

THE RUSSIAN-UKRAINE WAR WITHIN THE FRAMEWORK OF INTERNATIONAL LAW: EVALUATING THE PROHIBITION OF THE USE OF FORCE AND THE RIGHT TO SELF-DEFENCE BY STATES

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Abstract

This paper examines the Russian-Ukraine conflict in the context of international law. Specifically, the paper analyses the prohibition of the use of force and the right to self-defence by states under international law. The conflict between Russia and Ukraine has been ongoing for over 9 years and has resulted in significant political and military tensions. The paper evaluates the legal implications of this conflict and the extent to which international law has been respected by both sides. It also considers the role of international organizations, such as the United Nations, in addressing the conflict and promoting a peaceful resolution. The findings of this research suggest that the Russian-Ukraine conflict highlights the need for greater adherence to international law and stronger enforcement mechanisms to prevent the use of force and promote peaceful conflict resolution.

Keywords: Prohibition of the use of force, Right to self-defence, International law, Russian-Ukraine war, Human rights.

1. Introduction

International law took a major transition from the law of war to the regulation of peaceful co-existence amongst states. Throughout this time, both the prohibition against using force and the evolution of the approval of using force, particularly armed force, took place. The law accepted the use of armed forces as a decision of a sovereign state, while the *jus ad bellum* was upheld as element of the capacity of the state and international personality.

For purposes of historical background, it seems necessary to refer to the above-mentioned philosophical doctrine of just war (*bellum iustum*) and unjust war (*bellum iniustum*). The inception of this doctrine was spearheaded by the Christian concept of natural law – a reference which seems entirely appropriate. Modern legal concepts legitimising the use of armed force comprise of the features of the Christian doctrine of just war whose expanded form and moral rationale was formulated by St. Thomas Aquinas. Aquinas revised the Augustinian theory of war and included the doctrine of just war in moral theology. Indeed, assuming that the underlying principle of natural law – *bonum est faciendum et prosequendum et malum vitandum* – is a moral one, it was obvious and reasonable for Thomas Aquinas to base his just war theory on moral criteria. Therefore, the doctrine posits that, a war could be just if the following three conditions were satisfied: firstly, it was waged by a sovereign authority (*auctoritas principis*); secondly, it

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had a just cause (*recta causa*); and thirdly, both belligerents had righteous intentions (*recta intentio*).¹

However, while the doctrine promoted just war, it failed to look at the permissibility of same, when to, and when not. It was during 19th century, at the time when sovereign nation states were being created, the classical form of the doctrine of just and unjust war was rejected. Therefore, the concept of just war, has been seen as authorised and justified resistance to aggression.

The Russian Parliament on the 16th of February, 2022, requested President Vladimir Putin to recognize two states in eastern Ukraine as independent, same being held by Russian-backed armed groups.² President Putin signed two decrees recognizing the two areas on the 21st of February, 2022, and submitted same to the Parliament for ratification. As a corollary to the ratification, Putin issued orders to Russia's armed forces, which have been in standby at the border with Ukraine for months, to carry peacekeeping in Donetsk People's Republic (DNR) and Luhansk People's Republics (LNR).

On the 22nd of February, 2022, the upper Chambers of the Parliament (the Federation Council), approved Putin's request to deploy the armed forces. Accordingly, Putin declared that the boundaries of the territory whose independence Russia has recognized, included substantial areas of Donetsk and Luhansk regions that are under the control of the Ukrainian.³

2. Brief Historical Background of the War

The conflict between Russia and Ukraine has its roots in a complex history of territorial disputes, cultural differences, and political tensions.⁴ The following provides a brief historical and background analysis of the conflict.

In 1991, the Soviet Union dissolved, and Ukraine gained independence.⁵ However, the relationship between Ukraine and Russia remained complicated due to Ukraine's shared history with Russia and its large Russian-speaking population. Additionally, the issue of Crimea, a peninsula located in the Black Sea and historically part of Russia, remained a contentious issue.

The conflict between Russia and Ukraine began in 2014 when pro-Russian separatists seized control of the Crimean Peninsula in Ukraine.⁶ The separatists, with the support of Russian military personnel, held a referendum on independence, which was not recognized by the

1 Tadeusz Gadkowski, 'Prohibition of the Use of Force and Legality of Humanitarian Intervention' (2016) 13 *Acta Iuris Stetinensis* 5.

2 Human Rights Watch, 'Russia, Ukraine & International Law: On Occupation, Armed Conflict and Human Rights' (*Human Rights Watch* 23 February 2022) <<https://www.hrw.org/news/2022/02/23/russia-ukraine-international-law-occupation-armed-conflict-and-human-rights>> accessed 22 February 2023.

3 Ibid.

4 Fenghua Liu, 'Russia's Foreign Policy over the Past Three Decades: Change and Continuity' (2022) 2(1) *Chinese Journal of Slavic Studies* 86.

5 Andreas Kappeler, 'Ukraine and Russia: Legacies of the Imperial Past and Competing Memories' (2014) 5(2) *Journal of Eurasian Studies* 107.

6 Jonathan Masters, 'Ukraine: Conflict at the Crossroads of Europe and Russia' (*Council on Foreign Relations* 11 October 2022) <<https://www.cfr.org/background/ukraine-conflict-crossroads-europe-and-russia>> accessed 31 January 2023.

international community. The referendum was followed by the annexation of Crimea by the Russian Federation, which was also not recognized by the international community.⁷

The conflict escalated in eastern Ukraine, where pro-Russian separatists declared independence from Ukraine and seized control of several cities. The Ukrainian government responded with military force, leading to a full-scale conflict between Ukrainian forces and separatist rebels. The conflict has resulted in thousands of deaths, displacement of civilians, and significant political and economic tensions between Russia and Ukraine.⁸

Under international law, the use of force by states is prohibited, except in cases of self-defence or with the authorization of the United Nations Security Council.⁹ The annexation of Crimea by Russia and its military intervention in eastern Ukraine are clear violations of this legal framework.

