

RESOLUTION ES-11/4 TERRITORIAL INTEGRITY OF UKRAINE: DEFENDING THE PRINCIPLES OF THE  
CHARTER OF THE UNITED NATIONS (U.N.G.A.)  
BY LAURI MÄLKSOO\*  
[October 12, 2022]

## Introduction

The resolution “Territorial Integrity of Ukraine: Defending the Principles of the Charter of the United Nations” was adopted by the UN General Assembly (UNGA) on October 12, 2022, with 143 UN member states in favor, five against, thirty-five abstentions, and ten not voting. It is another important UNGA resolution on Ukraine, after the UNGA qualified as aggression Russia’s invasion of Ukraine since February 24, 2022 in its resolution of 2 March 2022.<sup>1</sup> That resolution had 141 states voting in favor, thus a slight increase in votes supporting Ukraine’s rights under international law can be seen in the resolution at issue.

## Background

Following its military attack against Ukraine, Russia unilaterally declared, on September 30, 2022, its annexation of four Ukrainian regions: Donetsk, Luhansk, Zaporizhzhia, and Kherson. In December 1991, when the Soviet Union disintegrated, Ukraine seceded from Russia in its Soviet-era administrative borders. In the Budapest memorandum of 1994, Russia was among the nations, along with the United States and the United Kingdom, that gave Ukraine assurances with respect to the latter’s territorial integrity, in return for Ukraine giving away the Soviet nuclear weapons still stored on its territory. On January 28, 2003, a border treaty was signed by Russia and Ukraine, later also ratified in both parliaments, which recognized Ukraine’s borders as they were during the disintegration of the Soviet Union in 1991, including Crimea and the Donbas region.

In February 2014, Ukraine’s pro-Western forces ousted President Yanukovich, to which Russia reacted by militarily invading Crimea, where it organized snap referendums and then annexed the peninsula. Soon afterwards, a military conflict also evolved in the Donbas region, which Moscow argued was a civil war in Ukraine but which Kyiv characterized as military intervention by Russia. After the Minsk agreements of 2014 and 2015, the military conflict in Donbas continued with somewhat lower intensity, but never entirely calmed down.

Russia’s open aggression against Ukraine started on February 24, 2022, but there were worrying signs regarding Moscow’s intentions even before then. For example, in July 2021 Russia’s President Vladimir Putin published an article in which he claimed that “modern Ukraine is entirely the product of the Soviet era” but also that “we know and remember that it was shaped—for a significant part—on the lands of historical Russia.”<sup>2</sup> Thanks to the Bolsheviks in and after 1917, according to President Putin, “Russia was robbed.”<sup>3</sup> Nevertheless, Putin concluded about the Russians and the Ukrainians: “We are one people.”<sup>4</sup>

In contrast to the above scenario, international law prohibits the forcible seizure of foreign territory. In 1928, states concluded the Kellogg-Briand Pact in Paris, which renounced war as an instrument of national policy. Soon thereafter, in 1929, the Soviet Union initiated the so-called Litvinov Protocol (named after the then Soviet foreign minister), with which war was renounced between the Soviet Union and its border states that signed the protocol. In 1933, the Soviet Union initiated the Convention for the Definition of Aggression which developed and refined further the underlying idea of the Kellogg-Briand Pact and the Litvinov Protocol. Finally, the UN Charter of 1945 prohibits threat and use of military force (Art. 2, para. 4), with only two explicit exceptions, self-defense “if an armed attack occurs” (Art. 51) and collective authorization by the UN Security Council if international peace and security are endangered (Article 42). The latter is, of course, subject to veto power of permanent members of the UN Security Council.

Thus, UNGA resolution ES-11/4 reiterates principles that have been recognized in international law for decades, especially the principle that illegal use of force under the UN Charter cannot lead to legally recognizable annexations. This idea was recognized in the context of World War II and its aftermath, sometimes (to some extent)

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retrospectively.<sup>5</sup> It is also relevant to note that the International Law Commission's Articles on State Responsibility of 2001<sup>6</sup> (Responsibility of States for Internationally Wrongful Acts) stipulates that, "No state shall recognize as lawful a situation created by a serious breach [under peremptory norms of international law], nor render aid or assistance in maintaining that situation."

