# How to overcome veto power in the U.N. Security Council and/or expel RF from the U.N.

by Viktor Ageyev

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On the 77th Session of the U.N. General Assembly (UNGA 77) representatives of some states, including the United States and Ukraine, expressed the view that the Russian Federation, using the right of veto in the U.N. Security Council, commits crimes against international peace and security with impunity, and therefore some action must be taken to prevent the abuse of the right of veto, or even to remove the RF from the UN. However, no practical scenarios have been proposed to implement this.

This is indeed a very complex legal problem. We will propose legally possible scenarios for overcoming the right of veto and even for removing the RF from a seat of a permanent member in the U.N. Security Council.

## How to overcome the “veto power” in the UN Security Council

### Do we need votes of all permanent members to make a Security Council decision?

[Art. 27 (3) UN Charter](https://www.un.org/en/about-us/un-charter/chapter-5) states: > Decisions of the Security Council on all other matters shall be made by an affirmative vote of nine members including the concurring votes of the permanent members;

From January until August 1950 the Soviet Union had boycotted the UN Security Council in protest that the Republic of China and not the People’s Republic of China held a permanent seat on the Council.

During this period, SC decisions were made without the voice of the Soviet Union and they are accepted as legitimate, including by the Soviet Union itself.

Most important, this includes [UN SC Resolution #84 (1950) of 7 July 1950](https://en.wikipedia.org/wiki/United_Nations_Security_Council_Resolution_84):

Having determined that the invasion of South Korea by forces from North Korea constituted a breach of the peace, the Council recommended that the members of the United Nations furnish such assistance to the South Korean state as may be necessary to repel the attack and restore peace and security to the area. The Council further recommended that all members providing military forces and other assistance to The Republic make these forces and assistance available to a unified command under the United States of America.

In [1950](https://treaties.un.org/doc/publication/ctc/uncharter.pdf) art. 27 (3) had instead the word “nine” the word “seven”, but all other words were the same.

In [advisory opinion](https://www.icj-cij.org/public/files/case-related/53/053-19710621-ADV-01-00-EN.pdf) of 21 June 1971 ([Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)](https://www.icj-cij.org/en/case/53)) International Court of Justice (ICJ) stated:

“in order to prevent the adoption of a resolution requiring unanimity of the permanent members, a permanent member has only to cast a negative vote”

As we can see, both the practice of application of Art. 27 (3) and the judicial precedent converge on this issue.

### Nemo iudex in causa sua and obligatory abstention

[Art. 27 (3) UN Charter](https://www.un.org/en/about-us/un-charter/chapter-5) states: > in decisions under Chapter VI, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting.

Although, in practice, abstentions with reference to this article were previously only voluntary in Security Council (see John Chappell, Emma Svoboda [Must Russia Abstain on Security Council Votes Regarding the Ukraine Crisis?](https://www.lawfareblog.com/must-russia-abstain-security-council-votes-regarding-ukraine-crisis)), the word “shall” clearly indicates that abstention in these cases are obligatory and is not a subject to the discretion of the participant that is a party to a dispute.

See also Enrico Milano [Russia’s Veto in the Security Council: Whither the Duty to Abstain under Art. 27(3) of the UN Charter?](https://www.zaoerv.de/75_2015/75_2015_1_a_215_232.pdf)

Mandatory abstention from voting when considering a dispute by the Security Council is based on the generally recognized legal principle [nemo iudex in causa sua](https://en.wikipedia.org/wiki/Nemo_iudex_in_causa_sua) (“no-one is judge in his own cause”), see Jan Wouters, Tom Ruys [Security Council Reform: a New Vet for a New Century?](https://aei.pitt.edu/8980/1/ep9.pdf" \l "page=16)

And, even repeated violations of the provisions of this article in the past, in no way can serve as an excuse for not applying this clear and direct rule in appropriate cases.

According to [Rule 40](https://www.un.org/securitycouncil/content/rop/chapter-7) of U.N. Security Council Provisional Rules of Procedure (S/96/Rev.7):

“Voting in the Security Council shall be in accordance with the relevant Articles of the Charter and of the Statute of the International Court of Justice”

From this rule, the procedure for counting votes in the Security Council is not entirely clear.

