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LEGAL BASES FOR THE “UNITING FOR PEACE” MECHANISM AND ITS USE IN THE CONDITIONS OF THE RUSSIAN FEDERATION’S WAR AGAINST UKRAINE

INTRODUCTION

The need to consolidate international support for Ukraine in its war of liberation against Russia, restoration of the territorial integrity of the state, bringing Russia, its political and military leadership, and perpetrators of war crimes to justice, establishing a just peace, and ensuring compensations for any damage caused by the Russian aggression – all these extremely difficult tasks determine the high interest of lawyers, diplomats, representatives of all branches of government and society in general in the legal principles and practice of international organizations.

The issues of countering Russian aggression are widely reflected in the resolutions of the UN General Assembly. The nature of these acts is the subject of long debates, and, according to scholars, they change in the process of the evolution of the UN. Unfortunately, these acts, which are constantly mentioned by politicians and journalists, did not attract the attention of Ukrainian lawyers. The bibliography of publications on international law for 2022 does not contain any scholarly work devoted to the significance of the resolutions of the UN General Assembly (Vasileva et al., 2022). The present author managed to find only a few recent articles and scholarly commentaries, but all of them are short and relatively general in nature (Rabinovich, 2022; Reniov, 2022; Todorov, Todorova, 2023)².

The purpose of this study is a comprehensive analysis of the Uniting for Peace mechanism, which was formulated and adopted by the UN General Assembly as a result of the search for a way out of the situation when the Security Council, as the body

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² To some extent, the article by O.L. Tymchuk is an exception, which presents a brief critical analysis of the acceptability of the oppositions “West – not West,” “autocracies-democracies,” “rich states – poor states” for understanding the development of support for “Ukrainian” resolutions of the UN General Assembly (Tymchuk, 2023).

entrusted by the UN Charter with the primary responsibility for the maintenance of international peace and security, is unable to fulfill its mandate due to the use of its veto by one of the permanent members of this body. For this purpose, I will reconsider the consequence of the evolution of the Uniting for Peace mechanism, reconstruct the influence of different political contexts on the formation of the mechanism and its realization, and analyze possible ways and limits of its interpretation. The research hypothesis is that the deficient and still existing post-World War II dominance mode for ensuring international peace and security, represented by UN Security Council credentials, had and can have legitimate and working alternatives that could be invoked for countering Russian aggression and holding the Russian Federation and its leadership accountable.

HISTORY AND LEGAL BASIS OF THE UNITING FOR PEACE MECHANISM³

Perhaps one of the most important and, at the same time, most criticized acts of the General Assembly, which interpreted and clarified its powers, was resolution 377 (V), “Uniting for Peace” of November 3, 1950 (also known as the Dean Acheson resolution). It won very convincing support during the voting: 52 votes “for”, 5 – “against” (USSR and its allies), and 2 states abstained from voting (Argentina and India).

The resolution reaffirmed the primary responsibility of the Security Council for the maintenance of international peace and security but stated that the “failure of the Security Council to discharge its responsibilities on behalf of all the Member States... does not relieve Member States of their obligations or the United Nations of its responsibility under the Charter to maintain international peace and security.” At the same time, it emphasized the existence of statutory powers of the General Assembly in this area, the implementation of which should be carried out even in the conditions of the inability of the Security Council to perform related actions. In particular, the General Assembly has the authority to monitor the situation, establish facts, expose aggressors, and recommend urgent collective measures to member states, including authorizing the use of collective armed forces. At the same time, it was not only about establishing the facts but also about their legal qualification (in particular, regarding the act of aggression). In the text, the “recommendations of the Security Council or the General Assembly” in the field of maintaining international peace and security and the need for their implementation by the member states are actually equated with each other. The provision by the states of their military contingents for operations abroad in accordance with these resolutions is defined as the realization of the right to individual or collective self-defense.

The resolution significantly changed the Rules of Procedure of the General Assembly. It declared that in the event of the Security Council’s inability to fulfill its duties in the field of maintaining international peace and security due to the impossibility of achieving unanimity of the permanent members of the SC, the General Assembly has

³ Materials of a previous study of the author are used partly in this paragraph (Kresin, 2022b).

the authority to immediately consider the relevant issue in order to adopt recommendations to member states regarding the listed collective measures. To consider such a question, consideration at a regular session or the convening of an emergency special session of the General Assembly within 24 hours were envisaged. The request for the latter could be submitted by the Security Council (by a qualified majority vote) or by any state, supported by the decision of a simple majority of member states, expressed during voting in the Interim (intersessional) committee of the General Assembly or otherwise. The agenda of such a session is not considered in advance by any of the committees of the General Assembly and can be supplemented according to the decision of two-thirds of the member states that were present and took part in the vote.

