

## The Russian War Against Ukraine In The Light Of International Law

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**Abstract:** *This research addresses the legality of the Russian war against Ukraine in the light of international law rules. This invasion constituted an important turning point in the history of modern international relations. It is the largest military attack that occurred in Europe since the Second World War. There is no doubt that the dispute and conflict between the two countries extends its roots back several decades, and its pace has increased over the past several years due to the great rapprochement between Ukraine and the West, which Russia considered a direct threat to its national security, especially after Kiev's plans to join NATO. As a result, Russia attacked Ukraine on February 22, 2022, citing some justifications, such as self-defense, protecting Russian-speaking population in the Donbas region, and stopping human rights violations. Ukraine and Western countries rejected these justifications and considered the "special military operation" an invasion and an aggressive act contrary to international law. In this research, we will discuss the causes of the conflict between Russia and Ukraine, the international reactions to this illegal attack; finally, we will analyze the Russian arguments and allegations in this regard and respond to them from the perspective of international law.*

**Keywords:** *Russia, Ukraine, Invasion, Self-defense, UN Charter, Humanitarian Intervention.*

### 1. Introduction:

On February 24, 2022, Russia attacked Ukraine. The Ukrainian civilians awoke to the sounds of shelling and explosions following Russian President Vladimir Putin's order of an invasion of the country, ending diplomatic efforts to resolve the differences resulting from the Cold War between the Western Bloc led by the United States, represented by NATO, and Russia, the legitimate heir of the former Soviet Union (International Coalition of Sites of Conscience, 2022; Britannica, 2024). Soldiers of the former Soviet Union and the United States did not fight each other directly during the Cold War, but the two superpowers continually antagonized each other through political maneuvering, military coalitions, espionage, propaganda, arms buildups, economic aid, and proxy wars between other nations (Britannica, 2024). The Russian's attack on Ukraine constituted an important turning point in the history of modern international relations. The roots of Russia's invasion of Ukraine go decades back and run deep. The ongoing conflict is more than one country fighting to take over another; it is — in the words of one U.S. official — a substantial shift in "the world order" (NBR). It created a state of instability at the international community level and almost led to a global conflict between the two superpowers, which reached the point of threatening the outbreak of a third world war,

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in which nuclear weapons would be one of the weapons used in this possible war (Nagel & Golany, 2023). For example, Deputy Chairman of Russia's National Security Council Dmitry Medvedev has repeatedly warned that Russia will not hesitate to use such weapons if necessary. Similarly, a sudden Ukrainian collapse—leading to the fall of Kiev—may cause the United States and its NATO allies to use the nuclear weapons to restore the balance (Nagel & Golany, 2023). In either scenario, the road to WWII is not only a scenario for science fiction. The current war between Russia and Ukraine is a very dangerous war which has led to the killing of tens of thousands of people, especially civilians and wounding tens of thousands of Ukrainian people. It has also led to displacing upwards of one third of the population, and creating the largest refugee crisis since the Second World War, with approximately seven million Ukrainians fleeing the country to many European countries (Kelly, 2023).

This war, which is unprecedented in the modern era, has also witnessed serious and systematic violations of human rights and international humanitarian law. Russian forces destroyed through its military operations the Ukrainian infrastructure including bridges, roads, airports and health facilities. As of September 1, 2023, the total documented direct damage to Ukraine's infrastructure caused by a full-scale Russian invasion has reached \$151.2 billion. The ongoing war continues to result in the destruction of residential buildings, educational institutions, and infrastructure, leading to an increase in the overall damage (Center for civilians in conflict, 2023). Russia is also targeting civilians and thousands of people were killed and injured during this ongoing war between the two countries. In surveying these various violations and crimes, it would seem that Russia currently is committing three essential types of crime: a war of aggression, war crimes and genocide. Early in the war, a majority of member states in the U.N. General Assembly recognized Russia as the aggressor, and therefore they called for referring these crimes to the International Criminal Court (ICC) (Howard, 2022). These crimes and violations are considered grave breaches of the provisions of international humanitarian law, which required from the international community to act accordingly to prevent and put an end to them (Ka Lok Yip, 2022).

Russia justified its "Private Military Operation" in Ukraine with several reasons, namely the right of self-defence, humanitarian intervention and preventing the genocidal acts against the Russian citizens in Lugansk and Donbas in Eastern Ukraine (Milanovic, 2022). Ukraine and its allies as well as many countries in the world rejected such claims and condemned this operation considering it as an aggression against a member of the UN. Moreover, many Western countries led by the USA supported politically and militarily Ukraine in this war. The United Nations, through its Secretary-General and the General Assembly have both criticized and condemned this illegal attack (Värk, 2022). However, the Security Council (SC), which is primary responsible for the maintenance of international peace and security, has remained unable to take any resolution related to this conflict, which threatens international peace and security due to Russia's use of Veto. Despite this miserable failure by the SC in this area and to prevent any military confrontation between NATO and Russia, Western countries instead turned to use the economic sanctions weapon as the primary means to hamper Putin's war machine (Värk, 2022). The United States, the European Union countries, and some other countries namely Japan, Australia and Canada, imposed strong economic and diplomatic sanctions on Russia to force it to stop its military attack and put an end to its massive violations of human rights and international humanitarian law (Globalwitness, 2022)

This attitude obviously confirms the role that the international community can play, when there is a real will to punish countries that violate international peace and security and threaten the idea of collective security on which the United Nations is trying to reach since its establishment in 1945.

