹⁵⁵, the Organization of American

¹⁵⁰ Revised text of a communication presented by the authors at the international colloquium “The Russian-Ukrainian war, one year later: challenges and perspectives”, which was held at the Catholic University of Lyon (France), on 24 and 25 February 2023.

¹⁵¹ See MAIA, Catherine; BAHADUR NAGAR, Shashaank. Poland-Belarus border crisis: a vanishing point of international refugee law. **Observatory on European Studies**, 13 Dec. 2021. Available at: <https://www.eurolatinstudies.com/laces/announcement/view/96>. Consulted on: 27 Feb. 2024.

¹⁵² On the origins of the war in the Donbas region, see, in particular, MARPLES, David R. (ed.). **The war in Ukraine’s Donbas: origins, contexts, and the future**. Budapest: Central European University Press, 2022.

¹⁵³ See MAUREL, Raphaël. Pourquoi l’agression de l’Ukraine par la Russie est illégale? **Les Surligneurs**, 26 Feb. 2022. Available at: <https://www.lessurligneurs.eu/pourquoi-lagression-de-lukraine-par-la-russie-est-illegale/>. Consulted on: 27 Feb. 2024.

¹⁵⁴ COUNCIL OF EUROPE. Committee of Ministers. 2.3 Situation in Ukraine – Measures to be taken, including under Article 8 of the Statute of the Council of Europe. In: EUROPEAN COUNCIL MEETING, 1426, 25 Feb. 2022. **Decisions**, 2022. Available at: <https://rm.coe.int/native/0900001680a5a360>. Consulted on: 8 Feb. 2024.

¹⁵⁵ EUROPEAN UNION. Press statement of President Charles Michel of the European Council and President Ursula von der Leyen of the European Commission on Russia’s unprecedented and unprovoked military aggression of Ukraine. 24 Feb. 2022. Available at: https://ec.europa.eu/commission/presscorner/detail/en/statement_22_1321. Consulted on: 7 Feb. 2024. Concerning the sanctions of the European Union, see, in particular, JACOB, Patrick. Les sanctions de l’UE contre la Russie comme mesures de réaction à un fait internationalement illicite. **Revue Générale de Droit International Public**, v. 127, n. 1, p. 71-97, 2023.

States¹⁵⁶, and the African Union¹⁵⁷. Immediately, the UN Secretary-General, António Guterres, regretted “Russian military operations inside the sovereign territory of Ukraine on a scale that Europe has not seen in decades”. He added: “The use of force by one country against another is the repudiation of the principles that every country has committed to uphold. This applies to the present military offensive. It is wrong. It is against the [UN] Charter. It is unacceptable. But it is not irreversible¹⁵⁸”.

In such a context, one would have expected that the Security Council – conceived as the pivot of the global system of collective security put in place by the UN – would have a crucial role to play. On the contrary, we are witnessing its powerlessness¹⁵⁹. In this respect, the aggression against Ukraine is an additional episode that vividly reveals the shortcomings of the UN when a permanent member of the Security Council is involved. Since its creation in 1945, this Organization has been unable to avoid a war triggered by one of its permanent members, be it the United States and the United Kingdom in Iraq in 2003 or Russia in Ukraine today.

Ironically, not only the offensive in Ukraine began on 24 February 2022 under the Russian presidency of the Security Council, just a few minutes after the start of an emergency session intended precisely to contain the risk of an escalation of tensions in the region, but a draft resolution presented the next day by the United States and Albania and aimed at reaffirming the sovereignty and territorial integrity of Ukraine and calling for the immediate withdrawal of Russian troops from the country, was immediately blocked by the Russian veto. Later the draft resolution of 30 September 2022 aimed at condemning the annexation of four Ukrainian regions met the same fate.

¹⁵⁶ ORGANIZATION OF AMERICAN STATES. **Statement from the OAS General Secretariat on the Russian attack on Ukraine**. 24 Feb. 2022. Available at: https://www.oas.org/en/media_center/press_release.asp?sCodigo=E-008/22. Consulted on: 9 Feb. 2024.

¹⁵⁷ AFRICAN UNION. **Statement from Chair of the African Union, H.E. President Macky Sall and Chairperson of the AU Commission H.E. Moussa Faki Mahamat, on the situation in Ukraine**. 24 Feb. 2022. Available at: <https://au.int/en/pressreleases/20220224/african-union-statement-situation-ukraine>. Consulted on: 9 Feb. 2024.

¹⁵⁸ UNITED NATIONS. Secretary-General. **Secretary-General, in statement on Ukraine, calls Russian Federation’s military offensive ‘wrong, against Charter, unacceptable, but not irreversible’**. 24 Feb. 2022f. Available at: <https://press.un.org/en/2022/sgsm21158.doc.htm>. Consulted on: 9 Feb. 2024.

