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## **The Dynamism of International Law in Politics: An Appraisal of Russo-Ukrainian War**

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Chukwuemeka Vincent MUONEKE<sup>1</sup>  
Nnaemeka Emmanuel NNANI<sup>2</sup>

### **Abstract**

The dynamism of international law when enmeshed in politics is critical especially when superpowers are involved in the violation of international humanitarian and human right laws. The Russia invasion of Ukraine is a vivid example. Russia's invasion of Ukraine which commenced on 24 February 2022 represented just the latest, albeit most devastating, intervention in a neighbouring former Soviet state. In the effort to examine that, our aims are to critically assess the dynamism of international law in politics through the analysis of the forceful invasion of territorial integrity of Ukraine by Russian government under the leadership of Vladimir Putin in order to underscore the potency of international law when the political interests of a superpowers are involved. In that regard, the paper employed the political realism theory of international relations in the effort to give the work a trajectory narrative. Secondary method of data collection and historical content analysis approach were employed in the collection and analysis of the phenomenon under study. One of the key findings of this paper is that indeed Russia violated the sovereignty of Ukraine and therefore violated the rules of international law and as a superpower nation the global community seems confused or carefully handling the war in order to avoid the occurrence of another world war. Russia being the current president of the Permanent Members of the UN left the entire nations concerned with worries over the violation of human and humanitarian rights of the Ukrainians. Based on our findings, one of the recommendations put forward is the urgent need for all member states of the UN to take steps to end the conflict as soon as possible in a way that all the interests of the parties are considered. They should comply strictly with the rules of international human right laws and international humanitarian laws to ensure the protection of civilians.

**Keywords:** International law, politics, Russia, Ukraine, Political realism, NATO

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<sup>1</sup> **Chukwuemeka Muoneke** lectures in the Department of Political Science, Nnamdi Azikiwe University, Awka, Nigeria

<sup>2</sup> **Nnaemeka Nnani** works in the Administrative Department of the Federal High Court of Nigeria, Enugu, Nigeria

## Introduction

Russia and Ukraine have had close cultural and historical connections that has evolved over the years. This linkage was due to their geographic position and trade connections before the violence conflicts ensued (Lichterman, 2022). However, Ukraine has in recent history long been considered an independent country that had a separate political system to Russia. This changed when on 24 February 2022 the Russian government ordered the entry of military forces into Ukraine territory. With this action, Russia launched a full-scale invasion of Ukraine (Grossi & Vakulenko, 2022, p. 1). And the invasion sent a wrong signal across the global system because of its ugly nature and would be impact on neighboring sovereign states (Cai et al., 2022). Russia is masquerading to include Ukraine within its territory for geopolitical gains (Behnassi & El-Harba, 2022). Russia shares common boundary and has a long cultural history with Ukraine although both countries share different political systems. Much of the logics behind the potential annexation of Ukraine by Russia revolve around the natural resources of oil and gas that are found in Ukraine largely believed to be supplied to a large percentage of consumers in the European Union (Johannesson & Clowes, 2022). That makes it strategically beneficial for Russia being a non-European Union member to have control of Ukraine and also attract greater attention on itself since the world focuses at the moment on China and the United States.

Ukraine was directly ruled by the communist party in Moscow (Orysia, 2022). Ukraine became a centre for the Soviet arms industry and a location for much of the nuclear arsenal. The 1986 Chernobyl disaster created public outrage among Ukrainians at the secretive, deceitful, and inhumane handling of the incident. However, there was always a strong dissident movement. Ukraine played a key role in pushing for the implementation of human rights and freedom as outlined in the Helsinki Accords of 1976, which subsequently contributed to the eventual collapse of the Soviet Union. Mikhail Gorbachev, General Secretary of the Communist Party of the Soviet Union from 1985, hoped to renegotiate a new treaty to redefine the Soviet Union (Orysia & Jon, 2022). Conventional wisdom holds that the Cold War was lost by the Soviet Union. In developments famously labelled as ushering in the end of history the states of Eastern Europe which had comprised the Warsaw Pact and effectively operated as Soviet satellites overthrew communism and became liberal democracies in the western tradition. Gradually, many became members of the European Union (EU) and/or the North Atlantic Treaty Organization (NATO). These developments were accompanied by the disintegration of the Soviet Union, which ceased to exist on 1 January 1992. Although dissolved into its constituent republics, Russia assumed the Union of Soviet Socialist Republics' (USSR's) international personality for most legal and political purposes. The period since, has been characterised by tensions arising from Russia's loss of influence in its near abroad and policies centred on efforts to reclaim this in the face of indications on the part of some ex-Soviet states, principally Ukraine, that they seek a future founded on closer relationships with the EU and NATO,

