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## The war in Ukraine: some international legal and political aspects

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**Abstract:** This paper addresses the ongoing war in Ukraine. It argues that Russia's use of force against Ukraine, both in 2014 with the annexation of the Crimean Peninsula, and today as we witness the aggression launched by the Russian Federation in February 2022, signifies a breach of international law, and provides no sound or justifiable reasons for its legitimacy. Even though the United Nations Security Council is paralysed and thus cannot adopt a 'hard' resolution exercising its primary responsibility for international peace and security, the vast support of the international community for Ukraine's efforts and a broad condemnation of Russian aggression are evident in the General Assembly's 'soft' resolutions. The paper concludes with a discussion of some of the political considerations triggered by Russia's aggression against Ukraine, and some thoughts on the need for a lasting, just, and indeed a sustainable peace.

**Keywords:** use of force; aggression; international law; international politics; Ukraine; Russian Federation.

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## **1 Introduction**

The massive mobilisation of Russian armed forces and hardware along the Ukrainian border in the spring of 2021, under the pretenses of ‘military training exercises’,<sup>1</sup> raised many serious questions, vast disbelief in Russia’s official explanation of the contentious situation, and an inevitable fear of what could happen. Negative predictions gathered ground as the rhetoric of the Russian President Putin intensified. War rhetoric was backed up by the situation on the ground as Russia expanded its troops in the area. Then, on 24 February 2022, Russia began its armed attack on sovereign and independent Ukraine as Putin authorised, in his words, a ‘special military operation’.<sup>2</sup> The Russian invasion and subsequent illegal annexation of Crimea in 2014 were still vivid in memory. Both countries came, using D’Anieri’s words (2023), from ‘civilized divorce’ to an ‘uncivil war’, and it can be argued that a new Cold War has begun.

The EU was faced with an unprecedented number of Ukrainians, mainly women and children, crossing borders into neighbouring EU countries, seeking safety and protection. The Temporary Protection Directive<sup>3</sup> was activated for the first time since its 2001 adoption. According to the United Nations High Commissioner for Refugees (UNHCR) reports, there are currently over 6 million refugees from Ukraine across the world.<sup>4</sup> The United Nations reacted. The UN Security Council convened an emergency meeting, but the constellation of its permanent membership, which includes the Russian Federation, and their veto power prevented the adoption of any hard law conclusions.<sup>5</sup> A draft resolution was similarly vetoed on the occasion of the annexation of Crimea.<sup>6</sup> However, unlike in 2014, the recent armed attack on Ukraine did not and could not go unnoticed or with only a mild response from several international organisations and states. The international community as such, and the EU member states in particular, faced important questions and decisions to be made.

‘History repeats itself’ is a well-known proclamation that is mostly true, but never really followed or rarely thought about when needed. Although the Cold War ended in 1989 and Soviet Marxism vanished, MacMillan (2003, p.3) warned that “older forces, religion or nationalism, came out of their deep freeze”. Putin tried to justify the army’s mobilisation as the first “self-defence against further expansion and threat from NATO”<sup>7</sup> and then as “support of Russian-backed separatists in the Donbas region”,<sup>8</sup> but also claimed its security demands had not been properly addressed. Could these justifications gain ground and suggest that the use of force by the Russian Federation against Ukraine was in fact legal and justified? When and how could the war in Ukraine end, considering it started almost 20 months ago and there is no plausible solution yet in sight?

The paper is divided into four main parts. It begins with an historical overview, dwelling on the roots of the conflict between two states which on many levels were intrinsically intertwined in the past. In the next part, Ukraine is considered in its broader geopolitical context, noting Ukraine’s NATO and EU aspirations. The third part of the paper delves into the international legal and political aspects of the conflict. It examines the legality and legitimacy of the use of force by the Russian Federation against Ukraine by observing and analysing the Russian justifications for this attack. Further, it explores the broader international political aspects of this war by looking at the response of the international community gathered in the UN. After months of fighting in Ukraine, with many deaths among the soldiers on both sides of the conflict, millions of people leaving Ukraine, many atrocities committed on its territory, including towards civilians, and no clear light at the end of the tunnel, the paper concludes with a discussion of some of the

political consequences and the possible geostrategic changes triggered by the Russian attack, and thoughts on how to reach peace and what kind of peace is in fact required and sustainable. It was reportedly the former French president, Clemenceau, who in 1919 commented: “It is much easier to make war than peace” (Ribot in: MacMillan, 2003, p.6). Although a century has passed since these words were spoken, they tend to resonate in our ears and prove to be all the more relevant and true.

## **2 Roots of the conflict**

### *2.1 A short historical overview*

As in most cases of international conflict, the roots of the present war in Ukraine rest deep in history. Ukraine has faced many challenges both internally and externally, and a short historical overview of pivotal events is therefore required to better understand the current conflict.

After the fall of Ukraine and the destruction of Kiev in the 13<sup>th</sup> century by Mongol invaders (Plokhy, 2015, pp.49–52), the centre of Russian orthodox civilisation slowly shifted to the north-east, to Moscow, and thus away from Mongol rule. The demise of Mongol rule nearly three centuries later led to most of today’s Ukraine territory being under Polish and Lithuanian rule (Plokhy, 2015, p.60). Plokhy (2015, p.133) commented that “the last quarter of the eighteenth century saw a dramatic change in the geopolitics of eastern and central Europe”. The partitions of Poland between Russia, Prussia and Austria resulted in the “reunification of some of the Ukrainian lands” (Plokhy, 2015, p.145). He explained that “Russia turned from a minority into a majority”, thereby “controlling most of Ukrainian ethnic territory”. Most of Ukraine, including Kiev, was part of the Russian Empire and under Russian rule and cultural influence.

