

TALLINN UNIVERSITY OF TECHNOLOGY

School of Business and Governance

Department of Law

Ivan Posadskyi

**LEGAL ISSUES OVER THE PRESENCE OF RUSSIA IN THE  
UNITED NATIONS SECURITY COUNCIL**

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Supervisor: Evhen Tsybulenko, PhD

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I hereby declare that I have compiled the thesis independently and all works, important standpoints and data by other authors have been properly referenced and the same paper has not been previously presented for grading.

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Ivan Posadskyi.....

(signature, date)

Student code: 194342HAJM

Student e-mail address: ivanposadskiy@hotmail.com

Supervisor: Evhen Tsybulenko:

The paper conforms to requirements in force

.....

(signature, date)

Chairman of the Defence Committee:

Permitted to the defence

.....

(name, signature, date)

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## **ABSTRACT**

The growing role and development of International Relations and globalization itself has made it necessary to clarify and revisit many existing terms and situations, alongside with developing new notions and approaches. In this framework, determining and clarifying previously shaded or general notions takes a major role in the process, as it is broadly known that new findings are based on what was done and known before.

With such a state of things, it is deemed necessary to understand the background of some problems to compose an appropriate approach in attempt to solve them or make the solving possible for others. One of such issues is, as some may know, the situation around the succession made by the Russian Federation after the disintegration of the USSR, overtaking its' place in the United Nations Security Council as a permanent member.

Alas, despite the succession itself did happen, even a shallow analysis of the events and timelines point towards the lack of legal grounds and procedures for that succession to have happened.

The main aim of this work is to dig in deeper into legal mechanisms and procedures that have led to that succession, by analyzing previous research, comparing expert opinions, and applying existing law principles to clarify and give an in-depth answer – was Russia's succession to the UNSC as a permanent member legal and legitimate?

Keywords: Russian Federation, state succession, Security Council, global security, Georgia, Moldova, Ukraine, Crimea, occupation.

## **INTRODUCTION**

The aim of this thesis is to investigate the legal issues arising from Russian Federation's succession to the Soviet Union in the United Nations Security Council. Specifically, the research here will be built upon the notions of legitimacy, conformity to the UN Charter and its principles. The research will consist of a legal analysis of core notions as well as definitions and cross-comparisons of similar cases in legal framework.

The question of Russia's presence and activity in the UNSC after the dissolution of the USSR was previously addressed by prominent scholars, such as Y. Z. Blum, A. Nikitin, D. Malone, I. Hurd, R. Mullerson, P. R. Williams, M. P. Scharf, B. Ustymenko, E. Tsybulenko, S. Sayapin, B. Kelichavyi, J. A. Francis, M. J. Glennon, L. M. Goodrich, D. Averre, K. Wellens, M. Berdal, E. Voeten and many others.

The aim of this work consists in the attempt to better scope the main issues of the problem of Russian presence in the UNSC, both as per historical factors (its succession) and its actual activity as a permanent member of the Council and as a UN member-state which is a major geopolitical power. This way, proposing solutions and further digging into the field would prove more effective with a consistent research-analysis available for future scholars.

The importance of this research is build on the necessity of having clear and specific relations between legal definitions and their real-world manifestations, as their relations is what constitutes the existing legal order, and its effectiveness is a direct evidence of the quality of this relation and its' consistency.

The research question around which the thesis is built is formulated as "Is the presence of the Russian Federation as a permanent member of the United Nations Security Council is legal and legitimate?". Built this way, the question would cover two main aspects of the work:

- 1) The legitimacy of Russia's succession to the USSR as the background for its' membership in the UNSC;
- 2) The compliance of the Russian Federation's foreign policy and activity to the legal principles laid down in the UN Charter;

The research method would be qualitative, as exploring legal notions and their manifestations in the real world and comparing one specific case to what already happened (as similar cases) would be two main instruments to this research.

The modern world, as it formed after the end of World War II, was supposed to be rooted in law and treaties as a major instrument of influence and problem solving, as the belief for armed interventions and power shows was vanishing in the shadows of two horrible wars happening in such a short period of time, bringing unprecedented catastrophic havoc to the people, economy and relations between states. The ineffectiveness of the League of Nations, which clearly couldn't do much to stop the tragedy from repeating itself, was the main factor that contributed to the understanding of necessity of an effective, strong and impactful instrument of international regulation to be created.

As brilliantly explained by Ian Hurd, the symbolic meaning and manifestation of an issue plays a substantively greater role in politics than the issue itself<sup>1</sup>. In this case, the long-desired security and prosperity was described as the need to create a body whose role would be to ensure peace and work to avoid the repeating of the two big tragedies mentioned above.

As such, the United Nations, and more specifically the UNSC, were created to accomplish what the League of Nations failed to: bring peace and security to the world. According to Bourantonis, "...the UN Charter recognized the Security Council as the organ with primary responsibility for international peace and security (Article 24), the maintenance of which would be realized in three ways. First, as outlined in Article 26 of the UN Charter, was the formulation of plans for the regulation of armaments. Second, international disputes or situations which were likely to endanger international peace and security would be settle in a peaceful manner following methods set out in Chapter VI of the Charter although 'decisions' of the Security Council would be framed as 'recommendations' and as such could have no legally binding effect on the members of the UN. Third, the Security Council was empowered to take enforcement action to deal with threats to the peace, breaches of the peace and acts of aggression."<sup>2</sup> This brings us to an understanding of the colossal responsibility and power that such a body would possess. To ensure that the decision-making process would be proportionate, safe and just, it's structure was to include 5 permanent and 10 non-permanent members to ensure a just and fair distribution of attention to all world regions.

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<sup>1</sup> Hurd, I. (2002). Legitimacy, power, and the symbolic life of the UN Security Council. *Global Governance: A Review of Multilateralism and International Organizations* 8.1

<sup>2</sup> Bourantonis, D. (2004). *The history and politics of UN Security Council reform*. Vol. 41. Routledge.

Moreover, since its' creation in 1945, 3 out of 5 permanent members had experienced some kind of internal change and/or governmental transformations that led them to be, in fact, other states than those that were originally admitted in the UNSC. Those cases are Russia succeeding to USSR, The People's Republic of China succeeding to the Chiang Kai-shek's Republic of China and France experiencing a reorganization, moving from the Provisional Government to the Fourth Republic and subsequently establishing as the French Fifth Republic under the leadership of Charles de Gaulle.

Those changes could not happen unaddressed, as they influence the policy that a permanent member in question would follow in international relations, including its' voting in the UNSC sessions. While they were all successful in the way that the successor had kept its' precedent's place in the UNSC, the formal process and background of some of the cases is worrying, if not disturbing – from a legal point of view.

Indeed, the disturbing cases are the USSR and China, mainly because France's change of government was nominal and reform-related, and not the result of a civil war (as in China) or the collapse of a supra-national entity (as with the USSR). Despite looking quite simplistic, those changes bear massive consequences, as the political "atmosphere" in those states was changing quite rapidly, potentially making the country's permanent membership in the UNSC an achievement of other political forces with different standings than the successors.

This is why an in-depth analysis that would take into account not only previous legal opinions, but the quick-changing political environment as well as the ever-growing framework of treaties, agreements and diplomatic exchanges is necessary, helping investigate such "old" and serious issues that potentially still create turbulences in world's global functioning to this day.

While indeed the issue has been addressed several times by many scholars, opinions are still divided between reforming the UNSC<sup>3</sup> and believing its' ineffectiveness is part of it due to its' nature<sup>4</sup> and will remain such as nothing can be done to substantially improving it<sup>5</sup>.

To address the problem adequately, this paper will focus on giving an answer to the question "Was Russia's succession to the UNSC after the fall of the USSR legitimate?". For that, the author will be first investigating the timeline of events and their impact on the decision power of USSR/Russia and those who represented them during the events in question, then comparing cases with "similar" other successions in the framework of the UNO itself, and finally by examining and reasoning

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<sup>3</sup> Morris, J. (2000). UN Security Council reform: a counsel for the 21st century. *Security Dialogue* 31.3

<sup>4</sup> Berdal, M. (2003). The UN security council: ineffective but indispensable. *Survival* 45.2 (2003): 7-30.

<sup>5</sup> Weiss, T. G. (2003). The illusion of UN Security Council reform. *Washington Quarterly* 26.4

with the impact of such a situation on the global peace and security through the framework of legal treaties and agreements existing to this days and related to the question.

First, it is necessary to revisit the timeline and emphasize the points of interest in order to start building a detailed map of the problem. The fall of the USSR was followed by a plethora of treaties both amongst its' former members and between international organizations/foreign countries, and the nature of the transition is quite obscure according to the procedure that former USSR member-states opted to follow.

Second, it is indispensable to bring up every similar case that may show the common points to look at in order to define what, how and under which circumstances makes a succession legitimate and lawful from an external perspective, and what clearly hints it's not a succession *per se*.

Third, analyzing existing legal treaties and documents would help solidify the whole reasoning in a legal framework, pointing out how previously discovered traits of a state transformation influence its' definition in a global and international community living and functioning under the rule of law, with respect for other states and global order.

Finally, a detailed conclusion summarizing every finding made will be done in the end of the work, helping point out the results of the work done and bringing understanding of the problem in the form of a bullet-point list of reasons and issues related/originating from the problem.



## **1. STATE SUCCESSION AND CASE OVERVIEW**

The complexity of the problem addressed in this thesis comes from the pluralism of its' nature. Out of all of humanity's "stimuli" – to call so driving powers that stimulate every major change in a more or less systematic way – there is, to this day, several that dominate the rest. According to Locke, "Though the legislative, whether placed in one or more, whether it be always in being or only by intervals, though it be the supreme power in every commonwealth, yet, first, it is not, nor can possibly be, absolutely arbitrary over the lives and fortunes of the people. For it being but the joint power of every member of the society... and nobody has an absolute arbitrary power over himself, or over any other, to destroy his own life, or take away the life or property of another. A man, as has been proved, cannot subject himself to the arbitrary power of another; and having, in the state of Nature, no arbitrary power over the life, liberty, or possession of another, but only so much as the law of Nature gave him"<sup>6</sup>. From this perspective, law is viewed as being secondary to life and property, which, in broader terms, may represent Culture and Economics, as there are more than enough proofs and theories that back up the statement that law is but a servant of society – which is shaped by economical and socio-cultural rules. In other words, in the framework of statehood, law is not the basis of society, but a mere set of rules to systematize and simplify interactions arising from economical (in the first place) and possibly cultural needs.

In other words, behind the reasons of each case of state succession lies not only legal background, but economical and cultural, that manifest into political relations if looked at from a certain angle. For the purpose of comparing how, when and where those "drivetrains" manifest and through which means, let's dig deeper into case examples of state succession and transformations occurring to states in relation to their membership in the United Nations Organization – as a first level example before moving to Security Council issues.

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<sup>6</sup> Locke, J. (1967). *Locke: Two treatises of government*. Cambridge University Press.

## **1.1. USSR and UNSC before Russia succession.**

In order to approach the issue accordingly and adequately, it is worth developing what the problem is and how it originated, before getting deeper into facts and arguments. As previously stated before, great superpowers agreed on the need to contribute to global peace and security through common efforts. Historically, it is recorded that “Moscow played a direct role in the formation of the United Nations, its principles, Charter and Security Council. At the Moscow Conference of allied states on 30 October 1943 the declaration by the four states on the Issue of Comprehensive Security was adopted, in which the Soviet Union and the Western allies for the first time declared the possibility of collective regulation of peace and security in a future post-war world. Point 4 of that Declaration postulated the “need to shape as soon as possible a comprehensive international organization aimed at maintaining international peace and security”. The Declaration established such principles for the future organisation as the sovereign equality of all peaceful states, large and small, the principle of the specific responsibility of great powers for the preservation and strengthening of peace, the need to coordinate their actions and cooperate in fighting against aggression not only in time of war, but also in a post-war world.”<sup>7</sup>. However, one aspect of the problem that United Nations are facing today (and already faced in the past) is the blurred gap between real actions and their background motives, ever-changing political and economic environment and other factors that may twist perceptions and standings of its’ members, leading to periods of change and metamorphoses that are temporary and fully depend on certain circumstances.