leaving Russia feeling ‘boxed in’ by the perception of the reach of these organisations extending ever closer to its borders. On February 24, President Putin declared war against Ukraine, and missile and shelling attacks began against multiple Ukrainian cities. (Kyiv) – Russia’s parliament adopted a resolution on February 16, 2022 requesting President Vladimir Putin to recognize as independent states two areas in eastern Ukraine held by Russia-backed armed groups. Also, on February 21, President Putin signed two decrees recognizing the two areas’ independence and submitted them to parliament for ratification. Following that, he issued orders to Russia’s armed forces, which have been amassing at the border with Ukraine for months, to carry out “peacekeeping” in the self-proclaimed “Donetsk People’s Republic”(“DNR”) and “Luhansk People’s Republics” (“LNR”). On February 22, the Federation Council, the upper chamber of Russia’s parliament, approved Putin’s request to deploy the armed forces (Neal, 2022). In public comments on February 22, Putin stated that the boundaries of the territories whose independence Russia has recognized extend to substantial areas of the Donetsk and Luhansk regions that are under Ukrainian government control. Ever since then fighting has escalated in Ukraine’s eastern region of Donbas amid Russia’s unprecedented military build-up along its border with Ukraine.

Coming to International law which are those set of rules and standards that governs relations between and among nation-states in their intercourse with one another of which its violation results to appropriate sanctions by the provided mechanisms in the international relations. It is an established principle of international law that all sovereign states enjoy the will power to carry out actions and inactions internally and externally with regards to the affairs of her territorial integrity and welfare of her citizens. Since the end of the second world war, international political system have been organized around the notion of equal sovereignty of states which is the internal competence for domestic jurisdiction and preservation of existing boundaries and, to say that these ideals has been violated frequently is incontestable (Elden 2006:11; Nnani, 2021). However, it appears that international law when engaged in international politics wears contradictory dynamisms. Nwosu (2011) posited that politics are those activities that affirm the existence of political power and its utilization in the production and distribution of resources in the political system. It follows that international politics revolves around the patterns involved in the allocation of political power and its utilization in the international system and the case of Russo-Ukrainian War is germane to the understanding of the dynamism that international political power structure intercourse plays in the effectiveness and ineffectiveness of international law (Nnani, 2022). Little wonder that Ekemam (2015) suffice international politics to mean that branch of political science which concerns itself with foreign affairs of nation-states in their constant struggle for power to influence the direction of the world order, all geared towards the realization of their individual national interests.

After the war started, millions of Ukrainians fled to other countries resulting in a humanitarian and political crisis. As a result of the invasion, the United Nations passed a

resolution on March 2, 2022 that demanded complete and unconditional withdrawal of Russian troops from Ukraine (Alyukov, 2022; Grossi & Vakulenko, 2022). This resolution has not been heeded to as the conflict continues between Russian and Ukrainian forces in the region. It is from those contradictions that the idea of this paper was born. This paper seeks to interrogate the nexus that both countries shared before the ensued war. Examine the factors responsible for the contemporary rising violence conflicts between them and expunge the efforts the UN regime so far had made to curb the war from international law and other available mechanisms so as to appreciate its dynamism in politics.

### Conceptual Clarification

It was Stowell (1931) that conceived international law to be an embodiment of certain rules relating to human relations throughout the world, which are generally observed by mankind and enforced primarily through the agency of the governments of the independent communities into which humanity is divided. Most importantly, C.G. Fenwick submitted that international law is the body of rules accepted by the general community of nations as defining their rights and the means of procedure by which those rights may be protected or violation of them redressed. Countries sovereignty, political independence, and territorial integrity are widely recognized principles, enshrined in the United Nations Charter. There is a clear prohibition on the threat or use of force between states, other than as authorized by the Security Council or for purposes of the right of self-defense if an armed attack occurs. A narrow understanding of anticipatory self-defense against an imminent armed attack has also been accepted by some international lawyers and policymakers as falling within the self-defense justification, as has a concept of protection of nationals abroad (for instance, in cases of hostage taking) (Neal, 2022).