However, in the 19<sup>th</sup> century, Ukrainian national and cultural identity, with the Ukrainian language as an official language, was established, mostly in the western part of Ukraine, which had been historically and culturally under the impact first of Poland and later of Austria and the Habsburg Empire. After the break-up of the Russian Empire and the adoption of the peace Treaty of Brest-Litovsk in 1918, Russia recognised the independence of Ukraine. This *de facto* independence was enjoyed by Ukraine for two years, only to be later ‘liberated’ by the Red Army, and most of it, including Kiev, became a separate federal entity part of the ‘Soviet republic’, the Soviet Union (Plokhy, 2015, p.254), whereas the west of Ukraine was included in the re-established independent state of Poland.

The partition of Poland based on the Molotov-Ribbentrop Pact in 1939 resulted in all of Ukraine becoming part of the Soviet Union, which was confirmed by new eastern borders of Poland being established after the Second World War. It is interesting to mention that the Ukrainian Soviet Socialist Republic, a federal entity within the Soviet Union, was formally a separate member of the UN. Indeed, it was a founding member of the world organisation, which enables the claim that its international status enhanced and was comparable to that of, for example, Belgium or Brazil (Plokhy, 2015, p.291). Despite this sort of formal statehood of Ukraine in the times of the Soviet Union, it should not be overlooked that during that time a Russification policy was carried out in Ukraine, including the infamous *golodomor* (i.e. starvation to death) (Plokhy, 2015, pp.252–254), and also the resettlement of Russians into Ukraine continued as it had in Tsarist times.

## 2.2 *The East–West divide*

The above remarks concerning the main events in Ukrainian history contribute to a better understanding of the significant divisions existing in present Ukraine between its west and east. Whereas the west of the Ukraine was historically oriented towards central and western Europe, its east turned more towards Moscow and orthodoxy. This is also reflected in the linguistic and religious composition of contemporary Ukraine. The 2001 All-Ukrainian Population Census, the first since the proclamation of its independence in 1991, indicated that 14.8% of ethnic Ukrainians considered Russian their first language.<sup>9</sup> According to a survey conducted by the Kyiv International Institute of Sociology in 2022, the vast majority of Ukrainians (72%) declare themselves to be Orthodox, and only 4% identify themselves with the Ukrainian Orthodox Church of the Moscow Patriarchate, whereas 54% of all respondents consider themselves to be members of the Orthodox Church of Ukraine.<sup>10</sup> Russians, however, make up the second most numerous nation of Ukraine, and the All-Ukrainian Population Census revealed that they were the prevailing nation in Crimea, and mostly inhabited the Eastern regions of Donetsk, Luhansk, Zaporizhzhia, and Kharkiv.<sup>11</sup>

Today this difference is also reflected in the Ukrainian approach towards EU and NATO membership, and in the relations of Ukraine with the Russian Federation. Let us remark that these differences and specifics of Ukrainian history and its relations with Russia in the past also contribute to the persisting views in Russia that Ukrainians and Russians are both part of a great Russian nation, and that Ukraine's cultural and even linguistic identity is disputable. In his essay *On the Historical Unity of Russians and Ukrainians* Putin emphasise that "Russians and Ukrainians were one people – a single whole", adding that modern Ukraine "was shaped – for a significant part – on the lands of historical Russia".<sup>12</sup> It seems that in the eastern part of Ukraine, particularly in the regions Donetsk and Lugansk with their large proportion of Russian speaking population, this belief is present and forms a ground of separatist tendencies. A Russian proverb apparently runs: "If Moscow is Russia's heart, and St Petersburg its head, Kiev is its mother". But Ukrainians deny that Kiev has to do with Russia – "if she mothered anybody, it was the Ukrainians themselves" (Reid, 2023, p.5).

## 2.3 *Russia's foreign policy doctrine*

Let us return to history and discuss the existence of the Russian Empire and its subsequent growth. Compared to other (European) colonial empires, that of Russia had some peculiarities, as it was not an empire consisting of overseas colonial possessions, but simply the territorial growth of the Russian state for three centuries across its borders to the neighbouring lands, especially towards the east (Siberia, Central Asia) and south (Caucasus, northern shores of the Black Sea and Ukraine). There are differing opinions on what the essential driving force of Russian foreign policy from 1700 till 1917 was. LeDonne (1994, p.1) identifies defensive considerations as "the great Russian plain exposed to invasion from all sides was a permanent source of insecurity", aggressive behaviour "grounded in political ambition, the urge to colonize, and economic interests", or a broader geopolitical context which eventually led to a "radical change in a certain balance of power on the Eurasian continent".

One of Russia's foreign policy doctrines on colonial or geographical expansion – not formally promulgated, but tacitly applied – was the strategy that the Baltic and Black

Seas should actually be Russian inner waters, which presupposed at least the possession by Russia of most of the shores of the Baltic and Black Seas. In fact, this goal had already been achieved in the 18<sup>th</sup> century by Russia incorporating into its empire territories on the eastern shores of the Baltic Sea, the northern shores of the Black Sea, and in the Caucasus. Historically, as Gresh (2000, p.23) explains, the waters of the Black and Baltic Seas were considered to be part of Russia's "traditional spheres of influence". It must be stressed that these were not Russian lands by either population or history; these were simply imperial conquests. Due to their territorial continuity with core Russian lands, they were easier to rule and to be integrated into the Russian realm, and to be settled by significant numbers of Russians. Towards the east, Russian geographical expansion did not meet with serious opposition, except the vastness of space to be incorporated into the empire and some dissent in Central Asia by the then existing Islamic states, until it reached the borders of China and met with British imperial security and commercial interest in Persia and Afghanistan. However, the Russian expansion towards the west had been challenged by significant European states such as, for example, Poland, Sweden, and Napoleon's France, since the 17<sup>th</sup> century. Nevertheless, after the Napoleonic Wars and the Congress of Vienna in 1815, Russia as an imperial power stood firmly in central Europe.