### **1.1 The Problematic of the Research:**

This research aims to examine the extent of the legitimacy of the Russian war on Ukraine from the perspective of international law. It examines whether the arguments or allegations made by Russia in this regard are legal or not, especially those related to the right of self-defence and humanitarian intervention to protect its persecuted citizens in Eastern Ukraine, as well as stop the operations of ethnic cleansing and acts of genocide against them. This research also aims to explain the most important principles that this aggression violated, especially the principle of non-use of force and to respond to the arguments presented by Russia in this regard to justify this attack. This research also tries to explain the danger of this war on the international peace and security and the failure of the SC to deal with this massive attack. This dangerous crisis demonstrates Russia's responsibility, both civilly and criminally, for the grave breaches and violations committed during this aggression and the role that the International Criminal Court (ICC) can play to arrest and prosecute Russian war criminals.

### **1.2. The Object of the Research and its Questions:**

This Research aims to study the legality of the Russian attack on Ukraine in the light of international rules. It analyzes the Russian allegations to justify its "special military operation" against Ukraine and the reaction of Ukraine and other states to these claims. It also discusses the position of international law on this war, how the relevant United Nations' bodies have dealt with it, how their performance was and how effective they were in dealing with this war, which puts the world on the brink of abyss. The research raises some important questions, namely: is the Russian attack against Ukraine legal? Are the Russian justifications, which are based on its right of self-defence and humanitarian reasons legally accepted? How was the reaction of the international community to this war? Can we bring the Russian war criminals before the ICC? How was the reaction of the UNSC to this war? Finally, what are the implications and effects of this war on international relations and international law?

### **2. Research Methodology and Segmentation:**

We will attempt to address the problem of this research and discuss the legal and other points raised in this paper. We will use the descriptive and analytical approach, in order to answer the most important questions it raises, particularly the legality of Russian war against Ukraine from the perspective of each party of this crisis and from international law side as well. Accordingly, to answer this main question and others, we have divided this paper into the following sections: the first section addresses the roots of the crisis between Russia and Ukraine. The second section discusses the international reaction to the Russian invasion against Ukraine. The third section deals with the justification which Russia presented to justify its attack and the extent of the acceptability and legitimacy of such justifications from international law perspective.

### **3. The Russian –Ukrainian Conflict Roots:**

The collapse of the Warsaw Pact in April 1991, and the Soviet Union in December 1991, created a huge security vacuum problem for Central and Eastern European countries seeking membership in the organizations of Western countries, such as NATO and the European Union (Reuters, 2022; Elekyabi, 2023). The European countries welcomed such steps and paved the way for these countries to join these important institutions. At the same time Russia has strongly opposed the joining of these countries to these institutions especially NATO, in order to preserve its political and security interests, which may be greatly affected by this situation. Russian policy after the collapse of the Soviet Union was based on some of the following main axes: there is no real need for the survival of NATO and all military alliances must be directed against a potential political opponent. Therefore, expanding and strengthening NATO and enhancing its potential and capabilities will negatively affect Russia, as it will increase conflicts and extreme trends in Russian politics (Mokhamer, 2023). Based on the above, and because of

the security vacuum, the collapse of the Soviet Union and the fall of communism, a group of countries applied for membership in some European institutions, such as NATO, and three countries succeeded in obtaining this membership in 1999, namely Poland, the Czech Republic, and Hungary (Warsaw institute, 2021). The alliance expanded again in 2004 with the joining seven countries including Bulgaria, Romania, Slovakia, Slovenia, Latvia, Lithuania and Estonia. The European Union itself expanded in 2004 to include ten new members such as Lithuania, Latvia, Estonia, Hungary, and others (Mokhamer, 2023).

In 2003, the relation between Russia and Ukraine witnessed a diplomatic crisis after the Russian government started to build a new dam on the Kerish Strait towards the Ukrainian island of Kosa Tosla. Kiev considered this an attempt to redraw the borders between the two countries, which fueled the conflict between the two countries. The conflict was ended after the intervention of the Russian and Ukrainian presidents, where work on building the dam was stopped (Jamal, 2023). In 2004, presidential elections were held in Russia, according to which Russia supported the candidate close to it, Viktor Yanukovich. Despite Russian support for its candidate in the elections, Mr. Victor did not succeed and his competitor Viktor Yushchenko won the general election after the outbreak of so-called the "Orange Revolution" (Dickinson, 2020; Jamal, 2023). During his presidential term, Russia cut off gas to Ukraine twice in 2006 and 2009, and also cut off gas passing to Europe through Ukraine, in order to put pressure on this new government, which Russia considered hostile to it and close to the policies of Western countries which is against Russia (Reuters, 2009). This government, through its policy and with the encouragement of the Western countries, led by the United States, began to get closer to the West, and with the encouragement of the United States, it began to accelerate the pace towards joining NATO, which Russia considered a clear and direct threat to its national security and strategic interests (Putin Speech, 2023).