In the case of Russo-Ukrainian war, it is the international humanitarian law, or the laws of war which provides for the protections of civilians and other non-combatants from the hazards of armed conflicts and it also addressed the conduct of hostilities—the means and methods of warfare—by all parties to a conflict. Foremost is the rule that parties to a conflict must distinguish at all times between combatants and civilians. Civilians may never be the deliberate target of attacks. Parties to the conflict are required to take all feasible precautions to minimize harm to civilians and civilian objects and not to conduct attacks that fail to discriminate between combatants and civilians, or would cause disproportionate harm to the civilian population. As politics permeates law just as law structures politics, the domain of law in the realm of politics are so intermeshed that any attempt to locate the boundary between them would be fruitless. Even the intuitive distinction between domestic and international political cum legal systems breaks down under scrutiny. Domestic orders may be on average more legalized, and international relations may tend to be more subject to power politics.

War is generally considered as a conflict or disagreement between two or more parties. It can occur in a sporadic basis or in a continual way depending on the power and influence

of those involved. Lim et al. (2022, p. 1) defines war as “a condition where a devastating fight (e.g. armed conflict, economic embargo) occurs between opposing forces of great influence (e.g. countries, groups of people), thereby impacting the entities under siege (e.g. business and society within opposing forces) and their equivalent stakeholders (e.g. business and society) outside opposing forces.” This long definition acknowledges the complex nature of war that involves contrasting forces that have a conflict around an issue. Thereby stressing there is some form of disagreement but also uncertainty about the nature of the conflict and the resulting impact.

### Review on Russo-Ukrainian War

Literatures surrounding the war in Ukraine is very recent, nevertheless information's available are content-rich. The main barrier had been the language barrier due to the fact that a lot of the scholarly articles were written by Ukrainian scholars and have not yet been completely translated into English. The ongoing invasion of Ukraine has attracted quite number of debates about the role of international law and global and regional institutions in maintaining international peace and security. Notable number of scholars more than ever before had come to the view that the reform of the UN Security Council is now paramount if we expect international law to become a more effective enforcement tool. In Holzgrefe and Keohane (eds), *Humanitarian Intervention: Ethical, Legal and Political Dilemmas*, they submitted that in that echo, Sayapin, a doctorate in criminal international law, specifies that the reform should focus, in particular, on the council's membership, and the voting procedure (Sayapin, 2022). Lewis Grossman, a lawyer, and law professor, wrote about the international legal norms that regulate the use of force in international relations. He delved into the “justifications” presented by Russia, which included a commentary on Putin's statements and writings. For example, the claim from Russia that it hasn't used force because it is merely a ‘peacekeeping operation’ and that makes imperative to appreciate how Russia is trying to justify its actions against Ukraine using the U.N. Charter. This will help understand the shortcomings of the U.N. Charter as in instrument of international dynamism when enmeshed in politics stating the need to re-establish full compliance with the norms referring to the use of force in international law (Grossman, 2022).

Gasser (1998) posited that international humanitarian law exists to restrict the suffering caused by warfare and to alleviate its effects. Arguing that war is forbidden according to international law and the U.N. Charter does allow the use of force in some cases. He submitted that states are allowed to defend themselves individually, or collectively, against an attack and six major treaties, including more than 600 articles, as well as some customary law rules, outline the restrictions applying to the use of violence in wartime (Gasser, 1998). The Geneva Conventions are central to the international humanitarian law for they are the body of that regulates the conduct of armed conflict and seeks to limit its effects. They specifically protect people who are not taking part in the hostilities and those who are no longer participating in the hostilities, such as wounded, sick, and shipwrecked soldiers and prisoners of war (Geneva Conventions, 1949). Zartner (2020) adumbrated the facts that

first Geneva Convention applies and protects wounded and sick soldiers on land during war; the second Geneva Convention protects wounded, sick, and shipwrecked military personnel at sea during war; the third Geneva Convention applies to prisoners of war and; the fourth Geneva Convention made provisions for the protection of civilians, including in occupied territory. Geneva Conventions apply to states party to the Geneva conventions, which Russia is.

