

INTERNATIONAL LAW AND ITS APPLICATION TO UKRAINE-RUSSIA CONFLICT

Nikitha Achu Abraham*

INTRODUCTION

One of the world's most indelible memories begins with World War I and continues through one of the terrible and most barbaric activities of the twenty-first century, the Russian Invasion of Ukraine. This raises the question of whether or not this is a breach of human rights and international law. Russia's activities are clearly in breach of international law, as evidenced by its own acts. On February 24, 2022, Russia invaded Ukraine, crossing the Ukrainian border and causing explosions in the capital, Kiev. Due to the Russian invasion, over a million people left the nation, with tens of thousands crossing into Moldova and Romania, and other neighboring countries. Russia's President, Vladimir Putin, stated that his military operations were to "protect the people who have been subjected to humiliation and genocide by the Kiev regime,"¹ and that Russia would seek to demilitarise and denazify the country. He also stated that Russia would not capture Ukrainian territory. On the other hand, when Russia attacked Ukraine, numerous innocent civilians were killed which is contrary to what he said. The ferocity with which Russian armed forces are invading Ukraine is out of this world. Both nations are members of the United Nations, which is an international organization tasked with tackling issues that transcend national borders and sustaining international peace and security. The activities of Russia raise the question of whether we are living in the twenty-first century when all countries are on a global march to join hands with other countries and improve measures toward a common goal. The significance of international law in this matter is evident. International law is the only law that extends beyond national borders and has implications for countries. In this scenario, the application of international law is crucial since it is the only law that applies in these circumstances.

*BA LLB, FIFTH YEAR, SCHOOL OF LAW, CHRIST (DEEMED TO BE UNIVERSITY).

¹ Ukraine Crisis: Recognition, military action, and international law, *available at*: <https://commonslibrary.parliament.uk/research-briefings/cbp-9470/> (last visited on 15th june,2022)

INTERNATIONAL LAW

International law from the term itself means "A collection of norms created by custom or convention and acknowledged by states as binding in their interactions with one another," Since international law is a binding principle for all the countries, it abided by Russia and Ukraine. Some of the several instruments that Russia and Ukraine have followed are. **Article 2(4) of the UN Charter**² states the "Principles of inviolability of borders, respect for the territorial integrity of the states, and the prohibition of the use of force", and not only that the resolution 2625 also states about the declaration adopted on 24th October 1970 which states that "Declaration on principles of International Law, concerning Family relations and the cooperation among states following the charter of the United Nations. "It is also stated in resolution 3314 that defined the term aggression, in which several acts done by Russia can be considered under this. It is evident from this that Russia, even a member of the Security Council, refuses to admit the troops deployed in Ukraine, which would have led to an inevitable condemnation by the UN and under several texts. Organization for Security and Co-operation in Europe (OSCE) was adopted at the Helsinki Conference (August 1st, 1975), in which Russia is a member. Above mentioned principles were incorporated into this conference. Treaties and bilateral agreements have been made between the neighboring countries, but Russia's annexation of Crimea in 2014 followed the guide. Since 2021 December, they have been ignoring all parts of this treaty. Russian delegation joined the council of Europe on 28th February 1996. Nonetheless, the nation is not a member of the council, raising the question of whether it is violating its statute. The assembly declared that the illegal annexation of Crimea was a serious violation of international law, violating the United Nations Charter as well as the Helsinki Final Act of the Organization for Security and Co-operation in Europe³ (OSCE). Since its inception, the assembly has expressed concerns regarding Russia's violations. Another such guarantee given by Russia was in Budapest Memorandum in 1994 on December 5th, which aimed to Denuclearize Ukraine; even though being a guarantee, also Russia failed to comply with the provisions. Several treaties have been signed between both countries, one of which was the Minsk Agreement that took place on September 5th, 2014, and February 12th, 2015, which complies with the countries of Russia, Ukraine, and the self-proclaimed republics of Donetsk and Lugansk. The first

² Watney, Murdoch. "Legal Solutions to State-Level Cyber Intrusion Under International Law: A Maze of Legal Uncertainty or Not?" European Conference on Cyber Warfare and Security, Academic Conferences International Limited, 206, 2014,

