



UNIVERSITY OF ZIMBABWE

**ANALYSING THE UNITED NATIONS SECURITY COUNCIL INTERVENTIONIST
ROLE IN THE 21ST CENTURY: A STUDY OF THE RUSSIAN - UKRANIAN CONFLICT**

BY

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I DEDICATE THIS WORK TO THE THOUSANDS THAT HAVE LOST THEIR LIVES IN UKRAINE. A NEEDLESS OUTCOME THAT COULD HAVE BEEN PREVENTED OR AT LEAST STOPPED IN ITS INFANCY. MAY THEIR SOULS REST IN ETERNAL PEACE.

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CHAPTER 1: GENERAL INTRODUCTION

1.1 Introduction

The First World War exposed the abysmal imports of global skirmish and warfare. It claimed considerable human and infrastructural casualties. The impact of this war would be felt for years after it ended. The catastrophe that was the first World War is one that was agreed by all to be the one of the lowest moments for mankind. For that reason, what was apparent was that no one wanted to repeat its cataclysmic violence. The victors and the losers all agreed that the world would benefit if there would never be a repeat of such a war ever again. Then U.S. President Woodrow Wilson summed it all up when he made it apparent that the world needed to agree on a way forward that would ensure the world would never again see itself sink into such destruction and chaos. In 1918 he delivered a speech wherein he campaigned strongly towards the creation of an “association of nations” that would advocate for and speak strongly for the veneration of “one another’s borders and independence”.¹ On this premise, the “League of Nations” came to being.² This League of Nations was staked on the idea of collective security, meaning the “incursion of one country by another” would for all purposes be treated like “a threat to the entire assemblage”.³ The League’s big dreams for world peace would however soon crash into the harsh realities of world politics and relations.

It is interesting to note for example that for all of President Wilson’s efforts and hard work, his own United States Senate voted not to join the League, citing concerns related to commitments of being a member of the League. It is advanced that the League’s requirement for unanimous agreement prior to any action further condemned it to failure. Twenty years after its creation it

¹ An extract of this speech is contained in the *Journal of American Studies*, Volume 19, Issue 3, (1985), pages 325 – 348.

² The League of Nations is acknowledged as the 1st global organization of states with a principal mandate to maintain peace. Created in January 1920 via the Paris Peace Conference at the end of the world war.

³ Ginneken, Anique H. M. Van (2006). “Historical Dictionary of the League of Nations”. Scarecrow Press. Page 174.

miscarried and failed to halt Japan from invading China, stop Italy from annexing Abyssinia (now Ethiopia), or do anything about the rise of Nazi Germany.⁴

Despite its failures, some of which have been stated above the League of Nations laid the groundwork for its eventual successor the United Nations (hereinafter referred to as the UN). The UN was created after the second World War in yet another attempt to promote global peace and security.⁵ A changing global landscape, emergence of new super-powers meant that the UN had to be stronger than its predecessor⁶. The UN formed a continuum with the League of Nations in general purpose, structure, and functions; “many of the UN’s principal organs and related agencies were adopted from similar structures established earlier in the century”⁷.

It will be advanced by this writer however, that in several respects the UN constituted a very different organization. This can be said in particular reference to its clearly structured objective of maintaining international peace and security and an invigorated commitment to economic and social development. Further it can be argued that the UN was more than a reaction to a global war, that being the second world war. In its design it was modeled to be a Launchpad for a constant interaction of nations. This being a platform to enable development while sustaining world peace. It from the onset sought to not only maintain the status quo but also enable economic and social

⁴ Ellis, Charles Howard (2003). “The Origin, Structure and Working of the League of Nations”. Law book Exchange Ltd. Page 169

⁵ The UN was set up at the close of World War II. Its main aim was to prevent future wars of a similar kind. It was a successor for the League of Nations which had failed to prevent a world war. On 25 April 1945, 50 governments met in San Francisco for a conference and started drafting the UN Charter, which was adopted on 25 June 1945 and took effect on 24 October 1945, when the UN began operations. Pursuant to the Charter, the organization's objectives include maintaining international peace and security, protecting human rights, delivering humanitarian aid, promoting sustainable development, and upholding international law. At its founding, the UN had 51 member states; with the addition of South Sudan in 2011, membership is now 193, representing almost all of the world's sovereign states.

⁶ The United Nations is an international organization founded in 1945 after the Second World War by 51 countries committed to maintaining international peace and security, developing friendly relations among nations and promoting social progress, better living standards and human rights. Due to its unique international character, and the powers vested in its founding Charter, the Organization can act on a wide range of issues, and provide a forum for its 193 Member States to express their views, through the General Assembly, the Security Council, the Economic and Social Council and other bodies and committees

⁷. The United Nations came into existence on October 24, 1945, after 29 nations had ratified the Charter.

development. This writer will later on argue that this undertaking was appealing at the time but later on became an issue particularly for the already developed nations who seek to maintain their dominance at whatever cost.

The organization and purpose that form the core of the United Nations are as outlined in the Charter of the UN. The essential concepts underlying the purposes and functions of the organization are as listed in Article 2 of the UN Charter and include the following, “that the UN is based on the sovereign equality of its members; disputes are to be settled by peaceful means; members are to refrain from the threat or use of force in contravention of the purposes of the UN; each member must assist the organization in any enforcement actions it takes under the Charter; and states that are not members of the organization are required to act in accordance with these principles insofar as it is necessary to maintain international peace and security”. The same article 2 also stipulates a basic long-standing norm, “that the organization shall not intervene in matters considered within the domestic jurisdiction of any state”. It is noted that this initially proved to be a major limitation on UN action but over time it will in this writing be shown that the line between international and domestic jurisdiction has indeed become blurred. This aspect the write shall focus on later in this research paper.

The United Nations has six main organs, “the General Assembly, the Security Council, the Economic and Social Council, the Trusteeship Council, the International Court of Justice, and the Secretariat”. Arguably the most powerful of these is the UN Security Council (hereinafter referred to as the UNSC), whose powers extend to even the issuing sanctions and where they deem necessary even authorizing the use of military force.⁸ The UN Charter empowers the Security

⁸ The Security Council is charged with “maintaining peace and security among countries”. All the other organs of the UN can only make "recommendations" to states, the Security Council has the power to make “binding decisions that member states have agreed to carry out”, under the terms of Charter Article 25. These decisions of the council become thereafter known as United Nations Security Council resolutions. The Security Council is made up of fifteen member states, consisting of five permanent members—China, France, Russia, the United Kingdom, and the United States—and ten non-permanent members elected for two-year terms by the General Assembly: Albania (term ends 2023), Brazil (2023), Gabon (2023), Ghana (2023), India (2022), Ireland (2022), Kenya (2022), Mexico (2022), Norway (2022), and the United Arab Emirates (2023).[104] ‘The five permanent members hold veto power over UN resolutions, allowing a permanent member to block adoption of a resolution, though not debate. The ten temporary

Council with the primary responsibility for the “maintenance of international peace and security”. The Security Council originally consisted of 11 members, five permanent and six nonpermanent elected by the General Assembly for two-year terms. From the beginning, nonpermanent members of the Security Council were elected, “to give representation to certain regions or groups of states”⁹.

Five countries, these being the United States of America, The People’s Republic of China, France, Russia, and the United Kingdom, form part of the Security Council as permanent members (known as the P5). Each of these powerful 5 with the power to veto any resolution with which it disagrees¹⁰. Ten other members, who are each elected for a rotating two-year term complete the Security Council. These ten however do not have veto power. It is advanced by this writer that this initial composition of the UNSC has proven to be a contentious issue. One which has spurred debate and considerable opinion amongst legal scholars and contemporary politicians alike.¹¹ This is again a subject this author will discuss at length in this thesis. It is however noted by this author that some

seats are held for two-year terms, with five member states per year voted in by the General Assembly on a regional basis. The presidency of the Security Council rotates alphabetically each month’.

⁹ ‘Each Security Council member is entitled to one vote. On all “procedural” matters—the definition of which is sometimes in dispute—decisions by the council are made by an affirmative vote of any nine of its members. Substantive matters, such as the investigation of a dispute or the application of sanctions, also require nine affirmative votes, including those of the five permanent members holding veto power. In practice, however, a permanent member may abstain without impairing the validity of the decision’

¹⁰ Vetoing refers to the right of a single permanent member of the UNSC to block action desired by the other members. It is stated in the United Nations Charter's Article 27. According to the Charter, a veto is granted to each member of the Security Council. A majority of nine members of the Security Council must vote affirmatively on procedural questions. The Security Council's decision on all other matters is taken by an affirmative vote of nine members, including the permanent members' concurring votes. A party to a dispute must abstain from voting in decisions made under Chapter VI and Article 52, paragraph 3. The veto power is probably the most important distinction between permanent and non-permanent members in the UN Charter.

¹¹ Hoopes, Townsend; Brinkley, Douglas (2000) *FDR and the Creation of the U.N.* New Haven, Connecticut: Yale University Press.

critics have argued that “the UNSC and its five permanent members reflect the power structure that existed at the end of World War II, when much of the world was under colonial rule”.¹²

Reform exertions aimed at the exclusive UNSC have remained abstract but rather they have been centered on conceited efforts to have the slog of the UNSC become more transparent and on well documented demands by “important non-permanent members”, such as “Brazil, Germany, India, and Japan (hereinafter referred to as the G-4)”, to obtain the much coveted permanent membership status or at least have some recognized “special status” within the UNSC. These G-4 countries have even proposed an increase in the membership of the UNSC up to 25 seats with the model being to add at least six new permanent members with at least two of these seats being reserved for African states. These African states having already voiced their concerns at the apparent lack of an African state with a permanent seat.

This writing will investigate whether or not, the UNSC as it currently exists, has been successful in meeting its objectives. The author will use the example of the conflict currently in Ukraine to illustrate the position. The writing will discuss the International armed conflict persisting in Ukraine and the ensuing legal issues viz a viz the UNSC. In order to understand the situation in Ukraine it is important to consider that conflict has always been an international problem. This as explained above is why the UN and subsequently the UNSC were created. These were later to be complemented by several Geneva Conventions to guide conflict. For all this though, the most important organ in these matters is the UNSC. It is supposed to guard against conflict in the first place.

1.2 Background of The Study

It is a fact that since its inception no reform can be recorded with regards to the UNSC, both in its form and substance. This widely apparent lack of restructuring of the UNSC is rather scandalous viz a viz the remarkable transferences in global order since its establishment¹³. Moreover it is very much apparent that other international institutions have shown a readiness to adapt to these

¹² Lowe, Vaughan; Roberts, Adam; Welsh, Jennifer; Zaum, Dominik, eds. (2008). *The United Nations Security Council and War: The Evolution of Thought and Practice since 1945*. Oxford University Press.