And it can be assumed that the application of mandatory abstention from voting, in practice, is possible in the following ways:

1. The existence of a dispute and the obligation to abstain may be resolved by a separate procedural decision of the Security Council adopted in accordance with [Art. 27 (2)](https://www.un.org/en/about-us/un-charter/chapter-5) of the Charter, or
2. The text of the resolution under [Art. 27 (3)](https://www.un.org/en/about-us/un-charter/chapter-5) may contain a statement that there is a dispute and a certain state is a party to this dispute and therefore should abstain (and all members of the Security Council, except those who abstained, voted for this resolution)

And this can become a basic precedent returning to the Security Council the cardinal rule of natural justice “nemo iudex in causa sua”.

## Why RF is not a U.N. member

### Permanent members of the Security Council according to U.N. Charter

in [Art. 23](https://www.un.org/en/about-us/un-charter/chapter-5) of the UN Charter, the following are listed as permanent members of the Security Council:

“Republic of China, France, ***Union of Soviet Socialist Republics***, United Kingdom of Great Britain and Northern Ireland and United States of America”

### U.N. rules concerning the possibility to succeed a seat of a U.N. member

Established UN law is based on the principle that the successor state (which the Russian Federation is in relation to the USSR, as well as Ukraine and other former USSR members) has no right to *inherit* the place of the predecessor state in the UN.

The basis of this rule was laid in the [opinion](https://github.com/ageyev/un-su/blob/main/documents/un/1947-10-08_Sixth_Committee_Letter.pdf) of the Sixth (Legal) Committee of the U.N. General Assembly back in 1947:

“1. That, as a general rule, it is in conformity with legal principles to presume that a State which is a member of the organization of the United Nations does not cease to be a Member simply because its constitution or its frontier have been subjected to changes, and that the extinction of the State as a legal personality recognized in the international order must be shown before its rights and obligations can be considered thereby to have ceased to exist. 2. That when a new State is created, whatever may be the territory and the population which is comprised and whether or not they formed a part of a State Member of the United Nations, it cannot under the system of the Charter claim the status of a Member of the United Nations unless it has been formally admitted as such in conformity with the provisions of the Charter”

In other words, if there have been changes in the state (government, constitution, territory, name), but this state continues to exist as the same [international legal personality](https://en.wikipedia.org/wiki/International_legal_personality) (“*continuing state*” or “*continuator*”), then it continues to be a member of the UN.

But if there is a new state (a new international legal personality), even if it was previously part of a UN member state, then this new state must submit a new application for membership.

This rule has never been challenged in the UN, and the UN has always been guided by it, and there are a number of relevant precedents (see Scharf, Michael P. [Musical Chairs: The Dissolution of States and Membership in the United Nations](https://%20scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1338&context=cilj) Cornell International Law Journal, Volume 28, Issue 1 Winter 1995)

### Termination of the existence of the Soviet Union as an international legal personality, and, consequently, as an U.N. member.

On December 8, 1991, the Republic of Belarus, the Russian Soviet Federative Socialist Republic and Ukraine signed the Agreement on the Establishment of the Commonwealth of Independent States (also known as [“the Belovezh Accords”](https://en.wikipedia.org/wiki/Belovezh_Accords)), the main provision of which was:

the Union of Soviet Socialist Republics as an international legal personality and a geopolitical reality no longer exists.

On December 10 of the same year, it was ratified by Ukraine and the Republic of Belarus, and on December 12 by the RSFSR.

The cited provision of the said treaty does not allow any other interpretation, the USSR as an international legal personality, and therefore as a member state of the UN, has ceased to exist.

According to [Art. 15 (4)](http://www.constitution.ru/en/10003000-02.htm) of Constitution of the Russian Federation:

“international treaties and agreements of the Russian Federation shall be a component part of its legal system. If an international treaty or agreement of the Russian Federation fixes other rules than those envisaged by law, the rules of the international agreement shall be applied”

This means that the Belovezh Accords, after their ratification, also became part of Russian law.