³Organization for Security and Co-operation in Europe Wikipedia. *available at* : https://en.wikipedia.org/wiki/Organization_for_Security_and_Co-operation_in_Europe (last visited on June14th ,2022)

protocol enabled the withdrawal of military troops, stopping the cease-fire, realization of prisoners and hostages, reconstruction, and humanitarian aid programs. Well, the second protocol followed the implementation of these measures, which significantly disagreed with the implementation. One of the instances when Russia refused to withdraw its soldiers, was until Ukraine reformed its constitution. The role of the International court of justice⁴ is another factor where the court considered Ukraine's request and made an order against Russia to suspend its military operations, which was indeed a moral victory for Ukraine, as the court sanctioned and ordered Russia to stop its military operations in the country. International Criminal Court, popularly known as ICC, has been investigating war crimes and crimes against humanity in Ukraine. As the seriousness of the issue increased, 39 countries worldwide petitioned the court to initiate an investigation. An issue regarding the investigation came up, whether an open investigation should be initiated or not, as Ukraine has issued two declarations regarding the jurisdiction over crimes in its territory. Also, a second declaration was made stating that no limitation will not cover current crimes committed in the country. The United Nations and UN Security Council being a solid framework, have the authority to take action against Russia, and not only the UN but every nation around the world also have the right to cut its ties with Russia. As Russia is an influential nation, the countries around the world are indeed careful in cutting relations with Russia cause the backlash can lead to the most questionable and deadliest world war 3.

DOES INTERNATIONAL LAW FAIL?

It is very clear from the apparent attack on Ukraine by Russia that indeed is a violation of international law. United Nations Charter Article 2(4) mentions that states are prohibited from using force or threat. But unlikely, there are two exceptions to this issue, and they need authorization from the security council, which mainly includes its permanent members, and if the needed self-defense can be claimed under Article 51 of the charter, in which if they have to claim, they have to meet the necessity and proportionality. As per the issue, Russia has taken the stand of self-defense and claimed that Ukraine might use the deadliest nuclear weapons with the aid of western allies, but another drawback regarding this is that Russia has to prove the need for self-defense requirements, but in this context which it failed. On the outline, as the international law has immensely failed, to curb that, the security council issued a resolution

⁴ “Myanmar, New Zealand : New Zealand Acknowledges ICJ Decision on Myanmar.” MENA Report, Albawaba (London) Ltd., Jan. 2020.

where it gave a complete withdrawal of Russian military forces, full implementation of Minsk agreements, and respect for human rights and humanitarian law.

In 2017, Ukraine initiated certain proceedings in the International Court of Justice, regarding the alleged violations of an international convention for the suppression of⁵ Financing terrorism and the International Convention on the Elimination of all Forms of Racial Discrimination⁶, and another drawback of this is that it has been five years since the filing of the application, and even though the decision is in favor of Ukraine, there is no proper implementation procedure and later on February 27th, Ukraine approached ICJ and claimed that Russia should be held accountable because it manipulated or used genocide to define or justify aggression. All these instances point out the structural failure of international law.

INTERNATIONAL LAW & ITS APPLICABILITY

International law has its limitations on its applicability. Firstly, it is evident that Russia is violating one of the essential fundamental norms, Article 2(4) of the United Nations Charter. This law is a part of the customary law and a jus cogens norm. Indeed, the limitation on its applicability lies where the collective decision-making regarding authorizations to use force against a sovereign nation is tied to the Security Council, and great powers like Russia have veto power. Another drawback of its application, there is no adequate measure to address the issue regarding the violations. It is indeed a limitation that scholars have laid out. Ukraine can request the North Atlantic Treaty Organization (herein referred to as NATO) to help defend the claim of self-defense. Still, the actions taken by the NATO countries to protect are not equivalent to the United Nations' collective use against Russia. NATO countries can decide to use force against Russia in order to defend Ukraine, and there is one such instance where the NATO countries issued a series of air strikes against the Federal Republic of Yugoslavia in order to stop abuse against Kosovar Albanians. Per the norms, a NATO-led force to defend a non-member state remains illegal under International Law unless authorized by the Security Council. In 1999, NATO air strikes were done against the Federal Republic of Yugoslavia, and many defended it as legal, but this was not considered legal under international law. If a

⁵ International Convention on the Suppression of Acts of Nuclear Terrorism. *available at: <https://www.nti.org/education-center/treaties-and-regimes/international-convention-suppression-acts-nuclear-terrorism/>* (last visited on June 15th, 2022)

⁶ "Ukraine : Statement by the Ministry of Foreign Affairs of Ukraine in Connection with the Submission by the Russian Federation of a Counter-Memorandum to the UN International Court of Justice." MENA Report, Albawaba (London) Ltd., 2021.