¹³ Consider the following example: In 1945, the Security Council consisted of 21.6% of the general membership (11 Council members, 51 UN member states), this ratio decreased to 12.8% in 1965 (15 Council members, 117 UN member states) and further to only 7.8 % today (15 Council members, 193 UN member states).

changes for example through the “admission of new members in the World Trade Organization”¹⁴, “adapting voting weights in the International Monetary Fund or introducing new patterns of weighted voting in the European Union”.¹⁵

Even though it can be noted that many of the world’s states “vociferously” demand a more ‘equitable representation’ and openly attack the superiority and dominance of the P5, none of the reform proposals suggested ranging from, “adding new permanent members, expanding solely the number of non-permanent members” to intermediate models of reform have yet managed to get the required majorities to be adopted. Other argue that this position will persist for the considerable future. This writer however strongly believes that as long as the political will exists change is achievable in the structure and form of the UNSC.

It is debatable whether the UNSC has reacted to the changing global order both in terms of formal institutional reform and more informal ways of granting more influence to “rising and established powers” through increasing in formalization, reforming its working methods, or institutional innovation. This particularly now when the world order has been threatened by the invasion of Ukraine by Russia. The background of the study being that the failure to reform the UNSC has created a situation wherein the primate aims of the UNSC are unachievable and all the world can do is watch while decades of posturing are drained down the sinkhole. It will be argued that while the various groups have failed to bridge the divide and avoid the ‘poison pill’ of UNSC reform, those states who have been denied permanent and exclusive UNSC membership have not “walked away”. Instead, they have opted to utilize a variety of available avenues to influence the UNSC’s politics over international peace and security and this has led to a virtual mootness of the UNSC as evidenced by the action or lack thereof in a deserving space such as Ukraine.

Based on the preceding assumption, it is thus crucial that this writing explores the tremendous shifts in global power and politics, how the evolving nature of conflicts has presented a challenge to the current system of global governance from a legal perspective. Its apparent that there exist political, structural and theoretical obstacles to a formal UNSC reform. Contemporary

¹⁴ Hutter S, Grande, E. And Kriesi, H. (2016) *Politicizing Europe: Integration and Mass Politics*, Cambridge: Cambridge University Press.

¹⁵ Ibid 10.

developments in Ukraine have exposed the possible need for substantive and structural reform. This makes this area worthy of accurate, unambiguous and defined investigation and possible suggestion for reform.

1.3 Problem Statement

The Security Council has the primary responsibility, under the United Nations Charter, “for the maintenance of international peace and security”. It is the principal UN organ tasked with preserving peace and collegiality of all member states. It is for the UNSC to determine the logistics of a UN peace operation. The ideal scenario is thus for a UNSC that not only acts but acts fast and with precision and accuracy. What was envisaged when the UNSC was created was an all-powerful organ that would step in when needed to maintain and where necessary restore world peace. A UNSC that would not allow the world to descend into the chaos that this and writers have described to have been the second world war. At all costs the aim was and is for a UNSC that will safeguard the world from itself even where necessary. Unfortunately, this and other writers will argue that this is not the position the UNSC finds itself in. The UNSC, it can be argued looks increasingly “anachronistic” against the remarkable modifications in military, political, economic and diplomatic global power since the “San Francisco” conference which took place close to over 70 years ago.¹⁶ It is argued and accepted that global power has been dispersed across nations. Many “smaller and middle-sized countries are rising powers”, “emerging economies” or among the so-called “Next Eleven”¹⁷.

Aside from these obvious transformations in the world order, the unpredictable concept of armed conflict, the increase of terrorism, the multiplying of nuclear weaponry and the persistence of intrastate conflicts such as the Russo-Ukrainian conflict are presenting a serious challenge to the UNSC efforts in “preserving international peace and security”. The net total thus sets up a nursery bed for the conclusion that in the context of the changing world order, and changing challenges to all UN member states, the UNSC at some stage has to adapt its range and scope of activities to a greater extent. Accordingly, it is precise to conclude that the UNSC faces new challenges that are urgent and important but fundamentally different from those facing the UNSC back then when the

¹⁶ Ibid 5.

¹⁷ Ibid.

UN organization was established. Due to the changes highlighted above and ever-changing world politics a legal gap exists wherein the UNSC has been at times rendered moot and inoperative due to conflict and political interests. The conflict in Ukraine currently being one such conflict wherein the gap created by the UNSC 's absence from action is clear and evident for all to see. This writing will seek to expose this gap and give recommendations as to how the UNSC can be made more effective. To make this more apparent we now proceed to highlight in the next part, the objectives of this research.

1.3.1 Research Objectives

1. To analyze the work of the UNSC in conflict situations.
2. To identify the reasons behind the Ukraine-Russia conflict.
3. To rely on the Ukraine experience to determine the efficacy (at law) of the UNSC to tackle conflict when it arises.
4. To provide recommendations for the UNSC in light of global events such as the invasion of Ukraine by Russia

1.4 Research Methodology

This research adopts the desktop study. This refers to research that results in data collected or acquired whilst one is sitting on a desk. Plainly put this refers to a research focused on data gathered from one central position and collated to produce a result. It does not involve fieldwork of any sort. The data is collected from already existing sources and resources. It is generally a low-cost method. In this instance this writer will research on the factual and legal issues arising out of the Russia-Ukraine conflict via the internet and texts written by other scholars in the field. From these this writer will then arrive at their own considered conclusion on the subject matter.

Generally, it is agreed that there are two types of desk research techniques, namely Internal desk research method and External desk research method. This writer will employ both these techniques in an attempt to produce quality work. Internal desk research can be treated as the most reasonable starting point of research for any thesis. Much Information could be generated internally within the targeted organization as a course of normal process. In the context of this research this involves the generation of information from within the UN and the UNSC. In this way the writer focuses

on material already produced on the organizations and seeks to critique and analyze same. It is advanced that the advantage of same is obviously that the writer will obtain first hand, often highly accurate information on the subject matter. The disadvantage however is that this type of research requires access to internal information which at times is not necessarily there for the taking. It should however be noted that the main advantage here in performing internal desk research is that it involves internal and existing organizational resources to organize the collected data in such a way that it is not only efficient but also usable. Internal desk research is comparatively very cheap and effective as internal recourses are deputed and the expenditure in getting data from outside is less. External Desk Research on the other hand involves research done outside the organizational boundaries and collecting relevant information. These outside resources are mainly accessed via the internet. It is this resource that this writer will rely on mainly due to accessibility.

1.6 Literature Review

UNSC reform has been tabled in the UN General Assembly since 1994 without any progress. Leading scholar Robert Canton argues, “In September 2000, Heads of State attending the Millennium Summit called for the rapid reform and enlargement of the UNSC making it more representative, effective and legitimate in the eyes of everyone in the world. Indeed, this was an issue agreed upon by the majority.”¹⁸ John Shiva, another scholar of note, however, adds “ that the referred to panel presented two models of expansion of the UNSC which involved a distribution of seats between four major areas, Africa, Asia and the Pacific, Europe and America. Nevertheless, while the expansion of the UNSC's membership pointed in the right direction, the veto power, which is critical, remained unchallenged in the report”.¹⁹ According to Salmon C. Trevor, “The U.N's failure to fully understand and doctrinally adjust to the new circumstances surrounding global politics may bring the world body to the point of outright strategic failure”²⁰. The above scholars all seem to agree that indeed the world has changed and keeps changing. Reform of the UNSC had become an ever increasing and needed necessity. The warning from scholar Nicholas Hopkinson being that failure to reform itself might see the UNSC failing as did the League of

¹⁸ Robert Canton “World Politics-Trends and Transformation” page 23 New York, St Martin, 2002.

¹⁹ John Shiva, “War against the UN: Prospects and Challenges of the UN reform”, Vol 23, page 4, New York, Armonk Sharpe, 2004.

²⁰ Leon Gordenker: “UN should consider AU Position, The New Role of the UN, Prospects and Challenges”, 22 March 2022, < [http// www.un.org/unrefor](http://www.un.org/unrefor), >

Nations ultimately. As aforementioned this research will lean and tap into the knowledge of such scholars to analyze and determine the efficacy at law of the UNSC to tackle conflict when it arises.

Russia has continuously used its veto power to frustrate any aid or assistance efforts in Ukraine presently. In chapters to follow, this will be an issue also under discussion in the analysis of the role of the UNSC. Reference will be made to the work of John T. Rourke, who argues that, “ the continuing importance of the veto in practice, its value as a symbol of big power status, and the difficulty of amending the Charter mean that the veto authority is likely to continue without major revision despite arguments that its existence is in the hands of an unrepresentative few countries and is undermining the legitimacy of the UNSC”²¹.

It has been established that the issue under discussion is that the world's political behavior is at large informed and dictated by the brawl for mostly selfish national interests. It has long been argued that world politics is characterized above all, “by egotistical states operating in an anarchical environment”. David Forsythe argues that, “From the celebrated works of Hans J. Morgenthau to the much-praised restatements by David Franklin and Hedley Bull, commentators have stressed the power drive of nation-states operating without higher authority”²². In these classical treatments emphasis has been placed on the “independence of states, on their drive to maximize power as both ends and means, and even on the morality of normally evil action when done in pursuit of national interests”.

In this study, the writer seeks to study power dynamics and also the unilateral exercise of power within the UNSC. In this thesis both realist and idealist theories of international relations will be examined in an attempt to better comprehend how the morph in global politics and dominance demand an equal reaction in the composition of the UNSC if it is to succeed. The submission being that resistance to reform from the P5 will definitely lead to ultimate failure of the UNSC and subsequently the UN itself. One however will still acknowledge that from the genesis of the UN there have been serious obstacles that for so long have prevented amendments to the Charter of the UN. This particularly where it requires the affirmation and concurrence of the P5. In essence

²¹ John Rourke: *World Politics: International Politics on the World stage*, New York, mcgraw-Hill, 2002

²² Greg Bruha: ‘The United Nations Capacities in a new World’, *Law, Policies and Practice*, Vol. 7, p.4, New York, Prentice Hall, 2005

it is very clear that none in the P5 will consent to any amendment that would seek to remove them from the UNSC or in any minute way lessen their veto power exclusive privilege. Sad to say that this is an understandable position and stance, which requires the affirmative concurrence of the five permanent members of the UNSC. Practically, this means that none of the five will approve. This becomes the central theme of this research.

1.6 Chapter Synopsis

Chapter 1: GENERAL INTRODUCTION.

This chapter provides the introduction to the thesis

Chapter 2: THE RUSSIAN-UKRAINE CONFLICT.

This chapter will give a factual background of the Russia-Ukraine conflict.

Chapter 3: THE INTERVENTIONIST ROLE OF THE UNSC.

The chapter will discuss the interventionist role of the UNSC

Chapter 4: THE LEGAL ISSUES ARISING FROM THE RUSSIAN-UKRAINE CONFLICT.

This chapter will focus on the legal issues arising from the Russo-Ukrainian conflict of 2022 for the UNSC

Chapter 5: CONCLUSIONS AND RECOMMENDATIONS.

This chapter will offer conclusions and recommendations

CHAPTER TWO: THE RUSSIAN-UKRAINE CONFLICT.