¹⁵⁹ See MAIA, Catherine. *The Security Council and the use of force: between military power and powerlessness*. *African Yearbook of International Law*, v. 23, n. 1, p. 473-488, 2018.

More than a year after the outbreak of armed hostilities, while the International Criminal Court opened an investigation into the situation in Ukraine¹⁶⁰ and issued an arrest warrant for war crimes against the Russian head of State,¹⁶¹ the record is dramatic and there is no indication that the war will end in the near future. While Russian determination comes up against fierce Ukrainian resistance on the ground, supported by many Western countries, both parties are also making demands that appear irreconcilable. While the Security Council, the restricted organ of the UN with the highest decision-making power, has remained paralyzed in its action to maintain world peace, the General Assembly, as the plenary organ, has experienced a resurgence of vitality, enabling it to intervene to the aid of Ukraine (I) and to adopt a number of important resolutions (II). We seem thus to witness a shift in the center of gravity of the UN from a paralyzed Security Council to a revitalized General Assembly.

2 THE INTERVENTION OF THE GENERAL ASSEMBLY TO THE RESCUE OF UKRAINE

It is on the basis of its subsidiary responsibility for international peace and security (1.1) that the General Assembly was able to intervene to the aid of Ukraine by qualifying the Russian military operation as an aggression (1.2).

¹⁶⁰ See: MAIA, Catherine. Quel rôle pour la Cour pénale internationale face aux allégations de crimes en Ukraine? **Revue des Droits et Libertés Fondamentaux**, v. 17, 2022. Available at: <https://revuedlf.com/droit-international/quel-role-pour-la-cour-penale-internationale-face-aux-allegations-de-crimes-en-ukraine/>. Consulted on: 7 Feb. 2024; FERNANDEZ, Julian; UBÉDA-SAILLARD, Muriel. Agression de l'Ukraine: qu'espérer de la Cour internationale de Justice et de la Cour pénale internationale. **Le Club des Juristes**, 5 Mar. 2022; ESCOBAR HERNÁNDEZ, Concepción. Ucrania y la Corte Penal Internacional: una oportunidad para la Corte y para la lucha contra la impunidad. **Revista Española de Derecho Internacional**, v. 74, n. 2, p. 57-76, 2022. Available at: <https://www.revista-redi.es/redi/article/view/95>. Consulted on: 7 Feb. 2024.

¹⁶¹ On 17 March 2023, the International Criminal Court issued arrest warrants for Vladimir Putin, Head of State of the Russian Federation, and Maria Lvova-Belova, Commissioner for Children's Rights under the President of the Russian Federation, both suspected of having committed war crimes by illegally deporting and transferring Ukrainian children from the occupied regions of Ukraine to Russia. In this respect, see, in particular: MAIA, Catherine; HAMA, Kadidiatou. Les mandats d'arrêt de la CPI à l'encontre du président russe et de la commissaire russe aux droits de l'enfant: un coup d'épée dans l'eau? **Les Surligneurs**, 23 Mar. 2023. Available at:

<https://www.lessurligneurs.eu/les-mandats-darret-de-la-cpi-a-lencontre-du-president-russe-et-de-la-commissaire-russe-aux-droits-de-lenfant-un-coup-depee-dans-leau/>. Consulted on: 8 Feb. 2024; FERNANDEZ, Julian. Mandat d'arrêt contre Vladimir Poutine: la Cour pénale internationale a-t-elle franchi le Rubicon? **Le Rubicon**, 20 Mar. 2023. Available at: <https://lerubicon.org/mandat-darret-contre-vladimir-poutine-la-cour-penale-internationale-a-t-elle-franchi-le-rubicon/>. Consulted on: 8 Feb. 2024.

2.1 Based on a subsidiary responsibility in matters of peace

Under Article 24 of the UN Charter,¹⁶² the Security Council has the primary responsibility for maintaining international peace and security. This responsibility allows it to adopt binding measures in the event of a threat to world peace. However, as in the situation in Ukraine, the Council can be paralyzed in its action, especially when one of the five permanent members with the right of veto is directly or indirectly involved.¹⁶³ This right, stemming from Article 27 of the UN Charter,¹⁶⁴ allows its holders to block any condemnation and, *a fortiori*, any decision to impose sanctions on themselves.

Nevertheless, blocking the Security Council does not mean blocking the UN. Indeed, while the main responsibility for maintaining international peace and security rests with the restricted organ of the world Organization, a subsidiary responsibility of the plenary organ¹⁶⁵ can be based on Article 11, paragraph 2, of the UN Charter, according to which:

The General Assembly may discuss any questions relating to the maintenance of international peace and security brought before it by any Member of the United Nations, or by the Security Council, or by a State which is not a Member of the United Nations in accordance with Article 35, paragraph 2, and, except as provided in Article 12, may make recommendations with regard to any such questions to the State or States concerned or to the Security Council or to both. Any such question on which action is necessary shall be referred to the Security Council by the General Assembly either before or after discussion.