Furthermore, the forcible acquisition of Crimea by Russia infringed upon Ukraine's territorial integrity and sovereignty, contravening a fundamental principle of international law.¹⁰ The international community has overwhelmingly denounced the annexation of Crimea, leading to the imposition of sanctions by numerous countries against Russia in response.¹¹

The historical background and overview of the Russian-Ukraine conflict highlights the challenges of enforcing international law in the context of state conflicts.

3. The Legal Framework on the Use of Force in International Law

The prohibition of the use of force has been a trending issue in international law, long before the Russian-Ukrainian war. Instances of state aggression have been witnessed throughout history, underscoring the enduring significance of this subject. For instance, in 1980, Iraq's invasion of Iran aimed to gain control of the oil-rich Khuzestan province, resulting in a protracted and devastating conflict that reached a stalemate in 1988.¹² Furthermore, in 2003, the United States

⁷ Associated Press, 'Russia's Sergei Lavrov: The US Cannot Change the Cold War in Its "Genetic Code"' *The Guardian* (27 September 2014) <<https://www.theguardian.com/world/2014/sep/27/russia-lavrov-us-cold-war-ukraine-unique-united-nations>> accessed 26 February 2023.

⁸ BBC, 'Ukraine Conflict: What We Know about the Invasion' *BBC News* (24 February 2022) <<https://www.bbc.com/news/world-europe-60504334>> accessed 31 February 2023.

⁹ Charter of the United Nations (adopted 26 June 1945) 1 UNTS XVI, art 51; Yaroslav Shiryayev, 'The Right of Armed Self-Defense in International Law and Self-Defense Arguments Used in the Second Lebanon War' (2008) 3 *Acta Societatis Martensis* 80 <<https://corteidh.or.cr/tablas/r30421.pdf>> accessed 30 March 2023.

¹⁰ United Nations General Assembly, 'United Nations General Assembly: Resolution 2625 (XXV) Declaration on Principles of International Law Concerning Friendly Relations and Co-Operation among States in Accordance with the Charter of the United Nations' (*The American Journal of International Law* January 1971) 243.

¹¹ Council of the European Union, 'EU Restrictive Measures against Russia over Ukraine (since 2014)' (www.consilium.europa.eu 15 March 2023) <<https://www.consilium.europa.eu/en/policies/sanctions/restrictive-measures-against-russia-over-ukraine/>> accessed 29 March 2023.

¹² Ray Takeyh, 'The Iran-Iraq War: A Reassessment' (2010) 64(3) *The Middle East Journal* 365.

initiated military action against Iraq without the approval of the UN Security Council, culminating in the withdrawal of US troops in 2011.¹³

The use of force by states is governed by a complex legal framework under international law. The main sources of international law governing the use of force are the United Nations Charter, customary international law, and the principles of ‘*jus ad bellum*’ and ‘*jus in bello*’.

The use of force by states is strictly regulated under international law and it is provided for in Article 2(4) of the Charter of the United Nations (UN), which declares that “(a)all Members shall 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”.¹⁴ The essence of this declaration is clear, but suffice to add that, it ensures the territorial sovereignty and existence of member states.

Customary international law also plays a significant role in governing the use of force by states. Customary international law refers to the unwritten rules and practices that have developed over time and are widely accepted by the global community as binding.¹⁵ The prohibition on the use of force in international relations, as stated in Article 2(4) of the United Nations Charter, is considered a fundamental element of customary international law.

‘*Jus ad bellum*’ and ‘*jus in bello*’ are two principles of international humanitarian law that also play a role in regulating the use of force by states.¹⁶ *Jus ad bellum* refers to the principles that govern the resort to force, while *jus in bello* refers to the principles that govern the conduct of hostilities once force has been used.¹⁷ These principles are set out in various treaties and conventions, including the Hague Conventions of 1899 and 1907,¹⁸ and the Geneva Conventions of 1949¹⁹.

The provision of article 2(4) of the Charter of the UN has been a point of controversy in so far as its interpretation is concerned.²⁰ The crux of this controversy is centred on the exceptions created in Article 51 of the Charter, and the provisions dealing with the collective security measures in

13 Encyclopedia Britannica, ‘Iraq War | Summary, Causes, Combatants, & Facts’, *Encyclopædia Britannica* (2018) <<https://www.britannica.com/event/Iraq-War>> accessed 26 September 2023.

14 Charter of the United Nations, art. 2(4), June 26, 1945, 59 Stat. 1031, 1 Bevans 1153, 33 U.N.T.S. 993.

15 International Committee of the Red Cross, ‘Customary Law’ (*International Committee of the Red Cross* 28 July 2014) <<https://www.icrc.org/en/war-and-law/treaties-customary-law/customary-law>> accessed 17 January 2023.

16 C Stahn, ‘“Jus Ad Bellum”, “Jus in Bello” . . . “Jus Post Bellum”? -Rethinking the Conception of the Law of Armed Force’ (2006) 17 *European Journal of International Law* 921 <<https://academic.oup.com/ejil/article/17/5/921/2756298>> accessed 18 February 2023.

17 Ibid.

18 Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907.

19 Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 12 August 1949, 75 UNTS 35; Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 12 August 1949, 75 UNTS 85; Geneva Convention (III) relative to the Treatment of Prisoners of War, 12 August 1949, 75 UNTS 135; and Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, 12 August 1949, 75 UNTS 287.

20 ‘Use of Force under International Law’ (*Justia* 2021) <<https://www.justia.com/international-law/use-of-force-under-international-law/>> accessed 2 May 2023.

Chapter VII by the Security Council. Even if the international Court of Justice (ICJ), has made certain pronouncement on prohibition of the use of force in Military and Paramilitary use of force in the *Nicaragua case*,²¹ such pronouncement did not conclusively dealt with the subject matter. Given that the Charter is a major document of the United Nations, has generated issues of interpretation just like a national constitution. In accordance with Article 53 of the Vienna Convention on the Law of Treaties, this principle is identified as a peremptory norm, categorized as *jus cogens*, and consequently, it establishes obligations that apply universally to all states, known as *erga omnes* obligations.²²

4. Prohibition of the Use of Force as a Pre-emptory Norm

The prohibition of the ‘use of force’ is widely considered to be a peremptory norm of international law, also known as *jus cogens*. Peremptory norms, often known as *jus cogens*, are foundational tenets of international law that possess a binding nature on all states and are not susceptible to derogation by treaties or other forms of agreement.²³

The prohibition of the “use of force” is considered a peremptory norm because it is a foundational principle of the international legal order.²⁴ The norm is based on the principle of state sovereignty, which is a cornerstone of international law.²⁵ The utilization of coercive measures by a state towards another state violates the fundamental concept of sovereignty and poses a significant threat to the sustainability of the international framework.²⁶ As such, the prohibition of the ‘use of force’ is seen as a fundamental principle of international law that cannot be violated.

