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**Master's thesis**

**Role of the UN Security Council and General Assembly under the  
Uniting for Peace Resolution: case study of aggression against Ukraine**

**Jungtinių Tautų Saugumo Tarybos ir Generalinės Asamblėjos vaidmuo  
pagal Vienybės taikos labui rezoliuciją: agresijos prieš Ukrainą atvejo  
analizė**

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## ABSTRACT AND KEY WORDS

This work analyses the roles of the UN Security Council and UN General Assembly under the UN Charter and Uniting for Peace Resolution related to the full-scale invasion by Russian Federation against Ukraine on the 24<sup>th</sup> of February 2022. It examines the deadlock of the UN Security Council and the role of the UN General Assembly in giving response to an act of aggression, posing threat to international peace and security and questions legacy of usage of veto and abstain from voting in the UN Security Council. Master thesis overviews the issues of legality of a permanent member's use of veto which supports its own jus cogens violation. The establishment of the Special Tribunal for the Crime of Aggression against Ukraine is an important step forward towards ensuring justice for Ukraine in the context of the ongoing aggression, but the mechanism of enforcing principles and purposes of the UN Charter shows that comprehensive response to an act of aggression still raises complex legal and political challenges for the international community.

**Keywords:** UN Security Council; UN General Assembly; act of aggression; Uniting for Peace Resolution; aggression against Ukraine; Use of Veto; Special Tribunal for the Crime of Aggression against Ukraine.

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## LIST OF ABBREVIATIONS

ARSIWA – Articles on Responsibility of States for Internationally Wrongful Acts  
ECCC – Extraordinary Chambers in the Courts of Cambodia  
ESS – Emergency Special Sessions  
ICC – International Criminal Court  
ICISS – International Commission on Intervention and State Sovereignty  
ICJ – International Court of Justice  
ICRC – International Committee of the Red Cross  
ICTR – International Criminal Tribunal for Rwanda  
ICTY – International Criminal Tribunal for the Former Yugoslavia  
ICAO – International Civil Aviation Organisation  
IHL – International Humanitarian Law  
IIIM – International, Impartial and Independent Mechanism  
ILC – International Law Commission  
OSCE – Organization for Security and Co-operation in Europe  
SCSL – Special Court for Sierra Leone  
STCoA – Special Tribunal on the Crime of Aggression against Ukraine  
STL – Special Tribunal for Lebanon  
U4P Resolution – Uniting for Peace Resolution  
UK – United Kingdom  
UN – United Nations  
UNGA – United Nations General Assembly  
UNSC – United Nations Security Council  
US – United States of America  
USSR – Union of Soviet Socialist Republics  
VCLT – Vienna Convention on the Law of Treaties  
WHO – World Health Organisation  
WTO – World Trade Organisation

## INTRODUCTION

Full-scale aggression against Ukraine continues for the fourth year and international community has no effective means to restore international peace and security. International legal framework established after the horrors of the second World War and aimed at prevention of acts of aggression once again failed to meet its fundamental purpose of peace. **The motive** of choosing the topic of the master thesis related to the personal relation to the topic as a citizen of Ukraine believing that credibility of international law could be restored through creative solutions strengthening ability of the UN Security Council and General Assembly to restore and maintain international peace and security, including Uniting for Peace Resolution that played the crucial role and provided possibility for the international community to respond to an act of aggression against Ukraine. Political and legal precedents set in the case of aggression against Ukraine has established the model of law and strategies on how to act in case of veto use by a permanent member, especially when a permanent member is the aggressor itself. Nowadays international peace and security are disturbed by the paralyses of international institutions to react and act, therefore this situation is creating the potential danger in the future and giving the “green light” for future blatant breaches of international law.

**The object** of the master thesis is legal and institutional frameworks of the UN General Assembly and Security Council enabling the UN as the organisation responsible for maintaining international peace and security to timely and effectively restore international peace and security in the case of an act of aggression by a permanent member of the UN Security Council.

**The research is relevant** due to ongoing aggression against Ukraine and continuing discussions between UN Member States about the use of veto right. The United Nations were established for maintenance of international peace and security, but legal framework of the UN Charter being agreed is under constant critic due to obvious problems with responding to the violations of the international law.

**The novelty** of the Master thesis is introducing a new viewpoint on an existing problem with use of veto and examining the role of UN General Assembly and Security Council in the restoring peace in Ukraine. Additionally, the research based on the latest legal acts as well as on first drafts on the topic, as well as on recent researches and offers for implementations the recommendations for the institutions.

**The importance** of the research is the exploring the potential ways to prevent veto abuse in future and explain the importance of reform the United Nations mechanism for maintaining international peace and security. The case of aggression against Ukraine raised

concerns over the future for other countries and the proposal of Liechtenstein and French-Mexican initiative were brought back for the discussions.

**The aim** of the master thesis is to research ability of the United Nations to adequately confront acts of aggression under legal and institutional frameworks of UN General Assembly and UN Security Council all together influencing ability of the whole international community to restore international peace and security as evidenced by aggression against Ukraine, that is taken as the case study for this master thesis.

**The tasks** for this Master thesis are grounded on the needs of pointing out the issue of:

1) to evaluate roles, responsibilities and obligations of UN General Assembly and Security Council in maintenance of international peace and security with reference to General Assembly Resolution 377 (A) adopted on 3<sup>rd</sup> of November 1950 (“Uniting for Peace”), the practical use of the U4P in the restoring the peace;

2) to research challenges in relation to the paralysis of the UN Security Council in cases of acts of aggression and its implications for the enforcement of international justice;

3) to examine effectiveness of UN General Assembly in giving response to acts of aggression with special focus on the act of aggression against Ukraine and resolutions ES-11<sup>th</sup> and Resolution 2623, reflecting of their importance to restoring peace in Ukraine and ensuring justice;

5) to explore a possibility of establishing the Special Tribunal for the Crime of Aggression against Ukraine within the limits of UN General Assembly recommendatory powers referring to the historical precedents of establishment of criminal tribunals.

**The methods** that are used in this thesis:

1) logical analysis – the analysis of existing legal acts and scientific literature, collecting the data and making the conclusion based on researches, legal acts and articles related to the topic;

2) doctrinal method – to analyse primary legal sources such as the Charter of the United Nations (1945), UN Security Council Resolution 2623 adopted on the 27<sup>th</sup> of February 2022 related to the Russian aggression against Ukraine on the 24<sup>th</sup> of February 2022, General Assembly Resolution 377 (A) and etc., the use of this method underscores the body of law of the used in this research legal acts over their practical use thus the word of law explained clearly and the understanding of the potential use of the legal act can be brought for future discussions;

3) empirical method – exploring the law in action and the consequences of decision-making process (in the case of this research – analyse of the resolutions that were adopted

under U4P Resolution and their influence on interpretation of the international law, peace and security, the potential changes which can be done by implementing the law);

4) comparative method – this method is actively used in order to see the progress which was done from the adopting the UN Charter till latest resolutions and how the legal approach has changed through the time and in order to examine;

5) method of systematic analyses insists on looking at the issue of veto not as complete structure but divided to make the searching of solution manageable and seeks for deeper research.

In the thesis **the main sources** are international legal acts and scientific literature (articles and books): Charter of the United Nations (1945) since all competences and powers of Security Council are listed in this legal act; Rome Statute of the International Criminal Court adopted on 17<sup>th</sup> July 1998; General Assembly Resolution 377 (A) from 3 November 1950 the fundamental legal which is giving power to the General Assembly to act in questions of international peace and security when the UN Security Council is deadlocked by veto; the UN Security Council Resolution 2623 from 27 February 2022 related to the Russian invasion to Ukraine 24 February 2022; the ES-11<sup>th</sup> resolutions (UNGA Res. ES-11/1 (2<sup>nd</sup> of March 2022); UNGA Res. ES-11/2 (24<sup>th</sup> of March 2022); UNGA Res. ES-11/3 (7<sup>th</sup> of April 2022); UNGA Res. ES-11/4 (12<sup>th</sup> of October 2022); UNGA Res. ES-11/5 (14<sup>th</sup> of November 2022); UNGA Res. ES-11/6 (23<sup>rd</sup> of February 2023); UNGA Res. ES-11/7 (24<sup>th</sup> of February 2025); UNGA Res. ES-11/8 (24 February 2025) are calling for withdrawal of Russian forces, peace, respect to the territorial integrity and sovereignty, emphasizing on global impacts of the war on the international safety and law; the article of Enrico Milano “Russia’s Veto in the Security Council: Whither the Duty to Abstain under Art. 27(3) of the UN Charter?” provides analyses of the abstention and how it can be used by Security Council for maintaining the international peace and security; the book of Richard K. Gardiner “International Law” of University College London (2003) explains the basics of UN bodies, connections between departments and case law for dealing with the acts of aggression and the influence of adopted resolutions of UN on the development of the international law and maintaining peace and security; the book of Patrycja Grzebyk “Criminal Responsibility for the Crime of Aggression” (2013), where she explore the historical background of criminal responsibility for the crime of aggression, the role of UN Security Council and the connection to the ICJ in the questions related to the definition and prosecution for the violations of peace and security.

The thesis contains abstract, introduction, three chapters, conclusions, list of sources and summary.

## 1. LEGAL FRAMEWORK FOR DEALING WITH ACTS OF AGGRESSION: PRIMARY RESPONSIBILITY OF THE UN SECURITY COUNCIL

In 1945, after World-War II as the replacement of the League of Nations was established the United Nations with the primary responsibility to maintain the international peace and security, under the adopted Charter of the United Nations the UN Security Council has the main role in this task as powerhouse of the United Nations, while the UN General Assembly supposed to support it. The UN Security Council contains 15 permanent members and their veto right for the decision-making. One of the permanent members is Russian Federation, who is serving in the UN Security Council and constantly blocking the UN Security Council to carry the given mandate by veto use.

The UN Security Council has the executive power for ensuring collective security, while states held the right to use force in self-defence if the subject of an armed attack, the UN Security Council should be informed so that it could take measures for immediate needs had been met and then work on the restore international peace and security<sup>1</sup>.

Unfortunately, when the veto is used in a way as it does by the Russian Federation it is create a serious breach of a peremptory norm of international law and triggers the UN Charter as the use of force against another State sovereignty, independence or territorial integrity should be refrain by Member States and also, use of force, if it is not a self-defence<sup>2</sup> as it provided by Article 51 of the UN Charter, goes against the provisions of the UN Charter as all Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered<sup>3</sup>. The UN Security Council gets deadlocked with permanent member who involved in the crime of aggression, and it violates jus cogens (i.e., it is a peremptory norm of international law<sup>4</sup>).

The Purpose of the United Nations as it was declared in the Article 1 of the UN Charter and they main task is to achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and when the norm gets violated is raising the legal concern over veto right as it could go against the primary idea of the UN Charter and gets

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<sup>1</sup> GARDINER, Richard. (2003) International Law. London: Pearson Education, pp. 234

<sup>2</sup> UN Charter, Article 51 provides the conditions under which the use of force can be justified when an armed attack occurs against a Member of the United Nations and before the UN Security Council has taken measures necessary to maintain international peace and security, important to report about the measures which were taken by Members in the exercise of this right of self-defence to the UN Security Council and shall not in any way affect the authority and responsibility of the UN Security Council under the present UN Charter.

<sup>3</sup> UN Charter, Articles 1-2

<sup>4</sup> "Oxford University Press (2022) The Oxford Dictionary of Law, 10th ed., entry 'Jus Cogens'.

inconsistent. The main goals of the United Nations are maintaining international peace and security and achieving international co-operation in solving international problems<sup>5</sup>.

In the situations, when use of veto does not ally with the “Purposes” and “Principles” of the UN Charter then the UN Security Council must act in accordance with the Article 24(2) of the UN Charter and the specific powers granted to the UN Security Council for the discharge of these duties are laid down in Chapters VI, VII, VIII, and XII”<sup>6</sup>. This is the mandate of the UN Security Council.

As declared by the Charter of the United Nations, self-defence cannot be invoked if an attack did not take place. However, the UN Charter establish that the right of self-defence is inalienable, which leads us towards the understanding that the ramifications of this right are found also in customary law<sup>7</sup>.

At the same time, it creates the extra pressure for the UN Security Council according to the provisions of Article 24(1) of the UN Charter as Member States confer on the UN Security Council primary responsibility for the maintenance of international peace and security, and also agree on caring those duties under this responsibility the UN Security Council acts on the Member States behalf<sup>8</sup>. Under this provision, the UN Security Council has leading but not exclusive role in the questions about international peace and security. Obviously, that if the permanent members violate the international peace and security, then they must be called for response for their aggression.

According to the Article 27(3) of the UN Charter the UN Security Council decisions on all other matters shall be made by an affirmative vote of nine members including the concurring votes of the permanent members and provided that, under the Chapter VI’s decisions a party to a dispute shall abstain from voting<sup>9</sup>.

Basically, it created a legal gap with veto abuse in the situations of genocide, war crimes, crimes against humanity and aggression, also it can be potentially used as powerful move to utilize the UN Charter obligation for the party of dispute to abstain in situations when the UN Security Council votes under Chapter VI.

In Wood’s opinion all states and bodies are bound to respect international law, which includes jus cogens, including the UN Security Council<sup>10</sup>. This opinion can be respected as it reflects the current understanding of the international law.

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<sup>5</sup> UN Charter, Article 1

<sup>6</sup> UN Charter, Article 24(2)

<sup>7</sup> GRZEBYK, Patricja. (2013) *Criminal Responsibility for the Crime of Aggression in International Law*. Oxfordshire: Routledge, pp. 32

<sup>8</sup> UN Charter, Article 24(1)

<sup>9</sup> UN Charter, Article 27(3)

<sup>10</sup> WOOD, Michael. and STHOEGER, Eran. (2022) *The United Nations Security Council and International Law*. Cambridge: Cambridge University Press, pp. 78–79.

The Judge Lauterpacht in the Separate Opinion at the Provisional Measures stage of the Genocide case ad hoc understands that the concept of jus cogens operates as a concept superior to both customary international law and treaty and the relief under Article 103 of the UN Charter may grant the UN Security Council in the case of a conflict between one of its decisions and an operational treaty obligation which cannot extend to a conflict between a UN Security Council resolution and jus cogens<sup>11</sup>.

Certainly, jus cogens obligations considered to be binding on all subjects of international law. In his research Salahuddin says that the concept of jus cogens in the context of international law indicates that it is a body of fundamental legal principle which is binding upon all members of the international community in all circumstances<sup>12</sup>.

The use of veto by Russian Federation after 25<sup>th</sup> of February 2022 showed that the violation of the purposes and principles set in the Charter of the United Nations in Articles 1(1) and 1(3) since Russian Federation did not fulfil the international co-operation in solving international problems of a humanitarian character as it supposed to be under the UN Charter<sup>13</sup>.

In Tadic opinion, the UN Security Council has a pivotal role, but it does not mean that its power is unlimited, and the UN Security Council is subjected to certain constitutional limitations, however broad its powers under the constitution may be. Those powers cannot, in any case, go beyond the limits of the jurisdiction of the Organization at large, not to mention other specific limitations or those which may derive from the internal division of power within the Organization<sup>14</sup>.

