

Note from the Field

Access to Justice Amid War in Ukraine Gateway

THE LEGALITY OF THE RUSSIAN MILITARY OPERATIONS AGAINST UKRAINE FROM THE PERSPECTIVE OF INTERNATIONAL LAW

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Keywords: *military operations against Ukraine, public international law, the Charter of the United Nations, International Court of Justice, crime of aggression*

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Abstract *The current study seeks to discuss the grounds used by the Russian authorities to legalise their war against Ukraine, indicating the falseness of these grounds and considering the efforts of the United Nations and the International Community that aim to cease Russian aggression against Ukraine. It aims to demonstrate the falseness of Russian legality in its war against Ukraine by identifying the violations and crimes related to the Russian attack under international laws and norms, including the Charter of the United Nations, rules of international humanitarian law, and international human rights law, emphasising on the potential accountability mechanism for perpetrators of international crimes during the Russian war against Ukraine.*

Background: *Russia has used military force against Ukraine several times since 2014 and seized several Ukrainian critical and strategic locations, including them in the Russian territory, coinciding with escalating protests by Pro-Russian separatist groups, especially in Donetsk and Luhansk, where these groups declared their independence in February 2022. Furthermore, Russia has declared it started a special military operation aiming at peacekeeping in those two regions, in addition to claiming that its intent was to stop genocide crimes undertaken by Ukraine in the eastern region of Donbas. This research concentrated on the legality of the latest Russian military operations that started on 24 February 2022 from the perspective of contemporary international law.*

Methods: *The research uses the descriptive analysis method, which is based on the precise description and in-depth analysis of the topic through gathering detailed data related to the research problem, analysing and interpreting legal texts and relevant information, and proposing appropriate solutions and recommendations that expose the Russian violations of international law, attempt to stop these violations, and preserve the state unity and territorial integrity of Ukraine.*

Results and Conclusions: *The research concludes that the Russian military operations against Ukraine represent a blatant violation of international law and an undermining of universal security. As a consequence, this negatively affects the friendly relationships among the members of the international community, in accordance with the provisions and principles of contemporary international law and the resolutions of international legitimacy.*

1 INTRODUCTION

Russian forces have conducted special military operations against Ukraine since February 2022, putting the regulations of international law at stake despite the global criticism of the Russian invasion.

This research tackles the study of how permissible the use of the Russian military forces is against Ukraine from the perspective of international law and its peremptory norms. It also clarifies the role of the United Nations (UN) and the international community in attempts to stop the Russian military actions against Ukraine.

The present research tackles the justifications Russia gave regarding its use of force against Ukraine and how sound they are. It pays special attention to the violations committed by Russia from the perspective of international law. Furthermore, it sheds light on the mechanisms of potential accountability for those who committed international crimes in the Russian war against Ukraine, and in conclusion, it suggests some recommendations for limiting the Russian violations and abuses of international safety and security.

2 THE RUSSIAN GROUNDS FOR THE USE OF ITS MILITARY FORCES AGAINST UKRAINE

Russia has frequently attempted to justify its aggression against Ukraine by linking its acts to the violations of international law by some of the western states in their illegal war against Iraq, Libya, and Syria, under the guise of self-defence and protection of human rights in the states they attacked. Certainly, this repressive silencing of states allying with Ukraine and condemning the Russian aggression against Ukraine is objectionable and cannot confer legality and morality to the Russian military intervention against Ukraine. In other words, any previous violations and breaches cannot nullify or justify the present violations.²

Since the start of the military action, Russia has argued that its attack is justified and legal under the right of individual or collective self-defence set out in Art. 51 of the UN Charter, stipulating that the Charter contains nothing that prejudices the inherent right of individual or collective self-defence in case of an armed attack against one of the UN members. Therefore, the UN member states have the right to defend themselves against an armed attack threatening their territorial integrity.³