On the 26th of June, 1945, the United Nations established the normative nature of the restrictions of the ‘use of force.’²⁷ This establishment was indeed, a development on previous legislation feeling on the stages of limiting the permissibility of war and total prohibition.

This prohibition was formulated in the 1928 Kellogg–Briand Pact earlier, which banned war as a way of solving international disputes among States and an instrument of national policy in their relations with one another.²⁸ This pact is justifiably considered landmark international regulation

²¹ Military and Paramilitary Activities in and Against Nicaragua (*Nicaragua v United States of America*) [1986] ICJ Rep 14, para.176.)

²² This categories rights in order of hierarchy in international law. See R. Kwiecień, *Teoria ifilozofiiprawamiędzynarodowego*. Problemywybrane, Warszawa, 2011, p. 172.

²³ William E Conklin, ‘The Peremptory Norms of the International Community’ (2012) 23(3) *European Journal of International Law* 837 <<https://doi.org/10.1093/ejil/chs048>> accessed 31 December 2022.

²⁴ James A Green, ‘Questioning the Peremptory Status of the Prohibition of the Use of Force’ (*EJIL: Talk!* 17 March 2011) <<https://www.ejiltalk.org/questioning-the-peremptory-status-of-the-prohibition-of-the-use-of-force/>> accessed 25 January 2023.

²⁵ The Vienna Convention on the Law of Treaties, 23 May 1969, 1155 UNTS 331, Art. 45, develops this idea in *Formation of States in International Law* (2006), at 102.

²⁶ *Ibid.*

²⁷ Helmersen, Sondre Torp, ‘The Prohibition of the Use of Force as Jus Cogens: Explaining Apparent Derogations’ (2014) 61 *Netherlands International Law Review* 167193 <<https://www.cambridge.org/core/article/prohibitionoftheuseofforceasjuscogensexplainingapparentderogations/BB795645B6C87EABAC3F56178B154716>>.

²⁸ For the text of the Pact, see 94 LNTS 57. For the Polish text, see *Dz.U. (Journal of Laws)* of 1929, No 63, item 489. For a commentary, see e.g., M. Król, *Zagadnienie agresji w prawiemiedzynarodowym*, Wilno 1939, p. 40 et seq

that enabled the transition from the *jus ad bellum* to the *jus contra bellum*.²⁹ The UN Charter provides for an absolute prohibition of aggressive war, which forms the foundation of the modern international legal order as *ajus cogens* norm.³⁰

It should be noted that, the International Court of Justice's (ICJ) decision on the Nicaragua case³¹, has made this prohibition not only a treaty obligation, but also supported by customary law obligation. As listed in Article 2(3), the UN Charter repeats the obligation of settling disputes by peaceful means and, in fact, reinforces it by elevating the status of the principle of peaceful settlement of disputes to that of one of the fundamental principles of international law.

It has been established that, regardless of the wording of the prohibition, it is frequently considered that the above provision represents both a treaty and customary norm of modern international law a peremptory norm. It important to note that, this prohibition was repeated in similar terms in subsequent international documents adopted by the United Nations (UN), and especially in the above-mentioned resolutions of the UN General Assembly: UNGA Resolution 2131 (XX), UNGA Resolution 2625 (XXV), and UNGA Resolution 42/22.

The General Assembly, which is a significant branch of the UN, holds relevance in the interpretation of the 'use of force.' The competence of the Assembly to deal with issues of global security and peace took to rise, since the Nuclear weapons advisory opinion delivered by the ICJ(International Court of Justice). The resolution have the status of an *opinio juris*, even if it's not binding. Therefore, it is sacrosanct to consider a series of General Assembly resolutions as relevant to the interpretation of Article 2(4) of the UN Charter. Hence, the resolutions of utmost significance encompass the 1949 resolution pertaining to the Fundamentals of Peace, the 1970 Declaration on Friendly Relations,' and its '1974 Definition of Aggression.'³²

The Security Council possesses a very expansive role, it has some quasi-judicial role, in determining threats to peace, "breach of the peace and acts of aggression"³³ by virtue of chapter VII of the UN Charter, but the magnitude and plenitude of this power is not settled.

According to Christine Gray, the Security Council clearly has an important role, but there is controversy as to whether its findings are conclusive as to legality, illegality, and as to the content of the applicable norm".³⁴ There are some obvious difficulties when one takes into account that the ICJ (International Court of Justice) is intended to be the "principal judicial organ" of the UN.

29 R. Kwiecień, *Teoria ifilozofiiprawamiędzynarodowego*. Problemywybrane, Warszawa 2011, p. 200.

³⁰ Larry May and Andrew Forcehimes, *Morality, Jus Post Bellum, and International Law* (Cambridge University Press 2012).

³¹ *Ibid*, *Nicaragua v United States of Americacase*.

³² Jiuyong Shi, 'Prohibition of Use of Force in International Law' (2018) 17 *Chinese Journal of International Law* 1 <<https://doi.org/10.1093/chinesejil/jmy010>> accessed 2 September 2023.

³³ United Nations, 'What Is the Security Council? | United Nations Security Council' (*Un.org*2015) <<https://www.un.org/securitycouncil/content/what-security-council>> accessed 2 September 2023.

³⁴ Christine D Gray, *International Law and the Use of Force* (4th edn., Oxford University Press 2018) 17.

