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**THE UNITED NATIONS
GENERAL ASSEMBLY RESOLUTIONS**

Their Nature and Significance in the Context of the
Russian War Against Ukraine

Edited by William E. Butler

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Dedicated to the memory of the outstanding Polish diplomat and scholar **Krzysztof Skubiszewski** (1926-2010), the author of a landmark study on this issue,
and **Kostiantyn Oleksandrovych Savchuk** (1976-2023), a talented Ukrainian international legal scholar

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Preface

As the United Nations approaches eight decades of existence, greatly increased in membership, issues that vexed or divided the founding countries continue to challenge the international community. The preferential status of the five permanent members of the United Nations Security Council, as reflected both in their permanent status and their veto power, is among these. Although much criticized by a membership which has nearly quadrupled since 1945, a seismic change will be required in the international order for one or more of the Great Powers to surrender this preferential position.

The principle of a veto power being vested in the five permanent members was accepted at the time: the issue was a veto precisely over what. A basic agreement reached at the Yalta Conference was imprecise in a number of respects, and the Soviet Union took the position that the veto power should extend even to the question of whether the Security Council might discuss an issue. An “immediate breakup” of the San Francisco Conference was at risk, only averted by a direct appeal to Joseph Stalin (1878-1953) by the American diplomats then in Moscow, Ambassador William Averell Harriman (1891-1986) and Harold “Harry” Lloyd Hopkins (1890-1946) on 6 June 1945 under instructions from the President of the United States. Stalin and Viacheslav Mikhailovich Molotov (1890-1986) agreed to withdraw their interpretation as “an insignificant matter” and the American position was accepted. (For details, see Ruth B. Russell, *A History of The United Nations Charter: The Role of the United States 1940-1945* (1958), esp. pp. 713-749.) The outcome preserved the “freedom of discussion” for the Security Council, but the principle of unanimity of the Great Powers, already under strain at San Francisco, has severely curtailed the effectiveness of the United Nations when such unanimity is absent.

On a more constructive note, the phrase “acts of aggression” was included in the United Nations Charter “as the result of a Soviet proposal at Dumbarton Oaks”. (For the history of this provision, see L. M. Goodrich, Edvard Hambro, and Anne P. Simons,

Charter of the United Nations: Commentary and Documents (3d rev. ed.; 1968), pp. 298-300.)

The practice of the General Assembly of that Organization to assume “residual responsibility” for performing functions arising out the Purposes of the United Nations to, *inter alia*, maintain international peace and security when the Security Council is unable to do so by reason of the lack of unanimity among the permanent members has been an important and perhaps unforeseen at the time expansion of United Nations competence. In this timely study, Professor Dr. Oleksiy V. Kresin explores the course of General Assembly resolutions, voting patterns, and substantive developments between 2014 and 2023 with reference to the various actions of the Russian Federation against Ukraine, commencing with the annexation of the Autonomous Republic Crimea down to the present time. These collectively represent both an exercise and an extension of General Assembly powers in the domain of the maintenance of international peace and security of consideration interest beyond the conflict itself. This is an important addition to the repertoire of United Nations practice that enriches the literature on international organizations—their limitations, their successes, and sometimes their lack of success. They are not autonomous actors in international affairs, but an extension of their ultimately human creators, who via human-created States seek to bring a modicum of decency and order to their relations *inter se*.

William E. Butler
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Introduction

Ukraine's new national liberation war against the Russian Federation has continued for more than a decade. The reasons for Russian aggression are of concern or threat to many neighboring and distant States. This threat to international peace and security requires strategic responses not only on the battlefield, but also by the States of the world and authoritative international organizations. As the High Representative for Foreign Affairs and Security Policy of the European Union, Josep Borrell, noted, "Russia has never been able to become a nation. It was always an empire with the tsar, with the Soviets, and now with Putin. It is a constant of Russia, and its political identity, and as a result a threat to its neighbors – and particularly to us".¹

The new stage of aggression of the Russian Federation against Ukraine in 2022 actualized, *inter alia*, the need for lawyers to turn to all available tools and levers of international law and international politics to promote victory in the struggle of Ukraine. Given the authoritative and universal character of the United Nations, the acts of this organization require meticulous analysis.