These invasions into Russia from the west, later added to by German victories on the Eastern Front in the First World War and subsequently the invasion by Nazi Germany in 1941, led to the reconfirmation of Russia's foreign policy doctrine that Russian (at that time the Soviet Union) security required 'friendly', in fact subdued, vassal regimes at its western borders. This strategic goal was achieved by the victorious Soviet Union, which could be considered as a kind of prolongation of the Russian Empire, at the end of the Second World War, and it lasted as the 'Soviet Bloc' until its breakup and the dissolution of the Soviet Union itself in the years between 1989 and 1992. This change has been considered by some in Russia as 'a geopolitical catastrophe' or 'a major geopolitical disaster of the century', as said Putin in his address to the Federal Assembly of the Russian Federation.<sup>13</sup> Others, however, has understood it as the historic liberation of eastern and central European peoples and peoples in Central Asia and in the Caucasus and commented it as "the last great wave of decolonization" (Kennedy, 2016, p.6).<sup>14</sup>

### 3 Ukraine and the broader geopolitical context

Ukraine is the largest and most populous state in the region besides the Russian Federation. It declared its independence on 24 August 1991. "After four unsuccessful attempts, undertaken by different political forces under various circumstances", as commented by Ploky (2015, p.322), "Ukraine was now not only united but also independent and free to go its own way". The past empire may be gone, and a new country may be born, but as it soon appeared, the new geopolitical situation was delicate, and continues to be most challenging.

At first it seemed that Ukraine would continue to remain *de facto* within the Russian realm, the main partner and ally of the Russian Federation in Europe. However, it did not turn out that way. In 1994, it began its 'political engagement with the West' as Ukraine signed a Partnership and Cooperation Agreement with the EU and the Partnership for Peace Agreement with NATO (Ploky, 2015, p.326). Nevertheless, Russia's aspirations to have control over Ukraine did not fade, and neither did the will of the protesters who

gathered in mass rallies in Kyiv on several occasions, being provoked by election fraud or corruption in government, or demanding reform or a European path to be taken (Plokyh, 2015, pp.333–340). Plokyh (2015, p.339) observed that the protesters opposed Ukraine joining the Russian-led Eurasian Customs Union; instead they were striving for closer ties with the EU. Ukraine therefore began to pursue its future within European integration and its security within NATO, despite declared Russian opposition and assertions from Moscow that Ukraine's NATO membership would be a serious challenge to Russia's security.

Among NATO members there has been neither a clear 'yes' nor a clear 'no' to a future NATO membership for Ukraine. The EU included Ukraine in its Eastern Partnership initiative launched in 2009, but it was only in 2014 that the Association Agreement was signed, and it lasted roughly three more years before entering into force. After Russia's seizure of Crimea in 2014, and even more so after its flagrant aggression against Ukraine commenced on 24 February 2022, which *de facto* established a state of war between Ukraine and the Russian Federation, it seems reasonable to assume that an invitation for Ukraine to join NATO at this time would probably have led to an increased risk of direct military confrontation between NATO and Russia; it is needless to add that a potential global conflict could have started, and indeed a catastrophe which nobody should want or seek out, and which is in fact of no interest of the international community as such.

In this context a few remarks on NATO's role in Europe are useful. In the past we have seen several clear military interventions, first by the Soviet Union and later by the Russian Federation; for example, to name just some of the most obvious ones, the Soviet Union's suppression of the East German uprising in 1953 (Ostermann, 2001), the Soviet Union's attack on Hungary to end its revolution in 1956 (McCabe, 2019), and the Soviet Union's invasion of Czechoslovakia to halt its reform tendencies in 1968 (Goodman, 1970). In recent times and in 'Putin's' Russian Federation, the world witnessed the Russian armed attack against Georgia by land, air, sea, and cyberspace in 2008, which in fact represented Russia's first massive deployment of troops outside its territory since the dissolution of the Soviet Union and, as depicted by Asmus (2010, p.218), "the first post-Cold War East-West military conflict", which arguably marked "a new Russian policy of rollback and containment – an effort to roll back Western influence and to contain any future expansion of Western institutions to Russia's borders". There is little doubt that the continuation of this Russian foreign policy and its ideas about expanding its influence within the borders of the Russian Empire of the 16<sup>th</sup> century paved the way for Russia's further military interventions in its neighbourhood.

Then, in 2014, Russia made use of Ukraine's internal crisis and paved the way to take control over Ukrainian Crimea (Plokyh, 2015, pp.340–341). From the point of view of international law, it is assumed here – and it will be argued later – that Russia, by its intervention and later annexation of the Crimean Peninsula, as well as by its destabilisation of Eastern Ukraine, undermined the territorial integrity, sovereignty and independence of Ukraine, and committed a clear violation of international law. To no surprise, Russian President Putin defended the annexation of Crimea as an act of "historical justice" (Plokyh, 2015, p.341).<sup>15</sup> He added: "Crimea is our common historical legacy and a very important factor in regional stability. And this strategic territory should be part of a strong and stable sovereignty, which today can only be Russian."<sup>16</sup>

Each of these military interventions had its specifics, but two features can be emphasised as common. First, the reasons given to justify the military interventions were connected to ‘defence against outside threats’, as the Soviet Union, now the Russian Federation, has grown ever more fearful of the West, i.e. the United States and its allies in NATO, and the possible expansion of NATO (McCabe, 2019, p.27). There seems to be, in words of Asmus (2010, p.218), “the clash between a twenty-first-century Western world that saw the extension of democratic integration closer to Moscow’s borders as a positive step toward greater stability and a Russia that was returning to the habits of nineteenth-century great power thinking and viewed it as a threat”.

Second, neither the Soviet Union nor the Russian Federation has ever intervened by military force in a NATO member state. The security guarantee established in Article 5 of the North Atlantic Treaty, signed in Washington, D.C., in 1949, has proved to be a solid security assurance for NATO member states.<sup>17</sup> It is, therefore, not difficult to understand the endeavours of Russia’s neighbours in Eastern Europe (specifically Finland and Sweden, both having long pursued a policy of neutrality) to join NATO, which they consider a guarantee against threats coming from the East after the Russian aggression against Ukraine.