Generally speaking, the ICJ is yet to make certain the definition or jurisdictional competence of it, vis-a-vis the security council, however, it is save to submit that, the ICJ deals with legal aspects of a case, while security council is concerned with the political aspect. Therefore, we may conclude safely that, the both arms plays complementary roles in the UN. The ICJ has the jurisdictional competence to decide cases relating to Article 2(4), on all aspects, the best example; being the *Nicaragua case*.

It should be noted that, the Court have avoided making pronouncement on any issue that deals with Chapter VII of the “UN Charter,” same being within the jurisdiction of the “Security Council.” The Court has demonstrated this restraint for example, in the Armed Activities on the Territory of the *Congocase*,³⁵ the Court made no pronouncement on whether Uganda was guilty of aggression despite the request by the DRC.³⁶

Conventionally, due to the difficulty encountered in interpreting Article 2(4), the Courts and scholar alike, have resorted to State practices for this purpose. This has led to the recognition of exceptions which ought not to be contemplated at all, for instance, humanitarian intervention. Further, the use of state practices interpretation has triggered some general observations. First, excessive focus on the justification of state actions or use of force instead of focussing on the genuine controversy. For instance, the 1967 conflict between Israel and Gaza. The aforementioned tactics were based on the principle of pre-emptive self-defence, wherein the primary consideration was the state that initiated the attack. The approach was no means factual inclined, and reminded us to be careful of *opinio juris*.

The value of state practice is contingent upon the state's conviction that its actions are in accordance with its legal rights or obligations.³⁷ Hence, it is imperative to exercise considerable prudence when scholars employ State behaviour as a basis for endorsing, for instance, pre-emptive self-defence, despite the absence of any explicit assertion to that effect by the concerned State.

The significance of construing the prohibition of employing force as a peremptory norm carries substantial ramifications for the legal structure that governs the utilization of force. It means that the norm cannot be derogated from by treaty or other agreement and that it takes precedence over conflicting norms. This means that any use of force that violates the prohibition is illegal under international law, regardless of the circumstances.

4.1 Prohibition

The major issue revolving around Article 2(4) is, whether the Prohibition should be given a broad or narrow interpretation? The proponents of the narrow interpretation do so by relying on the concluding line of the Article. This is because Article 2(4) requires member States to refrain from the use or threat of coercion “against the territorial integrity or political independence of

³⁵ International Court of Justice, Armed Activities on the Territory of the Congo (*Democratic Republic of the Congo v Uganda*), Judgment, [2005] ICJ Rep 168.

³⁶ Jiuyong Shi, ‘Prohibition of Use of Force in International Law’ (2018) 17(1)*Chinese Journal of International Law* 1.

³⁷ Jiuyong Shi, ‘Prohibition of Use of Force in International Law’ (2018) 17 *Chinese Journal of International Law* 1.

any state, or in any other manner inconsistent with the purposes of the United Nations.”³⁸ The question that begs for answer is whether these words are words of limitation?

The ICJ has generally maintained a strict approach to Article 2(4) in some cases. It is concordant with the approach of the GA (UN General Assembly) in the meaning of Aggression and the Friendly Relations Declaration, both of which tend to exclude justifications for the use of coercion, rather than permit them.

Prior to the strict approach, the United Kingdom did canvass the narrow interpretation argument in the *Corfu Channel case*, in defence of its rights of intervention to collect evidence of mine laying.³⁹ There, the United Kingdom claimed that its actions in Albanian waters had merely been for the purpose of collecting evidence, and had not therefore threatened territorial integrity or political independence.⁴⁰ In its response, the Court stated that it could only view the alleged right of intervention as a manifestation of an approach of force, the likes of which have historically given rise to the gravest abuses and which cannot, regardless of the current flaws within international organization, seek a place in the framework of international law.⁴¹ Intervention is possibly even less permissible in the specific form it would take in this case, as it would be confined to states with the greatest influence and could easily lead to the subversion of universal justice by itself.⁴²

The narrow understanding of Article 2(4) gained credence in the Entebbe incident. In 1976, the Israeli military conducted an operation at the Entebbe Airport in Uganda to rescue captives, including 92 Israeli nationals, from a hijacked plane.

Israel's adoption of a narrow comprehension of Article 2(4) and the United States' assertion that Uganda's sovereignty breach was only transient met with resistance in the Security Council. Similarly, the United States presented a similar rationale for its intervention in Grenada, but this argument garnered little support and failed to gain sympathy.

Considering these, historical instances and the evidence found in the *Travaux Préparatoires*, it is advisable to veer away from a narrow approach. Instead, a broader interpretation should be embraced, particularly given the presence of the concluding phrase, "or in any other manner inconsistent with the purposes of the United Nations." This broader perspective aligns with the consistent stance of states and reflects the overarching goals and tenets of the United Nations, which include the 'maintenance of international peace and security' as well as the concept of sovereignty and equality among states.

³⁸ International Committee of the Red Cross, 'Customary Law' (*International Committee of the Red Cross* 28 July 2014) <<https://www.icrc.org/en/war-and-law/treaties-customary-law/customary-law>> accessed 17 January 2023.

³⁹ Michael Waibel, 'The Corfu Channel Case' (*Papers.ssrn.com* 30 August 2010) <<http://ssrn.com/abstract=1919599>> accessed 31 March 2023.

⁴⁰ *Corfu Channel Case (United Kingdom v Albania)*, Merits, [1949] ICJ Rep 4.

⁴¹ *Ibid.*

⁴² Mansour Fallah, 'The Admissibility of Unlawfully Obtained Evidence before International Courts and Tribunals' (2020) 19 *The Law & Practice of International Courts and Tribunals* 147 <<https://doi.org/10.1163/1571803412341420>> accessed 4 September 2023..