Reinforcing this idea of subsidiarity, Article 12, paragraph 1, specifies that: “While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests”.

¹⁶² In accordance with Article 24, paragraph 1, of the UN Charter, “[i]n order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf”.

¹⁶³ See MAIA, Catherine. Agressão de l’Ukraine par la Russie: réflexions sur l’impuissance du Conseil de sécurité. **Multipol**, 5 Mar. 2022. Available at: <https://reseau-multipol.blogspot.com/2022/03/analyse-agression-de-lukraine-par-la.html>. Consulted on: 13 Feb. 2024.

¹⁶⁴ In accordance with Article 27, paragraph 3, of the UN Charter, “[d]ecisions of the Security Council on all other matters [other than procedural matters] 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 a dispute shall abstain from voting”.

¹⁶⁵ In this respect, see BARBER, Rebecca. A survey of the General Assembly’s competence in matters of international peace and security: in law and practice. **Journal on the Use of Force and International Law**, v. 8, n. 2, p. 115-156, 2021. Available at: <https://doi.org/10.1080/20531702.2020.1776505>. Consulted on: 8 Feb. 2024.

In the absence of a possible political condemnation of the Russian aggression by the Security Council, the latter turned to the General Assembly, by reactivating, on 27 February 2022, the potential of Resolution 377 (V) “Uniting for Peace”, adopted in 1950 in the context of the war in Korea and unused for several years. This resolution, also known as the “Dean Acheson” Resolution (named after the US Secretary of State who initiated it), provides that:

if the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, breach of the peace, or act of aggression, 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.

The Acheson Resolution also provides for the Assembly to be convened by a simple procedural vote of the Council, i.e. not subject to veto:

If not in session at the time, the General Assembly may meet in emergency special session within twenty-four hours of the request therefor. Such 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.

When the conflict broke out between Ukraine and Russia in February 2022, there was obviously no unanimity among the permanent members of the Council as to the measures to be taken in response to this flagrant violation of the prohibition of the use of armed force, laid down in Article 2, paragraph 4, of the UN Charter. Consequently, at a time when the Assembly was not in session, the Council convened an emergency special session under Resolution 2623 of 27 February 2022,¹⁶⁶ which opened the following day. It has been the 11th session of its kind since the adoption of the Acheson Resolution.

2.2 Materialized by the qualification of aggression as a strong symbol

¹⁶⁶ Resolution 2623 proclaims that due to the fact that “the lack of unanimity of its permanent members at the 8979th meeting has prevented it from exercising its primary responsibility for the maintenance of international peace and security”, the Security Council “[d]ecides to call an emergency special session of the General Assembly to examine the question contained in document S/Agenda/8979” (UNITED NATIONS. Secretary-General. **Secretary-General, in statement on Ukraine, calls Russian Federation’s military offensive wrong, against Charter, unacceptable, but not irreversible.** 24 Feb. 2022f. Available at: <https://press.un.org/en/2022/sgsm21158.doc.htm>. Consulted on: 9 Feb. 2024).

Resolution ES-11/1 of 2 March 2022 is the very first adopted by the General Assembly during its 11th emergency special session.¹⁶⁷ Entitled “Aggression against Ukraine”, it has been adopted by a large majority of the 193 UN Member States, with 141 votes in favor, 5 against (Belarus, Eritrea, North Korea, Russia, Syria) and 35 abstentions.

It begins by recalling the cardinal importance of the principle of the prohibition of the use of armed force: all States have the obligation “under Article 2 of the Charter to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations, and to settle their international disputes by peaceful means”. It also recalls its Resolution 2625 (XXV) of 24 October 1970 on friendly relations and cooperation among States, as well as its Resolution 3314 (XXIX) of 14 December 1974 on the definition of aggression to qualify Russia’s action on Ukrainian soil as an “aggression”, a term rarely used in the practice of the Security Council, which usually prefers the categories of “threat to the peace” or “breach of the peace” laid down by Article 39 of the UN Charter.¹⁶⁸

Thus, reaffirming “its commitment to the sovereignty, independence, unity and territorial integrity of Ukraine within its internationally recognized borders, extending to its territorial waters”, the General Assembly “[d]eplores in the strongest terms the aggression by the Russian Federation against Ukraine in violation of Article 2 (4) of the Charter”, demands that “the Russian Federation immediately cease its use of force against Ukraine” and “immediately, completely and unconditionally withdraw all of its military forces from the territory of Ukraine within its internationally recognized borders”. It also calls for the respect of international humanitarian law and human rights by all parties, while denouncing the involvement of Belarus in this illegal use of armed force.