When the Soviet Union intervened, for example, in Hungary or Czechoslovakia – neither of which were a member of NATO at the time – official statements were passed in the UN and elsewhere, though mainly in the West, and there were some demonstrations in the ‘Western’ capitals and condemnations of the Russian use of force, but in the end the victims of that aggression were left alone. As the Soviet Union, now the Russian Federation, is a permanent member of the UN Security Council, all the Security Council’s resolutions in the case of Russia’s military interventions fell before its veto. However, in the case of the Russian armed attack on Ukraine beginning in February 2022, what was different from the illegal Crimea annexation was the Ukrainians’ courage and readiness to resist the might, and by many considered invincible, military power. This time around, the situation on the ground was not comparable to that of 2014, when the Russian naval base was already stationed in Sevastopol and Russian ethnicity in the Crimean Peninsula prevailed.

#### **4 International legal and political aspects of the use of force against Ukraine**

The Russian armed attack against Ukraine raises an important question that touch upon the legality and legitimacy of the Russian use of force. First, it is important to explore whether Russia has a justified reason for resorting to armed force in this particular situation. If this is not the case, can we then argue that Russia, by invading and attacking its independent and sovereign Eastern neighbour, in fact breached international law and committed an act of aggression?

##### *4.1 The contested legality and legitimacy of the Russian use of force*

After the illegal annexation of Crimea and the contested situation in the Eastern part of Ukraine, and even more unequivocally clearly after February 2022, several reasons for the Russian intervention in Ukraine were often heard and disclosed in the official discourse and documents. These are Ukraine’s claim for NATO and EU membership,



and in particular NATO's ambition to enlarge eastward to the borders of the Russian Federation, and a possible expansion of the EU towards the east.<sup>18</sup>

It is, first of all, important to mention in this context, and indeed it is the premise of any further argumentation, that each sovereign state is free to choose its own security policy. This sovereign right of all states is based on the fundamental principles of international law determined in the UN Charter; that of the sovereign equality of states (Article 2(1) of the UN Charter) and that of the right of self-determination for all peoples (Article 1(2) of the UN Charter). Ukraine has chosen to fulfil its NATO and EU aspirations, and this is its sovereign right, as was its sovereign right, and a prudent decision, to sign the Budapest Memorandum renouncing the nuclear weapons on its territory in 1994.<sup>19</sup> By signing this Memorandum it was possible for Ukraine not only to later join the Treaty on the Non-Proliferation of Nuclear Weapons, but more importantly to avoid political and economic isolation in the international environment. However, in return, Ukraine demanded security guarantees. The United States, Russia, and the United Kingdom in the Budapest Memorandum reaffirmed "their commitment to Ukraine [...] to respect the independence and sovereignty and the existing borders of Ukraine" (the Budapest Memorandum, Article 1). Moreover, the same text reaffirmed the obligation of the mentioned states "to refrain from the threat or use of force against the territorial integrity and political independence of Ukraine, and that none of their weapons will ever be used against Ukraine except in self-defence or otherwise in accordance with the Charter of the United Nations" (the Budapest Memorandum, Article 2). Another point deserves attention. In the Budapest Memorandum security assurances were provided by the mentioned states "if Ukraine should become a victim of an act of aggression or an object of a threat of aggression in which nuclear weapons are used" (The Budapest Memorandum, Article 4). Ukraine's renouncing of the nuclear weapons was questioned;<sup>20</sup> several decades later those questioning the deal were proved to be right, as it would be difficult to believe that such a military invasion would have taken place if Ukraine had still possessed its nuclear arsenal.

Naturally, Ukraine could have decided on another direction for its security policy. Hypothetically, it could have opted for permanent neutrality, in line with the Swiss or Austrian model. It is clear, however, that the fact that Ukraine did not opt for this can in no way be considered an excuse or even as legal grounds for the Russian Federation to use military force against Ukraine. In the early weeks of the Russian military action, in particular, it was often heard that the Russian military preparations had been well known to NATO and its member states, but nonetheless the warnings to Russia were too mild. Would strong words from Brussels and particularly from Washington have stopped Russia? It is difficult to guess and too late to think of this now. The absence of stronger warnings, however, can in no way be an excuse for Russia's military action against Ukraine.

Secondly, Russia's statements at the beginning of the military action, including statements by President Putin himself, were very harsh accusations of supposed Ukrainian atrocities, including genocide committed against the Russian-speaking population of Ukraine, as a reason and an excuse for the Russian military action to prevent these crimes and to 'denazify' and demilitarise Ukraine.<sup>21</sup> However, a careful overview of the reports of international organisations dealing with human rights and fundamental freedoms (such as the Council of Europe), or dealing with security-related concerns (such as the Organization for Security and Cooperation in Europe), as well as of the adopted statements, decisions, or reports of the main UN organs or other UN bodies

(in particular the Office of the UN High Commissioner for Human Rights and the Human Rights Council), in the years before the Russian military action against Ukraine discovers no discussion either of genocide or of any other gross and large-scale violation of human rights in Ukraine. In some reports, clearly, there were critical remarks and suggestions concerning improvements in human rights and fundamental freedoms and the protection of minorities and other endangered groups, but Ukraine is not the only state mentioned in the reports of these bodies, and more importantly, the remarks do not amount to a determination that Ukraine had committed mass violations of human rights and grave international crimes.