For the sake of providing a comprehensive view of the issue, A. Jacewicz's monograph conducted a thorough analysis of the topic, ultimately permitting both narrow and broad interpretations of the term "force." According to Jacewicz's analysis, no particularly compelling reasons or arguments emerged to conclusively favour one of the two options. Taking a teleological perspective and considering the overarching primary objective of the UN to maintain peace and security, alongside adopting a systematic interpretation, the author settles for a broad interpretation in favour of the term "force."⁴³

This view appears to be confirmed in some of the resolutions of the General Assembly of the UN. The most critical example is the "Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations."⁴⁴ The Declaration is a codification of many legal principles delaying with the peaceful co-existence, among which the principle prohibiting the threat of physical coercion takes a particularly prominent position.⁴⁵

The Charter of the UN explicitly defined the universal nature of the principle by obligating all states to refrain from using or threatening the use of force toward the sovereignty or political autonomy of any other nation, or to act in any other way that is incompatible with the purposes of the UN.

In the provisions concerning the prohibition of interference in the internal affairs of States, the Declaration assumes the broad interpretation of the term "force", and thus provides that: "No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind". In Article 32 of the 'Charter of Economic Rights and Duties of States,' adopted on 12 December 1974.⁴⁶ it provides that: "No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights". The above observations suggest one additional comment.

Therefore, it should be noted that, the principle prohibiting the "threat or use of force is obviously related to the other fundamental concepts of international law specified in the UN Charter, and particularly in the provisions of Article 2. This is apparent in regards to the stipulations outlined in the 1970 Declaration, which specifically demonstrate the rule of non-interference in the internal affairs of sovereign states. It has been opined by some Writers that, even if economic force is not within the definition of force in 'Article 2(4),' it clearly falls within the definition of Article 2(7), dealing with non- interference in the domestic affairs of States.⁴⁷

⁴³ J. Symonides, *Zasada powstrzymywania się państwo w stosunkach międzynarodowych od uciekania się do groźby lub stosowania siły*, *Zeszyty Naukowe Uniwersytetu Mikołaja Kopernika w Toruniu* 1969, Vol. 37, p. 71 et seq.

⁴⁴ UN General Assembly (25th Sess.: 1970), 'Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations.' (1971) <<https://digitallibrary.un.org/record/202170>> accessed 2 September 2023.

⁴⁵ J. Symonides, *Zakaz użycia siły we współczesnych stosunkach międzynarodowych*, "Stosunki Międzynarodowe" 1990, Vol. 11, p. 11 et seq.

⁴⁶ UNGA Res. 3281 (XXIX).

⁴⁷ W. Czaplinski, A. Wyrozumski, *Prawo międzynarodowe*..., p. 684; T. Gadkowski,

Also, the fact that the fundamental regulations of international law prohibits the use of indirect force, understood as a state's involvement in the use of direct force by another State, grounds another argument in favour of such Interpretation.

These are mainly, albeit not only, situations where a State allows its territory to be used for armed action against a third State. The prohibition of the 'use of force' is clearly articulated in the aforementioned UN GA Resolution 2625 (XXV), specifically in the section pertaining to this ban. According to the text, it is stated that each sovereign nation bears the responsibility of abstaining from organizing, inciting, aiding, or engaging in acts of internal conflict or acts of terrorism in another nation. Additionally, they must not consent to organized activities within their own territory that are aimed at carrying out such acts, particularly when these acts involve the use or threat of force. The ICJ specifically referred to these provisions in the above-quoted judgement in the Nicaragua case, when the Court determined the extent of the prohibition of the recourse of force in customary law.⁴⁸

The phrasing of Article 4 (2) of the Charter (UN) permits the assertion that an examination of the extent of the prohibition on the threat or employment of force requires reference to the specific objectives of the United Nations, which are primarily focused on the preservation of global peace and security. In light of the prevailing circumstances, it appears necessary to analyse the particular actions undertaken by nations in relation to the utilization of force, particularly armed force. Furthermore, the broad definition of the prohibition of "threat or use of force," as adopted in the Charter, does not imply absolute prohibition. However, the utilization of force is deemed lawful solely within the parameters delineated in the Charter. They instances are: 'individual or collective self-defence' (Article 51), 'use of force' as part of the Security Council sanctions regime (Article 42), and 'the use of force' against enemy States from the Second World War (Article 53).

Antonio Cassese noted that, the fundamental prerequisite for a given instance to ground the use of force to be deemed legal and legitimised is conformity with the Charter.⁴⁹ This is the restrictive interpretation of the prohibition provided for in Article 2 (4) of the Charter, which limits States' ability to implement the '*jus ad bellum*' to the situations enumerated in the Charter.⁵⁰

It has been contended that the doctrine of just war and claim that the provisions of the Charter opened up a possibility of "lawful war," a war that qualifies for all three exemptions to the imperative prohibition of the application of force is true.⁵¹

There is a different interpretation of the Prohibition in Article 2(4) 1, it interprets the Article literally, thus the application of force will be unlawful only if directly violated chapter 2 of UN Charter. In reality, the latter interpretation allows States to undertake and legalise a far wider

⁴⁸ ICJ Reports 1986, p. 126. For a commentary, see W. Czapliński, A. Wyrozumka, *Prawomiędzynarodowe...*, p. 862.

⁴⁹ R. Kwiecień, *Teoria ifilozofia...*, p. 201.

⁵⁰ W. Czapliński, *Interwencja w Iraku z punktu widzenia prawamiędzynarodowego*, "Państwo i Prawo" 2004, Vol. 1, p.

⁵¹ For instance, R. Kwiecień, *Aksjologia...*, p. 74; the author refers to J.L. Kunza, *Bellum iustum and bellum legale*, "American Journal of International Law" 1951, Vol. 3, Issue 45, p. 528.

catalogue of actions involving the application of force. In the perspective of the international practice, it would be justified to say that this interpretation is broader than *de jure* exceptions to the principle restricting the application of armed force. According to that practice, the catalogue of *de facto* exceptions is considerably wider and reflects new trends in the use of force, the legality and legitimacy of which is in the process of being justified by emerging legal concepts. One of such concepts is the possibility of legalising the application of armed force by a Nation or Nations as a form of intervention (*interventio*).

4.2 Exceptions

The acknowledgment of the inalienable right of states to engage in self-defence in the event of an armed attack is enshrined in Article 51 of the Charter. This principle is fundamental in international law but comes with limitations. One significant issue is the absence of a precise and unambiguous delineation for "armed attack," leading to potential disputes in interpreting this provision. Additionally, Article 51 emphasizes that self-defence is only permissible unless the Security Council of the UN intervenes to uphold global peace and security. This implies that the application of force should be temporary, and states should seek Security Council authorization whenever feasible. States exercising self-defence are also required to report their actions to the Security Council for transparency and assessment.