According to the resolution, a permanent Peace Observation Commission was established as an association of the states defined in this act, which is able to monitor the situation in any territory where there is “international tension,” the continuation of which may threaten international peace and security, and are ready, by the decision of the General Assembly and upon the invitation or consent of the host state, to send their troops to it in conditions of a threat to international peace and security (provided that the Security Council is unable to adopt a corresponding decision), which were to perform their tasks as UN units. The decision on using the Commission’s resources must be taken by a qualified majority of two-thirds of the Member States present and voting. The right to use the powers of the Commission was also granted to the Security Council within the limits of its powers in this sphere. All states’ governments were recommended to assist and cooperate with the Commission and establish permanent military rapid response contingents for this purpose. A Collective Measures Committee was also established, consisting of representatives of the states specified in the resolution. It was supposed to receive information about ready-to-use national military contingents and create a base of military experts (*Uniting for Peace*, 1950).

The changes provided in the resolution regarding the work procedures of the General Assembly in the same year were enshrined in articles 8, 9, 10, 16, 19, and 65 of this body’s Rules of Procedure (*Rules of Procedure...*, 2022). This, together with the case law of the International Court of Justice (which confirmed the powers of the GA), deprived the criticism directed against the “Uniting for Peace” of any normative significance.

The “Uniting for Peace” resolution must be understood in context. In particular, as noted by Jean Krasno and Mitushi Das (2008: 176), the provisions of the 1950 resolution should also be considered in the context of the discussions during the drafting of the UN Charter: the norm of unanimity voting in the Security Council (with the corresponding and directly named right of veto) was accepted by other states only together with the declaration of the right of the General Assembly to discuss any issue and adopt recommendations regarding it if it is not currently under consideration by the Security Council (by the way, the USSR opposed the adoption of this norm at the time and insisted on its maximum mitigation). Of course, this significantly clarifies the significance of such recommendations. It is equally important that the mechanism of bypassing the Security Council veto was tested in the General Assembly already in the first years of the organization’s existence and before the “Uniting for Peace.” Back in 1947, a decision was made to establish the UN observation mission in the Balkans, and to make this possible, the relevant issue was previously removed from considera-

tion by the Security Council itself. The observation mission worked in 1947–1951 and reported to the General Assembly (Krasno, Das, 2008: 77–178).

The mechanism provided for in the “Uniting for Peace” resolution was first used in 1951. The Security Council, after an unsuccessful vote on the resolution on the aggression of the unrecognized DPRK, and in fact of the PRC, against the Republic of Korea, removed the issue from its consideration by a procedural decision, and the General Assembly adopted a resolution 498 (V), which contained a condemnation of the aggression and a call to the member states to oppose it, to support the UN military actions in Korea to repel the aggression of the PRC, and to the Collective Measures Committee to determine possible measures and report on it to the General Assembly (*Intervention of the Central People’s Government...*, 1951; Scharf, 2023: 7). The issue of coercive measures, including the use of collective armed forces, as well as economic sanctions and prevention of their violation by other states, etc., was also considered in subsequent resolutions of the General Assembly on countering aggression against the Republic of Korea (Additional measures).

In 1956, in response to the “Suez Crisis” and the invasion of Egypt by Israel, France, and Great Britain, the General Assembly authorized the deployment of the first military observer peacekeeping mission. In the same year, the General Assembly adopted a resolution calling on the USSR to end the occupation of Hungary. In 1958, a resolution of the General Assembly established the observation mission on the border of Lebanon and Syria. In 1960, a peacekeeping operation was also launched in Congo. In 1967, debates within this mechanism led to a ceasefire in the Middle East. In 1971, the General Assembly resolved the issue of the conflict in East Pakistan (now Bangladesh); in 1980 – the Soviet invasion of Afghanistan; in 1980–1982 – the Israeli invasion of Lebanon; in 1981 – the issue of sanctions against South Africa for the ongoing occupation of Namibia, in 1983 – of the invasion of a group of states to Grenada, in 1989 – of the US intervention in Panama. In 1997–2003, the emergency special session regarding the Israeli-Palestinian conflict was continued, but it was not possible to reach a solution (except for an appeal for an advisory opinion to the International Court of Justice) (Krasno, Das, 2008: 182–186, 189).

In general, the mechanisms proposed in the “Uniting for Peace” resolution, and in particular the adoption of decisions on maintaining international peace and security by a qualified majority at emergency special sessions, were implemented fifteen times by 2022. In seven cases, issues for consideration by the General Assembly were directly submitted by the Security Council. In one case, the SC removed the issue from its agenda, opening the way for the application of the “Uniting for Peace” mechanism. At the same time, in seven cases, the mechanism was applied at the request of the member states without the relevant decisions of the Security Council: in four cases – with direct reference to the 1950 resolution and in three cases – without its formal naming, due to the interpretation of art. 11 of the UN Charter or art. 15 of the Rules of Procedure of the General Assembly (Krasno, Das, 2008: 193–195). Let’s add that most cases of recalling the mechanism were connected with the use of the right of veto by the USSR during voting in the Security Council (*Security Council Deadlocks...*, 2013). The Peace Observation Commission provided for in the 1950 resolution existed until the 1960s. (Tomuschat, 1951).