Statements and conclusions adopted by other organs within the UN system and by other international organisations have deplored the aggression against Ukraine. Let us mention that Ukraine instituted proceedings before the International Court of Justice (ICJ) against the Russian Federation in a dispute concerning the interpretation, application or fulfilment of the Convention on the Prevention and Punishment of Genocide. The cause of the dispute was the false Russian accusations of genocide allegedly committed by Ukraine. On 16 March 2022 the ICJ issued an order requesting that “the Russian Federation shall immediately suspend the military operations that it commenced on 24 February 2022 in the territory of Ukraine” and that “the Russian Federation shall ensure that any military or irregular armed units which may be directed or supported by it, as well as any organizations and persons which may be subject to its control or direction, take no steps in furtherance of the military operations”.<sup>22</sup> The ICJ adopted the preliminary order by 13 votes to 2, with the judges from Russia and China opposing.

The Nazi analogy that Putin used to make an argument for the use of force against Ukraine should be firmly rebutted, and could instead be used against the Russian Federation. As Fried (2022) argued, there is in fact a resemblance between Putin’s invasion of Ukraine and Hitler’s attack against Poland in September 1939: “The Nazi narrative of grievance, the false claims of persecution of co-nationals, the false-flag attempts at providing a pretext for attack, are all present in Putin’s war. Ukraine now, like Poland then, fought with courage against a numerically and technologically superior army that surrounded it on three sides. The defence of Kyiv recalls the defence of Warsaw.”<sup>23</sup> However, even if there were accusations of genocide or other mass violations of human rights and crimes supposedly committed by Ukraine, it would not entitle any state, the Russian Federation being no exception, to intervene by military force, as any such intervention should be preceded by the authorisation of the UN Security Council, as explained below.

Thirdly, turning to the legality of the use of force by the Russian Federation, Article 2(4) of the UN Charter stipulates that the threat or use of force is prohibited in international relations. There are two exceptions to this rule, namely individual or collective self-defence, and the use of force under the authorisation and leadership of the Security Council. It is argued that none of these exceptions have either been invoked by the Russian Federation or existent in both the annexation of Crimea in 2014 and in the ongoing aggression towards Ukraine.

Let us begin with the *plausibility of the self-defence argument*. Russia cannot justify its military intervention by claiming it is merely exercising its inherent right to self-defence according to the Article 51 of the UN Charter. It is more than clear that its use of force against Ukraine was not a reaction to a Ukrainian attack nor to an imminent threat

of such an attack, which could have justified and legalised, according to international law, the Russian military intervention. Nor did Russia state any claim in that regard.

Under international law there is another possibility for using armed force: *when the Security Council first determines the existence of any threat to the peace, breach of the peace or act of aggression and based on that determination decides to authorize the use of force* (Articles 39 and 42 of the UN Charter). Russia did not and could not claim that the Security Council authorised or approved its military action in Ukraine. On the contrary, by exercising its right of veto, Russia has up to now effectively prevented any debate or adoption of conclusions in the Security Council concerning the war in Ukraine. Even if the Russian Federation had invoked the contemporary but not completely indisputable concept of ‘the responsibility to protect’ as the legal base of its action in Ukraine, it would still have required the approval of the Security Council. Thus, it is clear – and indeed does not require any further explanation – that the Russian Federation has no legal grounds, not in general international law nor in the UN Charter, to claim that the enlargement of NATO in particular, but also Ukrainian endeavours towards membership of NATO and the EU, were legally justified excuses for Russian military action against Ukraine.

Based on the legal reasoning, in line with international law, we reach the only possible conclusion, namely that by its military action in Ukraine, Russia has violated the prohibition to use force or threaten to use force in international relations, which is one of the fundamental principles of international law established in Article 2(4) of the UN Charter, and is the legal basis of collective security within the UN system. According to state practice and the prevailing doctrine of international law, including the authoritative UN International Law Commission, this principle is a principle of *jus cogens* in contemporary international law. In short, there is no norm of international law *de lege lata* which could be invoked by the Russian Federation as legal grounds for its military action in Ukraine.

#### 4.2 The paralysed Security Council

In 1974, the General Assembly adopted an important resolution 3314 (XXIX), approving the definition of aggression as “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 [...]”.<sup>24</sup> Among acts of aggression are, *inter alia*, “the invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof”; “bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State”; “an attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State”. These acts were committed by Russian military forces in 2014 and from 2022 onwards. How is it then possible for the Security Council to remain silent and the Russian aggression to stay unpunished by this UN organ?

As has been mentioned before, the Russian Federation is a permanent member of the Security Council, and without all the votes of the five permanent members this important organ of the UN is paralysed and cannot adopt any resolution determining that an act of aggression was committed. A draft resolution in March 2014, before holding a referendum on the status of Crimea, and, *inter alia*, reaffirming “the commitment to the

sovereignty, independence, unity and territorial integrity of Ukraine within its internationally recognised borders”, was vetoed by the Russian Federation.<sup>25</sup> A similar veto stopped the draft resolution of February 2022, *inter alia*, deploring “in the strongest terms the Russian Federation’s aggression against Ukraine in violation of Article 2, paragraph 4 of the United Nations Charter”,<sup>26</sup> and the draft resolution of September 2022 condemning “the Russian Federation’s organization of illegal so-called referenda in regions within Ukraine’s internationally recognized borders”.<sup>27</sup>

#### 4.3 *The broad condemnation of the Russian use of force against Ukraine*

Since Russia, by using its veto power, blocked the adoption of any Security Council resolution dealing with Ukraine, the General Assembly came to the fore. This UN organ does not work under the threat of veto, but this is in line with its powers, as deciding on the use of force is not within its domain. Instead, it is a deliberative, representative, and policy-making world body. It is indeed a unique place, comprising 193 member states, which provides an insight into international politics, the member states and their preferences (Kim and Russett, 1997). Such a universal representation speaks volumes about the most salient issues and is essential to the understanding of international politics. However, the General Assembly’s resolutions are considered to be ‘soft law’ and are thus legally non-binding documents. Nevertheless, they should not be underestimated or even neglected just because they are of a soft law nature, or because the hard law decisions could not or are not adopted by the Security Council. It is argued that once a resolution is adopted in the General Assembly, for example that in a particular instance acts committed by a state amount to aggression, it would then be easier for a national or international court to find that aggression had been perpetrated (Cassese, 2005, p.273).