Article 42 grants the Security Council substantial authority to use military to uphold or reinstate global peace and security. This broad power is essential for addressing threats to global peace but raises concerns about potential misuse or overreach. The decision to resort to military force under Article 42 is dependent upon the Security Council's determination that non-forceful measures (as outlined in Article 41) are inadequate or have proven ineffective. This determination can be contentious, influenced by political considerations.

Article 53 addresses regional arrangements and their role in enforcement actions. It acknowledges the importance of regional arrangements in upholding security and peace but underscores the overarching authority of the Security Council. Balancing regional and international actions can be challenging. Article 53 also provides an exception for enforcement actions against enemy states without Security Council authorization under specific circumstances, primarily related to post-World War II arrangements. The applicability and relevance of this provision in contemporary international relations could be determined by scrutiny.

5. Russo-Ukrainian War and the Right to Self Defence

5.1 Individual Self Defence

The principal rationale put up by President Putin for the military occupation of Ukraine revolves around the perceived threat posed to Russia. In his statement, he characterizes the activities taken by the United States and its coalition partners as part of a containment policy against Russia, one that he believes offers significant geopolitical advantages to them.⁵² In contrast, he portrays the situation as a matter of utmost significance for Russia, describing it as a life-or-death issue and a

⁵² Vladimir Putin, 'Address by the President of the Russian Federation' (*President of Russia* 24 February 2022) <<http://en.kremlin.ru/events/president/news/67843>> accessed 27 September 2023.

critical factor in Russia's future as a nation. He emphasizes that his stance is not an exaggeration but a factual assertion.

Putin argues that the perceived threat goes beyond being a challenge to Russia's interests; he sees it as a direct menace to the very existence of the Russian state and its sovereignty. He terms this threat as a "red line" that Russia has mentioned on numerous occasions, and from his perspective, NATO has crossed it.⁵³

It should be established that Article 51 of the United Nations Charter deals with and centres on armed attack, even when there is no unanimous agreement on its precise term,⁵⁴ it is safe to assert that it connotes gross use of force.⁵⁵

The essential question to address is whether NATO's actions against Russia have reached a level of severity that justifies the invasion.

Interestingly, Putin did not state there was an armed attack on Russia by NATO, he only indicated that the possibility of future threats was high. Interestingly, Putin did not explicitly state that there was an ongoing armed attack on Russia by NATO. Instead, he alluded to the high likelihood of future threats. The wordings of Article 51 unambiguously requires the presence of an imminent armed assault either underway or in progress. Nevertheless, a significant body of support, as reflected in Articles 29 and 30, from both states and scholars suggests that if an armed attack is impending, a state can resort to force in self-defence without having to wait for the situation to escalate further. This has generated a legal quandary among states and the international legal community, with differing opinions on whether self-defence can only be invoked once an armed attack is in progress.⁵⁶

If it is established that there exists a "right to anticipatory defence," can the application of this defence be reasonably substantiated in this scenario? Is there compelling evidence indicating an imminent attack on Russia by NATO? Certain advocates argue that NATO posed no significant threat to Russia, citing the limited military assets deployed near the Eastern frontiers. Conversely, they highlight Russia's substantial military presence, with over 130,000 troops and thousands of tanks deployed along the Ukrainian border, and point out that NATO did not respond even after the initiation of Moscow's special military operation.

⁵³ Ibid.

⁵⁴ United States, Department of Defense Law of War Manual 2015 (updated May 2016) Office of General Counsel, Department of Defence, 47, para 1.11.5.2; Elizabeth Wilmshurst (ed), 'The Chatham House Principles of International Law on the Use of Force by States in Self-Defence' (2006) 55 *International and Comparative Law Quarterly* 963, 966; Tarcisio Gazzini, *The Changing Rules on the Use of Force in International Law* (Manchester University Press, 2005) 138.

⁵⁵ Nicaragua (n 9) para 191; Case Concerning Oil Platforms (Islamic Republic of Iran v United States of America) (merits) [2003] ICJ Rep 161, para 51; Olivier Corten, *The Law Against War: The Prohibition on the Use of Force in Contemporary International Law* (Hart Publishing, 2010) 403; Avra Constantinou, *The Right of Self-Defence under Customary International Law and Article 51 of the UN Charter* (Bruylant, 2000) 57.

⁵⁶ J. Friman, *Revisiting the Concept of Defence in the Jus ad Bellum* (Hart Publishing, 2017) 60–6; Corten (n 26) 406–43.

Russia has repeatedly accused Ukraine of hosting over 30 biological development by NATO/US, thus posing an imminent threat, the height of this accusation was recorded at the UN Security Council on 11 March 2022.⁵⁷

In contrast, the United States maintains the position that funding biological research within Ukrainian territory does not constitute a threat to Russia, and there is no evidence of weaponizing such research. It is essential to consider that under customary international law, any action undertaken in self-defence must satisfy the criteria of being both necessary and proportionate. Consequently, there are pertinent questions for President Putin to address concerning the invasion.

Furthermore, beyond the concerns related to NATO, President Putin has also alleged Ukraine's actions as a motive for his right to self-defence. He has expressed that Russia cannot feel secure with Ukraine due to a perceived enduring threat. Nevertheless, one may raise questions about how Ukraine, if it were indeed the aggressor, could contemplate challenging a territory that possesses superior military strength and nuclear capabilities.

