

Name- Aditya Garg

College- Gujarat National Law University

BURNISHED LAW JOURNAL

## **Russian invasion of Ukraine : Mocking international law**

### *Abstract*

*All eyes around the world are on Ukraine, as new developments are occurring in the Donbass region with each day passing by. Historians and military analysts can certainly feel a déjà vu, as memories of the 2008 Russian invasion of Georgia and the 2014 Russian invasion of Crimea flash across one's mind, the only difference being that Russian giant Vladimir Putin is more aggressive than ever in achieving his interests, and has a suspected backing from Beijing, which could shield the Kremlin from a series of harsh sanctions from the West. Probability of the occurrence of a Third World War is at an all-time high, as Ukraine's Western allies have shown their support for Ukraine, but the fact that these counter-measures have barely affected Putin's acts of armed aggression, could invite large-scale military aid for Ukraine to defend itself against the Russian fortress. At this critical juncture, it becomes increasingly important to analyse events; Do Russia's acts qualify as violation of international law? What are the potential implications of Russia's actions? Is Ukraine justified in countering Russian aggression? What are the provisions of international law which can protect Ukraine and its citizens? Answers to these questions from the standpoint of public international law become crucial in this crisis situation and thus, it is worth inspecting various aspects of the current geopolitical situation, provisions of the international law for this situation, and potentially predicting what lies ahead not only for the disturbed Ukrainian citizens, but also for people around the globe.*

## Introduction

Anxieties around the world are booming as people find their future in grave uncertainty, courtesy of Putin-led Russia showing no signs of pausing their acts of aggression against Ukraine. It seems like nations' self-interests are trumping the humanitarian approach and leading to serious violations of human rights, as innocent Ukrainian citizens are forced to flee their nation, children's education is disturbed, and men aged 18-80 are forced to take up arms and defend their nation against a ferocious foreign invasion. Putin's actions have not only affected the Ukrainians, but also Kremlin, as counter-measures adopted by the Western allies of Ukraine are on track to severely damage the Russian economy and innocent Russian citizens in turn. Markets around the world are crashing (except for the weapon manufacturing industry, notably) and oil prices are sharply rising as the potential occurrence of a global war is looming large.

## History of the Russia-Ukraine crisis

BURNISHED LAW JOURNAL

Ukraine is a country almost 2.5 times the size of the United Kingdom, geographically sandwiched or crammed between Russia and Europe. It was an integral part of the erstwhile Union of Soviet Socialist Republics or the USSR until the final decade of the twentieth century, since then it has been a very poor nation with a vacillating or an indecisive approach towards its Russian and European neighbours.

Tensions in the region kicked off in November 2013 with Ukrainian President Victor Yanukovich turning down the deal for amalgamation with the European Union. This move sparked massive protests in the country followed by a violent attempt from President Yanukovich to extinguish the outcry. The United States of America and Europe were in support of the protestors, while Putin-led Russia backed then President Yanukovich<sup>1</sup>. What followed was more chaos, as in February 2014, the Yanukovich-led government collapsed

---

<sup>1</sup> Max Fisher - Everything you need to know about the 2014 Ukraine crisis.  
<https://www.vox.com/2014/9/3/18088560/ukraine-everything-you-need-to-know>

under the pressure of the protestors, and Russian heavyweight President Vladimir Putin decided to invade, and took over the region of Crimea, situated in eastern Ukraine. Crimea consisted of majorly Russian-speaking population, and following a referendum on 16 March, 2014, the Republic of Crimea declared its independence from Ukraine, and Russia formally took over Crimea two days later<sup>2</sup>. These acts from Russia were tagged as aggressively imperialist by the West and sanctions against Moscow flooded in, denting the Russian economy.

Contemporarily, all eyes around the world are fixed on the Donbass or the tension-filled border of Russia and eastern Ukraine, as over 150,000 Russian troops were deployed along the Ukrainian border, and Putin passed the green signal for launching missiles and deploying army tanks headed towards Kyiv and even Western Ukraine.