In 2008, the US administration led by Bush tried to integrate both Ukraine and Georgia into NATO, but these efforts did not succeed due to the Russian rejection of the idea of accepting Ukraine's membership in this military alliance. Moreover, France and Germany also rejected this idea during that period (Reuters, 2008). The idea of Ukraine joining was raised again at the Bucharest summit in 2008, but no date has been set for implementing this step. Western pressure and the state of international polarization resulted in disappointing results for the street in the 2010 elections, with Yanukovich winning after the revolutionary government failed to achieve its goals. As a result of the failure of successive Ukrainian governments to join NATO, Ukraine tried to strengthen its relation with European countries through a cooperation agreement with the European Union in 2013. (Andrzej Szeptycki, 2015) After signing this agreement, which did not live up to the ambitions of the Ukrainian people, Moscow exerted political and economic pressure to prevent Kiev from continuing with its approach and policy of rapprochement with the West (aljazeera.net, 2015). The European Union did not hesitate to criticize Russia, which was accused of exerting pressure on Ukraine, thus confirming the intensification of the "game of tug of war" between the two sides, while the Ukrainian opposition took to the streets in protest demonstrations demanding new elections, and the resignation of President Viktor Yanukovich, who was accused by the West and the opposition in his country of returning Ukraine to Russia's grip (Aljazeera.net, 2015). Subsequently, as a result of the policies of president Yanukovich due to his submission to Russian policies, large popular protests took place in many Ukrainian cities and streets demanding the overthrow of the government and the departure of the president, who later fled to Russia (Yosef, 2022). After the fall of the old Ukrainian government, which was known for its loyalty to Russia and which Russia considered as an ally and partner, and as a result of these developments in Ukraine and the danger of NATO threats to Russia's security, the latter invaded the island of Crimea and annex it to its territory in spring, 2014 in a unilateral measure, whose legitimacy is not recognized by the international community to this day (Schmidt-Felzmann, 2014). Russia

justified its attack on several legal grounds such as the right of self-defence, reliance on the invitation of former Ukrainian President Viktor Yanukovich who was, as Russia claimed, still the official head of the state, since the constitutional requirements for the transition to the new president had not been met. Further, it justified its military action on the principle of self-determination, which allows Russian-speaking residents of eastern Ukraine to decide their fate, and therefore, to demand from Russia to intervene militarily to protect them from the Ukrainian authorities (Allison et al., 2014)

After Russia's annexation of the Crimean Peninsula in March 2014, and the outbreak of war in Donbass in April 2014, Russia was working to support or even create “quasi-states” within Ukrainian territory, including the “people’s republics” of Donetsk and Luhansk. In August 2014, Russia intervened in the fighting between Ukraine’s armed forces and separatists in the east of the country with regular troop units and heavy weapons, in clear and explicit violation of the prohibition of the use of force established by the United Nations Charter (Kreß, 2022). The period extending between 2014 and before the Russian invasion of Ukraine was characterized by tension and instability in relations between Russia and Ukraine, reaching its peak after the election of Volodymyr Zelensky in 2019 as president of Ukraine (Varshalomidze, 2018). On September 14, 2020, Ukrainian President Zelensky approved Ukraine’s new national security strategy, which stipulates “the development of a distinguished partnership with NATO with the aim of obtaining membership within the alliance.” (NATO Relations with Ukraine, 2024). On March 24, 2021, Zelensky signed Decree No. 117/2021 approving the “strategy for ending the occupation and reintegrating [recovering] the occupied territories of the Autonomous Republic of Crimea and the city of Sevastopol” (Ministry of Reintegration of the Temporarily Occupied Territories of Ukraine, 2021).”

Few months before the Russian invasion there were negotiations between NATO and Ukraine about the latter’s accession to the alliance. This was followed by a wave of threats by the Russian Government. Russia insisted that it will not stand idly by if Ukraine takes this step and will take the necessary measures to preserve its national security. On 21 February 2022, Russian President Putin announced that Russia would formally recognize the areas of the Donbas under the control of Russian-backed separatist forces, as independent sovereign states (Aljazeera, 2022). Putin’s announcement comes after a meeting of the presidential Security Council. This announcement paves the way for Russia to openly send troops and weapons to the long-running conflict pitting Ukrainian forces against Moscow-backed rebels (Aljazeera, 2022). In a move considered very dangerous by the West, President Putin signed Executive Orders recognizing the self-declared independence of the Donetsk People’s Republic (DPR) and the Luhansk People’s Republic (LPR). The Russian government then signed Treaties of Friendship, Cooperation and Mutual Assistance with the leaders of those regions to legitimize its latter actions (Butchard, 2022). On 24 February, Putin announced the beginning of a “special military operation” in Ukraine. While Putin said it was a special military operation in Donbas and Russia would not occupy Ukraine (Butchard, 2022). In his speech, Putin presented the following legal justifications for this military action: first, in accordance with Article 51 (Chapter VII) of the UN Charter (self-defence) and second, in execution of the treaties of friendship and mutual assistance with the Donetsk People’s Republic and the Luhansk People’s Republic, ratified by the Federal Assembly on February 22. President Putin mentioned that the aim behind this special military operation was to “protect people who, for eight years now, have been facing humiliation and genocide perpetrated by the Kiev regime.” (Butchard, 2022). He also said Russia would “seek to demilitarize and denazify Ukraine”, and it is not intending to occupy the Ukrainian territories (Butchard, 2022). With regard to the NATO’s expansion to the east, President Putin said “We can’t stay idle and passively observe these developments”, he accused the members of the NATO of crossing Russia’s red line regarding their military cooperation with Ukraine (Atlantic Council, 2023).

On the other side, the Ukrainian Government has declared that Russia has begun a full scale attack on the country and it intends to occupy the country and change the geographical boundaries between the two countries. It also called for the ending of this attack and demanding the international community to force Russia to stop the aggression. Moreover, the international community's reaction was strong and commensurate with the gravity of this dangerous aggression, which constituted a clear and direct threat to international peace and security. In the second section, we will talk about the international reactions and the position of the United Nations on this war in general.