In 2014, the General Assembly adopted a resolution on the territorial integrity of Ukraine by a large majority, underscoring the invalidity of the 16 March referendum held in the Autonomous Republic of Crimea.<sup>28</sup> Then, in 2022, after the Security Council had confirmed “that the lack of unanimity of its permanent members [...] has prevented it from exercising its primary responsibility for the maintenance of international peace and security”, it called for an emergency special session of the General Assembly.<sup>29</sup> At the request of a large number of states, the procedure ‘uniting for peace’ was enacted. This procedure was established at the time of the Korean War (1950), as a means of circumventing the veto of the Soviet Union. In the event that the Security Council is being blocked by the veto of a permanent member, the ‘uniting for peace’ procedure enables the General Assembly to meet at an emergency special session to discuss the particular contested situation and recommend to the states the necessary measures to restore peace.<sup>30</sup>

During the period between March 2002 and March 2023 six emergency special sessions of the General Assembly were convened, each dealing with the situation in Ukraine. At the emergency special session called in the early days of the aggression against Ukraine, on 2 March 2022 a resolution was passed with the overwhelming support of 141 states (35 states abstained, 12 were absent and only 5 states voted against, i.e. supported the Russian federation).<sup>31</sup> There are two matters concerning this resolution worth stressing: one is that it would be difficult to find another General Assembly resolution where a ‘superpower’, a permanent member of the Security Council, was isolated as the Russian Federation was in this case.

Only four states opposed this resolution besides, naturally, the Russian Federation itself: Belarus, Syria, Eritrea, and North Korea. The other interesting and important point is the substance of the resolution. It recalls Resolution 3314 (XXIX) which defines aggression, explicitly condemns the Russian declaration announcing its ‘special military operation’ in Ukraine, affirms “that no territorial acquisition resulting from the threat or use of force shall be recognized as legal”, and “deplores in the strongest terms the aggression by the Russian Federation against Ukraine in violation of Article 2(4) of the Charter”. Moreover, it “demands that the Russian Federation immediately, completely and unconditionally withdraw all its military forces from the territory of Ukraine within its internationally recognized borders”.

Since the adoption of this resolution, the General Assembly has passed substantially similar resolutions on five occasions,<sup>32</sup> maintaining that the Russian aggression against Ukraine represents a violation of the territorial integrity and sovereignty of Ukraine and is inconsistent with the principles of the UN Charter; recognising the grave humanitarian consequences in Ukraine as unseen in Europe in many decades;<sup>33</sup> suspending the membership of the Russian Federation from the Human Rights Council;<sup>34</sup> condemning the Russian ‘attempted illegal annexation’ of four Eastern Ukraine regions;<sup>35</sup> recognising the accountability of Russia for any violations of international law in and against Ukraine, for any violations of international humanitarian law and international human rights law and recommending the creation of register to document damages caused by Russia;<sup>36</sup> and lastly underscoring “the need to reach, as soon as possible, a comprehensive, just and lasting peace in Ukraine in line with the principles of the Charter of the United Nations” as well as reiterating “that the Russian Federation immediately, completely and unconditionally withdraw all of its military forces from the territory of Ukraine within its internationally recognized borders”.<sup>37</sup>

It must be stressed that each time the resolutions received a broad, indeed an impressive and overwhelming support. There were four resolutions with a particularly similar voting distribution. The voting patterns in these four resolutions offer some conclusions: the votes were relatively evenly distributed, on each occasion gaining over 70% of votes. Voting did not run along North-South lines. There were, however, regionally defined divisions, as many Asian and some African states decided to abstain. It is also true that several important states such as, for example, China, India, and South Africa, with their traditional relations and specific interest in the Russian Federation, abstained from voting on several resolutions, but they did not express their opposition. The core of states opposing the adoption of the resolutions each time consisted of, quite logically, the Russian Federation itself, Belarus, North Korea, and Syria, whereas Eritrea, Nicaragua and Mali voted against some (not all) of the resolutions. Comparing the votes in the General Assembly in the case of the last resolution concerning Ukraine, which was adopted in March 2023, a year after the start of the aggression, and in the case of the first resolution, which was passed in March 2022, there is one unequivocal conclusion. The support of the international community has not declined; instead it continues to be overwhelming. The permanent member of the Security Council, the Russian Federation, finds itself isolated politically, supported by only six states, and the names of those states supporting Russia are telling. Overall, the votes in the General Assembly showed broad support for Ukraine in its fight against the aggressor.

Another vivid illustration of the Russian Federation’s political isolation is the result of the latest election of non-permanent members of the Security Council, which took

place in June 2023, where Belarus, supported by Russia, lost to Slovenia by an incredible 153 votes, thus facing the political consequences of its support of Russia's aggression.

If the international community accepted the aggression against Ukraine and its consequences, it would deliver a death blow to the existing international legal order. But instead the international community gathered in the General Assembly gave an unprecedented, overwhelming and unequivocal international response, opposing Russia's aggression against Ukraine and recognising the grave violations of international law. The voting in the General Assembly shows that the international community understands what values are at stake in this war. Without overestimating, it could be argued that the Ukrainian resistance and the request by a large majority of the international community to stop the aggression should be understood as the endeavour, the fight for the fundamental principles of the contemporary international order to be protected and saved.

## **5 Conclusion: a path towards a just, lasting, and sustainable peace**

The consequences of the war in Ukraine are numerous and far-reaching. It has already caused unimaginable damage in Ukraine, to a large extent destroying its infrastructure, harming its state organisation and democratic institutions, and most importantly exposing the Ukrainians to death and suffering. A great deal of time, effort, endeavour and help will be necessary to stop the aggression and to re-establish Ukraine as a functioning state. The relations between the Russian Federation and its important neighbour Ukraine have been damaged for a long time to come. These two closely related peoples with many common features and interests, will carry with them the burden of this war, including hatred, for generations.