Seven years after the invasion of Crimea, Ukraine can feel the pressure of history repeating itself as Russia is opposed to the prospects of Ukraine joining the North Atlantic Treaty Organisation (NATO), as Ukraine's increased participation with the hostile West may cement the path for NATO to achieve a closer presence near its frontiers. Russia is cautious of the NATO influence especially post the 1999 Belgrade bombing of Yugoslavia accompanied by '78 days of fear'<sup>3</sup>, and wants to prevent the addition of Ukraine in NATO in any capacity to restrict the organisation to its pre-1997 boundaries, and secure Ukraine as the buffer state between itself and NATO<sup>4</sup>.

Calls of a potential Russian invasion on the 16<sup>th</sup> of February, 2022 by American President Mr Joe Biden sent shock waves around the globe, as stock markets plummeted world-wide, and oil and gas prices hiked due to fears that potential war could disrupt oil and gas supply across the world, '*price of Brent crude oil touching a seven-year high of \$99.2 per barrel*'<sup>5</sup>, and '*UK petrol prices touching a record 149.67p per litre serves as evidence*'<sup>6</sup>.

On 22<sup>nd</sup> February 2022, tension escalated in the region when Russian president Vladimir Putin officially recognised the separatist-held areas of 'Donetsk' and 'Luhansk' in eastern Ukraine as independent states, and ordered Russian troops to enter these self-claimed independent states

---

<sup>2</sup> Ibid.

<sup>3</sup> Maja Zivanovic and Serbeze Haxhijaj - 78 Days of Fear  
<https://balkaninsight.com/2019/03/22/78-days-of-fear-remembering-natos-bombing-of-yugoslavia/>

<sup>4</sup> Boris Toucas - Russia's Design in the Black Sea  
<https://www.csis.org/analysis/russias-design-black-sea-extending-buffer-zone>

<sup>5</sup> <https://www.bbc.com/news/topics/cmjipj223708t/oil>

<sup>6</sup> <https://www.bbc.com/news/business-60518578>

for ‘*peacekeeping missions*’<sup>7</sup>. Ukrainian President Volodymyr Zelensky called for “clear and effective support” from international allies, and the West has rallied behind Ukraine, as UK Prime Minister Boris Johnson claimed that Russia had violated the sovereignty of Ukraine, and ‘completely torn up’ the international law, he also promised a ‘barrage of sanctions’ against Mr Putin’s Russia for its act of full-scale invasion. Washington has accused Russia of creating a situation of war, and ‘*German Chancellor Olaf Scholz announced the halting of the process certifying the Nord Stream 2 pipeline as a result of Russia’s actions*’<sup>8</sup>.

History seems to be repeating itself as Putin has struck his first blow, by declaring the Donetsk and Luhansk regions of eastern Ukraine as independent states, thereby indirectly attacking Ukraine’s sovereignty, it looks like Putin has already triggered his plan of achieving ‘*Novorossiya*’<sup>9</sup>, which has certainly got the alarm bells ringing in Ukraine and its western allies, as the West has responded by introducing sanctions, but what remains to be seen is how much damage it does to the Russian interests.

### **Position of the Public International Law**

With Russia launching missiles headed for Ukrainian cities Poltava and Mariupol, and multiple envoys barging into Kharkiv and capital city Kyiv, tension is continuously rising between the two neighbours, and in such a context, analysing the actions of aggressor states is of utmost importance from the standpoint of public international law. Speaking on behalf of ‘*jus cogens*’ (or ‘*compelling law*’ which designated norms from which no derogation is permitted by way of particular agreements), which stands at the very core of international law, acts of aggression are forbidden by these authoritative norms. ‘*Notably, the jus cogens are applicable to all nations irrespective of any specific treaty obligations, with no possibility of derogation*’<sup>10</sup>.

Keeping aside the perspective of *jus cogens*, it is to be noted that both Russia and Ukraine are integral members of the United Nations, and thus, are bound by the Charter of the United

---

<sup>7</sup> <https://www.bbc.com/news/world-europe-60468237>

<sup>8</sup> <https://www.aljazeera.com/news/2022/2/23/what-sanctions-have-been-imposed-on-russia>

<sup>9</sup> Roger Mcdermott - Putin’s War for Novorossiya  
<https://jamestown.org/program/putins-war-for-novorossiya/>

<sup>10</sup> M. Cherif Bassiouni, *International Crimes: Jus Cogens and Obligation Erga Omnes*, ‘*Law and Contemporary Problems*’ 1996, vol. 59, p. 63, at pp. 63-66

