

## UN General Assembly Resolution 76/262 as a Strengthening of the Collective Response to the Use of the Veto Right in the UN Security Council

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### Abstract

*The article describes the legal nature of United Nations General Assembly Resolution 76/262 (A/76/L.52) entitled "Standing mandate for a General Assembly debate when a veto is cast in the Security Council", adopted on April 26, 2022. We have analyzed this topic due to its relevance and the emergence of a new procedure of the United Nations General Assembly, aimed at increasing of the transparency and accountability of the United Nations Security Council, as a result of the ineffective activity of the Security Council in crisis in which our world finds itself today, in particular due to armed conflicts in Ukraine and the Middle East, which have led to complex humanitarian consequences. Many states and scientists have been expressing their interest in the issue of Security Council reform for a long time. We deeply researched the Resolution which is the first in a long time and a significant legal instrument that changes the existing mechanism of the functioning of the United Nations and has revived the discussions on the need for a complete reform of the Security Council in accordance with Resolution 62/557 of December 15, 2008. The purpose of the article is an overview of the new Resolution 76/262, namely the reasons and expediency of its adoption, cases of application and its effectiveness in modern conditions. The methodological basis of the study are the following general scientific and special methods of cognition of legal phenomena: the method of the philosophical level – the dialectical method; empirical methods – comparative, observation and description methods; general logical methods – analysis, synthesis; specially-legal method. The article analyzes the main provisions of Resolution 76/262, the reasons for its adoption, examines cases of its application, and draws conclusions about the effectiveness of this resolution. We have differentiated the procedures provided for by Resolution 76/262 "Standing mandate for a General Assembly debate when a veto is cast in the Security Council" and Resolution 377 (V) "Uniting for Peace". We have reviewed the international legal conceptual foundations of the need to apply the resolution. The topic of reforming the United Nations against the backdrop of the current world security crisis is very important and relevant for further research by domestic scientists in order to formulate their own proposals, approaches and*

*scientific justifications in the modern Ukrainian science of international public law, as well as for the scientific enlightenment of society in this of knowledge.*

**Keywords:** maintaining international peace and security; main UN bodies reform; Standing Mandate; Uniting for Peace; international conflict.

## **Резолюція Генеральної Асамблеї ООН 76/262 як посилення колективної відповіді на використання права вето в Раді Безпеки ООН**

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### **Анотація**

*Статтю присвячено дослідженню правової природи Резолюції Генеральної Асамблеї Організації Об'єднаних Націй 76/262 (A/76/L.52) під назвою «Постійний мандат на проведення дебатів у Генеральній Асамблеї в разі застосування вето у Раді Безпеки», прийнятої 26 квітня 2022 р. Актуальність теми зумовлено появою нової процедури Генеральної Асамблеї Організації Об'єднаних Націй, спрямованої на підвищення прозорості, підзвітності Ради Безпеки Організації Об'єднаних Націй, унаслідок неефективної діяльності Ради Безпеки в умовах кризової ситуації, в якій сьогодні опинився наш світ, зокрема через збройні конфлікти в Україні та на Близькому Сході, які призвели до складних гуманітарних наслідків. Питання реформи Ради Безпеки вже давно становить інтерес багатьох держав та науковців. Досліджувана в цій статті Резолюція є першим за тривалий час вагомим правовим інструментом, який змінює наявний механізм функціонування Організації Об'єднаних Націй та знову поживавив дискусії щодо необхідності суцільної реформи Ради Безпеки відповідно до Резолюції 62/557 від 15 грудня 2008 р. Метою цієї статті є огляд нової Резолюції 76/262, а саме: причин та доцільності її прийняття, випадків застосування та її ефективності в сучасних умовах. Методологічну основу дослідження становлять такі загальнонаукові та спеціальні методи пізнання правових явищ: метод філософського рівня – діалектичний; емпіричні методи – порівняльний, метод спостереження, метод описання; загальнологічні методи – аналіз, синтез; спеціально-юридичний. У статті проаналізовано основні положення Резолюції 76/262, причини її прийняття, розглянуто випадки її застосування та сформульовано висновки щодо ефективності цієї резолюції. Проведено розмежування процедур, передбачених Резолюцією 76/262 «Постійний мандат на проведення дебатів у Генеральній Асамблеї в разі застосування вето у Раді Безпеки» та Резолюцією 377 (V) «Єднання заради миру». Здійснено огляд міжнародно-правових концептуальних засад необхідності застосування резолюції. Тема реформування Організації Об'єднаних Націй на тлі сучасної світової безпекової кризи є дуже важливою та актуальною для подальших досліджень вітчизняних науковців задля формування*

*власних пропозицій, підходів та наукових обґрунтувань у сучасній українській науці міжнародного публічного права, а також для наукового просвітництва суспільства в зазначеній галузі знань.*

**Ключові слова:** підтримання міжнародного миру і безпеки; реформа головних органів ООН; Постійний мандат; «Єднання заради миру»; міжнародний конфлікт.