The creation of an International, Impartial, and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since 2011, with the resolution of the General Assembly 71/248 of December 21, 2016, can be considered a relatively recent fact of application of the essence of the “Uniting for Peace” mechanism, although without reference to it (*International, Impartial and Independent Mechanism...*, 2016). But the direct implementation of the “Uniting for Peace” mechanism in the resolution of the General Assembly, and in accordance with the decision of the Security Council, took place for the first time since the “Cold War” in the context of the full-scale aggression of the Russian Federation against Ukraine.

The content of some of the provisions of Resolution 377 (V) has now been largely confirmed, transformed, or leveled by the decisions and advisory opinions of the International Court of Justice. However, the text of the resolution was not directly considered by the Court. In the advisory opinion *Certain Expenses of the United Nations* of 1962, the Court denied that the resolutions of the General Assembly in the sphere of maintaining international peace and security are purely recommendatory and do not impose obligations on member states. According to the Court, the main powers of the UN Security Council in this sphere are not exclusive and are entrusted to this body precisely to ensure quick and effective actions, primarily coercive actions.

The Charter makes it abundantly clear, however, that the General Assembly is also to be concerned with international peace and security. The word “measures” implies some kind of action, and the only limitation that Article 14 imposes on the General Assembly is the restriction found in Article 12, namely, that the Assembly should not recommend measures while the Security Council is dealing with the same matter unless the Council requests it to do so. Thus, while the Security Council exclusively may order coercive action, the functions and powers conferred by the Charter on the General Assembly are not confined to discussion, consideration, the initiation of studies, and making recommendations; they are not merely hortatory.

In particular, the powers of the General Assembly to suspend the rights and privileges of a member state and to expulse a member state from the UN, carried out in cooperation with the Security Council, were qualified by the Court as “specifically related to preventive or enforcement measures.” In addition, with recommendations to states and the Security Council, the General Assembly has the authority to organize peacekeeping operations at the request or with the consent of the state concerned since these are measures, not coercive actions, under Chapter VII, which are within the competence of the Security Council (*Certain Expenses...*, 1962: 160–165).

No less important is another provision formulated by the International Court of Justice in this advisory opinion. No body in the UN is authorized to provide the final interpretation of the Charter of this organization, including the clarification of the ratio of powers of the General Assembly and the Security Council. Therefore, the general approach to understanding the lawfulness of the actions of these bodies is the compliance of such actions with the goals of the organization. If this is so, then the actions of the body should be considered as a decision of the whole organization: “when the Organization takes action which warrants the assertion that it was appropriate for the

fulfillment of one of the stated purposes of the United Nations, the presumption is that such action is not *ultra vires* the Organization” (*Certain Expenses...*, 1962: 168).

Also, in the advisory opinion *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* of 2004, the International Court of Justice confirmed the previously expressed position: the powers of the Security Council in the field of maintaining international peace and security are, although principal, but not exclusive. When considering the relationship between the powers of the Security Council and the General Assembly, the Court proceeded not only from the provisions of the UN Charter and its previous decisions but also from the practice developed in the UN, in particular from the practice of the Security Council deliberately removing certain issues from its agenda to enable their consideration by the General Assembly. The Court also pointed to the development of this practice and the interpretation of the provisions of the UN Charter, the result of which is the possibility of consideration and adoption of resolutions by the General Assembly, even on issues currently under consideration by the Security Council. The basis for this is the consideration of certain situations by the Security Council from the point of view of international peace and security and by the General Assembly – more broadly, taking into account their humanitarian, social, and economic aspects. The court indicated that the development of such practice does not contradict the UN Charter (*Legal Consequences...*, 2004: 148–150). So, as Christian Tomuschat (1951) points out, in this advisory opinion, the ICJ recognized that the prohibition of parallel consideration of issues in the Security Council and the General Assembly, provided for by the UN Charter, has been changed by practice.

Important and even significant in the evolution of the understanding of the powers of the GA is its resolution, “Standing mandate for a General Assembly debate when a veto is cast in the Security Council,” dated April 26, 2022. This act is quite fresh and, therefore, still not well considered by researchers, but an authoritative scholar, Anne Peters (2023: 87–93), definitely connects its appearance with the reaction of UN member states to the aggression of the Russian Federation against Ukraine. The resolution emphasizes that the main responsibility for maintaining international peace and security of the Security Council was laid on it by member states, and this mission is carried out on their behalf (an unequivocal hint that all of them are represented only in the General Assembly). It is emphasized that, at the same time, that the General Assembly has not lost its competence in this area, and it is also indicated that the existing composition of the Security Council and the decision-making procedure in it require changes, and are called into question even in the decisions of the Security Council itself (the decision 62/557 of September 15, 2008 is mentioned) (*Question of equitable...*, 2008). On the basis of all of the above, the President of the UN GA is obliged to convene “a formal meeting”⁴ of the Assembly within ten working days after each case of veto application by one or more permanent members of the SC – in order to consider the situation on the decision of which this veto was imposed – if the GA has not already called an emergency special session regarding this situation. During such

⁴ This term is absent in the Rules of Procedure of the General Assembly, which provides for public and private plenary and committee meetings of this body (art. 60, 61) in the form of regular and special sessions, including emergency special sessions (art. 1–11, 63, etc.) (*Rules of Procedure...*, 2022).

a “formal meeting,” the first speech is provided for the states – permanent members of the Security Council, which used the veto. The Security Council is invited to present to the General Assembly three days before its “formal meeting” a special report on the case of the use of the veto (*Standing mandate for...*, 2022). On the basis of this resolution, in April 2023, the General Assembly held the first discussion of the principles of the application of the right of veto in the Security Council, which reflected the full support of the resolution by almost all member states that expressed their position (except Syria), including the USA, France, and Great Britain. At the same time, a significant number of countries spoke in favor of further limiting the right of veto and pointed to its obsolescence and inconsistency with the principle of sovereign equality of states (*General Assembly Holds...*, 2023).