The claim of individual self-defence by Putin in relation to Ukraine also included the protection of the Russian Nationals abroad and passport holders who are dwellers within the Donbass region. In order to enjoy the right to protection of nationals as self-defence in arms attack, three conditions must be fulfilled cumulatively;

1. There must be an imminent threat of injury to nationals;
2. The lack or incapacity of the territorial sovereignty to provide protection, and;
3. The intervention by the state shall be limited to the objective of safeguarding its nationals from harm.⁵⁸

This defence however remains controversial and subject to further scrutiny as it has been misused, this finding no soft ground in the UN era, however; it has also been recognized in Article 51 of the UN Charter.⁵⁹

Interestingly, there exists a claim that Russia made at least 720,000 passports for citizens in the Donbass, in order to designate as nationals, thereby paving way to claim the 'right of self-defence' upon those nationals. This has been said to be the Russian playcard⁶⁰ in both Ossetia and Abkhia regions of Georgia prior to the 2008 invasion, and even Crimea prior to the 2014 invasion.

⁵⁷ M. Ryan, A. Suliman and M. Fernández Simon, 'Russia accuses U.S. of supporting a biological weapons program in Ukraine at U.N. Security Council meeting', *The Washington Post* (11 March 2022) www.washingtonpost.com/world/2022/03/11/un-council-ukrainerussia-chemical-weapons-zelensky.

⁵⁸ C. M. Waldock, 'The Regulation of the Use of Force by Individual States in International Law' (1952-II) 81 *Receuil des cours* 4.

⁵⁹ Derek W. Bowett, 'The Use of Force in the Protection of Nationals' (1957) 43 *The Grotius Society—Transactions for the Year 1957* 111.

⁶⁰ D. Litvinova and Y. Karmanau, 'With fast-track passports, Russia extends clout in Ukraine', *abc News* (17 February 2022) <https://abcnews.go.com/International/wireStory/fast-track-passports-russiaextends-clout-ukraine-82947863>; 'Russia has issued 720,000 fast-track passports in separatist-held areas of eastern Ukraine', *Euronews* (17 February 2022) www.euronews.com/2022/02/17/russia-hasissued-720-000-fast-track-passports-in-separatist-held-areas-of-eastern-ukraine.

However, it is now accepted that there have been a large scale human rights violation in the Donbass by both the forces of Ukraine, pro-Kyiv paramilitary groups, as well as Russian separatists groups or rebels.⁶¹

In anyways for Russian to take advantage of this right, the use of force must still be of necessity and proportionate. Most paramount of President Putin's aim is to demilitarize and 'denazify', a move to a regime change, different from the protection of nationals under threat of imminent attack.

5.2 Collective Self-defence

Aside the individual self-defence claimed by Russia, which is controversial, the President also claimed a collective Self-defence. The conditions for individual self-defence *viz*; necessity and proportionality, is also applicable to collective Self-defence. It is apposite to establish the fact, for a state to be able to use force in collective Self-defence, the state, that's the victim must request military aid in response to the actual or imminent armed attack.⁶²

Therefore, Russian collective Self-defence claim on Ukraine is founded on its official recognition of the two regions in Donbas region of Ukraine, which are; Donetsk and Luhansk. Russia declared this states as sovereign on the 22nd February, 2022, as the; 'Donetsk People's Republic', and the Luhansk People's Republic'. Treaties of mutual friendship and assistance was signed by the two states with Russia, and appeal for military assistance was demanded.⁶³

According to Putin's statement, "the people's Republics of Donbass ..." asked Russia for help' and Russia responded pursuance to the Treaties of mutual friendship and assistance with the Donetsk and Luhansk People's Republic.⁶⁴

It is imperative to acknowledge that, under international law, the assertion of defending a state(s) can only grounded when request is made from the government of the state in issue.⁶⁵

⁶¹ 'Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his visit to Ukraine, Human Rights Council, UN Doc A/HRC/40/59/Add.3 (17 January 2019); "You Don't Exist": Arbitrary Detentions, Enforced Disappearances, and Torture in Eastern Ukraine', *Human Rights Watch* (21 July 2016) www.hrw.org/report/2016/07/21/you-dont-exist/arbitrary-detentions-enforced-disappearances-and-torture-eastern#

⁶² Nicaragua (n 9) para 195; Sir Michael Wood, 'Self-Defence and Collective Security' in Marc Weller (ed), *The Oxford Handbook of the Use of Force in International Law* (Oxford University Press, 2015) 649, 654; Dino Kritsiotis, 'A Study of the Scope and Operation of the Rights of Individual and Collective Self-Defence under International Law' in Nigel D White and Christian Henderson (eds), *Research Handbook on International Conflict and Security Law: Jus ad Bellum, Jus in Bello and Jus Post Bellum* (Routledge, 2013) 170, 185–7;

⁶³ Treaty of Friendship, Cooperation and Mutual Assistance between the Russian Federation and the Donetsk People's Republic (signed in Moscow, 21 February 2022); Treaty of Friendship, Cooperation and Mutual Assistance Between the Russian Federation and the Lugansk People's Republic (signed in Moscow, 21 February 2022). As of 20 March 2022, these treaties have not been deposited with the UN, nor has notice of their deposit been submitted. And See documents released by the Kremlin and published by Russian news agencies on social media sites such as Telegram: e.g. TACC, Telegram (23 February 2022) https://t.me/tass_agency/111840.

⁶⁴ Address by the President of the Russian Federation' (n 18).

⁶⁵ Dinstein (n 81) 317–8.

Prior to moving forward, it is important to acknowledge the existence of debates surrounding Russia's recognizing the two Republics did not automatically make them independent states, and that was the wishful thinking of Putin. They argue further that, the right to 'remedial succession' is yet to be settled, and can only be applicable in extraordinary situations where a 'people' has been denied of its right to 'internal' self-determination amidst gross human rights violations and abuses; this was not the case in the eastern Ukraine. Thus the premature recognition of Crimea by Russia in 2014, followed by the subsequent recognition of the Donbass is a violation of international law.⁶⁶

It has been posited that, an intra-state hostility between two states, could not have snowballed into armed conflict, which may permit the "right of self-defence" by another State by the instrumentality of sovereign recognition. Such reasoning goes against mimics the requirement of immediacy, proportionality and necessity.⁶⁷

6. The Role of the Global Community in Addressing the Conflict

The war involving Russia and Ukraine has had a significant impact on the global community, with many states and international organizations becoming involved in efforts to address the war and promote a peaceful resolution. The role of the global community in addressing the conflict has been multifaceted, involving diplomatic, economic, and military measures.