The issues of countering Russian aggression are extensively reflected in resolutions of the United Nations General Assembly. The nature of these acts is the subject of long debates and, according to scholars, changes in the evolution of the United Nations. Therefore, the research acquires not only a practical, but also a theoretical character.

Unfortunately, these acts, constantly mentioned by politicians and journalists, did not attract the attention of Ukrainian jurists. The bibliography of Ukrainian publications on international law for 2022 does not contain a single scholarly work devoted to the

1 P. Wintour, "EU Foreign Policy Chief Fears Rightwing Surge in June Elections", *The Guardian*. 24 December 2023 (available online).

significance of General Assembly resolutions.² The present author managed to find a few recent articles and scholarly commentaries, but all brief and quite general.³

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- 2 N. Vasil'eva, I. Hula, D. Danik, M. Ivankovych, and S. Kurochka, "Вибрана бібліографія з міжнародного права за 2022 рік" [Select Bibliography on International Law for 2022], *Український часопис міжнародного права* [Ukrainian Journal of International Law], no. 4 (2022), pp. 123-159.
- 3 P. Rabinovych, "Діяльність Організації Об'єднаних Націй у протидії військовій агресії Російської Федерації проти України" [UN Activities in Counteracting Russian Military Aggression against Ukraine], in: M. Kovaliv, M. Navryltsiv, N. Lepish (comp.), "Конституційні права і свободи людини та громадянина в умовах воєнного стану: матеріали наукового семінару" [Constitutional Rights and Freedoms of a Person in Conditions of Martial Law] (Lviv, 2022); Ye. Reniov, "Щодо деяких аспектів діяльності ООН в контексті підтримки суверенітету та територіальної цілісності України" [On Some Aspects of UN Activities in the Context of Sovereignty and Territorial Integrity of Ukraine Support], *Juris Europensis Scientia*, 2022, Iss. 5; I. Todorov, N. Todorova, "ООН у протидії російській агресії в Україні" [UN in Counteraction to Russian Aggression against Ukraine], *Геополітика України: історія і сучасність* [Geopolitics of Ukraine: History and Contemporaneity], 2023, No. 1 (30); R. Topolevskiy, T. Dudash, V. Honcharov, A. Nakonechna, ed. by P. Rabinovych, "Науковий коментар [до резолюції Генеральної Асамблеї ООН, ухваленої 2 березня 2022 року, ES-11/1 "Агресія проти України"]" [Scholarly commentary to the UN GA resolution *Aggression against Ukraine*], *Право України* [Law of Ukraine], 2022, No. 8; R. Topolevskiy, T. Dudash, V. Honcharov, A. Nakonechna, ed. by P. Rabinovych, "Науковий коментар [до резолюції Генеральної Асамблеї ООН, ухваленої 24 березня 2022 року, ES-11/2 "Гуманітарні наслідки агресії проти України"]", [Scholarly commentary to the UN GA resolution *Humanitarian consequences of the aggression against Ukraine*], *Право України* [Law of Ukraine], 2023, No. 2; R. Topolevskiy, T. Dudash, V. Honcharov, A. Nakonechna, ed. by P. Rabinovych, "Науковий коментар [до резолюції Генеральної Асамблеї ООН, ухваленої 7 квітня 2022 року, ES-11/3 "Зупинення прав, пов'язаних з членством Російської Федерації в Раді з прав людини ООН"]" [Scholarly commentary to the UN GA resolution *Suspension of the rights of membership of the Russian Federation in the Human Rights Council*], *Право України* [Law of Ukraine], 2023, No. 4. To some extent, the article by O. 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 United Nations General Assembly. See: O. Tymchuk, "Реакція Генеральної Асамблеї ООН на російське вторгнення в Україну" [The Reaction of UN General Assembly to the Russian Invasion to Ukraine], *Актуальні проблеми та перспективи розвитку юридичної науки, освіти та технологій у XXI столітті в дослідженнях молодих учених: збірник матеріалів доповідей учасників всеукраїнської науково-практичної конференції* [Topical Issues and Prospects for Development of the Legal Science, Education, and Technologies in 21st Century: Conference Collection], Kharkiv, 2023.