## Introduction

The issue of reforming the UN Security Council (hereinafter the UNSC) regarding the restriction of the use of the veto right by the permanent members of the UNSC, unfortunately, has not lost its relevance over the years and, on the contrary, is gaining more and more support among the countries of the world. Mahatma Gandhi once said, *"Be the change you wish to see in the world"*.

The purpose of this article is to review the new Resolution 76/262 (A/76/L.52), adopted on April 26, 2022, entitled "Standing Mandate for a General Assembly debate when a veto is cast in the Security Council" (hereinafter "Standing Mandate procedure"), the reasons and expediency of its adoption, cases of application and its effectiveness in modern conditions.

The issue of reforming the UN is not new for the scientific research of Ukrainian scientists, but this study of Resolution 76/262 is new for domestic science and has been covered in the works of some foreign scientists such as Rebecca Barber, Maurizio Arcari, Barbara Adams, Marina Lent та Anne Peters.

Renov E.V. rightly noted, *"The current composition of the UN Security Council is far from the Kantian ideal of perpetual peace, according to which the support of the world order should be ensured by the interaction of liberal democracies. Roosevelt's concept of "four policemen" (USA, USSR, Great Britain and China) also could not predict that one of them would turn into a criminal"* [1, с. 540]. Paul Niland points out, *"Russia's invasion of Ukraine is a watershed moment in world history that will have a profound impact on the future of international relations. If the United Nations wants to survive as an institution and remain relevant in the decades ahead, it must be ready to embrace fundamental reform"* [2]. Thus, in the context of the outlined vector of restrictions on the veto right of a permanent member of the UNSC and the agreed will of the world community in the direction of reforms of the main bodies of the UN, Resolution 76/262 acts as a logical step that outlines future changes in the processes of interaction of these bodies, especially in the context of maintaining international peace and security.

It is appropriate to mention the joint Political Statement of the governments of France and Mexico at the 70th session of the UN General Assembly (hereinafter the UNGA) regarding the voluntary abstention from the exercise of veto of

the permanent members of the UNSC in cases of mass atrocities, the crime of genocide, crimes against humanity and war crimes. In particular, the statement claims, *"We therefore consider that the Security Council should not be prevented by the use of veto from taking action with the aim of preventing or bringing an end to situations involving the commission of mass atrocities. We underscore that the veto is not a privilege, but an international responsibility"* [3]. Although this statement was supported among the permanent members of the UNSC only by France and the corresponding changes did not become a step towards reforming the UN, as of July 13, 2022, it was backed by 104 member states and 2 UN observer missions [4]. In addition, in July 2015 the Accountability, Coherence and Transparency (ACT) Group proposed a "Code of Conduct on Security Council Actions Against Genocide, Crimes Against Humanity or War Crimes", which calls on all members of the Security Council (both permanent and elected) not to vote against any credible draft resolution aimed at preventing or ending mass atrocities, as provided by paragraph 2 of the Code, *"... contains a general and positive pledge to support Security Council action against genocide, crimes against humanity and war crimes – to both prevent or put an end to those crimes. This is complemented by a more specific pledge to not vote against credible draft Security Council resolutions that are aimed at preventing or ending those crimes"* [5]. As of June 8, 2022, the Code of Conduct was signed by 121 member states and 2 permanent members of the UNSC namely France and Great Britain [6].

From the HLAB (High-Level Advisory Board on Effective Multilateralism) report, published in the spring of 2023 states, *"Today's UN Security Council is the highest profile example of failure in the multilateral system. Dominated by a small number of States and hampered by geopolitical polarisation, it has proven itself unable to respond to major risks to international peace and security. Without meaningful reform, the Security Council risks irrelevance"* [7, p. 8]. On July 21, 2023, UN Secretary General Antynio Guterres presented to the world "A New Agenda for Peace", which includes proposals in five areas, in particular, the 5th one is called "Updating our collective security machinery to restore its legitimacy and effectiveness". It establishes the following conceptual foundations, *"The world needs collective security structures that represent the geopolitical realities of today ... The New Agenda for Peace recommends urgent reforms to the Security Council to make it more just and representative, and the democratization of its procedures. It ... proposes revitalizing the work of the General Assembly and reforming the disarmament machinery, ... proposes enhancing the role of the Peacebuilding Commission. Peace is the driving force behind the work of the United Nations. Today's new threats to peace create new demands on us. ... The time to act is now"* [8].