2.1 Introduction

During different years in history, the Russian empire, the Austro-Hungarian Empires, the states of Poland, and Lithuania have all wielded territorial and political control over the rather smaller state of Ukraine. It should be noted however that Ukraine's contemporary independence was first asserted as far back as 1917, at the time of the formation of the "Ukrainian People's Republic". Russia would however find ways to take back control of the newly independent Ukraine, making it an integral part of the then newly established Soviet Union. Russia would ultimately retain power and control in the region until the onset of the second world war and the subsequent invasion by German troops. The debate still rages over how exactly to recall this history of the second world war. Its implications for Ukrainian independence and sense of nationalism and independence, is key to a fair comprehension of the current conflict in Ukraine that has gripped international law. It has been argued that Russian hostility towards Ukraine can be traced to genocide and suppression that allegedly took place under the then Soviet rule. A famous example the Great Famine, Holodomor, which fuses the Ukrainian words for starvation and inflicting death, claimed the lives of around "3.9 million people, or approximately 13 percent of the Ukrainian population, in the early 1930s".²³

This Russian aggression has been mainly because Russian nationalists strongly believe that Ukraine is a part of Russia whose "independence" was pushed for by the German led forces in a bid to weaken Russia. This stance of a weakened Russia they argue is a position favored by both the United States of America and their western allies. This writer affirms the position that Russia has pursued a policy toward Ukraine clearly predicated on the notion that its respective national identity as indicated above is highly artificial and man-made therefore very fragile. The major

²³ It has been called, "A human-made famine, it was the direct result of Soviet policies aimed at punishing Ukrainian farmers who fought Soviet mandates to collectivize. The Soviets also waged an intense "Russification" campaign, persecuting Ukraine's cultural elite and elevating Russian language and culture above all others".

argument for this Russian position being that foreign enemies promote identity as part of a geopolitical struggle against Russia. This salience that supposed Russian elites place on the idea of Russian-Ukrainian unity probably assists one to better explain the Russian basis for the present day conflict, notably why Russia a stable thriving state was certainly prepared to have a potentially large-scale conflict so near to its territory when no potent threat existed from the comparatively smaller Ukraine. Worse with no military threat present from NATO at the material time.

It also suggests that Russia 's aims extend way beyond only preventing Ukrainian NATO membership and encompass a more thorough aspiration to dominate Ukraine politically, militarily, and economically.

In this chapter the writer will seek to discuss the factual context of the Russia-Ukrainian conflict. The writer will explore the historical background leading to the conflict. This important if one is to fully understand how the current conflict came to being. This conceptualization of the historical events will allow for a more systematic analysis as to how Russia has abused her privileged P5 position and in so doing exposed the inherent weaknesses of the UNSC. Thereafter we will seek to connect this history to the current on-goings in Ukraine, showing explicitly how the current conflict is just but a culmination of a series of events dating from the immediate post-cold war years. Lastly, in this chapter as well we will also analyze the UNSC response in the aftermath of Russia's invasion of Ukraine. This chapter will thus conclude after juxtaposing the history of Russia and Ukraine, the ongoing conflict amid the response or lack thereof from the UNSC.

2.2 Russia 's Imperial Identity Crisis.

Clearly with a huge dose of expected Soviet-era variation, what the historian Zenon Kohut calls the "unity paradigm" has been the agreed upon view of Russian leaders and Russian thought leaders. This having been the Russian position of choice since the early modern era, when the "Grand Principdom of Moscow (Muscovy) began bringing the disparate East Slavic lands and peoples under its control". It is notable that during this period of imperial superiority Russian thought leaders such as the cleric Innokenty Gizel sought to convince all that the Ukrainian lands and their people would always be a part Russia's antiquity. What this writer views as a rather "undue emphasis" was needlessly placed on the presence of a tripartite "all-Russian" people

comprised of “Great, Little (Ukrainian), and White (Belarusian) Russians”. This extremist view was strongly presented in the educational system of the nineteenth-century in Russia. Perhaps working under the belief that they were committed to the idea of the “all-Russian” people, most of Russia’s extremists and would be elites believed as earlier suggested by this writer that rival, mostly western powers were deliberately promoting misguided “Ukrainian nationalism” as a geopolitical tool for weakening Russia as they feared a united and all-powerful Russia.²⁴

For most of the 1920s the areas in the west of the Soviet which had been formerly parts of Austria-Hungary were politically under Polish rule until Stalin seized them at the start of the second World War. Despite an attempt at communization, western Ukraine remained a sticky issue imploring upon Russia a version of undying nationalist sentiment. Western Ukraine became even more significant because it was to be known as the operational center for Stepan Bandera’s Organization of Ukrainian Nationalists (OUN), who attempted to set up a disciple state as a German protectorate during the course of the second world war.²⁵ Its common cause that this became the area to record some of that war’s worst atrocities such as ethnic cleansing of the Polish by the Ukrainians and the German led purging of all Jews. As per the doctored Russian narrative Bandera was and is to be remembered as a figure of hate. His readiness to work with Nazi invaders still is referred to as evidence of the nexus existing between Ukrainian nationalism and the ever present threat of foreign manipulation.²⁶

Russia has over the years totally refused to accept Ukraine independence. The Russian position has been that Ukraine is a part of Russia that from the onset should have been recognized as such. No reason proffered will ever be good enough to support any stance purporting to support and recognize Ukrainian independence. To the deeply nationalist Russians, Ukraine over the years has

²⁴ With the collapse of the Austro-Hungarian and Russian empires at the end of World War I, Russian suspicions about Ukrainian identity transferred to other targets. During the Paris Peace Conference, former foreign minister Sergei Sazonov, a man generally sympathetic to Slavic national movements, remarked, “As for Ukraine, it does not exist. Even the word is artificial and a foreign import. There is a Little Russia, there is no Ukraine . . . The Ukrainian movement is nothing but a reaction against the abuses of the bureaucracy and of Bolshevism.”

²⁵ Johnstone, I. (2003). Security Council deliberations: The power of the better argument. *European Journal of International Law*, 14(3), 437–480.

²⁶ Putin and other officials claim that Ukraine’s post-2014 governments have pursued a “Banderite” policy of purging Russian influence under the direction of foreign sponsors.

been a tool for weakening of their imperial all powerful state. The all-powerful Russia has had to be bothered by continuous reference to the sovereignty of a Ukraine state that history for them seems to point out as part of their state either way. The signal to want to join NATO was the “proverbial match that then lit the bonfire” and had Russia decide that it was time to deal with the problem that as has been highlighted above has been appearing and reappearing ever since the second World War. It has been previously argued that Russian hubris rested on a basic failure to grasp not only the deep roots of Ukrainian identity, but also the extent to which Ukraine itself has changed in the years since the Soviet collapse.

2.3 Ukraine’s Claim for Independence.

It is advanced that the more than three decades that have passed since the collapse of the Soviet Union point to a gradual diffusion of “Ukrainianness” and acceptance that Ukraine is indeed a country in her own right that deserves her own independence and sovereignty. In a pattern that shows relation to both wartime Europe and the postcolonial Global south, the independent Ukrainian state was seen as becoming instrumental in forging a shared national identity among all its scattered inhabitants through an efficient education system and other tools. Clearly the idea of Ukraine ‘s founding fathers being to create an independent state which would have its own shared ideals and views. It would be clear that this independent Ukraine would be free of Russian influence and ideology. This writer chips in and suggests that the geographical position of Russia would always work against Ukraine in this regard. From the onset it was apparent that most in Russia’s ruling elite were not willing to accept a Ukraine nation with its own shared views and distinct identity. It is suggested that possibly the missing element was and has always been a political willingness to blur the historical divide always known to have existed between western and eastern Ukraine.²⁷

Regardless of the development and attempted amalgamation of a Ukrainian national identity as discussed above an “all-Russian” or “post-imperial consciousness” still exists in some parts of Ukraine to date. For example, deposed former president Viktor Yanukovich and Belarusian leader

²⁷ It is also stated that “Rukh and similar groups’ stronghold lay in western Ukraine, a 1991 referendum on independence from the Soviet Union was approved by 92.3 percent of voters; even in Russian-speaking regions of eastern Ukraine, large majorities supported independence”.

Aleksandr Lukashenko, both Russian speakers who identify more with the supranational Soviet Union than with the post-Soviet national states they ruled promoted Russian as “the language of choice and supported religious institutions linked to the Kremlin”²⁸. Moreover, these Russian leaders were known and on record favoring closer ties with Russia economically. To add to this during their administrations political integration with Russia was not totally off the table. It is also notable that during the annexation of Crimea and the war in the Donbas, some Ukrainian citizens clearly chose to side with the known and established separatists.²⁹ Perhaps on this backdrop it is maybe not a far-fetched idea that led to the conflict in 2022 arising out of Russia having launched a full-scale military operation in Ukraine seeking to extinguish any thought of a sovereign Ukraine and reestablish Russian dominance in the state.

2.4 Ukraine as a Geopolitical Flashpoint.

As has already been discussed part of the objectives of this thesis is to establish why the UNSC to a larger extent has been rendered moot in the wake of the Russia-Ukraine conflict. It is prudent however to first show why Ukraine has for a considerable time been a potential crisis state with reference to the aims and objectives of the UNSC. This writer will postulate that it is not a coincidence that the Ukraine crisis has exposed gaps within the current framework and operations of the UNSC.

As has already been mentioned, Ukraine was a pillar of the Soviet States, the adversary of the United States of America during the Cold War. Second to Russia, it ranked second in terms of population to land ratio. Ukraine was also the second-most- powerful of the fifteen Soviet republics. It was also the jurisdiction of the Soviet Union’s key agricultural production, military and naval fleets, including the famous black sea fleet and a considerable portion of the nuclear

²⁸ Lowe, V., Roberts, A., Welsh, J., and Zaum, D. (2008). “Introduction. In V. R. A. Lowe, J. Welsh, and D. Zaum (Eds.), *The United Nations Security Council and war: The evolution of thought and practice since 1945*” (pp. 1–58). Oxford: Oxford University Press.

²⁹ “While in the United States we talk about a Ukraine crisis, from the Russian standpoint this is a crisis in European security architecture,” CFR’s Thomas Graham told Arms Control Today in February 2022. “And the fundamental issue they want to negotiate is the revision of European security architecture as it now stands to something that is more favorable to Russian interests.

arsenal of the union. All this evidently underlines the importance of Ukraine within the union at the time. This is pinned to its strategic location also in reference to the other would be world powers. To a greater extent it can be argued that the geographical position of Ukraine in reference to Russia and other members of the P5 is a contributory factor to the crisis the world is currently witnesses. This writer seeks to suggest that had Ukraine been positioned differently chances of Russian aggression would probably have remained minimal. Basing on the prior premise this author proceeds to note that Ukraine's decision to sever ties with Russia in the year 1991 proved to be a coup de grâce for the ailing superpower called Russia.³⁰

In recent times it can be argued that Ukraine has sought to forge its own path as a sovereign state while looking to align more closely with Western institutions, including the EU and NATO. Ukraine however has clearly struggled to forge a balance in its foreign relations and to bridge deep internal divides. It is observed that the rather more nationalist, Ukrainian-speaking population in the west of the country generally supported greater assimilation with Europe. In contrast the mostly Russian-speaking community in the east favored only closer ties with Russia. Due to this there is reason why Ukraine then became a battleground in 2014 when Russia annexed Crimea and began "arming and abetting separatists in the Donbas region in the country's southeast".³¹

Quite a number of analysts see Russia's 2022 invasion as the culmination of its growing resentment toward NATO's post-Cold War expansion into the former Soviet sphere of influence. Its submitted by this writer that this alone provides the most sensible reason why Russia chose to risk their worldly status and become the antagonist that attacked a sovereign state. Russian leaders, including Putin, have alleged that the United States and NATO repeatedly violated pledges they made in the early 1990s to not expand the alliance into the former Soviet bloc. They view NATO's enlargement during this tumultuous period for Russia as a humiliating imposition about which they could do little but watch. That Ukraine was angling towards attaining NATO membership ended up being a bit too much for Russia to stomach as this affirmed NATO dominance and presence across their borders. In essence Russia saw the intention to join NATO as a threat to its own sovereignty and

³⁰ Mayall, J. (2008). "Introduction. In M. R. Berdal & S. Economides (Eds.), *United Nations interventionism*", 1991–2004 (pp. 1–31). Cambridge: Cambridge University Press.