States such as the US have internalized the Geneva Conventions into their domestic military laws. It is one of the most widely ratified conventions in the world today because of the fact that states would want to be protected during conflicts. However, in addition to violating the international legal articles regarding the right to go to war, Russia has also violated articles regarding the right conduct during war. With its actions, Russia is violating those rules, which is considered a grave violation of International Humanitarian Law and a war crime. Accountability for violence against health care has been exceedingly rare, and not just in the current ongoing conflict in Ukraine. With the use of international law, even commanders could be held accountable, even if they did not directly order the criminal act (Gostin, 2022). Therefore, one can contend that the main obstacle to keeping Russia accountable for its actions in Ukraine is its position as a permanent member of the U.N. Security Council with veto power.

MacLeod (2022) had contended that Russia's position on the Security Council is not completely valid. Indeed, when the U.N. was created, and the Security Council was established, one of the five seats of permanent members was given to the USSR, the same seat that was later reassigned to Russia, which used to be the largest country of the USSR. In an article for King's College London, Andrew MacLeod, a visiting professor in the department of war studies, goes over how Russia managed to get the USSR's seat following its dissolution. States can change forms, but it does have international legal ramifications. The whole legality of it depends on whether Russia was a "successor state" or a "continuing state" under international law. The literature thus far has established that the veto power of U.N. permanent Security Council members is paralyzing the U.N. in the case of the war in Ukraine, Moreover, it was advanced that international law needs to focus on accountability of both states, and corporations. More so, the first aspect of Russia's individual self-defence claim is the perceived encroaching threat posed by NATO's eastwards expansion, which President Putin clearly identified as representing an existential threat to the Russian state. In his words:

For the United States and its allies, it is a policy of containing Russia, with obvious geopolitical dividends. For our country, *it is a matter of life and death*, a matter of our historical future as a nation. This is not an exaggeration; this is a fact. It is not only a very real threat to our interests but to the *very existence of our state* and to its sovereignty. It is the red line which we have spoken about on numerous occasions. They [NATO] have crossed it (Olysia & Jon, 2022).

Thomas, (2022) posited that three cumulative criteria are usually identified: (i) there must be an imminent threat of injury to nationals; (ii) a failure or inability on the part of the territorial sovereign to protect them and (iii) the action of the intervening state must be strictly confined to the object of protecting its nationals against injury. At the same time, reliance on ‘protection of nationals’ has not been a common legal claim in the UN era and, especially because there have been notable examples of it being (ab) used as a pretext for force employed for non-defensive purposes, it remains controversial. Nonetheless, it is not ‘ruled out’ by Article 51 and it may be said that there has been a degree of support for it as a manifestation of self-defence during the UN era. In particular, there appears to be broader support for ‘non-combatant evacuation operations’ that merely seek to evacuate nationals out of harm’s way.

Putin in part argued that one aim of the Russian operation was to ‘bring to trial those who perpetrated numerous bloody crimes against civilians, including against citizens of the Russian Federation. Here, then, he seemed to be referring to attacks that have occurred, not attacks that are imminent. There is certainly no evidence that serious and large-scale human rights violations have been perpetrated against people in separatist-leaning areas of eastern Ukraine since 2014 by both Ukrainian authorities and pro-Kyiv paramilitary groups as well as by Russian forces and Russian-backed separatists (Gowan, 2022). Yet, assuming one accepts the protection of nationals as a basis for exercising self-defence in the first place, whether there is sufficient evidence of human rights violations having occurred specifically against Russian nationals in Ukraine, at least on a scale that could be equated to an armed attack against Russia, is highly doubtful.

More so, Nico (2022) had contended that the Russian invasion involves ‘a great power openly flouting international law and in a decentralized order, the weight of the law is eroded if powerful actors treat it cavalierly. In spite thereof, it is worth noting that some scholars have argued that the *jus ad bellum* is perhaps the incorrect legal prism through which to view the intervention, on the basis that Russia and Ukraine have been involved in an international armed conflict (occurring in parallel to a non-international armed conflict) ever since the Kremlin’s unlawful annexation of Crimea in 2014 and the war in Donbas that soon followed, questions regarding whether Russia can lawfully use force in Ukraine under the *jus ad bellum* have thus already been asked – and answered, in the negative – 8 years ago (Roscini, 2014). In his part, James (2015) posited that it is worth noting that the terminology with regard to claims of self-defence against attacks that have not yet occurred is not clear; various terms are used by different scholars to mean different things in this context. Ukrainian membership would indeed have meant that Russia’s attack on Ukraine would have triggered the collective defence obligation under the North Atlantic Treaty (1949) 34 UNTS 243, Article 5. Oppenheim (1912) argued as regards intervention in the interest of the balance of power, it is likewise obvious that it must be excused. The States themselves and the majority of writers agree upon the admissibility of intervention in the interest of balance of power.