As Renov E.V. notes, *"Currently, Ukraine is acting as the biggest driver of reforming the Security Council, as our state suffers from aggression from the permanent member of the UN Security Council, which uses the veto right for the impossibility of adopting resolutions aimed at support of Ukraine. ... The same situation we can see after February 24, 2022: Ukraine actively uses the platform of the General Assembly, when the Security Council agreed on only one statement (May 6, 2022, S/PRST/2022/3), which was limited to expressing deep concern about the maintenance of the peace and security of Ukraine"* [1, p. 540]. In particular, Adnan Mahmutovic emphasizes that, *"The Russian military intervention in Ukraine has been widely condemned as an act of aggression by the international community, including by the United Nations. Representatives of various states and international organisations, such as the Council of Europe, the OSCE, NATO, the EU, the African Union, the Economic Cooperation Organisation of Western African States, and the Organisation of American States have all strongly denounced the unlawful nature of the intervention and emphasised the importance of defending the basic principles of the international law"* [9, p. 9-10]. Patrycja Grzebyk rightly notes, *"... "special military operation" Russia started in February 2022 must be classified as a flagrant breach of the UN Charter and as an aggression, which was confirmed in the UN General Assembly and Human Rights Council in their resolutions. The same conclusion was confirmed in statements of the Institut de Droit International, International Law Association, American Society of International Law, European Society of International Law, and in many national ILA branches statements, i.e. by members of bodies devoted to the analysis of international law norms"* [10, p. 153-154]. *"From the very first days of military aggression, the Russian leadership was politically condemned by the majority of countries for unjustified military aggression against Ukraine. The country leaders, including Presidents of the United States, Poland, and France, the Prime Ministers of Great Britain, Canada, Lithuania, Germany, the UN Secretary General, policymakers and leaders of other international organizations denounced the war started by Russia in Europe, together with the Russian political regime headed by Vladimir Putin to start the unprovoked military aggression against a sovereign state"*, – V. Fedorenko and M. Fedorenko rightly mentioned [11, p. 37].

Thus, the full-scale armed aggression of the Russian Federation against Ukraine on February 24, 2022 undoubtedly became a catalyst for changes and active discussions of the international community in search of vital changes to bring the modern world order out of the crisis. The armed aggression of a permanent member of the UNSC was strongly condemned by many countries of the world, international organizations, human rights defenders and the world community. Awareness of the hopeless position of the UNSC in this crisis has once again brought to the fore the need to reform the established mechanism of activity

of the main UN bodies, in the context of maintaining international peace and security. Ukraine, which is actively involved in political support and which actively uses legal mechanisms within the UN as the main means of peaceful resolution of the conflict, can rightly be considered as the engine of the process of reforming the activities of the UN.

As Paul Niland points out, *"Almost twenty months since the invasion began, few would argue that the devastating scale of Russia's attack on Ukraine has highlighted the shortcomings of the United Nations. ... How can a country engaged in Europe's largest invasion since World War II and led by a man wanted by the International Criminal Court for war crimes be allowed to undermine an organization committed to maintaining world peace? The absurdity of Russia's position among the five permanent members of the UN Security Council is fueling calls for fundamental reform of the United Nations. For two years in a row, the reform of the United Nations Security Council has featured in US President Joe Biden's annual address to the UN General Assembly"* [2].

### **Materials and Methods**

The materials for the study were a universal international treaty, namely the founding document of the United Nations, resolutions of the UNGA, reports of international non-governmental organizations, reports of UN structural divisions, positions of state governments, political statements of states, proposals for UN reform made by special working groups, results of scientific researches of domestic and foreign scientists.

The basis of the methodology of this study is a comprehensive approach to the analysis of Resolution 76/262 adopted on April 26, 2022 entitled "Standing Mandate", in particular, the features and requirements of its functioning, effective application one year after its adoption, which consists in the application of the philosophical level method, in particular, dialectical method. This method allows to study the struggle of opposites in the process of continuous development of this or that phenomenon, in our case it is the development of the system in which the United Nations Organization functions. We researched the historical direction of development and comparison of the old and the new. Thus, within the chosen topic, we can talk about the study of the functional purpose of the "Standing Mandate" procedure, its internal contradictions both in formal consolidation and in practical activity; comparison with other procedures. The article analyses the historical development movement, evaluates qualitative and quantitative changes, which will allow to form the following mutual transitions to qualitative and quantitative changes through the reform process, justifies the need to introduce changes to the existing system of UN activities.

Furthermore, we used empirical methods such as comparative, observation and descriptive methods. The comparative one is used to establish the content of the legal norms of the "Standing Mandate" Resolution and the "Uniting for Peace" Resolution. The observation one is an integral part of the study, because the UN is not only an organization under the influence of the law, but also too strongly influenced by the political decision of a great power or a camp of states, which creates the main obstacles to effective functioning and, again, creates a struggle "law" – "politics". The process of development to a certain extent is activated during and after the end of world crises, wars, which highlight existing defects in one or another system. Therefore, in order to review and evaluate the effectiveness of the changes, observation with further description of the decisions made within the UN, proposals of states, world leaders, peace formulas, reform projects, resolutions of the UNGA, decisions of the UNSC are necessary. Descriptive is a logical result of observation, but with separation and structuring of the main material.