Such a circumstance can be seen in Moscow’s participation in the creation of the UN, and the fact it received a permanent seat in the Security Council as well. By the end of World War II, the USSR was on the same side as the Western Allies (USA, Great Britain, France) not only (and not mainly!) because Soviet officials of higher ranks were pursuing the same policy as the West, and not even because they were sharing the same view on geopolitics. The main reason of this standing was because the USSR was significantly involved in WWII ever since the Nazi Germany attacked it without ever declaring war, breaking all of the previously concluded agreements between the two (Despite, as some historical facts show it, the USSR were planning to act in the same way, they just never managed to do so). Additionally, the USSR was a global superpower at that time, making it just impossible to conclude a global deal on peace and security without them being a part of it. Notably, as brilliantly pointed out by Nikitin, “as powers with global interests, they could not be

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<sup>7</sup> Nikitin, A. (2012) Russia as a permanent member of the UN Security Council. Friedrich-Ebert-Stiftung, Global Policy and Development.

disinterested neutral peacekeepers.”<sup>8</sup>. In this context, Mr. Nikitin is mentioning global actors of the geopolitical arena – in this case specifically the founding nations of the UNO. As it goes according to the theory of a multi-polar world, there will always be several issues on which a disagreement will emerge between major political players – mostly economical and political reasons, because nobody likes or wants to lose power. What does this lead us to? It emphasizes the first point of a great controversy, where an actor with its’ own global interests is at the same time in charge of global security and peacekeeping.

Secondly, one other aspect of this controversy lies in a short-lapsed cascade of events that took place in 1991 with the dissolution of the USSR itself. Namely, as it was agreed on the Alma-Ata conference between member-states, the USSR as an entity ceases to exist, which means it should literally lose all rights and obligations it had and go politically extinct. As such, logically there could have been no succession between states, as at the very moment Russia would declare its’ intent to succeed, it should have been made clear there is nothing to succeed. Blum explains this with the following: “Apparently, at some point between 21 and 24 December 1991, there developed a recognition of this problem and of the resulting implications for Soviet membership in the UN in general, and in the Security Council in particular. It would seem that this belated realization also prompted the dispatch on 24 December 1991 (some 24 hours before Soviet President Gorbachev's resignation<sup>32</sup>) of Soviet Ambassador Vorontsov's letter asserting, on behalf of Russian President Yeltsin, that Russia was ‘continuing’ the Soviet membership in the UN. This claim of the Russian Federation - made some three days (and possibly sixteen days) after the dissolution of the Soviet Union - that it was ‘continuing’ the legal existence and hence the UN membership of the latter, must thus be considered - irrespective of its obvious political merits - as being seriously flawed from the legal point of view.”<sup>9</sup>. Such a situation implies that without emergency reaction from other members of the UN and the international community in general, the UN would face an unprecedented constitutional crisis – the Charter would state that one of the permanent members of the Security Council is, in fact, a non-existing state, breaking wholly the mechanism of voting and the very functioning of the UNSC. It is worth noting, however, that in matters of long-term consequences, a short-termed period of uncertainty wouldn’t damage global peace and security as much as further decisions did in the future.

Finally, despite formally the Security Council and the UN itself were functioning normally after USSR membership’s “transition” to Russia, it is mandatory to frame issues that are secondary to

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<sup>8</sup> Ibid.

<sup>9</sup> Blum, Y. Z. (1992). Russia takes over the Soviet Union's seat at the United Nations. *Eur. J. Int'l L.*, 3, 354.

the main problem – as with an unlawful and illegitimate “pretext”, the “consequences” and whole activity may be questioned as also being grounded on dust, potentially unveiling a chaotic scenario of zugzwang for the global order, the UN and peace and security themselves. In that case, proposing a solution/finding an option for fixing or remedying the problem would be vital and more than necessary. The complexity however lies not only in the need to dutifully investigate the problem *de facto* and *de jure*, but the quite limited period remaining in order to propose viable solutions and make grounded claims, as with each passing year and decade of inactivity, a “mistake” becomes history which is impossible to rewrite or influence anyhow.

As already abovementioned, one of the main concerns regarding the problem of succession of USSR by the Russian Federation lies in the manner of dissolution of the first, and thus questioning “who” and “what” the latter is claiming to succeed.

Cases of succession, break-off or cease of existence (also called continuation, separation or dissolution) between countries are not unusual to the point where the issue couldn’t had been addressed in a dueful manner. They are however first-hand in the context of security, as usually states undergo transformations of any kind in periods of turbulence, which is an issue for stability on a state-scale level for global peace. As an example of such situations, we can examine the cases of Pakistan, Czechoslovakia, and China – all of them being in different situations towards the UN, all of them undergoing a certain change and all of those cases having been addressed and solved.

## **1.2. India and Pakistan case**

First, let’s take a quick look to what happened with Pakistan and India in 1947 and why it matters for our analysis.

In 1947, the British Parliament adopted the Indian Independence Act, which parted British India into two new-formed dominions: India and Pakistan. Leaving aside all the economical, internal and non-related external issues that emerged from this transition, it is worth paying attention to what has been stated by the United Nations Secretariat: “From the viewpoint of international law, the situation is one in which a part of an existing State breaks off and becomes a new State. On this analysis, there is no change in the international status of India; it continues as a State with all the treaty rights and obligations, and consequently, with all the rights and obligations of membership in the United Nations. The territory which breaks off, Pakistan, will be a new State; it will not have the treaty rights and obligations of the old State, and it will not, of course, have

membership in the United Nations.”<sup>10</sup>. Despite after that some discussion arose between Legal and Political Committees of the UN, the following stating from the Legal Committee was approved by the General Assembly:

“1. As a general rule, it is in accordance with principle to assume that a State which is a Member of the United Nations does not cease to be a Member from the mere fact that its constitution or frontiers have been modified, and to consider the rights and obligations which that State possesses as a Member of the United Nations as ceasing to exist only with its extinction as a legal person internationally recognized as such.

2. When a new State is created, whatever the territory and the population which compose it, and whether these have or have not been part of a State Member of the United Nations, this new State cannot, under the system provided for by the Charter, claim the status of Member of the United Nations unless it has been formally admitted as such in conformity with provisions of the Charter.

3. Each case must, however, be judged on its merits.”<sup>11</sup>

The explanation provided here by the UN Legal Committee is a crucial point, as it, in fact, gives some criteria as to what process should be considered as bringing certain legal consequences to a state’s membership in the UN and, in case of the Russian Federation – the UN Security Council subsequently.

In order to build-up a ground for comparison, we will analyze two other cases – Czechoslovakia and China.

### **1.3. Czechoslovakia case**

Czechoslovakia was one of the original 51 countries to sign the UN Charter on 26 June 1945. Since then, the state has ceased to exist as a result of a dissolution and two new states emerged from it – the Czech Republic and Slovakia, both of which are considered its’ successors as of 1 January 1993, per the adopted act by the Federal Assembly of the Czech and Slovak Federal Republics on 25 November 1992.

Despite the Czech and Slovak Republics had signed an Agreement on the Membership in International Organizations which should have regulated who and how assumes Czechoslovakia’s

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<sup>10</sup> Yearbook of the International Law Commission 1962 (1964), available at: [https://legal.un.org/ilc/publications/yearbooks/english/ilc\\_1962\\_v2.pdf](https://legal.un.org/ilc/publications/yearbooks/english/ilc_1962_v2.pdf)

<sup>11</sup> UN GAOR, 2nd session, 6th Comm., 43rd meet., 7 October 1947, retrieved from: [https://undocs.org/en/A/RES/116\(II\)](https://undocs.org/en/A/RES/116(II)) on 2 April 2021

membership in the United Nations Organization, in fact none of the newly emerging countries did so, as both the Czech Republic and Slovakia subsequently separately applied for a membership.<sup>12</sup> In this case, the timeline of events fully explains itself and all actions and procedures were carried out legally and legitimately, as prior to the dissolution of Czechoslovakia, its' successor states agreed (or so it seemed) upon the procedure and manner of succession to be carried out. The date of dissolution was known ahead, as well as the states that should assume the rights, obligations and duties of the dissolving state – no legal mess was done from this point of view, and both states have been accepted as UN members shortly after proclaiming their independence – on the 19 January 1992. Additionally, the membership of Czechoslovakia in UN subsidiary organization was allocated to both Czech Republic and Slovakia as it was agreed between them by the abovementioned act.<sup>13</sup>

This example is a good contrast in general to the case of USSR dissolution, as succeeding states managed to settle all matters related to their assumption of rights and obligations that emerged when they were parts of the dissolving state well before it ceased to exist legally. Generally speaking, successors had made sure they will be identifiable in the framework of obligations assumed by Czechoslovakia.

Despite the well-handled legal side of this process, there is need to further address the political aspect of it, as just before Czechoslovakia began to dissolve, another state had found itself in a somewhat similar situation – Yugoslavia.

With Yugoslavia, the issue was the cease of existence of the Socialist Federal Republic of Yugoslavia as a consequence of the separation of 4 out of 6 socialist republics that formed it, and its' further reorganization into the Federal Republic of Yugoslavia. As a consequence of these events, the FRY attempted to proclaim succession over SFRY, which wasn't welcomed by the UN Security Council and by the General Assembly as well.<sup>14</sup> Moreover, FRY was prohibited from participating in the General Assembly at all, but the United Nations somehow permitted the continuation of a UN mission based on its' territory.

As a result, the well-planned agreement between Czechoslovakia's former states was not only related to good will or superior legal handling, but rather influenced by a real-life example of how things may turn without having enough political background and motivation to settle arising issues.

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<sup>12</sup> Williams, P. R. (1994) *The Treaty Obligations of the Successor States of the Former Soviet Union, Yugoslavia, and Czechoslovakia: Do They Continue in Force*. *Denver Journal of International Law and Policy* 23, 1.

<sup>13</sup> *Ibid.*

<sup>14</sup> Scharf, M. P. (1995). *Musical chairs: The dissolution of states and membership in the United Nations*. *Cornell Int'l LJ*, 28, 29.

As outlined by Mr. Scharf, “From the contrary ways that the United Nations handled these cases, one might conclude, as one commentator long ago suggested, that the question of succession to membership in the United Nations is less a question of law than one of political judgment, and that in such matters legal principles and Charter interpretation take a back seat to political and administrative convenience. Yet, careful analysis of these cases indicates that such a conclusion would mistakenly undervalue the important role played by legal theory and precedent in the context of succession to membership in the United Nations.”<sup>15</sup>

The author would specifically like to add it is always a question of both political judgment and legal principles, the only issue being their ratio and proportion.

#### **1.4. China case**

The case of China’s membership in the United Nations is based off of the existence of two separate governmental powers, each of them assuming they represent China historically, legitimately and lawfully.

Initially, in 1945, the Republic of China (ROC) was among the 51 original founding states of the United Nations Organization. At that time, it was ruled by the Chinese Nationalist Party, led by Chiang Kai-shek. Later, in 1949, a civil war broke up in China between Kai-shek and the Communist Party of China, who eventually forced the ROC to retreat from Beijing to the island of Taiwan. As a result, the territory of mainland China was fully out of control of the legitimate representants of the Republic of China, which soon led to several problems among which the so-called “dual representation” theory<sup>16</sup>, as well as attempts from both sides to delegitimize the other. People’s Republic of China was in control of all mainland China, while the Republic of China extended its’ influence only to Taiwan and few other small islands. As a result, the PRC was claiming to be the successor of the ROC, and the Taiwan government were claiming for the continuity of the existence of ROC and illegitimacy of the government occupying mainland China. In the first period of development of this situation, ROC representants were occupying China’s seat at the UNO, affirming their legitimacy and right to do so, and condemning PRC attempts to

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<sup>15</sup> Ibid.