According to the Article 2(2) of the UN Charter all Members shall fulfil in good faith the obligations assumed by them in accordance with the present Charter<sup>15</sup>. The use of veto was not complied with the UN's Principle of acting in "good faith" as it provided in the Article 2 and as well as with the Principle of "international disputes by peaceful means". The lack of respecting to the obligation provided in the Article 2(4)<sup>16</sup> of UN Charter to step away from the threat or use of force contrary to the UN Charter.

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<sup>11</sup> LAUTERPACHT, Elihu. (2007) 'Separate Opinion of Judge ad hoc Lauterpacht', in Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro), I.C.J. Reports 2007, para. 100.

<sup>12</sup> MAHMUD, Salahuddin. and RAHMAN, Shafiqur. (2017) 'The Concept and Status of Jus Cogens Norms in Contemporary International Law', International Journal of Law, 3(6), pp. 111

<sup>13</sup> UN Charter, Articles 1(1) and 1(3)

<sup>14</sup> Prosecutor v Duško Tadić (1995) ICTY Case IT-94-1-AR72, Decision on Jurisdiction, 2 October. Para 28.

<sup>15</sup> UN Charter, Article 2(2)

<sup>16</sup> UN Charter, Article 2 (4) declares that all Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state and should act consistently with the Purposes of the United Nations.

The UN Security Council is allowed to respond to the case of aggression, but it has limits under International Court of Justice case law, especially when the UN Security Council imposes sanctions, and the Chapter VI resolutions adopt in order to call for Member States to the peaceful settlement of disputes. At the same time, the Chapter's VII resolutions act as a guideline for taking actions in a specific course for the peace-making process, for example sanctions, deployment of peacekeeping forces or/and military intervention.

As viewed by Richard Gardiner, the role of the UN Security Council under Chapter VI of the UN Charter is pretty much in terms of monitoring developments and it has two purposes: firstly, to see if parties took all opportunities for peaceful settlement, for example negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements; and secondly, the UN Security Council need to be in a position to make a decision under Article 39 that the threat to international peace and security is important enough for the Council itself to intervene with more coercive measures<sup>17</sup>.

According to Kolb, Chapter VI resolutions are non-binding and it is the difference between that and Chapter VII resolutions and as it was admitted by the International Court that the UN Security Council can take binding decisions outside of Chapter VII, whenever it deems necessary to do so, the legal basis of this binding force would directly rely on the UN Charter Article 25 and if necessary impose a binding settlement in a dispute<sup>18</sup>.

The resolutions under the Chapter VII are binding, but it depends on the content if it is a decision with clear guidelines for the action or something less strict as recommendations. Under the Article 25 of the UN Charter the Member States agree to accept and carry out the decisions of the UN Security Council in accordance with the present UN Charter<sup>19</sup>. The Dag Hammarskjöld Library agrees with this since resolutions adopted by the UN Security Council acting under Chapter VII of the UN Charter are considered binding, in accordance with Article 25 of the UN Charter<sup>20</sup>.

The responsibilities assigned to the UN Security Council, listed in Article 26 of the UN Charter, give the Council's resolutions binding status, as well as the Council responsible

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<sup>17</sup> GARDINER, Richard. (2003) International Law. London: Pearson Education, pp. 237

<sup>18</sup> KOLB, Robert. (2004) 'Does Article 103 of the United Nations Charter Apply Only to Security Council Decisions or Also to Authorisations?', *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, 64, pp. 25.

<sup>19</sup> UN Charter, Article 25

<sup>20</sup> Dag Hammarskjöld Library (2025) "Are UN Resolutions Binding?"

for formulating, plans to be submitted to the Members of the United Nations for the establishment of a system for the regulation of armaments<sup>21</sup>.

The UN Member States follow the UN General Assembly resolutions as non-binding except for certain limited situations, for example under Article 17(1) of the UN Charter when the UN General Assembly shall consider and approve the budget of the Organization<sup>22</sup> and elect the five non-permanent members of the UN Security Council under the UN General Assembly Decision 68/403<sup>23</sup>.

Oberg thinks that the term “resolution” as used in the United Nations practice has a generic sense and includes recommendations and decisions, which have a vague and variable meaning in the Charter<sup>24</sup>. I can agree with this opinion since there is no exact definition of resolution and the power of each legal act depends on the conditions on which it was adopted, under which the Chapter and what is the call for it.

Under Article 29 of the Charter, the Council has powers to establish subsidiary organs and there are the UN Commission settling claims arising from Iraq's invasion of Kuwait and the International Criminal Courts for the Former Yugoslavia and Rwanda, each of these organs performed such functions as a judicial character which can be comparable to those performed by courts and tribunals in national legal systems<sup>25</sup>.

When the UN Security Council experience the deadlock among the permanent members in the questions of violation or threat of international peace, acts of aggression, then there is the possibility to call for ESS and this was underscored in the Uniting for Peace Resolution and allowed the UN General Assembly to take peacekeeping actions.

Also, such a request from the UN Security Council gives the power for the UN General Assembly to offer its own recommendations as it provided under the Article 11(2) of the UN Charter if the questions relate to the maintenance of international peace and security brought before it by any Member of the United Nations or by the Security Council, but any such question on which action is necessary shall be sent to the UN Security Council by the UN General Assembly before or after discussion<sup>26</sup>. As recent example of that, the UN General Assembly passed numerous resolutions related to the aggression against Ukraine.

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<sup>21</sup> UN Charter, Article 26

<sup>22</sup> UN Charter, Article 17(1)

<sup>23</sup> General Assembly Decision 68/403 (2013) A/68/49 (Vol. II).

<sup>24</sup> ÖBERG, M.D. (2005) ‘The Legal Effects of Resolutions of the UN Security Council and General Assembly in the Jurisprudence of the ICJ’, *European Journal of International Law*, 16(5), pp. 880

<sup>25</sup> GARDINER, Richard. (2003) *International Law*. London: Pearson Education, pp. 234

<sup>26</sup> UN Charter, Article 11(2)

The UN General Assembly supports the UN Security Council in the questions related to the peace and security, but there is certain limitation under Article 12(1) of the UN Charter when the UN Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, then the UN General Assembly shall not make any recommendation until the Security Council requests so<sup>27</sup>.

Nonetheless the provisions of UN Charter over limiting the powers of UN General Assembly regarding international peace and security matters, there are cases when the UN General Assembly can act, and the UN General Assembly has significant role in the financial authority by approving the UN peacekeeping budget and apportioning expenses among Member States by providing the material support necessary for the implementation of Council mandates<sup>28</sup>.

Next important provision of the UN Charter is Chapter XIV “The International Court of Justice” and it sets out the essential of the constitution of the ICJ. The obligation of States is to comply with ICJ judgments and the powers of the UN Security Council to take action if states default in this; the Statute of the ICJ, which is annexed to the Charter, automatically assigns all members of the United Nations as parties and it makes the provision of ICJ binding<sup>29</sup>.

The role of ICJ is to peacefully settle disputes between states and they empowered to issue advisory opinions, the jurisdiction of the ICJ limited by states and cannot be imposed to the individuals. In case, if the issue related to the individual responsibility for the crime of aggression, war crimes, genocide, or crimes against humanity, then the International Criminal Court must be involved.

Establishing the International Criminal Court challenged the traditional views on state sovereignty as the sovereignty based on a presumption that states have certain inviolable rights inherent to statehood<sup>30</sup>. The cases may have symbolic value and have implications for other cases before the International Criminal Court, also it might involve legal questions which can develop international criminal law<sup>31</sup>.

In 2004, between the United Nations and the International Criminal Court was concluded the Relationship Agreement<sup>32</sup>, the sense of this legal act is to settle cooperation,

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<sup>27</sup> UN Charter, Article 12(1)

<sup>28</sup> United Nations Peacekeeping (2024). “Role of the General Assembly in Peacekeeping.” UN Peacekeeping Official Website.

<sup>29</sup> GARDINER, Richard. (2003) International Law. London: Pearson Education, pp. 487

<sup>30</sup> STIGEN, Jo. (ed.) (2008) The Relationship Between the International Criminal Court and National Jurisdictions: The Principle of Complementarity. Leiden: Brill, pp. 16.

<sup>31</sup> Ibidem, pp. 19

<sup>32</sup> International Criminal Court and United Nations (2004) Relationship Agreement between the International Criminal Court and the United Nations. New York.

as well as formalizing the obligations, privileges, and immunities of both of those international organs. Also, the Agreement sets the information to share and types of support (logistical, financial and informational) that the United Nations can provide for the Court.

The great achievement for the past couple of decades of the international community was the 2010 Review Conference of the Rome Statute in Kampala and adoption the Kampala Amendments, particularly the Resolution RC/Res. 6 issued on 11<sup>th</sup> of June 2010<sup>33</sup>.

This Resolution defined the crime of aggression by Article 8bis, set conditions for the prosecution by the International Criminal Court and closed the legal gap which existed since the 1998 Rome Statute, where the definition was unclear, and prosecution was barely possible. This Article manifested that crimes of aggression violate the UN Charter and breach the international peace and security.

The Conference itself gave an example of referencing a specific crime type without changing the general threshold standard, the modification of definition was done with the developing of the language of law and due to the need of clarification and explanations<sup>34</sup>.

According to Koh the issue of definition for the crime of aggression were raised earlier during the discussions about the fact that the definition of the crime of aggression remained to be decided and should not be an issue for the United States of becoming a party to the Rome Statute, as if amendments defining aggression were later adopted, then the Court's jurisdiction will not be applied against the citizens of a state which did not ratify those amendments<sup>35</sup>. I agree which the raised concerns since the defining the crime of aggression and becoming the Party of Rome Statute for the states is an important step towards peace-keeping process and prosecution in the case of breach of the international law.

The connections between the United Nations and the International Criminal Court can be found in the UN Charter and the Rome Statute of the ICC. The Rome Statute itself build on the two main assumptions – the international crimes must not stay unpunished, and those crimes should preferably be prosecuted on the national level<sup>36</sup>.

While Article 24 of UN Charter gives the UN Security Council primary responsibility for the maintenance of international peace and security, Article 1 of the Rome Statute

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<sup>33</sup> Assembly of States Parties (2010) Resolution RC/Res.6, 11 June.

<sup>34</sup> EINARSEN, Terje. (2012) *The Concept of Universal Crimes in International Law: Theoretical Foundations and Contemporary Challenges*. Oslo: Torkel Opsahl Academic EPublisher, pp. 213

<sup>35</sup> KOH, Harold Hongju and BUCHWALD, Todd (2015) 'The Crime of Aggression: The United States Perspective', *American Journal of International Law*, 109(2), p. 287.

<sup>36</sup> STIGEN, Jo. (ed.) (2008) *The Relationship Between the International Criminal Court and National Jurisdictions: The Principle of Complementarity*. Leiden: Brill, pp. 11

established the ICC as permanent institution, which shall have the power to exercise its jurisdiction over persons for the most serious crimes of international concern<sup>37</sup>.

Next, Article 2 of the Rome Statute declares that the Court shall be brought into relationship with the United Nations<sup>38</sup>. Also, Article 13(b)<sup>39</sup> and Article 16<sup>40</sup> of the Rome Statute refers to the UN Security Council and settle the obligations of the Court and the United Nations and can be even used when the crimes were committed by a non-party of the Rome Statute.

The UN Security Council must act under Chapter VII of UN Charter and must define that the crimes are threat for the international peace and security. The provisions of the Rome Statute do not release the UN Security Council from taking measures for peacekeeping.

The UN Charter and the Rome Statute have shared values, such as maintaining the peace, security and justice. While main role of the United Nations is the prevention from the breaches of the international law, the International Criminal Court prosecutes the individuals who were involved into the violations of peace and security.

Unfortunately, the legal tension and debates exist between the United Nations and the International Criminal Court as Article 103 of the UN Charter declares the prevail role of the obligations under the UN Charter over any other international agreement<sup>41</sup>.

Moreover, the UN Security Council is empowered to decide if the case should be referred to the Court, since this decision depends on the political will of the permanent members and interests of them in the referring. The imbalance also takes place when the permanent members can push the referral decision to the Court over other States but not over themselves. The consequences of this power can be seen in the recent cases of Syria, Palestine, and Ukraine.

According to the report of the Oxfam International the UN Security Council is failing people living in conflict, especially noticeable with Russian Federation and the United States, who are particularly responsible for abusing veto powers and blocking progress toward peace in Ukraine, Syria, and the Occupied Palestinian Territory and Israel<sup>42</sup>.

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<sup>37</sup> Rome Statute, Article 1

<sup>38</sup> Rome Statute, Article 2

<sup>39</sup> Rome Statute, Article 13(b) – the Court may exercise its jurisdiction if the committed crimes is referred to the Prosecutor by the UN Security Council acting under Charter VII of UN Charter.

<sup>40</sup> Rome Statute, Article 16 - no investigation or prosecution may be commenced or proceeded with under the Rome Statute for a period of 12 months after the UN Security Council, in a resolution adopted under Chapter VII of the UN Charter, has requested the Court to that effect

<sup>41</sup> UN Charter, Article 103

<sup>42</sup> Oxfam International. (2024) UN Security Council casts nearly all vetoes last decade on Syria, Palestine and Ukraine, robbing opportunities for peace.

Current mechanism reflects the post-WWII international peace and security architecture. The countries got developed but still experience lack of the representee, the permanent members of the UN Security Council have most of the power not only by voting themselves but also in created them cooperation's and political interests. The structure of the United Nations is getting criticised and questioned about its credibility and independence.

As it was explained by Patrycja Grzebyk the UN Security Council in real practice has so far tended toward making a general reference to Chapter VII of the UN Charter, without qualifying the circumstances under Article 39, which might involve unnecessary debate and controversy and this is clearly linked to the determination that the situation may fit into any of the three categories referred in the Article 39 of UN Charter and do not affect the measures available to the council in these circumstances<sup>43</sup>.

To conclude, from the UN Security Council's point of view, it is important to identify what may constitute a threat to peace, since both a breach of the peace and an act of aggression fall into this broader category<sup>44</sup>. In accordance with Article 39, the Council determines the existence of any threat or breach of the peace, act of aggression<sup>45</sup>, next, according to the Article 40 decides temporary measures which should be applied<sup>46</sup>; accordingly, Article 41 decides measures which will not be used by armed force<sup>47</sup>, and thereafter the Council may decide in accordance with Article 42 the actions which should be taken by the armed forces<sup>48</sup>.

As the role of the UN Security Council in maintaining the peace and security is crucial, the need of strengthen the cooperation between the UN Security Council and General Assembly is urgent. It can be done in regular joint sessions and updates in the processes of sharing the information.

These reforms needed, especially in the situations when the UN Security Council under the deadlock and the Uniting for Peace Resolution mechanism is the only way to be involved into the peace-making process. Also, funding of the peacekeeping initiatives and preventive diplomacy is the way which can be used by United Nations for the upgrading the existing system.

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<sup>43</sup> GRZEBYK, Patrycja. (2013) *Criminal Responsibility for the Crime of Aggression in International Law*. Oxfordshire: Routledge, pp. 28

<sup>44</sup> *Ibidem*, pp. 29

<sup>45</sup> UN Charter, Article 39

<sup>46</sup> UN Charter, Article 40

<sup>47</sup> UN Charter, Article 41

<sup>48</sup> UN Charter, Article 42

The role of the ICC in the maintaining the peace and security is great but as it was mentioned above the powers of the UN Security Council in the referral/nonreferral are related to the political interest and the status of the party of dispute for the Rome Statute as party or non-party, as well as Article 103 of the UN Charter can become an issue for the Court in implementing the resolutions of the UN Security Council.