## Theoretical Framework

A war between two sovereign states is better appreciated from the political realism which is premised upon fear-based world. The anarchic nature of the international environment is said to make countries and their leaders fearful for their survival. This fear prompts arms build-ups, alliances, and balancing against perceived aggressors. Hertz (1950) theorized that these actions can make fears for security self-fulfilling in the absence of any aggressor because every state aims for a military advantage, and this quest can convince others of its malign intentions. In his view, this ‘security dilemma,’ and not anarchy, is what makes international relations so fear-generating war-prone. Realism has given rise to numerous variants and competing theories, but almost all the rest of these assumptions revolve around classical realism. This tradition originates with Thucydides and finds modern expression in the writings of Hans Morgenthau (1948) and Lebow (2003, 2008).

Classical realists do not attribute fear-dominated worlds to anarchy, in the sense of international politics being different by reason of its lack of government. They describe domestic and international politics as taking place within societies where behaviour is more governed by norms and habits than it is by empirical laws. When society breaks down because of the lack of constraint by powerful actors, it becomes anarchical. The logic of anarchy in modern realism assumes that those who are weak are the most threatened in fear-based world. In traditional spirit-based worlds—those dominated by warrior elites—wars tend to be frequent but limited in their ends and means. Many of these societies (e.g., Greeks, Aztecs, and Maoris) waged wars in conformity with a strict set of rules. In fear-based worlds wars may be less frequent but are more unrestrained in their ends and means and correspondingly more costly. They are also more difficult to prevent by deterrence and alliances, the stock-and-trade realist tools of conflict management. One of the most revealing aspects of Thucydides’ account of the Peloponnesian War is the absolute failure of all alliances and all forms of deterrence intended to prevent war. They almost invariably provoked the behaviour they were intended to prevent (Lebow, 2013; Thucydides, 1996). For these reasons deterrence is least likely to succeed in those circumstances where modern realists and strategic analysis consider it most needed and appropriate.

Fear-driven worlds are the opposite of honour and interest worlds in that they are like lobster traps: easy to enter and difficult to leave. Once fear is aroused it is hard to assuage. Worst-case analysis, endemic to fear-based worlds, encourages actors to see threat in even the most benign and well-meaning gestures. This creates a snowball effect, making fears of such worlds self-fulfilling. A vivid example is the Putin’s fear of Ukraine alliance with NATO and the ensued war against Ukraine in order to protect its national political interests. Actors who contemplate steps toward trust and accommodation rightfully worry that others will misunderstand their intent or exploit their concessions. Pure fear-based worlds are few and far between, but most political units for most of their history have had to worry to some degree about their security. For this reason, realists see fear-driven worlds as the condition to which human societies inevitably return. History gives ample cause for pessimism—but



also for optimism. Competition for colonies in the late nineteenth century, sought primarily for reasons of standing, got out of hand, led to increasingly unrestrained competition in the Balkans and pushed the European powers toward World War I. Beggar-thy-neighbour policies during the Great Depression reveal how quickly a partially liberal trading world can be destroyed (Kindleberger, 1973). Europe's phenomenal economic and political recovery after World War II, based in large part on the consolidation of democracy in Germany, Italy, Spain, Portugal and Greece, has transformed that continent in ways that would have been dismissed out of hand as idle dreams if offered as a prediction as late as the early 1950s.

Classical realism (Lebow, 2003) puts as much emphasis on spirit as a motive as fear. It recognizes that it is powerful states, not weak ones, who most often feel humiliated. They are much more likely than weak ones to go to war to gain status or revenge. My explanation for this phenomenon draws on Plato (Plato 1996, 440c-441c) and Aristotle's understanding of anger (Aristotle 1984c, 387a31-33, 1378b10-11, 138,024-29). It is provoked by an *oligōria*, which can be translated as a slight, lessening or belittlement. Such a slight can issue from an equal but provokes even more anger when it comes from an actor who lacks the standing to challenge or insult us—consider the American response to the Arab terrorists who took down the twin towers of the World Trade Center and damaged the Pentagon. Anger is a luxury that can only be felt by those in a position to seek revenge.