Nations. The aforementioned Charter contains significant provisions on obligations with respect to ‘*self-determination*’ (article 1.2), ‘*sovereignty*’ (article 2.1), and the principle of ‘*non-interference*’ (article 2.7). Additionally, article 2.44 asks states to “*refrain in their international relations from threat or use of force*”, and article 2.3 obliges “*all member states shall settle their international disputes by peaceful means*”. Moreover, the Friendly Relations Declaration states - “*The territory of a State shall not be object of acquisition by another State resulting from the threat of use of force, no territorial acquisition resulting from threat or use of force shall be recognised as legal*”<sup>11</sup>.

Moving on, the International Court of Justice (ICJ) mandate mentions sources of international law in article 38. ‘*International conventions, whether general or particular, establishing rules recognised by contesting states*’<sup>12</sup> are the top source of international law in hierarchical order, and treaties or legal instruments become of utmost importance in such situations. Kremlin had expressly recognised the territorial integrity of Ukraine in treaties and agreements such as in :

- The Alma Ata protocol<sup>13</sup>, wherein, leaders of Russia, Belarus and Ukraine agreed to dissolve the Soviet Union and formed the CIS.
- Minsk II treaty, wherein, leaders of Russia, Ukraine and other separatist group leaders signed a 13-point agreement in February 2015 for immediate ceasefire in the region.

By these standards, it can be answered that Russian invasion of Ukraine is a serious act of outright aggression and is not only transgressing the sovereignty of Ukraine, but also directly attacking international peace and stability. The International Criminal Court (ICC) along with its 123 members introduced a set of amendments to the Rome Statute which included defining aggression, however, the court would be unable to prosecute the Russian officials involved in the invasion of Ukraine as Russia is not a member state of ICC, and these crimes stated in the Rome Statute do not apply to the aggressive acts committed by non-members of the ICC. The ICJ had also highlighted in the ‘Corfu Channel’ case that “*between independent states, respect for territorial sovereignty is an essential foundation of international relations*”<sup>14</sup>. It is worth to

---

<sup>11</sup> Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, GA Res 2625 (XXV), 24.10.1970. See also: R. Geiss, Russia’s Annexation of Crimea: The Mills of International Law Grind Slowly but They Do Grind, ‘International Law Studies’ 2015, vol.91, at p. 425, pp. 432-433.

<sup>12</sup> Article 38, ICJ mandate. <https://www.icj-cij.org/en/statute>

<sup>13</sup> Alma-Ata Declaration, 21.12.1991, ‘International Legal Materials’ 1992, vol. 31, at p. 149.

<sup>14</sup> ICJ GL No 1, [1949] ICJ Rep 4, ICGJ 199 (ICJ 1949), 9th April 1949, United Nations [UN]; International Court of Justice [ICJ]

be highlighted that after Russia's invasion of Ukraine, Ukraine's action of countering the invasion is non-violative of the provisions of the available international law (as long as the reply is proportional), as Ukraine has the right to self-defence from exterior aggression. The UN Charter clearly states in its article 51, "*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*"<sup>15</sup>. However, the act must be a direct reply to the imminent danger from the aggressor state, and must be proportional to the danger. Thus, it is safe to say that Ukraine is legally justified to reply to the devastating Russian invasion by launching a proportional counter-attack as it can use the reasoning of self-defence.

### Repercussions of the invasion

With Russian missiles wreaking havoc in Kyiv and other parts of Ukraine, the West has not adopted a rather aggressive approach in its reaction, as, on calls for solidary support by Ukrainian President Zelenskiy, the West along with nations like Australia and Japan have imposed heavy sanctions on the Kremlin, targeting financial institutions and affluent individuals. '*Sanctions are legal penalties or other means of enforcement used to provide incentives for obedience with the law, or with rules and regulations*'<sup>16</sup>. The USA and the UK have introduced sanctions against banks such as VTB and Promsvyazbank, and certain Russian nationals too, EU on the other hand decided to target the energy sector with an export ban on materials Russia uses for oil refineries<sup>17</sup>. Japan is halting the export of goods such as semiconductors with Russia, and German chancellor Olaf Scholz has also decided to put the permission for the Nord 2 Stream gas pipeline between Russia and Germany on hold.