## **2. UNITING FOR PEACE RESOLUTION AND ITS PRECONDITIONS**

### **2.1. Inability of the UN Security Council to act in the case of an act of aggression**

The UN Security Council has a list of situations<sup>49</sup> when it was unable to act for the act of aggression due to veto right for permanent members of the UNSC. By this veto block, the UN Security Council cannot keep its primary responsibility under Chapter VII of the UN Charter – maintaining the international peace and security.

The deadlock of the UN Security Council to act in the case of an act of aggression shows the political problem, as well as problem inside the United Nations system. The key issue is the five permanent members of the UN Security Council and the single vote against can block the decision-making process, the offered idea for use of veto as two or more permanent members of the UN Security Council at the same time vote against the decision did not find the support among the Members<sup>50</sup>. In current case of aggression against Ukraine, it allows the Russian Federation, who is permanent member of the UN Security Council to avoid the responsibility for the violations.

Nowadays system stays similar to the 1945's system and brings new challenges for the United Nations and especially, UN Security Council to act timely and effective.

According to the reports of Al Jazeera the reform of the UN Security Council has been floated for years at the United Nations but has regained new traction following Russia's invasion of Ukraine. Currently, the five permanent members can veto any resolutions put forth by the Security Council and the rotating ten other members have no such power back since the first veto ever used by the Soviet Union in 1946 – Moscow has deployed it 143 times, far ahead of the United States (86 times), Britain (30 times) and China and France (18 times each)<sup>51</sup>.

The common situation with veto use in order to block the resolutions since the party of dispute is committing an act of aggression and violates the UN Charter. The debates about veto use and activity of UN Security Council were discussed by Wouters, in his

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<sup>49</sup> See also, Suez Crisis 1956, Hungarian Revolution of 1956, War in Afghanistan 1979-1989, Nicaragua v. United States conflict 1982-1986, the United States invasion to Panama in 1989, Iraq invasion to Kuwait 1990, Syrian Civil War 2011-2024, Yemeni Civil War since 2014, Occupation of Crimea, Donetsk and Lugansk regions of Ukraine since 2014

<sup>50</sup> DOROSH, Lesia, IVASECHKO, Olha. The UN Security Council Permanent Members' Veto Right Reform in the Context of Conflict in Ukraine, *Central European Journal of International and Security Studies* 12, no. 2, pp. 174

<sup>51</sup> Al Jazeera (2022) 'United Nations to Debate Veto Power of Permanent Security Council Members', 19 April.

opinion the founding members were forced to accept the codification of the proposed balance of power through the insertion of Article 27 UN Charter<sup>52</sup>.

According to Peters the obligation of good faith carries over to United Nations voting, and obviously includes the UN Security Council, so that the United Nations members must exercise their voting power in good faith, in accordance with the Purposes and Principles of the Organization<sup>53</sup>.

But also, in several cases where the UN Security Council members did abstain, later they claimed to have acted on a strictly on voluntary basis and several situations arose in which the UN Security Council members participated in a vote despite the fact it was difficult, if not impossible, to reconcile such conduct with the wording of Article 27(3)<sup>54</sup>. By raised topic it's clear that the voting of Member States may be controversial, especially when genocide, crimes of aggression or humanity are taking place.

Inability of the UN Security Council to act happened many times and brought the consequences of the failure in the system to a real world as loses of lives and damages of the infrastructure after the late respond or silence of the UN Security Council.

The UN General Assembly Resolution 377(A) adopted the conditions for the emergency special sessions in case if the UN Security Council failed to exercise its primary responsibility, then by the vote of any seven members or majority of the Members of the United Nations the UN General Assembly must meet within 24 hours after the voting<sup>55</sup>.

The jus cogens rules are easy to be explained and examined in the extreme cases as genocide, aggressive war, torture, but less clear when it relates to the protection of the human right or international social injustice, as examples<sup>56</sup>.

The rules of jus cogens are highly important for the international community as basis of the international law and understanding of peace and security, the violation of it brings disbalance of the peace. According to the research of Hossain jus cogens rules are considered as customary international law and the rules of jus cogens are binding regardless of the consent of the parties concerned and regardless of the states' individual opinion over these rules since they are too fundamental for states to escape responsibility for the breaches of it<sup>57</sup>

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<sup>52</sup> WOUTERS, Jan. and RUYS, Tom. (2005) Security Council Reform: A New Veto for a New Century? Egmont Paper No. 9. pp. 6

<sup>53</sup> PETERS, Anne. (2011) 'The Security Council's Responsibility to Protect', International Organizations Law Review, 8(1), pp. 29

<sup>54</sup> Ibidem, pp.12

<sup>55</sup> G.A. Res. 377 A (V) (1950) Uniting for Peace, 3 November

<sup>56</sup> GARDINER, Richard. (2003) International Law. London: Pearson Education, pp. 125

<sup>57</sup> HOSSAIN, Kamrul. (2005) 'The Concept of Jus Cogens Norms and the Obligations Under the United Nations Charter', Santa Clara Journal of International Law, 3(1), pp. 78

Byers's research correlates with the previous scholar as jus cogens rules are derived from the "process of customary international law," which basically makes it as a part of international constitutional order<sup>58</sup>. The understanding of the rules of jus cogens by those scholars coincides with my own understanding of this norm.

The Article 53 of the Vienna Convention explains a peremptory norm of general international law as a norm which was accepted and recognized by the international community of States as a norm from which no derogation is permitted, and which can only be modified by a subsequent norm of general international law of the same nature<sup>59</sup>. The similar provisions can be found in Convention on the Prevention and Punishment of the Crime of Genocide<sup>60</sup>. Moreover, The Common Article I undertake to respect and to ensure respect for the present Convention in all circumstances<sup>61</sup> and provisions of the International Committee for the Red Cross.<sup>62</sup> The 1949 Geneva Conventions<sup>63</sup> and Common Article 1 contain the obligations of not committing the war crimes mentioned in the Conventions. Those norms are important as breaches of them lead to the violation of the international peace and security.

In the Military and Paramilitary Activities in and Against Nicaragua Judgment that the principle prohibiting the use of force, and this should be recognized as jus cogens<sup>64</sup>.

As highlighted by Green, the Court in Nicaragua case concluded that the prohibition of the use of force was a peremptory norm and overwhelming majority of scholars view the prohibition of aggressive use of force, and so the use of force contrary to the UN Charter as having a peremptory character<sup>65</sup>. In her research Johnston agrees that the prohibition of aggressive use of force reverse to the UN Charter since it has an imperative character<sup>66</sup>.

The recognition of jus cogens in the Nicaragua case and by the International Law Commission is following: the prohibition of aggression, genocide, crimes against

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<sup>58</sup> BYERS, Michael. (2013) 'Conceptualising the Relationship Between Jus Cogens Norms and Erga Omnes Obligations', *Nordic Journal of International Law*, 66, pp. 222

<sup>59</sup> Vienna Convention on the Law of Treaties, Article 53

<sup>60</sup> Convention on the Prevention and Punishment of the Crime of Genocide (1948) 78 UNTS 277, 9 December.

<sup>61</sup> Geneva Convention I (1949) 75 UNTS 31.

<sup>62</sup> ICRC. Grave Breaches Specified in the 1949 Geneva Conventions and Additional Protocol I of 1977.

<sup>63</sup> See also, Geneva Convention I (1949) 75 UNTS 31; Geneva Convention II (1949) 75 UNTS 85; Geneva Convention III (1949) 75 UNTS 135; Geneva Convention IV (1949) 75 UNTS 287.

<sup>64</sup> Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v United States of America) (1986) ICJ Reports 14, 27 June.

<sup>65</sup> GREEN, James. (2011) 'Questioning the Peremptory Status of the Prohibition of the Use of Force in International Law', *Michigan Journal of International Law*, 32(2), pp. 216

<sup>66</sup> JOHNSTON, Katie. (2021) 'Identifying the Jus Cogens Norm in the Jus Ad Bellum Regime', *International and Comparative Law Quarterly*, 70(1), pp. 18.

humanity, racial discrimination and apartheid, slavery, torture; the basic rules of international humanitarian law and the right of self-determination<sup>67</sup>.

When the international law provisions experience breach, then the Member States have obligations to act and this was highlighted by Article 41 of the International Law Commission's Draft Articles on Responsibility of States for Internationally Wrongful Acts: "States shall cooperate to bring to an end through lawful means any serious breach, no possibilities for recognition of lawful acts created by a breach of law" and additionally, Article 40(2) of the ARSIWA adds that the violation involves gross or systematic non-fulfilment of obligations by the responsible State, then this is a serious problem for international security<sup>68</sup>.

Certain background of those provisions can be found in Advisory Opinion over the Legality of the Threat or Use of Nuclear Weapons, where the consequences might be way harsher for the international community as the applicability of the principles and rules of humanitarian law and of the principle of neutrality to nuclear weapons is hardly disputed but remain controversial as the fact that recourse to nuclear weapons is subject to and regulated by the law of armed conflict does not necessarily mean that such recourse is as such prohibited<sup>69</sup>.

In the Advisory Opinion of Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, the judge concluded that: the prohibition of the use of force is universally recognized as a *jus cogens* principle, so that, the Wall is not recognised by States and there is an obligation not to render aid or assistance in maintaining the situation created by such construction by any States<sup>70</sup>.

In the Chagos Advisory Opinion, the ICJ found that the decolonization of Mauritius was not conducted in a manner consistent with the right of peoples to self-determination, it follows that the United Kingdom's continued administration of the Chagos Archipelago constitutes a wrongful act entailing the international responsibility of that State<sup>71</sup>.

In case if the breach of *jus cogens* norms happens, the UN Security Council must react to keep peace and security, but those actions may get vetoed by permanent members

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<sup>67</sup> International Law Commission (2019) *Peremptory Norms of General International Law (Jus Cogens)*, A/74/10.

<sup>68</sup> International Law Commission (2001) *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, A/56/10.

<sup>69</sup> International Court of Justice (1996) *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 8 July.

<sup>70</sup> International Court of Justice (2004) *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 9 July.

<sup>71</sup> International Court of Justice (2019) *Legal Consequences of the Separation of the Chagos Archipelago*, Advisory Opinion, 25 February, para. 177

if they are involved into the violation. The deadlock of the UN Security Council was proposed to be solved by adopting the jurisdiction of the International Criminal Court, in particularly over the crimes of aggression, and amend it with Rome Statute of the ICC. By those changes, individual criminal responsibility for act of aggression can be prosecuted before the International Criminal Court.

The Rome Statute specified about four crimes within ICC's jurisdiction in the Article 5(1), the jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole to the following crimes: the crime of genocide; crimes against humanity; war crimes; the crime of aggression<sup>72</sup>.

Kress defines that seriously controversial cases under the ICC jurisdiction drawn separately in order not to decide major controversies about the content of primary international rules of conduct through the back door of international criminal justice<sup>73</sup>. I agree with this statement as solving the limited situations in the Court, only related to the most serious crimes, let the Court be more precise and attentive to the details of the cases.

The crime of aggression under Article 8bis(1) of the Rome Statute means the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the UN Charter<sup>74</sup>.

The prosecution is also limited due to major reason – the Rome Statute of ICC is the lack of jurisdiction for the non-State Parties and if the acts of aggression committed on the lands of the non-State Parties, then the jurisdiction is not covering it.

The weakness of the International Criminal Court was reflected in the two Article 12(3) declarations about war crimes, crimes against humanity and genocide for the case in Ukraine<sup>75</sup>. In order to fulfil the requirement and be a State Party of the Rome Statute is to join the Rome Statute, i.e., ratification of it by State<sup>76</sup>.

The declaration of this provision can be found in the Article 15bis(5) of the Rome Statute, the Court shall not exercise its jurisdiction over the crime of aggression when committed by that State's nationals or on its territory if the State is non-party<sup>77</sup>.

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<sup>72</sup> Rome Statute, Article 5(1)

<sup>73</sup> KRESS, Claus. (2009) 'Time for Decision: Some Thoughts on the Immediate Future of the Crime of Aggression', *European Journal of International Law*, 20(4), pp. 1142

<sup>74</sup> Rome Statute, Article 8bis(1)

<sup>75</sup> International Criminal Court (2022) *Situation in Ukraine*, ICC-01/22.

<sup>76</sup> See also, Article 12(1) of the Rome Statute: a State which becomes a Party to this Statute thereby accepts the jurisdiction of the Court with respect to the crimes referred to in article 5.

<sup>77</sup> Rome Statute, Article 15bis(5)

The UN Security Council Resolution 687 “Chemical and Biological Weapons Inspection Regime” proved the material breach of Iraq’s obligations related to chemical and biological weapons inspections revived the earlier use of force authorization, which was arguably still in effect if Iraq engaged in “hostile or provocative action”<sup>78</sup>.

According to Maxwell the revival argument became as primary legal justification for the invasion was predicated. As the result, the US and UK argued that the UN Security Council’s resolutions 660, 678 and 687 in relation to the first Gulf War were reactivated by so-called fail of Iraq to comply with resolution 687<sup>79</sup>.

The case of Iraq become significant due to several reasons:

1. the crimes were committed in 2003;
2. the definition of the crime of aggression was adopted in 2010 and according to the Article 15ter(3) of the Rome Statute the exercise of the jurisdiction over the crime of aggression by the Court, subject to a decision to be taken after 1 January 2017<sup>80</sup>;
3. the international level of the jurisdiction was not applicable as Iraq has a non-State Party status.

Since 1994 the Open-ended Working Group on the Question of Equitable Representation on and Increase in the Membership of the Security Council and Other Matters related to the Security Council of the UN General Assembly has met many times but got limited results<sup>81</sup>. The discussions of the reform of the UN Security Council started times ago and the participants of the 1994’s conference agreed that the UN Security Council need to be adapted to nowadays realities.

Niels Blokker thinks the debate about reform is still locked up in the realities of 1945 or earlier and the important things for a future reform of the UN Security Council are temporary character of it and time limit for the reformed composition of the Council<sup>82</sup>.

Expressing the support of the offered plan and considering it being realistic and useful so for future deeper reformation will be possible without being blocked by the first-round of reform.

As a solution in the case of the UN Security Council is unable to act in act of aggression, there were offered two initiatives: French/Mexican initiative and ACT Code of

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<sup>78</sup> S.C. Res. 687 (1991) 3 April.

<sup>79</sup> MAXWELL, Douglas. (2016) ‘Iraq: A Basis in Law?’, Law Society of Scotland, 15 August.

<sup>80</sup> Assembly of States Parties (2017) Activation of the Jurisdiction of the Court over the Crime of Aggression, ICC-ASP/16/Res.5, 14 December.

<sup>81</sup> BLOKKER, Niels and SCHRIJVER, Nico. (eds.) (2005) *The Security Council and the Use of Force: Theory and Reality – A Need for Change?* Leiden: Brill, pp. 261

<sup>82</sup> *Ibidem*, pp. 268

Conduct since the use of veto conflicting with the primary rules of maintaining international peace and security.

According to the presented by France and Mexico Political statement on the suspension of the veto in case of mass atrocities the UN 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, since the veto is not a privilege, but an international responsibility<sup>83</sup>. As of July 2022, 104 member states and 2 United Nations observers have signed the declaration.