COMPREHENSION OF THE “UNITING FOR PEACE” MECHANISM IN THE DOCTRINE OF INTERNATIONAL LAW⁵

Few doctrinal works have been devoted to the question of the peculiarities of the nature of the resolutions of the UN General Assembly adopted within the framework of the “Uniting for Peace” mechanism. In general, three views can be conditionally distinguished in the available publications: 1) optimistic – the lawfulness of replacing the decisions of the Security Council with resolutions of the General Assembly as a result of the delegation of powers or the development of UN institutional practice; 2) differentiated – the lawfulness and significance of the resolutions of the General Assembly depend on the referral of issues to it by the Security Council, but in any case these resolutions cannot usurp the statutory powers of the Security Council; 3) skeptical – the “Uniting for Peace” mechanism does not have any added value and does not attach any special importance to the resolutions of the General Assembly adopted within its framework.

“Optimists” Jean Krasno and Mitushi Das (2008: 173, 186, 190–191) propose a vision of the “Uniting for Peace” mechanism as a means for temporarily delegating the powers of the Security Council to the General Assembly. And this mechanism is an exception that does not contradict but affirms the powers of the Security Council. At the same time, the researchers recognize that the resolutions of the General Assembly adopted in this way are not legally binding anyway. However, in their opinion, together with the last unsuccessful experience of considering the Israeli-Palestinian issue in 1997–2003, the “Uniting for Peace” mechanism lost its usefulness, turned into “yet another forum for rhetorical debate,” and later was not used due to the reluctance of the member states to intervene in difficult conflict situations: “when there is no will to act, it is useless.” However, the mechanism itself retains its potential if it is rethought as a tool for increasing the effectiveness of the UN.

As the authoritative American scholar Michael Scharf (2023: 1, 4, 17–21, 27) points out, in connection with the war in Syria and the invasion of the Russian Federation in Ukraine, the UN “wiped the dust” from this mechanism [“Uniting for Peace”], and its

⁵ Some materials of a previous study of the author are partly used in this paragraph (Kresin, 2022a).

new use marks “a shift in power away from the Security Council and to the General Assembly, with potentially broad and long-term implications.” In particular, according to this author, the resolution of the General Assembly regarding Syria played the role of authorizing collective force measures (the bombing of chemical weapons production plants in Syria by US, Great Britain, and French aircraft), and they were qualified as a humanitarian intervention in connection with the declared in 2005 principle of “responsibility to protect.”⁶ Regarding the situation of the full-scale aggression of the Russian Federation against Ukraine and the prospects for using the potential of the UN General Assembly, Scharf (2023: 28) notes: “the General Assembly, through diplomatic practice and International Court of Justice decisions, had slowly amassed the power to act on matters of which the Security Council was seized. This amassed power allowed the General Assembly to recommend imposition of sanctions and to create investigative bodies and hybrid tribunals without invoking the Uniting for Peace resolution.”

Michael Ramsden (2022) notes that, apart from the debate about the legal nature and binding nature of GA resolutions, as well as about the lack of formal advantages of resolutions adopted during emergency special sessions of the GA convened within the framework of the “Uniting for Peace” mechanism, these sessions are symbolic, because they indicate shocking events that require an urgent response, and give a solemn meaning to this response through the “crystallizing a series of legal claims by the community of nations that can be used to support future actions” and the implementation of “collective legal interpretation.”

Henry Richardson (2014: 135–140) notes that the “Uniting for Peace” mechanism should be considered not as a one-time formulation but as a part of a long process of gradual acquisition by the resolutions of the General Assembly of its current significance (with a further perspective of development) in the context of the law-declaring intentions of the majority in this body, customary international law emergence or fixation, the formation of institutional precedent practice in the General Assembly – based on the development of the interpretation of the UN Charter. And vice versa – this mechanism cannot be considered unsuitable or inconsistent with the UN Charter on the basis of the unfounded presumption of the absolute nature of the right of veto of the permanent members of the Security Council – because it is precisely the interpretation of the right of veto, being unlawful and inconsistent with the UN Charter, the intentions when it was written and adopted, and the goals of the organization, that led to the appearance of the “Uniting for Peace.” Based on the need to temporarily replace the Security Council in case of paralysis of its work and on the presence of the responsibility of the General Assembly in the field of maintaining international peace and security, the powers of the GA within the framework of the “Uniting for Peace” mechanism should be considered as broadly as possible and taking into account the development of international law, including the recommendation of coercive measures. The General Assembly cannot be considered as a body inferior to the Security Council – because it reflects the UN’s goal to represent the interests of all or almost all states and all or almost all of the world’s population. According to Richardson (2014: 135–140), the

⁶ The principle of “responsibility to protect” was proclaimed in 2005 (*2005 World Summit Outcome...*, 2005).