#### **4. The International Reaction to the Russian Invasion of Ukraine:**

In the morning of the military attack, which Russia launched against Ukraine, the permanent representative of Russia to the UN notified the UN Secretary-General of its military action. Appended to the notice was a speech of Vladimir Putin president of Russia describing a host of grievances and justifications of the attack (USIN, 2022). The voices of the Western powers were largely unified, including condemning the Russian military operation in Ukraine and threatening to impose sanctions. The major Western countries reacted angrily to the Russian military operation in Ukraine, accusing Moscow of bringing the war back to Europe. The US President Joe Biden warned of a "huge loss of life". He said in this regard that "President Putin has chosen a premeditated war that will lead to massive loss of life and human suffering" (BBC, 2022). He further said that US allies would impose tough sanctions on Moscow. In Eastern Europe, concerns extend to dealing with an expected wave of refugees (USIN, 2022). The invasion caused Europe's largest refugee crisis since World War II, with more than 8.2 million Ukrainians fleeing the country and a third of the population displaced (Vierlinger, 2022). The invasion also caused global food shortages not only for the Ukrainian people but also for the whole world. The reaction of the Western countries to this invasion has been unprecedented; thousands of sanctions were imposed on Russia, making it the country most exposed to this type of measures in the world, which resulted in negative effects on its economy (Florian Zandt, 2024). It included many fields such as banking, energy sources, trade, transportation, media, technology, automobiles, and sports. The Swedish company's data shows that since the start of the war, 11,327 new sanctions have been imposed on Russia, bringing the total number of sanctions to 16,077 (Florian Zandt, 2024).

On other side, the UN also condemned the invasion considering it as flagrant violation of international law, particularly the UN charter. The UN Secretary-General António Guterres said the Russian invasion was "the saddest moment of my tenure" and called on Putin to withdraw his forces "in the name of humanity (UN news, 2022). In his comment on the statement of President Putin who described the deployment of the Russian troops in Eastern Ukraine as a "Peacekeeping" operation, the UN Secretary-General expressed his concern about using this particular phrase, stating it was a "perversion of the concept of peacekeeping" (UN news, 2022). He mentioned in this regard that "when troops of one country enter the territory of another country without its consent, they are not impartial peacekeepers. They are not peacekeepers at all (twitter, 2022; Gilder 2022)." Further, the Secretary-General of the United Nations described the Russian invasion of Ukraine as an insult to our collective conscience, noting that one year since this invasion represents a grim milestone for the people of Ukraine and the international community (UN, 2023). He reiterated what he has been saying since the first day the Russian invasion began, that Russia's attack on Ukraine challenges the basic principles and values of our multilateral system, stressing that the Charter of the United Nations is clear and unambiguous: "All members of the body shall refrain in their international relations from the threat or use of force against territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations" (Article 2/4, UN Charter, 1945). Additionally, the Secretary-General said many times that the United Nations is

committed to Ukraine's sovereignty, independence, unity and territorial integrity, within its internationally recognized borders. Mr. Guterres stressed that war is not the solution, but rather the problem. He said that people in Ukraine are suffering greatly, noting that Ukrainians, Russians and people much further away need peace. "While the outlook may seem bleak today, we know that true and lasting peace must be based on the UN Charter and international law. The longer the fighting lasts, the more difficult this work (reaching peace) will be" (UN, 2023).

On March 2, 2022, the General Assembly endorsed a resolution by a majority of 141 states, with 35 states abstaining from the vote and 5 states voting against the resolution, namely: Russia, Belarus, North Korea, Syria, and Eritrea. The United Nations General Assembly condemned Russia's "illegal" annexation of Ukrainian regions after Moscow used its veto against a similar draft resolution in the UN Security Council (Aljazeera.net, 2022). According to UN (2022) the GA Resolution demanded the Russian Federation immediately end its invasion of Ukraine and unconditionally withdraw all its military forces from that neighboring country, as the General Assembly continued its emergency session on the crisis. The Assembly also demanded the Russian Federation immediately and unconditionally reverse its 21 February decision related to the status of certain areas of the Donetsk and Luhansk regions of Ukraine. It demanded that the Russian Federation immediately ceases its unlawful use of force against Ukraine and refrains from any further threat or use of force against any United Nations Member State, while also deploring Belarus' involvement in this illegal action and calling on that country to abide by its international obligations. The General Assembly adopted the resolution by a majority of 143 votes compared to 5 countries that voted against it, but 35 countries abstained from voting, including China, India, South Africa and Pakistan, despite great American diplomatic efforts (Aljazeera.net, 2022). The United Nations reiterated that the Russian invasion of Ukraine constitutes a violation of the United Nations Charter and international law, and called on Russia to stop its aggression against Ukraine and put an end to the bloodshed (UN, 2023). The UN General Assembly also adopted a resolution on 7 April 2022 calling for Russia to be suspended from the Human Rights Council.