Certainly, the ambivalence of the expression of disapproval is regrettable since, in the case of a violation of a cardinal rule of international law, the verb “deplore” is coupled with the formula “in the strongest terms”. However, when it comes to diplomatic negotiations, achieving consensual formulations is notoriously complex. Certainly, the fact that the resolution has no binding force is equally regrettable, since it is only a recommendation, and

¹⁶⁷ UNITED NATIONS. General Assembly. **Resolution A/RES/ES-11/1, adopted on 2 March 2022.** Aggression against Ukraine. [New York]: UN, 18 Mar. 2022a. Available at: <https://digitallibrary.un.org/record/3965290?v=pdf#files>. Consulted on: 9 Feb. 2024.

¹⁶⁸ In this respect, see, in particular, COMBACAU, Jean. Le pouvoir de qualification du Conseil de sécurité. In: **70 ans des Nations Unies: quel rôle dans le monde actuel?** Paris: Pedone, 2014. p. 25-36.

does not in itself prescribe any sanctions¹⁶⁹. However, its political weight is considerable in that it measures the isolation of the Russian regime on the international scene and comes in support of the sanctions adopted by various States and organizations.¹⁷⁰

Furthermore, Resolution ES-11/1 demonstrates the persistence of multilateralism and the pre-eminence of international law, despite the severe blows inflicted on them. Paradoxically, this type of major attack on the principles of international law and peace between nations can unite the international community. The fact that only five States opposed the resolution – including two directly involved and targeted by it (Russia and Belarus) and three others with regimes considered authoritarian (Eritrea, North Korea and Syria) – is indicative of a massive adherence to the respect of rules as fundamental in the international legal order as the prohibition of the use of force, the inviolability of borders and the territorial integrity of States.

3 THE ACTION OF THE GENERAL ASSEMBLY IN THE CONTEXT OF THE CONFLICT IN UKRAINE

Once the qualification of an ongoing aggression has been established by the General Assembly, the question remains as to the scope of action of this body in the context of the conflict in Ukraine. In this regard, the Assembly has shown a dynamism that contrasts sharply

¹⁶⁹ Beyond the demands made with regard to Russia, Resolution ES-11/1 only asks the Emergency Relief Coordinator to provide, within 30 days, “a report on the humanitarian situation in Ukraine and on the humanitarian response” (UNITED NATIONS, 2022a, paragraph 13).

¹⁷⁰ Since the beginning of the conflict, there has been a veritable avalanche of sanctions against Russia, in addition to those already targeting it since its annexation of Crimea in 2014. Whether it is NATO, which has reinforced its troops present in the Baltic countries, the Council of Europe, which has excluded Russia from its membership, various world sports organizations, which have banned Russian teams from competitions, or even the many States which have adopted individual or concerted sanctions, the mobilization is vast. Among the organizations that have adopted sanctions, the European Union stands out for the unity it has succeeded in demonstrating, by adopting a series of sanctions comprising economic and financial restrictive measures, targeted individual sanctions, notably the freezing of assets against high dignitaries of the Russian regime, including the Russian President himself, as well as other measures as diverse as the supply of equipment and materials to the Ukrainian armed forces, a ban of all Russian carriers from flying over EU airspace, or the suspension of the broadcasting activities of Russian State-owned Sputnik and Russia Today. In addition, sanctions have also been taken against, on the one hand, Belarus, for its involvement in the invasion of Ukraine and, on the other hand, against Iran, for supplying drones to Russian forces. In this regard, see, in particular: BURGORGUE-LARSEN, Laurence. *La réaction des organisations internationales face à l’agression de l’Ukraine par la Russie: entre impuissance onusienne et renaissance européenne*. **Le Club des Juristes**, 28 Feb. 2022; DUPONT, Angèle; MARKUS, Jean-Paul. *Petit point sur les sanctions européennes contre la Russie depuis le début de la guerre, à la veille du onzième ‘paquet’*. **Les Surligneurs**, 22 May 2023. Available at: <https://www.lessurligneurs.eu/petit-point-sur-les-sanctions-europeennes-contre-la-russie-depuis-le-debut-de-la-guerre-a-la-veille-du-onzieme-paquet/>. Consulted on: 9 Feb. 2024.

with the paralysis in which the Security Council is immersed, as proven by the series of resolutions directly (2.1) or indirectly (2.2) linked to the conflict in Ukraine that have been voted in the context of its 11th emergency special session.

3.1 By voting resolutions related to the conflict

The first resolution of condemnation voted at the 11th emergency special session paved the way for various other resolutions related to the conflict. Thus, on 24 March 2022, in its Resolution ES-11/2 on the “Humanitarian consequences of the aggression against Ukraine”¹⁷¹ adopted by 140 votes in favor, 5 against and 38 abstentions, the General Assembly begins by reiterating the principles of prohibition of the use of armed force and respect for sovereignty, independence and territorial integrity, as well as its call for Russia to immediately, completely and unconditionally withdraw its military forces from the Ukrainian territory.

