

# The UN Security Council Permanent Members' Veto Right Reform in the Context of Conflict in Ukraine

*Lesia Dorosh, Olha Ivasechko*

The activities of the United Nations Security Council have traditionally been seen as a guarantor of international peace and security with powers to influence infringers of the international law. At the beginning of the 21st century, the UN Security Council was powerless to perform its functions and duties to safeguard international peace and security, as well as to resolve a number of large-scale armed conflicts. Therefore, the need to find mechanisms of the UN Security Council reform in order to enhance its effectiveness is proven. The article analyses the UN member-states' suggestions on the UN Security Council reform that they started to apply actively in the early 1990s. On the basis of the analysis of the Security Council decision-making mechanism, an increase in the effectiveness of the UN Security Council can be achieved only by means of the veto right reform. This article analyzes the position of Ukraine, in particular proposals for reformation provided by state officials, analysts and publicists. It was found that the main obstacle in the reform of veto is the need to persuade five permanent members to limit themselves in the use of the instrument that allows them to influence the entire international system. Therefore, it is unlikely that these states will give their consent to such a reform.

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The Russian military aggression against Ukraine, which started in 2014 with the annexation of the Crimean Peninsula, is an unprecedented challenge for the international system, its security and therefore for the current global order. The powerlessness of the United Nations (UN) as the most influential global institution in the world security sector in stopping European territorial changes in the 21<sup>st</sup> century again raises the issue of reforming the United Nations Security Council (UNSC) as one of the key bodies of this organisation. Such reform is important both for the international system in general and for Ukraine in particular. In this article, we put forward the claim that the issue of UNSC reform has never been considered in the context of the armed conflict in Eastern Ukraine and in the context of new challenges to the international security system caused by it. For the present, there is no research on the impact of the UNSC desuetude on the possibility of its intervention in this armed conflict and on the importance of the UNSC reform to resolve it. Thus, the previously mentioned facts have encouraged debate on the problems of UN Security Council reform, which will help to establish the reasons for the ineffectiveness of the organisation in resolving the conflict in Eastern Ukraine (2014-ongoing), and to devise a method for their elimination, as well as to identify the possible ways to increase the effectiveness of the United Nations in resolving conflicts in the twenty-first century.

Near the turn of the century, the UNSC failed to intervene and to resolve the escalation of a number of armed conflicts, particularly such conflicts as the Falkland war (1982), the invasion of Iraq (2003), and the civil war in Syria (2011-ongoing). Since the annexation of Crimea in February 2014, the Russian Federation, which was declared the aggressor country by Ukraine in the conflict, has used its veto right to block the activity of the UNSC towards the solution of the Ukrainian crisis. Parties such as Ukrainian diplomats and foreign officials in the United Nations, as well as the authoritative international nongovernmental organization 'Amnesty International' have noted that because of the risk of Russia's use of the veto right, the UN Security Council could not take any effective action concerning events in Ukraine. In this way, it is effectively powerless to perform its functions and duties to safeguard

international peace and security, making the international community search for ways to transform this structure. Because of its central place in the international security system, the research on reforming the Security Council is particularly relevant.

Lesia Dorosh,  
Olha Ivasechko

### **Theoretical framework**

An analysis of research sources shows the considerable attention of researchers to various aspects of the UN Security Council's reform. It is worth mentioning the work and analytical studies of Gh. Evans,<sup>1</sup> I. Endeley,<sup>2</sup> C. Karuna Karan,<sup>3</sup> E. Luck,<sup>4</sup> F. Mahmood,<sup>5</sup> S. Patrick,<sup>6</sup> D. Sarooshi,<sup>7</sup> D. Schweigman,<sup>8</sup> L. Svart, J. Freiesleben,<sup>9</sup> E. Wirkola,<sup>10</sup> M. Zorn,<sup>11</sup> J. Paul,<sup>12</sup> C. Nahory,<sup>13</sup> M. Teng,<sup>14</sup> E. Toro,<sup>15</sup> N. Ronzitti,<sup>16</sup> T. Weiss<sup>17, 18</sup> and others, in which the authors describe the UN and its main achievements in resolving 'frozen conflicts' in the world, especially in the former Soviet Union. Detailed studies (in particular, of E. Osmanczyk, A. Mango<sup>19</sup>) on the main and specialized UN bodies' functioning and their effectiveness contributed greatly to our work.<sup>20</sup>

This study is an attempt to address the issue of insufficient legislative power of UN and the lack of a UNSC enforcement mechanism. There is a rapidly growing body of literature on the effectiveness of the UN as an organization aimed at maintaining peace in the world. While writing this article, attention to the set of normative legal acts governing the activities of international organisations of various levels, primarily the UN, is considerable.<sup>21</sup>

The literature on UN Security Council's reform abounds with examples of the absence in Ukraine the opportunity for effective protection through the mechanisms that currently exist in the UN system. Under such circumstances, it is necessary to single out the work of M. Butler on conflict management in international relations.<sup>22</sup>

An important monographic source on the issue is the historiographical work of Lydia Swart and Jonas von Freiesleben<sup>23</sup> *Security Council Reform from 1945 To September 2013*, issued with the support of the Government of Switzerland by the non-profit organisation Center for UN Reform Education. This work allows us to study all the proposals for reforming the Security Council that were put forward during the period from 1945 to 2013, to examine the positions of the member states on this issue, and also to analyze the main obstacles to the reform of the UN Security Council arising during this period.