Diplomatically, the global community has played a significant role in efforts to address the conflict through negotiations and dialogue. The United Nations has been actively involved in efforts to promote a peaceful conclusion to the conflict, with the Security Council passing a number of resolutions aimed at promoting stability and tranquillity in the region.⁶⁸ The EU (European Union) has also been involved in diplomatic efforts, with its leaders holding a series of meetings with Russian and Ukrainian officials aimed at finding a solution to the war.⁶⁹

Economically, the international community has imposed a range of sanctions on Russia in response to its actions in Ukraine.⁷⁰ These sanctions have targeted key sectors of the Russian economy, including its energy and financial sectors, and have had a significant impact on the Russian economy. In addition, the international community has provided economic assistance to

⁶⁶ H. Lauterpacht, 'Recognition of States in International Law' (1944) 53 *The Yale Law Journal* 385,390–6, & UNGA Res 68/262, UN Doc A/RES/68/262 (27 March 2014).

⁶⁷ Lubell (n 30) 702–3.

⁶⁸ United Nations, 'With Invasion of Ukraine, Security Council's 2022 Efforts to Maintain International Peace, Stability Mired by Widening Rifts between Veto-Wielding Members | UN Press' (*press.un.org* 12 January 2023) <<https://press.un.org/en/2023/sc15172.doc.htm>> accessed 31 March 2023; United Nations Security Council Resolution 2202 (2015) on Ukraine, S/RES/2202 (2015), February 17, 2015.

⁶⁹ European Union Council Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, OJ L 78, March 17, 2014.

⁷⁰ Noah Berman and Anshu Siripurapu, 'One Year of War in Ukraine: Are Sanctions against Russia Making a Difference?' (*Council on Foreign Relations* 21 February 2023) <<https://www.cfr.org/in-brief/one-year-war-ukraine-are-sanctions-against-russia-making-difference>> accessed 31 March 2023; European Council, 'EU Sanctions against Russia Explained' (*Council of the European Union* 2022) <<https://www.consilium.europa.eu/en/policies/sanctions/restrictive-measures-against-russia-over-ukraine/sanctions-against-russia-explained/>> accessed 31 March 2023.

Ukraine, aimed at helping the country rebuild its economy and infrastructure in the wake of the conflict.⁷¹

Militarily, the international community has also been involved in efforts to address the conflict, with a number of states providing military support to Ukraine. For instance, the US (United States America) has provided military aid to Ukraine,⁷² including weapons and training, while NATO has increased its military presence in the region in an attempt to deter further aggression by Russia.⁷³

Also recently as part of an alleged plan to deport Ukrainian children to Russia, the ICC (International Criminal Court) issued an arrest order for President Vladimir Putin and the Russian official Maria Lvova-Belova.⁷⁴

Recommendations

The following recommendations are proffered:

- i. **Ceasefire:** A temporary halt of the war between Russia and Ukraine would pave way for negotiations that may lead to end of the war. According to Seth Jones, the Director of CSIS (Center for Strategic and International Studies), International Security Program, "that would probably not be an end, though, that would be the state of active warfare declining, at least temporarily, and it becomes something closer to a frozen conflict that can heat up or cool down depending on the range of factors,".
- ii. **Diplomatic Efforts:** Encourage diplomatic negotiations and dialogue between all parties engaged in the Russian-Ukraine War. International mediation and conflict resolution initiatives should be pursued vigorously to find a peaceful solution.
- iii. **Adherence to International Law:** Emphasize the importance of strict adherence to international law, particularly the UN Charter, as the basis for addressing conflicts. States should respect the prohibition of the application of force and 'the right to self-defense' within the framework of international law.
- iv. **Conflict Attribution:** Clarify and refine the principles of attribution in instances of armed conflicts to ensure a clear understanding of responsibility for actions leading to conflict escalation. This could involve the development of clearer guidelines or legal mechanisms.

⁷¹ USAID, 'One Year Later: Helping Ukraine Win the War and Build Lasting Peace | Fact Sheet' (*U.S. Agency for International Development* 17 February 2023) <<https://www.usaid.gov/news-information/fact-sheets/feb-2023-one-year-later-helping-ukraine-win-war-and-build-lasting-peace>> accessed 31 March 2023.

⁷² US Department of Defense, 'More than \$3 Billion in Additional Security Assistance for Ukraine' (*U.S. Department of Defense* 6 January 2023) <<https://www.defense.gov/News/Releases/Release/Article/3261263/more-than-3-billion-in-additional-security-assistance-for-ukraine/>> accessed 31 March 2023.

⁷³ NATO, 'Boosting NATO's Presence in the East and Southeast' (*NATO* 2022) <https://www.nato.int/cps/en/natohq/topics_136388.htm> accessed 31 March 2023.

⁷⁴ International Criminal Court, 'Situation in Ukraine: ICC Judges Issue Arrest Warrants against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova' (*International Criminal Court* 17 March 2023) <<https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-vladimir-vladimirovich-putin-and>> accessed 31 March 2023.

- v. Enhanced Enforcement Mechanisms: Consider options for strengthening enforcement mechanisms within the international legal framework, such as addressing shortcomings in the enforcement powers of Security Council of the UN.

7. Conclusion

The Russian-Ukraine War has highlighted the challenges in upholding the principles governing the use of force under international law, particularly the prohibition of the use of force and the right to self-defence. The war has tested the understanding and implementation of these principles, as well as the issue of attribution and the lack of effective enforcement mechanisms.

However, the ongoing efforts of the international community demonstrate a commitment to upholding these principles and promoting a peaceful resolution to the conflict. The ICJ judgment in the Congo-Uganda case, the Charter of the UN and other international legal instruments have established a legal framework for the application of force, which emphasizes the importance of peaceful resolution of conflicts and respect for the sovereignty and territorial integrity of states.

As the war continues, it is important for all parties to abide by international law and work towards a peaceful resolution. The international community should continue to call for respect for the principles governing the use of force under international law, and for the use of peaceful means to address conflicts. By upholding these principles, the international community can promote a more stable and peaceful world for all.