“Uniting for Peace” mechanism should now be perceived not as something extraordinary but as part of the statutory powers of the General Assembly in their modern interpretation, including the possible use of coercive measures, and regardless of the authorization of this mechanism by the Security Council or even the presence of a reference to it. In cases of the inability of the Security Council to implement its primary responsibility for maintaining international peace and security, provided for by the UN Charter, the General Assembly acquires the authority of “collective power” in this area, which can authorize member states to implement collective coercive measures (see also: Kirgis, 2014: 116–117; Mamlyuk, 2014: 129–134).

Ved Nanda (2020: 136, 139–140) believes that all provisions embodied in the resolution “Uniting for Peace” have their source in the UN Charter. And although the question of the powers of the General Assembly to recommend the use of military force is ambiguous, the possibility of recommendations for the use of other measures is not in doubt. And the very ambiguity regarding military force can only be about its mandatory character, while the General Assembly’s recommendation of its collective use by member states can be quite legitimate within the framework of the implementation of collective self-defense. According to the scholar, it is the indication of these powers in the resolution “Uniting for Peace” that makes this act still relevant, especially in the context of the implementation of the “responsibility to protect” principle (see also: Ahmad, 2002: 81–98).

Other scholars offer a more differentiated view. For example, Andrew Carswell (2013: 453, 455–456, 476, 478–479) notes that the act revealed the latent powers of the General Assembly existing within the UN Charter to make recommendations in lieu of a blocked [Security] Council, up to and including the use of force. However, it went too far when it assigned to the Assembly a role that effectively usurped the primary role of the Security Council in the maintenance of international peace and security. When P5 members [of the UNSC] realized that it potentially restricted their respective sovereign interests, it [the resolution] was relegated to obscurity. Nevertheless, read down to reflect a constitutional balance between the UN’s primary organs, the resolution represents a viable tool capable of overcoming the worst effects of a veto exercised in circumstances that cry out for an international response.

Carswell emphasized that further use of the experience of the 1950 resolution is quite relevant, but “the key to maintaining both the credibility and constitutionality of this process is ensuring that the Security Council plays the central role conferred upon it by the Charter.” The General Assembly cannot determine the inability of the Security Council to fulfill its duties and usurp the latter’s functions.

At the same time, in particular, the recommendations of the General Assembly within the framework provided by the 1950 resolution can be considered as collective self-defense. But, as Carswell (2013: 460, 463–467) points out, the question arises about the conflict of such a recommendation with the principle of the refrain from the threat or use of force (clause 4 of art. 2 of the UN Charter). The resolution of this conflict is possible only if the actions of states can be qualified as actions of the UN – and therefore, whether the resolutions of the General Assembly are decisions not only of the body but also of this organization as a whole. The auxiliary statutory competence of the General Assembly in the field of maintaining international peace and security

was confirmed in the advisory opinion of the International Court of Justice on *Certain Expenses* of 1962, but the limits of such competence were not defined. According to Carswell, there is nothing preventing to consider the General Assembly recommendations to member states as delegating them its powers in this area on behalf of the UN, similar to how the Security Council does it. But the relevant resolutions of the General Assembly “must clearly define the objective and scope of the use of force, and should specify the time frame,” and also be adopted after the Security Council has referred the matter to this body for consideration. As the author notes, through such a transfer, “the Council does effectively activate the Assembly’s secondary role in the realm of collective security, eliminating any controversy concerning the qualification of the matter as a threat to the peace, breach of the peace or act of aggression demanding the attention of the UN Organization. Most importantly, a referral from the Council bestows a degree of moral legitimacy on that secondary role.” Thus, the resolutions of the General Assembly created on the basis of this are adopted on behalf of the entire organization, and the measures implemented by the member states in accordance with these resolutions do not violate the principle of non-use of force or the threat of force.

Rebecca Barber (2021: 14, 16) notes that regardless of the disputes about the full compliance of the “Uniting for Peace” with the UN Charter, this mechanism currently “serves as a valid interpretation by the UNGA of its own powers,” which on many occasions the International Court of Justice has not denied and, on the contrary, affirmed in essence. Nevertheless, in order to avoid disputes regarding “constitutionality,” it is better if the use of this mechanism will involve the request of the Security Council to the General Assembly or the removal of the issue from consideration by the Security Council.