Among the general logical methods, the following were used, analysis - a detailed study of the process of adoption of Resolution 76/262, and cases of its application, contradictions in the possible procedural functioning of Resolution 76/262, as well as facts, decisions, changes taking place in the world today; synthesis – on the basis of the conducted analysis, the development of an efficiency assessment and justification of the reform of the existing system.

A special legal method was also applied – to study the provisions of international legal documents regarding innovations in the activities of the UN.

## **Results and Discussion**

### ***Overview of the "Standing Mandate" Resolution***

Since the beginning of the Russian Federation armed aggression, the permanent member of the UN Security Council, against Ukraine, the world community can once again observe certain changes in the issue of reforming the UN and its main bodies. The armed aggression launched on February 24, 2022 highlighted the urgent need to reform the existing legal mechanisms within which the UN operates. As Adnan Mahmutovic notes, *"The ongoing conflict in Ukraine, like the one in Syria, is a bloody business because of the devastating impact on the lives of ordinary people, and it is the responsibility of the international community to take action to prevent and resolve these conflicts. This bloody business has shaken the international order to its core and now represents one of the main global security challenges"* [9, p. 2].

There is a need to overcome the veto right of a permanent member of the UNSC and for the UNSC to work effectively in the matter of maintaining international

peace and security, as the main body of the UN on which the member states have entrusted the main responsibility in this area (Article 24 of the UN Charter) [12]. The UN Security Council is a body whose decision UN members obey and are obliged to implement (Article 25) [12]. The UNSC is empowered to make decisions on the application of sanctions to a state whose actions threaten international peace and security, including collective armed measures (Chapter VII) [12].

*"The United Nations, including its most powerful organ, 'exists in a world of sovereign states, and its operations must be based in political realism. But the organization is also the repository of international idealism, and that sense is fundamental to its identity.' This characterisation of the UN by the International Commission on State Sovereignty and Intervention (ICISS) seems more pertinent than ever. ICISS had, twenty years ago, opined that '[t]he task is not to find alternatives to the Security Council as a source of authority, but to make the Security Council work much better than it has'",* notes Anne Peters [13].

From the point of view of awareness of the need for changes in the issue of the reform of the main bodies of the UN, we consider it necessary to pay attention to the Resolution of the UN General Assembly № 76/262 entitled "Standing Mandate" of April 26, 2022, as one of the first in a long time and very important legal elements that change and supplement the boundaries of the existing legal mechanism. This resolution is a positive signal that proves that the international community is ready for changes and, in particular, continues its efforts to limit the veto right of a permanent member of the UNSC, in order to achieve effective UN activity.

Resolution 76/262 of the UNGA was developed by almost 40 states initiated of Liechtenstein and received the support of the international community, which expressed its political will. The resolution stipulates that in case of exercising the veto right by a permanent member of the UNSC, it must report with the justification of its decision to exercise this right. The Resolution provides that the UNGA plays the main role in this process, in particular, paragraph 3 of the Resolution stipulates, *"Invites the Security Council, in accordance with Article 24 (3) of the Charter of the United Nations, to submit a special report on the use of the veto in question to the General Assembly at least 72 hours before the relevant discussion in the Assembly"* [14]. This provision creates additional regulatory and control powers of the UNGA in the face of all member states of the organization, which once again emphasizes that the UN General Assembly should play an important role in the maintenance of international peace and security, as can be seen from the analysis of the provisions of Articles 11, 12, 14, 15 of the UN Charter.



It should be emphasized that within the framework of the existing legal mechanism within which the UN operates in the context of maintaining international peace and security, the UNGA must have its own effective scope of rights and duties during the inactivity of the UNSC or during the actions of permanent members of the UNSC, which directly lead to such inactivity. The creation of additional levers of control and influence, checks and balances between the main bodies of the UN is a vivid example of the horizontal character of legal relations in international law, to a certain extent limits the influence of the sovereign will of the state, and also emphasizes the principle of equality of states in the international arena, which is a kind of compensation of opportunities for states, which in their political and legal assets do not possess the veto right.

Due to repeated abuses of the veto, including with the aim of blocking actions aimed at stopping or preventing serious crimes, as well as actions aimed at eliminating the complex humanitarian consequences caused by such actions, a corresponding initiative of Liechtenstein was born. The inability of the Security Council to respond to Russia's aggression in Ukraine and the blockades that continue to prevent the provision of humanitarian aid in Syria were decisive on the way to the adoption of Resolution 76/262 [15].