### Significance

The effect of UNGA resolution ES-11/4 is significant, as it demonstrates that a significant majority of the UNGA is willing to protect the underlying principles of the UN Charter even when the violator of international law is a permanent member of the UN Security Council. Nevertheless, one may ask whether simply asserting that the Russian aggression qualifies as aggression (the March 2, 2022 resolution) and that Russia's unilateral annexations in Ukraine are illegal (the October 12, 2022 resolution) may be too little, considering the gravity of the violation of the UN Charter's main principles in this case. At the time of writing this comment, another debate is taking place, namely on whether a special international tribunal for the crime of aggression against Ukraine should be created, with the endorsement of the majority of the UNGA. It is not yet certain whether such an idea would achieve a similarly strong majority in the UNGA as the March and October 2022 resolutions. Opponents to the idea of a crime of aggression tribunal are likely to question why the crime of aggression has not always been punished. Nevertheless, it will be important to watch how far the majority in the UNGA is willing to go in the defense of the UN Charter's underlying principles.

In parallel, Ukraine has recently also initiated the debate in the UN on whether in December 1991, when the Soviet Union disintegrated, the Russian Federation rightfully inherited the Soviet permanent seat in the UNSC.<sup>7</sup>

Consequently, these resolutions represent a story larger than that of one country violating the fundamental rights of another and the UNGA's reaction to the violation. As the violator of international law here, the Russian Federation, happens to be permanent member of the UNSC, the crisis may even disrupt the legitimacy of the constitutional foundations of the United Nations.

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### ENDNOTES

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| <p>1 G.A. Res. ES-11/1, U.N. Doc. A/RES/ES-11/4 (Oct. 12, 2022).</p> <p>2 Vladimir Putin, <i>On the Historical Unity of Russians and Ukrainians</i> (July 12, 2021), <a href="http://en.kremlin.ru/events/president/news/page/101">http://en.kremlin.ru/events/president/news/page/101</a>.</p> <p>3 <i>Id.</i></p> <p>4 <i>Id.</i></p> <p>5 See further in the context of the Baltic States: LAURI MÄLKSOO, <i>ILLEGAL ANNEXATION AND STATE CONTINUITY. THE CASE OF</i></p> | <p>THE INCORPORATION OF THE BALTIC STATES BY THE USSR (2nd ed., 2022).</p> <p>6 INT'L L. COMM'N, <i>RESPONSIBILITY OF STATES FOR INTERNATIONALLY WRONGFUL ACTS</i>, art. 41, ¶ 2 (2001).</p> <p>7 Statement of the MFA of Ukraine on the illegitimacy of the Russian Federation's presence in the UN Security Council and in the United Nations as a whole (Dec. 26, 2022), <a href="https://mfa.gov.ua/en/news/zayava-mzs-ukrayini-shchodo-nelegitimnosti-perebuvannya-rosijskoyi-federaciyi-v-radi-bezpeki-oon-ta-organizaciyi-obyednanih-nacij-u-cilomu">https://mfa.gov.ua/en/news/zayava-mzs-ukrayini-shchodo-nelegitimnosti-perebuvannya-rosijskoyi-federaciyi-v-radi-bezpeki-oon-ta-organizaciyi-obyednanih-nacij-u-cilomu</a>.</p> |
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CHARTER OF THE UNITED NATIONS (U.N.G.A.)\*  
[October 12, 2022]

United Nations

A/RES/ES -11/ 4



General Assembly

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13 October 2022

**Eleventh emergency special session**

Agenda item 5

**Letter dated 28 February 2014 from the Permanent  
Representative of Ukraine to the United Nations addressed  
to the President of the Security Council (S/2014/136)**

**Resolution adopted by the General Assembly  
on 12 October 2022**

*[without reference to a Main Committee (A/ES-11/L.5)]*

**ES-11/4. Territorial integrity of Ukraine: defending the principles of the**

**Charter of the United Nations**

*The General Assembly,*

*Recalling* the obligation of all States under Article 2 of the Charter of the United Nations to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations, and to settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered,

*Reaffirming* the principle of customary international law, as restated in its resolution 2625 (XXV) of 24 October 1970, entitled “Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations”, that no territorial acquisition resulting from the threat or use of force shall be recognized as legal,