<sup>16</sup> Hickey, D. V. (1997). US policy and Taiwan's bid to rejoin the United Nations. *Asian Survey*, 37(11), 1031-1043.

join UNO as it didn't match the UN Charter definition of "peace-loving state"<sup>17</sup> in regard of the civil war that happened and the subsequent expulsion of ROC to Taiwan.

Another important point worth investigating is the status of the island of Taiwan as such. As Chen explains, "In 1895, Taiwan was ceded by treaty to Japan as a result of the Sino-Japanese War and Taiwan became a colony of Japan until 1945. At the end of World War Two, after the Japanese surrender, General MacArthur instructed Chiang Kai-shek, then Generalissimo of the Republic of China, to administer Taiwan pending the resolution of its ultimate disposition. Thus, Chiang's Kuomintang regime acquired *de facto* control of the island as a form of military occupation on behalf of the Allied Powers."<sup>18</sup>

In order for this uncertainty to come to an end, the Allies forced Japan to sign the San Francisco peace treaty, which *de jure* put an end to the hostilities between Japan and the Allies after World War II. According to that treaty Japan was resigning from the island of Taiwan, however not specifying in favor of which state, which, in author's opinion, is a significant legal gap and not only the result of uprising tensions between the USSR and its' satellites on one side and the Western states on the other – as it is known, USSR minister of foreign affairs Gromyko refused to sign the San Francisco peace treaty, claiming it was a "separate peace", mainly because the claims of PRC over Taiwan were not reflected in the treaty.

Time passed, and after the outbreak of the Cold War and the shift of powers in the Asian region, the question of China's seat in the UN became more important, specifically in the back-then framework of a bipolar communist-capitalist world. This eventually led to the application on the 26<sup>th</sup> session of the United Nations General Assembly, by 17 UN member-states of the question about restoration of PRC's lawful rights to the China seat in the UN. Their main argument was rooted in the assumption that PRC is genuinely representing Chinese people, while ROC was only trying to deteriorate their position<sup>19</sup>.

According to Chen, "The shared expectation of the parties... was that Taiwan's status, though temporarily left undetermined, would be decided at an opportune time in the future in accordance with the principles of the United Nations Charter, notably the principle of self-determination of peoples and the Principle of non-use of force for acquisition of territory. Such an opportune time came and went some twenty-four years ago, when the United Nations failed to adopt a "one China, one Taiwan" formula to resolve the Chinese representation question in the United Nations.

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<sup>17</sup> Ibid.

<sup>18</sup>Chen, L. C. (1996). Taiwan, China, and the United Nations. New York Law School, [https://digitalcommons.nyls.edu/cgi/viewcontent.cgi?article=2221&context=fac\\_articles\\_chapters](https://digitalcommons.nyls.edu/cgi/viewcontent.cgi?article=2221&context=fac_articles_chapters), Accessed 10 May 2021

<sup>19</sup> Yearbook of the United Nations, 1971, pp. 127–128, 136



According to the "one China, one Taiwan" formula, both China and Taiwan would have been seated as separate states in the United Nations, with the People's Republic of China occupying China's permanent seat in the Security Council. However, in October 1971, the United Nations General Assembly, by Resolution 2758, voted to seat the People's Republic of China and to "expel forthwith the representatives of Chiang Kai-shek."<sup>20</sup>

The strangest trait of the expel of Kai-shek's representants was the absence of background for such a decision, as no evidence can be clearly brought up to point out that ROC had "consistently violated any principles of the United Nations Charter"<sup>21</sup> – a requirement under Article 6 of the Charter to justify the expulsion of a member.

The author strongly agrees with the opinion laid down by Chen, notably that "The leaders of China have good reasons to fear a formal debate over the status of Taiwan in the United Nations, for the facts speak for themselves. Taiwan is a sovereign, independent state in every sense of the word. The question today is to acknowledge Taiwan as an independent state in name as well as in fact. The fact of Taiwan's independent existence is well known in the world community; what is increasingly at issue is whether to call this sovereign, independent entity the Republic of China (ROC), the Republic of China on Taiwan, the Republic of Taiwan or simply Taiwan."<sup>22</sup>

As substantively explained by Campbell and Mitchell, "When Mao Zedong and Chiang Kai-shek ruled the mainland and Taiwan, respectively, the issue at stake was not whether there was only one China, but who its legitimate ruler was. Chiang sought to retake the mainland for the Republic of China (ROC), while the People's Republic of China (PRC) sought (and continues to seek) to bring the "renegade province" of Taiwan back into the fold, thus completing the Chinese communist revolution.

The one-China concept, however, has become increasingly blurred in recent years. The PRC has modernized its' economy, but its political system remains very similar to the one Mao created more than 50 years ago. Over the same period Taiwan has developed from an authoritarian state with a primitive economy into a prosperous free-market democracy. Although many observers in the PRC and some in the United States may still view the dispute over Taiwan's status as the last manifestation of a decades-old civil war, developments on the island over the past decade have changed the essential character of the divide.

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<sup>20</sup>Chen, L. C. (1996). Taiwan, China, and the United Nations. New York Law School, [https://digitalcommons.nyls.edu/cgi/viewcontent.cgi?article=2221&context=fac\\_articles\\_chapters](https://digitalcommons.nyls.edu/cgi/viewcontent.cgi?article=2221&context=fac_articles_chapters), Accessed 10 May 2021.

<sup>21</sup>Hickey, D. V. (1997). U.S. Policy and Taiwan's Bid to Rejoin the United Nations. *Asian Survey* 37, no. 11

<sup>22</sup>Chen, L. C. (1996). Taiwan, China, and the United Nations. New York Law School, [https://digitalcommons.nyls.edu/cgi/viewcontent.cgi?article=2221&context=fac\\_articles\\_chapters](https://digitalcommons.nyls.edu/cgi/viewcontent.cgi?article=2221&context=fac_articles_chapters), Accessed 10 May 2021

In 1991, Taiwanese President Lee Teng-hui officially recognized the ROC's lack of authority on the mainland - stating the obvious while effectively severing the lingering political bond between Taipei and Beijing. Then, last year, the Taiwanese people elected President Chen Shui-bian, who has advocated formal independence and whose party has had no ties and little contact with the mainland. Since taking power, Chen's government has questioned the PRC's 1992 declaration of a "consensus" on the one-China principle and has rejected Beijing's requirement that Taipei accept the principle as a prerequisite for dialogue, preferring instead to put the principle itself up for discussion."<sup>23</sup>

To summarize the China case, author suggests that political background had outperformed legal reasoning at the very moment Resolution 2758 was passed. Sadly, the moment the vote had been lost for Taiwan, the despicable behavior of PRC supporters was imprinted in Barbara Bush's memory as followed: "Once it was clear that we had lost the vote, the room went wild. Seated right in front of me were some people from the Tanzanian Mission. They turned and jeered and spit at me. I truly was shocked by the hatred they felt for us. It was so sad to see the lovely foreign minister from Taiwan walk out of the United Nations, his back straight and head held high."<sup>24</sup>

### **1.5. Timeline analysis of the Russia-USSR succession**

Before starting to analyze the succession process and the events that were intertwined with it, it is worth revisiting the very beginning of the relations between the United Nations and the USSR.

In 1945, three state entities have become founding members of the United Nations – the Ukrainian Soviet Socialist Republic, the Belarusian Soviet Socialist Republic, and the Union of Soviet Socialist Republic. Furthermore, the USSR obtained, along with 4 other states, a permanent seat at the UN Security Council, rooting itself even deeper into the United Nations in this way.

It is worth noting that no mentions of the Russian Soviet Federative Socialist Republic had ever being made in the context of these events.

The Soviet Union officially ceased to exist on 8 December 1991, with the signing of the Belavezha Accords between representants of Ukraine, Belarus and Russia, which officially stated that "the USSR as a subject of international law and a geopolitical reality no longer exists.". Since this moment, from a legal point of view, none of the former soviet republics could have had the possibility to claim succession over any USSR rights and/or obligations – as there is nothing to

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<sup>23</sup> Campbell, K. M., & Mitchell, D. J. (2001). Crisis in the Taiwan Strait?. Foreign Affairs, 14-25.

<sup>24</sup> Bush, B. (2015). "Barbara Bush: a memoir." Simon and Schuster.

succeed to. As therefore outlined by Bohdan Ustymenko, “On... December 21, 1991, the Council of the Heads of State of the CIS passed a decision that all the CIS states ‘...support Russia in succeeding the USSR’s membership in the UN, including permanent membership on the Security Council, and other international organizations...’.

But as follows from the content of the decision of the Council of Heads of State of the CIS, this document was signed only by 11 out of 15 constituents of the former USSR, without the participation and consent of the Soviet Union itself, following the termination of its existence.

On December 26, 1991, the Council of Republics of the Supreme Soviet of the USSR, with its Declaration No. 142-N, stated the termination of the existence of the Soviet Union as a state and a subject of international law in connection with the creation of the CIS, and, among other things, invited the heads of the Independent States to consider the issue of the succession of the USSR and union-level bodies of state power and administration, as well as on the ratification, execution and denunciation of international treaties concluded by the USSR before the creation of the CIS. That is, Declaration No. 142-N, together with other evidence, confirms the nullity of the decision of the Council of Heads of State of the CIS of December 21, 1991.”<sup>25</sup>

Apart from the issues listed above, there are several other important points worth considering while examining this situation:

1. The Constitution of USSR does mention but has no clear mechanism for the secession of its’ member states nor for its’ dissolution.
2. The United Nations Organization has no existing mechanism of succession for permanent members of the Security Council, nor for their replacement.
3. No treaties or agreements that were signed by the USSR contain any provisions on the replacement of the USSR by another member state at international organizations and/or bodies.

As we can see, the presence of Russian Federation in the UN Security Council does not look legitimate so far, as there are clear evidences of lack of legal ground, bend-and-warp of date of events (or more specifically – their consequences), and simply no mechanism or provision that could solve this legal dilemma in a right manner or justify the current state of things.

And as also explained by Blum, “all the constituent republics of the former Soviet Union adamantly and unambiguously asserted that the international legal personality of the Soviet Union had been extinguished; indeed, their very assertion of their independence rested on the claim, first articulated in the Minsk declaration of 8 December 1991 and subsequently repeated in the first

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<sup>25</sup> Ustymenko, B. (2021). Russia’s veto power at the UN Security Council is illegitimate. Legal analysis. Retrieved from: <https://informnapalm.org/ua/radbez-oon-russia> on 6 April 2021

Alma-Ata declaration of 21 December 1991 that the Soviet Union, as a subject of international law, had ceased to exist.”<sup>26</sup>.

Arguments stating that three former soviet republic had no rights to dissolve the Soviet Union as a whole, and that the remaining 9 republics that haven’t participated in the Belovezha Accords were still constituting the USSR by themselves are out of line, because shortly after, as outlined above, all 11 remaining republics (with Georgia participating as an observer) reaffirmed what has been agreed in Minsk by Ukraine, Russia and Belarus.<sup>27</sup>

Following what have been said, the question of legitimacy of Russian presence in the UN Security Council still remains unanswered, as exploring Russian Federation’s foreign policy and actions is a mandatory element in order to fully approach the question from all aspects, and not only from the issue of succession. Mr. Blum, however, states the following concerning the answer obtained regarding the transition from USSR to Russian Federation (and the whole Soviet Union disintegration process): “...might have also brought about the elimination of Soviet (and subsequently Russian) permanent membership in the UN Security Council. Such an outcome would have clearly precipitated a serious constitutional crisis for the United Nations: the resulting situation would have violated the explicit provisions of Article 23(1) of the UN Charter, as amended, under which the Council should consist of five permanent and ten non-permanent members. It is reasonable to assume that considerations of this nature played a major role in prompting the Secretary-General and the UN membership to accede to Russia's claim - however flawed legally - to be the ‘continuation’ of the Soviet Union.