President Zelenskyy, on behalf of Ukraine, has applied for membership in the European Union (EU) as a counter measure to gain more diplomatic support from Europe, it can be believed that Ukraine wants to receive military by joining the EU as it can then activate the 'mutual defence clause' stated in article 42(7) of the Treaty of the European Union, which states that '*EU countries are obliged to assist a fellow member state that has become "a victim of armed*

---

<sup>15</sup> Article 51, United Nations Charter. <https://www.un.org/en/about-us/un-charter/full-text>

<sup>16</sup> Black, Henry Campbell (1990). *Black's Law Dictionary*, 6th ed. St. Paul, MN.: West Publishing. p. 1341. ISBN 0-314-76271-X.

<sup>17</sup> <https://www.bbc.com/news/world-europe-60125659>

*aggression on its territory” and that support should be consistent with potential NATO commitments<sup>18</sup>.*

In addition to the series of sanctions introduced by the West, a severe financial armament, which could very well serve a rigorous blow to Kremlin, is being kept in reserve. The Society for Worldwide Interbank Financial Telecommunication or SWIFT was set up in 1973, and is used by over 11,000 financial institutions for sending secure payment orders and messages. Removal of Russia from SWIFT would deliver a huge shock to Russian companies and their foreign customers as it would make much tougher for the financial institutions to move money in or out of the country, and could even trigger currency volatility and massive capital outflow as a result<sup>19</sup>. Ukrainian president has made calls for expulsion of Russia from SWIFT as a repercussion of the invasion, however the Western allies are divided over the issue due to reciprocal price surge it may trigger for European nations such as, Germany, Italy and France.<sup>20</sup>

However, there seems to be a catch here, as it is assumed that Putin has learnt his lessons of how detrimental sanctions can be for Moscow as it affected Russia’s economy sharply in 2014 when it annexed Crimea. Russia’s international reserves were at record levels by January 2022 (more than \$630 billion), but around 13% of it is now held in Chinese renminbi, which was supposedly done to shield Russia from America-led sanctions<sup>21</sup>. China is a huge part of Putin’s defence strategy as Russia has driven itself away from Western markets for trade, and additionally, reduced its reliance on foreign loans and investments<sup>22</sup>. It seems like president Putin is placing a bet, as multiple sanctions to significant Russian banks would surely hurt, but sanctions in oil industry and halting the Nord 2 Stream gas pipeline will have significantly shoot up energy prices in Western Europe as well, which makes it a contest of ‘who will break first’.

As a result of the Russian missiles flying in and destroying structures in Ukraine, over 100,000 Ukrainians are already displaced, with the number potentially going up to 1-5million. This could kick off a massive refugee crisis across Europe. For now, Ukrainians are being welcomed with open arms in central Europe, with receiving countries being neighbour Poland, Romania,

---

<sup>18</sup> <https://www.europarl.europa.eu/news/en/headlines/security/20160119STO10518/mutual-defence-clause-what-the-requirement-to-help-other-member-states-means>