The work of German scientist Bardo Fassbender called *UN Security Council Reform and the Right of Veto: A Constitutional Perspective* deserves special attention among the monographs devoted to the problem of UNSC reforming.<sup>24</sup> The author argues that there are the disadvantages of the Security Council's obsolete structure and the unfair distribution of power among the member states, as well as analyses the main proposals of the UN member states on the reformation of this body.

Many scientific articles addressing the problem of reforming the UN Security Council, as well as other problems close to the topic of our study, are published both by various periodical scientific publications and by non-profit organisations of scientists and specialists in the field of international relations. In particular, Center for UN Reform Education, Global Policy Forum, Security Council Report and Council on Foreign Relations. Most scientific articles do not aim at a comprehensive study of the problem of the United Nations Security Council reformation. Moreover, in their scientific articles, researchers tend to focus on one of the main areas of reform.

Further evidence supporting UNSC reform may lie in the findings of J. Paul, C. Nahory, B. Fassbender, who pay attention to the issue of the veto right reformation despite the small prospects for introduction of such reform, largely because of resistance of the permanent members to any changes in their prerogatives and powers.

Current research seems to validate the view that there is the necessity of reforming the UNSC working methods and the prospects for the introduction of a regional representation in the UNSC. A number of scientific articles by E. Toro, J. Paul and C. Nahory, I. Endeley and N. Ronzitti represent this area of study.

In addition to the above-mentioned sources of information, scientific theses published on official websites of foreign universities and the repositories of their libraries can be used for studying the problem of the UNSC reform in the post-bipolar world. To fulfill our research, we have studied the work of E. Wirkola.

It is necessary to also note the lack of domestic fundamental and generalizing studies concerning today's problems of the function of the UN, in particular the reform of the UN Security Council. A relatively small number of scientific publications have been devoted to the UN contribution to the conflict in Ukraine, which could provide an objective assessment of the UN peaceful regulation and could help

to formulate specific recommendations and suggestions for improving the activity of the UNSC in resolving the Ukrainian crisis and similar conflicts. For example, the proposals and recommendations on Ukraine's position on restricting/denying the veto right of the aggressor state have not been particularly developed.

The literature shows no consensus on the issue of Security Council Reform. Much of the current debate revolves around the certain areas of the reform, namely:

1. The issue of membership and changes of the composition of the UN Security Council. Studies in this area consider the possibility of increasing the number of both permanent and non-permanent members of the Security Council and forecast the possible impact of such changes on the functioning of the UN and of the international system;
2. Reform of the working methods of the Security Council. This research area concerns the possibilities of making changes into the procedural rules and methods of work of the UN Security Council that would help to increase transparency of its functioning;
3. Veto right reform. Within the framework of this direction, researchers defend three points of view: veto right should be eliminated, preserved or limited;
4. Regional representation. This line of research examines the advantages and disadvantages of obtaining membership in the UN Security Council for regional associations and organisations such as the European Union.

On the basis of the issues currently available in existing works such as the main features of the activities of the UN, mechanisms for conflict management, principles of the UN and its role in the system of international organizations, and the effectiveness of the UNSC activity, it seems fair to suggest that the main arguments can be advanced to support the international cooperation deepening, specification of strategic directions of the UN, and defining the strategic importance of Security Council Reform.

In the research, the institutional method was used for considering the UN Security Council as an international institution, its powers, and functions, as well as the norms which regulate its activities, as it's enshrined in international law. Also, the historical method was

*The UN Security Council Permanent Members' Veto Right Reform in the Context of Conflict in Ukraine*

used for the study of the history of UN Security Council functioning, the activities of Member States of the UNSC and the process of the proposals' providing for Security Council reform, etc. The behavioral method helped to research positions and statements of the permanent members of the UN Security Council, their goals, attitudes, and motivation. The method of documents analysis was used for investigating the proposals for reform of the UN Security Council which have been proposed by the member states of the organization and the internal organs of the UN, as well as for the study of reports, resolutions, transcripts of meetings of the main United Nations institutions, etc.

Consequently, the purpose of this article is to identify the reasons for the lack of power of the United Nations Security Council to respond to threats and violations of peace in the post-bipolar international system, and to examine the main proposals for reform of this international structure. In particular, the task is to establish the reasons for non-interference of the UN Security Council in a number of large-scale conflicts, to identify and systematise the main proposals for its reform, and to study the prospects for introducing this innovation.

### **The UN Security Council: basic suggestions for reform**

The Security Council is the most powerful body of the United Nations, on which according to the UN Charter primary responsibility for the maintenance of international peace and security is imposed.<sup>25</sup> While other parts of the UN can exceptionally make recommendations, the Security Council has the power to make decisions that member states are obliged to obey. This gives the Security Council a very important and powerful position in the United Nations and in the world.<sup>26</sup>

The UN Security Council is composed of fifteen states, five of which are permanent members.<sup>27</sup> The latter – the USA, the United Kingdom, France, the Russian Federation, and the PRC – have the power to “veto” (from Latin *vetō* – I forbid) substantive decisions of the Council.<sup>28</sup> The other ten non-permanent members of the Security Council are elected by the General Assembly for two-year terms; with five members elected each year.