ACT Code of Conduct received signs from 121 Member States, additionally 2 observer states have signed it as well<sup>84</sup>. While France and the UK endorse the ACT Code of Conduct, and also France one of the initiators of the mentioned French/Mexican initiative, the US who is permanent member of the UN Security have not joined any of those initiatives, and also has announced that the US will moderate with the veto use.

In 2001 the report of the International Commission on Intervention and State Sovereignty called for veto restraint and expressed that the agreement of the Permanent Five over a “code of conduct” to use the veto powers with respect to actions are needed to stop or avert a significant humanitarian crisis. The primary idea is that a permanent member, in the situations where its crucial national interests were not claimed to be involved, then the permanent member would not use its veto to obstruct the passage of what would otherwise be a majority resolution, but realistically speaking, It is impractical to debate about any amendment of the Charter happening any time soon since the veto power and distribution are concerned<sup>85</sup>.

The remarks of Ambassador Linda Thomas-Greenfield over this question were about the refrain from the use of the veto in the future except in rare, extraordinary situations, but if the Permanent Member exercises the veto to defend its own acts of aggression, should be held accountable for the breach<sup>86</sup>.

To conclude, a Code of Conduct and a political declaration, as the ACT Code of Conduct and French/Mexican initiative are examples of soft law instruments, they highlighted that veto should not used in the face of genocide, war crimes or crimes against humanity. Yet, any of those initiatives do not bring the question about legality of veto use

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<sup>83</sup> 70th General Assembly of the United Nations (2015) Political Statement on the Suspension of the Veto in Case of Mass Atrocities Presented by France and Mexico, 1 August.

<sup>84</sup> Global Centre for the Responsibility to Protect (2022) List of Signatories to the ACT Code of Conduct, 8 June.

<sup>85</sup> International Commission on Intervention and State Sovereignty (2001) The Responsibility to Protect. Ottawa: International Development Research Centre. Para 6.21.

<sup>86</sup> THOMAS-GREENFIELD, Linda. (2022) Remarks on the Future of the United Nations, 8 September.

and after years of pushing the idea of moderate use of veto only two permanent members on board support this idea, and this cannot be called a significant improvement. Currently there is no better ideas and options for the UN Security Council considering veto use and jurisdiction of the ICC under Rome Statute.

The alternative is call for the UN General Assembly emergency special sessions, as resolutions of the UN General Assembly overall has recommendary, nonbinding character. The U4P Resolution is a lifesaver for the situations when the UN Security Council is unable to act due to veto block, but this also lack the binding force to be real grant of the collective enforcement.

The rules of jus cogens explained well in the numerous Advisory Opinions, as well as it established by legal acts, but the prosecution of the breaches of the rules remains weak and the Rome Statute of ICC is limited in its powers when the non-party State involved into the dispute. The mechanism of prosecution needs to be improved and adopted in accordance with the principles of the international law.

## **2.2. Legality and legitimacy of the use of veto and abuse: obligation to abstain and its practical implications**

The deadlock of UN Security Council raises concerns about its relevance and productivity in case when the party of dispute is a permanent member, as it is in the case of aggression against Ukraine by Russian Federation.

Currently in the legal system, *jus cogens* norms have the highest level of protection in the international law so no derogations may be permitted from them, the exception is creating a new norm with the same character.

The discussions about the use of veto is flowing for the decades, but the concerns over the legality of such changes are high. Yet, the UN General Assembly recommendations non-binding and the UN Security Council can be blocked by cast of veto, then the maintaining peace and security seems even more complicated.

As for now, there no declared obligation to abstain from voting for the party of dispute, when the voting happens under the Chapter VII of UN Charter. In his research Milano explains the history of the distinction: the provision for so-called obligatory abstention, which is important to distinguish from voluntary abstention under Article 27 of the UN Charter, stems from a compromise between the UK positions, which argued that considerations of fairness and efficiency required members of the dispute to abstain from voting, and the other side from the USSR position, which was reluctant to reduce the elevated status of the Permanent Five in the UN Security Council, even in cases where the permanent member was a party to the dispute before the UN Security Council. Therefore, there was a limitation of the obligation to abstain by non-binding conciliation measures correlated under Chapter VI of the Charter. According to the researcher, although the wording that requires it is clear in accordance with the UN Charter, it simply has not been used.<sup>87</sup>

For the current period, the last use of such provision of abstention happened for the dispute between Israel and Adolf Eichmann's abduction from Argentina in 1960. The UN Security Council and Argentina abstained<sup>88</sup> from voting on the resolutions being considered.

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<sup>87</sup> MILANO, Enrico. (2015) 'Russia's Veto in the United Nations Security Council: Legal Dimensions', Max Planck Institute Papers, pp. 217

<sup>88</sup> Security Council Report Article 27(3) of the United Nations Charter and Parties to a Dispute: A Historical Overview.

According to Milano, the issue of abstention, whether it should be used, has arisen since then, there has been no successful subsequent use of such abstention<sup>89</sup>.

As was discussed in the above, France and Mexico offered the initiative on suspension of the veto and called for the international responsibility over inner political interest of the States<sup>90</sup>.

After the February 2022, the discussions over the use of veto increased due to ongoing aggression against Ukraine and Liechtenstein offered the Resolution 76/262 “Standing mandate for a General Assembly debate when a veto is cast in the Security Council”<sup>91</sup> issued on 26<sup>th</sup> of April 2022. This Resolution received 83 votes in favour and proposed the way to solve the issue with veto right so the use of UN Charter would be more effective.

The Liechtenstein Initiative does not reactive the Uniting for Peace Resolution, but it offers the shorter and automatic way for invoking it. The primary idea of the Initiative is to increase the powers of implication of the U4P resolution or call for the emergency special sessions. The problem that was viewed by this Initiative is the lack of unanimity of the Permanent Members of the UN Security Council and this leads to the deadlock of the Council and fail the exercise the primary responsibility of maintaining international peace and security.

Basically, the Initiative creates mandatory procedural response when one or more of the Permanent Members use the veto and by this create the threat or breach of the international peace and security.

The Initiative based it provision on:

1. the Article 24(1) of the UN Charter to ensure that Members confer on the Security Council primary responsibility for the maintenance of international peace and security<sup>92</sup>;
2. Article 24(3) of the UN Charter to the UN Security Council submission of a special report on the use of the veto in question to the UN General Assembly at least 72 hours before the relevant discussion in the UN General Assembly<sup>93</sup>;
3. Article 27 of the UN Charter as explanation about the voting since each member of the UN Security Council shall have one vote and decisions of the UN Security Council on procedural matters shall be made by an affirmative vote of nine members<sup>94</sup>;

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<sup>89</sup> Ibidem, note 87, p. 217

<sup>90</sup> 70th General Assembly of the United Nations (2015) Political Statement on the Suspension of the Veto in Case of Mass Atrocities Presented by France and Mexico, 1 August.

<sup>91</sup> G.A. Res. 76/262 (2022) 26 April.

<sup>92</sup> UN Charter, Article 24(1)

<sup>93</sup> UN Charter, Article 24(3)

<sup>94</sup> UN Charter, Article 27

4. the provisions of the deadline and organisational matters, so the President of the UN General Assembly shall convene a formal meeting of the UN General Assembly within 10 working days of the casting of a veto by one or more Permanent Members of the UN Security Council, to hold a debate on the situation as to which the veto was cast, provided that the UN General Assembly does not meet in an emergency special session on the same situation<sup>95</sup>.

The Initiative has risks to increase the tension between the UN Security Council and General Assembly, if the Permanent Members will consider those privileges of the UN General Assembly as politization and may sabotage the voting in general by strategic abstentions, cooperating inside the Permanent Members or creating the obstacles for the UN General Assembly.

Yes, the Initiative increases the reputational cost of the veto, but the preventive effect of this depends on political stimulus, so in cases where the Permanent Members believes that its main interests are higher and reputational costs are high, then the Initiative is not enough to prevent the use of the veto. The Initiative itself just develop the provisions of the UN Charter but not replace them completely.

The Uniting for Peace Resolution gives mandate to the UN General Assembly to act, and this also creates the tension as the UN General Assembly holds the recommendatory powers and taking actions in the deadlock of the UN Security Council gives to the Assembly wider role.

The Initiative provisions hold political effect not juridical, and the sense of the Initiative is to raise the responsibilities of the Permanent Members of the UN Security Council on reputational and diplomatic levels. Overall, the Resolution 76/262 should be understood as a legitimate procedural innovation that enhances transparency and accountability, while respecting the UN Charter's allocation of binding decision-making power.

The UN General Assembly Resolution 70/621–S/2015/978 in the Annex I call for voluntary veto restraint as the code of conduct was elaborated in consultation with States, civil society and the Secretariat of the United Nations and it contains a general and positive pledge to support UN Security Council action against genocide, crimes against humanity and war crimes to prevent or put an end to those crimes<sup>96</sup>.

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<sup>95</sup> 70th General Assembly of the United Nations (2015) Political Statement on the Suspension of the Veto in Case of Mass Atrocities Presented by France and Mexico, 1 August.

<sup>96</sup> G.A. Res. 70/621 – S/2015/978 (2015) Code of Conduct Regarding Security Council Action Against Genocide, Crimes Against Humanity or War Crimes, 14 December.

This UN General Assembly Resolution asks members not to vote against a credible draft resolution before the UN Security Council on timely and decisive action to end the commission of genocide, crimes against humanity or war crimes, or to prevent such crimes, as it breaches the primary responsibility of those international bodies and leads to the fail of its obligations.

As an option, the UN General Assembly can request an Advisory Opinion against the use of the veto in the acts of aggression and it can be arranged as a contentious case, under the Genocide Convention<sup>97</sup> for the situations of veto use when genocide takes place or under the Torture Convention<sup>98</sup>, same issue but for situations when torture takes place.

According to the Article IX of the Genocide Convention, the disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or etc, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute<sup>99</sup>.

According to the Article 30(1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation shall ... any one of those Parties may refer the dispute to the ICJ by request in conformity with the Statute of the Court if the dispute can be solved in any other way<sup>100</sup>.

If the UN General Assembly resolution and the ICJ Advisory Opinion would not be binding, none of it can be powerful enough for creating a political pressure for the UN Charter provisions of obligatory abstention of a party to the dispute under Chapter VI to be updated. Such a reform can practically make the UN Security Council stronger and prevent from the deadlock when the party of dispute is a permanent state of the UN Security Council, in cases when the UN Security Council issues the resolution under Chapter VI.

To conclude, scholars resuming the functioning of the duty to abstain under Article 27(3) of the UN Charter would go exactly in the direction of revitalizing the role of the UN Security Council and would offer the UN Security Council a more credible, effective and impartial institutional actor in the performance of its task of promoting international peace

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<sup>97</sup> Convention on the Prevention and Punishment of the Crime of Genocide (1948) 78 UNTS 277, 9 December.

<sup>98</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) 1465 UNTS 85, 10 December.

<sup>99</sup> Convention on the Prevention and Punishment of the Crime of Genocide (1948) 78 UNTS 277, 9 December.

<sup>100</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 30(1)

and security<sup>101</sup>. Unfortunately, the use of veto went too far while abstain got no development and stays unused for years, the reforms are needed to bring equality and to fulfil the provisions of the UN Charter.

The Liechtenstein Initiative can be considered as legitimate and the UN Charter-respected innovation since it does not call for the cancelation of the use of veto but for mindful use and respect to the international community, offers the easier call for the Uniting for Peace Resolution, and proposed to increase the reputational responsibility for the use of veto. The Initiative offers transparency as it needed for the maintaining peace and security.

Yet, the Initiative met several issues with understanding, implementing and following it, since the Permanent Members of the UN Security Council do not want to lose the privilege which they hold.

The UN Charter provides voluntary abstain and has no force over the use of veto, even when the party of dispute votes. Unfortunately, the provision is liberal and relaying on the moral of the States instead of establishing the stricter rules and punishment for the abuse of veto right.

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<sup>101</sup> Ibidem, note 87, pp. 217.

### **2.3. Limits and possibilities of UN General Assembly recommendatory powers: role and practice of UN General Assembly in establishment of criminal tribunals**

The emergency special session can be called by UN General Assembly when the UN Security Council fails to fulfil its obligations. Overall, the UN General Assembly, under the provisions of the Rules of Procedure of the General Assembly, meets every year in regular session commencing on the Tuesday of the third week of September, counting from the first week that contains at least one working day<sup>102</sup>.

The emergency special sessions call for solving the international disputes and offer solutions for the peacekeeping. One of the important discussions is about the sanctioning the aggressor state for the breaking international peace and security.

The UN General Assembly as part of the law-making machinery of the United Nations cooperates with the International Law Commission and other specialist United Nations bodies<sup>103</sup>. The UN General Assembly is a most convenient forum for pronouncements of a collective view of states that certain practices are observed because states are allowed to observe it<sup>104</sup>.

The UN Charter gives the primary responsibility to the UN General Assembly to keeping peace and security and under the Article 13 (1)(b) shall assist in the realization of human rights<sup>105</sup>.

The systematic violations of the human rights threaten the international peace and security and the responsibility of restoring it falls to the UN Security Council.

The crime of aggression as crimes against peace was especially highlighted and prosecuted in the International Military Tribunals at Nuremberg<sup>106</sup> and the International Military Tribunal for the Far East (Tokyo)<sup>107</sup>. Those criminal tribunals were launched before the United Nations, but it gave the first navigations for the establishing such a tribunals later in in history. The Nuremberg Tribunal listed crime against peace as the paramount crime – “the supreme international crime”<sup>108</sup>.

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<sup>102</sup> United Nations (2007) Rules of Procedure of the General Assembly, A/520/Rev.17. para. 49

<sup>103</sup> GARDINER, Richard. (2003) International Law. London: Pearson Education, pp. 229

<sup>104</sup> Ibidem, pp. 111

<sup>105</sup> UN Charter art 13(1)(b).

<sup>106</sup> Charter of the International Military Tribunal (1945) Annex to the London Agreement of 8 August.

<sup>107</sup> International Military Tribunal for the Far East (1946) Special Proclamation by the Supreme Commander for the Allied Powers, 19 January.

<sup>108</sup> EINARSEN, Terje. (2012) The Concept of Universal Crimes in International Law: Theoretical Foundations and Contemporary Challenges. Oslo: Torkel Opsahl Academic EPublisher, pp. 209

Important to mention that the prosecution of the crime against peace was stopped during Cold War and stayed unactive up until 1993 since the International Criminal Tribunal for the former Yugoslavia<sup>109</sup>.

In general, the United Nations relies on the International Court of Justice as it is the principal judicial organ of the United Nations and it shall function in accordance with the Statute, which is based upon the Statute of the Permanent Court of International Justice and forms an integral part of the present Charter. Under the Article 96 of the UN Charter the ICJ can issue the advisory opinion on any legal question<sup>110</sup>. The UN General Assembly or the Security Council may request the International Court of Justice to give an Advisory Opinions. At the same time, the UN General Assembly resolutions and the Advisory Opinions of the ICJ are not binding, so the implementation of their recommendations can be limited.

According to the Mayr, the ICJ Advisory Opinions are authoritative erga omnes and strongly influence the international community's understanding of international law as well as the normative expectations of States<sup>111</sup>. I can agree with this statement since it reflects the real powers of the ICJ's Advisory Opinions.

According to the ICJ ruling in the Certain Expenses Advisory Opinion, the UN Security Council is impowered to decide on any action over the maintenance of international peace and security, it was argued that since the UN General Assembly's power is limited to discussing, considering, and recommending<sup>112</sup>.