³¹ Russia's seizure of Crimea was the first time since World War II that a European state annexed the territory of another.

independence. President Putin emphasized this.³² Despite remaining a nonmember, Ukraine over the years has grown its ties with NATO. For example, Ukraine has over the years held annual military exercises with the alliance and, in 2020, became one of just six enhanced opportunity partners, a special status for the bloc's closest nonmember allies. Russia in turn was obviously keeping a close eye on such developments.

So far in this chapter the writer has given a factual narrative of the Russia-Ukraine crisis. The thesis has to this extent explained the factual reasons leading to the conflict. The next part of the chapter will proceed to discuss the actions of the UNSC immediately before and after Russia declared its 'military operation' in Ukraine.

2.5 UNSC Response to the Conflict in Ukraine

On the night of 23 to 24 February 2022, the world was informed to the grappling news that Russia had launched a full-scale military offensive in Ukraine. The United Nations was quick to indicate that they considered this attack to be a violation of the territorial integrity and sovereignty of Ukraine. To show how serious the UN was taking this situation, On 25 February, the Secretary-General of the United Nations appointed Amin Awad of Sudan as Assistant Secretary-General to serve as "United Nations Crisis Coordinator for Ukraine".³³

The United Nations General Assembly adopted on Wednesday 2 March a resolution deploring the "aggression committed by Russia against Ukraine".³⁴ The UN Human Rights Council adopted a resolution on 4 March calling for the "swift and verifiable withdrawal of Russian troops and Russian-backed armed groups from the entire territory of Ukraine". Added to this the UN Human Rights Council decided on 5 March to urgently establish an independent international commission of inquiry following Russia's aggression against Ukraine. On Thursday 24 March, the UN General

³² In the weeks leading up to NATO's 2008 summit, President Vladimir Putin warned U.S. diplomats that steps to bring Ukraine into the alliance "would be a hostile act toward Russia."

³³ Adopted (141 votes in favor, 5 against and 35 abstentions).

³⁴ Morris, J. (2015). "The responsibility to protect and the great powers: The tensions of dual responsibility. *Global Responsibility to Protect*," 7(3-4), 398–421. <https://doi.org/10.1163/1875984X-00704009>.

Assembly overwhelmingly demanded civilian protection and humanitarian access in Ukraine, while also criticizing Russia for creating a “dire” humanitarian situation.

At this stage the UNSC still had not voiced and or issued a unified statement on its position on the crisis that was unfolding in Ukraine. Rather it can be noted that individual countries that make up the UNSC seemed to castigate the Kremlin ‘s actions in their individual capacities. It is submitted that this can easily be attributed to the fact that Russia, the would-be aggressor in the scenario is a permanent member of the UNSC and as indicated in the introductory chapter of this thesis enjoys the veto power.

On 30 March the United Nations appointed three human rights experts to investigate possible violations of international law committed during the conflict in Ukraine. In a statement on Monday, 4 April, UN human rights chief Michelle Bachelet said she was horrified by the images of people lying dead on the streets and in improvised graves in the town of Bucha. It is vital that all efforts are made to ensure independent and effective investigations into what happened in Bucha. Still at this time no reference is made to any decision, action or recommendation of the powerful UNSC.

On 7 April, the UN General Assembly adopted a resolution calling for Russia to be suspended from the Human Rights Council. The resolution received a two-thirds majority of those voting, minus abstentions, in the 193-member Assembly, with 93 nations voting in favor and 24 against. Currently, it is apparent that the UN General Assembly seems the only authoritative organ that seeks to take decisive action on Russia’s transgressions. The only drawback as suggested by this writer would be that the UN General Assembly does not enjoy as much power as the UNSC which was quiet seemingly because it is heavily conflicted. To show the growing concern over the mootness of the UNSC, On 26 April 2022, the UN General Assembly adopted a new resolution calling on the five permanent members of the Security Council to justify the use of the veto.

Due to this pressure from the UN General Assembly the UNSC adopted a statement on 6 May 2022 in which it strongly supported the Secretary-General’s efforts to achieve a peaceful solution in Ukraine. The Secretary-General welcomed the fact that for the first time the Security Council had spoken with one voice over the crisis escalating in Ukraine. This writer will add that the legal gap earlier alluded to is clearly exposed in this regard. The fact that it took close to four months of war and death of innocent civilians in Ukraine for the UNSC to be able to “speak” with one voice

shows just how much the UNSC operations and framework must change. The UNSC as mentioned earlier was designed to act promptly and decisively. In this regard it has already failed in its interventionist role in the Russia-Ukraine crisis.

2.6 Conclusion.

This chapter has discussed the background of the Russo-Ukraine conflict. The writer has shown how the history of the Soviet Republic is at the core of the conflict between the two states. The factual proposition is that on one hand Ukraine sees herself as an independent state with her sovereign rights fully enshrined while on the other hand Russia nationalism is fully entrenched in the belief that Ukraine is simply being used to weaken her. In this chapter the writer has also discussed how the Russia-Ukraine conflict was an inevitable ending to a long winding dispute that traces itself from the Cold-war era. Lastly the chapter has also then given a factual account exposing the action or lack thereof on the part of the UNSC at a time wherein the world anticipated the powerful UN organ to provide guidance and decisive leadership. In the next chapter we proceed to look at the interventionist role of the UNSC to thus expose exactly why this writer joins the chorus of others who conclude that the UNSC needs reform.

CHAPTER THREE: THE INTERVENTIONIST ROLE OF THE UNSC

3.1 Introduction

Chapter VII of the U.N. Charter gives the responsibility for the maintenance of “international peace and security” to the UNSC.³⁵ It is important to note that the U.N. Charter, does not provide for a definition of what exactly is “international peace and security”, thus leaving the power to determine its significance to the judgment of the UNSC itself. The UNSC is in this regard a unique institution. Furthermore, the UNSC exercises “legislative, judicial and executive powers”. It largely operates with few enforceable safeguard mechanisms. Reputable scholars have described the UNSC as being “unbound by law”. In this regard the UNSC is charged with not only maintaining and preserving international peace but one can also argue coherently that it first of all has the mandate to define what is world peace and when is world peace under threat. In essence when it comes to issues of world peace the UNSC becomes “judge, jury and executioner”. In this chapter the writer proceeds to look at this possible weakness amid the general interventionist role of the UNSC.

Some scholars argue that the UNSC is a ‘law unto itself’. The Council is inherently vested with powers to “maintain international peace and security”, most notably under Chapter VII of the UN Charter. Added to this the decisions of the UNSC are binding on all members of the UN. Simultaneously, some of the Council’s actions have been taken to be ultra vires. Based on this in some instances the lacking of a binding, authoritative and enforceable oversight mechanism over the UNSC has been identified as a cause for concern. The fact that as is the UNSC is a “god” has not amused many an international law scholar. This writer will add his voice to the list of those who have decried this lack of oversight on the decisions of the UNSC. This inherent weakness will later on be exposed and shown as a reason for the crisis in Ukraine.

In this chapter the writer will give an expose of the interventionist role of the UNSC. The thesis thus far has hinted on the apparent lack of action by the UNSC in the Russia-Ukraine crisis. In the preceding chapter the author has exposed how the invasion of Ukraine by Russia has been long

³⁵ U.N. Charter art. 39.

coming. The writer has explored the factual context of the crisis escalating in Ukraine. It has been discussed how the invasion of Russia to a greater extent was predictable. This premise would then leave any scholar of repute seeking to then ascertain why the UNSC, a powerful body charged with maintaining peace in the world failed to prevent or at least cut short the predictable consequence of the invasion. It is thus prudent that before developing this aspect the writing goes into fuller detail on the prescribed role of the UNSC in times of war and crisis.

It is agreed that the UNSC has at its disposal a wide range of powers. These powers as already mentioned in this thesis include but are not limited to being able to authorize the use of force in the name of the UN. According an established and settled doctrine of implied powers, the UNSC also possesses all those powers that are deemed essential for the enactment of its duties and that are proportionate with its responsibility for the “maintenance of international peace and security”.³⁶ Based on the above this writer will no doubt agree with those that argue that the UNSC resolutions imposing obligations to the international community of states as a whole rather than being restricted to U.N. members are regarded as a direct emanation of the teleological reading of U.N. powers in general, and the UNSC powers in particular.

3.2 The Position of the UNSC in the Maintenance of World Peace.

A surgical study of the UNSC will expose that it definitely occupies a remarkable and unique position in international law. This because it is the only institution that can, “ (i) authorize the use of force (outside of measures taken in self-defense) and (ii) make determinations that are binding on states regardless of their direct consent or other treaty obligations”.³⁷ As earlier on referred to in this writing its creation was meant to express the agreed upon core principle of collective security, in an effort to circumvent future skirmishes at the rather large scale witnessed in the second World war by co-opting the ‘Great Powers’ and the ability of states to wage war within the

³⁶ See *Reparation for Injuries Suffered in the Service of the United Nations*, Advisory Opinion, 1949 I.C.J. 174, 178 (Apr. 11); *Legal Consequences for States of the Continued Presence of South Africa in Namibia (Southwest Africa) Notwithstanding Security Council Resolution 276*, Advisory Opinion, 1971 I.C.J. 16, ¶ 109 (June 21).

³⁷ Charter of the United Nations, Art. 41; Henderson, ‘The Centrality of the United Nations Security Council in the Legal Regime Governing the Use of Force’, in Nigel D. White and Christian Henderson (eds), *Research Handbook on International Conflict and Security Law* (2013) 120, at 123–124; Benedetto Conforti and Carlo Focarelli, *The Law and Practice of the United Nations* (2010), at 259–261.

structures of the UN Charter.³⁸ Due to the political climate at the time it is postulated that this required a very delicate harmonizing concerning giving the supposed great powers an acceptable incentive and reason enough to accept to be bound by the UN regime in the form of their veto power within the UNSC , and the UNSC itself enjoying a very broad series of powers enough to have all other members of the UN relaxed in that their own interests no matter how small were also adequately catered for. This in light of his of the principles and purposes of the UN which are to be located in “Articles 1 and 2 of the UN Charter” and arguably the restrictions on Council action pursuant to Article 24(2). This writer will submit that the 21st crisis under discussion in Ukraine has exposed just how much danger this attempt to strike a balancing act has created in relation to the interventionist powers of the United Nations. It is submitted that in an attempt to create a balancing act the world has from the onset created a UNSC that has always been at risk of conflict and unnecessary influence.