After all, there is also an authoritative skeptical position that exists about the suitability of the “Uniting for Peace” mechanism. Larry Johnson (2014: 108–115), a former assistant of the UN Secretary-General for legal affairs, offered a number of conclusions about the long-standing practice of its application. In particular, he believes that with the change in the work schedule of the General Assembly, the disappearance of long breaks between regular sessions, the need to hold emergency special sessions has disappeared unless there is a desire to make a political emphasis on the importance of a certain situation. Doubts that the General Assembly and the Security Council can consider the same issues also disappeared, and the International Court of Justice recognized that this practice does not contradict the UN Charter. The General Assembly, both before and after 1950, introduced voluntary collective measures against various states regardless of the “Uniting for Peace” mechanism. Also, outside this mechanism, based on the right to individual and collective self-defense (art. 51 of the UN Charter), the General Assembly can recommend coercive or forceful measures. Therefore, taking into account the development of the practice of interpretation and application of the UN Charter, the appeal to the mentioned mechanism, in the opinion of the author, has become unnecessary.

To some extent, a new stage of understanding the “Uniting for Peace” mechanism has already begun in connection with the large-scale invasion of the Russian Federation into Ukraine and the convening of the eleventh emergency special session of the General Assembly in 2022.

THE ELEVENTH EMERGENCY SPECIAL SESSION OF THE GENERAL ASSEMBLY⁷

The new stage of the Russian Federation’s aggression against Ukraine, which began on February 24, 2022, caused the discussion and adoption of new resolutions at the 11th emergency special session of the General Assembly. It was convened in accordance with Security Council resolution 2623 of February 27, 2022 – in connection with “the lack of unanimity of its permanent members at the 8979th meeting has prevented it from exercising its primary responsibility for the maintenance of international peace and security” (*Resolution 2623...*, 2022) (here are elements of citations of the UN Charter and the GA resolution “Uniting for Peace”). In particular, the Security Council submitted to the General Assembly for examination the issue of the decision regarding the letter from the Permanent Representative of Ukraine in the UN dated February 28, 2014, which demanded consideration of the security situation in Ukraine (*Letter dated 28 February 2014...*, 2014). The resolution was supported by 11 out of 15 members of the SC (permanent members – France, Great Britain, the USA, as well as Albania, Brazil, Gabon, Ghana, Ireland, Kenya, Mexico, and Norway), only the Russian Federation voted against, 3 countries abstained from voting (permanent member – China, as well as India and the UAE) (*Security Council. 8980th meeting...*, 2022). It should be noted that the Security Council’s transfer of an issue of maintaining international peace and security to the General Assembly for consideration occurred only for the eighth time in the history of the UN and the first time in forty years (since 1982) (Blanchfield, Weed, 2022: 2).

It is important that all issues during this session were considered according to the special procedure provided for in Parts 2 and 3 of Article 18 of the UN Charter – that is, in this case, as decisions on important issues – “recommendations on the maintenance of international peace and security,” and this accordingly provides for the adoption by a qualified majority (at least two-thirds of the votes of the representatives of the states that were present at the meeting and participating in the vote). During each vote, this special procedure was proposed by the President of the General Assembly and unanimously approved by the representatives of the member states. The eleventh emergency session of the General Assembly was not completed within a certain period, only breaks were announced, and meetings were resumed at the request of groups of states and took place in 2022 and 2023.

Six resolutions have been adopted within the framework of this session so far: “Aggression against Ukraine” (March 2, 2022), “Humanitarian consequences of the aggression against Ukraine” (March 24, 2022), “Suspension of the rights of membership of the Russian Federation in the Human Rights Council” (April 7, 2022), “Territorial integrity of Ukraine: defending the principles of the Charter of the United Nations” (October 12, 2022), “Furtherance of remedy and reparation for aggression against Ukraine” (November 14, 2022), “Principles of the Charter of the United Nations underlying a comprehensive, just and lasting peace in Ukraine” (February 23, 2023). The present author has analyzed them in another study (Kresin, 2024) and will not take up space here.

⁷ Some materials of a previous study by the author are used in this paragraph (Kresin, 2023).

CONCLUSIONS

The 1950 resolution “Uniting for Peace” became a concentrated expression of the understanding by the member states of the broad competence of the General Assembly. Without violating the statutory recommendatory powers of this body, it created new mechanisms for their implementation. First of all, this applies to the algorithm of actions in cases of the inability of the Security Council to realize its primary responsibility in the field of maintaining international peace and security, the efficiency of convening sessions, and the simplified procedure for preparing issues for consideration by the General Assembly, as well as not only the authorization but also the direct coordination by the General Assembly of the collective actions of member states in this field.

At the same time, the procedural innovations of this resolution, in particular regarding the holding of emergency special sessions, were incorporated into the Rules of Procedure of the General Assembly. In addition, the “Uniting for Peace” mechanism has been repeatedly initiated by the Security Council and essentially recognized as legitimate by the International Court of Justice. Therefore, the presence or absence of an indication of this mechanism in acts of the General Assembly has no legal significance. The emphasis in the resolutions on the use of this mechanism, in particular when convening emergency special sessions of the GA, is to a greater extent political, called to emphasize the special importance of the issue under consideration.

Therefore, it could be repeated that, in the opinion of the present author, the most important material, not procedural, element of the “Uniting for Peace” mechanism, which still retains its independent significance, is the creation and existence for a long time of a system of coordination of collective coercive measures against states that violate international peace and security. This element significantly complements the arsenal of means for carrying out the activities of the General Assembly in this area.