*Recalling* its resolutions 68/262 of 27 March 2014, entitled “Territorial integrity of Ukraine”, ES-11/1 of 2 March 2022, entitled “Aggression against Ukraine”, and ES-11/2 of 24 March 2022, entitled “Humanitarian consequences of the aggression against Ukraine”,

*Noting* that the Donetsk, Kherson, Luhansk and Zaporizhzhia regions of Ukraine are areas that, in part, are or have been under the temporary military control of the Russian Federation, as a result of aggression, in violation of the sovereignty, political independence and territorial integrity of Ukraine,

\*This text was reproduced and reformatted from the text available at the United Nations website (visited February 1, 2023), <https://digitallibrary.un.org/record/3990673?ln=en>. For context, readers may wish to read Vladimir Putin’s address regarding the signing of the treaties on accession of Donetsk and Lugansk people’s republics and Zaporozhye and Kherson regions to the Russian Federation, as transmitted to the United Nations by letter dated Oct. 3, 2022. That document is available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/619/12/pdf/N2261912.pdf?OpenElement> but is not reproduced in this issue.

*Noting also* that the decisions of 21 February and 29 September 2022 by the Russian Federation related to the status of the Donetsk, Kherson, Luhansk and Zaporizhzhia regions of Ukraine are a violation of the territorial integrity and sovereignty of Ukraine and inconsistent with the principles of the Charter,

*Noting with concern* that the illegal so-called referendums were organized from 23 to 27 September 2022 in these regions as attempts to modify the internationally recognized borders of Ukraine,

*Noting* the Secretary-General's statement of 29 September 2022 in which he recalled that any annexation of a State's territory by another State resulting from the threat or use of force is a violation of the principles of the Charter and international law,

1. *Reaffirms its commitment* to the sovereignty, independence, unity and territorial integrity of Ukraine within its internationally recognized borders, extending to its territorial waters;
2. *Condemns* the organization by the Russian Federation of illegal so-called referendums in regions within the internationally recognized borders of Ukraine and the attempted illegal annexation of the Donetsk, Kherson, Luhansk and Zaporizhzhia regions of Ukraine, following the organization of the above-mentioned referendums;
3. *Declares* that the unlawful actions of the Russian Federation with regard to the illegal so-called referendums held from 23 to 27 September 2022 in parts of the Donetsk, Kherson, Luhansk and Zaporizhzhia regions of Ukraine that, in part, are or have been under the temporary military control of the Russian Federation, and the subsequent attempted illegal annexation of these regions, have no validity under international law and do not form the basis for any alteration of the status of these regions of Ukraine;
4. *Calls upon* all States, international organizations and United Nations specialized agencies not to recognize any alteration by the Russian Federation of the status of any or all of the Donetsk, Kherson, Luhansk or Zaporizhzhia regions of Ukraine, and to refrain from any action or dealing that might be interpreted as recognizing any such altered status;
5. *Demands* that the Russian Federation immediately and unconditionally reverse its decisions of 21 February and 29 September 2022 related to the status of certain areas of the Donetsk, Kherson, Luhansk and Zaporizhzhia regions of Ukraine, as they are a violation of the territorial integrity and sovereignty of Ukraine and inconsistent with the principles of the Charter of the United Nations, and immediately, completely and unconditionally withdraw all of its military forces from the territory of Ukraine within its internationally recognized borders;
6. *Welcomes* the efforts of the United Nations, Member States and humanitarian organizations to respond to the humanitarian and refugee crisis;
7. *Welcomes and expresses its strong support* for the continued efforts by the Secretary-General and Member States, and calls upon Member States and international organizations, including the Organization for Security and Cooperation in Europe and other international and regional organizations, to support the de-escalation of the current situation and a peaceful resolution of the conflict through political dialogue, negotiation, mediation and other peaceful means, with respect for the sovereignty and territorial integrity of Ukraine within its internationally recognized borders and in accordance with the principles of the Charter;
8. *Decides* to adjourn the eleventh emergency special session of the General Assembly temporarily and to authorize the President of the General Assembly to resume its meetings upon request from Member States.

*14th plenary meeting  
12 October 2022*