In the key realm to peacekeeping and security, the Council has three main functions:

- contributes to the peaceful resolution of conflicts;
- establishes the UN peacekeeping forces and exercises control over them;
- carries out coercive measures against states that violate international law.<sup>29</sup>

*Lesia Dorosh,  
Olha Ivasechko*

Acting under Chapter VI of the UN Charter, the Security Council shall, when it deems necessary, call upon the parties to a dispute to settle it by negotiation, enquiry, mediation, conciliation, arbitration, or judicial settlement (Article 33 of the UN Charter). The Council also may, if all the parties to a dispute request, make recommendations to the parties with a view to a peaceful settlement (Article 38 of the Charter).<sup>30</sup> While fulfilling its duty to safeguard international peace and security, the Council frequently authorises the deployment of peacekeeping operations as a means to end conflicts or to preserve shaky peace accords. With the aim of ensuring security, political support and facilitating peacebuilding, the Council usually deploys the UN peacekeeping forces only after ceasefire between the parties have been agreed upon.<sup>31</sup>

In addition, the UN Security Council can carry out more resolute and 'hard' enforcement actions than peacekeeping. Chapter VII of the UN Charter grants it the power to carry out such compulsory actions. According to it, the Council has the right to determine independently whether there was a threat to peace or if it was violated, and authorises it to impose economic and military sanctions, or to use armed forces (military, naval, or air) to maintain or restore international peace and security.<sup>32</sup>

Thus, the UNSC should normatively play a major role in the current global system of international security. Having the right to make decisions of an imperative nature, in particular the authority to apply economic sanctions and military force against states that violate the principles of international law, and to apply a wide range of coercive methods, the UN Security Council should act as a guarantor of peace and security on a humanity scale.

However, being created after the Second World War by the victorious powers, the Security Council does not meet modern geopolitical realities. In particular, the institution of permanent membership of the Security Council does not consider the presence of new centers of influence that have appeared after the end of the war and make a sig-

nificant contribution to financing the UN and conducting its peace-keeping operations (Japan, Germany, India, etc.). In the end, several of the above-mentioned armed conflicts point to the inefficiency of the Security Council's work.

*CEJISS*  
2/2018      Proposals for reforming the UN Security Council are pushed by member states dissatisfied with various aspects of functioning of this international security body. We can divide these proposals into three categories of reform:

- changes of the composition;
- change of working methods;
- reform of the veto right of the permanent members.

Formal discussion on the problem of increasing the number of the Security Council members began in 1991.<sup>33</sup> As Melanie Zorn points out, there are three main reasons that justify the need to reform the Council's membership:

1. Changes in global power structure. Five permanent members of the Security Council today reflect the global power structure that existed after World War II, despite the emergence of new centers of power over the past 70 years.
2. The problem of representativeness of the UN Security Council. As supporters of the Council's enlargement note, the representation in the UN Security Council is not proportional, neither geographically nor in terms of population or number of UN members per region. For example, no country in Africa or Latin America has a permanent membership in the Security Council. Africa is the second largest continent in the world in terms of population and ranks first in terms of the number of UN member states (53 countries). Asia accounts for more than half of the world population, but China is the only Asian state with a permanent seat in the Security Council. In addition, the ratio between the number of members of the Security Council and the total number of UN member states is too small. In 1945, this ratio was 11 members of the Security Council to 51 UN member states. In 2015, this ratio is 15 members of the Security Council to 193 UN member states.
3. Disadvantages of the current structure of the Security Council. The lack of ability of the UNSC to respond quickly to threats



to peace and security is one of the most acute problems. A combination of the veto paralyzing effect on one hand and insufficient representation from 193 member states on the other is a source of the problem. This, in turn, can lead to problems in the sphere of peacekeeping. States that provide troops, funds or supplies to UN peacekeeping missions want to have a greater influence on the decision-making process.<sup>34</sup>

*The UN Security Council Permanent Members' Veto Right Reform in the Context of Conflict in Ukraine*

All the proposals put forward in this area of reforming the UN Security Council belong to the issue of an expansion of its composition. Proponents of the UN Security Council membership reform claim that increasing the number of its participants will increase the level of democracy and representation of the body, which it lacks. The main obstacle to the implementation of such a reform is disagreement in the views of the UN members on whether to grant the new members of the Security Council 'permanent' membership or the veto right. Thus, Brazil, India, Japan and Germany (the 'Group of Four') demand for themselves the status of permanent members of the body. They also propose reducing their financial contributions to the UN budget and the number of their own contingents involved in UN operations if their demands are not satisfied;<sup>35</sup> African members of the UN also speak in favor of expanding the Security Council membership and demand the provision of permanent seats for two states of the continent. However, a number of states that have formed the interstate group 'Uniting for Consensus' promote the idea of expanding the non-permanent composition of the Security Council without increasing the number of its permanent members. They oppose giving new members of the Security Council the veto right, claiming that an addition of permanent seats violates the principle of sovereign equality of states.<sup>36</sup> According to them, the provision of permanent seats to new members can also exacerbate regional rivalries among the states of the subcontinent (for example, between Argentina and Brazil, or India and Pakistan).<sup>37</sup>

An integral part of the EUSC's membership reform is the issue of introducing regional representation in it. Regional representation is an alternative concept of reforming participation in this body, according to which permanent seats in the UN Security Council should be provided to regional organisations and blocs, rather than individual states.<sup>38</sup> 10-15 members of the intergovernmental group 'Uniting for Consensus', in particular, Italy, Spain, Argentina, Mexico and Malta, as

well as organisations such as the League of Arab States and the Organisation of Islamic Cooperation, expressed their support for this idea of reformation.<sup>39</sup> However, the idea of introducing a regional representation did not receive broad support among the UN members. Moreover, such permanent members of the Security Council as the United States and Russia rejected it. According to them, proposals to expand the membership of the UN Security Council should target specific states. Applicants for permanent membership in the Security Council also criticised it.<sup>40</sup>

The second direction of the UN Security Council reform concerns a change in the Council's methods of work. It has been on the agenda of the UN members since the 1990s. Initiatives to reform the working methods of the UN Security Council aim at achieving three main goals – transparency and accountability of the Council, as well as the possibility of participation of non-member states in its work.