Decisions and initiatives of the General Assembly in 2022–2023 regarding the supervision of the use of the right of veto⁸ in the Security Council are of great importance for understanding both the powers of the GA in correlation to the powers of the Security Council and the nature of the resolutions of the GA. The member states actually declared that: a) their interests are represented by the General Assembly; b) they partially delegate the protection of their interests in the field of maintaining international peace and security to the Security Council; c) they do not lose their initial rights in connection with this and, through the GA, have the authority to supervise the decisions of the SC and, in particular, to evaluate the application of the right of veto. It is obvious that the right to one way or another overcomes the consequences of the application of the veto in the event that it turns out to be unreasonable follows from this. That is, the powers and resolutions of the General Assembly, in particular in the field of maintaining international peace and security, are indirectly placed above the corresponding powers and resolutions of the Security Council. In our opinion, this, as well as the idea of accountability of the Security Council to the General Assembly, fully corresponds

⁸ Conventional and already rooted name for situations that, according to the UN Charter, can be qualified as a lack of unanimity among the permanent members of the Security Council.

to the holistic understanding of the UN Charter in modern conditions. All this is based on the long-term development of the practice of the General Assembly, in particular, its establishment of various auxiliary bodies in the field of maintaining international peace and security, as well as on the real significance of its recommendations to member states regarding the application of collective measures of a preventive and coercive nature in this area, and on the perception by states of resolutions of the GA as legally binding and similar in nature to international treaties.

Separately, it is advisable to dwell on the assessment in doctrinal writings of the issue of the specifics of the resolutions adopted by the General Assembly within the framework of the “Uniting for Peace” mechanism. It is important to note that the opinion presented in political debates and in the positions of individual states regarding the general inconsistency of this mechanism with the UN Charter, is not perceived by Western scholars. The reservations of some authors regarding the use of this mechanism without the initiative of the Security Council are still present but are mostly based on general out-of-contextual normativism or political considerations.

This, of course, cannot call into question either the real long-term practice of the General Assembly, or the meaning of the decisions of the International Court of Justice, but instead should be perceived primarily as useful wishes. Optimists, critics, and skeptics in this matter agree that the essence of the resolutions of the General Assembly, adopted within the framework of the “Uniting for Peace” mechanism, is the authorization of the collective actions of the member states to implement their collective self-defense, and recently also the individual or collective implementation of the principle “responsibility to protect.” And there is essentially no difference between the skeptical (the “Uniting for Peace” mechanism does not have any added value) and optimistic (the expediency of this mechanism) positions, because, as already mentioned, the norms of the relevant resolution are integrated into the Rules of Procedure of the General Assembly. Opinions regarding the gradual replacement of the decisions of the Security Council with the resolutions of the General Assembly are still analytical or prognostic, largely evaluative in nature, based on the development of the practice of UN bodies, but do not affect the existing provisions of the Charter of this organization.

The complex of resolutions of 2022–2023 regarding countering Russian aggression against Ukraine, the consequences of this aggression, and ensuring responsibility for it fundamentally differed from the previous group in terms of its nature, content, and level of support. The reason for holding this session was the decision of the Security Council to refer to the General Assembly the issue of the security situation in Ukraine, which was raised back in 2014. In itself, such a referral is a rare phenomenon, which involves the recognition by the Security Council of its inability to fulfill the statutory duty assigned to it to maintain international peace and security. The formal transfer of consideration of the issue does not mean a transfer by the Security Council of its powers to adopt binding decisions for member states in the sphere of maintenance of international peace and security. And yet – this means that solving a certain issue on behalf of the UN becomes the prerogative of another body of this organization, namely the General Assembly. This presupposes a fairly broad understanding of the GA’s recommendatory powers and the nature of the measures it recommends. In ad-

dition, it fundamentally expands the aspects of the problem that can be considered by the General Assembly. After all, while it was discussed in the Security Council, the General Assembly did not have the authority to consider it in essence as a threat to international peace and security or their breach, it had to limit itself only to some of its accompanying aspects (such as, for example, human rights violations or the militarization of the territory).

It should be noted that the resolutions of this emergency session of the General Assembly directly refer to the already mentioned resolution “Uniting for Peace,” and have all possible and undeniable reasons for this, because they do not come into conflict with the powers of the Security Council, as in 1950. The General Assembly legitimately took upon itself the resolving of issues related to the aggression of the Russian Federation in Ukraine, albeit with the help of more limited means than those of the Security Council. Among other things, as interpreted in the 1950 resolution, which was heavily criticized but never repealed or contested, it may include: establishing the facts and their legal qualification, exposing the aggressor, recommending to member states urgent collective measures, including sanctioning of creation and use of collective armed forces on behalf of the UN.