Anne Peters notes in her article that Resolution 76/262 establishes a standing mandate for public discussion and criticism of every veto without exception within the General Assembly, which differs from previous practice. What is new is that this explanation must now be repeated in the General Assembly, before all UN member states, who also have the right to speak out. The author emphasizes, *"... the obligation to explain and give reasons forces a decision-maker (in our case the veto power) to base its acts on claims regarding the general interest rather than on selfish appeals. ... These reasons, even if they may be hypocritical, still have the consequence of generating better outcomes, because in an official debate the 'bad' reasons cannot be stated. The obligation to explain before the General Assembly leaves the exercise of the veto within the realm of discretion of the permanent member of the Security Council, but still forces this state to rationalise the exercise of its veto right. This allows not only all other states but also the public to criticise these reasons. In the long run, the necessity to justify the veto might lead to ruling out those most blatant abuses that can simply not be rationalised"* [13].

As Rebecca Barber points out in her article, "The U.N. General Assembly's Veto Initiative Turns One. Is it Working?", *"Delegates who spoke in support of Resolution 76/262 said they hoped it would accomplish two goals.*

*First, the Resolution's supporters hoped the initiative would make the Security Council more accountable to the General Assembly. Liechtenstein's representative,*

introducing the Resolution, said that "all Member States have ... agreed that the Council acts on their behalf," and that "therefore, membership, as a whole, should be given a voice when the Council is unable to act".

Second, it was hoped the initiative would prompt the General Assembly itself to engage more robustly in matters of international peace and security when the Security Council failed. Qatar's representative, for example, described the Resolution as "promot[ing] the Assembly's role in accordance with its mandate, which gives it powers and authority in matters related to the maintenance of peace and security," and hoped the Resolution would strengthen the U.N. system "in cases where it cannot stand idly by and should respond effectively" [15].

Anne Peters believes that, "The ... objectives of the veto initiative are to deter the use of the veto and to create accountability. Deterrence might result from the (slight) increase of the costs of exercising the veto, namely the shaming effect of the broad and public debate. Putting veto users 'under the spotlight' 68 in the General Assembly generates transparency which is in itself a mild form of accountability" [13].

On April 26, 2022, during the 69th Plenary meeting of the 76th session of the UN General Assembly, during the discussion of the draft Resolution 76/262 and its adoption, many states expressed strong support for this resolution. Some states, such as Argentina, Guyana, Colombia, have also emphasized that they have always advocated for a complete prohibition on the use of the veto. In addition, the discussion of Resolution 76/262 led to repeated mentions and references to Resolution 62/557 of December 15, 2008 regarding the intergovernmental negotiations on the reform of the Security Council, which are the only basis for the reform of the Council, which indicates a new revival in the issue of reforming such the main body of the UN as the Security Council. In particular, the representative of China noted, "Like other Member States, China believes that the General Assembly is the most universal and representative deliberative, policymaking and decision-making organ within the United Nations system. ... Liechtenstein and other countries submitted resolution 76/262 ... which aims to empower the General Assembly, in line with its Charter mandate, with respect to matters related to international peace and security. The Assembly is thus empowered to make a meaningful contribution to effective multilateralism. Based on our consistent position on the role of the General Assembly, we understand and concur with the purpose of the resolution" [16, p. 9]. The lack of harmonious integration of the procedural component of this resolution was also noted by the participating states during the discussions. According to some states, the automatic convening of the UNGA every time a veto is used, provided by the

resolution, may have future consequences in the form of procedural confusion and certain similarities with Resolution 377 (V) "Uniting for Peace" (hereinafter "Uniting for Peace" Resolution).

### ***Effectiveness of the application of the "Standing Mandate" Resolution one year after its adoption***

Resolution 76/262 has been applied in the cases of three vetoed resolutions regarding the Democratic Republic of North Korea (which concerned the strengthening of UNSC sanctions), Syria (which concerned the extension of cross-border humanitarian aid from Turkey to Syria until January 2022) and Ukraine (which concerned the condemnation of the so-called "referendums" that preceded Russia's announced annexation of part of Ukraine). The special sessions of the UNGA convened on the vetoed resolutions regarding North Korea and Syria, unfortunately, were not marked by adopted resolutions or the presence of effective proposals from member states, what exactly the UNGA should do. Instead, these sessions served as a platform for expressing criticism of the use of the veto and the states that possess this right. In particular, the representative of Fiji, speaking on behalf of the Pacific Islands Forum, called the veto right "outdated and obstructionist"; The representative of Ireland called on the Security Council to "hear and listen" to the voices of the delegates of the General Assembly.