The war has had an impact on several other states and their relations, in particular in the neighbourhood of Ukraine, but also between Europe and Russia, as well as in other parts of the world. It seems that the war in Ukraine has brought Europe and the world back to a kind of new Cold War. Another relevant question is what will be the long-term impact of this war on relations between the West (meaning the EU and the US) and China? It could be predicted that their future relations will not only continue as a competition, but they will also be exposed to deterioration and risks until this war ends. Moreover, not only the neighbourhood of Ukraine and Russia, but also countries far away from them, are already facing serious problems with regard to the import of food and some other goods coming from Russia or Ukraine. The costs of this war will have effects on resources for development and humanitarian assistance, while increasing tensions in international relations will have a negative impact on several aspects of international cooperation. Furthermore, a permanent member of the Security Council being involved in flagrant aggression against its neighbour adds tremendously to the image of the inefficiency of the UN in preserving peace and security. Although Russia is, no doubt, historically, culturally, and politically part of western civilisation, in Bolshevik times it was cut off from the world to which it historically and culturally belongs for three generations. By the war in Ukraine, Europe is divided again, and mutual trust, readiness for cooperation and common understanding are exposed to challenges.

It is difficult to imagine that the aggressor in this case can be completely defeated, considering the Russian Federation's wealth of different resources (human, economic, natural and financial), as well as its massive military arsenal enabling it to sustain a long war. However, a long war can also become devastating in the loss of human life,

expensive in financial and economic terms, damaging for the prestige and role of a state in the multipolar world, and consequently politically unacceptable, even for a great power. In an authoritarian state, with suppressed opposition, with no powerful public opinion, no free press or speech, in fact with no political opposition, as is the case in the Russian Federation under Putin's rule, an aggression against its neighbour might also become too costly, and too unpopular at home. The Russian Federation is experiencing many difficulties both domestically and abroad, while many casualties and a significant exodus of its population seems to be already telling of worries, disappointments and fatigue in Russia with this war. History provides us with a concrete example of the Soviet Union, which had to quit its intervention in Afghanistan after it became in many aspects too costly. The leadership of the Soviet Union at that time understood the realities and trends of developments in the international community and the difficulties at home. It can be at least hoped that this aggression will not pay off and that for the aggressor it will become too costly politically and economically, as well as on the battlefield.

Since Russia began its aggression against Ukraine, several initiatives for negotiations and peace have launched. However, it seems that the situation is not yet ripe for negotiation and that peace is currently still out of reach, since the aggressor is not, for the time being at least, showing any readiness to quit the aggression and to depart from its goals. As has been mentioned, the General Assembly's latest resolution on Ukraine underscored "the need to reach, as soon as possible, a comprehensive, just and lasting peace in Ukraine in line with the principles of the Charter of the United Nations".<sup>38</sup> In this context, what kind of peace should be reached is of the utmost importance.

Let us recall the summer and autumn of 1940, after France was defeated and most of Europe, except for Great Britain, stood defenceless against Nazi Germany and fascist Italy; when the Soviet Union was still in friendly relations with the Nazi regime, sharing with it the booty of conquest in Eastern Europe. At that time the United States, although supporting Great Britain by sending it goods and arms, had not yet entered the war, and had been indicating its intention to remain out of it. Many, both in Europe and outside it, were suggesting that peace should be made with Hitler, and that there was no other realistic alternative but to conclude peace with a victorious Germany. There were also signals towards peace from Berlin, including the famous flight of Rudolf Hess to Scotland in May 1941, supposedly in a kind of peace mission. But one should ask what kind of peace would it have been? Would that 'peace' have included the confirmation of previous Nazi conquests; would it have spread the holocaust all over Europe; would it have meant accepting and confirming the so-called 'New Order' (*Die Neue Ordnung*), based on racism and Aryan racial superiority, across Europe? This new order in Europe would then in fact have meant a brutal German domination based on racial superiority and discrimination.

On the contrary, a just and lasting, indeed a sustainable peace, should be based on sound principles of contemporary international order, on justice, and on the accountability of those responsible for breaching international law, international humanitarian law and international human rights law, including the necessary reparations. In light of the above, peace in the present war in Ukraine should be based on the principles of the UN Charter, including the prohibition of aggressive use of force and the obligation to resolve disputes only by peaceful means, confirming the right of all peoples to self-determination and the right of all states to sovereign equality and territorial integrity. Such a peace seems to be out of reach for the time being. The Russian Federation shows no intention of withdrawing its armed forces from east and

south Ukraine, and even less so from Crimea. Russia's current foreign policy contributes to a dangerous understanding of international relations in which the powerful can dictate to the weak on their foreign and security policy and goals, while pursuing their own goals with the use of force. For Ukraine – but also for the entire international community – such a 'peace' would be confirming the amputation of close to one quarter of its territory and a *de facto* subjugation of Ukraine to the Russian Federation, which is and should be unacceptable.

It should not be overlooked that Ukraine is fighting not only for its survival as a sovereign state and for its territorial integrity and freedom, but also for the existing international order. It is also clear that this aggressive war is particularly dangerous because it carries within itself the potential to expand into a large war in Europe which could lead to the use of nuclear weapons. On the one hand this comprehensive and sensitive situation requires effective, persistent support and assistance to the victim of the aggression, and also wisdom, restraint and statesmanship. On the other hand everything necessary should be done to ensure that the world does not slide into a larger European or maybe even a world conflict. To slip into a great war which could include the use of nuclear weapons would be catastrophic, endangering the existence of civilisation on our planet.