Regardless of the endless formal dispute regarding the legal or purely political significance of the resolutions of the General Assembly, no one essentially denies that their provisions are a part of the, so to speak, international normative system and can generate significant consequences: they create a presumption of legality or illegality of certain actions of states; create an authoritative (although not formally normative), and sometimes consensual interpretation of acts of international law, provide qualifications for specific situations; authorize states individually and jointly to take or refrain from taking certain actions, create grounds for coordinating their actions; enable and legitimize actions of states that violate their other obligations in bilateral relations and within international organizations; create grounds for decision-making by other intergovernmental and non-governmental international organizations. It is these consequences, and not the formal status of the General Assembly’s resolutions, that played and continue to play an important role in countering Russian aggression, the processes of restoring Ukraine’s territorial integrity and holding the Russian Federation and its leadership accountable. The Uniting for Peace mechanism has been incorporated into the UN General Assembly’s Rules of Procedure and has been implemented many times in practice, but the appeal to it still remains symbolic, and states continue to attach special importance to the resolutions adopted within its framework as the final solution to the most complex and controversial issues on behalf of the UN as an organization, not its individual body.

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ABSTRACT

The author analyzes comprehensively the "Uniting for Peace" mechanism, which was formulated and adopted by the UN General Assembly as a result of looking for a way out of the

situation when the Security Council, as a body entrusted with the main responsibility in the field of maintaining international peace and security by the UN Charter, is unable to fulfill its duties due to the use by one of the states – permanent members of this body of its right of veto. Attention is paid to the development of this mechanism in recent years and its use for adopting a set of resolutions in response to the aggression of the Russian Federation against Ukraine. The author concludes that the resolution of 1950, "Uniting for Peace," became a concentrated expression of understanding by the member states of the broad competence of the UN General Assembly. Without violating the statutory advisory powers of this body, new mechanisms for their implementation were created. First of all, this concerns the efficiency of convening sessions and the simplified procedure for preparing issues for consideration by the General Assembly, as well as not only authorization but also direct coordination by this body of collective actions of member states in the field of maintaining international peace and security. The UN General Assembly legitimately took upon itself the solution of issues related to the aggression of the Russian Federation in Ukraine, albeit with the help of more limited means than those of the Security Council. The appeal to the "Uniting for Peace" mechanism also remains symbolic, and states continue to attach special importance to the resolutions adopted within this framework – as the final solution to the most complex and controversial issues on behalf of the UN as an organization, not its individual body.

Keywords: international organizations, acts of international organizations, law of international organizations, international peace and security, Russian aggression against Ukraine

PODSTAWY PRAWNE PROCEDURY „ZJEDNOCZENI DLA POKOJU” I JEJ ZASTOSOWANIE W KONTEKŚCIE WOJNY FEDERACJI ROSYJSKIEJ PRZECIWKO UKRAINIE

STRESZCZENIE

Autor kompleksowo analizuje procedurę „Zjednoczeni dla pokoju”, która została sformułowana i przyjęta przez Zgromadzenie Ogólne ONZ w wyniku poszukiwania wyjścia z sytuacji, gdy Rada Bezpieczeństwa, jako organ, któremu Karta Narodów Zjednoczonych powierzyła główną odpowiedzialność w dziedzinie utrzymania międzynarodowego pokoju i bezpieczeństwa, nie jest w stanie wypełniać swoich obowiązków z powodu korzystania przez jedno z państw – stałych członków tego organu z prawa weta. Zwrócono uwagę na rozwój tej procedury w ostatnich latach oraz jej zastosowanie w celu przyjęcia szeregu rezolucji w odpowiedzi na agresję Federacji Rosyjskiej przeciwko Ukrainie. Autor dochodzi do wniosku, że rezolucja z 1950 roku „Zjednoczeni dla pokoju” stała się skoncentrowanym wyrazem zrozumienia przez państwa członkowskie szerokich kompetencji Zgromadzenia Ogólnego ONZ. Nie naruszając statutowych kompetencji doradczych tego organu, stworzyła ona nowe mechanizmy ich realizacji. Dotyczy to przede wszystkim skuteczności zwoływania sesji oraz uproszczonej procedury przygotowania spraw do rozpatrzenia przez Zgromadzenie Ogólne, a także nie tylko autoryzacji, ale również bezpośredniej koordynacji przez ten organ działań zbiorowych państw członkowskich w dziedzinie utrzymania międzynarodowego pokoju i bezpieczeństwa. Zgromadzenie Ogólne ONZ w sposób uzasadniony podjęło się rozwiązywania kwestii związanych z agresją Federacji Rosyjskiej na Ukrainę, choć przy użyciu bardziej ograniczonych środków niż te, którymi dysponuje Rada Bezpieczeństwa. Odwołanie się do procedury „Zjednoczeni dla pokoju” pozostaje również symboliczne, a państwa nadal przywiązują szczególną wagę do rezolucji przyjętych w tych ramach jako do ostatecznego roz-

wiązania najbardziej złożonych i kontrowersyjnych kwestii w imieniu ONZ jako organizacji, a nie jej poszczególnych członków.

Słowa kluczowe: organizacje międzynarodowe, akty organizacji międzynarodowych, prawo organizacji międzynarodowych, międzynarodowy pokój i bezpieczeństwo, agresja Rosji przeciwko Ukrainie