As Rebecca Barber rightly notes, *"In both these situations, there were things the General Assembly could have done. In relation to North Korea, it could ... have passed a resolution recommending to States that they unilaterally strengthen sanctions on Pyongyang. The General Assembly has recommended to States that they impose sanctions in other contexts in the past, for example in relation to Israel in the 1980s, South Africa (1960s-1980s) and ... Southern Rhodesia and the Portuguese Territories in the 1960s-1970s. Regarding Syria, the General Assembly could have passed a Resolution affirming the principle recognized by the International Court of Justice in its Nicaragua Advisory Opinion (para. 242), that exclusively humanitarian assistance is not an unlawful intervention in a State's internal affairs. The General Assembly is empowered by the U.N. Charter to contribute to the progressive development and codification of international law, and it has previously passed resolutions affirming principles of international law – see, for example, early Resolutions on the crime of genocide and on the Nuremberg principles. The General Assembly could have also reaffirmed (in terms similar to its Resolution of December 2021) that humanitarian needs in northern Syria could not be met from within Syria, and emphasized the imperative for humanitarian assistance to be provided through all available access routes. It could have further bolstered the legal case for States and U.N. agencies to*

*provide cross-border humanitarian assistance without Security Council authorization, by describing the situation as one of "necessity" – recognized in international law as a circumstance "precluding the wrongfulness" of the breach of an international legal obligation..." [15].*

Following the results of the Special Session on Ukraine, on October 12, 2022, the General Assembly adopted Resolution A/RES/ES-11/4, which recognized the so-called "referendums" in part of Ukraine as invalid and called on states not to recognize any changes in the status of these regions [17] and November 14, 2022 Resolution A/RES/ES-11/5, according to which Russia must compensate for the damage caused by its "internationally wrongful acts", recognizing the need for an "international mechanism of compensation" and recommending States to create an "international register of damage" [18].

The number of vetoes and cases where the Council failed to act despite the obvious need, references to the submission of three special reports under resolution 76/262, and information on the adoption of a resolution under the United for Peace Resolution were included in Debate on the Annual Report of the Security Council (A/77/2) under agenda item 27 from 30 June 2023 Accountability, Coherence & Transparency (ACT). Statement by H.E. the Permanent Representative of Portugal to the United Nations in New York, Ambassador Ana Paula Zacarias, on behalf of the ACT Group [19, p. 2].

In addition, a year after the adoption of the resolution on April 26, 2023, a plenary session of the UNGA was convened on the issue of "Application of the veto right". The debate showed determined support for improved accountability, as well as broad support among member states for further initiatives to limit the use of the veto [7, p. 4-5].

### ***Correlation of the "Standing Mandate" and "Uniting for Peace" procedures***

Resolution 76/262 can be considered as a new legal mechanism that complements the already existing legal instrument known as "Uniting for Peace". According to it, in the event of a lack of unanimity among the permanent members of the UN Security Council during the performance of its primary duty to maintain international peace and security in any case where there appears to be a threat to the international peace, a breach of peace or even an act of aggression, the UN General Assembly must immediately convene for an emergency special session to discuss the situation and provide its recommendations to the members regarding the necessary collective measures to resolve the crisis situation, in particular regarding the necessary armed force to maintain or restore international peace and security [20]. Resolution 76/262 has become a legal instrument that allows additionally (if the procedure of "Uniting for Peace" has already been initiated)

or separately, to consider and evaluate an issue that was vetoed for one reason or another, and also, which is no less important, to receive an explanation and to listen to the reasoning of the permanent member or members of the UNSC, who believed that the veto should be applied. It is important to note that the combination of these procedures is possible subject to the condition of the first paragraph of the operative part of Resolution 76/262, according to which, the "Standing Mandate" procedure can be initiated in the event that the General Assembly has not already been convened on the same issue under the "Uniting for Peace" procedure.

As Maurizio Arcari points out in his article, "The conflict in Ukraine and the hurdles of collective action", *"Not surprisingly, some also viewed the new procedure introduced by resolution 76/262 ... as a slant for revitalizing the deadlocked question of Security Council reform. If considered for its potential contribution to accountability and transparency, the new standing mandate procedure is certainly commendable. Some perplexity may arise if one gives a closer look to its relationship with the Uniting for peace procedure. As pointed out by the proponents of resolution 76/262, the intent of the standing mandate procedure is not to substitute Uniting for peace, but to complement it"* [21, p. 13].

Maurizio Arcari also draws attention to the uneven scope of these procedures. The "Standing Mandate" procedure is limited only to hearing the permanent members who vetoed the draft resolution of the UNSC and holding a general debate on this matter, while the "Uniting for Peace" procedure provides for the possibility of adopting appropriate recommendations to member states for collective measures [21, p. 13-14]. In particular, as noted by Muhammad Ibrahim Bukar, such recommendations can be as follows, *"The General Assembly could ... mandate a UN investigation of Russia's actions, urge member states to impose sanctions on Russia, or recommend that Russia be expelled or suspended from certain UN bodies"* [22, p. 33]. It creates an opportunity to record the conclusions of the discussion and develop practical recommendations aimed at legal consequences against the offending state.