The termination of the existence of the USSR as a state is also confirmed by a number of other documents.

In the [Alma-Ata declaration](https://web.archive.org/web/20010122033300/http://lcweb2.loc.gov/frd/cs/belarus/by_appnc.html) signed by heads of states of of the Commonwealth of Independent States, including Russian Federation, on December 21, 1991 was repeated the statement from the Belovezh Accords:

With the formation of the Commonwealth of Independent States the USSR ceases to exist.

The Soviet of the Republics of the Supreme Soviet of the USSR on its [last](https://history.wikireading.ru/333679) session on December 26, 1991 adopted [Declaration no. 142-N]:

“The Soviet of the Republics of the Supreme Soviet of the USSR, following the will of the supreme state organizations of the Republic of Azerbaijan, of the Republic of Armenia, of the Republic of Belarus, of the Republic of Kazakhstan, of the Republic of Kyrgyzstan, of the Republic of Moldova, of the Russian Federation, of the Republic of Tajikistan, of Turkmenistan, of the Republic of Uzbekistan and of Ukraine regarding the creation of the Commonwealth of the Independent States, stipulates that with the creation of Commonwealth of the Independent States, the Union of SSR ceases to exist as a state and as a international legal personality”

The proof that the Russian Federation (RSFSR) and the USSR are different international legal personalities is also the fact that even before the disappearance of the USSR, treaties were made between it and the RSFSR.

On December 4, 1991 was also signed an agreement [“On succession in relation to external state debt and assets of the USSR”](https://ru.wikisource.org/wiki/Договор_о_правопреемстве_в_отношении_внешнего_государственного_долга_и_активов_Союза_ССР) which was signed by states - former members of USSR, including RSFSR, and *by the USSR itself* - This clearly shows that RSFSR and USSR are not the same international legal personality, but two different personalities, which even had entered into agreements with each other.

### How the Russian Federation took the place of the USSR in the U.N.

As mentioned above, the Russian Federation, as the successor of the USSR, could in no way lawfully succeed its place in the UN.

After the disappearance of the USSR, its representatives in the UN realized that the state they represented no longer exists. Also, the rulers of the Russian Federation realized that, unlike Ukraine and the Republic of Belarus, they do not have UN membership.

Then the former representatives of the USSR in the UN and the leadership of the Russian Federation entered into a conspiracy, and, taking advantage of the lack of English texts of documents related to the collapse of the USSR in the UN, committed a fraud, declaring that the USSR continues to exist as an international legal personality under the new name “Russian Federation”

As Yulii Vorontsov, a former representative of the Russian Federation, and before that the USSR, at the UN later told in his memoirs:

“Our cooperation with leading Western countries and, first of all, with the United States, has turned out well. American lawyers suggested to us a very good legal option, according to which disputes about what belongs to the Russian Federation and what does not become pointless. They suggested that in our statement about the change of the name of the state, as we said at the time, it should be indicated that the Russian Federation is the continuator to the Soviet Union. This word”continuator" helped out a lot. The continuator, which means that the seat in the Security Council continues to belong to Russia. In fact, the whole process outwardly looked like a simple change of the tablet at the table of delegations in the General Assembly and in the Security Council. Instead of the “Soviet Union” sign, the “Russian Federation” appeared"

(Source: [From the archive of UN Radio: Ambassador Vorontsov on how Russia became the “continuator to the USSR”](https://news.un.org/ru/audio/2015/10/1030441), available in Russian only)

On 24 February 1991 permanent representative of USSR has informed the General Secretary, that the state, which he represented has changed its name to “Russian Federation”, he also has attached the letter from President Yeltsin, pretending that Yeltsin is the plenipotentiary head of the Soviet Union that changed its name. See [Telegram of the UN Secretary GeneralPerez de Cuellar to Security Council members with Yeltsin and Vorontsov letters attached](https://github.com/ageyev/un-su/blob/main/documents/un/1991-12-24_Telegram_of_Perez_de_Cuellar_with_RF_Letters_attached.pdf)

The implementation of this deception was facilitated by a number of factors:

* As already mentioned, there were no texts testifying to the cessation of the existence of the USSR at that time in the UN, and they were not at all in public access translated into English
* It was Vorontsov who chaired the Security Council at that moment
* December 24 is just Christmas Eve, and the first meeting of the Security Council at which Vorontsov sat with a sign “Russian Federation” was on December 31 - on New Year’s Eve.
* This fraud, at least according to Vorontsov’s memoirs, was carried out with the support of the United States, and the idea itself was invented by American lawyers.