The “primary responsibility” of the UNSC is the ‘maintenance of international peace and security’.³⁹ This responsibility is the premise for the need of the Council to be able to take “prompt and effective action”.⁴⁰ As earlier stated it is an agreed principle by the UN members that when acting the UNSC ‘acts on their behalf’.⁴¹ The opposite thus becomes true that when the UNSC also does not act it also does on member states’ behalf. Inaction of the UNSC is thus inaction of the UN as a collective. The member states also “agree to accept and carry out the decisions of the Security Council”, an obligation that, in combination with “Article 103 of the UN Charter”, makes all decisions of the UNSC effectively binding on all member states even if they are in conflict or inconsistent with other highlighted treaty obligations. These broad powers give the UNSC somewhat of a position of supremacy in the international law spectrum. This is because this supremacy is based on the unparalleled nature of UNSC influence and the potential to at times make decisions that may bind even non-member states.

³⁸ See Fidler, “Caught between Traditions: The Security Council in Philosophical Conundrum”, 17 Michigan Journal of International Law (MJIL) (1996) 411, at 415–418; Jeremy Matam Farrall, “United Nations Sanctions and the Rule of Law” (2007), at 58–59.

³⁹ Charter of the United Nations, Art. 24(1).

⁴⁰ Ibid.

⁴¹ Ibid.

In terms of “Article 39 of the UN Charter”, it is the prerogative of the UNSC, “to determine whether a threat to, or breach of, the peace, or act of aggression, exists that would justify its intervention under Chapter VII”. Once it has made such a determination, its options for action have been described as “carte blanche”.⁴² While Chapter VII does contain a hierarchy of actions that the Council can consider when dealing with situations, namely (i) calling upon the parties to comply with provisional members,⁴³ (ii) implementing ‘measures not involving the use of armed force’⁴⁴ and, ultimately, (iii) implementing measures involving the use of armed force,⁴⁵ there is no need for the Council to “adopt the measures ... in any particular order”. Rather the Council has broad discretion not only in relation to when it may act but also in relation to what types of action it can take. Indeed, the only explicit UN Charter limitation on Council action is in Article 24(2), which states that “the Security Council shall act in accordance with the Purposes and Principles of the United Nations”.

3.3 Decision Making in the UNSC

The UNSC makes decisions through a variety of methods. These several varying means include voting, through consensus, by delegation, and using the veto. For decisions made by voting, “Article 24” of the procedural rules’ states that “Council decisions on procedural matters require an affirmative vote of nine to pass”. For non-procedural matters, “decisions require an affirmative vote of nine and a concurring vote from each of the P5 members to pass”. In certain cases, the UNSC makes decisions in the form of nonbinding written statements issued following informal consultations that have resulted in a consensus.

Moreover, the President of the UNSC typically issues a "statement on behalf of the Council" that makes a recommendation or communicates a view about a specific situation. It should be noted however that in the context of the Russia-Ukraine crisis such a statement was hard to come by. As suggested earlier in this thesis this was largely since Russia’s involvement in the hostilities meant

⁴²Schott, ‘Chapter VII as Exception: Security Council Action and the Regulative Ideal of Emergency’, 6(1) *Northwestern Journal of International Human Rights* (2008) 24, at 24.

⁴³ Charter of the United Nations, Art. 40.

⁴⁴ *Ibid.*, Art. 41.

⁴⁵ *Ibid.*, Art. 42.

the UNSC was greatly conflicted. These statements from the President of the Council are nonbinding but they can have a legal effect, where, for example, the UNSC determines that a state has violated its set international law obligations.

The Council also engages in decision-making via delegating its inherent authority to a subsidiary body, often but should be pointed out very rarely when it reaches a determination that such a body is better suited to make decisions on a specific issue.⁴⁶ This author will later in the thesis give reasons why they believe that this delegation to another subsidiary body should be mandatory where the UNSC is conflicted as is the case in the Ukraine conflict wherein a member of the P5 is an active participant. For example, the UNSC has also delegated decisions to its Sanctions Committee, which, as demonstrated in the recent crisis in Libya, has a successful record of making decisions quickly. It is submitted that one can argue that had this delegation to the sanctions committee taken place immediately and effectively the crisis in Ukraine would probably not have developed to the extent it has presently.

Added to what has been discussed above, the veto power can at times be used to block non-procedural decisions. It is argued that in this way the power to veto can and has become an effective way to make decisions in the UNSC. This is heavily criticized however because as has been continuously alluded to in this thesis only the P5 have veto powers.⁴⁷ At the material time it is clearly evident that The United States, Great Britain, Russia, and The People's Republic of China agreed on the necessity of veto power. The thought process being likely that the veto power would not only work to consolidate and safeguard their national interests within the U.N., but most importantly to also make the nascent organization viable. The United States insisted on such powers at the Dumbarton Oaks Conference in 1944 in order to obtain Congressional approval (and thus avoid the mistakes made several decades earlier when the United States Senate refused to accept U.S. participation in the League of Nations as discussed earlier in the introduction to this paper. The veto power however can be and is open to abuse. This writer at later stage will show why they believe that the veto power should be totally scrapped of or at least be made unavailable

⁴⁶ The UNCC, for example, was developed as a subsidiary organ of the UNSC to adjudicate and process claims brought by victims of Iraq's illegal invasion and occupation of Kuwait.

⁴⁷ U.N. Charter art. 27, para. 1.

to a state in the P5 that is the subject of a vote and or conflicted as Russia is in relation to the crisis in Ukraine.

Lastly, decision-making process in the UNSC can also be shaped by opinion made in the other U.N. organs. This can occur in two ways which we shall then discuss shortly. As has become normal it is apparent that the UNSC may where necessary seek an advisory opinion from its court. This being the International Court of Justice (hereinafter referred to as the ICJ). Such an opinion will usually be sought on issues concerning the legality of a matter under international law.⁴⁸ It should be noted however that according to the UN Charter these advisory opinions do not bind the UNSC. Another way that opinion from another organ may influence the decision making in the UNSC is as follows. The UNGA adopted the "Uniting for Peace" resolution in 1950. According to this resolution the UNGA is empowered to "consider the matter immediately with a view to making appropriate recommendations" should the UNSC look like it has failed to uphold its primary responsibilities under the U.N. This route however has yet to be explored and falls trap to a lot of politicking and abuse by conflicted states. Moreso when the conflicted states are powerful members of the P5.

The scope of situations that come before the Council and require decisions are enumerated in "Article 39 of the U.N. Charter". It provides that the Council "shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security."⁴⁹ As the negotiating history of the U.N. Charter reveals in the 1943 Outline Plan, the drafters intended for the Council to have the authority to "determine the existence of a threat or act of aggression, and. . . to institute measures to repress such threat or act." In UNSC Resolution 660, for example, the Council declared Iraq's invasion of Kuwait a breach of international law, demanded immediate withdrawal, called for immediate negotiations, and set up

⁴⁸ U.N. Charter art. 96, para. a ("The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question.")

⁴⁹ art. 39, para. 1 ("The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.").

the United Nations Compensation Commission (UNCC) to process claims and pay for losses resulting from the invasion.⁵⁰

This provision has been central to many attempts to limit the Council's powers. Scholars have argued as to the effect of the said limitations contained in the legal framework of the UNSC and its effect on the success or lack thereof the body. For example, David Schweigman reads Article 24(2) as requiring compliance with norms such as human rights, self-determination and the principle of good faith.⁵¹ It has been submitted however that the UN Charter's text is notoriously vague, making it difficult to use it to construct a meaningful regime to constrain the Council.⁵² This writer subscribes to this notion also. This acceptance of the vagueness of the legal constraints in the legal framework of the UNSC is a genesis. "Legal language however already plays a role in current debates over the legitimacy of Council action and is an important factor in Council decision making. At the same time, however, history shows an aversion by states to institutionalizing the legal oversight of the Council and permanent members of the UNSC abusing their 'privilege' to advance their personal interest".

3.4 A look at the UNSC Intervention Policy.

With the Cold War ending and the veto paralysis that had up to that time stymied Security Council action, it can be noted that the UNSC began to make increasing use of coercive measures in accordance with "Chapter VII of the UN Charter" to respond to situations of acts of unwarranted aggression. Over the years the UNSC has deployed "heavily armed" and "robust" peacekeeping operations whose mandates have often included the use of force. The Council has also imposed economic sanctions against state actors that violate human rights.⁵³

⁵⁰ Resolution of the Security Council. 660, 1-4, U.N. Doc. S/RES/660 (Aug. 2, 1990)

⁵¹ . See Gowlland-Debbas, "The Relationship between the International Court of Justice and the Security Council in the Light of the Lockerbie Case", 88(4) AJIL (1994) 643, at 662–663.

⁵² Martenczuk, "The Security Council, the International Court and Judicial Review: What Lessons from Lockerbie?", 10(3) European Journal of International Law (EJIL) (1999) 517, at 542. See also Koskenniemi, "The Police in the Temple Order, Justice and the UN: A Dialectical View", 6 EJIL (1995) 325, at 327.

⁵³ Bellamy, A. J. (2016). "UN Security Council. In A. J. Bellamy and T. Dunne (Eds.), *The Oxford handbook of the responsibility to protect*" (pp. 249–268). Oxford: Oxford University Press.

Moreover, the UNSC has conducted or authorized military interventions to put an end to humanitarian crises and massive human rights abuse. These measures were imposed in many places, among others, Somalia, Northern Iraq, Bosnia, Sierra Leone and, most recently, Libya. At the same time, however it can be argued that the Security Council's response has remained highly selective. In many similar crises and conflicts as is the case in Russia-Ukraine crisis at present no such actions have been taken by the Council. Lack of uniformity in the UNSC's response to humanitarian emergencies raises important questions about what factors motivate intervention decisions in the UNSC. It is these fluid factors that apparently can be cited for the inaction of the UNSC when faced with the Russia-Ukraine crisis. Traditionally however, the main controversy among legal scholars has been centered on whether such interventions are best explained by a shift in international politics or by humanitarian considerations⁵⁴. To best illustrate how UNSC intervention does not follow a specified pattern the writer will discuss below using examples how the UNSC interventions have varied over the years and then link that up with the Russia-Ukraine crisis presently under discussion.

3.4.1 The Hebron Massacre compared to The Park Hotel Bombing

This becomes the first example that this writer will use to show how UNSC intervention is and has never been uniform. This writer will argue and illustrate that comparing the distinct word choices in Security Council Resolution 904 with Security Council Resolution 1,402 is the most telling demonstration of the Council's proclivity for treating Israel differently than other Entities.⁵⁵ In 1994, Baruch Goldstein, a Jewish settler living in the Occupied Territories of the West Bank, entered the Mosque of Ibrahim in the city of Hebron and killed twenty-nine Muslims while they were praying.⁵⁶ Another 125 Muslims were wounded in the gruesome attack. The mayor of Hebron, Mustafa Natshe, acknowledged that Goldstein had acted alone. Furthermore, the Israeli government explicitly denounced his actions and declared his political party, Kach, to be an illegal,

⁵⁴ Bellamy, A. (2008). The responsibility to protect and the problem of military intervention. *International Affairs*, 84(4), 615–639. <https://doi.org/10.1111/j.1468-2346.2008.00729.x>.