The UN General Assembly according to the Article 14 of the UN Charter has the power to give recommendations for peaceful adjustment on various situations<sup>113</sup> but with the restriction found in Article 12, namely, that the Assembly should not recommend measures while the UN Security Council is dealing with the same matter unless the Council requests it to do so<sup>114</sup>.

Corell agrees with this decision of the ICJ Advisory Opinion because if the UN General Assembly can make recommendations to use armed force in the case of a breach of the peace or act of aggression, the UN General Assembly can make a recommendation

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<sup>109</sup> S.C. Res. 827 (1993) 25 May.

<sup>110</sup> UN Charter, Article 96

<sup>111</sup> MAYR, Teresa and MAYR-SINGER, Jelka. (2016) 'Keep the Wheels Spinning: How to Maintain the Functioning of International Criminal Proceedings', Heidelberg Journal of International Law, 76, pp. 425–449.

<sup>112</sup> International Court of Justice (1962) *Certain Expenses of the United Nations*, Advisory Opinion, I.C.J. Reports 1962, p. 151 (20 July).

<sup>113</sup> UN Charter, Article 14

<sup>114</sup> International Court of Justice (2004) *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 9 July.

or direct a request to the Secretary-General to negotiate on establishing of a Special Court for the Crime of Aggression<sup>115</sup>.

If the UN General Assembly establish the tribunal under the provisions of the Article 22 of the UN Charter, then the powers of such a tribunal are limited as the only tribunals that can be set in this way are related to the functioning of the Organisation itself and can prosecute administrative, employment, etc cases.

The UN Member States can obtain the arrest warrants of a tribunal under Chapter VII of the UN Charter and this principle was used for the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda, basically, the statute of the ICTY and ICTR were first international instruments to regulate the relationship between international and national criminal jurisdictions.<sup>116</sup>

The UN General Assembly is competent to recommend measures not involving the use of military force, and has previously recommended a wide range of diplomatic, economic and other sanctions, but important remark over the sanctions recommended by the UN General Assembly – those sanctions that were not mandated by the UN Security Council are generally characterised in legal terms as unilateral sanctions<sup>117</sup>.

Overall, the competences of the UN General Assembly under the UN Charter are broad but the character of the recommendations are non-binding. Under the provisions of the Articles 10 -12 and 14 of the UN Charter the UN General Assembly can recommend measures for the peaceful adjustment of any situation and promote the cooperation between the States.

Yet, the UN General Assembly established the UN Administrative Tribunal as the UN General Assembly initiative<sup>118</sup>. The “soft-law” resolutions, declarations and recommendations of the UN General Assembly work over the inner processes of the United Nations.

The UN General Assembly can address the issue of breach of peace and security in making appropriate recommendations to members for collective measures, including in the case of a breach of the peace or act of aggression, the use of armed force when necessary. The implications of the UN General Assembly distinctly invoking the U4P Resolution as a

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<sup>115</sup> CORELL, Hans. (2023) ‘A Special Tribunal for Ukraine on the Crime of Aggression and the Role of the United Nations General Assembly’, Just Security, 14 February.

<sup>116</sup> STIGEN, Jo. (ed.) (2008) *The Relationship Between the International Criminal Court and National Jurisdictions: The Principle of Complementarity*. Leiden: Brill, pp. 41

<sup>117</sup> BARBER, Rebecca (2021). *The Powers of The UN General Assembly to Prevent and Respond to Atrocity Crimes: A Guidance Document*. Asia Pacific Centre for the Responsibility to Protect, University of Queensland. pp. 38

<sup>118</sup> G.A. Res. 351 (IV) A (1949) 9 December.

basis to recommend the use of force, or alternatively recommending the use of force without invoking U4P Resolution<sup>119</sup>.

Despite issues with the implications and understanding the legal norms, the historical background proves that establishment of the tribunals are possible in a different way – by request of the UN Security Council or by the recommendations of the UN General Assembly. The discussions over the establishment of tribunals related to the ongoing aggression against Ukraine and the format of the tribunal is highly important to rule of law, justice and international peace and security.

According to the UN Security Council Resolution 827, in the particular circumstances of the former Yugoslavia the establishment as an ad hoc measure by the Council of an international tribunal and the prosecution of persons responsible for serious violations of international humanitarian law would contribute to the restoration and maintenance of peace and the main goal was cooperation of all States to fully with the International Tribunal and its organs in accordance with the present resolution and the Statute of the International Tribunal<sup>120</sup>.

The same principle was used for the International Criminal Tribunal for Rwanda under the UN Security Council Resolution 955 for establishing an international tribunal for the sole purpose of prosecuting persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring States<sup>121</sup>.

Also, the UN Security Council approved the creation of the Special Tribunal for Lebanon under Chapter VII by issuing the UN Security Council Resolution 1757 and requesting inter alia the establishment of a tribunal of an international character to try all those who are found responsible for this terrorist crime, and the request by this Council for the Secretary-General to negotiate an agreement with the Government of Lebanon aimed at establishing such a Tribunal based on the highest international standards of criminal justice<sup>122</sup>.

Remarkably, the Special Tribunal for Lebanon has jurisdiction to apply only the provisions of the Lebanese Criminal Code which were related to the prosecution and punishment of acts of terrorism, crimes against life, criminal participation and etc; the

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<sup>119</sup> Ibidem, pp. 44.

<sup>120</sup> S.C. Res. 827 (1993) 25 May.

<sup>121</sup> S.C. Res. 955 (1994) 8 November.

<sup>122</sup> S.C. Res. 1757 (2007) 30 May.

definition of the “acts of terrorism” were pursued by an international tribunal for the first time<sup>123</sup>.

In 2010 under the UN Security Council was established the International Residual Mechanism for Criminal Tribunals, also known as “the Mechanism”<sup>124</sup>. The budgetary and administrative sides are managed by the UN General Assembly. According to this resolution, the UN Security Council recalled the UN Security Council resolution 827 of 25<sup>th</sup> of May 1993, which established the International Tribunal for the former Yugoslavia, and resolution 955 of 8<sup>th</sup> of November 1994, which established the International Criminal Tribunal for Rwanda, and all subsequent relevant resolutions.

It was decided to establish “the Mechanism” with two branches, which shall commence functioning on 1 July 2012 for the branch for the ICTR) and 1 July 2013 for the branch for the ICTY.

The UN Security Council Resolution 1966 provided the algorithm of the operation and establish the schedule for the meetings for “the Mechanism” it shall operate for an initial period of four years and to review the progress of the work of the Mechanism, including in completing its functions, before the end of this initial period and every two years thereafter, and further decides that the Mechanism shall continue to operate for subsequent periods of two years following each such review, unless the UN Security Council decides otherwise<sup>125</sup>.

Another issue that was raised by the UN Security Council Resolution 678 was authorizing “all necessary means” as the respond to the use of force for the Iraq’s invasion to Kuwait: “authorizes Member States co-operating with the Government of Kuwait, unless Iraq on or before 15 January 1991 fully implements, use all necessary means to uphold and implement resolution 660 (1990) and all subsequent relevant resolutions and to restore international peace and security in the area”<sup>126</sup>.

In another case, the UN Security Council did not establish the special tribunal for Sierra Leone since it was acting under the Chapter VI not Chapter VII of the UN Charter and the UN Security Council requested the Secretary-General to negotiate an agreement with the Government of Sierra Leone to create the SCSL<sup>127</sup>.

One of the examples of the recommendatory powers of the UN General Assembly is Extraordinary Chambers in the Courts of Cambodia and under the UN General Assembly

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<sup>123</sup> EINARSEN, Terje. (2012) *The Concept of Universal Crimes in International Law: Theoretical Foundations and Contemporary Challenges*. Oslo: Torkel Opsahl Academic EPublisher, pp. 146-147

<sup>124</sup> S.C. Res. 1966 (2010) 22 December.

<sup>125</sup> Ibidem

<sup>126</sup> S.C. Res. 678 (29 November 1990)

<sup>127</sup> S.C. Res. 1315 (14 August 2000)

Resolution 52/135 was established a Group of Experts for Cambodia, which recommended to the United Nations to establish an ad hoc international tribunal for Khmer Rouge officials who committed crimes against humanity and genocide<sup>128</sup>.

The establishing of the ECCC was done under the Cambodian law but it is relevant example of the UN General Assembly resolution that led to the establishing of the tribunal after the request of the UNGA. Also, the Cambodia Group of Experts agreed that the UNGA resolution is the important step for creation of the tribunal<sup>129</sup>.

With respect to discussed above, the UN Security Council has authority for enforcement measures (use of force or sanctions) under the Chapter VII of the UN Charter and the historical background proves it, establishing of the ICTY and ICTR were done under provisions of the Chapter VII. The UN General Assembly has limited powers which can be used for the administrative or internal functions.

Scholars agree that the UN General Assembly does not have the power to create a criminal tribunal with binding international criminal jurisdiction, since it lacks judicial enforcement powers, and it cannot use a subsidiary tribunal to impose criminal one<sup>130</sup>.

In 2016 the UN General Assembly adopted Resolution 71/248 also known as the International, Impartial and Independent Mechanism to assist in the investigation and prosecution of persons responsible for the most serious crimes under International Law committed in the Syrian Arab Republic since March 2011, or “the IIIM”<sup>131</sup>.

It was done as the investigative mechanism to compile crime evidence in Syria: “the Mechanism has an explicit nexus to criminal investigations, prosecutions, proceedings and trials and the Mechanism is required to prepare files to assist in the investigation and prosecution of the persons responsible and to establish the connection between crime-based evidence and the persons responsible, directly or indirectly, for such alleged crimes, so the Mechanism has a quasi-prosecutorial function”<sup>132</sup>.

According to scholars, there are concerns about the source of the court’s jurisdiction due to lack of the enforcement powers of the UN General Assembly. Considering the overview of scholars, the new Special Tribunal for the crime of aggression against Ukraine could be conferred international criminal jurisdiction over the crime of aggression in two

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<sup>128</sup> HATHAWAY, Oona. MILLS, Maggie and ZIMMERMAN, Heather. (2023) ‘The Legal Authority to Create a Special Tribunal for the Crime of Aggression Against Ukraine’, *Just Security*, 5 May.

<sup>129</sup> Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia (2004) NS/RKM/1004/006

<sup>130</sup> JINKS, Derek (2014). Does the U.N. General Assembly have the authority to establish an International Criminal Tribunal for Syria? [online] <https://www.justsecurity.org/10721/u-n-general-assembly-authority-establish-international-criminal-tribunal-syria/>

<sup>131</sup> G.A. Res. 71/248 (2017) 11 January.

<sup>132</sup> *Ibidem*

ways. First, as with the courts formed for Sierra Leone and Cambodia (and unlike the IIIM), where the territorial state consents through entering into an international agreement with the United Nations, it vests the tribunal with a jurisdictional title and secondly, it can be acquired through a specific instrument, like a negotiated agreement between the UN and a member State<sup>133</sup>.

To sum up, the UN General Assembly holds subsidiary powers to keep this core purpose – maintain the international peace and security. Also, the UN General Assembly can adopt the resolutions and trigger the establishing of the special tribunal or a body with the judicial character and UN General Assembly has the powers to request the Secretary-General to act and create a special tribunal under existing jurisdiction and exercise it. This request is an obligation for the Secretary General to step up and follow this request.

There are plenty of historical background which proves the capacities of the UN General Assembly to act and follow the Principles and Purposes of its existent, but the lack of enforcement is a hot topic for debates.

The powers of the UN General Assembly are about the recommending and creating subsidiary bodies for the internal functioning of the United Nations and promote cooperation between states. A positive characteristic is the establishment of soft law norms and political legitimacy. At the same time, the issue of sanctions, the use of force or mandatory criminal jurisdiction constituting coercive acts remains the domain of the UN Security Council under Chapters VI–VII of the UN Charter.

Tribunals that may create or establish UN General Assembly are internal administrative bodies, that is, they are not instruments of international criminal justice, so such actions are not coercive measures under the Charter. As a result, the UN General Assembly may establish auxiliary internal management tribunals as necessary, but the UN General Assembly does not have the authority to create tribunals that are criminal and capable of prosecuting international crimes.

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<sup>133</sup> HATHAWAY, Oona. MILLS, Maggie and ZIMMERMAN, Heather. (2023) ‘The Legal Authority to Create a Special Tribunal for the Crime of Aggression Against Ukraine’, *Just Security*, 5 May.

### **3. AGGRESSION AGAINST UKRAINE AND RESPONSIVENESS OF THE UNITED NATIONS**

#### **3.1. Resolutions adopted under Uniting for Peace Resolution and their implications**

The first version of the UN General Assembly Resolution 377 A, also known as Uniting for Peace resolution was headed by the United States due to the UN Security Council's deadlock in 1950 during the Korean War<sup>134</sup>. The same day, the UN Security Council met and determined that the action constituted a "breach of the peace" and called for an immediate cessation of hostilities and for the withdrawal of "North Korean forces".

As the matter initially arose before the UN Security Council, the USSR was boycotting the UN Security Council due to the exclusion of representatives from the People's Republic of China from taking up the Chinese seat on the UNSC<sup>135</sup>.

After this, in August 1950 the US officials concluded that no further the UN Security Council action on the Korean Peninsula would be possible, and reignited discussions about ways that the UN General Assembly could support further action on Korea<sup>136</sup> and this happened as offered the UN Security Council resolution motivated the USSR to come back to the UN Security Council and due to presidency of the USSR in the UN Security Council at the same time.

Under this resolution the establishing of the Uniting for Peace process<sup>137</sup>, also known as Emergency Special Sessions, happened as well. For Winter 2025, this mechanism was used only eleven times<sup>138</sup> and established the rule of law, as well as showed the powers of the United Nations as international forum.

The UN Charter allows recommendations, but the Uniting for Peace Resolution understands this norm as meaning that according to Article 24 the UN General Assembly

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<sup>134</sup> Korean war began when North Korean forces crossed the 38th parallel and invaded the South Korea on 25<sup>th</sup> of June 1950, continued until 27<sup>th</sup> of July 1953. See more, Korean War. Britannica Editors [online] <https://www.britannica.com/event/Korean-War/Invasion-and-counterinvasion-1950-51>

<sup>135</sup> KRASNO, Jean. and DAS, Mitushi. (2008) 'The Uniting for Peace Resolution and Other Ways of Circumventing the Authority of the Security Council', in CRONIN, B. and HURD, I. (eds.) *The United Nations Security Council and the Politics of International Authority*. London: Routledge, pp. 178

<sup>136</sup> *Ibidem*, pp. 178-179

<sup>137</sup> United Nations General Assembly: Emergency Special Sessions.

<sup>138</sup> 1st session (Middle East on 1-10 November 1956); 2nd session (Hungary on 4-10 November 1956); 3rd session (Middle East on 8-21 August 1958); 4th session (Question of Congo on 17-19 September 1960); 5th session (Middle East on 17-18 June 1967); 6th session (The situation in Afghanistan and its implications for international peace and security on 10-14 January 1980); 7th session (Question of Palestine on 22-29 July 1980; 20-28 April 1982; 25-26 June 1982; 16-19 August 1982 and 24 September 1982); 8th session (Question of Namibia on 13-14 September 1981); 9th session (The situation in the occupied Arab territories on 29 January to 5 February 1982); 10th session (Illegal Israeli actions in Occupied East Jerusalem and the rest of the Occupied Palestinian Territory); 11th session (Letter dated 28 February 2014 from the Permanent Representative of Ukraine to the United Nations addressed to the President of the Security Council).

can hold discussions, even in cases where the UN Security Council is deadlocked and the exclusivity of the primacy of the UN Security Council is weakened. Also, the UN General Assembly may recommend collective measures which mostly associated with the UN Security Council enforcement powers.