Once this claim was accepted, it followed logically that the Soviet permanent seat in the Security Council also belonged to Russia.”<sup>28</sup>.

While from a logical standpoint such an opinion is acceptable and fully viable, the very assumption that one infringement may avert some unpleasant consequences is at best curious, in author’s opinion, as the level of responsibility allocated to the UN Security Council and its’ members is quite not an ordinary one. Of course, the outcome described by mr. Blum indeed hints towards a “constitutional” crisis for the UN, as provisions of Article 23(1) would indeed be infringed, but then again the situation is summed up to a choice of “lesser evil” – either the remaining permanent members accept Russia as a successor to the USSR (illegitimately) and stay integral, or they refuse, appealing to the abovementioned lack of legal grounds, and come up with an ineffective body of

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<sup>26</sup> Blum, Y. Z. (1992). Russia takes over the Soviet Union's seat at the United Nations. *Eur. J. Int'l L.*, 3, 354.

<sup>27</sup> *Ibid.*

<sup>28</sup> *Ibid.*

the UN that can't perform its' functions by the simple fact it is formally not operating under its' own provisions.

In author's opinion, the decision to admit Russian Federation as a permanent UNSC member instead of the USSR was a solution to the problem, but a very wrong solution – either way some legal and political consequences would have emerged, but trying to maintain the functioning of UNSC through potentially illegitimate and unlawful decisions will only compromise its' authority and reputation as the body that should ensure global peace and security.

As explained by Gardner and Gati back in 1991, “The best legal and political solution would be to give Russia the Soviet seat and admit the other nine republics as new members. Giving the Council seat to a Russia whose leaders are Western-oriented, dedicated to democracy and human rights and committed to developing a market economy would be the best assurance that Moscow's exceptional cooperation in recent years would continue. (Surely a condition should be that Russia would take over a suitable portion of the Soviet Union's financial contributions -- with the other republics picking up the rest -- and pay up the Soviet Union's arrears.)”<sup>29</sup>. As it can be seen from this opinion, the West was hoping for a warming in relations with (now former) Soviet Republics, very expected since the end of the Cold War.

While this is understandable and finds its' roots back in 1991 when a once strong and powerful USSR has dissolved into many smaller states, it has nothing in common with today's reality, where the Russian Federation is mainly capitalizing on being a permanent member of the UNSC through its' veto right, securing almost zero liability from the international community in regard of its' present deeds.

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<sup>29</sup> Gardner, R.N. and Gati, T. T. (1991). Russia Deserves The Soviet Seat. The New York Times.

## **2. RUSSIA'S FOREIGN POLICY AND REGIONAL SECURITY ISSUES**

The framework of this research is aimed at cornering legal issues and controversies existing in Russia's presence in the UNSC as a permanent member. While the formal part related to the succession is one of the main „pillars“ of the topic, it is necessary to investigate another aspect of Russian activity through the lens of its membership in the UNSC: its foreign policy, more specifically – in the surrounding areas, broadly described as post-soviet or post-USSR region.

The importance of this aspect lies in the deeper involvement of the Russian Federation in security matters in the region through its foreign policy than it is through its activity as part of the UNSC. Not only does the analysis provided in this section help understand the impact of Russian Federation on regional security (and hence, global as well), but it is also a curious issue if looked at through the prism of certain UN Charter clauses.

### **2.1. Overview of the situation**

In order to fully answer the question of legitimacy of Russia's presence in the UN Security Council, it is necessary to investigate not only the manner by which it obtained the permanent seat, but also at what extent it does/does not comply with the provisions of the UN Charter in terms of “peace-loving countries” and with regards to its' assumed duty of “maintaining international peace and security” both as a permanent UN Security Council member and as a major global power which it determines it is.

The region of the former member states of the USSR (including the territory of the modern organization of the Commonwealth of Independent States) has always been of key importance in terms of foreign policy and interests of the Russian Federation. In all unrecognized or partially recognized state formations in these areas, there is a significant influence from the Russian Federation, as most of the actions and decisions made by these state formations were accompanied by a clear imposition of the pro-Russian narrative to establish national interests that would correspond to the views and positions of the Russian political elite.

For example, the formation and support of informal political entities (de facto terroristic formations), the organization and provision of their armed forces. Despite the protests of the international community, attempts at international isolation and influence on the Russian Federation, which supported the unrecognized formations, these pseudo-state formations and paramilitary formations - Transnistrian Moldavian Republic, the so-called Donetsk People Republic and Luhansk People Republic, self-proclaimed Republic of Abkhazia, Nagorno-Karabakh Republic – they all continue their activities to this day.

They remain the territory of "frozen" conflicts with uncertain status and the same subsequent fate. Any attempt to actively resolve these conflicts politically could lead to an immediate intensification of the military confrontation. The situation in Donbass is an active conflict in which hostilities continuing for 7 years. The Russian Federation continues to use the DPR-LPR pseudo-states as an instrument of geopolitical pressure on Ukraine and political influence in the West. Regarding the situation in the NKR, Armenia and Azerbaijan cannot reach a consensus, not even start a dialogue with the development of a settlement of claims. Conflicts in Karabakh are periodically renewed, as exemplified by the new active phase of hostilities in September 2020. It must be acknowledged that neither the first nor the second example of the Minsk negotiation formats are effective in resolving such problems. More likely, they ensure the termination of the active phase of the war, rather than its solution.

Today, Russia claims to pursue a great-power policy and insists on a multipolar world order in which it is one of the centers of power. Strengthening Russian influence in the post-Soviet space helps the country's leaders maintain the image of Russia's greatness. Under Vladimir Putin, Russia seeks to increase this influence by promoting economic and political integration with the former Soviet republics, in particular by creating a Customs Union with Belarus and Kazakhstan and forming the Eurasian Economic Union (EAEU), as well as deepening Russia's cooperation with Abkhazia and South Ossetia and Transnistria. Russia's recognition of the Transnistrian Moldavian Republic, following the example of Abkhazia and South Ossetia, is currently not possible without increasing tensions in international relations and the escalation of existing conflicts over these states.

At the same time, Russia's attitude toward unrecognized republics has changed significantly over the past decade. Modern discussion and polemical doctrines demonstrate that the influence of the

Russian Federation on the source of conflicts, their escalation and stimulation of tension is obvious both through direct actions and through indirect intervention.<sup>30</sup>

## 2.2. Abkhazia and South Ossetia problem

One of the brightest examples of Russian policy in the former USSR region is Abkhazia and South Ossetia. Despite *de facto* it is claimed by Russia that these are two separate and „independent“ „states“, the two entities are a manifestation of the Russian-Georgian frozen conflict aimed at keeping Georgia in the Russian geopolitical orbit. As T. German described back in 2006, „Relations between Tbilisi and Moscow have been characterized by tension and mutual mistrust, ever since Georgia declared its independence after the collapse of the Soviet Union in 1991. The South Caucasian state has sought to maintain an autonomous and pragmatic foreign policy that removes it from the Russian sphere of influence and the new leadership in Georgia has been inclined to seek the engagement of external actors such as the EU, the Organization for Security and Cooperation in Europe (OSCE) and the US, demonstrating its desire to integrate with the West. This has upset Moscow, which is unhappy with its southern neighbor’s European leanings and rewarding relationship with Washington, particularly the growing US military influence in the South Caucasus.<sup>12</sup> Moscow is seeking to retain its influence over former Soviet states such as Moldova and Belarus, believing that it has “lost” Georgia and Ukraine to the West. President Vladimir Putin has insisted that Moscow will continue trying to influence affairs in former Soviet states, dismayed at perceived Western attempts to “manufacture democracy” in what it considers to be its own “strategic backyard.” As a result, Moscow has been seeking to re-assert its waning hegemony by means of political posturing and saber-rattling, attempting to manipulate separatist conflicts as foreign policy instruments. However, far from enabling Moscow to retain influence, its manipulation of events in regions such as South Ossetia and Abkhazia have hastened Georgia’s move towards the West, strengthening its desire to join organizations such as NATO and reduce the leverage that Russia has. Georgia has witnessed a veritable flood of assistance from the US: financial support for Georgia to date totals over US\$ 1bn, making Georgians the second biggest per capita recipients of American aid after the Israelis. The US\$ 64m “Train and Equip” (GTEP) program, which ran from 2002 to 2004, has been replaced by a 16-month, US\$ 64m Sustainment

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<sup>30</sup> Prykhnenko M.I. and Turko T.A. (2020). Russian Federation and the conflicts in post-soviet regions. Courier of Donetsk National University of Vasyl Stus № 2 (12). [Прихненко М. І., Турко Т. А. (2020) Російська Федерація у конфліктах на пострадянському просторі. Вісник Донецького національного університету імені Василя Стуса. № 2 (12), С. 141-144.]



and Stability Operations Program (SSOP) launched in 2005.. The democratic “revolutions” in Georgia and Ukraine are viewed as part of a Western conspiracy to usurp Russian influence, an opinion expressed in the government-controlled newspaper Rossiiskaya Gazeta in December 2004, which argued that “Russia cannot afford to allow defeat in the battle for Ukraine” as it “would mean velvet revolutions...in Belarus, Moldova, Kazakhstan, Kyrgyzstan and possibly Armenia.”

With the majority of the Abkhazian and South Ossetian population claiming Russian citizenship, Moscow is able to cite concerns for the security of its citizens as a possible motive for escalation of the conflicts. The Russian authorities did precisely that in July 2004 with the statement that Moscow “will not remain indifferent towards the fate of its citizens, which compromise the absolute majority of South Ossetia.”<sup>14</sup> This rhetoric has yet to be backed up by any real action and, despite 15 years of so-called “independence,” the secessionist regions are still a part of Georgia and neither de jure independent, nor a legal part of Russia. If Moscow really wanted to incorporate South Ossetia, then it has the means to achieve this. The fact that this has not happened indicates that, while it enjoys the leverage over Georgia that involvement in these conflicts lends it, it is not keen to actually take full control and propel itself into a full-scale war with a neighboring state.”<sup>31</sup>

Today, according to certain media, a large part of the population of the Republics of Abkhazia and South Ossetia are eager to "link their destiny" with Russia, emphasizing at the same time the passages voiced by state officials and referendums, which do not constitute any legitimate power neither de facto nor de jure. Russia, allegedly loyally expressing its vision of this process, completely rejects this version of events. At the same time, the Russian Federation does not waive its obligations under the agreements to provide economic, material, military and political support to the Republics of Abkhazia and South Ossetia<sup>32</sup>. It can be argued that international standings (both from the economic point of view and from the political and security perspective) have greatly increased and risen in comparison with the state of things that was observed in the 1990s.

Today, Russia's aspirations and efforts continue with renewed enthusiasm: in other words, Russia is performing new efforts to restore previously gained control and powerful influence in the Caucasus region. After Russia's recognition of Abkhazia's independence in 2008, apart from Russia, the international legal status of this quasi-republic among the world community was

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<sup>31</sup> German, T. (2006). Abkhazia and South Ossetia: Collision of Georgian and Russian Interests. *Russie. Nei. Visions*, 11, 16.