Modern realists maintain that survival is the overriding goal of all states, just as domestic politics explanations assert that it is for leaders (Waltz 1979; Mearsheimer 2001). This is not true of honour societies, where honour has a higher value. Achilles spurned a long life in favour of an honourable death that brings fame. For Homer and the Greeks fame allows people to transcend their mortality. Great deeds carry one's name and reputation across the generations where they continue to receive respect and influence other actors. In the real world, not just in Greek and medieval fiction, warriors, leaders and sometimes, entire peoples, have opted for honor over survival. We encounter this phenomenon in nineteenth and twentieth century Europe and Japan. Perhaps the most compelling case is the origins of World War I, where defense of honour and the status that went with it, was the principal motive that prompted Austrian and Russian leaders to act in ways they knew threatened the survival of their respective empires (Lebow, 2003).

To summarize, honour-based societies experience conflict about who is 'recognized' and allowed to compete for standing; the rules governing ego or competition, the nature of the deeds that confer standing and the actors who assign honour, determine status, and adjudicate competing claims. Tracking the relative intensity of conflict over these issues and the nature of the changes or accommodations to which they lead provide insight into the extent to which honour and standing remain primary values in a society and its ability to respond to internal and external challenges. Real worlds are mixed in that all four motives are usually to some degree present. Real worlds are also lumpy in that the mix of motives differs from actor to actor and often within their elites. Multiple motives generally mix rather

than blend, giving rise to a range of behaviours that appear inconsistent, even contradictory. It is nevertheless possible to identify primary motives in many instances and establish through qualitative and quantitative analysis their relative importance for war as Russian had done to Ukraine and the ongoing war between the two countries. However, to move further, secondary source of data collection vis-a-vis library, internet materials, textbooks, and academic journals and articles were the sources from which data were collected for the analysis of this phenomenon using the historical content analysis approach to analyse the phenomenon under study.

### **Russo-Ukrainian War and the Dynamism of International Law in Politics**

It was Thomas Hobbs who observed and submitted that man by nature, is selfish, wicked, nasty, brutish and greedy. If we are to talk about the creation of the modern nation-states which dates back to the treaty and peace of Westphalia 1648, one would agree with us, that the modern nation-state is a creation of man. Then who is man by nature! Well, I think Thomas Hobbs inter alia submission answered that question. It then means that nation-states possesses the characteristics and attributes of man by nature and that has come to make modern nation-states in their relations with one another to worship one god that they all know best in international political, economic, social and legal systems. When we say one god here, we do not mean a religious God that man worships in his attempts to relate with the metaphysical world as he tries to unravel certain mysteries and challenges that poses beyond his human knowledge and solutions. This one god that they all worship is their national interest. It is from that implication that we want our average reader to appreciate the dynamics of international law and politics through our probe of the Russian-Ukraine war. Remember that the position of the president of the permanent members of the United Nation Security Council (UNSC) is rotational and is currently held by Russia. Could that be the reason why the NATO members are to some reasonable degree handicapped to adequately help Ukraine. Let us then journey together in this analysis and see for ourselves.

Putin's claims that Russian ethnic minority in Ukraine have a right to determine its political status and pursue its economic, social, and cultural development is not wrong per se but that does not presume that they have the right to unilaterally secede from Ukraine and form their own separate state. In recognition of states right to preserve their territorial integrity, secession is allowed only in extreme cases of repeated oppression or subjugation of the minority, leaving it with no other option to exercise internal self-determination in a meaningful way (Obi, 2020). International lawyers call this remedial secession. Putin seems to have alluded to this when he claimed that it was necessary to immediately stop this nightmare: the genocide against the millions of people living there, who rely only on Russia, hope only on us" – a claim that Ukraine emphatically denies. Blum and Modirzadeh (2022) critically observed that there is much reason to suspect that Putin's description of the situation in eastern Ukraine is a gross and self-serving exaggeration, if not an outright fabrication. There have been some ongoing disputes over the use of the Russian language in official dealings and in schools. Even if language rights were denied or curtailed, this

would hardly justify secession and would certainly not amount to genocide. It is important to recall that this is the latest salvo in a repeated practice by Russia to recognize breakaway republics in areas over which it has territorial aspirations. In 2008, it recognized the Georgian regions of Abkhazia and South Ossetia as independent, and in 2014 it first recognized Crimea as independent and then annexed it.