As mentioned in the previous chapter, the UN General Assembly can call the emergency special sessions within 24 hours, and this allows to quickly mobilize diplomatic pressure on States who violate international peace and security.

Thus, the Uniting for Peace Resolution significantly expands the political authority of the UN General Assembly, despite the resolutions under it has formally non-binding character.

Additionally, Advisory Opinion over Certain Expenses of the United Nations confirmed that the UN General Assembly has legality of actions which are taken under the U4P Resolution<sup>139</sup>, if they do not disturb the binding decisions of the UN Security Council.

As was discussed in the Chapter 1 of this Master thesis, the International Court of Justice as takes part in peacekeeping operations which created under the UN General Assembly and may issue Advisory Opinion over dispute when it needed.

Under the Uniting for Peace Resolution the UN General Assembly can take different measures to settle peacefully disputes between States. First of all, the diplomatic and economic pressure on the States, the recommendations are not binding but they influence on regional level and can interrupt trade, aim transfers, if those take place as well. Diplomatically States become limited in their cooperation due to risks of being excluded from the international forum as well.

Next, the call of the emergence special sessions and establishing the UN Emergency Force<sup>140</sup> if it needed. The block of the UN Security Council may be avoided by the UN General Assembly powers for issuing the recommendations and taking actions in the peacekeeping processes.

Additionally, the UN General Assembly may establish investigatory and commissions of damages. The resent examples of those powers of the UN General Assembly, in 2016 the International, Impartial and Independent Mechanism for Syria and in 2022 the compensation mechanism for Ukraine.

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<sup>139</sup> International Court of Justice (1962) Certain Expenses of the United Nations, Advisory Opinion, I.C.J. Reports 1962, p. 151 (20 July).

<sup>140</sup> See also, First United Nations Emergency Force which was established in 1956 to address the Suez Crisis and was done to supervise the cessation of hostilities, including the withdrawal of the armed forces of France, Israel and the United Kingdom from Egyptian territory. After the withdrawal the UNEF served as a buffer between the Egyptian and Israeli forces. [online] <https://peacekeeping.un.org/mission/past/unefi.htm>

Lastly, the resolutions of the UN General Assembly can have so-called binding character if it related to the suspension of the State from the certain institutions or rights. The latest precedent happened in 2022 with the Russian Federation suspension from the UN Human Right Council as respond to the aggression against Ukraine.

Scholars agree that the Uniting for Peace mechanism provides the UN General Assembly with extra mandate to act in the case of acts of aggression and that leads to the conclusion that additional power cannot be given to the UN General Assembly under the UN Charter. For example, Reicher thinks that the Uniting for Peace Resolution was a constitutional landmark in the history of the Charter—not in the sense of creating new powers, but in the sense of revealing a latent potential in the Charter itself and setting it on a firm foundation and it “re-legitimized” what was already there<sup>141</sup>.

According to Andrassy, the U4P Resolution grants the UN General Assembly no greater powers than those it has under Article 10 and 11<sup>142</sup> and Carswell understands it as the U4P resolution serves to reveal the latent potential of the UN General Assembly already residing within the UN Charter<sup>143</sup>.

As we can see, they all agree on the same idea – the Uniting for Peace resolution gives certain benefits for the UN General Assembly, but it is no greater power than it possible under the UN Charter.

In recent history, the UN General Assembly was able to present an independent respond about the situation about act of aggression against Ukraine with adaptation of the UN General Assembly Resolution 68/262 from 27<sup>th</sup> of March 2014 “Territorial integrity of Ukraine” which passed with 100 votes in favour<sup>144</sup>.

The case of aggression against Ukraine was adopted the UN Security Council Resolution 2202 from 17<sup>th</sup> of February 2015 where the President of the Russian Federation, the President of Ukraine, the President of the French Republic and the Chancellor of the Federal Republic of Germany reaffirmed their full respect for the sovereignty and territorial integrity of Ukraine and obliged to remain committed to the implementation of the Minsk Agreements<sup>145</sup>.

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<sup>141</sup> REICHER, Harry. (1981) ‘The Uniting for Peace Resolution at Its Thirtieth Anniversary’, *Columbia Journal of Transnational Law*, 20, pp. 48.

<sup>142</sup> ANDRASSY, Juraj. (1956) ‘Uniting for Peace’, *American Journal of International Law*, 50(3), pp. 572.

<sup>143</sup> CARSWELL, Andrew. (2013) ‘Unblocking the United Nations Security Council: The Uniting for Peace Resolution’, *Journal of Conflict and Security Law*, 18(3), pp. 476

<sup>144</sup> G.A. Res. 68/262 (2014) Territorial Integrity of Ukraine, 27 March.

<sup>145</sup> S.C. Res. 2202 (2015) 17 February.

The Package of measures for the Implementation of the Minsk agreements, also known as Minsk Agreements<sup>146</sup>, was unique action for the international community due to several reasons: first, the difference in the role of each side as formally set out in the agreements, since none of the provisions in the agreements directly assigned any obligation to the Russian Federation and second, the problem was the sequence of implementation of the agreements, since they were conceived as a package, the agreements did not mention the procedure for implementing their provisions<sup>147</sup>. While Ukraine had security matters as a priority, the Russian Federation was seeking for the decentralization of Ukraine together with local election which would legitimize the forces.

According to the UN General Assembly Resolution GA/12407, the UN General Assembly demanded that all parties allow safe and unfettered passage to destinations outside of Ukraine, facilitate rapid and unhindered access to those in need of assistance inside the country, and protect civilians and medical and humanitarian workers<sup>148</sup>.

After the start of full invasion against Ukraine in February 2022, the United Nations by using the provisions of Article 24(1) of the UN Charter and U4P Resolution issued numerous resolutions, several of them were vetoed by Russian Federation, for example resolution S/2022/155 from 25<sup>th</sup> February 2022<sup>149</sup>. This created the deadlock of the UN Security Council and the effectiveness of the United Nations raised concerns about safety of international community. Another vetoed resolution was S/2022/720 from 30 September 2022 and it contained the concerns about illegal referenda in Ukraine<sup>150</sup>

Overall, the vetoed resolutions raised the questions about the abstain of the party of the dispute in cases when the UN Security Council is acting under the Chapter VI of the UN Charter. Unfortunately, this is the existing issue of the United Nations since the permanent states of the UN Security Council allowed to decide by themselves if they would like to abstain from voting.

Legally, the Uniting for Peace Resolution is staying consistent with the framework of the UN Charter, as the main right to act belong to the UN Security Council and as long as it stays active and not blocked by use of veto – the recommendations of the UN General

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<sup>146</sup> See also, Package of measures for the Implementation of the Minsk agreements [online] <https://peacemaker.un.org/sites/default/files/document/files/2024/05/ua150212minskagreementen.pdf> and S.C. Res. 135 (2015) (25 February)

<sup>147</sup> DUMOULIN, Marie (2024) Ukraine, Russia, and the Minsk agreements: A post-mortem. The European Council on Foreign Relations [online] <https://ecfr.eu/article/ukraine-russia-and-the-minsk-agreements-a-post-mortem/>

<sup>148</sup> United Nations General Assembly (2022) GA/12407: Adoption of Resolution Demanding Immediate End to Russian Use of Force, 2 March.

<sup>149</sup> S/2022/155 (2022) 25 February - this resolution issued as respond on the aggression against Ukraine and recalled the Minsk Agreements as request to cease the fire.

<sup>150</sup> S/2022/720 (2022) 30 September.

Assembly have non-binding character and opposite possible only in extreme cases as a deadlock of the UN Security Council. At the same time, certain decisions of sanctions and peacekeeping operation issued by the UN General Assembly found the support of the International Court of Justice. By conclusion, the U4P Resolution has been broadening the role of the UN General Assembly without violating the UN Charter.

The authority of the UN General Assembly allows it to call for the emergency special sessions and be responsible for the peacekeeping process while the UN Security Council blocked, also, according to the Article 22 of the UN Charter the UN General Assembly may establish subsidiary organs if it is necessary for the performance of its functions<sup>151</sup>.

As example of the realisation of this provisions, the UN General Assembly created the United Nations Relief for Palestine Refugees in the near East<sup>152</sup>, the Office of the High Commissioner for Refugees<sup>153</sup> and numerous other human right mechanisms. The established bodies carrying different tasks – humanitarian, investigatory, administrative, etc.

Additionally, the UN General Assembly according to the UN Charter do not get legislative powers but the recommendatory powers may be considered as such and this allowed to adopt the 1948 Universal Declaration of Human Rights<sup>154</sup>, and as it recognized by Sloan in his research the central feature of the UN General Assembly since the 1960s is the “soft-law” function as the developed mix of the customary international law and framework-making powers<sup>155</sup>.

To conclude, the Uniting for Peace resolution has significant impact on the UN General Assembly powers in the situations when the UN Security Council under the deadlock due to use of veto. As explained above, the UN General Assembly enjoys certain privileges in the establishing subsidiary organs if needed.

For the case of aggression against Ukraine, the UN General Assembly adopted numerous resolutions since 2014, which reflected the political consensus and involvement of the international community to the dispute. Since the block of the UN Security Council,

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<sup>151</sup> UN Charter, Article 22

<sup>152</sup> See, UNRWA is mandated by the UN General Assembly to serve Palestine refugees. [online] <https://www.unrwa.org/who-we-are>

<sup>153</sup> See, UNHCR was established by the General Assembly of the United Nations in 1950 in the aftermath of the Second World War to help the millions of people who had lost their homes. [online] <https://www.unhcr.org/about-unhcr>

<sup>154</sup> See, the Declaration was proclaimed by the United Nations General Assembly in Paris on 10 December 1948 (General Assembly resolution 217 A) as a common standard of achievements for all peoples and all nations. [online] <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

<sup>155</sup> SLOAN, Blaine. (1991) United Nations General Assembly Resolutions in Our Changing World. New York: Transnational Publishers. pp. 50

the mechanism of the Uniting for Peace Resolution of call for the emergency special sessions was used by the UN General Assembly to respond to the breach of the international peace and security, this mechanism can be used in the extreme situations and the call for it highlighted the importance of the mobilization of the international bodies to address the issue.

### **3.2. Establishment of the Special Tribunal for the crime of aggression against Ukraine in the context of UN General Assembly recommendatory powers**

The discussions about establishing of the Special Tribunal for the Crime of Aggression against Ukraine started in February 2022 and the main issue is a adjudicate individual criminal responsibility for the crimes of aggression of citizens of Russian Federation. The core of debates is the prohibition of the use of force according to the UN Charter and the issues with keeping the peace and security for international community. The need to investigate and prosecute the crimes of aggression is directly related to principles, purposes and tasks of the United Nations.

The role of the UN General Assembly was actively discussed as the questions about the nature of the special tribunal is specific and the UN General Assembly has quite limited powers over the decisions of the establishing of the tribunal, despite the establishing the UN Administrative Tribunal and powers of the UN General Assembly under Article 22 of the UN Charter.

Nevertheless, some scholars question the possibilities of Article 22 of the UN Charter since no direct prohibition for the creation a special tribunal is not provided by the UN Charter and if tribunal created under principles and purposes of the United Nations then it can be established under the UN General Assembly request<sup>156</sup>.

The professor Oona Hathaway of the Yale Law School reminded that the International Criminal Court does not have jurisdiction over the crime of aggression in the case of aggression against Ukraine and the alternative avenue for accountability must be found. The roundtable discussion focused on the option of proceeding through the UN General Assembly which – building on its resolution ES-11/1 of 2nd of March 2022<sup>157</sup> and can recommend the creation of a special tribunal for the crime of aggression and settle a treaty between the United Nations and Ukraine establishing a Special Tribunal for the Crime of Aggression against Ukraine<sup>158</sup>.

The Uniting for Peace Resolution do not give the UN General Assembly powers to establish the special tribunal, but it allows the UN General Assembly to take the

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<sup>156</sup> SCHERMERS, H.G. and BLOKKER, N.M. (2018) *International Institutional Law: Unity within Diversity*. 6th edn. Leiden: Brill Nijhoff. pp. 389

<sup>157</sup> G.A. Res. ES-11/1 (2022) 2 March calls to work on the international framework and include the Normandy format and Trilateral Contact Group to implement them fully.

<sup>158</sup> Yale Club Roundtable (2022) *A Special Tribunal for the Crime of Aggression Recommended by the United Nations General Assembly? Latvia, Liechtenstein and Ukraine (2022) Letter dated 12 August 2022 from the Representatives of Latvia, Liechtenstein and Ukraine to the United Nations addressed to the Secretary-General Annex to A/ES-11/7 – S/2022/616.*

responsibilities in restoring the international peace and security when the UN Security Council fails due to block.

According to Hatheway another reason for the creation of the tribunal lays in the future of the international community since Russian Federation aggression against Ukraine it is also an attack on the post-WWII international order, the current aggression against Ukraine as a crisis moment that includes an important opportunity to make history by strengthening the rules-based international order and helping the United Nations to keep its promise of maintaining international peace and security in the future<sup>159</sup>.

The UN General Assembly can request the Secretary-General to adopt an international treaty for the creation of a tribunal and also, can motivate States to cooperate in the establishing of such a tribunal.

According to Reisinger, the historical background of the enforcement of international criminal law was full of selectivity and was in the form of victors' justice and she views the ICC as permanent institution with an aspiration of universality that would end the need for ad hoc or post hoc enforcement mechanisms, so the ICC has a clear mandate which alerts the perpetrators about the prosecution from the outset of a conflict: since the establishment the Court has become as the centre of a system of global criminal justice<sup>160</sup>. This central position of the ICC must be unwaveringly maintained and strengthened.

Upgrading the Rome Statute, as it was mentioned previously, requires attention so that in the future the cases of aggression will be allied with the ICC's jurisdiction without further negotiations. The current solution for those juridical gaps is the Special Tribunal for the Crimes of Aggression against Ukraine.

Global Institute for the Prevention of Aggression says that the ICC is itself currently unable to prosecute the crime of aggression being committed against Ukraine because of limitations placed on the exercise of the ICC's jurisdiction over the crime that do not apply to the other three Rome Statute crimes<sup>161</sup>.

This can be explained simply, the ICC jurisdiction is limited in exercising jurisdiction over a crime of aggression committed by the nationals or on the territory of States not party to the Rome Statute and in the absence of the UN Security Council referral.

Under the Article 36(1) of the UN Charter the UN Security Council may, at any stage of a dispute of the nature referred to in Article 33 or of a situation of like nature, recommend

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<sup>159</sup> Ibidem

<sup>160</sup> REISINGER CORACINI, Astrid. (2023) 'Is Amending the Rome Statute to Allow for Universal Jurisdiction Over Aggression a Feasible Option?', Just Security, 21 March.

<sup>161</sup> Statement on Russia's Invasion of Ukraine (2022) Global Institute for the Prevention of Aggression, 24 March.

appropriate procedures or methods of adjustment<sup>162</sup> for the resolution for Ukraine and the UN to start negotiations about creation of the tribunal. Yes, the power of such a tribunal would be weaker due to the limits of the Chapter VII mandate and resolutions under it.