<sup>32</sup> Tkachenko S.L. Russian policy in the regions of the former USSR in 2000-2002. (2002). *Courier of Saint-Petersburg University* № 3 (6), 106 -114. [Ткаченко С. Л. Российская политика на территории бывшего СССР в 2000–2002 гг., (2002). *Вестник Санкт-Петербургского университета*. № 3 (6), С. 106 -114.]

officially supported by 7 states (all of them UN member states): Russia, Nicaragua (both since 2008), Venezuela, Nauru (2009), Syria (2018) and Vanuatu and Tuvalu (the latter were holding such a position only in 2011-2014, as they later abandoned the previously adopted resolution documents and changed their opinions) and South Ossetia (the situation with the recognition of this self-proclaimed state is identical and similar to Abkhazia). The Russian Federation is actively merging and assimilating economic, political, legal systems in accordance with the standards and state-constitutional system that exists and function on its' own territory. Alongside with that, Russia also deepens and develops formal cooperation with these states; The only difference between the policies involved in both of these states, is that South Ossetian relations are marked by a slightly higher level of mutual integration<sup>33</sup>.

Criticizing the Russian approach and overall standing towards the issue of Abkhazia and South Ossetia, German emphasized the point, claiming that “Unable to stop itself meddling in what they still consider to be its own backyard, Russian officials hold periodic meetings with the leaders of Georgia’s separatist regions and in September 2005 hosted a conference of self-proclaimed republics, the so-called Commonwealth of Unrecognized States, which included representatives from South Ossetia, Abkhazia and Transdnistr.<sup>15</sup> This tacit recognition by a major world power encourages the separatists to persist with their demands and balk at negotiations. South Ossetian officials have rejected a series of peace proposals put forward by Tbilisi, which offered considerable autonomy, on the basis that the region is already independent and agreeing to a deal would essentially represent a step backwards.. There were no official representatives from either South Ossetia or Russia at a peace conference held in Batumi in July 2005, at which Saakashvili unveiled new proposals to resolve the conflict, stating that the status quo is unsustainable and Georgia will aggressively pursue peace as he is not prepared “to wait for the next 100 years to resolve these problems.” According to the Georgian authorities, most of the key security positions in the South Ossetian administration are occupied by ex- or current Russian officials. Givi Targamadze, the chairman of Georgia’s parliamentary Defense and Security Committee, has described talks with South Ossetia as “pointless” because “the key posts in Tskhinvali are directly appointed by Russia,” while the local authorities have no influence.”<sup>34</sup>

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<sup>33</sup> Nizitska O.K. (2020). The security dilemma in the Black Sea and Baltic region. Scientific process and approach: methodics and conduction of researches. № 2 (18). [Нізіцька О. К., (2020). Дилема безпеки у Балто-Чорноморському регіоні. Науковий процес та наукові підходи: методика та реалізація досліджень. № 2 (18), С. 107-110.]

<sup>34</sup> German, T. (2006). Abkhazia and South Ossetia: Collision of Georgian and Russian Interests. *Russie. Nei. Visions*, 11, 16.

Russia's influence on the current and frozen conflicts in Eastern Europe can generally be described in the Kremlin's application of the following measures in generalized form:

- Recognition at the diplomatic level of some self-proclaimed quasi-state entities (in particular, in Georgia); attempts to "legitimize" their subjectivity in the international political arena (lobbying for the involvement of their representatives in the negotiation process);
- Provision of military support in the form of supply of weapons and equipment to illegal armed groups in the occupied parts of Moldova and Georgia and Ukraine; participation of regular troops of the Russian Federation in hostilities in the relevant territories.
- Financing of "leaders" on the ground in pseudo-state groups in the regions of Transnistria, Abkhazia, South Ossetia, DPR-LPR.
- Dissemination of propaganda rhetoric and pro-Russian connotations in the regional information environment in order to support its version of the causes and course of existing and frozen conflicts.
- Support for mass "conversion" to local or Russian citizenship of citizens of Moldova, Georgia and Ukraine in the occupied territories.

As per provisions of international law, and giving the fact that the Russian Federation occupies the seat of a permanent member in the UN Security Council, it is at least strange why such confirmed actions from Russian side are not addressed, as they constitute a heavy breach of the Charter provisions, hindering human rights, global peace and security – something that a permanent member of the UNSC is expected to enforce.

### **2.3. Nagorno-Karabakh problem**

A conflict mainly between Azerbaijan and Armenia, the Nagorno-Karabakh problem is nonetheless another example of Russian policy aimed at destabilizing peace and security in the area of its geopolitical interests. Cornell describes the traits of this conflict, stating that it "has led to over twenty thousands casualties and almost one and a half million refugees, a refugee flow which has resulted in a considerable crisis especially in Azerbaijan, with the number of displaced persons numbering close to one million. Over fourteen percent of the territory of Azerbaijan is occupied, territories which have been ethnically cleansed in the course of warfare of

their Azeri population by Armenian Forces. The conflict is regarded as an internal conflict by the major powers and international organizations, and the efforts of the international community to bring an end to the conflict have been half-hearted at best and exiguous at worst. The conflict over Nagorno-Karabakh clearly possesses an intra-state dimension, that of the struggle for independence on the part of the Armenian population of Nagorno-Karabakh. However, since the beginning of 1992 the conflict also possesses an inter-state dimension in the sense that it involved two sovereign states as belligerents: Armenia and Azerbaijan. The existence of three parties to the conflict, that is the governments of the two sovereign states as well as that of the unrecognized 'Republic of Nagorno-Karabakh' is a factor which has made a solution to the conflict all the more difficult"<sup>35</sup>

The situation here is completely different from previously mentioned cases. Russia is not directly involved in the conflict around it, the leading confrontation is between Armenia and Azerbaijan. It can be argued that Russia is a third party, but with a significant degree of influence: the vector of collaboration is manifested in domestic political lobbying, advocacy, information propaganda, as well as undisguised sponsorship of military groups and unidentifiable mercenaries.<sup>36</sup>

In the period from the early 1990s to the present, the evolution of Russia's foreign policy towards Nagorno-Karabakh is easily traceable. Despite this, the reasons for the resumption of hostilities in Nagorno-Karabakh in April 2016 are not fully understandable, as such full-scale high-intensity military operations with the simultaneous use of tanks and artillery took place for the first time since Baku, Yerevan and Stepanakert (the *de facto* center and capital of Nagorno-Karabakh) reached an agreement in 1994 and secured the front line after several years of active hostilities.<sup>37</sup>. It is believed that the Russian Federation, like many other neighboring countries in the region, is destructive to the negotiation process between the NKR (Armenia) and Azerbaijan. In February 2017, a constitutional referendum was held in the Nagorno-Karabakh Republic. According to its results, the NKR changed its status from a parliamentary to a presidential republic, giving the president more power. In addition, as in South Ossetia, the referendum put forward the question of the republic's adoption of a historical name (other than the existing one) - Artsakh. Azerbaijan and the Western public did not recognize the last referendum as valid, despite the fact that the last

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<sup>35</sup> Cornell, S. E. (1999). The Nagorno-Karabakh Conflict. Uppsala Universitet, [https://is.muni.cz/el/1423/podzim2012/MVZ208/um/35586974/Cornell\\_The\\_Nagorno-Karabakh\\_Conflict.pdf](https://is.muni.cz/el/1423/podzim2012/MVZ208/um/35586974/Cornell_The_Nagorno-Karabakh_Conflict.pdf), Accessed 10 May 2021

<sup>36</sup> Ibid.

<sup>37</sup> Smith, G., Law, V., Wilson, A., Bohr, A., & Allworth, E. (1998). Nation-building in the post-Soviet borderlands: the politics of national identities. Cambridge University Press.

referendum in the NKR cannot possess any internationally recognizable legal force. Russia's reaction to that was neutral. On the Nagorno-Karabakh issue, Russia has consistently adhered to the resolution of the conflict, taking into account the territorial integrity of Azerbaijan. At the same time, there is a gradual shift in Russia's policy in favor of taking into account the interests of Armenia.

Such a situation is not obvious from first glance, but major Russian influence is traceable in both parties' decisions and actions, varying only in scale and aim, but still putting the Russian Federation in a position of power and possibilities to end the conflict, instead of which the issue is still present on the table.

## **2.4. Transnistrian problem**

The conflict in Transnistria arose against the background of "discrimination" against the Russian-speaking population, so it initially had an advantage for Russian propaganda and agitation. According to some researchers, since the early 1990s, Russia has either directly supported or promoted the emergence of four separatist ethnic regions in Eurasia to increase its influence in countries emerging from the orbit of Russian influence. In each of these cases, Russia intervened in the internal conflict when it felt that its influence was under threat. Moscow has consistently stated that it has been forced to act on commitments to protect ethnic minorities, but this has usually been a secondary issue. Russia's actions are driven more by a desire for strategic advantage than by humanitarian or ethno-national reasons. "Promises to protect the Russian population or other minorities might have worked, but in reality, Moscow was forced to intervene by the desire of the governments of Azerbaijan, Georgia and Moldova to leave Russia's geopolitical orbit, rather than real or imagined persecution of minorities,"<sup>38</sup>.

Given Russia's repeated intervention in the situation in the separatist regions of the former Soviet republics, it could be assumed that the strategy has been successful in the past. In fact, every time Russia maintained the territorial integrity of a neighboring state in an effort to maintain its influence there, the result was the opposite. Moscow's support for separatist movements has forced Azerbaijan, Georgia and Moldova to fight their dependence from Russia and seek a new partnership with the West. The main problem is that supporting separatist movements most likely

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<sup>38</sup> Strategic and Security Studies Group. (2009). The Prydnestrovian problem: from Ukraine's point of view. Verity. [Група стратегічних та безпекових студій. «Придністровська проблема: погляд з України.» К.: Істина, 2009. 272 с.]

will reduce Russia's influence in the long run. It can hardly be considered a coincidence that of the former Soviet republics, apart from the Baltic states that joined NATO and the EU, Azerbaijan, Georgia and Moldova have been most active in reducing their dependence on Russia in the last 20 years. On the other hand, this process is interdependent, as Russia does not send troops to problem-free regions. There were many objective reasons for the outbreaks of tension in the very places where they arose. These reasons, as mentioned above, are historical, ethno-national, political and economic. The second point of criticism of the policy of the Russian Federation in the post-Soviet regions is the place in foreign policy, which is determined for the CIS member states and the former Soviet republics. Since the collapse of the Soviet Union, one thing has not changed in the Kremlin's tactics: Russia's paternalistic attitude toward its post-Soviet neighbors. Russia continues to view them as components of Russia's sphere of influence, where Moscow has "privileged interests." In the early 1990s, Russian leaders called the former Soviet republics "the near abroad." (literally meaning neighboring foreigners). Since then, the term has lost popularity, but the idea behind it – that the post-Soviet states in Eastern Europe and Eurasia are fully sovereign, and Moscow has special rights in them - is still relevant.<sup>39</sup>

Despite this, Russia has provided significant economic assistance to Transnistria, where there is a contingent of Russian “peacekeepers”. Russia's political elite, for the most part, sympathized with Transnistria. Today, the population of Transnistria has shrunk by almost half, according to the latest news, Russia has recently refused to give Transnistria money to help pay pensions, people live in poverty and are forced to go to Russia to earn money. Russia's position on the Nagorno-Karabakh Republic has some differences. There is no "discrimination" of the Russian-speaking population (it is practically absent there), this territorial entity does not gravitate to Russia, has no direct border with the Russian Federation, and, most importantly, this conflict is a matter of two sovereign states. With regard to Nagorno-Karabakh, Russia has consistently adhered to the principle of Azerbaijan's territorial integrity, but recently there has been a marked shift in Russia's rhetoric toward greater respect for Armenia's position as a partner in the Eurasian Economic Union (Eurasian Economic Union).