The Security Council, under UN members' pressure, has already taken some measures to increase the transparency of its activities. For example, the Security Council now holds more meetings that are public, and consults with external actors, including non-governmental organisations, more frequently. It has also given other UN members the opportunity to speak before the Security Council and has made a special effort to enhance relations with troop contributing countries, meeting with them on a regular basis.<sup>41</sup> Since 1993, members of the Security Council have created a number of initiatives aimed at changing its working methods. Such initiatives were as follows: the publication of the daily programs and the monthly schedule of the work of the Council; draft versions of its resolutions; providing the opportunity for the members of the UN Security Council to invite experts and representatives of civil society to its 'private' meetings, etc.<sup>42</sup>

However, as J. Paul and C. Nahori claim, to achieve the goals of the UN Security Council reformers, there are still many things to change. According to the researchers, the Security Council should abandon its temporary procedural rules in favor of permanent members. It also should find ways to obtain support from the UN Secretariat and institutionalise the presidency of the Security Council (to increase the term of chairmanship of its members from one month to six or more). The authors propose the UN Security Council transfer more of its work to its subsidiary bodies, as well as to strengthen the work of expert groups, and establish a constant exchange of information between

them. In addition, the Security Council should work more on finding accurate information through consultations with international actors of all kinds, especially with non-governmental organisations.<sup>43</sup>

### **The use and proposals for the veto right reform in the light of conflict in the East of Ukraine**

*Lesia Dorosh,  
Olha Ivasechko*

In our opinion, reform of membership in the UN Security Council and its working methods will help to increase its democracy, representativeness and transparency. However, these areas of reform cannot significantly enhance the effectiveness of this international body, as well as the ability to intervene in the large-scale conflicts of the present and solve them. The expansion of the Security Council will even lead to deterioration of its ability to respond to the peace violations and threats rapidly.<sup>44</sup> Consequently, reform in the composition and working methods of the Security Council is not relevant, while the problem of reform in practice of using the veto right by the permanent members of the UN Security Council is extremely acute. In our opinion, the veto right is the main obstacle to the fulfillment of the Council's main functions – maintenance of peace and security. Therefore, it requires the main attention of the international community. To confirm this thesis, let us consider the mechanism of decision-making in the Security Council.

The Security Council's decisions are in the form of resolutions. One or more Security Council members propose its draft and transmit it to the other members for consideration. It (the document) is discussed and, if necessary, is changed after consultations with members of the Security Council. When all members of the Security Council reach agreement on the final version of the resolution, it is formally submitted to the Security Council.<sup>45</sup> In voting for the adoption of the resolution, each member of the Security Council has one vote (Article 27 of the UN Charter).<sup>46</sup>

Questions submitted for UN Security Council consideration are of two types – procedural and substantive. The Security Council's decision on procedural matters is taken by a majority of nine votes of any members of the Security Council. The decisions of the Security Council on substantive issues call for a positive vote by nine members of the Council, including the votes of all five permanent members.

So, formally, the word 'veto' is not used in the UN Charter. Nonetheless, through the above-mentioned mechanism almost every per-

manent member of the Security Council has the opportunity to block the decision. If at least one of them votes against the resolution, it is considered not adopted. However, a resolution may be adopted when a permanent member abstains from voting.<sup>47</sup>

*CEJISS*  
2/2018

This decision-making mechanism enables permanent members of the UN Security Council to abuse their veto right for realizing their national interests, including cases when they violate the rules and principles enshrined in the system of international law by themselves. This, in turn, can have unpredictable consequences, because blocking the actions of the international community in ending the development of armed conflicts inevitably leads to an escalation of such conflicts and an increase in the number of their victims. For example, in scientific literature and rhetoric of the United Nations' members, the accusations of Britain for its power abuses in 1982 are quite common. Accordingly, the UN was unable to prevent Britain from starting a war with Argentina for the Falkland Islands. Another example is the tough criticism of the US for the invasion of Iraq in 2003.<sup>48</sup> Russia and China are widely criticised today for their support of Bashar Assad in the civil war in Syria. These countries have blocked the adoption of resolutions of Western states aimed at putting pressure on the Syrian president. Richard Govan, vice-director of the Center on International Cooperation at New York University notes that it is widely believed if the United Nations had intervened in the conflict in its early stages, when violence was on a limited scale, it would have avoided escalation of conflict to a state of civil war - the one that has lasted more than four years and claimed the lives of more than 191 thousand people. In addition, because of the actions of Moscow and Beijing, the Security Council's serious attempts to influence B. Assad, including the imposition of an arms embargo on the current Syrian regime, were blocked.<sup>49</sup> Undoubtedly, it is not just an issue of blocking a resolution by one of the permanent members of the Security Council regarding a conflict. It is also about the so-called 'hidden veto' - the quiet threat of a permanent member of the UN Security Council to use the veto right because of inconvenience of the situation for this member, the result of which is the blocking of resolutions at the stage of their writing and approval.<sup>50</sup>