Looking back to the previous cases such as the Special Court for Sierra Leone that was established by agreement between the United Nations and Sierra Leone, after the UN Security Council adopted the resolution requesting the establishment of the tribunal under Chapter VI<sup>163</sup>. But the tribunals established under Chapter VI of the UN Charter are prohibited in the issuing the arrest warrants for the third state parties.

The UN Security Council Resolution 1315 adopted on 14<sup>th</sup> of August 2000 reminded about the importance of compliance with international humanitarian law and reaffirmed that persons who commit or authorize serious violations of international humanitarian law are individually responsible and accountable for those violations<sup>164</sup>. That was the background of the situation when former Liberian President Charles Taylor was announced with his crimes, he left to Nigeria and the arrest warrant could not be sent to him since the only country with was allowed to do it was Sierra Leone due to agreement between Sierra Leone and the United Nations.

The concern was raised over the STCoA inability to disguise the root cause of its proposed existence: the overly restricted jurisdictional regime of an existing permanent International Criminal Court that has subject matter jurisdiction over the crime of aggression, and that has temporal, personal and territorial jurisdiction over the situation in Ukraine, but that is unable to prosecute the crime of aggression in this very situation<sup>165</sup>.

According to Cotler, who has also issued a proposed tribunal statute, the logical proposal is to replicate the SCSL's Statute, while there exist some divergences between approaches, but all agree on the need for the tribunal, the need to create it through the UN General Assembly and based it on an agreement between the United Nations and the Government of Ukraine, the only focus on prosecuting the crime of aggression<sup>166</sup>.

Finally, the creating of the STCoA may take overlook on the United Nations past, when the United Nations did this adaptation before when negotiated and established of the Special Court for Sierra Leone and the Extraordinary Chambers in the Courts of Cambodia.

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<sup>162</sup> UN Charter, Articles 36(1)

<sup>163</sup> Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone (2002) Residual Special Court for Sierra Leone, 16 January.

<sup>164</sup> S.C. Res. 1315 (2000) 14 August.

<sup>165</sup> "Just Security (2022) Blog Series: The Case for Creating an International Tribunal for the Crime of Aggression Against Ukraine, 23 September (Part II)

<sup>166</sup> Just Security (2022) Blog Series: The Case for Creating an International Tribunal for the Crime of Aggression Against Ukraine, 26 September (Part III)

Important note, none of those tribunals had authority to prosecute the crime of aggression, the only crime which can be prosecuted by the STCoA<sup>167</sup>.

The primary idea, which was expressed by Yale Club presenters is establishment of the simple format for victim participation and also, Ukraine could establish a Truth and Reconciliation Commission running parallel to the STCoA, giving victims wide latitude for providing testimony and benefiting from the truth-seeking practices of such a body<sup>168</sup>.

The reason for the tribunal to be international and be established under the United Nations is a mandate and arrest warrants possibilities. According to Coracini, establishing an international tribunal through the United Nations would have many advantages over national or regional initiatives. To name just one, a tribunal established through the United Nations would be able to avoid personal immunities from shielding top Russian leaders from accountability<sup>169</sup>.

The establishing the tribunal and gets it recognised as international give bonuses for the tribunal. First of all, the States will be encouraged to cooperate with it; secondly, this will show the status of the tribunal, if it would be done on the regional level, then the process of recognising of the tribunal will be time-consuming and for some countries irrelevant; thirdly, the tribunal will get political legitimacy under votes of the international community.

Ambassador Hans Corell who has experience in the heading the United Nations' legal office for a decade agrees that the ECCC were created upon a recommendation by the UN General Assembly and when the ECCC's creation was first contemplated, it was not envisioned to be a tribunal within the Cambodian Court system. But this background cannot be applied fully for Ukraine since Ukraine cannot go to the UN Security Council as Sierra Leone did for the simple reason that Russia will veto such a proposal, that why the case of the agreement between the United Nations and Cambodia should be applied<sup>170</sup>.

Despite all offered ideas and understanding of the Special Tribunal for the crime of aggression against Ukraine<sup>171</sup>, on 25<sup>th</sup> of June 2022, the Secretary General of the Council of Europe and the President of Ukraine signed a bilateral agreement to create a Special

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<sup>167</sup> Just Security (2022) Blog Series: The Case for Creating an International Tribunal for the Crime of Aggression Against Ukraine, 28 September (Part IV)

<sup>168</sup> Ibidem

<sup>169</sup> REISINGER CORACINI, Astrid. and TRAHAN, Jennifer. (2022) 'On the Non-Applicability of Personal Immunities to the Crime of Aggression Before an International Tribunal', Just Security, 8 November.

<sup>170</sup> CORELL, Hans. (2023) 'A Special Tribunal for Ukraine on the Crime of Aggression and the Role of the United Nations General Assembly', Just Security, 14 February.

<sup>171</sup> See also, Frequently Asked Questions - Special Tribunal for the Crime of Aggression against Ukraine [online] <https://www.coe.int/en/web/portal/special-tribunal-for-the-crime-of-aggression-against-ukraine-frequently-asked-questions>

Tribunal for the Crime of Aggression against Ukraine, this tribunal will be based on Ukraine's territorial jurisdiction but will have a number of international elements, and this leads to properly categorising as a hybrid or internationalised tribunal and the full-scale activities of the tribunal expected in late 2029 or early 2030<sup>172</sup>. The requirement for the start of operating is at least 25 States, the first State to join was the Republic of Lithuania.

The positive implementation of this Tribunal provided in the Article 1 of the STCoA Statute “the Special Tribunal shall have the power to investigate, prosecute and try persons who bear the greatest responsibility for the crime of aggression against Ukraine”<sup>173</sup> and this provision do not have any temporal limitation. That means the STCoA will be able to prosecute for the 2022 invasion and the unlawful invasion and annexation of Crimea in 2014<sup>174</sup>.

The negative implementation is the Article 28(1) of the STCoA Statute – the tribunal allows to hold trials in absentia<sup>175</sup>. Heller understands that this provision was important to Ukraine and also, no prohibition of in absentia trials in international law, but counts this provision as a mistake, since the STCoA has low chance to have a Russian suspect anytime soon and at the same time, it is highly likely that the STCoA will hold only in absentia trials in the nearest future<sup>176</sup>. Additionally, in the Article 28(3) of the Statute provided that “in case of a conviction in the absence of the accused, the convicted person shall have the right to a retrial in his or her presence before the Special Tribunal or a successor mechanism”<sup>177</sup>. So, the existent of the Article 28 can be explained as the only way how the STCoA can exist overall.

To conclude, the United Nations has experience with the creating the tribunals but not at the level which was needed for the case of aggression against Ukraine. The SCSL was established by bilateral agreement between the United Nations and state, the ECCC was established as Chamber which was approved by the UN General Assembly and the ICC was established by the Rome Statute, so that was a multilateral treaty. While the UN General Assembly holds the legal competence and political constabulary in recommendatory powers in creating the international tribunals, the UN Security Council,

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<sup>172</sup> HELLER, Kevin Jon (2025). The New STCoA: The Good, the Bad, the Curious, and the Terrible. *OpinioJuris*.

<sup>173</sup> Council of Europe (2025). Consequences of the aggression of the Russian Federation against Ukraine – Statute of the Special Tribunal for the Crime of Aggression against Ukraine, 25 June. Article 1.

<sup>174</sup> HELLER, Kevin Jon (2025). The New STCoA: The Good, the Bad, the Curious, and the Terrible. *OpinioJuris*.

<sup>175</sup> *Ibidem*, note 174, Article 28(1)

<sup>176</sup> HELLER, Kevin Jon (2025). The New STCoA: The Good, the Bad, the Curious, and the Terrible.

*OpinioJuris*.

<sup>177</sup> *Ibidem*, note 147, Article 28(3)

the establishment of the tribunals do not require and limit its authority, mostly the tribunal were established without the UN Security Council being involved.

Signed agreement of the Secretary General of the Council of Europe and the President of Ukraine about establishing a Special Tribunal for the Crime of Aggression against Ukraine received many comments over the quality and core of this tribunal. Especially those questions were raised since the discussions about the STCoA took almost three years and many scholars, including those who took highest position in the United Nations, the final form of the established tribunal is not satisfactory and might bring even more disputes in the future.

### 3.3. Role of the United Nations in enforcing possible peace accords to the resolutions adopted at emergency special sessions

As consequences of the violation of international peace, the intergovernmental body of United Nations system – the International Civil Aviation Organization accused Russian Federation in breaching of the Chicago Convention<sup>178</sup> rules of international aviation and failed its re-election on the Montreal session on 1<sup>st</sup> of October 2022 for the 3-year term in the ICAO Council<sup>179</sup>. In May 2022, Russian Federation announced its withdrawn from the World Health Organization and the World Trade Organization for the neglect of obligations towards them and non-benefit character of the cooperation<sup>180</sup>. In August 2022 at the 10<sup>th</sup> Review Conference of the Nuclear Non-Proliferation Treaty, Russian Federation was accused in creating potentially dangerous situation for the not letting the international bodies to reach the consensus in the decision-making process<sup>181</sup>.

The respond of United Nations to the aggression against Ukraine the UN Security Council adopted Resolution 2623 since the only way for the Council to respond to the violation was to call for an emergency special session of the UN General Assembly. The precedent of calling to the ESS gave the opportunity for the UN General Assembly to act and take up the aggression against Ukraine under the Uniting for the Peace Resolution.

The UN Security Council Resolution 2623 adopted on the 27<sup>th</sup> of February 2022 received 14 out of 15 votes in favour, the only Member of the UN Security Council who voted against passing this legal act was Russian Federation<sup>182</sup>. The adoption of this Resolution was caused by permanent members fail to maintain international peace and security on the 8979<sup>th</sup> meeting and the need to call for Emergency Special Session under the UN General Assembly supervision. The UN Security Council Resolution 2623 invoked the mechanism of the UN General Assembly Resolution 377 A (V) and relayed on the UN

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<sup>178</sup> See, International Civil Aviation Organization (ICAO) (1944) Convention on International Civil Aviation (Chicago Convention), Doc 7300. Chicago: ICAO. [online] [https://www.icao.int/publications/Documents/7300\\_orig.pdf](https://www.icao.int/publications/Documents/7300_orig.pdf) - Russian Federation claimed the decision was made on the political ground rather than practical but ICAO had concern since 2021 when Russian Federation vote prevented Belarus from sanctions for the flight FR4978 by Ryanair; see also, EVENT INVOLVING RYANAIR FLIGHT FR4978 IN BELARUS AIRSPACE ON 23 MAY 2021(2022). ICAO [online] <https://www.icao.int/sites/default/files/Security/documents/Ryanair-FR4978-FFIT-report.pdf>

<sup>179</sup> CHARPENTREAU, Clement. (2022) ‘Russia loses seat at ICAO council: What now?’, AeroTime Hub, 3 October. [online] <https://www.aerotime.aero/articles/32307-russia-loses-seat-icao-council>

<sup>180</sup> AARUP, Sarah Anne. and FURLONG, Ashleigh. (2022) ‘Russia takes first steps to withdraw from WTO, WHO’, POLITICO, 18 May. [online] <https://www.politico.eu/article/russia-takes-first-steps-to-withdraw-from-wto-who/>

<sup>181</sup> Think Tank European Parliament (2022) Tenth NPT review conference: Nuclear weapons threat at an all-time high, 12 July. [online] [https://www.europarl.europa.eu/thinktank/en/document/EPRS\\_BRI\(2022\)733594](https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2022)733594)

<sup>182</sup> S.C. Res. 2623 (2022) 27 February.

General Assembly to respond the violation of peace and security in Ukraine and to unblock the paralyzes of UN Security Council in the action.

The call for the ESS allowed the UN General Assembly to be more active in the solving of the international crisis and this was followed by adopting on 2<sup>nd</sup> of March 2022 the UN General Assembly Resolution ES-11/1 “Aggression against Ukraine” with 141 votes in favour. This Resolution recalled the U4P Resolution and recognized the military operations of the Russian Federation in Ukraine as actions those have not been seen in Europe for decades.

The Resolution ES-11/1 reaffirmed that the threat or use of force to gain new territories cannot be recognized as legal, also the Resolution expressed concerns about attacks on the civilian facilities and civilians themselves<sup>183</sup>.

The significant outcomes of those legal acts were strengthening the collective responsibility as it provided in the UN Charter, especially in the questions related to the state sovereignty and territorial integrity. The UN Security Council under veto block capable to call for UN General Assembly Emergency Special Session, so the ESS acts as forum for political and moral pressure on the aggressor state.

Obviously, as those ESS resolutions have non-binding character, they act as recommendatory measures which establish the rule of law, express political will, gain international support and call for Russian Federation to cease the use of force against Ukraine. By establishing these legal acts, the UN General Assembly declared that invasion to Ukraine is the peacebreaker situation, condemned the aggression and showed support to the civilians, which deals with consequences of this invasion.

The Resolution ES-11/2 “Humanitarian consequences of the aggression against Ukraine” was issued on 24<sup>th</sup> of March 2022 and received 140 votes in favour. This Resolution called to follow the obligations under Article 2 of the UN Charter, respect to the political and territorial independence, settle the disputes in the peaceful manners, stay consisted with the purposes of the United Nations. Additionally, the Resolution declared the respect to the internationally recognized borders and sovereignty and the need of the full implementation of the resolution ES-11/1<sup>184</sup>.

The first and second the ES-11<sup>th</sup> resolutions were calling for the withdraw of Russian forces from Ukraine and the United Nations showed solidarity with Ukraine with seeking for peace and possible negotiations over the dispute.

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<sup>183</sup> G.A. Res. ES-11/1 (2022) 2 March.

<sup>184</sup> G.A. Res. ES-11/2 (2022) 24 March.

According to the UN General Assembly Resolution A/RES/60/251 issued on 3<sup>rd</sup> of April 2006 “the General Assembly, by a two-thirds majority of the members present and voting, may suspend the rights of membership in the Council of a member of the Council that commits gross and systematic violations of human rights”<sup>185</sup> and with respect to this provision the UN General Assembly Resolution ES-11/3 “Suspension of the rights of membership of the Russian Federation in the Human Rights Council” adopted on 7<sup>th</sup> of April 2022 expelled Russian Federation from the Human Rights Council.<sup>186</sup> The resolution ES-11/3 with 93 votes in favour got a binding character as the recommendation was brought to the action.

The taken measures were outstanding and significant for the international community, the United Nations showed the political will and strengthen the respect to law by the expel decision. The systematic violations of the international peace and security as well as abuse of human rights which were monitored in Ukraine led to the suspend of the membership in the Human Rights Council of the Russian Federation and created the precedent for future – in case if the peace, security and human rights will be systematically violated by a state, then the aggressor will get sanctioned and limited in the expressing of its political will.

The decision was made as the respond to the violations and got significant support from the Member States, the taken actions also showed the power of the United Nations in the dispute settlement. Additionally, the reputation of the UN General Assembly and respect to the Emergency Special Sessions resolutions were highlighted by the suspend decision.

Overall, this decision has symbolic and practical sense for the development of human rights and international law, the implementation of the suspend decision promoted the importance of respect to law, human rights and zero tolerance to the violations of primary responsibilities and obligations under the UN Charter. Despite the non-binding character of the UN General Assembly resolutions in this particular case the recommendation of the Assembly was treated as binding and gained the international support.