The general picture and scenario of actions of the Russian Federation can be unified and materialized on the example of Transnistria, and gives the ability to dissect Russian behavior and point out its main components. The main approach has a political aim and is characterized by the initiation and escalation of the conflict to the stage of armed confrontation with its further

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<sup>39</sup> Dungaciu, D. & Godzimirski, J. M., (2020). Russia and Frozen Conflicts in The Black Sea Region. New Strategy Center, The Norwegian Institute of International Affairs.

maintenance in an active phase until the object of geopolitical pressure of Russia begins to concede its own interests in favor of the latter. This set of measures consists of:

- support for the separatist movement in the Transnistrian region, where at that time troops under the control of the former Soviet Union were stationed (the 14th Army of the USSR Armed Forces with headquarters in Tiraspol was based in Moldova);
- militarization of the region through the distribution of military property, weapons and military equipment of the 14th Army between the parties to the future conflict on a territorial basis.
- creation, with the support of the 14th Army, of illegal military formations, which were not only provided with Russian weapons, but also manned by Russian servicemen.
- provoking an armed conflict between the separatist regime in the Transnistrian region and the Moldovan authorities by launching a large-scale information war against Moldova and systematically intimidating the Transnistrian population with the horrors of "violent Romanianization".
- intervention of units of the 14th Army in the course of the armed conflict on the territory of the Republic of Moldova on the side of the Transnistrian separatist regime, which ensured its military superiority.
- Russia's proposal to mediate in the conflict between the separatist regime and the constitutional government and the successful situational use of the inexperience of the then government of Moldova, which led to Moldova's approval of the Russian proposal and turned Russia into a mediator in resolving the conflict, giving it significant influence pressure on official Chisinau to determine its foreign policy priorities.
- the introduction of numerous economic restrictions in bilateral economic relations.

with the Republic of Moldova (since 2004 Russian-Moldovan economic ties have been gradually curtailed, in 2005 a ban on the import of fruit and vegetables to Russia was introduced, in 2006 imports of Moldovan wines and cognacs were suspended, the export of which is an important part income of the country). As a result, Russian businesses bought bankrupt Moldovan enterprises at lower prices and further resumed supplies of products to Russia by enterprises with Russian capital.

- creating a situation in which Moldova has to pay for services or goods that it has not ordered or used. Thus, by supplying natural gas to the Transnistrian region, the Gazprom company issues bills for it to official Chisinau, which, as we know, does not recognize PMR. This means that no one is currently paying for the gas supplied by the Russians: nor Tiraspol, because it does not have the funds to do so, nor Chisinau, as it does not plan to pay for goods that it did not buy directly. The Kremlin prefers not to remind Tiraspol of its debt, hoping that in the event of the reintegration of

Transnistria into Moldova, the debt will be recognized by official Chisinau, and in the event of Transnistria joining Russia, the TMR debt will be written off.

- expansion of Russian business into the Transnistrian economy, the purpose of which is to take control over the economy of "Transnistria". The direct consequence of Russia's economic expansion in Transnistria has been that the most attractive objects of the economy have been bought in bulk and at much lower prices. For example, the Moldovan TPP in Transnistria, which supplies electricity to all of Moldova, was sold to a subsidiary of RAO UES of Russia, Inter RAO, for \$20 million, despite its market cost was about \$150 million.

In the author's deep conviction, the abovementioned tendencies are a clear argument for Russia's rather inhumane, expansionist policy of intervention, when the state violates the sovereignty and unity of arbitrary states with the involvement of military potential and other armed formations. From a legal point of view, if we turn to the current provisions of current legislation of the Russian Federation, such statements have a completely legal and legitimate meaning. Constitution of the Russian Federation in paragraph 2, Art. 65 states that: "Admission to the Russian Federation and the creation of a new entity in its composition is carried out in the manner prescribed by federal constitutional law." In turn, the following legal act (Law "On the procedure for admission to the Russian Federation and the formation of a new entity") strictly and unequivocally indicates the essence of the adoption process: it is a procedure that involves changing the composition of the Russian Federation as a result of the accession to it of a foreign state or its part by voluntary agreement, appropriate initiative, implementation of interstate consultative measures and ratification of a duly executed proposal.

At the same time, such actions are nothing else but ignoring, neglecting, and expressing pure nihilism about the ideals of international law. An eloquent confirmation of this fact is the purpose and principles underlying the UN Charter and the Statute of the International Court of Justice, namely in Art. 1, which stipulates that the primary tasks of the UN and the Security Council are:

1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace.

2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace.



3. To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.
4. To be a center for harmonizing the actions of nations in the attainment of these common ends.

Despite the common features of Russia's support for the relevant conflicts in Eastern Europe, it should be noted that there are specific features of Moscow's policy towards each country in the region. The context of its relations with Chisinau in the framework of the Transnistrian conflict settlement includes support for an international consensus on the need to preserve Moldova's unity by granting special status to unrecognized Transnistria, but Russia has its own views and conditions on how to achieve this<sup>40</sup>. We are talking about Russia's promotion of its model of reintegration on the terms of federalization of the illegal "Transnistrian region" and granting the pseudo-republic broad autonomy within Moldova. If this scenario is successfully imposed on Chisinau, Russia will gain additional leverage to block Moldova's European integration prospects, as well as set a serious precedent for Georgia and Ukraine.

All of the abovementioned, while considered in the framework of Russia's obligations as a permanent member of the UN Security Council, given the fact how cynically Russian officials deny and/or warp Russia's involvement in all of the mentioned conflicts, as well as the global consequences of such policy and approaches for global security and peace slowly leads us to the conclusion concerning the legitimacy and legal grounds for Russian Federation's presence in the UN Security Council.

Those actions combined with the Russian Federation's veto power in the UN Security Council are believed by some to be a manifestation of a newly emerging phenomenon named "soft balancing"<sup>41</sup>.

As explained by Chaziza, "where hard balancing involves efforts to reconfigure the international system, soft balancing has less ambitious goals, centred mostly on raising the costs of action for the more powerful state. Precisely because the goals are less ambitious, it can become a particularly appealing foreign policy tool for second-tier nations"<sup>42</sup>.

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<sup>40</sup> Snihyr O. (2019). The security situation in the Azov-Black Sea region. Center for international studies. Retrieved from <http://da.mfa.gov.ua/wp-content/uploads/2019/05/TRAVEN-2019-Olena-Snihyr.pdf>. [Снігир, О. (2019) Безпекова ситуація в Азово-Чорноморському регіоні. Центр міжнародних досліджень. URL: <http://da.mfa.gov.ua/wp-content/uploads/2019/05/TRAVEN-2019-Olena-Snihyr.pdf>.]

<sup>41</sup> Chaziza, M. (2014). Soft balancing strategy in the Middle East: Chinese and Russian vetoes in the United Nations Security Council in the Syria crisis. China Report 50, no. 3.

<sup>42</sup> Ibid.

As further detailed by Pape on the example of the Bush administration security strategy, "... the United States has the right to attack and conquer sovereign countries that pose no observable threat, and to do so without international support, is one of the most aggressively unilateral U.S. postures ever taken. Recent international relations scholarship has wrongly promoted the view that the United States, as the leader of a unipolar system, can pursue such a policy without fear of serious opposition. The most consequential effect of the Bush strategy will be a fundamental transformation in how major states perceive the United States and how they react to future uses of U.S. power. Major powers are already engaging in the early stages of balancing behavior against the United States, by adopting "soft-balancing" measures that do not directly challenge U.S. military preponderance but use international institutions, economic statecraft, and diplomatic arrangements to delay, frustrate, and undermine U.S. policies."<sup>43</sup>

However, in this context the UNSC became a "battlefield" and a "graveyard" for all its participants, as the hard reality, as explained by Glennon, was merciless in that case: "The truth, therefore, is that the Security Council's fate never turned on what it did or did not do... American unipolarity had already debilitated the council, just as bipolarity paralyzed it during the Cold War. The old power structure gave the Soviet Union an incentive to deadlock the council; the current power structure encourages the United States to bypass it. Meanwhile, the council itself had no good option. Approve an American attack, and it would have seemed to rubber-stamp what it could not stop. Express disapproval of a war, and the United States would have vetoed the attempt. Decline to take any action, and the council would again have been ignored. Disagreement over Iraq did not doom the council; geopolitical reality did."<sup>44</sup> What the situation is about is that, in fact, on top of the complexity of interactions between UN Security Council permanent members in that framework, a disruptive and self-pursuing behavior from any number of them would be dreadful for the implementation of any possible solution to emerging problems.

Such steps undertaken by Russia are extremely dangerous, at least in the sense that it is a permanent member of the Security Council as the successor of the USSR. Therefore, the considered situation testifies to the inferiority of the existing methodological apparatus of repulsion and resistance to aggression. Thus, one can trace the emergence of regional, local conflicts in Nagorno-Karabakh, South Ossetia, Georgia, Transnistria, and Ukraine. Of course, each

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<sup>43</sup> Pape, R. A. (2005). Soft balancing against the United States. *International security* 30, no. 1.

<sup>44</sup> Glennon, M. J. (2003). Why the Security Council Failed. *Foreign Affairs*, vol. 82, no. 3, 16–35. JSTOR, [www.jstor.org/stable/20033576](http://www.jstor.org/stable/20033576). Accessed 21 Apr. 2021.

of these conflicts has its own traits and specificity<sup>45</sup>. But the fact is that in these wars the methods and technologies used are of indirect influence, non-traditional methods of warfare (the so-called hybrid warfare).

## 2.5. Donbas and Crimea

The last, but by far not least bright example of a frozen conflict and a manifestation of Russian political aim at maintaining control over the former USSR region through force and insurgency in the Donbas case, as well as the unlawful and illegitimate Crimea annexation. A brief introductory overview may be shaped from Francis and Tsybulenko's description of the case, notably „Much is known, to a degree, about the unlawful annexation of Crimea that took place on 20 March 2014; however, little is known about the continuous unlawful activities taking place in Donbas. Despite the fact that varying specific international resolutions and statements defined constitutive elements of the conflict within their right contexts, such as naming the situation as Russian aggression and identifying the presence of Russian regular troops, there are varying alternative and misleading terms utilized to tell the story of the conflict. On the one hand, some label the collaborators and even Russian troops as “rebels” and “separatists”; hence why some view the situation in Donbas as a “civil war”, “separatist action” or a “hybrid war”. Conversely, others label the collaborators as “Russian-backed forces” or “Kremlin-backed militants”, among other similar terms; hence, why others view the situation as much more than an internal conflict”<sup>46</sup>.

The Russian aggression in the East of Ukraine began in 2014, with an unprecedented invasion of governmental buildings and structures by armed people without distinctive signs, resulting in a total loss of control for Ukraine and subsequently emerging in the so-called “Donetsk People's Republic” and “Luhansk People's Republic” – by the names of the provinces whose partial territory has been occupied alongside with its main cities.

Similarly to the Georgian situation, the Donbas region in Ukraine has methodically been doused with Russian propaganda, spreading the agenda that miners and workers from Donbas are being

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<sup>45</sup> Panasenko G.S., (2020). “A time of military asymmetry: main actors of today.” *Actual Society* № 2 (21), 58-74. [Панасенко Г.С., (2020). Епоха військової асиметричності: основні гравці сучасності. *Сучасне суспільство*. № 2 (21), 58-74.]