Behind the rhetorical masquerading of self-defense and protecting Russians in the East of Ukraine are ambitions to extort concessions by Ukraine to stay outside of NATO. Any such agreement with Ukraine would, however, be invalid due to the preceding coercion (Article 52 of Vienna Convention on the Law of Treaties). As the ICJ's briefly stated in the Nicaragua case, such an "ideological intervention" would be "a striking innovation" and thus does not constitute a legal argument. Self-defense has been the most common reason to resort to wars throughout history and even more so in the UN Charter era (Article 52 of Vienna Convention on the Law of Treaties para. 266) (Nwebo, 2020; Alisigwe, 2020). As the Parliamentary Assembly of the Council of Europe held in resolution 1633 (2008) on The consequences of the war between Georgia and Russia, "from the point of view of international law, the notion of "protecting citizens abroad" is not acceptable and is concerned by the political implications of such a policy by the Russian authorities for other member states where a substantial number of Russian citizens reside" (Blum and Modirzadeh, 2022). More so, one also needs to remember that the Responsibility to Protect has not altered the requirement of Security Council authorizations for military interventions. In hindsight, it seems as if Putin was determined to attack Ukraine all along and all negotiation efforts might thus have been futile from the very beginning. The only remaining question was which justifications he would rely on most given that there were no indications of an imminent or actual armed attack by Ukraine in the sense of article 51 - one does not need to be a general officer to know that striking Russia's military first is a very bad idea. So one option might have been a fabricated pretext and in January 2022, the Pentagon accused Russia of planning to stage a "false flag" operation - a claim rejected by foreign minister Sergei Lavrov as "nonsense".

Irrespective of any self-proclaimed label, under international law, including the Geneva Conventions, Russian troops in Ukraine are an occupying force. Neither sovereignty claims by local "authorities" in the self-proclaimed 'LNR' or 'DNR', nor their recognition as independent by the Russian government, affects the applicability of the international law of occupation. The Fourth Geneva Convention, which addresses the responsibilities of an occupying power, such as Russia in Ukraine, permits the internment or assigned residence of protected persons only for "imperative reasons of security." This must be carried out in accordance with a regular procedure permissible under international humanitarian law and allow for the right of appeal and for review by a competent body at least every six months (Blum and Modirzadeh, 2022). The Fourth Geneva Convention provides detailed regulations for the humane treatment of internees (Nwebo, 2020).

Admittedly, Russia did appear to step back from invoking humanitarian intervention to the extent that it was indeed present in President Putin's original statement. In its 7 March letter submitted to the ICJ, in the context of the proceedings triggered by Ukraine's request for provisional measures, Russia seemed to indicate that the only basis for its action in Ukraine was the right of self-defence. In any event, whether humanitarian intervention is a legal justification for the use of force is, of course, highly controversial. As is well-known, there is no explicit basis for it in the UN Charter. Its advocates thus usually seek to identify its legal basis in customary international law. It is sufficient here to note that the majority view - shared by some scholars - is that there is no such legal basis for the use of force in international law (absent pre-facto UN Security Council authorisation). However, even for the (not insignificant) minority of scholars who do support the prima facie lawfulness of force used to avert extreme humanitarian distress it would seem pretty clear that Russia's invasion of Ukraine would not qualify (Curtis & Mills, 2022). Proponents of humanitarian intervention are consistent in requiring, on the one hand, that any such use of force must be taken in response to a significant, large-scale violation of human rights involving widespread loss of life among civilians (which must in principle follow from convincing evidence, generally accepted by the international community as a whole), and, on the other hand, that the action taken must be necessary and proportional to the goal alleviating that harm (Chesterman, 2001).

Interestingly, again in the context of issuing its provisional measures order on 16 March, the ICJ noted that 'it is doubtful that the Genocide Convention, in light of its object and purpose, authorizes a Contracting Party's unilateral use of force in the territory of another State for the purpose of preventing or punishing an alleged genocide. Tellingly, the Court here was musing - entirely unnecessarily for the purposes of reaching its order - which it was 'doubtful' that lawful authority for the use of force could be found in the Genocide Convention. This could well be read as an implicit rejection by the Court of the entire concept of humanitarian intervention as an ad bellum justification. Again, we need not be as coy as the ICJ, and so it is worth reiterating that a notable majority of scholars and a significant majority of states do not support a right of unilateral humanitarian intervention at all. We are therefore talking about a claim by Russia (assuming that it indeed made such a claim) that would fail, in more than one respect, to meet the criteria for a justification that most would not even consider to be a justification.