## **5. The Russian Justifications for Its Attack Against Ukraine:**

### **5.1. General Review for the Relevant Provisions:**

It has been said previously that Russia has relied on several legal grounds to justify its attack against Ukraine. In his speech to the Russian people, President Putin presented the following legal justifications for this military action. First, Russia claimed that it was defending itself from a generalized threat posed predominately by the USA and other NATO Members but genuinely emanating from Ukraine. Therefore, Russia has the full and natural right according to international law to defend itself individually or unilaterally. Russia relied on the right of self-defence enshrined in article 51 of the UN Charter and the implementation of the treaties of friendship and mutual assistance with the Donetsk People's Republic and the Luhansk People's Republic, ratified by the Federal Assembly on February 22 (Treaty with the Donetsk People's Republic, 2022). Second, Russia also claimed to be acting in collective self-defence of separatist areas in East Ukraine particularly Luhansk and Donetsk regions, which the Russian government recognized as independent states three days before the invasion. Third, Russia argued that its attack is designed to prevent "genocide perpetrated by the Kiev regime" against Russian and Russian-speakers in Ukraine. This research will try to analyze these legal grounds for the invasion.

Before examining these justifications for this invasion, we should identify first the most important provisions that are relevant to this case. One can find that there are a number of explicit and clear texts that prohibit this act and make it completely illegal from international law perspective. The preamble of the UN charter, for instance focused on a number of important



points that clarify the basic purposes behind the establishment of the United Nations. One of these goals is to maintain international peace and security in the world. The preamble provides in this regard that:

“to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, as well as to encourage the resolution of disputes by peaceful means” (UN Charter, 1945).

The charter also emphasized in article 1 the necessity of achieving international peace and security. This concept is officially known as the collective security. It simply means the joint action, which is taken by the international community to maintain international peace and security (Altarawneh, 2023). This concept was achieved after going through several stages; the most important one came after the establishment of the United Nations in 1945, when collective security was fully achieved, both in its preventive and punitive aspects. The preventive aspect was achieved through the adoption of article 2/4 of the Charter. This article prohibited the use of force in international relations as a method to resolve international disputes (Altarawneh, 2023). The punitive aspect achieved through chapter VII of the UN Charter, which grants the SC the right to use the required measures including force against any state that might threaten international peace and security (UN Charter, 1945). Moreover, Article 2 of the Charter also called on the UN organization and its members, in pursuit of the purposes stated in Article 1, to act in accordance with seven fundamental principles. They include respect of the principle of sovereign equality among all its members, settlement of international disputes by peaceful means, and refrain 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 (UN Charter, 1945).

When examining the Russian attack in light of these articles and provisions, one can clearly say that Russia did not adhere to these principles. It did not respect the principle of the equality of states sovereignty, which is mentioned in article 2/1 of the UN Charter. It attacked an independent and a sovereign country, which is a member of the UN and other organizations. It did not either resort to peaceful solutions or diplomatic methods to resolve the existing conflict with Ukraine, which emanated from the latter’s attempt to obtain NATO membership. This particular issue has intensified the differences between the two countries and increased the escalation between them, as well as the issue of protecting the rights of Ukrainian citizens of Russian origin, whom Russia accused the Ukrainian authorities of persecuting, committing crimes of genocide and ethnic cleansing against them. Therefore, Russia took the initiative from the beginning and started to prepare for this attack and mobilized its forces to carry out this large-scale attack against Ukraine. Another important principle that Russia violated in this regard is the principle of prohibition of the use of force. Article 2/4 provides that:

“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”.

This article established a general ban on use of force, and the content of the article reflects the customary international law which outlaw the use of force in international relations. The ICJ recognized the importance of this prohibition and called it as “a cornerstone of the United Nations Charter” (ICJ, 2005). Article 2(4)’s prohibition has evolved into a jus cogens norm of customary international law, and the dominant view amongst international lawyers is that it represents a complete prohibition on the use of force, subject to expressly stated exceptions. The UN has made two exceptions in this regard; the first one is in case of self-defence in accordance with article 51 of the charter and the second, in accordance with chapter VII. Article 51 grants member states of the UN the right to use force individually or collectively to defend



themselves against any armed attack until the UNSC takes the necessary measures to maintain international peace and security. Article 51 provides the following:

“Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.”

The second exception is the use of force in accordance with chapter VII of the UN Charter which is known as military enforcement action authorized by the UN Security Council, in response to a determination of the existence of a threat to the peace, breach of the peace or act of aggression, (Articles 39-51). Article 39 states that:

“The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.”

Apart from these two exceptions, no state has the right to recourse to armed force to justify its actions against others (UN Charter, 1945). Additionally, under modern international law, there are several acts, and declaration concluded within the framework of the UN organization, which also focused on the importance of peaceful settlement of international disputes, respecting the principle of non-interference in the domestic affairs of other states, prohibition of the use of force and forcible acquisitions of other states' territories. One of these Resolutions is the “Declaration on Principles of International Law Concerning Friendly Relations among States in Accordance With the Charter of the United Nations”, which was adopted by the General Assembly on October 24<sup>th</sup>, 1970 (Mulligan, 2022). The Declaration states that: “The territory of a State shall not be the object of acquisition by another State resulting from the threat or use of force. No territorial acquisition resulting from the threat or use of force shall be recognized as legal” (Declaration on Principles of International Law Concerning Friendly Relations, 1970). Additionally, the UNGA adopted on December 14, 1974 the Definition of Aggression in its Resolution number 3314. This Resolution is one of the most important Resolutions that the GA has ever adopted in its history and is still one of the fundamental documents in the field of jus ad bellum. This term is a Latin term and it means “the right to war,” or “the law of resort to war”, and it contains some standards and principles that determine when states may resort to war or use force legitimately (Yosef, 2023). The resolution clearly defined the aggression as follows:

“Aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations, as set out in this Definition.” (Definition of Aggression, 1974).