In the last two years (since the annexation of the Crimean Peninsula in February 2014), the Russian Federation, being an aggressor in the conflict in the east of Ukraine in 2014-2015 (Ukraine recognised Russia as an aggressor country on 27<sup>th</sup> January 2015), has used its veto

and has blocked activities of the UN Security Council in resolving the Ukrainian crisis.<sup>51</sup> Both Ukrainian diplomats and foreign officials in the United Nations have already announced Russia as the implicated country. The influential international non-governmental organisation Amnesty International noted in its report that 'because of the risk that Russia is using its veto in the UN Security Council could not accept effective action when it came to events in Ukraine'.<sup>52</sup>

The behavior of Russian official representatives at the meetings of the Council on the Ukrainian question showed the fact that the Russian Federation blocks the actions of the UN Security Council on events in Ukraine. For example, Russia was the only member state of the Security Council that voted against the adoption of draft resolution S/2014/189 on 15<sup>th</sup> March 2014. In this resolution, in accordance with the UN Charter 42, UN member states, including Ukraine, refrained from the threat or use of force against the territorial integrity and independence of other states, and confirmed: "no territorial acquisition resulting from the threat or use of force shall be recognised as legal". They also called on the international community not to recognise the referendum held on 16<sup>th</sup> March 2014 by the occupation authorities at the Crimean peninsula as legal.<sup>53</sup> The fact that the Russian Federation has blocked the draft resolution mentioned above, in particular, is indicated in the list of vetoed resolutions of the Security Council published by the United Nations Library of the United Nations named Dag Hammarskjöld – the information center and the structural unit of the UN headquarters in New York.<sup>54</sup>

The overwhelming majority of the UN Security Council members at meeting on 15<sup>th</sup> March 2014 expressed its support for Ukraine in the military conflict in the Donbass. After the vote of 15 members of the Security Council, Gerard Araud, French Ambassador to the United Nations, expressed outrage at the Russian annexation of Crimea and recognised Russia's isolation in the UN.<sup>55</sup> Mark Lyall Grant, British official representative to the Security Council said that Russia's violation of international law 'is heard outside the walls of the Security Council meeting hall'.<sup>56</sup> In their speeches at the meeting, Lithuania, the United States and France used the word 'annexation' to describe Russia's actions on the Crimean peninsula.<sup>57</sup>

Moreover, according to the British government, Russia tried to prevent the adoption of the UN Security Council Resolution No. 2166 on the Malaysian Boeing 777 shot down on 17<sup>th</sup> July 2014 in the Donetsk

*The UN Security Council Permanent Members' Veto Right Reform in the Context of Conflict in Ukraine*

region. In the Resolution, inter alia, the Security Council demanded militants refrain from any actions that could be a threat to the inviolability of the injured party, and requested the relevant investigative bodies, the OSCE Special Monitoring Mission and representatives of other relevant international organisations have safe, secure, comprehensive and unequivocal access to the site of the disaster and surrounding areas. Russia motivated such actions by the fact that there were no problems with access to the drop site of the downed aircraft, despite the OSCE report, which has contradicted the statements of Russian representatives.<sup>58</sup> According to the representatives of Ukraine, Russian military personnel shot down the Malaysian Boeing 777. It serves as confirmation of Russian military aggression against Ukraine.<sup>59</sup>

Because of Russia's actions, the Security Council could not accept two other important statements. The first statement, scheduled to take place on 31<sup>st</sup> October 2014, condemned the illegal 'elections' in the Donbass, which took place on 2<sup>nd</sup> November 2014 in the occupied territories of the Lugansk and Donetsk regions. As the Ukrainian Foreign Ministry noted in its commentary, the draft statements condemn the said "elections" in the East of Ukraine that not only violated the Constitution and laws of Ukraine, but also caused serious damage to the Minsk accords. Therefore, by blocking this statement in the UN Security Council Russia once again demonstrated its unwillingness to implement the Minsk agreements, despite being the one of its signatories.<sup>60</sup>

In addition, the Russian Federation blocked the statement of the Security Council condemning shelling of the Ukrainian city of Mariupol controlled by the Ukrainian authorities on 24<sup>th</sup> January 2015, which killed 30 and injured more than 100 civilians. The shelling, as defined by the OSCE special monitoring mission (CMM), was conducted from a territory controlled by the Donetsk People's Republic group, which is believed to be controlled by Russia.<sup>61</sup> It is worth mentioning that the Russian Federation also blocks the initiatives of the international community to resolve the conflict in the Donbass region within the Organisation for Security and Cooperation in Europe (OSCE). It once again proves the desire of this state to prevent any actions aimed at resolving, or at least freezing the armed conflict in eastern Ukraine.<sup>62</sup>

Therefore, the inability of the UN Security Council to intervene in the Russian-Ukrainian war in 2014-2015 is connected with the blocking by the Russian Federation of any initiatives of the Council mem-

ber states aimed at resolving this conflict. Russia abuses the veto right granted to it as one of the five permanent members of the Security Council to commit military aggression against another state.

Undoubtedly, the problems of the functioning of the UN Security Council and the imperfection of its decision-making mechanisms that arise from the shortcomings of the United Nations Charter adopted in 1945 have a direct impact on the fate of Ukraine today. This has led Ukrainian society and Ukrainian leadership to take a fresh look at the problem of the UN Security Council reform. Ukraine continues to emphasise the need for reform. Therefore, Ukrainian experts even joined in the development of a draft on this issue, concentrating their attention firstly on the need of expanding the composition of this international body. However, as noted by R. Guban, the previous position of Ukraine was suspended.<sup>63</sup> Today, in our opinion, the issue of reform of the UN Security Council for Ukraine is fundamental and should become one of the priorities of its foreign policy.