One can assume that the reasons for ignoring the resolutions of the United Nations General Assembly are primarily political – from widespread utopian imaginations in society to partially preserved ideological guidelines of the Soviet doctrine of international law among lawyers. Journalists, some politicians, and many citizens perceive the United Nations General Assembly as a kind of world parliament able to prohibit a certain State from taking certain actions by its law and to ensure that this State fully complies with such norms. The United Nations Charter is, accordingly, considered as the constitution of such a world political entity, the pinnacle of world law. To a certain extent and in certain aspects, this is close to the truth or at least to the intentions of some members of the United Nations, in some situations confirmed by practice. This point of view is also supported by those international lawyers who believe in the existence of a special supra-contractual or extra-contractual essence of a unified international law.⁴

But the world is full of contradictions, in particular between State sovereignty, realized or imagined interests of individual societies, selfish and/or ideologically determined policies of State leadership – on one hand, the same interests and policies of other societies and groups – on the other hand, or the development of societal awareness of the globality of many key problems and the need for their joint solution – from a third party. Therefore, excessive optimism in assessing the abilities of the “world parliament” is without foundation – at least immediately. Faced with serious problems and the impossibility of a quick and complete solution by the “international community” represented by the United Nations General Assembly, optimistic politicians and ordinary citizens become

4 The consideration and critics of such views see in: W. E. Butler, “Сравнительное международное право” [Comparative International Law], Yu. Shemshuchenko, O. Kresin (eds.), *Ідея порівняльного міжнародного права: pro et contra*: Збірник наукових праць на честь іноземного члена НАН України та НАПрН України Уільяма Елліота Батлера [The Idea of Comparative International Law: Pro et Contra: The Collection Dedicated to Member of the National Academy of Sciences of Ukraine and National Academy of Legal Sciences of Ukraine William Elliott Butler], Kyiv, Lviv, 2015, pp. 114-139.

pessimists, proclaiming the inaction and uselessness of the United Nations in general and the acts adopted by its organs in particular.

This game of images, passions, and disappointments is unconstructive and even dangerous. The dialectical opposite of the insufficiently effective, according to observers, United Nations law does not constitute a more perfect universal international legal order, a coordinated sum of regional international legal orders, a worldwide network of non-contradictory international relations and treaties of States, but nihilism—an international space of lawlessness and war of all against all.

On the other hand, Ukrainian legal science to a certain extent is still under the influence of the Soviet and modern Russian doctrine of international law, which is generally State-centered and takes a narrow normativist view of international law. The first involves consideration of international law primarily as a system for ensuring the sovereignty and coexistence of States (as well as the “balance of power”),⁵ and the second, as a continuation of the first, is recognition of the legal character only of the sources enumerated in the Statute of the International Court of Justice (Article 38), according preference to treaties.⁶ Under this approach, resolutions of the United Nations General Assembly, unless their provisions have gained recognition as part of customary international law, are perceived as exclusively political in nature.

5 V. Denysov, “Міжнародне співтовариство як правова реальність функціонування міжнародних відносин” [International Community as Legal Reality of the International Relations Functioning], *Правова держава* [Legal State], 2017, Iss. 28, p. 373.

6 See for example: T. Langström, “Россия в переходный период: эволюция международно-правовых доктрин. Сравнительный анализ учебников “Международное право” под ред. Г.И. Тункина (М., 1982) и под ред. Ю.М. Колосова и В.И. Кузнецова (М., 1995)” [Russia in the Period of Transformation: Evolution of International Legal Doctrines], *Московский журнал международного права* [Moscow Journal of International Law], 1999, No. 1, pp. 202-235; A. Kraevskii, “Отражение международного права в советской теории государства и права конца 1930-х–1980-х годов” [The Contemplation of International Law in Soviet Theory of State and Law in 1930s–1980s], *Право и политика* [Law and Politics], 2015, No. 12(192), pp. 1765-1772.

Neither utopian optimism or pessimism nor post-Soviet legal skepticism can adequately reflect the ambiguous and dynamic realities of the development of United Nations organs and institutions and their decisions.

This book summarizes the results of research, carried out in 2022-2023, against the backdrop of the war tragedy and the Ukrainian people's resistance to the full-scale aggression of the Russian Federation. Some materials have been published previously,⁷ but they are comprehensively presented here for the first time.