## **5.2. General Analysis of the Russian Justifications:**

Based on the above, and upon the analysis of the texts of the previous articles and provisions, the basic question that we are trying to answer is whether the military action, or what Russia called “the special military operation”, is considered legitimate, in accordance with the right to self-defence stipulated in article 51 of the Charter and customary international law or not?, and whether this “special operation” can be justified on the basis of humanitarian intervention that Russia referred to, to protect the Ukrainian citizens of Russian origin in the Donbas region, or it is an act of aggression according to the previous relevant texts? And finally what about the actions and measures taken by Russia after this attack, such as annexing parts of Ukrainian's territories, recognizing the independence of some regions and the extent of their legitimacy in light of the rules of international law?

To answer these questions, one should examine the self-defence argument that Russia relied on in this context. Russia has clearly subjected Ukraine to the application of military force, directed against its territory with the ultimate objective of furthering goals inconsistent with its political independence. Beyond constituting a *prima facie* violation of Article 2(4), Russia's invasion also places it in breach of the Budapest Memorandum, under the terms of which Russia pledged to respect Ukraine's independence and sovereignty, and, mirroring Article 2(4), refrain from any threat or use of force against it. Several other international legal principles are also infringed, including Ukraine's own right of internal self-determination. The invasion of Ukraine is also capable of amounting to the commission of the international crime of aggression as defined in the Rome Statute of 1998 (Boas, 2013). Aside from the text of article 2/4 and the relevant provisions and decisions of the General Assembly that were previously mentioned and which Russia violated by invading Ukraine, Russia has invoked to justify its invasion the right of self-defence. In an attempt to emphasize the Russian right to individual self-defence, President Putin claimed that Ukraine tried to possess and develop biological and nuclear weapons. Thus, implying that the attack against Ukraine was meant to prevent the country from possessing weapons of mass destruction, even though Ukraine has strongly rejected these allegations and highlighted the absence of the infrastructure required for the production of such weapons (Khater, 2022). In order to comply with the requirements enshrined in article 51, it annexed a speech delivered by President Putin on 24<sup>th</sup> of Feb to the SC. The letter was so long and it didn't precisely refer to the individual or collective self-defence or both. In his speech, the Russian president spent a lot of time expressing Russian sentiment about the alleged threat posed by Ukraine (Kreß, 2022). Nevertheless, President Putin did not come any way close to presenting an arguable case for at least an imminent armed attack by Ukraine on Russia. Therefore, it is not necessary to engage in a complex legal debate about the status of pre-emptive self-defense in this case, in order to conclude that Russia was not in a position to invoke an individual right to self-defense to justify the use of force against Ukraine (Kreß, 2022). To use the right of self-defense, there should be an armed attack against a sovereign state. Ukraine did not commit or threaten to commit an armed attack against Russia or any other member in the UN Organization (Brunk & Hakimi, 2022). However, Putin did not cite or allege any specific armed attack in his address, and Ukraine has continued to deny any non-defensive military action outside its borders (Butchard, 2022). Moreover, even if Russia could show that Ukraine had committed or planned to commit attacks on the Ukrainian regions of Donetsk and Luhansk, article 51 would not permit an action of collective self-defence, because the two provinces are not members in the UN. They cannot even be qualified as states under international law despite the Russian recognition of these two provinces as states (Brunk & Hakimi, 2022). In other words, Russia cannot invoke the right of collective self-defence in this case, despite President Putin's recognition of Donetsk and Luhansk on 21 of February as new states. Rather, by claiming statehood for its two puppet regimes, Russia disregarded Ukraine's territorial integrity and threatened its political independence (Butchard, 2022).

Another argument was presented to justify this military attack in Putin's letter to the SC related to accusing the Ukrainian Authorities of committing grave violations of human rights, humiliation acts of genocide against the Ukrainian citizens of Russian origin in Donetsk and Luhansk. This particular issue arises the question of the right of self-determination for the peoples of Donetsk and Luhansk as Russia tried to rely on this right to justify its invasion. President Putin's speech on 24 February 2022 mentions his intention to protect people subjected to bullying and to stop the 'genocide of millions of people living there'. Adding more generally in respect of its military operation that it served a "purpose [...] to protect people who [...] have been facing humiliation and genocide perpetrated by the Kiev regime [...] we will seek to demilitarize and denazify Ukraine" (Khater, 2022, p. 109). He continues by stating

that “it was these aspirations, feelings, pain of people that were for us the main motive for making a decision to recognize the people’s republics of Donbas” (Cavandoli & Wilson, 2022). Despite this allegation, Russia did not provide or make any serious attempt to substantiate this claim. Moreover, all available reports of international observers of the events in the two provinces showed that no such substantiation would have been possible. There is no evidence that the Ukrainian Authorities have committed genocide in the Eastern part of Ukraine and Russia has failed to provide any evidence that supports this allegation (Brunk & Hakimi, 2022). Furthermore, the provisions of the Genocide Convention of 1948 do not authorize its parties to use force if acts of genocide were committed by one of its parties. If this happens, the body that has the full right to examine the situation and take the necessary measures in this context is the SC, because it is the responsible organ to maintain international peace and security in the world. Hence, if human rights violations reached to the level of threatening the international peace and security, then the SC should deal with this situation according to its authority (UN Charter, 1945). Therefore, we should say that the Russian allegations are not compatible with law or reality since no evidence has been found stating that Ukraine violated human rights in Donetsk and Luhansk, committed acts classified as genocide, or aimed to destroy any national, ethnic, racial, or religious group as the Genocide Convention requires.

