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No, Russia cannot be removed from the UN Security Council

Russia's invasion of Ukraine has drawn attention to a major problem in the UN system: Russia's veto power in the Security Council. Some have argued that the solution is to remove Russia from the UNSC, but these arguments are misguided.

One of the more obvious issues plaguing international responses to Russia's invasion of Ukraine has been the fact that Russia possesses a veto power in the United Nations Security Council. The UN Charter confers upon the Security Council the "primary responsibility for the maintenance of international peace and security", which includes the right to take forcible action (whether military or in the form of sanctions) under Chapter VII of the Charter. The five permanent members of the Security Council — Russia, China, the United States, United Kingdom, and France — each have a veto over these decisions. Thus, Russia [was able to veto](#) a draft resolution condemning its own invasion in Ukraine.

The veto power of the permanent members does not extend to all Security Council decisions: procedural decisions simply require the affirmative vote of nine of the fifteen UNSC members. As a consequence, Russia's vote against [SC Resolution 2623 \(2022\)](#) on 27 February did not stand in the way of its adoption, as the resolution was a procedural decision referring the matter to the General Assembly under the "[Uniting for Peace](#)" procedure, which in turn on 2 March [adopted](#) by an overwhelming majority a [resolution](#) condemning the invasion. The General Assembly's powers to enforce such resolutions, however, are extremely limited. This post explores several potential options of dealing with the deadlock in the Security Council — and argues that none of them are viable.

The UN Charter requires members of the Security Council to abstain from voting when the Council is dealing with a dispute to which they are a party. This duty, however, is limited to Chapter VI of the Charter, which deals with the pacific settlement of disputes; actions relating to international peace and security under Chapter VII are not subject to the requirement that parties to a conflict abstain from voting.

Another way of "dealing" with Russia in this case - though admittedly not the most subtle of ways - would be to expel Russia from the UN pursuant to Article 6 of the Charter for "persistent violation" of the principles of the Charter. The UN would not be the first international organization to take action along these lines: the Council of Europe [suspended](#) Russia's right of representation one day after the invasion. Expulsion from the UN, however, requires a vote by the General Assembly upon the recommendation of the Security Council - in which Russia, of course, has a veto. The rather radical option of amending the Charter to remove any reference to Russian membership runs into a similar issue: Article 108 of the Charter requires that any amendments be ratified by two thirds of the Members, including all five permanent members of the Security Council.

Perhaps the most creative option, which was suggested by several commentators - including [Ukrainian Permanent Representative](#) to the UN Sergiy Kyslytsya, former U.S. Ambassador to Russia [Michael McFaul](#), and political scientist [Ian Hurd](#) - is to establish that the Russian Federation is, in fact, not a permanent member of the UN Security Council at all. The argument comes down to a literal reading of [Article 23\(1\) of the UN Charter](#), which provides that "The Republic of China, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America shall be permanent members of the Security Council." There is an obvious issue here: the USSR ceased to exist in

December 1991, and the Charter has not been amended to reflect its dissolution (there is also the thorny issue of the reference to the “*Republic of China*”, but that is an entirely different matter). As Kyslytsya [argued](#) in front of the Security Council, Russia’s “membership is not legitimate, as the General Assembly never voted on its admission to the Organization following the fall of the Soviet Union in December 1991.”

Instead of regulating the succession of the USSR through a treaty or a resolution, Boris Yeltsin, the president of the Russian Federation - the USSR’s largest constituent country - simply informed the UN Secretary General on 24 December 1991 that “the membership of the Union of Soviet Socialist Republics in the United Nations, including the Security Council and all other organs and organizations of the United Nations system, is being continued by the Russian Federation (RSFSR) with the support of the countries of the Commonwealth of Independent States.” No other member of the UN — including Ukraine, which had been a member State in its own right since 1945 — objected to this continuation; [the Alma-Ata Protocols](#), signed by most former Soviet republics including Ukraine in December 1991, explicitly supported Russia’s continuation of the USSR membership.

Contrary to what has been suggested, this is not unusual: as set out by Schermers and Blokker’s *International Institutional Law*, the larger part of a State which splits into more parts is usually the successor, including within international organizations ([para. 105](#)). This happened during the break-up of the United Arab Republic in 1961 (succeeded by Egypt), the secession of Singapore from Malaysia in 1969, and the break-up of Serbia and Montenegro in 2006 (succeeded by Serbia). The simple continuation of the USSR’s membership by the Russian Federation is thus perfectly in line with long-standing practice within the UN. Ukraine itself, in fact, was never formally admitted to the UN after the dissolution of the USSR in 1991; as [pointed out](#) by former UN assistant secretary general for legal affairs Larry D. Johnson, the State of “Ukraine” simply continued the membership of the “Ukrainian Socialist Soviet Republic”, which had been admitted in 1945.

Yet even in the absence of a formal settlement of the USSR’s succession, retroactively reading the Charter in such a way as to exclude the Russian Federation from the Security Council would run afoul of thirty years of very consistent and unopposed practice. In its [1971 Advisory Opinion](#) on *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa)*, the ICJ dealt with South Africa’s argument that [SC Resolution 284 \(1970\)](#), in which the Security Council requested the Court’s opinion, was invalid as it was not adopted by an affirmative vote of all five permanent members (the UK and the USSR had abstained, as had Poland). Article 27(3) of the UN Charter explicitly requires that UNSC resolutions (other than procedural decisions) be adopted with “the concurring votes of the permanent members”. South Africa’s contention that this resolution could not have been adopted — as an abstention is not the same as a concurring vote — was in accordance with the literal text of the UN Charter.

The Court held, however, that “the proceedings of the Security Council extending over a long period” supported the argument that the Council had “consistently and uniformly interpreted the practice of voluntary abstention by a permanent member as not constituting a bar to the adoption of resolutions” and therefore “has been generally accepted by Members of the United Nations and evidences a general practice of that Organization” (*Namibia*, para. 22). A “consistent and uniform” interpretation by the Security Council of its own practice, *even if* in direct contradiction to the literal text of the Charter, could thus be accepted as law.

There has certainly been a consistent and uniform interpretation by the Security Council and by all other UN organs of accepting the Russian Federation as the continuing State of the USSR — a practice to which, as far as I can see, no other State, including Ukraine, had objected in thirty years. To suggest that this reading of the relevant Charter provisions, which is in conformity with the UN practice surrounding State succession and was supported (at the time) by the other States that came out of the dissolution of the USSR, could be overturned at a whim by a creative interpretation of the Charter is to undermine every remaining element of stability in the UN system.

I feel obliged to point out here that none of this is intended to justify in any way Russia's invasion of Ukraine. The invasion is an act of aggression, plain and simple, and a blatant violation of the UN Charter and many other rules of international law. Suggestions to remove Russia from the Security Council, however, are not only legally unfounded and unhelpful, but will distract from solutions in international law that could actually help Ukraine and the Ukrainian people. Yes, the UN system is dysfunctional in many ways — that does not mean that we should blow it up in a misguided attempt to save it.