While the first weeks of the conflict were marked by the discovery of massacres, the General Assembly notes that the military offensive led by Russia inside Ukrainian territory is having humanitarian consequences on a scale that the international community has not experienced in Europe for decades. It expresses its concern at the disastrous humanitarian consequences of the conflict, in particular the high number of civilian victims, displaced persons and refugees in need of humanitarian aid, but also at the serious humanitarian consequences that an accident resulting from the bombing of Ukraine’s nuclear infrastructure could have.

The Assembly then firmly demands the immediate cessation not only of the hostilities, but also of the attacks directed against civilians and protected civilian objects, including civilian evacuation convoys, as well as indiscriminate and disproportionate attacks, while condemning the violations of international humanitarian law and human rights.

On 7 April 2022, in a third resolution, Resolution ES-11/3, the General Assembly reached a new milestone with the “Suspension of the rights of membership of the Russian

¹⁷¹ UNITED NATIONS. General Assembly. **Resolution A/RES/ES-11/2, adopted on 24 March 2022.** Humanitarian consequences of the aggression against Ukraine. [New York]: UN, 28 Mar. 2022b. Available at: <https://digitallibrary.un.org/record/3966630?ln=en&v=pdf>. Consulted on: 9 Feb. 2024.

Federation in the Human Rights Council”.¹⁷² Although the majority of support was more limited compared to the previous resolutions (with 93 votes in favor, 24 against and 58 abstentions), such a measure of suspension is nonetheless a powerful symbolic act and a rare precedent since, before Russia, only Libya had been previously ousted, in 2011.

Immediately after the adoption of this resolution, the Russian delegate, Mr. Kuzmin, took the floor to declare that Russia had decided that day to leave the Human Rights Council before the end of its mandate. Such a scenario is reminiscent of a similar one that took place at the Council of Europe, where the withdrawal of Russia, notified on 15 March 2022, had been telescoped the very next day by its exclusion by the Council of Ministers, a first in the history of this pan-European organization created in 1949 to strengthen democracy, human rights and the rule of law in Europe.¹⁷³

In the case of the Human Rights Council, before coming to a suspension, this body had previously adopted, on 4 March, a resolution¹⁷⁴ in which, after strongly condemning “the aggression committed by the Russian Federation against Ukraine”, it decided to urgently establish an independent international inquiry commission to investigate alleged human rights violations in the context of the Russian aggression against Ukraine, and called for the “swift and verifiable” withdrawal of the Russian troops and Russian-backed armed groups from all Ukrainian territory. This demand remained unheeded.

A few months later, on 12 October 2022, Resolution ES-11/4 was adopted by 143 votes in favor, 5 against (Belarus, Nicaragua, North Korea, Russia and Syria) and 35 abstentions. Through this fourth resolution, devoted to the “Territorial integrity of Ukraine”,¹⁷⁵

¹⁷² UNITED NATIONS. General Assembly. **Resolution A/RES/ES-11/3, adopted on 7 April 2022.** Suspension of the rights of membership of the Russian Federation in the Human Rights Council. [New York]: UN, 8 Apr. 2022c. Available at: https://digitallibrary.un.org/record/3967950/files/A_RES_ES-11_3-EN.pdf. Consulted on: 9 Feb. 2024. Russia had joined the Human Rights Council in January 2021 for a 3-year term as one of the 15 countries then elected by the General Assembly to this 47-member body. Symbolically, the vote to suspend Russia took place on the anniversary of the start of the 1994 genocide in Rwanda. The Ukrainian ambassador, Sergiy Kyslytsya, drew a parallel with this dark page of contemporary history, stating that the genocide in Rwanda was largely due to the indifference of the world community, the UN having failed to respond to the warnings of the Security Council and the General Assembly.

¹⁷³ MAIA, Catherine; GBÉNOU, André-Marie. Exclusion de la Russie du Conseil de l'Europe: une fragilisation de l'organisation paneuropéenne? **Le Temps**, 20 Mar. 2022. Available at: <https://www.letemps.ch/opinions/exclusion-russie-conseil-leurope-une-fragilisation-lorganisation-paneuropeenne>. Consulted on: 9 Feb. 2024.

¹⁷⁴ UNITED NATIONS. General Assembly. **Resolution A/HRC/49/L.1, adopted on 24 February 2022.** Situation of human rights in Ukraine stemming from the Russian aggression. [New York]: UN, 4 Mar. 2022e. Available at: <https://digitallibrary.un.org/record/3959073?v=pdf>. Consulted on: 9 Feb. 2024.