Nevertheless, Ukraine rejected Russia's claims in this regard, and in response, it filed on the 26<sup>th</sup> of February 2022 a lawsuit against it before the International Court of Justice (ICJ) regarding its misinterpretation of the texts of the Genocide Convention, in order to find an excuse to justify its attack on Ukraine. Russia refused to appear before the court, and based on Ukraine's request, the court issued on the March 16, 2022 with 13 votes in favour and two votes against the decision (Russia and China) a set of temporary measures, including demanding Russia to stop its military operation against Ukraine ( ICJ, 2022). The Court in essence accepted all arguments made by Ukraine for the purposes of the provisional measures stage of the proceeding and rejected those in Russia’s submission to the Court that followed its non-appearance. The Court accepted as plausible Ukraine’s argument that it had a right under the Convention not to be subjected to a false claim of genocide, which was then used as a basis for using force against it. The Court declared in its resolution that no genocide acts have been committed in Luhansk and Donetsk, in contrast to the Russian claim that its invasion of Ukraine was grounded on the prevention and punishment of the crime of genocide. The Court has demanded that Russia and any other forces that support it immediately cease military operations on Ukrainian territory, as the Russian grounds for the attack have been proved false (Cavandoli & Wilson, 2022).

Having explained these ideas regarding the right of self-defence, we can briefly say that the Russian aggression on Ukraine is recognized and declared as an attack and does not fall under the right of self-defence, because Russia is the party, which started the attack. Therefore, its action in this regard contradicts the rules and principles of international law, particularly the UN Charter. The principle of sovereign equality of States and protection of its political independence and territorial integrity as well as the prohibition of the use of force are all fundamental principles that states have no right to violate or exceed at all. Therefore, President Putin’s argument for self defence seems like an argument for pre-emptive self-defence, because there is no evidence of an armed attack against Russia from Ukraine (Green et al., 2022; Milanovic, 2022). We would like to point out here that the theory of pre-emptive self-defence is one of the issues that is not agreed upon among jurists. It raises many disagreements about the extent of its legitimacy, as it may be used by states to justify the use of force in some cases that are originally considered to be in violation of the United Nations Charter, which prohibits the use of force (Murphy, 2005). Therefore, there are different views on how imminent an armed attack must be before the use of force in self-defence by states. Many observers have clearly stated that the absence of military action or attack or even a threat from Ukraine against

Russia leads to the conclusion that the Russian's argument of self-defence is inapplicable under any standard. Russia again cannot rely on the concept of collective self-defence to justify its attack because the two provinces of Donetsk and Luhansk, which Russia recognized as independent states three days before its attack, are not states capable of claiming such a right (Cavandoli & Wilson, 2022). The two provinces do not clearly appear to satisfy international law's traditional criteria for statehood, because their purported independence was established through the use of force. The two areas do not seemingly exercise control over their territory and they fully rely on the Russian government in the economic, financial, political and military fields (Mulligan, 2022). Moreover, in order for self-defence to be legitimate under the rules of international law, it must be proportionate and necessary to respond to any armed attack by another country. The question arises here: Was Russia's reaction to Ukraine proportionate and necessary? Did Ukraine carry out armed action against Russia?

Many jurists who commented on this invasion have reached the conclusion that Ukraine did not launch any armed attack against Russia and its actions, even those related to its desire to join the NATO and EU cannot be interpreted as unfriendly actions or threats to the Russian government and national security. Ukraine, as an independent and sovereign state, has the full right to determine its own destiny and decide the way it will manage its foreign affairs, and it has the right to join the organizations it desires.

Therefore, I do not think that such situation will affect Russia, despite its claim that joining NATO by Ukraine will threaten its national security, as President Putin indicated several times in his formal speeches. Furthermore, even if evidence of an armed attack could be established, it is not obvious whether the government of Russia's goals to "demilitarize and denazify Ukraine" would be a necessary and proportionate use of force in any case (Butchard, 2022). Another point I would like to clarify here, even if we would consider the two provinces of Donetsk and Luhansk as states, many observers have noticed that *jus ad bellum* principles of necessity and proportionality would require Russia to limit its military intervention to actions that protect only these two areas not a full scale attack aimed at the demilitarization of all Ukraine. As for the Russian allegations about Ukrainian forces and authorities committing acts of genocide against Russian minorities and Russian-speaking populations in Ukraine, such allegations have not been proven to be true, as we mentioned previously (Mulligan, 2022). Reports issued by some relevant international organizations did not confirm the validity of such allegations, nor did the United States accept it. The Western countries rejected such allegations, which it described as false, incorrect and fabricated. They accused Russia of launching such allegation in order to overthrow the current Ukrainian government, which Russia describes as hostile to it, and to occupy parts of Ukraine territories, especially the Donbas region.

In addition to the above-mentioned arguments, the Russian attack raises some other important issues that require specialized articles in this field, such as the issue of unilateral humanitarian intervention on the part of Russia to protect Russian minorities in Ukraine and the extent of the legitimacy of the use of force for this purpose. Unilateral humanitarian intervention is what Russia tried to raise through President Putin's message to the Security Council, raises many problems about the extent of its legitimacy, as it is a departure from the principle of prohibiting the use of force stipulated by Article 2/4 of the United Nations Charter. Resorting to it requires adherence to a set of standards and controls, which jurists have indicated and which have not been respected by Russia in its military operation in Ukraine (Al-Tarawneh, 1998).