### ***Fundamental substantiation of the grounds for applying the "Uniting for Peace" and the "Standing Mandate" procedures together***

In view of the above, in this context it is also appropriate to provide the rationale of Patrycja Grzebyk regarding the fundamental grounds for initiating the "Uniting for Peace" procedure, *"The prohibition of aggression is a peremptory norm, thus its violation triggers certain obligations ... if a breach of such obligation is serious, i.e. it involves a gross or systematic failure by the responsible state to fulfill its obligations. As Russia systematically attacks Ukraine and has committed*

*and continues to commit various acts of aggression, there is no doubt that the breach is serious. In Art. 41 of the 2001 Articles on State Responsibility for Internationally Wrongful Acts (as well as in Art. 42 ...), the International Law Commission stressed that the international community should cooperate to bring an end, through lawful means, to any serious breach of this kind of norm; and additionally it should not recognize as lawful a situation created by such a serious breach, nor render aid or assistance in maintaining such a situation. ... Consequently, states cannot invoke, for example, neutrality laws ... as the current international system does not allow for neutrality in response to violations of such peremptory norms as the prohibition of aggression. ... In the case of Russia's aggression, it has been impossible to achieve a UN SC resolution condemning its action and imposing enforcement measures, which is why the "Uniting for Peace" procedure was adopted, as a result of which the UN SC can call an emergency session of the GA, which can then make appropriate recommendations based on the UN Charter principles. This procedure was commenced with the UN SC Resolution 2623 of 27 February 2022, and now it is possible to use the GA and refer to its decisions in order to end serious breaches of peremptory norms" [10, p. 154-155]. Thus, violations of the general norm of international law, which has the character of erga omnes, concern all participants in international relations and require a joint logical reaction and response. Violations of peremptory norms of jus cogens do not create rights for the violator, they demonstrate how modern problems affect the established system and must be overcome by consistent reformation with the impossibility of repeated violations on the same grounds. Therefore, the initiation of the "Uniting for Peace" procedure together with the "Standing Mandate" procedure is an effective change to the existing mechanism of the UN.*

Thus, we can make an interim conclusion that the "Standing Mandate" procedure is a significant reinforcement of already existing legal instruments. As we can see from the precedents of the application of the "Standing Mandate" procedure, the most effective was the case of initiation regarding Ukrainian issues. Because the "Standing Mandate" procedure was initiated during the 11th Emergency Special Session of the UN General Assembly on matters different from the matter for which it was convened, the General Assembly had the opportunity to discuss and adopt recommendations for collective action, as expressed in resolutions A/RES/ES-11/4 (concerning the so-called "referendums") and A/RES/ES-11/5 (concerning the need for an "international compensation mechanism" and the creation of an "international register of damage"), which had previously been vetoed in within the UNSC and should not have received support, but given the innovations provided for by Resolution 76/262, they were able to become the subject of discussion within the UNGA and obtain a practical result.

Therefore, as Maurizio Arcari rightly summarizes, *"Be that as it may ... the new standing mandate procedure may strengthen the rationale behind the old Uniting for peace procedure. This way, the vitality of the latter in the law of the United Nations, as well as the critical role played by the GA when the Security Council is paralyzed, would be confirmed"* [21, p. 15].

A year after the adoption of the "Standing Mandate" resolution at the plenary session of the UNGA, the representative of Costa Rica in his speech was able to summarize and evaluate the year of activity of this initiative: *"Costa Rica has supported 'the veto initiative' from its inception. And, despite the fact that the initiative has only been in place for a year, we can already identify three significant contributions. Firstly, the UN's critical work on international peace and security is now able to continue despite paralysis in the UN Security Council. When parts of the UN system are unable to fulfil their mandate, the veto initiative gives this chamber the opportunity to step into the breach, to rise above political theatre and unite for peace and the protection of the United Nations Charter. ... Instead of acting, a veto compelled the United Nations to watch multiple crises emerge from the sidelines. The impact of this political paralysis is devastating and civilians around the world pay the cost"* [7, p. 9].

The representative of Liechtenstein also noted that *"The veto is the most controversial and the most debated provision of the Charter of the United Nations. It is of course also a fact of life and very likely here to stay. We can collectively mitigate its use by taking it to a very different place in the practice of the Council than the one it has been occupying for many long years. The veto must no longer be a permanent threat and possible impediment to the effectiveness of our organisation, but slowly fade away into obsolescence through a range of measures"* [7, p. 12]. Summarizing, Barbara Adams and Marina Lent note, *"The veto is the acknowledged Achilles heel of democratizing the Security Council. Under provisions of the Charter, it can realistically only be incrementally adapted through moral suasion and gradually shifting norms"* [7, p. 12].