⁵⁵ See S.C. Res. 904, U.N. Doc. S/RES/904 (Mar. 18, 1994); S.C. Res. 1402, U.N. Doc. S/RES/1402 (Mar. 30, 2002).

⁵⁶

racist party in Israel.⁵⁷ The Security Council “strongly condemned” the “massacre” in Hebron and “called upon” Israel to prevent these types of illegal acts.¹⁸⁷ The Security Council used the term “massacre” five times to describe the tragic incident.⁵⁸

In sharp contrast, in 2002, a Palestinian from the West Bank entered an Israeli hotel during a Passover religious ceremony and set off a bomb.⁵⁹ The explosion killed at least twenty-nine Jewish worshippers and injured an additional patron in the Park Hotel. Hamas, a Palestinian political party, explicitly claimed credit for the attack.⁶⁰ The Security Council responded with a resolution that “expressed its grave concern” about both the suicide bombing and Israel’s attacks against the Palestinian Authority”. It called upon Israel and the Palestinians to uphold a ceasefire and specifically “for the withdrawal of Israel troops from Palestinian cities.

The metamorphoses in phraseology used by the UNSC in the two resolves are striking. Similar numbers of casualties and wounded worshippers were found in each incident, yet only Resolution 904 explicitly “condemned” an attack and repeatedly used the term “massacre.” This author will point out that if twenty-nine casualties and more than 125 wounded are defined as a “massacre” of Palestinian worshippers, should not the same hold true of Israeli worshipers? Apparently, it does not in the UNSC.

The Council “strongly condemned” the massacre in Hebron, yet it merely “called upon” the parties to uphold a ceasefire and did not explicitly mention the Park Hotel bombing or casualties incurred. Resolution 904 specifically refers to the Palestinian civilian casualties four times in the resolution, but Resolution 1402 does not mention Israeli civilians or casualties even once.¹⁹⁸ Additionally, Resolution 904 unambiguously characterizes the victims as “worshippers” killed during the holy

⁵⁷David Weisburd and Hagit Lernau, “What Prevented Violence in Jewish Settlements in the Withdrawal from the Gaza Strip: Toward a Perspective of Normative Balance”, 22 OHIO ST. J. ON DISP. RESOL. 37, 48 (2006). See also Clyde Haberman, “Israel Panel Says Killer at Hebron was Acting Alone”, N.Y. TIMES, June 27, 1994, at A1. However, the Israeli army contends only ninety were wounded.

⁵⁸ See S.C. Res. 904, U.N. Doc. S/RES/904 (Mar. 18, 1994); S.C. Res. 1402, U.N. Doc. S/RES/1402 (Mar. 30, 2002).

⁵⁹ Tracy Wilkinson, Attack in Israel Kills 19, Hurts 100; Violence: Palestinian Suicide Bombing, the Deadliest in 10 Months, Could End Efforts for a Cease-fire and Unleash a New Phase in the Conflict, L.A. TIMES, Mar. 28, 2002, at A1.

⁶⁰ Ibid.

month of Ramadan, which clearly aligns the victims with the entire Islamic world. Resolution 1402 fails to mention who was killed by the “recent suicide bombings in Israel” and completely omits that the Park Hotel bombing was perpetrated on unsuspecting worshippers celebrating Passover.

It can thus be concluded that a comparison of the explicit details and descriptions in Resolution 904 with the vague generalities in Resolution 1402 clearly demonstrates the Security Council’s discrepant treatment of the two similar Subjects. Second, Resolution 904 declares the “massacre” resulted in “more than 50 Palestinian civilians [deaths] and injured several hundred others.” These statistics are notably inaccurate. Numerous reports of the massacre have capped the casualties at twenty-nine, with another 125 wounded, the Security Council fails to consider the aftermath of these tragic incidents. Following the “massacre” in Hebron, the Israeli government immediately denounced the rogue citizen. Furthermore, it took measures to outlaw his fringe political party due to its radical ideologies. “With respect to the Park Hotel bombing, the suicide bomber’s political party, Hamas, not only failed to chastise the brutal attack, but it proudly claimed credit for killing and maiming Israelis. The Security Council ignored these distinctions between the two attacks, further proving that even when Subjects are virtually identical, if Israel is one of the Entities, it will be treated differently”.⁶¹

3.4.2 The Story of South Africa and the UNSC

Another example to show selective action on the part of the UNSC intervention and action would be that of the story of South Africa. South Africa’s actions were the subject of seventy-six UNSC resolutions in the Cold War era. These resolutions concerned South Africa’s apartheid practices,⁶² or military attacks on other countries, such as Angola, Botswana, Lesotho, and Zambia”.⁶³ Apartheid was South Africa’s “strict policy of racial separation and discrimination by which the minority white population controlled the government and the non-white majority.

⁶¹ Ayoob, M. (2002). Humanitarian intervention and state sovereignty. *The International Journal of Human Rights*, 6(1), 81–102. <https://doi.org/10.1080/714003751>

⁶² An example would be U.N.S.C. Res. 191,

⁶³ Peter-Tobias Stoll, Conflicts, South Africa, in 1 UNITED NATIONS: LAW, POLICIES AND PRACTICE 317, 325 (Rudiger Wolfrum ed., 1995). See, e.g., S.C. Res. 300, U.N. Doc. S/RES/300 (Oct. 12, 1971).

Although apartheid is a horrific subjugation of human rights that violates the United Nations Charter,⁶⁴ it can be argued that South Africa was excessively chastised compared with atrocities perpetrated by other actors on the international stage at this time. The Security Council's failure to chastise these, as well as many other, atrocities directly conflict with the principle of equal treatment for all Members, which was expressed in the introduction to the United Nations Charter. Not only did the Security Council excessively criticize South Africa, but it often used stronger words to criticize South Africa's actions than any other Entity, including Israel. South Africa was more vulnerable to harsh denunciation and extensive focus because it lacked a staunch, Permanent Member ally on the Security Council willing to consistently veto resolutions regarding its transgressions.

South Africa's apartheid policy and military attacks, as a Member of the United Nations, were an obvious stain on the United Nations as an organization; however, the astronomical discrepancy of "condemnations" by the Security Council shows that the Council did not treat other Entities with equal attention or severity of wording.⁶⁵

As shown above the action or non-action, the anger or passiveness of the UNSC is determined largely by who the transgressor is. The examples thus far given show that this has been the case for the longest of time. Would it be prudent thus to expect a different approach from the UNSC considering the ever-changing global political landscape or not?

3.5 Conclusion.

This chapter introduced the theoretical framework for explaining Security Council intervention in humanitarian crises. The chapter commenced discussing UNSC decision making to argue that, given the rather complex processes and procedures characteristic for the Council, intervention

⁶⁴ The Charter declares that there must be a "respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion." U.N. Charter art. 1, para. 3.

⁶⁵ Konstantinos D. Magliveras, Exclusion from Participation in International Organisations: The Law and Practice behind Member States' Expulsion and Suspension of Membership in 5 *STUDIES AND MATERIALS ON THE SETTLEMENT OF INTERNATIONAL DISPUTES* 224 (Peter Malanczuk ed., 2001) (citing Robert C. Johansen, The Reagan Administration and the U.N.: The Costs of Unilateralism, 3 *WORLD POLICY JOURNAL* 601, 607–608 (1986)).

decisions by it are different from unilateral ones, both consequently requiring separate analysis and explanation. The writer then proceeded to discuss the intervention role of the UNSC indicating possible weaknesses arising from the decision-making process of the UNSC mentioned earlier. To further illustrate the point that the intervention policy of the UNSC lacks uniformity and the required fluidity the chapter then discussed two scenarios independent of the crisis in Ukraine under discussion. This being to show that the Russia-Ukraine crisis has just but exposed institutional deficiencies in the UNSC which have manifested themselves prior. The next chapter thus will proceed to discuss the legal issues arising for the UNSC from the Russia-Ukraine conflict.

CHAPTER FOUR: THE UNSC AND THE RUSSO-UKRANIAN CONFLICT

4.1 Introduction

Thus far the writer has articulated how the conflict in Ukraine has placed the UNSC on the spotlight like never before. It has been shown how at the onset of the conflict in Ukraine it was expected by a neutral viewer that the UNSC would intervene. In the previous chapters it has been shown just how much the UNSC was supposed to intervene in the Russia-Ukraine crisis and just how little they did so. The writer has explored the factual context of the Russia-Ukraine war and has fully established that indeed there is an issue threatening international peace and stability in Ukraine. All this leading to the undoubted conclusion that the UNSC as the organ tasked with preserving international peace should at least have acted in one way or another. The writer has then proceeded to indicate that the UNSC has largely ghosted the Ukraine crisis. Moreover, the writer has also shown the scope with which if it wants to the UNSC can operate. To this date it is thus safe to conclude that the little to inaction by the UNSC has exposed and created several legal problems which remain unabated. These will now be the focus of this writing. In this chapter the thesis will shift its attention to focus on the legal problems that the Russia-Ukraine crisis has created for the international arena and subsequently the UNSC. The presumption being that one can only seek to recommend a way forward if they fully grasp the problems the situation has created.

4.2 An Illegal Invasion?

This author aligns with the school of thought that concludes that the invasion of Ukraine by Russia violates “Article 2(4) of the UN Charter”, a fundamental tenet of the UN charter that clearly stipulates that UN member states are to refrain from the “use of force against the territorial integrity or political independence of any state.” As already mentioned in chapters before the Russian government has attempted to sanitize the invasion of Ukraine by shielding it as an act to restore the shape of the former Soviet states and preventing what would be a weakening of its own sovereign systems. Like many before this writer does not agree with this weak excuse for the wanton invasion and breach of the territorial integrity of Ukraine.

This assertion that Russia's use of force is justified under "Article 51 of the UN Charter" has no support in fact or at law. Article 51 provides that "nothing in the present charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a member of the United Nations." It is widely agreed upon that Ukraine at no time committed or even threatened to commit what would be viewed as an armed attack against Russia or any other UN member state. Added to this assertion one can also categorically state that even if Russia in some bizarre instance could show that Ukraine had committed and or planned to commit any form of attacks on nationals in the Ukrainian regions of Donetsk and Luhansk, "Article 51" would not allow an action in collective self-defense, because Donetsk and Luhansk were as of the material time not UN member states. In this regard they are specifically excluded from coverage in the aforementioned clause. Added to this the two do not even remotely qualify as states under International law after their purported secession from Ukraine and the provocative recognition of their statehood by Russia. The above discussion thus takes away the argument that Russia's actions were in some way actions of self-defense.