Let us conclude this reasoning by saying that not every agreement is a step in the right direction towards real peace. One should bear in mind that a peace which in fact would mean recognising the aggression and rewarding the aggressor would not only be unjust, but also a dangerous peace. Ukraine should therefore be helped and assisted for as long as it is ready to fight for its independence and sovereignty, in fact for its existence and for the existing international order. At the same time persistent endeavours should be continued in preventing the aggression against Ukraine from dragging humanity into a world conflict. However, in the last century there were several cases when peace was restored without the resolution of a dispute but simply by silencing the arms, by stopping the fighting, and by ending the suffering of people, where the conflict remained 'frozen' as no treaty was concluded to resolve the dispute (for example, the war in Korea). In some cases it took long decades after the fighting and the war on the ground had stopped to reach a solution of the dispute which had led to the armed conflict in the first place. Several past examples indicate that it may be a realistic possibility to stop the ongoing aggression in Ukraine by agreeing to stop the fighting on the ground and for the aggressors' forces to retreat to internationally recognised borders between Ukraine and Russian Federation, without the conflict being resolved by an agreement.

Unfortunately, we would have in Europe another 'frozen conflict' which would have to be resolved in the future, and which would – until its resolution – burden international relations in Europe. But the brutal war would be stopped and the mortal danger of a larger conflict, possibly with the use of nuclear weapons, would deescalate. Ukraine would remain a sovereign, independent state. And, importantly: the prohibition of the use of armed force and the obligation of states to resolve international disputes only by peaceful means, not by force, would persist as the basic pillar of the rules on which the contemporary and future international order is and should be based.



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## Notes

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- 2 Russian Federation Announces 'Special Military Operation' in Ukraine as Security Council Meets in Eleventh-Hour Effort to Avoid Full-Scale Conflict, SC/14803, 23 February 2022. Available online at: <https://press.un.org/en/2022/sc14803.doc.htm>
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- 8 *ibid.*
- 9 All-Ukrainian Population Census 2001. Available online at: <http://2001.ukrcensus.gov.ua/rus/results/general/language/>
- 10 Dynamics of Religious Self-Identification of the Population of Ukraine: Results of a Telephone Survey Conducted on July 6–20, 2022, Kyiv International Institute of Sociology. Available online at: <https://kiis.com.ua/?lang=eng&cat=reports&id=1129>
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- 14 Kennedy (2016, p.6) outlines three waves of decolonisation. The first wave happened in the Americas in the late 18th century; the second one with the collapse of the Russian, German, Habsburg, and Ottoman Empires after the World War I, while the last wave arguably occurred with the dissolution of the Soviet Union in the early 1990s.
- 15 Transcript: Putin says Russia will protect the rights of Russians abroad, March 18, 2014, *The Washington Post*. Available online at: [https://www.washingtonpost.com/world/transcript-putin-says-russia-will-protect-the-rights-of-russians-abroad/2014/03/18/432a1e60-ae99-11e3-a49e-76adc9210f19\\_story.html](https://www.washingtonpost.com/world/transcript-putin-says-russia-will-protect-the-rights-of-russians-abroad/2014/03/18/432a1e60-ae99-11e3-a49e-76adc9210f19_story.html)
- 16 *Ibid.*
- 17 Article 5 of the North Atlantic Treaty stipulates:

“The Parties agree that an armed attack against one or more of them in Europe or North America shall be considered an attack against them all and consequently they agree that, if such an armed attack occurs, each of them, in exercise of the right of individual or collective self-defence recognised by Article 51 of the Charter of the United Nations, will assist the Party or Parties so attacked by taking forthwith, individually and in concert with the other Parties, such action as it deems necessary, including the use of armed force, to restore and maintain the security of the North Atlantic area.

Any such armed attack and all measures taken as a result thereof shall immediately be reported to the Security Council. Such measures shall be terminated when the Security Council has taken the measures necessary to restore and maintain international peace and security.”

- 18 Knott (2022) explored another reason, given by Putin for the annexation of Crimea, i.e. Crimeans were more Russian than Ukrainian. The results of her fieldwork show “that identity in Crimea was far more complex than a region with a Russian, or pro-Russian, majority. Few in Crimea identified as pro-Russian nationalists. In fact, only those I interviewed within pro-Russian parties and movements identified as such. Instead, many identified as ethnically Russian, but with few cultural or political ties to Russia. Many others identified as between Ukraine and Russia: as *Crimean*. Meanwhile, many younger people did not identify, ethnically, even as Russian speakers, rather they identified as Ukrainian citizens.” Knott, E., Were Crimeans really pro-Russian before annexation? 15 November 2002. Available online at: <https://www.lse.ac.uk/research/research-for-the-world/society/were-crimeans-really-pro-russian-before-annexation>
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- 27 United Nations Security Council: draft resolution, S/2022/720, 30 September 2022.
- 28 United Nations General Assembly: resolution A/RES/68/262, 27 March 2014.
- 29 United Nations Security Council: resolution S/RES/2623 (2022), 27 February 2022.
- 30 United Nations General Assembly: resolution 377 A (V) 'Uniting for peace', 3 November 1950.
- 31 United Nations General Assembly: resolution A/RES/ES-11/1, 2 March 2022.
- 32 United Nations General Assembly: resolution A/RES/ES-11/2, 24 March 2022; United Nations General Assembly: resolution A/RES/ES-11/3, 7 April 2022; United Nations General Assembly: resolution A/RES/ES-11/4, 12 October 2022; United Nations General Assembly: resolution A/RES/ES-11/5, 14 November 2022; United Nations General Assembly: resolution A/RES/ES-11/6, 23 February 2023.
- 33 United Nations General Assembly: resolution A/RES/ES-11/2, 24 March 2022.
- 34 United Nations General Assembly: resolution A/RES/ES-11/3, 7 April 2022.
- 35 United Nations General Assembly: resolution A/RES/ES-11/4, 12 October 2022.
- 36 United Nations General Assembly: resolution A/RES/ES-11/5, 14 November 2022.
- 37 United Nations General Assembly: resolution A/RES/ES-11/6, 23 February 2023.
- 38 Ibid.