possible use of force against Russia, it could happen only after getting the consent from Security Council, but this will not happen since, Great powers like Russia have veto powers within the Security Council. One other limitation on its applicability is that Article 8 of the ICC Rome Statute states that "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." As⁷ per this, Russia's President Vladimir Putin has committed a grave crime of aggression, but for this law to be applicable, both countries should be a part of the ICC Rome statute, whereas, in reality, Russia is not. But in 2013, Ukraine accepted the ICC jurisdiction over crimes that had been allegedly committed by Russian forces starting in 2013. The limited applicability of the International Court of Justice, where the Court has its drawbacks for its applications. The International Court of Justice is a judicial organ to settle disputes. Still, the problem lies for the Court to decide the case on whether the states must agree to litigate the issue in ICJ on an Adhoc basis or based on a treaty dispute resolution clause. One of the essential aspects of this is that Court doesn't have an enforcement mechanism to apply its judgment; since this is the problem, ICJ has limited applicability. One of the interesting features of international law is that governments have no capacity to halt Russia's invasion militarily since Russia has the ability to veto UN Security Council decisions. Russia is responsible not just to other countries but also to international courts and organizations internationally and in Europe. It is clearly visible from these issues that International law's application is limited in reality, where in theory, Russia's invasion of Ukraine is violating international norms. Specifically, the actions taken by leader Putin are also criminal acts. From the veto-powered Security Council, Russia has advantages under international law, making them escape accountability. So Russia, being in the status of Great Power, has violated fundamental international law norms, but they remain insulated from International law's reach.

RUSSIA'S CURRENT STATUS

Russia has made significant, meaningful contributions to international law, ranging from the 1868 St. Petersburg Declaration to the 1993 monistic approach to international law. Russia was keen to join any international organization. Still, the problem was that it did not match the legal requirements for admittance, and its military activities in Chechnya were ongoing while its application was still pending. From all of these perspectives, it is clear that Russia's current

⁷ United Nations General Assembly Resolution 3314 (XXIX). *available at* : <http://hrlibrary.umn.edu/instatee/GAres3314.html> (last visited on June 16th, 2022)

global position is unstable. Other countries did not question Russia's actions since it is a superpower, making it a powerful and dictatorial government. The world countries implemented several sanctions. They crippled the Russian economy by banning gold and natural gas, where Russia is the largest exporter of natural gas, grains, crude oil, coal, steel, and metals, and several countries even banned oil imports. It is evident from the current scenario that Russia may benefit from the West's dubious use of armed force in several parts of the world. Even though many African, Asian, and Middle Eastern countries are skeptical of the West's hypocrisy. Russia's actions against Ukraine are not only against international law but also against humanitarian law. Many cases have occurred recently, including killings of thousands of innocent people, the Kharkiv rape, in which a Russian soldier raped an innocent girl, and other forms of inhumane treatment towards innocent civilians in custody⁸.

The world economy is suffering as a result of Russia's actions. For instance, the European Union is dealing with negative outcomes such as the largest intake of refugees since World War II, food insecurity, a drop in financial market share prices, and a loss of cryptocurrency value. In regions of Asia, the immediate repercussions of conflict are minimal, as rice prices remain consistent. At the same time, nations such as Sri Lanka and Pakistan were already destabilized, and palm oil prices in Indonesia were rising due to a global lack of vegetable oil caused by conflict. India, on the other hand, has already prohibited wheat exports due to Russia's actions. Several African countries were particularly hard hit by the conflict since they were hit first by the climatic and societal catastrophe. Some Sub-Saharan African nations import energy and food items from Russia and Ukraine, mainly wheat. In short, the poor economic outlook in many rising and developing nations will have significant social and political ramifications, as well as influence the public view of the Ukraine conflict. The majority of allies do not disagree with the European stance on the war, but they do want them to do more, like handle the repercussions. As the situation worsens, people may be tempted to blame Europeans and the West for the issues instead of Vladimir Putin's war of aggression. On the facts, this is incorrect; nonetheless, if individuals characterize a situation as real, it is real in terms of its implications⁹.

⁸Ukraine Crisis: Recognition, military action, and international law, *available at* : <https://www.nytimes.com/2022/04/29/us/politics/ukraine-rape-war-crimes.html> (last visited on 17th June,2022)

⁹Russia's invasion of Ukraine puts the global economy at risk , *available at* : https://www.eeas.europa.eu/eeas/russia%E2%80%99s-invasion-ukraine-puts-global-economy-risk_en (last visited on 17th June,2022)

CONCLUSION

Russia's action towards Ukraine is violative not only in the eyes of international law but also in the eyes of humanitarian grounds. Unlike World War I & II, a "WAR" in the 21st Century gives a lot of different outlooks, as, since the formation of the United Nations, there hasn't been an act of war till now, except the current Russia –Ukraine war. And this is mainly because of the power of one of the fundamental organizations holding the countries together, and it is United Nations. Still, indeed, it has its limitations on its applicability. As nations are civilized, there is the notion that those countries to act systematically according to the principles of international law because if they don't, they know that they will suffer in the long run. International law and its applicability to countries have restrictions; if international law is obligatory on countries, then treaties, international legislation, or ratification of international laws must be applied to national legislations. Many nations are signatories to conventions, one being the Genocide Convention, to which Russia was a signatory. It is evident from these activities that Russia's actions are in violation of international law, and their application is restricted.

