



By: Tomorrow's Affairs Staff

Shortening the path to Russia's expulsion from the UN Security Council



On October 1, by a majority vote of UN members, Russia was expelled from the governing council of the International Civil Aviation Organization. This UN body, based in Montreal, accepted the arguments of Western countries that Russia was illegally confiscating planes, which Moscow denied, but at the same time fell short of the votes needed to stay on the International Civil Aviation Organization's 36-nation governing council.

This decision brings back into focus the issue of Russia's membership in the UN and its important bodies and agencies. Due to the aggression against Ukraine, Russia was already suspended from the UN Human Rights Council on April 7. Russia's membership in the UN Food and Agriculture Organization (FAO) was also contested in June, when the President of Ukraine, Volodymyr Zelensky, presented that proposal to the FAO Assembly members.

He demanded expulsion of Russia from the organization, blaming Moscow for spurring the global grain crisis by invading his country. Russia's membership in another important UN agency, the World Health Organization, was under threat at the annual Assembly of this organization at the end of May in Geneva, when a resolution was adopted which condemns in the strongest terms Russian Federation military aggression against Ukraine, including attacks on healthcare facilities. The resolution appeared to raise the possibility of stripping away some WHO membership and voting rights, noting a 10 May resolution of WHO's Regional Committee for Europe which called on the organisation to "consider temporarily suspending all regional meetings in the Russian Federation." WHO's report on the war on 26 May reported 252 "attacks on health." But the WHA resolution also raised the matter of third countries suffering from hunger because of Russia's Black Sea blockade.

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After these expulsions and threats of expulsions, how close or far is Russia really from the big expulsion - from the Security Council and even from the UN?

This issue appeared at the recent general debate of the 77th UN General Assembly. Experts agree that there is no mechanism to remove a permanent member of the UN Security Council written in the documents of the World Organization, nor have there been any cases of a member of the UN being excluded. But, at the same time, they say that several indirect options open the possibility for Russia to be removed from the top of the UN, and even from its membership.

According to Dan Maurer, assistant professor of Law, U.S. Military Academy at West Point, Russia has the "bizarre power to act like a criminal defendant who, with farcical impunity, single-handedly vetoes his own indictment or refuses to submit to the sentence the jury hands down upon convicting him". Professor Maurer, however, mentions the amendment to the UN Charter as an obvious mechanism for the expulsion of Russia - "The obvious mechanism would be to amend" the U.N. Charter to pointedly strike Russia from its permanent council seat or its membership in the General Assembly.

This path, however, is merely a tempting mirage. While an amendment (**according to Article 108**) requires only two-thirds of the organization's members to ratify it, the amendment still requires unanimous consent of the permanent members of the Security Council. However, Professor Maurer refers to an old decision of the UN's International Court of Justice from 1962, by which the court defined the mutual relations between the General Assembly and the Security Council, which, according to him, could be applied in the possible decision on the expulsion of Russia.

Part of that decision reads "In connection with the suspension of rights and privileges of membership and expulsion from membership under Articles 5 and 6, it is the Security Council which has only the power to

recommend and it is the General Assembly which decides and whose decision determines status; but there is a close collaboration between the two organs". That's why, Maurer interprets, Article 6, which states that the expulsion of a member of the UN must be read as meaning something more than just an occasion for the General Assembly to vote on a nation's expulsion only when the Security Council has first raised it, debated it and recommended it. It does not "read" and this ICJ opinion makes the point clear that the General Assembly may only vote on expulsion after a preceding vote by the Council, and one that positively recommended that punitive action.

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Other experts see room for the expulsion of Russia from the Security Council, and even from the UN, on a procedural level. They go back to 1991, when Russia succeeded to the Soviet Union's seat in the UN, including its permanent membership on the Security Council in the United Nations. Now it is possible to challenge that legacy, which Russia took over in 1991. Dr Thomas D. Grant, a Fellow of the Lauterpacht Centre for International Law at the University of Cambridge, proposes Russia's expulsion in several steps: The first step would be for Ukraine to issue credentials to one of its diplomats to fill the USSR seat. No doubt Russia's representative would insist that he, not a Ukrainian, keep the seat.

Other Council Members, however, would be free to object to the Russian's presence. An objection would give rise to a matter requiring settlement. Here, the Security Council's seldom-noted credentials rules would come into play. Under Rule 17 of the Security Council's Provisional Rules of Procedure: any representative on the Security Council, to whose credentials objection has been made within the Security Council, shall continue to sit with the same rights as other representatives "until the Security Council has

decided the matter" (emphasis added). So Russia's representative would "continue to sit" on the Council until a decision was made. Deciding the matter i.e., deciding an objection to the credentials of a Security Council representative falls under the rules on procedural matters. These are decided by a nine-member majority on the 15-member council. Under UN Charter Article 27(2), such matters cannot be vetoed. Russia would be powerless.

The whole matter rested on whether Russia was the "Successor State" or a "Continuing State" under international law.

A similar path is proposed by Andrew MacLeod, visiting professor at the King's College Department of War Studies, recalling that Russia would not be the first permanent member of the Security Council whose status was changed. Before Russia, it was China in 1971, when UN membership was recognized by the communist government in Beijing, instead of the one in Taipei. But why did Russia get the USSR's seat following its dissolution?

In 1991, the **Alma-Ata Protocol** was signed by the majority of Soviet republics, declaring the end of the Soviet Union and agreeing that Russia would take over the USSR's seat. Russia then wrote to the UN requesting that the name USSR be amended to Russian Federation and that nothing else would change. International lawyers have questioned the legality of this and have debated whether the dissolution of the USSR should have dissolved its seat at the Security Council. This is what Ukraine is now arguing. The whole matter rested on whether Russia was the "Successor State" or a "Continuing State" under international law.

The discussion about the expulsion of Russia from the Security Council, and even from the UN itself, is no longer just academic, it has become practical and political, which means that its realisation is no longer a hypothesis, but a matter of decision by UN members. In front of all of them is Article 6 of the UN

Charter, which states that a country "which has persistently violated the principles contained in the present charter" can be excluded from the UN. In that description, most UN members recognise Russia and its aggression against Ukraine.