In this regard, we consider it necessary to pay attention to the possibility of an evolutionary interpretation of the provisions of the UN Charter, about which Anne Peters notes the following, *"The difference between Charter amendment and reform of working methods is only ... that the latter can be legally framed as dynamic interpretation of the UN Charter through subsequent practice. The UN Charter, formally a treaty, may be interpreted (and re-reinterpreted) by 'taking into account' any 'subsequent agreement between the parties regarding the interpretation of the treaty' (Art 31(3) lit. a) of the Vienna Convention on the Law of Treaties) or by taking into account 'any subsequent practice in the application of the treaty*

*which establishes the agreement of the parties regarding its interpretation' (Art 31(3) lit. b) of the Vienna Convention on the Law of Treaties). If all member states agree on such a course, it would be in the end acceptable in legal terms, because the lines between mere 'interpretation' of the Charter and its tacit amendment are blurry both in legal theory and in fact, and because member states may in an ad hoc fashion agree to change the rules of revision. It is often argued that the UN Charter is particularly prone to and in need of dynamic interpretation due to its constitutional character and due to the difficulty of formal amendment. On the other hand, 'informal' amendments in the guise of dynamic interpretation risk to undermine legal clarity and security" [13].*

We agree that the veto right is an important legal and political element of the functioning of the current UN system and its complete prohibition will not lead to the proper maintenance of international peace and security. However, active discussion and work on limiting its use can have positive changes. Increasing the level of transparency and openness of the activities of the UN Security Council is a logical trend on the path of reforming the UNSC. Violation of the fundamental norms of the UN Charter, systematic abuse of one's right and neglect of one's high duties by a permanent member of the UNSC are unacceptable and requires public assessment by the world community, in particular, within the UNGA. The political will of the majority of the member states of the organization is aimed at a new mechanism for restricting the veto as an absolutely logical response in the form of a sanction for violating the norms of the statute, abusing the right for the sake of personal interest and failing to fulfill a high duty entrusted to it.

## **Conclusions**

Summarizing, we note that the "Standing Mandate" Resolution is, indeed, the first significant change in a long time on the path of reforming the existing mechanism of UN activity. With the goal of overcoming abuses by permanent members of the UNSC regarding the use of the veto and subsequent blocking of the main universal organization, the main purpose of which is the maintenance of international peace and security, this resolution is aimed at increasing the role of the UNGA in addition to the Resolution "Uniting for Peace". Thus, the world community has outlined its political will in demanding accountability, transparency and responsibility of the UNSC before the UNGA, in demanding more effective use of the veto and providing a procedurally recorded public assessment by the member states of the appropriate use of the veto and its justification, which will also allow much a wider range of subjects to join the search for a solution to the problem. The UN Security Council has primary, but not exclusive, responsibility for world peace and security. The UN General



Assembly, the UN Secretary General also play an essential role in this process. Starting with the preventive activity and until the restoration of peace, the main bodies of the UN must work harmoniously, move in the same direction in their will to support international peace and security, because in extremely crisis situations such as in Syria, Ukraine and the Middle East, civilians does not have time for political confrontations within the Security Council. The adoption of Resolution 76/262 emphasized the need for plan "B", which would be able to restore the effective operation of the UN.

As evidenced by the research results, namely the review of the effectiveness of the "Standing Mandate" Resolution, its mechanism turned out to be more effective in combination with the "Uniting for Peace" procedure. During the emergency special session of the UNGA, the representatives of the member states have the opportunity not only to hear the justification for the use of the veto and to discuss it, but also to make certain decisions aimed at maintaining international peace and security, which we could witnessed in the case of resolutions regarding Ukrainian issues (Resolution A/ RES/ES-11/4, regarding the recognition of the so-called "referendums" in part of Ukraine as invalid and Resolution A/RES/ES-11/5, regarding the obligation of Russia to compensate for the damage caused by its "internationally wrongful acts", recognition of the need "international compensation mechanism" and recommendations to States to create an "international register of damage"), which were previously vetoed within the UNSC.

Discussing Resolution 76/262, some states emphasized the similarity and certain duplication of the Resolution "Uniting for Peace". Based on the distinction made, we believe that these two procedures strengthen the role of the UNGA in the matter of maintaining international peace and security, but provide different scopes of power for member states. At the same time, the joint application of these procedures turned out to be more effective.

The fundamental need to initiate such procedures as "Uniting for Peace" and "Standing Mandate" is argued. Gross violations of the imperative norms of general international law – erga omnes norms – simultaneously relate and negatively affect the entire international community. Violations do not create rights for offenders, but on the contrary require joint decisive actions and transformations to stop such violations and create a restrictive framework in the system of international law so that such violations are not repeated, and the violator is accountable and responsible for what has been done, therefore, violations must involve aggravating, unfavorable consequences. In particular, such conclusions are drawn in view of the violation of the basic principles

established by the UN Charter, in the form of direct aggression by a permanent member of the UNSC (a state that has not only the veto right, but also a significant nuclear potential, unlike the states that do not have none of the above and are a target) with further use of the veto to continue their own aggression, maintain the status quo and avoid any adverse consequences for themselves. Therefore, we consider it a positive innovation to consolidate the opportunity for the permanent members of the UN Security Council to express themselves and justify their position regarding the applied veto, which will create clear fixed facts, as well as enable evaluation and search for a solution by a wider range of members.

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