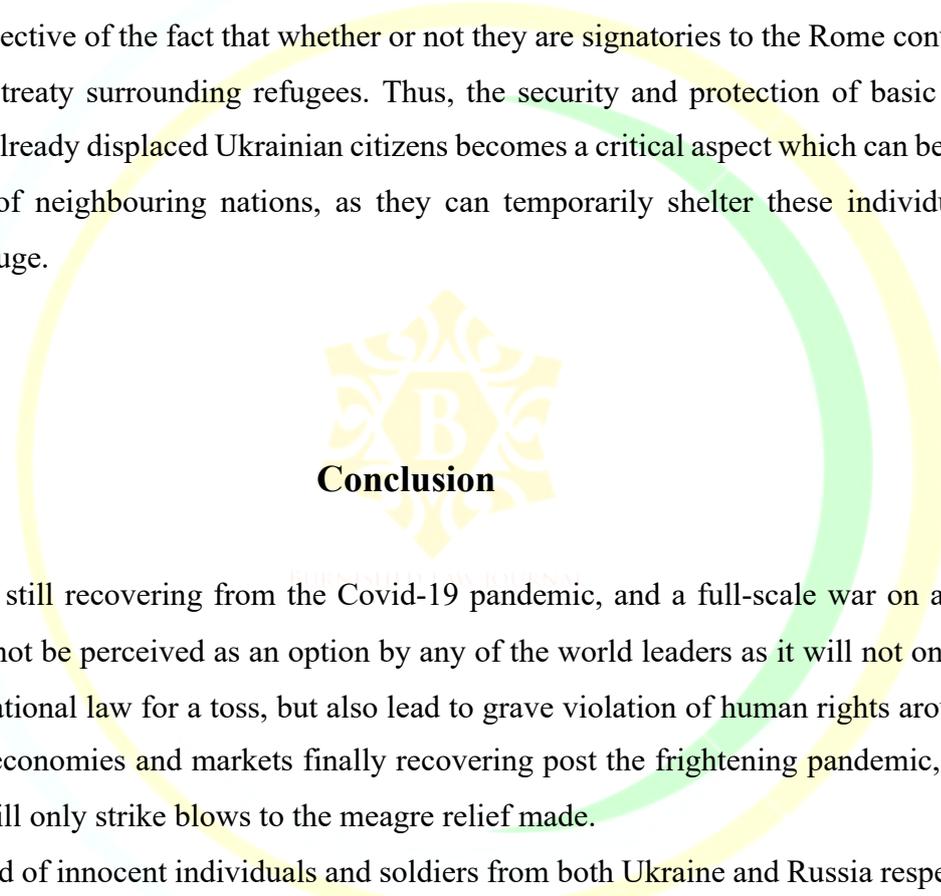
<sup>19</sup> <https://carnegiemoscow.org/commentary/84634>

<sup>20</sup> <https://www.bbc.com/news/business-60521822>

<sup>21</sup> <https://www.bbc.com/news/business-60480904>

<sup>22</sup> ibid

Hungary, Slovakia and Moldova<sup>23</sup>. It is to be noted that Hungary, Poland, Romania and Slovakia are signatories to the '1951 Convention relating to the Status of Refugees'<sup>24</sup>, article 33 of the aforementioned convention talks about the prohibition of expulsion or return of a refugee in case of a threat of persecution<sup>25</sup>, which applies to Ukrainians seeking refuge. However, it is of utmost importance to keep in mind that the principle of non-refoulement or the prohibition of expulsion of a refugee on grounds of a threat of persecution is a jus cogen or a peremptory norm of international law or an international custom, which is a binding on all nations irrespective of the fact that whether or not they are signatories to the Rome convention or any other treaty surrounding refugees. Thus, the security and protection of basic human rights of the already displaced Ukrainian citizens becomes a critical aspect which can be solved by the help of neighbouring nations, as they can temporarily shelter these individuals by providing refuge.



## Conclusion

The world is still recovering from the Covid-19 pandemic, and a full-scale war on a global level should not be perceived as an option by any of the world leaders as it will not only send public international law for a toss, but also lead to grave violation of human rights around the globe. With economies and markets finally recovering post the frightening pandemic, acts of aggression will only strike blows to the meagre relief made.

With thousand of innocent individuals and soldiers from both Ukraine and Russia respectively losing their lives in this conflict, it becomes very significant to adopt some mechanism which can halt the bloodshed and potentially improve relations between the two hostile nations.

Article 33(1) of the United Nations Charter stores the potential solution to resolve the conflict, which is - '*The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice*'<sup>26</sup>. The

---

<sup>23</sup> Nicole Narea - The Ukrainian refugee crisis has already begun

<https://www.vox.com/22948699/ukraine-refugee-crisis-us-eu-russia-war>

<sup>24</sup> <https://www.unhcr.org/protect/PROTECTION/3b73b0d63.pdf>, page 3 & 4.

<sup>25</sup> <https://www.ohchr.org/Documents/ProfessionalInterest/refugees.pdf>, page 9.

<sup>26</sup> <https://www.un.org/en/about-us/un-charter/chapter-6>

subsequent clause states that UN Security Council shall call upon the parties to settle their disputes when it deems to be necessary. Delegations from both Russia and Ukraine meeting at the Belarus border is a beacon of hope for millions and Ukrainians and even for the West as multilateral talks in the region could extinguish the prospects of the Russian invasion evolving into a global war.