### Ex injuria jus non oritur.

So, although the statement made by the permanent representative of the Soviet Union to the UN on December 24, 1991 that the USSR changed its name to “Russian Federation”, due to his authority to represent the USSR and the presumption that he is acting in [good faith](https://en.wikipedia.org/wiki/Good\_faith\_(law), did not raise doubts and objections at that time, was a lie, a fraud.

And though it was a successful froud at the time, according to one the basic principles of law [“ex injuria jus non oritur”](https://unterm.un.org/UNTERM/Display/record/UNHQ/ex_injuria_jus_non_oritur/C40ED8CCD326321A85256A0000075D40)(“right does not arise from injustice”)(see also [Anne Lagerwall on The Principle ex injuria jus non oritur in International Law](https://www.youtube.com/watch?v=gv8ruTYiG58)) it can not create any rights for the wrongdoer, neither the rights of a UN member, nor the rights of a permanent member of the Security Council.

## How to expel RF from the U.N.

### Recognition of the cessation of the existence of a UN member state.

In 1992, the Federal Republic of Yugoslavia (later known as “Serbia and Montenegro”) insisted on the continuing membership of the Socialist Federal Republic of Yugoslavia in the UN.

On September 19, 1992, the UN Security Council adopted [Resolution 777 (1992)](https://github.com/ageyev/un-su/blob/main/documents/un/1992-09-19_UN_SC_Resolution_777_1992_en.png) which recognized, that 1) the Socialist Federal Republic of Yugoslavia has ceased to exist, 2) therefore, the Federal Republic of Yugoslavia cannot continue automatically its membership in the UN.

On 22 September 1992, the General Assembly adopted [Resolution 47/1](https://github.com/ageyev/un-su/blob/main/documents/un/1992-09-22_UN_GA_Resolution_47-1_1992_en.png) with reference to the above-mentioned resolution of the RB, which also decided that the Federal Republic of Yugoslavia cannot continue automatically the membership of the former Socialist Federal Republic of Yugoslavia in the UN, must apply for membership as a new state, and before that must not take part in the work of the General Assembly.

Thus, the U.N. may decide that a certain UN member state has ceased to exist and does not have a continuing state.

There is another important precedent, when the General Assembly decided on who exactly had the right to represent a permanent member of the Security Council, without a prior decision of the Security Council on this issue.

### Expelling from a seat of the Security Council permanent member

There is another important precedent, when the General Assembly decided on who exactly had the right to represent a permanent member of the Security Council, without a prior decision of the Security Council on this issue: [General Assembly resolution 2758 (XXVI) of 25 October 1971 (Restoration of the lawful rights of the People’s Republic of China in the United Nations)](./Restoration%20of%20the%20lawful%20rights%20of%20the%20People's%20Republic%20of%20China%20in%20the%20United%20Nations)

The important thing here is that the General Assembly actually recognized that the place of permanent member of the Security Council was “unlawfully occupied” for more than 20 years (the government of Chiang Kai-shek completely lost control of mainland China in 1950, and the decision was made in 1971)

That is, the case of the Russian Federation is not the first case in the history of the UN when the seat of a permanent member was unlawfully occupied for decades.

The difference, however, is that the Chiangkai-shek government initially took this place in a legitimate way, and the Russian Federation through a fraud.