On 11<sup>th</sup> February 2015, the permanent representative of Ukraine to the UN, Yuriy Sergeyev, announced Ukraine's new official position on reforming the key international security body. The Ukrainian crisis became an example of the United Nations' loss of its legal capacity, and thus the UN Security Council should be reformed immediately. In addition, the Ukrainian party at the intergovernmental forum on the reform of the UN Security Council noted that Ukraine itself felt the lack of action of the UN Security Council in the case when one of the five permanent members is an aggressor, and this state of affairs needs to be changed.<sup>64</sup> As early as December 2014, the President of Ukraine Petro Poroshenko, in an interview to the Australian television channel ABC, talked about the necessity of reformation in the functioning of the UN Security Council. Later the Ukrainian president also noted the ineffectiveness of the post-war global security system in general and the UN Security Council in particular and said that to improve the effectiveness of the latter, it is necessary to remove from the veto right from permanent members.<sup>65</sup>

The reasons for this position of Ukraine, in our opinion, are obvious. Ukraine has to advocate the veto reform in the UN Security Council because of the pressure of the Russian Federation that is a direct participant in the war in the East of Ukraine. It blocks any initiatives and resolution on the solution of the Ukrainian crisis making the influential international security organ powerless in halting military aggres-

*Lesia Dorosh,  
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sion. Specific cases of abuse of the veto right by the Russian Federation in the United Nations Security Council to realise its own predatory aspirations were cited in the first paragraph of this section.

Undoubtedly, the mechanism of decision-making in the UN Security Council, the shortcomings of which we have described above, must be changed, since it does not correspond to the modern geopolitical situation on the planet. As the Ukrainian diplomat Bohdan Yaremenko notes, the rules of the UN Security Council, were written 'to the Soviet Union' by other victorious powers in the Second World War. They were written out in such a way that the powers of the two inveterate blocs could not impose their own opinions on issue, and of course, it is the rudiment of the political system in the world.<sup>66</sup> There are only two ways to reform the veto - its complete elimination or restriction of its use by the five permanent members of the UN Security Council.

Neither representatives of the Ukrainian government, nor the Ministry of Foreign Affairs of Ukraine have put forward specific proposals on how to reform the veto right of the five permanent members of the UN Security Council. For today, we have only comments of the Ukrainian Minister of Foreign Affairs Pavlo Klimkin on this issue.

The first comment P. Klimkin gave in an interview with Channel 5 in November 2014. Speaking on the issue of reform of the Security Council, he said, 'a radical reform of the UN system, and in particular of the Security Council, is needed. We cannot allow in the twenty-first century the veto right belonging to country that carried out acts of aggression against another country... There are many countries now, which perfectly understand the need of such reform. Due to such reform, Russia cannot own veto. The veto of a permanent member of the Security Council should be limited, and some even talk about the collective veto right'.<sup>67</sup> For the second time, Pavlo Klimkin started to talk about reforms in the veto right of the Security Council in an interview with 1+1 TV channel in April 2015: 'We spent years talking about the reform of the UN Security Council... We cannot agree on how to limit the veto use'.<sup>68</sup> Therefore, since Ukrainian diplomats are negotiating with other UN member states on the limitation of the veto, we can conclude that its total elimination in the Security Council is not possible now.



## **Position of the permanent members of the UN Security Council on the reform of the veto right**

Let us consider possible options for reform of the veto right of the UNSC five permanent members. The international community has put forward the following proposals for reform:

*The UN Security Council Permanent Members' Veto Right Reform in the Context of Conflict in Ukraine*

1. Decision-making in the UN Security Council should solely be done by the consensus of all member states. As the permanent representative of Ukraine in the UN, Yuriy Sergeyev, notes in his author's column of *Ukrainian Week*, 'this will lead to even more problems. Any country can break a consensus, and there will be no solution'.<sup>69</sup> We agree the opinion that such reform of the veto right will not deprive Russia the opportunity to block the activities of the Security Council on Ukraine. In addition, agreeing on common position of the 15 members of the Council will be more difficult than between the five permanent members.
2. The proposal of France, first announced in 2001, is the voluntary refusal of the permanent members of the UN Security Council to use their veto right in cases of mass atrocities to which France itself includes genocide, crimes against humanity and large-scale war crimes. In 2013, Francois Hollande again put forward this proposal, and Laurent Fabius, French Foreign and European Affairs Minister laid out its essence in an article for the *The New York Times*. It is that 'the five permanent members of the Security Council – China, France, Russia, the United Kingdom and the United States - could voluntarily agree on the regulation of their right to use the veto ... That is, if the Security Council needed to decide on a mass crime, the permanent members would agree to suspend their veto right. The criteria for the implementation of this agreement would be simple: at the request of at least 50 member states, the UN Secretary General would be obliged to determine the nature of the crime. After making a decision, the code of conduct would be applied immediately'.<sup>70</sup> In our opinion, such a proposal to reform the veto right in the Security Council does not satisfy Ukraine, because in its essence it is a proposal for the conclusion of a 'gentlemen's agreement' between the five permanent members of the Council. As is known, the gentlemen's agreement does not lead to any legal obligations of its participants, and, accordingly, they can violate it at any moment. For

example, Russia may 'not notice' the commission of war crimes by separatists in the East of Ukraine.