¹⁷⁵ UNITED NATIONS. General Assembly. **Resolution A/RES/ES-11/5, adopted on 14 November 2022.** Furtherance of remedy and reparation for aggression against Ukraine. [New York]: UN, 15 Nov. 2022d. Available at: https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/a_res_es

the General Assembly succeeded in doing what the Security Council had been prevented from doing again shortly before, on 30 September 2022, due to the Russian veto, namely condemning Russia's organization of illegal referendums in four partially occupied Ukrainian regions – Lugansk, Donetsk, Kherson and Zaporizhia – as well as their subsequent annexation aimed at changing the internationally recognized borders of Ukraine.

Furthermore, this resolution recalls certain essential principles of international law, including the obligation of all States under the UN Charter to refrain in their international relations from resorting to the threat or use of force, as well as the obligation under customary law not to recognize as legal any territorial acquisition resulting from the threat or use of force. Consequently, States, international organizations and UN specialized institutions are asked not to recognize any modification of the status of the regions concerned, and Russia is asked to immediately cancel its annexations and withdraw its military troops from the Ukrainian territory.

On 14 November 2022, in a fifth resolution dedicated to the issue of reparation, Resolution ES-11/5,¹⁷⁶ obtained by 94 votes in favor, 14 against and 73 abstentions, the General Assembly considers that Russia must be held accountable for any violation of international law in or against Ukraine, including aggression committed against this country in violation of the UN Charter, as well as for any violation of international humanitarian law and human rights, and that it must bear the legal consequences of all its internationally wrongful acts, including reparation for the damage caused by its acts. To this end, it recommends the establishment of an international compensation mechanism for damage, loss or injury resulting from internationally wrongful acts committed by Russia in or against Ukraine, as well as the opening of a register to collect evidence and document claims.

In addition to this series of texts, a sixth resolution, Resolution ES-11/6¹⁷⁷, was voted by the General Assembly on 23 February 2023, with 141 votes in favor, 7 against and 32 abstentions. Dedicated to the “Principles of the Charter of the United Nations underlying a

_11_5.pdf. Consulted on: 9 Feb. 2024. See in this regard MAIA, Catherine; GBÉNOU, André-Marie. Annexions russes de territoires ukrainiens: lorsque l'Assemblée générale condamne ce que le Conseil de sécurité est empêché de condamner. *Le Club des Juristes*, 31 Oct. 2022. Available at: <https://www.leclubdesjuristes.com/international/annexions-russes-de-territoires-ukrainiens-lorsque-lassemblee-generale-condamne-ce-que-le-conseil-de-securite-est-empeche-de-condamner-498/>. Consulted on: 9 Feb. 2024.

¹⁷⁶ UNITED NATIONS, 2022d.

¹⁷⁷ UNITED NATIONS. General Assembly. **Resolution A/RES/ES-11/6, adopted on 23 February 2023.** Principles of the Charter of the United Nations underlying a comprehensive, just and lasting peace in Ukraine. [New York]: UN, 2 Mar. 2023a. Available at: <https://documents.un.org/doc/undoc/gen/n23/063/07/pdf/n2306307.pdf?token=TWpk6Jj3viLzva5Hex&fe=true>. Consulted on: 9 Feb. 2024.

comprehensive, just and lasting peace in Ukraine” this text, which is intended as an appeal to end the conflict, recalls the importance of respecting territorial integrity, reiterates its request to Russia to withdraw its military troops from Ukrainian territory, and calls for a cessation of hostilities in order to achieve a comprehensive, just and lasting peace in Ukraine as soon as possible.

3.2 By voting to justify the veto on the margins of the conflict

In addition to the adoption of various resolutions directly related to the hostilities unleashed by Russia in February 2022, the context of the war in Ukraine also led to a renewal of UN practices concerning the right of veto, here again thanks to the impetus of the General Assembly. Thus, on 26 April 2022, the General Assembly adopted by consensus – i.e. without a formal vote – the Resolution 76/262 entitled “Standing mandate for a General Assembly debate when a veto is cast in the Security Council”.¹⁷⁸

According to this text, any recourse to the veto will automatically trigger a meeting of the Assembly within 10 working days, in order to debate the use of the said veto by all the UN Member States, provided that an emergency special session is not held on this same situation. This resolution, which is of immediate application, also decides that, during the debate in the Assembly, the list of speakers will give precedence to the country or countries that have vetoed, which will be invited to explain the circumstances and motivations behind their decision.

Such an invitation to enlighten the international community as a whole *a posteriori* and not *a priori* on the use of the veto leaves intact the discretionary nature of this prerogative. The permanent members of the Security Council can, therefore, continue to use the veto without any condition and without any obligation to provide their reasons. Nevertheless, the objective here is clearly to discourage the veto, due to the observation that

¹⁷⁸ See in this respect, MAIA, Catherine; GBÉNOU, André-Marie. La motivation du droit de veto au Conseil de sécurité au cœur d’une nouvelle résolution de l’Assemblée générale des Nations Unies. **Multipol**, 3 May 2022. Available at: <http://reseau-multipol.blogspot.com/2022/05/actu-la-motivation-du-droit-de-veto-au.html>. Consulted on: 9 Feb. 2024.

its use by the Council's permanent members is abundant, if not sometimes abusive. Since 1945, the vast majority of vetoes have been used by the Soviet Union and then by Russia¹⁷⁹.