<sup>46</sup> Tsybulenko E., Francis J.A. (2018) Separatists or Russian Troops and Local Collaborators? Russian Aggression in Ukraine: The Problem of Definitions. In: Sayapin S., Tsybulenko E. (eds) *The Use of Force against Ukraine and International Law*. T.M.C. Asser Press/Springer, The Hague, pp. 123-144

neglected by the Ukrainian government while in return Ukraine was mostly “dependent” off of their economical and industrial potential, while it wasn’t the case and their economical well-being was mostly coming from tight integration into Russian metallurgic industry, who capitalized on the imported ores, coal and other resources that were produced in the Donbas region.<sup>47</sup>

The hostilities that emerged in 2013-2014 were overall an unprecedented event in global politics – as in fact the Russian Federation, who is a permanent member of the UNSC, had manifested, orchestrated and conducted acts of aggression targeting another member of the UN – Ukraine, and further impairing its territorial integrity and aiming at its sovereignty.<sup>48</sup>

Furthermore, the Donbas situation alongside with the Crimean annexation again shows the global ambitions of the Russian Federation to maintain geopolitical authority among former USSR member-states by means of aggression and use of force, as the involvement of such actors as Igor Girkin (Strelkov) and Alexander Borodai in several of the mentioned conflicts shows that the effort is consistent, as notably pointed out by Kofman and others, “Frozen conflicts in the former Soviet Union provide pools of fighters from which Russia may draw. Russia can count on standing fighters in autonomous republics such as Chechnya and perhaps elsewhere in the North Caucasus (e.g., Abkhazia and Ossetia). Russia can hire combat groupings from these regions, where each conflict generates more fighters. The annexation of Crimea helped create volunteers to fight in the Donbas; with thousands of enlisted locals, armed Russian volunteers, and other trained fighters, it has offered a large resource pool for future wars.”<sup>49</sup>

Not only provoking and sustaining local conflicts in former Soviet states constitutes a heavy breach of the UN Charter in terms of security, but several secondary issues are as well consequences of those actions. As a recent example the Donbas fits perfectly as, according to Fischer, “The war years of 2014 and 2015 caused a dramatic economic collapse on both sides of the line of contact. Much of the industrial equipment and infrastructure in the areas of fighting was damaged, looted or destroyed. Supply chains were broken, trade ceased. The banking system collapsed and the region was cut off from the international financial transaction system. It is estimated that the region’s economy shrank by about two-thirds in 2014.<sup>58</sup> Payments of pensions

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<sup>47</sup> Kofman, M., Migacheva, K., Nichiporuk, B., Radin, A., Tkacheva, O., Oberholtzer, J., (2017). Lessons from Russia's Operations in Crimea and Eastern Ukraine. Santa Monica: RAND Corporation. [https://www.rand.org/content/dam/rand/pubs/research\\_reports/RR1400/RR1498/RAND\\_RR1498.pdf](https://www.rand.org/content/dam/rand/pubs/research_reports/RR1400/RR1498/RAND_RR1498.pdf). Accessed on 8 May 2021.

<sup>48</sup> Grant, T. D. (2015). Annexation of Crimea. *American journal of international law*, 109(1), 68-95.

<sup>49</sup> Kofman, M., Migacheva, K., Nichiporuk, B., Radin, A., Tkacheva, O., Oberholtzer, J., (2017). Lessons from Russia's Operations in Crimea and Eastern Ukraine. Santa Monica: RAND Corporation. [https://www.rand.org/content/dam/rand/pubs/research\\_reports/RR1400/RR1498/RAND\\_RR1498.pdf](https://www.rand.org/content/dam/rand/pubs/research_reports/RR1400/RR1498/RAND_RR1498.pdf). Accessed on 8 May 2021.

and other social benefits ceased from the end of the year, further exacerbating socio-economic hardship.”<sup>50</sup> Such a situation goes against the Charter’s provisions, notably art. 55, which clearly states the promotions of universal respect for human rights and universal freedoms – and it is a breach by the Russian Federation, who disregards international agreements in favor of geopolitical control over neighboring states.

Finally, the MH-17 flight takedown by a Russian anti-aircraft missile<sup>51</sup> launched from the conflict zone is an absolute disaster in terms of social and humanitarian consequences as well as proof of criminal disregard towards international law by default.

The very first statement of Russian media resources regarding the MH-17 crash was accusing the Ukrainian side to be responsible for shooting down the airplane. Russian media stated that the rebels present in Eastern Ukraine did not possess the means to perform such an act, and put all responsibility on Ukraine. It is however interesting how just few hours before that, another Russian media – LifeNews, had stated that the rebels achieved another victory over Ukraine by taking down a AN-26 of the Ukrainian Air Force. Clearly, those statements are about the same tragedy – the Malaysian Boeing crash.<sup>52</sup> Even more, there had been several other changing versions concerning what happened, notably statements that the cause of the crash was a Ukrainian jet missile, some time after – that the target was confused with Vladimir Putin’s official jet returning from a trip to Latin America, even after – that it was indeed a rebel Buk missile system, but that Russia had no involvement on it.

As for the Crimean situation, it appears to be different from everything described in previous chapters. The backstory behind the annexation is very well described by Biersack and O’lear: “Russia responded to the loss of a friendly government by setting events in motion that led to the annexation of Crimea. Russian government-friendly media and the Russian government itself condemned the new acting Ukrainian government as puppets of a EU/US-backed coup. The EU and the US both pledged to support the new Ukrainian government, further ensuring Russia’s sense of loss and continuing to make Ukraine a geopolitical battleground between Russia and the West; reducing the agency 248 J. Biersack and S. O’Lear of Ukrainians in media coverage of

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<sup>50</sup> Fischer, S. (2019). The Donbas conflict: opposing interests and narratives, difficult peace process. SSOAR, [https://www.ssoar.info/ssoar/bitstream/handle/document/62708/ssoar-2019-fischer-The\\_Donbas\\_conflict\\_opposing\\_interests.pdf?sequence=1&isAllowed=y&lnkname=ssoar-2019-fischer-The\\_Donbas\\_conflict\\_opposing\\_interests.pdf](https://www.ssoar.info/ssoar/bitstream/handle/document/62708/ssoar-2019-fischer-The_Donbas_conflict_opposing_interests.pdf?sequence=1&isAllowed=y&lnkname=ssoar-2019-fischer-The_Donbas_conflict_opposing_interests.pdf). accessed 8 May 2021.

<sup>51</sup> Conclusion of the investigation into the crash of flight MH17 in eastern Ukraine. Netherlands Public Prosecution Service, <https://www.prosecutionservice.nl/topics/mh17-plane-crash/prosecution-and-trial/court-sessions-june-2020/conclusion-about-the-investigation>, Accessed 10 May 2021.

<sup>52</sup> Bugorkova, O. (2016). MH-17 catastrophe: the changing Russian versions. BBC News, <https://www.bbc.com/russian/features-37496581> accessed on 7 May 2021.

events in Ukraine. The Russian government also said neo-Nazis and other far-right groups were now going to commit violence against ethnic Russians and Russian speakers in Ukraine. Ukraine and Western governments denied or played down claims made by Russia. Members of (some) right-wing Ukrainian groups played a prominent role in facing off against police on the streets of Kyiv and a few positions in the new Ukrainian government were given to representatives of these groups. The role of these right-wing figures fueled widespread Russian media portrayals of Ukraine as now controlled by a “fascist junta” that threatened Russians...<sup>53</sup>. Interestingly enough, no real threat to Russian living in Ukraine under a legal basis and being lawful citizens has never seen the day, further pointing towards the hyperbolization, if not clearly misinformation in the form of propaganda from the Russian Federation, seeking only further destabilization that would be beneficial for Russian goals in terms of creating the ground necessary to keep Ukraine further away from the West and attempting to maintain it in its orbit of influence.

Partially this propaganda was part of the springboard that the Russian Federation was capitalizing on in its preparation to annex Crimea. According to Kofman and others, “The circumstances of the Crimean annexation presented Russia with substantial advantages, which have only partial analogues elsewhere in former Soviet republics. These factors included the confined geography of the peninsula, its proximity to Russia, and its existence as a separate political unit within Ukraine. Russia not only had forces in place at its Black Sea Fleet, but legitimate transit arrangements that could be leveraged for a covert operation and the introduction of key military capabilities. The invading force benefited from such practical advantages, as well as from the historical legitimacy of Russian military presence in the peninsula and a commonality of language and culture, along with other social ties.”<sup>54</sup> It is worth noting, however, that some of the advantages mentioned by Kofman and others has no “natural” roots, as such factors like the commonality of language and culture of the people living in Crimea did not occur naturally, but in various forms were orchestrated by the Soviet government, notably in the form of deportation of the native population – the Crimean tatars, back in May-

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<sup>53</sup> Biersack, J., & O’lear, S. (2014). The geopolitics of Russia's annexation of Crimea: narratives, identity, silences, and energy. *Eurasian geography and economics*, 55(3), 247-269.

<sup>54</sup> Kofman, M., Migacheva, K., Nichiporuk, B., Radin, A., Tkacheva, O., Oberholtzer, J., (2017). *Lessons from Russia's Operations in Crimea and Eastern Ukraine*. Santa Monica: RAND Corporation. [https://www.rand.org/content/dam/rand/pubs/research\\_reports/RR1400/RR1498/RAND\\_RR1498.pdf](https://www.rand.org/content/dam/rand/pubs/research_reports/RR1400/RR1498/RAND_RR1498.pdf). Accessed on 8 May 2021.

June 1944, sanctioned by Joseph Stalin as a manifestation of the attempt to cut down national spirits and sow the narrative of the all-above-else “Soviet nationality”.

Now, moving on to the “legal” part of the annexation itself, let’s investigate the timeline, documents and decrees issued by Ukrainian, Russian and Crimean authorities back in 2014, and characterize their status towards national legal orders and international law provisions.

The first stone to collapse these events, apart from the Maidan protest and Russian will to maintain political influence over Ukraine, was the adoption by the Supreme Council of a declaration named “On the All-Crimean Referendum”, whose purpose was to set the basis for a future so-called “plebiscite” aimed at legalizing the framework in which the Crimean Autonomous Republic passed on from Ukraine to Russian Federation. The use of the term “so-called “plebiscite” by the author here emphasizes the major mistakes, breaches and legal problems that this event had, with the first and foremost being that such an issue cannot be raised on a local level, under the Ukrainian Constitution, but should be put on a state scale and be voted by the whole population of Ukraine.

The second worrying issue that points towards the illegitimacy and illegality of this annexation lies in the percentage of votes that have been cast on the “referendum” held for the annexation of Crimea. As explained by Grant, “The Russian Federation Presidential Council for Civil Society and Human Rights briefly posted an analysis on its website indicating that no more than 60 percent of votes were in favor of annexation and possibly as few as 50 percent and that voter turnout was as low as 30 percent and not higher than 50 percent. However, the result as finally reported was 96.77 percent for the first option, with 83.1 percent of eligible inhabitants, not including the city of Sevastopol, casting votes.”<sup>55</sup>. This analysis hints us toward the idea that some possible vote rigging had been conducted in favor of the decision that would most benefit the Russian Federation.

The whole situation, with an emphasis on the lack of power for the Crimean Supreme Council to set such matters for plebiscite, was addressed as well by the Ukrainian side, and a request was submitted to the Constitutional Court of Ukraine. Much anticipated, the Court ruled out that it was the exclusive competence of an All-Ukrainian referendum to address such matters as the Crimean break-off.

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<sup>55</sup> Grant, T. D. (2015). Annexation of Crimea. *American journal of international law*, 109(1), 68-95.

Despite this, in the next few weeks after the so-called “referendum” took place, Russian President Vladimir Putin performed a set of actions, such as signing an act of recognition of the “Republic of Crimea”, and submitting requests to the Constitutional Court of the Russian Federation to inspect whether a treaty on the annexation of Crimea would contravene with the Constitution of the Russian Federation. At no surprise, the Court ruled that such a treaty would comply with international law on the grounds that it is concluded between two parties – which, according to international law provisions, was not the case, as Crimea was not recognized as being a “party” under international law for the purpose of an annexation agreement.<sup>56</sup>

Interestingly enough, if the issue of secession be investigated out of context, taking into account previous at least partially similar cases (formally), then the case of Kosovo has to be mentioned at once. Back then when the question of Kosovo as a new subject of international law arose, the Russian Federation strictly denied the existence of a possibility for a territory to secede from a state, except if “truly extreme circumstances, such as an outright armed attack by the parent State, threatening the very existence of people in question”<sup>57</sup> apply. Surprisingly enough, there has been, nor is to this day, any confirmed international report of Russians living in Ukraine being subject to restrictions of their rights and freedoms, not even in Crimea where they constitute a majority.