### Resolution on expelling RF from the U.N.

We believe that, based on the above precedents, the resolution of the General Assembly on expelling Russian Federation from the U.N. could look like this:

*The General Assembly*,

*Recalling* the UN Charter rules and principles of the international law concerning the succession and continuation of states, as well as concerning representation of states in UN, which, in particular, were expressed before in General Assembly Resolution [2758 (XXVI) of 25.10.1971](https://github.com/ageyev/un-su/blob/main/documents/un/1971-10-25_UN_GA_Resolution_2758_en.png), Security Council Resolution [777 (1992) of 19.09.1992](https://github.com/ageyev/un-su/blob/main/documents/un/1992-09-19_UN_SC_Resolution_777_1992_en.png) and General Assembly Resolution [47/1 of 22.09.1992](https://github.com/ageyev/un-su/blob/main/documents/un/1992-09-22_UN_GA_Resolution_47-1_1992_en.png)

*Considering* the Union of Soviet Socialist Republics as an international legal personality no longer exists, as it was clearly and unambiguously stated in [Belovezh Accords 1991](https://github.com/ageyev/un-su/blob/main/documents/cis/1991-12-08_Belovezh_Accords_text_en.md), ratified by states successors of the USSR, [including Russian Federation](https://raw.githubusercontent.com/ageyev/un-su/main/documents/russia/1991-12-12_ratification.jpg), and also declared in the [Alma-Ata Protocols 1991](https://github.com/ageyev/un-su/blob/main/documents/un/1991-12-30_Buravkin_to_UN.pdf), and confirmed by the [Declaration no. 142-N of the Soviet of the Republics of the Supreme Soviet of the USSR](https://en.wikisource.org/wiki/Declaration_no._142-N_of_the_Soviet_of_the_Republics_of_the_Supreme_Soviet_of_the_USSR),

*Recognizing* that there is no and can be no continuing state to the the USSR,

*Recognizing* that since the Union of Soviet Socialist Republics has ceased to exist, only four permanent members remain in the UN Security Council,

*Decides* to expel forthwith the representatives of the Russian Federation from the place of the Union of Soviet Socialist Republics, which they unlawfully occupy at the United Nations and in all the organizations related to it, including United Nations Security Council.

*Decides* that this Resolution shall not have retroactive effect, and shall not in itself entail the annulment or revision of Security Council Resolutions adopted to date.

*Proclaims* the desire to see Russia as a future member of the UN, provided that in the future it fulfills the conditions for membership provided for by the UN Charter, including the requirement to be a peace-loving state.

…th plenary meeting,

… October 2022

We think that such a resolution could be adopted on [Eleventh emergency special session of the United Nations General Assembly](https://en.wikipedia.org/wiki/Eleventh_emergency_special_session_of_the_United_Nations_General_Assembly)

Based on the above precedent with China, the adoption of such a resolution does not require a prior decision of the Security Council (although, as indicated above, the rule of mandatory abstention should be applied in this case, so the Russian Federation could not block such a decision)

A separate issue is whether a qualified majority or a simple majority in the General Assembly is enough to pass such a resolution. Based on previous practice, this issue is to be decided before the adoption of a resolution by a simple majority of votes.

So in the case of China, the [proposal](https://digitallibrary.un.org/record/3979592) that the issue should be decided by a qualified majority was rejected by the Assembly (see [General Assembly, 26th session : 1976th plenary meeting, Monday, 25 October 1971, Official records](https://digitallibrary.un.org/record/735611), § 388) (however, at the same time, they forgot about the [resolution](https://en.wikipedia.org/wiki/United_Nations_General_Assembly_Resolution_1668) of the General Assembly on the same issue adopted ten years before)

Thus, it is most likely that the proposed text of a resolution recognizing that the Soviet Union ceased to exist and deciding to remove the Russian government from its representation in the UN, can be adopted by a simple majority of votes, unless the General Assembly previously decides (by a simple majority) otherwise.

## Analysis of the arguments about the impossibility of removing the Russian Federation from the UN

### Decision of the Council of Heads of States of the Commonwealth Independent States of 21 December 1991.

Decision of the [Council of Heads of States of the Commonwealth Independent States](https://en.wikipedia.org/wiki/Council_of_Heads_of_State_of_the_CIS) was signed on 21 December 1991 in Alma-Ata along with others documents (including Alma-Ata declaration which proclaimed that “with the formation of the Commonwealth of Independent States the USSR ceases to exist”)

See: [European Commission for Democracy through Law: Agreements establishing the Commonwealth of Independent States](https://github.com/ageyev/un-su/blob/main/documents/cis/alma-alta-commonwealth-of-independent-states-december-1991.pdf) p. 151.