However, such use of the veto undermines the mandate of the Security Council in favor of world peace. This observation has been further illustrated by the current conflict in Ukraine, since Russia has managed to defeat two draft Security Council resolutions concerning it directly: one on 25 February 2022, aimed at deploring the aggression committed by the Russian Federation against Ukraine and demanding the immediate withdrawal of its military forces from Ukrainian territory; the other on 30 September 2023, aimed at condemning the organization by the Russian Federation of illegal referendums in regions located within the internationally recognized borders of Ukraine. These vetoes thus bluntly highlighted the impossible condemnation of a permanent member by the Security Council¹⁸⁰.

While the veto power was originally established in favor of the founding members of the UN who emerged victorious from the Second World War, in order to respond to a concern for realism in the application of resolutions requiring the support of the world's major powers, today this privilege of the "club of five" is contested when it is used to evade the action of the Council.¹⁸¹ In the Ukrainian context, the use of the veto by the aggressor State to escape international condemnation appears both cynical and unacceptable.¹⁸² Cynical, because the

¹⁷⁹ According to the data available on the UN website as of 1 June 2023, since 1945, Russia/USSR has used its veto 152 times, followed by the United States 87 times, the United Kingdom 32 times, China 19 times and France 18 times. France and the UK have not used their veto since 1989 (source: <https://psdata.un.org/dataset/DPPA-SCVETOES>). Favorable to a reform of the Security Council, France and Mexico have for several years supported the voluntary and collective suspension of the veto by the five permanent members in the case of mass atrocities, in particular war crimes, crimes against humanity and crimes of genocide.

¹⁸⁰ One year after the adoption of Resolution 76/262, during the 68th and 69th plenary meetings of the General Assembly, several States expressed their regret that no application had been made of Article 27, paragraph 3, of the UN Charter, guaranteeing that "a party to a dispute shall abstain from voting" in decisions taken under Chapter VI on the pacific settlement of disputes (UNITED NATIONS. **General Assembly Holds First-Ever Debate on Historic Veto Resolution, Adopts Texts on Infrastructure, National Reviews, Council of Europe Cooperation**. 26 Apr. 2023b. Available at: <https://press.un.org/en/2023/ga12500.doc.htm>. Consulted on: 13 Feb. 2024).

¹⁸¹ In this regard, see, in particular: KOUDÉ, Roger. La sempiternelle question de la réforme du Conseil de sécurité des Nations Unies. *Revue Politique et Parlementaire*, 9 Dec. 2021. Available at: <https://www.revuepolitique.fr/la-sempiternelle-question-de-la-reforme-du-conseil-de-securite-des-nations-unies/>. Consulted on: 13 Feb. 2024; PAIGE, Tamsin Phillipa. Mission: impossible? Reforming the UN Charter to limit the veto. *Journal of International Peacekeeping*, v. 25, n. 2, p. 187-194, 2022; TRAHAN, Jennifer. **Existing legal limits to Security Council veto power in the face of atrocity crimes**. Cambridge: Cambridge University, 2020.

¹⁸² See KOUDÉ, Roger. Invasion de l'Ukraine: la Russie fait usage de son 'droit de veto' au Conseil de sécurité des Nations Unies. *Revue Politique et Parlementaire*, 28 feb. 2022. Available at: <https://www.revuepolitique.fr/invasion-de-lukraine-la-russie-fait-usage-de-son-droit-de-veto-au-conseil-de-securite-des-nations-unies/>. Consulted on: 13 Feb. 2024. For an overview of the veto issue, see, in particular, KELLY, Michael J. United Nations Security Council permanent membership and the veto problem. *Case Western Reserve Journal of International Law*, v. 52, n. 1, p. 101-118, 2020. Available at:

right of veto was conceived as the counterpart of a responsibility to respect and ensure the respect of the values of peace underlying the UN Charter. Unacceptable, because an abusive use of the right of veto undermines the credibility of the UN as the organization of the maintenance of international peace and security, giving permanent members of the Council a blank check to violate international law at little cost.

It is certainly regrettable that the General Assembly Resolution 76/262 is not binding and, consequently, that the State using its veto is not obliged to justify its decision, but is simply invited to do so, no form of sanction being provided for in the event of refusal. However, this resolution may shift the equilibrium established by the UN collective security system towards greater transparency and accountability of the actions of the permanent members of the Security Council concerning the use of an exorbitant power, as well as towards greater complementarity in the relationship between the Assembly and the Council.