As a result, we can see a groundbreaking contradiction in the statements and standings of the Russian Federation, and again giving the context, it is not erroneous to assume that such behavior is hardly influenced by geopolitical interest and the desire of Russian establishment to maintain control over what it considers to be in its own orbit of influence.

To finish off the Crimean situation and with an emphasis on the breach of human rights, it is worth mentioning the current situation related to the water crisis currently happening in the peninsula. Following the annexation, Ukraine decided to cut off the water flow coming into the peninsula from a canal located in mainland Ukraine. Subsequently, this caused the beginning of non-

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<sup>56</sup> Ibid.

<sup>57</sup> Accordance with international law of the unilateral declaration of independence in respect of Kosovo. Written Statement of the Russian Federation, para. 88 (2009). <https://www.icj-cij.org/public/files/case-related/141/15628.pdf> accessed on 8 May 2021.



preceded drops in water on the peninsula, with a brief explanation of the situation as following: “For several months, cities in Russian-occupied Crimea have been rationing their water. In most of the region, authorities only provide water for six hours a day: three hours in the morning and three hours in the evening.

This crisis dates back to 2014 when Crimea, already under Russian occupation, voted in a referendum widely regarded as not free or fair to become a province of the Russian Federation. Ukrainian authorities subsequently blocked the North Crimean Canal which had been supplying over 85 per cent of the peninsula’s water supply.

Crimea has always been an arid region with comparatively little rain and snowfall. What rivers there are are significantly smaller in volume than the Dnipro, for example. In the 1950s, only 155 out of 926 settlements had consistent access to clean drinking water. This prompted Soviet authorities to begin constructing the Crimean Canal in 1957 – three years after administration of Crimea was transferred to the then Ukrainian Soviet Socialist Republic.

Completed in 1971, the canal diverted water from the Kahkovka Reservoir in southern Ukraine, fed by the Dnipro. With independence, maintenance of the canal was neglected and by 2013, water flows were just one-third of 1980s levels. Despite this, the situation did not reach critical levels until the canal was fully dammed in 2014.

For Ukraine, blocking the canal was one of the few methods it could employ to put pressure on Russia.”<sup>58</sup>

## **2.6. Suggestion of possible solutions.**

With an overview of the problems cited previously, there is a clear necessity for a solution that could solve or at least create the ground for solving them. In author’s opinion, a clear and simple approach that would have the capabilities of doing so is currently non-existing.

However, with the legal instruments available to the international community to this day, there are few interesting propositions that may remedy to the issue. In author’s opinion, there is at least 3

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<sup>58</sup> Mamo, C. (2021). Inside Crimea’s Water Crisis. Emerging Europe, <https://emerging-europe.com/news/inside-crimeas-water-crisis>. Accessed 8 May 2021.

possible approaches to solve the issue of illegal and illegitimate presence of Russian Federation in the UNSC. Those are:

1) Addressing the ICJ, in accordance with art. 96 of the UN Charter, with a demand on issuing an advisory opinion on Russia's conformity to the provisions of the said charter, resulting in a grounded legal opinion on whether the Russian Federation does or does not comply to the requirements and rules set by the UN and applied to UN members. In case if the ICJ indeed issues an advisory opinion where it would come to the conclusion that there are breaches and non-compliance in the actions and behavior of the Russian Federation, it would be subsequently possible to attempt to issue a resolution at the level of the General Assembly, which would deny Russia from participating in UNSC sessions, thus facilitating in some fashion the activity and functioning of the Security Council on some issues until the situation is revisited or resolved in another manner. According to provisions of art. 27 of the UN Charter, the absence of a permanent member on a meeting does not impair the possibility to adopt the draft resolution that is discussed. In this scenario, Russian Federation remains a permanent member of the UNSC, but is banned from taking part in the Council's sessions.

2) A second way to address the problem would be similar to the first one, but in some way would be more of a long-term "bet". As in the first case, an advisory opinion from the ICJ, or even a court ruling aimed at proclaiming the Russian Federation as an aggressor-state, with following economical sanctions applying until the situation changes in a positive way. This solution looks more probable, as there would be difficulties and wide debate over the possibility to deny a permanent member its ability to participate in Security Council sessions. Despite this, the world knows for a fact that political decisions that were in fact far from being legal were made, and they were the main reasons of the consequences that are discussed as issues in this paper.

3) The third, and, in author's deep conviction, most fantastic and unlikely way to address the problem of Russian presence in the UNSC and its veto power to any decision aimed at solving problems related to Russian Federation's actions and foreign policy would be for the United Kingdom, United States and France (for example) to simultaneously declare their desire to cancel their membership in the Security Council, thus putting up another "constitutional crisis" for the Security Council. As a consequence, a reformation process on terms of unanimous approval could be then launched, or, even more fantastically – a new global organisation substituting the UN could be then created, addressing from the beginning all known issues and imperfections existing today in the procedural organization of UN activity. The author acknowledges that this solution is unlikely to be considered at all due to the complexity and scale of the matter, however the potential

of resolving issues existing today due to the lack of efficiency of some of the existing provisions is beyond anything that could be proposed by any other solution.

## CONCLUSION

In conclusion, if shortly answering the research question, the hypothesis proposed in the introduction section proves itself. The Russian Federation's presence in the UNSC is indeed illegitimate and illegal, and while broader explanations are provided in the paragraphs, the main points of this statement are grounded in the following points:

- 1) Russian Federation bypassed in all terms the procedure of admission in the United Nations and succeeded USSR's seat as a permanent member of the UNSC in absence of any existing procedures on the matter.
- 2) Russian Federation claimed to succeed USSR at a moment where former USSR member states agreed that the Soviet Union had ceased to exist and all features it possessed as a legal entity are gone. In fact, at the moment Russian Federation allegedly claimed to be succeeding to the USSR it was already late – former members agreed to terminate the Soviet Union.
- 3) Russian Federation succeeded the USSR as a whole, despite in fact it logically should have succeeded only the RSFSR - Russian Soviet Federative Socialist Republic, which was the Russian member state of the USSR as a whole.
- 4) Russian Federation as a state entity is constantly breaking international agreements and infringing international law by the way it conducts its foreign policy, with denial of responsibility and use of hybrid means, and by the unlawful acts of aggression and geopolitical disturbance it orchestrates or performs by itself.

Each of the mentioned points constitutes a major issue in the legal field, causing consequences that impact global security and politics more severely than it would seem at first glance and much more than if they happened to be addressed by the international community. The author means here that it is not necessary to strip off Russia from its membership or permanent seat in the UNSC only because there has been legal mistakes made, but because the status that the Russian Federation has due to being a permanent UNSC member is partially the reason there is no strict response to Russia's aggression that would incentivize Russian establishment to opt for a change of behavior.

Furthermore, the path of “frozen conflicts” that was chosen by Russian Federation proves to be horrifyingly effective in modern reality, as there is no real response to this day to hybrid threats that Russia imposes on its neighbors both as a tool of dissuasion from inconvenient economical and political decisions (for Russia) and as a formal trait that makes them unable to perform certain actions as joining organizations that require their member to have no active conflicts happening on their territory at the time of admission. Even more – this opens vast possibilities of influencing decision-making in a state as long as it is still interested in regaining its territorial integrity and not losing its sovereignty – as soon as a country with a Russian-backed frozen conflict takes one step away from the path that would satisfy the Russian Federation, the threat of escalation of this conflict will come to life. Again, this shows that the approach chosen is rather not investing into global tendencies of humanitarian and peaceful development, but maintaining a certain authority as a major power in the first place.

Of greatest concerns are the consequences that arise from breaches of international agreements and legal provisions. The United Nations’ main goal, at the time of its creation, was to maintain global peace and security through means of non-aggressive methods, abstaining from the use of force and opting for other means of influence, mainly legal ones. The issue of a multi-polar world seems to take the upper hand if the methods used by the Russian Federation are at least not welcomed with steps that would penalize the perpetrator and restore peace and security according to UN standards.

Moving next, there is the humanitarian aspect of the path chosen by the Russian Federation. It is known and obvious that armed conflicts are followed by major disruptions in infrastructure, economical ties and social well-being of people living in the conflict zone or near its border(s). The UN Charter expressively states that the UN aims at cooperating in order to resolve such issues and enforce principles of humanism developed by the international community to this day. A logical assumption would be that members of the UNO should (and, to a certain extent, would) follow those principles and act accordingly to contribute to a due and full solution for such issues. Unfortunately, after examining existing sources and investigating the issue in this work, the author concludes that Russian Federation is not interested in addressing humanitarian problems in frozen conflict territories, at least not as a primary objective but perhaps as a bargaining argument in matters of achieving their ultimate goals for each situation they’re involved in. Furthermore, it appears that those issues constitute not even a secondary importance

matter for the current Russian establishment – not only are they disregarded or addressed in context of possible benefits for the Russian Federation’s goals, but Russia’s actions deriving from its involvement in frozen conflicts are disastrous for the international community – a brilliant and most sad example is the MH-17 passenger flight takedown in the Donbas area by a Russian anti-aircraft missile launched from Ukrainian territory uncontrolled by the Ukrainian officials. This case shows the sad reality of Russian Federation’s intents and miscaring attitude towards the possible outcomes of its deeds, as the story itself has a most disturbing timeline in terms of Russian official statements and comments on the situation.

In summary, apart from issues related strictly to legal matters, the problem of Russian war propaganda aimed towards supporting Russian Federation’s actions in conflict zones is another issue in terms of compliance to the UN Charter and principles of international law.

Another humanitarian aspect consists of consequences arising from Russian Federation’s actions and decisions towards territories it formally (and illegally) occupies, such as the Crimean water crisis that emerged in 2014 after Ukraine cut the water flow towards Crimea due to debts owed by the peninsula, which caused droughts and agricultural catastrophies unprecedented since times when Crimea was part of Soviet Russia. The issue is also ecological, adding another aspect of Russian foreign policy to the table, which is not covered by the framework of this research.

To sum up the findings in this article, the author would like to state that there is a whole plethora of legal and other issues related to Russian foreign activity that impacts global peace and security, and the complexity of the situation lies partly in the status of the Russian Federation being a permanent member of the UN Security Council, as well as in the current agenda of Russian officials, deriving from political, economical and historical desires to maintain a dominating place in regional affairs, and in this fashion staying a major force to consider in case of any activity of the international community or single states in the region of the former Soviet Union.

Future considerations should be aimed at researching possible means of influence towards state perpetrators that threaten regional (and global in the same way) security and peace. But giving the current problematic and specific nature of the issue, combined with the hybrid means employed by the Russian Federation, a solution is more likely to come from political institutions and the international community in fields that are not directly linked to the mentioned problems,

notably as applying sanctions, limiting Russian (specifically in those cases) economical influence and similar steps, aimed at raising the costs of such actions to dissuade potential perpetrators in the future of following a similar approach.

A potentially important matter is to research the possibilities of legally qualifying any impactful act or decision of a given state in terms of its relation to peace, security and respect of human rights and freedoms, giving how shady and uncertain they can appear if backed by hybrid means. Of course, the issue looks wide at first glance, but it is in the framing and defining of notions that some certainty may be found, including in addressing issues as the ones discussed in this paper. The importance of this matter is not fully developed to this day, as the nature of hybrid threats is first of all hard to frame in order to further qualify it, and it relies mostly on unexpected applications of regular instruments and means of influence. That is, the more a certain hybrid instrument is used, the better the world would be ready to deal with it, and the less “hybridity” it would have.

And, to finish off the conclusion, the author would like to point out that the framework of this research is based on the Russian example as it shows the scale and depth of how legal issues may further become political and economical problems, and even accumulate more and more traits, making them harder to address. The findings of this article may apply to any potential perpetrating state, as long as legal gaps or twisting of provisions, alongside with the silent approval of a wider international community would allow it.

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