7 О. В. Кресін, “Характер повноважень та актів Генеральної Асамблеї ООН: статутні положення та еволюція їх тлумачення” [The Character of Powers and Acts of UN General Assembly: Charter Provisions and the Evolution of their Interpretation], *Право України* [Law of Ukraine], 2022, No. 7, pp. 112-126; Кресін, “Питання щодо характеру резолюцій Генеральної Асамблеї ООН у доктрині міжнародного права” [The Issue on the Character of UN General Assembly Resolutions in the International Law Doctrines], *Право України* [Law of Ukraine], 2022, No. 11, pp. 128-147; Кресін (ed.), “Деокупація. Юридичний фронт [Електронне видання]: матеріали Міжнародного експертного круглого столу (Київ, 18 березня 2022 р.) / Державний торговельно-економічний університет, Українська асоціація порівняльного правознавства, Українська асоціація міжнародного права, Асоціація реінтеграції Криму” [De-Occupation: Legal Front [Electronic Edition]: Materials of the International Round Table], Kyiv, 2022, 224 p.; Кресін, “Новітні виклики і загрози у війні Росії проти України: правові оцінки й рекомендації (за матеріалами Міжнародного експертного круглого столу «Деокупація. Юридичний фронт»)» [New Challenges and Threats in the War of Russia against Ukraine: Legal Conclusions and Recommendations], in: S. Pyrozhkov, O. Mauboroda, N. Hamitov, and others (eds.), *Національна стійкість України: стратегія відповіді на виклики та випередження гібридних загроз: національна доповідь / Інститут політичних і етнонаціональних досліджень ім. І. Ф. Кураса НАН України* [National Resilience of Ukraine: The Strategy of Response to the Challenges and Hybrid Threats: National Report], Kyiv, 2022, pp. 509-546; Кресін (ed.), *De-Occupation of Ukraine. Legal expertise* [Electronic publication] / State University of Trade and Economics, Ukrainian Association of Comparative Jurisprudence, Ukrainian Association of International Law, Association of Reintegration of Crimea, Kyiv, 2022. 58 p.; Кресін, “Правові аспекти протидії російській агресії та відновлення територіальної цілісності України (за матеріалами доповіді на засіданні Президії НАН України 13 квітня 2022 року)” [Legal Aspects of Counteracting the Russian Aggression and Territorial Integrity of Ukraine Restoration], *Вісник НАН України* [Herald of the National Academy of Sciences of Ukraine], 2022, No. 6, pp. 60-65; Кресін, “Доктрина міжнародного права про характер резолюцій Генеральної Асамблеї ООН” [International Law Doctrine on the UN General Assembly Resolutions Character], in: L. Pavlyk, U. Tsmots (eds.), *Війна в Україні: зроблені висновки та незасвоєні уроки: збірник тез*

Міжнародного круглого столу (23 лютого 2023 року) [War in Ukraine: Conclusions and Lessons: Conference Collection], Lviv, 2023, pp. 105-112; Kresin, “Тлумачення характеру повноважень та актів Генеральної Асамблеї ООН Міжнародним Судом ООН” [Interpretation of UN General Assembly Powers and Resolutions Character by the ICJ], in: T. Syroid, O. Havrylenko, V. Shamraeva (eds.), *Актуальні проблеми міжнародного права: Всеукраїнська науково-практична конференція (Харків, 10 березня 2023 року): збірник матеріалів* [Topical Issues of International Law: Conference Collection], Kharkiv, 2023, pp. 16-19; Kresin, “Зміст, характер, правове і політичне значення резолюцій Генеральної Асамблеї ООН щодо протидії агресії РФ проти України у 2014 – 2023 рр.” [The Contents, Character, Legal and Political Significance of the UN General Assembly Resolutions on Counteracting the Aggression of Russian Federation against Ukraine in 2014 – 2023], *Право України* [Law of Ukraine], 2023, No. 11; Kresin, “Правові засади механізму «Єднання заради миру» та його використання в умовах війни РФ проти України” [Legal Grounds of *Uniting for Peace* Mechanism and its Using in Conditions of the Russian Federation War against Ukraine], *Право України* [Law of Ukraine], 2024, No. 1; and others.