Since the introduction of this new motivational mechanism, Russia has used its veto on three occasions: on 26 May 2022 (together with China), on the occasion of a draft resolution concerning new sanctions against North Korea due to the continuation of its nuclear program;¹⁸³ on 8 July 2022, on the occasion of draft resolution concerning a 12-month extension of the mechanism for delivering cross-border humanitarian aid to Syria;¹⁸⁴ and on 30 September 2022, on the occasion of a draft resolution concerning the condemnation of Russia's organization of illegal referendums in four Ukrainian regions and the declaration of the nullity of their subsequent annexation.¹⁸⁵ An open debate took place on each of these vetoes, with Russia willing to explain its motivations, followed by China in the case of the text on North Korea. Unsurprisingly, although the narrative went in the direction of blaming a politicization of international issues by the Western camp, the debate introduced a certain

<https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=2567&context=jil>. Consulted on: 13 Feb. 2024.

¹⁸³ UNITED NATIONS. Security Council. **S/2022/431**: United States of America: draft resolution. [New York]: UN, 26 May 2022g. Available at: <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/S%2022%20431.pdf>. Consulted on: 9 Feb. 2024.

¹⁸⁴ UNITED NATIONS. Security Council. **S/2022/538**: Ireland and Norway: draft resolution. [New York]: UN, 8 Jul. 2022h. Available at: https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2022_538.pdf. Consulted on: 9 Feb. 2024.

¹⁸⁵ UNITED NATIONS. Security Council. **S/2022/720**: Illegal So-Called Referenda in Ukraine: draft resolution. [New York]: UN, 20 Sep. 2022i. Available at: <https://undocs.org/Home/Mobile?FinalSymbol=S%2F2022%2F720&Language=E&DeviceType=Desktop&LangRequested=False>. Consulted on: 9 Feb. 2024.

degree of accountability for the use of the veto, while offering all UN Member States the opportunity to make their voices heard.

4 CONCLUSION

In the UN architecture, although the General Assembly and the Security Council have distinct mandates, they pursue a common goal, that of ridding the world of the scourge of war. The context of the conflict in Ukraine, involving one of the Council's permanent members, has undeniably led to a shift in the center of gravity of the collective security system set up by the UN Charter, from a Council conceived as the central organ but paralyzed by the Russian veto, towards a reinvigorated Assembly where the political responsibility to manage a situation blocked by the veto has flowed.

In an extremely tense geopolitical context with an uncertain outcome, this shift has strengthened the role of the General Assembly in promoting world peace, enabling this UN plenary organ to adopt several resolutions. While these recommendatory texts are only an imperfect palliative to the impasse in which the Security Council finds itself, they nonetheless have a strong political weight as a reflection of the concerns of the international community. In this respect, it is undeniable that the egalitarian representation of UN Member States in the Assembly confers on this plenary body – based on the principle of “one State, one vote” – a legitimacy which it can claim in the face of a Council whose membership is restricted and whose functioning can be hampered at any time by the veto. More than ever, at a time when international law is being so severely undermined, it is essential to forcefully reaffirm in the Assembly the commitment of States to the principles set out in the UN Charter, especially the prohibition of the use of armed force, the respect for the territorial integrity and political independence of States, as well as the obligation to settle disputes peacefully.

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GUERRA NA UCRÂNIA: A MUDANÇA DO CENTRO DE GRAVIDADE DAS NAÇÕES UNIDAS DO CONSELHO DE SEGURANÇA PARA A ASSEMBLÉIA GERAL

Resumo: Em 24 de fevereiro de 2022, o Presidente russo, Vladimir Putin, decidia desencadear uma vasta ofensiva das forças armadas russas por terra, ar e mar em todo o território ucraniano, no âmbito do que foi justificado como uma “operação militar especial”. Tal guerra lançada pela Rússia contra a Ucrânia veio evidenciar as deficiências da Organização das Nações Unidas quando está envolvido um membro permanente do Conselho de Segurança. Pois, desde o início das hostilidades armadas, o Conselho de Segurança, órgão de composição limitada assumindo a responsabilidade principal pela manutenção da paz e da segurança internacionais, permaneceu paralisado na sua ação pelo veto russo. Pelo contrário, a Assembleia Geral, órgão plenário, conheceu uma vitalidade renovada, que lhe permitiu intervir no auxílio à Ucrânia e adotar uma série de resoluções importantes apesar de não vinculativas. O centro de gravidade das Nações Unidas deslocou-se assim de um Conselho de Segurança imobilizado para uma Assembleia Geral revigorada e capaz de recordar os princípios essenciais do direito internacional, numa altura em que estes estão a ser tão maltratados.

Palavras-chave: Organização das Nações Unidas; Conselho de Segurança; Assembleia Geral; Rússia; Ucrânia; guerra; paz e segurança internacionais.