3. Permission to use veto right only if two or more permanent members of the Security Council voted against the decision at the same time. Such a reform would significantly limit the influence of a single member on decision-making. Especially considering that according to information published by the United Nations Library under the name of Dag Hammarskjöld, between 1946 and 2014 a collective veto was imposed only 30 times, while during the same time single vetoes were imposed 162 times.<sup>71</sup> However, even if such a reform is implemented for Ukraine, there will still be a risk from the Russian Federation to block the Security Council's activities on the Ukrainian crisis due to support of Russia's actions by China. This is supported by the fact that over the past 8 years the two states have jointly vetoed the Security Council resolutions six times,<sup>72</sup> and are historically considered old allies.<sup>73</sup>

4. The use of veto exclusively to the issues provided by Chapter VII of the UN Charter ('Actions with respect to threats to the peace, breaches of peace, and acts of aggression'). Such a reform in no way will limit Russia's ability to block the actions of the Security Council against Ukraine.

5. Introduction of the possibility of overcoming veto by a two-thirds majority of UNSC. Since such a proposal provides for the possibility of overcoming the permanent member's veto on any issue, in our opinion, the permanent member states will not dare consent to such a reform. For example, the United States is unlikely to give up the opportunity to support Israel in the Middle East conflict, despite the fact that from 1972 to 1997 its allies (France and the United Kingdom) voted on the Palestine issue opposite the United States position in almost 80% of cases.<sup>74</sup>

Considering the unlikeliness of the permanent members' consent to such reform, we do not recommend Ukraine to lobby it at the UN member states' negotiations. Today Ukraine should put forward proposals that would limit the veto right exclusively to the aggressor country, taking into account the fact that such proposals are quite ambitious. Since France could not persuade the five permanent members of the Security Council to conclude a gentlemen's agreement on voluntary abstention from using veto in cases of terrible crimes for 15 years

(2001-2015), it will be very difficult for Ukraine and the world community to persuade the permanent members of the Security Council to amend the UN Charter.

Since the UN Charter granted the veto right to the five permanent members, it is possible to liquidate or restrict it only by amending this document. According to Article 108, amendments to the UN Charter 'shall come into force for all members of the United Nations when they have been adopted by a vote of two thirds of the members of the General Assembly and ratified in accordance with their respective constitutional processes by two thirds of the members of the United Nations, including all the permanent members of the Security Council'.<sup>75</sup> In other words, each of the five permanent members of the Council has the right to block the veto reform. Therefore, in order to establish the possibility for such a reform, we will consider the official positions of the PRC, Britain, France, the Russian Federation and the United States of America on the issue of reforming the veto right.

The Russian Federation and the United States are categorically against the reform of this right. Russia's former Permanent Representative to the UN, V. Churkin (2006-2017), voiced the position of the country on 26<sup>th</sup> September 2014. He stated that Russia 'is against any changes regarding the veto right'.<sup>76</sup> The United States of America also opposes restrictions on the veto right. Even though US officials rarely comment the question of reforming of the right, the United States position on the issue is indicated, in particular, in the report 'United States Participation in the United Nations for 2001', published on the official website of the US State Department. The main idea is that 'the United States continues to resist the attempt to make any changes in the status and prerogatives of the currently existing defined by the UN Charter permanent members, including the establishment of any restrictions on the use of veto'.<sup>77</sup> In the annual reports 'United States Participation in the United Nations for 2002' and 'United States Participation in the United Nations for 2004' this phrase was repeated.<sup>78</sup> Similarly, on 15<sup>th</sup> November 2012, at a speech in the UN General Assembly, Rosemary Di Carlo, U.S. Deputy Permanent Representative to the United Nations, made a comment on the possibility of increasing the number of permanent members of the Security Council. She stated, 'The United States is not open to an expansion of the Security Council that would lead to a change of current structure of the veto'.<sup>79</sup> Also, note that the US did not support

*Lesia Dorosh,  
Olha Ivasechko*

the initiative of France to refuse the use of this right in cases of mass atrocities voluntarily.<sup>80</sup>

As Michael Teng points out, France has also revealed its reluctance to lose the veto right of a permanent member of the Security Council.<sup>81</sup> While France's position on restricting the veto right is not known, it was precisely this state that proposed the conclusion of a 'gentlemen's agreement' on the voluntary refusal to use it in cases of mass atrocities.

The United Kingdom is the only permanent member of the United Nations Security Council, supporting the above-mentioned proposal by France to renounce the use of the veto voluntarily.<sup>82</sup> At the same time, we cannot forecast the UK's attitude to the possible restriction of the veto right of a permanent member of the Security Council. The United Kingdom's official representatives discuss the reform of the Security Council, focusing exclusively on the expansion of this body, completely ignoring the problem of reforming the veto right.

The position of the current government of the PRC on reforming the veto right in the Security Council also remains unknown. However, according to S. Patrick, the PRC refused to support France's proposal to restrict the veto right in cases of mass crimes voluntarily, declaring its disagreement with such restrictions.<sup>83</sup> Therefore, we can assume that since China refused to conclude a 'gentlemen's agreement' which would restrict its veto right, the Chinese government will probably resist such changes to the UN Charter.

Therefore, two permanent members of the UN Security Council (the Russian Federation and the US) are openly opposed to reform of the veto; China is negative to such a reform as well. No preconditions to believe that France and the UK will support the reform of veto right are yet available. Therefore, we can conclude that today the reform of the veto right in the Security Council is impossible.