On September 2017, the Ukraine Parliament passed an education reform bill that included a clause making Ukrainian the required language of study in state schools from the fifth grade onwards. Russia's Foreign Ministry stated that the law was designed to 'forcefully establish a mono-ethnic language regime in a multinational state. In 2018, the Ukrainian Supreme Court overturned a 2012 law which permitted national minorities in their home regions to carry out official business with the government, in their native language. In January 2022, a new state language law came into force which requires that Ukrainian be used in most aspects of public life. This new law has raised concerns about the protection

of minority languages. Article 25, regarding print media outlets, makes exceptions for certain minority languages, English, and official EU languages, but not for Russian. Ukrainian authorities justify this by referring to the country's European ambitions and 'the century of oppression of Ukrainian in favour of Russian'. The Ukrainian government has every right to promote its state language and strengthen its national identity, however a balance is required, to avoid discrimination against linguistic minorities, especially, Russian. President Putin's speech on 24 February 2022 mentions his intention to protect people subjected to bullying and to stop the 'genocide of millions of people living there'. He continues by stating that 'it was these aspirations, feelings, pain of people that were for us the main motive for making a decision to recognise the people's republics of Donbas'.

## Conclusion

Hostilities between Russian armed forces and Ukrainian armed forces constitute an international armed conflict governed by international humanitarian treaty law (primarily the four Geneva Conventions of 1949 and its first additional protocol of 1977 (Protocol I), and the Hague Conventions of 1907 regulating the means and methods of warfare), as well as the rules of customary international humanitarian law, and both Ukraine and Russia are parties to the 1949 Geneva Conventions and Protocol I. Sanctions imposed by one state against another are generally considered a permissible "countermeasure" – that is, a tit-for-tat to a prior violation of international law by a state. Such sanctions, though effectively a form of collective punishment of the population, are lawful under international law as long as the sanctions themselves do not constitute violations of international human rights law. Russia's actions were a basic violation of the principles of international law and a flagrant violation of the United Nations Charter. As international human rights law remains in effect and continues to apply at all times, including during armed conflict and occupation, to which the laws of war also apply and as in some circumstances, humanitarian law norms may trump a human rights norm, or the more specific norm for the particular circumstance. It is imperative to state that Putin's claims here does not seem enough justification to warrant the actions and inactions of Russian government on Ukraine and Ukrainians. It is noteworthy that both Putin and his opponents have repeatedly resorted to international law in support of their respective claims. For instance, dozens of states have condemned Russia's blatant violations of international law at the General Assembly in a special emergency session. Also noteworthy is Putin's reference to purported violations of international law by the United States and its NATO allies.

In a lengthy speech justifying the invasion, Putin derided the U.S. and NATO for their military intervention in Kosovo, the invasion of Iraq (ridiculing the American claims about their intelligence), the overly expansive and disingenuous interpretation and application of a Security Council resolution on Libya and the consequent collapse of the country, as well as the ongoing attacks in Syria. Outcomes along some of these lines may legitimately warrant charges that international law has been ineffective, actions widely condemned as unlawful having instigated consequences that represent a gross compromising of Ukraine's

sovereignty and territorial integrity. Undoubtedly, international law suffers from its limitations in the face of the application of might by a major power (AlJazeera, 2022). The key contention of this paper had been to demonstrate how key principles of public international law, including self-determination and the use of force have been manipulated by Russia to justify the invasion of Ukraine. As previously mentioned, such tactics are not new and were used by Russia in its earlier interventions in Georgia (2008) and Crimea (2014). The only difference this time around is that the intervention has not been so straightforward thanks to the unexpected resistance of the Ukrainian army.

## Recommendations

1. It is high time for every member of the international community – including great powers, to adhere to a system of rules, even when there are short-term incentives to defect. In fact, this might be a moment for a renewed and more inclusive engagement around the legitimate interpretation of the international law that governs the use of force.
2. The two parties to the conflict should proceed immediately to a ceasefire, finding a negotiated solution, which would minimise the number of fatalities.
3. There is an urgent need for a strong supranational organisation and international police force to enforce the principles and doctrines of international law and treaties as failure of which would make international law to remain revolving in its dynamic nature and unenforceable when strong nations violate its principles and doctrines. The UN should borrow leaf from the AU African Standby Force (ASF) to create a international police whose personnel would sprang from all the regions of the world.
4. A special international tribunal needs to be established. The only viable path to the prosecution of crimes of aggression committed against Ukraine is the establishment of a special international tribunal.

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