Again, to legitimize the invasion of Ukraine, it has been argued that Ukraine on its part committed "genocide" against Russians in Donetsk and Luhansk. This writer notes that this is just but a very loosely veiled attempt to justify the use of force by Russia. This argument however is not supported by the facts on the ground as they evolved and would not, in any case, give Russia a right to launch a full throttle invasion of Ukraine as she did. The Genocide Convention defines genocide as "certain, specified actions intended to destroy in whole or in part a national, ethnic, racial, or religious group". At hand no evidence exists of Ukraine engagement in any of the defined actions and certainly no evidence of any shown intent to destroy in whole or in part any group in eastern Ukraine by the government of Ukraine. Let's suggest even a remote scenario wherein the Ukrainian government had committed gross and clear human rights abuses against Russians in eastern Ukraine, neither the Genocide Convention nor the UN Charter authorizes convention parties or UN member states to use force to remedy acts of genocide or serious human rights abuses as was done in this case.

The above discussion thus supports the notion that the invasion of Ukraine by Russia is just, but an illegal war sanctioned against every principle that international law stands for. As has been shown no explanation offered to date can be used to justify the war in Ukraine. It is clear for all to

see that the invasion by Russia of a sovereign state in the form of Ukraine is a clear violation of international law and all it stands for. In no way had Ukraine acted as an aggressor to Russia warranting the wanton invasion. That the UNSC has failed to and or resisted to intervene should be a cause of concern for any international law scholar of repute, this author included. It thus becomes imperative that this dissertation at some time proceed to tackle why the UNSC has been rendered moot, mute and ineffective.

4.3 An Issue of Remedial Secession?

It can be argued that “Russia’s recognition of Donetsk and Luhansk as independent states was inconsistent with international law governing state sovereignty and secession. This is largely because in general, international law requires respect for the territorial integrity of states and does not permit regions of states to declare independence and secede”⁶⁶. In fact, a school of thought is based on the notion that this requirement is the bedrock of modern-day international law.

However, it is noted that “some international law experts believe that so-called remedial secession is permissible as a last resort when a people have suffered grave human rights abuses at the hands of the state government and have been unable to exercise internal self-determination, but research has shown that this is a minority view, and few (if any) international law scholars are likely to argue that secession by Donetsk and Luhansk was justified in this case. In that vein no legal justification exists for the actions currently underway in Russia”. The wanton disregard for international law is clear and there for all to see. The issue rather as has already been hinted is why in the face of such an international law issue the UNSC has chosen to play ghost.

4.4 The Ideal Intervention by the UNSC

A recurring theme in this thesis is that the UNSC response was far from the ideal that could and was expected by the international law observer. At this juncture it is crucial that the writer directs the paper towards identifying what the expected reaction from the UNSC would have been. As previously mentioned in this thesis the greater expectation was that when faced with a crisis such as the one in Ukraine the UNSC was supposed to act and act expeditiously.

⁶⁶ *ibid*

It is noted that there is no regular, consistent international police force to seemingly enforce international law as would be under municipal law. As such there is no international force policing the world. The UNSC however serves as the organ best suited to recommend action that would otherwise serve as inhibiting actions that threaten world peace. This to say that though compliance is primarily in the hands of countries themselves, wherein they have failed to adhere to set standards and norms it is upon the UNSC to call them out and where necessary enforce some bit of order. It's now common cause that this was not to be the case in reference to the Russia-Ukraine conflict. This writer has already explored in detail how this lack of action was as a result of the fact that Russia remains to date a permanent member of the UNSC with veto power.

The ICJ referred to earlier was created by the U.N. It is designed to decide disputes between countries. These include alleged violations of the U.N. Charter. It is however worrying that only 73 countries out 195 have accepted the court's jurisdiction. Where it deems fit the UNSC has power to refer a matter to the immediate attention of the ICJ. Clearly a situation where in another country decides to invade another for no apparent reason as highlighted earlier should all things being equal be a situation fitting. In the instance this has not been the case, such attempt to do so as already indicated was vetoed by Russia and has been threatened if it occurs again to be vetoed by Russia. In this vein the UNSC has been rendered moot and incapable of intervening in a positive light to the situation in Ukraine.⁶⁷

The UNSC also has the authority to instruct for the use of force under the charter of the UN. This as long as this use of force is done so as to maintain peace at the international level. In an ideal scenario the UNSC moves in to use brute force if it is for the greater good. Examples have earlier been given of instances wherein the UNSC has threatened to or even gone on to use force to achieve the required means. As hinted earlier this move has failed to materialize primarily Russia as indicated earlier is a member of the P5. Russia thus holds veto power over any decision. It has shown a serious willingness to use this veto power to frustrate any move that it deems against its agenda.

⁶⁷ SC/14808 SECURITY COUNCIL 8979TH MEETING.

Finally, either the UNSC or member countries in their individual capacity may impose diplomatic and or economic sanctions against an aggressor where it's necessary. This action in individual capacity has already been done by the U.S. and other specific European countries. It is noted by this writer that to date only a few individual countries have taken this bold move. Again, its noted that individual action carries greatly less weight as would have collective UNSC action. The Russia Ukraine crisis has aided in showing that such actions at best will have a minimal impact in ending or preventing war. The greater collective action of the UNSC can never be replaced by the actions of individual countries. Indeed, in an ideal situation the actions and voices of individual countries should be clothed in the collective voice of the UNSC. That this is not the position further buttresses the assertion that the situation in Ukraine in relation to the UNSC is far from ideal.

4.5 Conclusion

In conclusion this writer will advance the position that while it is accepted that there cannot be a law that will enjoy domestic compliance, that cannot be a reason for disregard of some of the fundamentals of humanity as has occurred in Ukraine. The challenge that exists should be see to it that international law is enforced in all instances and by all state actors. The function of the UNSC cannot and should not be usurped by the power that member states of the P5 enjoy. Once this becomes the situation it is apparent that the UN itself loses significance and may eventually face the same fate as faced by the League of Nations. To date Russia has vetoed any remote suggestion that the UNSC take any form of action with regards to the events as they unfold in Ukraine. This speaks of serious legal abuse and a direct mockery of the UNSC.

Having exposed these problems that the Russian Ukraine crisis has exposed in the workings of the UNSC the writer will in the next concluding chapter now seek to suggest ways and give recommendations meant to make the UNSC a 21st century compliant interventionist organization

CHAPTER FIVE: CONCLUSIONS AND RECOMMENDATIONS

5.1 Introduction

It has been ascertained throughout this writing that the UNSC was set up to preserve and maintain world peace. As earlier mentioned after the catastrophe that was World War 2 the UN and the UNSC in particular were birthed to avoid a repeat of the same. The theme of this thesis has over the chapters been that the UNSC is at present ill equipped and unable to meet its core mandate.

The writer acknowledges the growing chorus for change in the substance and structure of the operations of the UNSC. This thesis however seeks to not only advance this change agenda but offer more precise and concise recommendations into how the UNSC can best be reformed for it to qualify as a successful interventionist organ of the UN in the 21st century.

5.2 Summary of Main Arguments

It has been advanced that Russia 's invasion of Ukraine in February of 2022 constitutes an illegal action. The writer has established that the invasion of Ukraine is impossible to support at law. All the legal arguments advanced for that action have been discussed and their shortcomings exposed. Earlier on the writing the author clearly dealt with the role of the UNSC and how its core mandate is to preserve and maintain world peace. In doing all this the UNSC is expected to act expeditiously and decisively. The main argument advanced is that in light of the Russia-Ukraine conflict the UNSC was rendered moot and useless because it was conflicted. The fact that Russia is a permanent member with veto power meant that the UNSC could not act fast and act decisively. In the instance of the Ukraine crisis thus the UNSC was and has been reduced to a weak organ of the UN whose members have had to issue statements and act in their individual capacities. This has prompted the conclusion that the UNSC has been outdated and rendered obsolete by modern day politics and economics. The writer advances the position that it is time the UNSC is reformed if it is to meet its aims and mandate. Further it is argued that Russia's brutal assault on Ukraine has revived demands that the world repair longstanding weaknesses in the United Nations' ability to counter wars of aggression regardless of the identity of the aggressor.

It has been set out in this thesis that “Russia’s glaringly visible brutality against Ukrainians has energized demands by devotees of international justice and peace that states need to repair long-acknowledged weaknesses in the world’s institutions for preventing and sanctioning wars of aggression such as the one in Ukraine. It has been established that central to the maintenance of world peace is the UNSC. Its rules, written after World War II, afford five victors in that war Britain, China, France, Russia and the United States the power to veto any proposed U.N. action. As indicated earlier these are the five permanent members of the Security Council, in which the 10 other seats have no veto power and are rotated among other U.N. member countries”.

Since 1946, U.N. library records show that the P5 have used their veto power 262 times in many cases to obstruct international challenges to their own actions, including military force. It is noted that the use or threat of a veto repeatedly has obstructed U.N. action to halt mass atrocities, as in Rwanda, Sudan’s Darfur region, Burma’s Rakhine State, Yemen and elsewhere. The argument advanced has been that the UNSC has become obsolete and moot. The writer suggests that the Russia-Ukraine conflict has and continues to serve as an example of the disaster that awaits the international community if the UNSC is not adapted to meet modern day demands. It was Russia’s veto of a Security Council resolution in February that prevented the United Nations from taking concrete steps against it, such as globally binding economic sanctions. Ukraine and its allies managed a moral victory by gathering a rare consensus of 141 nations to condemn Russia’s attack, with only four countries joining Russia in opposing the declaration. In this way the UNSC has been rendered inactive and moot to an issue that would have otherwise been on its agenda.

5.3 Summary of Main Findings

It has been postulated that it is time the international community of states strongly considers how to strengthen the fundamentally flawed international system of laws and institutions to prevent such wars of aggression as the one currently in Ukraine. The major findings of this thesis have been that the UNSC as it is currently constituted will not always be able to carry out its mandate of preserving and maintaining world peace. The current set up of the UNSC allow it to be conflicted and make way for geopolitical influence. Moreover, the states that make up the UNSC will where it’s in their best interests’ act for their own selfish reasons. In this regard the UNSC has become an organ whose actions are not necessarily centered on the best interests of the UN as a community of world states but on the politics of the powerful bloc that is the P5. It is thus a crucial

finding of this thesis that it is time the UNSC is morphed to meet the ever-growing demands of modern day world politics. Today it is the Russian invasion of Ukraine, tomorrow it might be the invasion of yet another smaller state by a powerful P5 neighbor. In summation it is a finding of this author that the UNSC needs reform both in substance and in form if at all it should succeed in its core mandate of maintain and preserving world peace. Having reached that as a conclusion the writer will proceed to suggest recommendations in this concluding chapter.

5.4 Recommendations

5.4.1 Expand the UNSC

In this part of the thesis the writer will work from the already established premise that the UNSC has in the case of the Russian invasion of Ukraine proven to be incapable of carrying out its interventionist role to perfection. The writer will thus proceed to proffer recommendations as to what should be done to prevent a series of cataclysmic events such as the ones the world has witnessed in Ukraine.

The first recommendation is that the UNSC should be expanded. In this vein the UNSC would definitely become more representative. When the World War II victors created the UN in 1945, many of the world's current nations did not exist at all". Nearly all of Africa and much of the Middle East for example lived under colonial rule. This means that much of today 's middle east and Africa remains under-represented in the Security Council. Only 50 nations signed the United Nations Charter in 1945, while 193 are members of the organization today. This being a statistic showing serious growth on the part of the UN. An expansion is needed "so that there is a fair representation of all regions of the world.