§ 1 of this decision stated that: > “The Commonwealth states support Russia in continuing the membership of the USSR in the UN, including permanent membership in the Security Council, and other international organizations”

Larry D. Johnson in his publication [“United Nations Response Options to Russia’s Aggression: Opportunities and Rabbit Holes”](https://www.justsecurity.org/80395/united-nations-response-options-to-russias-aggression-opportunities-and-rabbit-holes/) He refers to this Decision as a justification for the assertion that the Russian Federation is a continuing state to the USSR.

But, in fact, this document does not give grounds for such a conclusion.

This decision can only be considered as political support for the future membership of the Russian Federation at the U.N., possibly with obtaining a seat of a permanent member of the Security Council in the future.

But it does not in any way follow from this Decision that the Soviet Union did not cease to exist (as stated on the same day by the same persons In the [Alma-Ata declaration](https://web.archive.org/web/20010122033300/http://lcweb2.loc.gov/frd/cs/belarus/by_appnc.html))

Quite the contrary, this “support” itself proves that the USSR ceased to exist, because if the Russian Federation were really the same USSR, then such support is completely meaningless and unnecessary.

And, of course, it cannot be asserted that one of the CIS bodies had the authority to transfer a seat in the UN Security Council from one state to another, or in any way change the provisions of the UN Charter.

### Estoppel, lashes or acquiescence.

This is a quite sophisticated argument and deserves careful consideration.

Larry D. Johnson in the previously mentioned publication [“United Nations Response Options to Russia’s Aggression: Opportunities and Rabbit Holes”](https://www.justsecurity.org/80395/united-nations-response-options-to-russias-aggression-opportunities-and-rabbit-holes/) writes the following:

“It runs straight into what lawyers call a “laches” or “estoppel” problem or what lay people might call a “Speak now or forever hold your peace” problem"

“Speak now or forever hold your peace” is not exactly estoppel, it’s rather acquiescence.

Estoppel is a judicial device whereby a person may be estopped (i.e. ‘stopped’) from resiling from the existence of a particular state of affairs, due to his previous behavior or position.

But what is a “state of affairs” in this case? The question is not if the RF itself is a U.N. member. The Russian Federation has never declared that it is a member of the UN separate from the USSR, it has always claimed that it is the Soviet Union that changed its name and borders.

So the question is whether the Soviet Union has ceased to exist.

And if we understand the essence of the problem, then it becomes clear that it is the Russian Federation that loses the right to assert that the Soviet Union continues to exist, because of a number of international treaties signed by it.

That is, in this case, estoppel does not justify the presence of the Russian Federation in the UN, but quite the contrary.

But maybe even if the USSR ceased to exist, the Russian Federation should be considered a member of the UN?

The idea “if nobody objected for 30 years, RF should be considered a U.N. member” can be described not as ‘estoppel’, but rather as acquiescence (consent conferred from a juridically relevant silence)

But can acquiescence be applied here? We will refer to a very clear explanation of the scope of acquiescence in [The Scope of Acquiescence in International Law, by I.C.MacGibbon](https://heinonline.org/HOL/LandingPage?handle=hein.journals/byrint31&div=7):

“Acquiescence operates in the sphere to which the maxim *ex injuria jus non oritur* is least applicable, that is, where the vindication of a claim or course of action depends on the consent of the States affected”

But in this case: 1) As mentioned above, it is precisely that the principle *ex injuria jus non oritur* applies, since fraud has (has) taken place. 2) Who exactly are the permanent members of the UN Security Council, in no way depends on the consent of the States affected, since their list is prescribed in Art. 23 of the UN Charter

There is also no [usucaption](https://en.wikipedia.org/wiki/Usucaption)(a method of acquiring property by occupying it uninterrupted for a certain period of time) regarding the seat of a U.N. This is clearly demonstrated by the resolution of the General Assembly on expelling the Chiang Kai-shek government from the UN. And even if it were, the principle “ex injuria jus non oritur” would prevent it from being applied here.