The Resolution ES-11/4 “Territorial integrity of Ukraine: defending the principles of the Charter of the United Nations” issued on 13<sup>th</sup> of October 2022 with 143 votes in favour has similar opinion as vetoed the UN Security Council Resolution S/2022/720<sup>187</sup> which

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<sup>185</sup> A/RES/60/251 (2006) 3 April.

<sup>186</sup> G.A. Res. ES-11/3 (2022) 7 April.

<sup>187</sup> S/2022/720 (2022) 30 September was vetoed by Russian Federation; the draft resolution was offered by Albania and the United States and the primary idea of the Resolution was to condemn the so-called referenda on 23-27<sup>th</sup> of September 2022 and announced those as illegal under international law. The Resolution also expressed disagreement with Russian Federation actions on the 21<sup>st</sup> of February 2022 according to status of

was drafted on 30<sup>th</sup> September 2022 and condemned the illegal attempts of the Russian Federation of annexation of the Donetsk, Kherson, Luhansk and Zaporizhzhia regions of Ukraine. Also, the adopted Resolution ES-11/4 recalled for the UN General Assembly Resolution 68/262<sup>188</sup>.

Overall, the ES-11/4 called for international organizations and United Nations of non-recognition of any status or alter status of the Donetsk, Kherson, Luhansk or Zaporizhzhia regions of Ukraine which alteration by Russian Federation, the United Nations recognizes those regions as under temporary military control of the Russian Federation as result of the aggression and violation of the political and territorial independence of Ukraine <sup>189</sup>.

The outcomes of the ES-11/4 demonstrated the international support over geopolitical issues and highlighted the political and diplomatic power in sanctioning the violations against peace, security, independence, and sovereignty. Ukraine holds legal reasons to claim for withdrawn of Russian Federation military forces and cease the fire, the United Nations cannot stay aside the dispute and with respect to state integrity issued mentioned above Resolution ES-11/4.

The resolution ES-11/5 adopted on 14<sup>th</sup> of November 2022 “Furtherance of remedy and reparation for aggression against Ukraine” was announced in order to establish the compensation mechanism for Ukraine after the infrastructural and other damages. By this resolution the call to create an international register of damages was done as well. This resolution received 94 votes in favour.

The Resolution declared the importance of maintaining the peace upon freedom, equality, and justice and by establishing the mechanism of compensation provide the help to Ukraine to improve the political, economic and social systems after the losses caused by wrongful acts of Russian Federation and damages, injuries as the consequences of them. Also, the UN General Assembly recommended to cooperate with Ukraine in recording and registering in documentary form the damages and collecting evidence of the losses and injuries of the natural and legal persons<sup>190</sup>.

The establishing of the mechanism of compensations for damages caused by aggression is a huge step towards peace and prevention of future violations, also it is helpful to rebuild the lost potential of the state without intervention of third parties.

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certain areas of Donetsk and Lugansk regions of Ukraine since it is violation of the principles of the UN Charter.

<sup>188</sup> G.A. Res. 68/262 (2014) Territorial Integrity of Ukraine, 27 March.

<sup>189</sup> G.A. Res. ES-11/4 (2022) 13 October.

<sup>190</sup> G.A. Res. ES-11/5 (2022) 14 November.

The UN General Assembly Resolution ES-11/6 “Principles of the Charter of the United Nations underlying a comprehensive, just and lasting peace in Ukraine” adopted on 23<sup>rd</sup> of February 2023 passed with 141 votes. This resolution highlighted the importance of peace in Ukraine for global food, nuclear energy safety. The environmental security has a huge impact on all states, so that the concern is real, and the actions supposed be taken collectively as multilateral responsibility.

Overall, the resolution ES-11/6 calls the Member States and international organizations to follow the UN Charter and respect to the principles of sovereign equality and territorial integrity of States, the peace in Ukraine needs to be reach as soon as possible for the international and environmental security and not to affect the global food supply, nuclear safety and Member States should cooperate for this, since the aggression against Ukraine has not a regional level but impacts the world balance<sup>191</sup>.

The UN General Assembly Resolution ES-11/7 “Advancing a comprehensive, just and lasting peace in Ukraine” issued on 24<sup>th</sup> of February 2025 with 93 voted in favour raised the concerns over the Democratic People’s Republic of Korea’s involvement into aggression against Ukraine together with the Russian Federation. The concerns are based on escalation of the conflict and potential growth of the risks for civil population and energy infrastructure of Ukraine. The joined military forces created new risks for the international peace and prolonged war, the concerns over international safety increased as well<sup>192</sup>. The Resolution ES-11/7 showed new way of the UN General Assembly of expressing the concerns by radicalization of language, this development connected to the risks for the geopolitical safety and continuing crisis.

For the Winter 2025, the last adopted Resolution of the UN General Assembly is ES-11/8 “The path to peace” issued on 24<sup>th</sup> of February 2025 and received 93 votes in favour. This Resolution mourning the loss of life throughout the aggression against Ukraine and calling for following the principles of maintaining peace and security as provided in the UN Charter, declares the sovereignty, independence, and territorial integrity of Ukraine within its internationally recognized borders, including the territorial waters<sup>193</sup>.

Overall, the sense of the Resolution ES-11/8 is to declare the rule of law with respect for the UN Charter and express support for independence and unity of Ukraine, also this Resolution express the human side of law by mourn of the tragical loss of life in ongoing

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<sup>191</sup> G.A. Res. ES-11/6 (2023) 23 February.

<sup>192</sup> G.A. Res. ES-11/7 (2025) 24 February.

<sup>193</sup> G.A. Res. ES-11/8 (2025) 24 February.

aggression against Ukraine. The expressed allies with provisions of the UN Charter and shows the continuing support for Ukraine to maintain peace and security.

The nature of the emergency special session is to respond to the aggression in cases when the UN Security Council is deadlock and UN General Assembly is forced to act, but the practical impact of the numerous issued ES-11<sup>th</sup> resolutions seems limited as the UN General Assembly resolutions have recommendatory character and the use of force is not possible under those Resolutions. The issuing of the ES-11<sup>th</sup> Resolutions showed the political will and support towards Ukraine in ongoing aggression but also the power of those resolutions is symbolic since none of the legal acts did not create a concrete mechanism to solve the dispute and showed the structural weakness of the UN General Assembly in the situations when the conflict is ongoing.

The Resolutions ES-11<sup>th</sup> got the attention of the international community but have no real power to intervene the conflict and solve it immediately. Expelling the Russian Federation from the ICAO Council and the Human Rights Council as it was offered by ES-11/3 Resolution, as well as self-withdrawn of Russian Federation from the WHO and the WTO, had positive impact on restoring peace and security in Ukraine. Also, the establishing the compensative mechanism was a great decision for the political and economic strengthen of Ukraine after all loses caused by wrongful acts against it.

To conclude about the UN Security Council Resolution 2623 and the resolutions of the UN General Assembly Emergency Special Sessions, those legal acts had a significant impact on the international law as those expresses the support for Ukraine in aggression against: independence, unity, territorial integrity, sovereignty, civilian population, and infrastructure of Ukraine.

The number of Member States who voted in favour of the issued resolutions is extremely high and it shows the international support and cooperation of the Member States, as it provides by the UN Charter.

By declaring the importance of the rule of law and taking steps toward the peaceful settlement of the dispute is important but unfortunately, the aggression against Ukraine is still existing and the escalation by the involvement of the DPRK to joined military operations with the Russian Federation took place.

Important to note, the aggression against Ukraine has international character not regional and it impacts on the global and nuclear safety, food supplies and security overall, all taken measures showed the strengthen of the international law and called to sanctioning and bringing for the responsibilities the Russian Federation.

To sum up, the Resolution 2623 and the ES-11th resolutions, even with their non-binding character, created a map of actions to bring peace and security for international community and to cease the war in Ukraine by sanctioning Russian Federation with expulsion from Human Rights Council and creating the mechanism of compensations for Ukraine.

The precedent of calling for the Emergency Special Sessions are not new mechanism but in current situation was the necessary step to act according to the Charter of the United Nations and U4P Resolution and to involve into the dispute when the Russian Federation is blocking resolutions with its veto right, for example the UN Security Council Resolution S/2022/720 drafted on 30<sup>th</sup> of September 2022.

Legally speaking, the only way to meet expectations of the roles that were established under the UN Charter for the international peace and security in this case was to call Emergency Special Sessions and issue the Resolutions. As it is noticeable, the resolutions aimed at being comprehensive, raised various issues (the issues territorial integrity, safety of the civilian population, nuclear energy safety and etc) and recommended the ways of its solutions, as well as expressed the political will of the States. The ES-11th resolutions supported a clear multilateral recognition of the aggression of the Russian Federation, those legal acts increased the legitimacy and coherence of efforts of the Council of Europe's Register of Damages and the creation of the Special Tribunal for the crime of aggression against Ukraine as a result. The ESS resolutions offered an authoritative point of reference, so other institutions relied on it while developed the accountability and redress mechanisms.

The language of the UN General Assembly had improved due to growing concerns, and this is a precedent that can be used in future as example for action.

## CONCLUSIONS

The UN Charter establishes primary responsibility of the UN Security Council in maintenance of international peace and security and its restoration in the case of an act of aggression, which is reflected in the ability of the UN Security Council to adopt binding decisions, including on the use of force. Meanwhile, the UN General Assembly does have the same responsibility and ability to adopt binding international law enforcement measures in response to an act of aggression, authorized instead to rely on its recommendatory powers. Failure of the UN to effectively respond to an act of aggression contributed to the important developments of the institutional and legal framework of the UN that enabled international community to provide political and legal guidance for member states of the UN in response to an act of aggression against Ukraine.

1. In this master thesis the issues of the use of veto by a permanent member of the UN Security Council and not abstaining were considered relying on the legal framework of the UN Charter, the UN Security Council Resolution 2623 and the UN General Assembly Resolution 377 (A). The obligations, responsibilities and limits of roles of the UN Security Council and UN General Assembly in relation to maintenance of international peace and security limit possibility of the UN to act timely and decisively in the case of an act of aggression by a permanent member of the UN Security Council, but on the other hand – enabled international institutional legal framework of the UN to be developed towards meeting expectations of the victim of the aggression and international community as a whole.

Full-scale Russian aggression against Ukraine once again testified the limits and weaknesses of institutional mechanism of the UN when confronted with an act of aggression by a permanent member of the UN Security Council – institution that has primary responsibility for restoring international peace and security.

2. In the case of aggression against Ukraine, veto used by Russian Federation in the UN Security Council triggered application of the Uniting for Peace resolution. The UN General Assembly called this qualified aggression as manifest violation of the UN Charter and adopted the resolutions in the 11<sup>th</sup> Emergency Special Sessions and the UN Security Council Resolution 2623 which were invoked under U4P Resolution mechanism and were called for restore peace and security in Ukraine. The issued legal acts brought the attention of the international community to the violations of Russian Federation of international law and breached peace by aggression against Ukraine and demanded to cease the fire,

withdraw armed forces from the territory of Ukraine and provide the safety for civilians. Unfortunately, the recommendations of those Resolutions have limited mandates.

3. As the case study of aggression against Ukraine proved, the Uniting for Peace Resolution gives procedural alternative for the international community to act together when the UN Security Council is deadlocked by veto and cannot deliver on its mission under the UN Charter. The U4P resolution provides the UN General Assembly possibility to recommend collective measures that contribute to restoration of international peace and security, including international justice, but the U4P Resolution is short of providing General Assembly special and concrete powers, including power to establishing an international criminal tribunal.

4. The deadlock of the UN Security Council in the case of an act of aggression is the issue that UN member states have been discussing and working on reforms for decades. The UN Security Council has also struggled with timely responses to humanitarian crises, involving commission of crimes of aggression against Suez Crisis, Palestine, Syria etc.

The way to deal with this issue is the broader use of Chapter VI by Member States and application of the obligatory abstain of the party of the dispute. Also, it can be done as a request of the UN Security Council to the Secretary-General for the Emergency Special Sessions as it was done for the solving the situation over aggression against Ukraine and it allowed the UN General Assembly to issue the ES-11<sup>th</sup> resolutions and emphasize on the importance of the international peace, security, and the law as the guarantee of the future peace. Those resolutions with non-binding recommendations and comments showed the political will of the Member States to solve the war in Ukraine and this is hard to avoid for the decision-making process of the Secretary-General.

5. The ICC is not covering the case of aggression against Ukraine – none of the states are party so they cannot be prosecuted under the Rome Statute, the STCoA covers more and allows to bring Russian Federation to answer for the breach of international law. The agreement signed between the Council of Europe and the President of Ukraine received many remarks and concerns over the certain provision of the STCoA Statute.

Overall, the UN General Assembly recommendatory powers for establishing the Special Tribunal for the Crime of Aggression against Ukraine are persist but due to existing limitations the practical effectiveness is not satisfactory. It is important that UN General Assembly endorses the tribunal established by the Council of Europe as it makes it more legitimate and gives it the status of the international one. This situation with the implementation of the position of the United Nations General Assembly is one of structural

constraints within the United Nations system, as well as lacking a coherent jurisdictional framework and discrepancies in the use of legal regimes with respect to the International Criminal Court.

To conclude, the UN General Assembly took a leading role in the peace-making process in Ukraine but this development of the political influence of the UN General Assembly cannot compare with the powers of the UN Security Council in the peace restoration and peacekeeping processes. The deadlock of the UN Security Council by the use of veto creates the pressure on the international community. The U4P Resolution mechanism allowed to take measures, enforce the rule of law, and show support in the case of aggression against Ukraine.

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## SUMMARY

### **Role of the UN Security Council and General Assembly under the Uniting for Peace Resolution: case study of aggression against Ukraine**

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This Master's thesis provides an analysis of the role of UN Security Council and UN General Assembly in the maintaining the peace and security under the Uniting for Peace (Res. 377A (V) adopted on 3rd of November 1950) in the case of aggression of Russian Federation against Ukraine, February 2022. The main issue is the paralysis of international institutions in reactions and actions to pursue peace and safety due to veto and abstain rights which a given to permanent members.

The U4P Resolution gives the power for the UN General Assembly to give the recommendary powers for the international peace and security, but those recommendations are taking from the UN Charter not from the resolutions under U4P Resolution. Giving that, the U4P Resolution cannot introduce any new mechanism which are not provided by the UN Charter. The reason why U4P Resolution is needed is the creation of the Emergency Special Sessions under it, which help to make the resolution-making process timely and relevant.

The thesis analyses the inability of UN Security Council to gain the peace under the existing right of veto use by permanent members and so, the U4P Resolution cannot be fulfilled and often get mislead. At the same time, the UN Security Council can avoid the veto effect by the procedural mechanism under U4P Resolution by calling the ESS under the UN General Assembly but often fails in taking actions.

This topic is most revealed through the prism of the implementation of UN Security Council Resolution 2623 adopted on 27<sup>th</sup> of February 2022 and the ES-11<sup>th</sup> resolutions as the reaction on Russian invasion to Ukraine and the recent adoption of the Statute of the Special Tribunal for the Crime for Aggression against Ukraine as respond on the ongoing aggression.

The topic of the Master's thesis requires the deep research in the existing legal issues with use of veto rights and how this influences the decision-making process in the case of an act of aggression. The U4P Resolution is calling for the empowering the UN General Assembly to take “collective measures” in gaining the international peace and provide security instead of relying on UN Security Council and its use of veto right for the permanent members.