5.4.2 Suspension of UNSC vetoes

Added to this the writer recommends that the Charter be amended to indicate a voluntary suspension of Security Council vetoes in cases of "mass atrocities." France and Mexico launched an initiative in 2015 that seeks to persuade the permanent five Security Council members to

commit not to cast vetoes that would block the council from taking action with the aim of preventing or bringing an end to situations involving the commission of mass atrocities. In this regard situations such as the one in Ukraine would fall under cases of mass atrocities wherein the permanent members of the UNSC would suspend their veto power. The only challenge with this however would be that it would be a question of asking the powerful to cede their power.

5.4.3 Overriding the UNSC vetoes

Another recommendation would be to create a way to override UNSC vetoes. This for example would be by way of amending the U.N. Charter so that a large double majority representing, for example, at least two-thirds of member countries and two-thirds of the world's population could override a veto. Such a change would ultimately serve to create a more equitable and inclusive multilateral system in the UN itself. A more advanced variation of this recommendation would allow a veto with the combined approval of two-thirds of the General Assembly and four of the five existing permanent members of the Security Council. In all these scenarios the aim would be to minimize the chances of one state such as Russia in this instance rendering the UNSC conflicted.

5.5 Conclusion

The fact that an increasingly illegitimate and ineffective UNSC lies at the heart of today's multilateral system is all the more unfortunate given the ever emerging of threats to peace and security. These include not only conventional acts of aggression of the sort the world is witnessing in Ukraine and which could yet escalate to nuclear exchanges but also other security threats posed new geopolitical factors.

It is concluded that no easy path to United Nations reform exists, as the decades of stalled reform efforts attest. The United Nations Charter has been amended only five times since 1946, and that step requires approval from two thirds of all U.N. member states, including all five permanent Security Council members. Still, crises such as the Russia-Ukraine war provide moments of opportunity to consolidate a global consensus that eventually may be applied to persuade Russia or other hesitant powers. The world's democracies must sustain their immediate support to help Ukraine win its war in defense of its own existence, and of a world ruled by law instead of brute force. At the same time, they should commit themselves to specific reforms that in the longer term

can repair the obvious weak spots in the international laws and institutions to prevent future such wars of aggression.

The crisis in Ukraine has served to remind the world that the setup of the UNSC was fit for the aftermath of the second World War. The world has drastically changed since then. The politics and the economics in turn too have changed. Its agreed upon that an effective organ is rendered effective by its ability to change and best serve its constituency. The UNSC will serve no one if it is stuck in the past. This writer postulates that it is time that the UNSC system is changed as recommended if the powerful organ is to succeed going forward.

BIBLIOGRAPHY

- Andrassy, J. (1956). 'Uniting for Peace'. *The American Journal of International Law*, 50(3): 563–582.
- Blum, Y.Z. (2005). 'Proposals for UN Security Council Reform'. *The American Journal of International Law*, 99(3): 632-649.
- Bull, H. (2012). *The Anarchical Society: A Study of Order in World Politics*. Fourth Edition. Basingstoke: Palgrave Macmillan.
- Claude, I.L. (1966). 'Collective Legitimization as a Political Function of the United Nations'. *International Organization*, 20(3): 367-379.
- Cunliffe, P. (2020). *Cosmopolitan Dystopia: International Intervention and The Failure of The West*. Manchester: Manchester University Press.
- Duffy, M. (2022). The United Nations in Crisis: Geo-Political and Geo-Economic Challenges. *e-ir.info*. Available at: <https://www.e-ir.info/2022/03/02/the-united-nations-in-crisis-geo-political-and-geo-economic-challenges/>.
- Glennon, M.J. (2002). 'The fog of law: Self-defense, inherence, and incoherence in Article 51 of the United Nations Charter'. *Harvard Journal of Law and Public Policy*, 25(2): 539-558.
- Higgins, R. (1963). *The Development of International Law Through the Political Organs of the United Nations*. Oxford: Oxford University Press.
- Holmes, K. R. (1993). 'New World Disorder: A Critique of the United Nations'. *Journal of International Affairs*, 46(2): 323-340.
- Hurd, I. (2021). *International Organisations: Politics, Law, Practice*. Fourth Edition. Cambridge: Cambridge University Press.
- Johansson, P. (2009). 'The Humdrum Use of Ultimate Authority: Defining and Analysing Chapter VII Resolutions'. *Nordic Journal of International Law*. 78(3): 309-342.
- Joyner, C.C. (1981). 'U.N. General Assembly Resolutions and International Law: Rethinking the Contemporary Dynamics of Norm-Creation'. *California Western International Law Journal*, 11(3): 445-478.

- Kennedy, P. (2007). *The Parliament of Man: The Past, Present and Future of the United Nations*. London: Penguin Books.
- Macleod, A. Ukraine invasion: should Russia lose its seat on the UN Security Council. *kcl.ac.uk*. Available at: <https://www.kcl.ac.uk/ukraine-invasion-should-russia-lose-its-seat-on-the-un-security-council>.
- Mayer-Mruwat, E. (1998). 'United Nations: Critiques and Reforms'. *Journal of Third World Studies*, 15(1): 221-237.
- Mazower, M. (2012). *Governing the World: The History of an Idea*. London: Penguin Books.
- Northedge, F.S. (1976). *The International Political System*. London: Faber and Faber.
- Paioletti, F. (2011). The 21st Century Challenges to Article 51. *e-ir.info*. Available at: <https://www.e-ir.info/2011/06/30/the-21st-century-challenges-to-article-51/>.
- Pico, G. (1994). 'The UN and the Use of Force: Leave the Secretary – General Out of It'. *Foreign Affairs*, 73(5): 14-18.
- Puchula, D.A. (2005). 'World Hegemony and the United Nations'. *International Studies Review*, 7(4): 571-584.
- Reisman, W.M. (1993). 'The Constitutional Crisis in the United Nations'. *American Journal of International Law*, 87(1): 83-100.
- Rengger, N. (2013). *Just War and International Order: The Uncivil Condition in World Politics*. Cambridge: Cambridge University Press.
- Sahnoun, M. (1994). *Somalia: The Missed Opportunity*. Washington, DC: U.S. Institute of Peace.
- Sakwa, R. (2015). *Frontline Ukraine: Crisis in The Borderlands*. London: I.B. Tauris.
- Schachter, O. (1995). *A United Nations Legal Order*. Cambridge: Cambridge University Press.
- Shukla, S. (2000). 'United Nations Peace-Keeping in Civil Wars: A Critique'. *India Quarterly: A Journal of International Affairs*, 56(1-2): 49-61.
- Sievers, L. and Daws, S. (2014). *The Procedure of The UN Security Council*. Oxford: Oxford University Press.
- Soderberg, N. (2015). 'Time to Bring the United Nations Security Council into the 21st Century'. *Georgetown Journal of International Affairs*, 16(2): 39-46.

- Thakur, R. (2016). *The United Nations, Peace and Security: From Collective Security to the Responsibility to Protect*. Cambridge: Cambridge University Press.
- United Nations (1945). United Nations Charter. *un.org*. Available at: <https://www.un.org/en/about-us/un-charter/full-text>.
- United Nations (1994). Memorandum on security assurances in connection with Ukraine's accession to the Treaty on the Non-Proliferation of Nuclear Weapons: Budapest, 5 December 1994. *treaties.un.org*. Available at: <https://treaties.un.org/doc/Publication/UNTS/Volume%203007/Part/volume-3007-I-52241.pdf>.
- United Nations General Assembly (1950). GA/RES/377 (V): Uniting for Peace. *un.org*. Available at: [https://www.un.org/en/sc/repertoire/otherdocs/GAres377A\(v\).pdf](https://www.un.org/en/sc/repertoire/otherdocs/GAres377A(v).pdf).
- United Nations High Commissioner for Refugees (2022a March 3.). News Comment: 1 million refugees have fled Ukraine in a week. *unhcr.org*. Available at: <https://www.unhcr.org/uk/news/press/2022/3/62206a824/news-comment-1-million-refugees-fled-ukraine-week.html>.
- United Nations High Commissioner for Refugees (2022b March 8.). Operational Data Portal: Ukraine Refugee Situation- Refugees Fleeing Ukraine Since 24 February 2022. *data2.unhcr.org*. Available at: <https://data2.unhcr.org/en/situations/ukraine>.
- United Nations Meetings Coverage and Press Releases (2022a Feb. 25.). Security Council Fails to Adopt Draft Resolution on Ending Ukraine Crisis, as Russian Federation Wields Veto. *un.org/press*. Available at: <https://www.un.org/press/en/2022/sc14808.doc.htm>.
- United Nations Meetings Coverage and Press Releases (2022b Feb. 25.). Minsk Accords Have Been in 'Intensive Care', Secretary-General Notes, as General Assembly Discusses Eastern Ukraine Developments. *un.org/press*. Available at: <https://www.un.org/press/en/2022/ga12403.doc.htm>.
- United Nations Security Council (2014). S/2014/136: Letter dated 28 February 2014 from the Permanent Representative of Ukraine to the United Nations addressed to the President of the Security Council. *securitycouncilreport.org*. Available at: https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2014_136.pdf.

- United Nations Security Council (2015). S/RES/2202: Resolution 2202 [2015] Adopted by the Security Council at its 7384th meeting, on 17 February 2015. *undocs.org*. Available at: [https://undocs.org/en/S/RES/2202\(2015\)](https://undocs.org/en/S/RES/2202(2015)).
- United Nations Security Council (2022). S/2022/155: Draft Resolution. *undocs.org*. Available at: <https://undocs.org/S/2022/155>.
- UN News Security Council holds emergency meeting on Ukraine: Major conflict must be 'prevented at all costs'. *news.un.org*. Available at: <https://news.un.org/en/story/2022/02/1112412>.
- UN News As Security Council meets on Ukraine crisis, Russia announces start of 'special military operation'. *news.un.org*. Available at: <https://news.un.org/en/story/2022/02/1112592>.
- Welsh, J.M. (2018). "Humanitarian Intervention". In Gheciu, A. and Wohlforth, W., *The Oxford Handbook of International Security*. Oxford: Oxford University Press. pp. 457-470.
- Wheeler, N. (2000). *Saving Strangers: Humanitarian Intervention in International Society*. Oxford: Oxford University Press.
- Wight, M. (1956). 'The Power Struggle within the United Nations'. *Proceedings of the Institute of World Affairs*. 33rd Session. pp. 247-259.
- Wight, M. (1979). *Power Politics*. Bull, H. and Holbraad, C. (Ed.). Second Edition. London: Penguin Books.
- Wilmshurst, E. (2022 Feb. 24). Ukraine: Debunking Russia's legal justifications. *chathamhouse.org*. Available at: <https://www.chathamhouse.org/2022/02/ukraine-debunking-russias-legal-justifications>.
- Yost, D. (2015). 'The Budapest Memorandum and Russia's intervention in Ukraine'. *International Affairs*, 91(3): 505-538.