Among other issues that can also be discussed is the issue of Russian violations of international humanitarian law (ICRC, 2004; Green et al., 2022). Russian forces are committing war crimes, crimes against humanity, and acts of genocide against civilians in Ukraine, as Russian forces targeted many civilians, women and children, and the infrastructure of Ukraine. This raises the issue of accountability of Russian officials and leaders accused of these crimes before the International Criminal Court (ICC) (Klobucista, 2022). Ukraine referred the file of

the crimes that occurred on its territory to the International Criminal Court, where the Office of the Prosecutor of the Court, Karim Khan, opened an investigation about these crimes and issued an arrest warrant against the Russian President Putin (Ashby, 2023). This dispute also raises the issue of Russia's civil liability for the damages it inflicted on Ukraine. Russia is legally responsible for compensating Ukraine for the damages it caused as a result of this aggression, in accordance with the rules of international liability, which are considered customary rules under international law. The great destruction and repeated attacks on infrastructure and civilian targets, such as roads, bridges, hospitals, housing, and others in Ukraine, are matters for which Russia must be held civilly and criminally accountable. These attacks constitute serious violations of the Geneva Conventions of 1949 and its First Protocol of 1977, and are also considered crimes in accordance with the Rome Statute of 1998 (Cotler et al., 2023). These issues that I mentioned require from researchers who deal with this conflict to focus on these matters in the future in their research and studies to provide the necessary legal answers to such questions and problems and provide appropriate solutions to them in the light of international law.

## **6. Conclusion:**

This research dealt with the Russian invasion of Ukraine and the extent of its legitimacy from the perspective of international law. We have shown in this research the historical roots of the conflict between the two countries and the reasons that led to its occurrence. The research analyzed the international reactions that accompanied this invasion and the positions of various countries on it, especially the Western countries. It also discussed the position of the United Nations on this aggression and the responses taken by the member states of the organization towards this illegal act by Russia. The research focused on clarifying and analyzing the most important arguments that Russia relied on to justify this invasion, which included self-defense, protecting Russian minorities in eastern Ukraine, and stopping genocide operations against Russian-speaking citizens. Russian authorities accused Ukraine of attacking and persecuting them, which justified its special military operation against Ukraine as it called it. This research has proven, through analysis of the relevant legal texts, especially the United Nations Charter, the declarations approved by the General Assembly, and the rules of international custom, that the arguments and allegations presented by Russia to justify its aggression against Ukraine were not convincing and clearly violate the rules of international law, especially those established in the Charter of the United Nations, such as Article 2/4, Article 2/7, and other articles. The argument presented by Russia based on the idea of self-defense, in accordance with Article 51 of the Charter are unacceptable, given that Ukraine did not carry out any military action against Russia. It is not also possible to invoke, as this study has shown, the idea of preventive self-defense, since this idea is already considered an unjust idea and contradicts the rules of international law. This study also showed that other arguments based on the idea of humanitarian intervention to protect the Russian minority in eastern Ukraine or to stop acts of genocide against this minority are also weak arguments and cannot be relied upon to justify this invasion, especially since the reports issued by international organizations and concerned parties did not acknowledge the commission of these acts. In conclusion, we can say that the Russian invasion of Ukraine violated Ukraine's sovereignty and threatened its stability, independence and territorial integrity. Consequently, such an act is considered a gross and flagrant violation of international law and therefore, does not fall within the scope of legitimate self-defence as Russia claimed.

This research has also shown that, although international law criminalizes the Russian invasion of Ukraine and considers it an illegal act, the international community is still unable to take any decision within the Security Council condemning this invasion and allowing the international community to use force to restore security, stability and peace to Ukraine because of the Russian veto. However, the United Nations General Assembly (UNGA) adopted a

resolution condemning the invasion and demanding the withdrawal of Russian forces from the areas they occupied. We also see an active role for the Western powers, led by the United States and the member states of the European Union, in exerting pressure on Russia in this regard. These countries have provided political, military and logistical support and assistance to Ukraine in its ongoing war with Russia, since the beginning of the war.

Despite the importance of such great efforts in this regard, the Russian-Ukrainian conflict raised some questions related to the issue of double standards and political hypocrisy practiced by some major countries regarding international issues and crises. While the major countries have dealt with this crisis with all effectiveness and strength, we find them, in return, turning a blind eye about other crises namely the recent aggression against Gaza on the 7<sup>th</sup> of October 2023, which demonstrated the moral crisis that the international community and international law are experiencing at the present time. The Security Council has been unable to take any decision to condemn the Israeli aggression, its blatant violation of the rules of international humanitarian law, and its commission of crimes of genocide against children, women and other civilians in a manner never witnessed in modern history. Such immoral and illegal policies and practices always remind us of the necessity of reviewing the composition of the Security Council and reconsidering the various United Nations structures, so that they can effectively respond to international crises. Further, it is the legal and moral responsibility of the international community to deal with all crises equally. States, particularly the major powers should abandon the policy of double standards which, unfortunately undermine the whole United Nations system. The current practices of the SC and its failure to deal with certain crisis made the people, nations and states lose their confidence in international law and its ability to resolve these crises, which are threatening the international peace and security. Politics and interests must be far away from international law, in order to ensure its effectiveness and ability to resolve international crises without discrimination. International law should not only seek to maintain peace and stability, but it should also seek to achieve justice for all.

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