In our opinion, none of the above-mentioned proposals to limit the veto right meets the challenges of international security provoked by the conflict in the East of Ukraine. In this regard, we propose our own way of limiting the veto right of the permanent members of the UN Security Council, which presupposes the following steps:

- i. State parties to the conflict are invited to attend a meeting of the Security Council relative to this conflict;

2. In their speeches, the participants give evidence of the participation of the UNSC permanent member in the conflict;
3. The Council holds a vote for the recognition of a permanent member of the UN Security Council as a participant of the conflict. If 12 of the 15 members of the Security Council vote positively, such permanent member loses right to veto decisions on a conflict in which it is recognised a participant.

*The UN Security Council Permanent Members' Veto Right Reform in the Context of Conflict in Ukraine*

Such a mechanism would increase the influence and significance of non-permanent members of the UN Security Council, stimulate the international prestige of the institution of non-permanent membership and partially will solve the problem of representativeness in the Security Council. Nevertheless, the mechanism for limitation the veto of a permanent member of the Security Council proposed by us will not make it possible to influence such conflicts as a civil war in Syria. This is an example of a conflict where a permanent member of the Security Council is not directly involved, but abuses the veto to achieve its strategic interests despite the large number of victims of such a conflict.

As we noted above, the proposals for reform of the veto right are ambitious. It is unlikely that the changes necessary for such reform will be made in the Charter of the United Nations in the near future. Nevertheless, as noted by Yuriy Sergeyev, in 2015 the UN is in a critical state, since today it is not able to fulfill its main function - to safeguard peace and stability.<sup>84</sup> Therefore, the future existence of the United Nations and the future of the entire international security system depend on today's initiatives on reform of the UN Security Council as a key body for maintaining peace.

## **Conclusions**

From the inception of the creation of the United Nations, the United Nations Security Council, as the guarantor of international peace and security, has broad powers to influence states that violate international law (the right, at its discretion, to apply sanctions and military force against violators of peace and security). At the end of the 20th and the beginning of the 21st century, it proved to be powerless in resolving a number of large-scale armed conflicts. Members of the United Nations and experts in the field of international relations often criticise its activities. One of the main reasons for criticism of this internation-

al security organ is the imbalance between the five permanent members of the Security Council and the rest of the UN member states. Enshrined in the UN Charter in 1945 by the World War II victorious nations, such imbalance gives the United States, Britain, France, Russia and the People's Republic of China the opportunity to 'play not according to the rules' in situations favorable for them.<sup>85</sup> Therefore, in connection with its inability to fulfill its functions and responsibility for ensuring international peace and security, it is necessary to search for mechanisms of reforming the UN Security Council to improve its effectiveness.

In the early 1990s members of the United Nations began actively to propose options for reform of the Security Council. These proposals of the UN member states on reforming the Security Council cover three key problems: the composition of the Council, the use of the veto right and non-transparent methods of work. However, as shown by the analysis of the decision-making mechanism of the Security Council, it is possible to increase the effectiveness of the UN Security Council only by reform of the veto right.

The main obstacle to such reform is the need to convince the five permanent members of the Council to limit themselves in using a tool that allows them to influence the entire international system. As the analysis of the statements and official positions of the five permanent members of the UN Security Council shows, these states oppose the restriction of their rights and prerogatives, and, therefore, do not consent to such a reform. Nevertheless, today the United Nations is in a critical state, as they are unable to fulfill its basic function of ensuring peace and stability on the planet.

Consequently, having considered the cases of the United Nations and the UN Security Council's failures to intervene in major international or domestic conflicts, it should be noted that the non-interference of the UN (the organisation which was created for the maintenance of peace and security) in wide-ranging conflicts is associated with the abuses of the permanent Council members' rights, granted by the UN Charter. In our opinion, for the same reason, the United Nations Security Council is unable to influence the resolution of the conflict in the East of Ukraine. The failure of the UN Security Council to intervene in the Russian-Ukrainian war (2014-ongoing) is related to the Russian Federation blocking any initiatives of the Council's member states aimed at conflict resolution. Russia abuses the permanent

Security Council's members veto right for the purpose of committing military aggression against another state.

Hence, the future effective existence of the United Nations and the future of the entire international security system depend on today's initiatives to reform the UN Security Council as a key body for peacekeeping. In this context, further studies of the possibilities and options for reformation of the UN Security Council are promising. The position of Ukraine, which became a victim of the aggressor – a permanent member of this structure – should also be taken into account. The detailed study of proposals provided by official representatives of the state of Ukraine, as well as analysts, publicists on reformation of the UN Security Council are of huge importance.

*Lesia Dorosh,  
Olha Ivasechko*

Considering the opposition of the permanent members of the Security Council on reforming the veto right, a reform must be one that seeks for restricting the veto right only in cases of extreme necessity. None of the ways limiting the veto right in the Security Council proposed by the international community today meets this criterion. In this regard, the authors' suggestion developed in this work is limiting the right to veto decision of the Security Council's permanent member on a conflict, of which it (the permanent member) was recognised as a participant by thirteen member states of the UN Security Council in a special vote. Such a mechanism would increase the influence and significance of the non-permanent members of the UN Security Council, the international prestige of the institution of non-permanent membership and partially will solve the problem of representativeness in the Security Council. Nevertheless, the proposed mechanism for limiting the veto of a permanent member of the Security Council will not influence conflicts such as the civil war in Syria. In other words, one when a permanent member of the Security Council is not directly involved in the conflict, but abuses the use of the veto to achieve its strategic interests, despite a large number of victims in such a conflict.



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Lesia Dorosh,  
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*The UN Security Council Permanent Members' Veto Right Reform in the Context of Conflict in Ukraine*