Putin has stated that one of the most fundamental grounds for the invasion of Ukraine is individual self-defence in response to the various Ukrainian threats made against Russia. In an attempt to emphasise the Russian right to individual self-defence, he claimed that Ukraine sought to possess and develop biological and nuclear weapons; thus implying that the attack against Ukraine was meant to prevent the country from possessing weapons of mass destruction, even though Ukraine has strongly denied these allegations and highlighted the absence of the infrastructure required for weapon production of this kind.⁴

It is not inconceivable that a slip of the tongue made by the former US President, George W. Bush, in his speech about the Russian war against Ukraine, when he said 'the invasion of Iraq by Russia' and then corrected it with '... of Ukraine', was a result of the link between Russia and the US. And indeed, Russia used the same grounds as the USA in its war against Iraq. Russia wanted to imply that the scenario is the same, regardless of the extent to which this comparison is real and valid.

Besides the Russian justification of its military invasion in Ukraine as a legal right of individual self-defence, it argued that there were also grounds for collective self-defence and that its invasion of Ukraine was meant to defend Ukraine's two eastern separatist regions, Donetsk and Luhansk, which Russia depicted as sovereign independent states facing grave violations of human rights, humiliation, and genocide by the Ukrainian government.

According to the Convention on the Prevention and Punishment of the Crime of Genocide 1948, genocide means any of the following acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such: (a) killing members of the group; (b) causing serious bodily or mental harm to members of the group; (c) deliberately inflicting on the group conditions of life calculated to bring about its physical

2 I Wuerth, 'International Law and the Russian Invasion of Ukraine' (*Lawfare*, 25 February 2022) <<https://www.lawfareblog.com/international-law-and-russian-invasion-ukraine>> accessed 10 June 2022; JA Green, C Henderson, T Ruys, 'Russia's attack on Ukraine and the *jus ad bellum*' (2022) 9 (1) *Journal on the Use of Force and International Law* 4-30.

3 Charter of the United Nations, signed 26 June 1945 in San Francisco at the conclusion of the United Nations Conference on International Organization, and which came into force on 24 October 1945.

4 DE Sanger, 'Putin Spins a Conspiracy Theory That Ukraine Is on a Path to Nuclear Weapons' (*New York Times*, 23 February 2022) <<https://www.nytimes.com/2022/02/23/us/politics/putin-ukraine-nuclear-weapons.html>> accessed 10 June 2022; Green, Henderson, Ruys (n 2).

destruction in whole or in part; (d) imposing measures intended to prevent births within the group; (e) forcibly transferring children of the group to another group.⁵

It could therefore be said that the Russian allegations are consistent with neither law nor reality since no evidence has been found stating that Ukraine violated human rights in Donetsk and Luhansk, committed acts classified as genocide, or aimed to destroy any national, ethnic, racial, or religious group. On the other hand, the right to self-defence cannot be an excuse since neither Donetsk nor Luhansk are declared independent states under international law, despite Russia's claims. Therefore, they have no right to require any state to defend them. Even if Donetsk and Luhansk were independent states, the response would have to be necessary and proportionate under international law provisions in order to be legal. However, the Russian use of power was violent and intense throughout Ukraine, which was not necessary and proportionate, as will be clarified below.

3 EFFORTS OF THE UNITED NATIONS IN CEASING RUSSIAN MILITARY ACTIONS AGAINST UKRAINE

The international organisations and the UN's roles have become clear during the Russian aggression against Ukraine regarding the attempts to cease, address, and control these aggressive actions and to preserve international peace and security.

Since the beginning of the Russian invasion of Ukraine, the Secretary-General of the UN has described the Russian aggression and the relevant actions as 'a moment of the grave' and said that the Russian resolution to declare the independence of Donetsk and Luhansk is a violation of the territorial unity and Ukrainian sovereignty that contradicts the principles of UN Charter. Therefore, the UN has frequently called for a ceasefire for the protection of civilians and invited the relevant parties to engage in political dialogue to reach a peaceful settlement, which unfortunately has not happened yet. Many civilians are still on the bloody battlefields, hundreds of people are trapped due to conflicts, and war crimes are being committed, as we know from recent reports.⁶

3.1 The Role of the United Nations Security Council in Attempts to Cease Russian War Against Ukraine

The UN Security Council bears the primary responsibility for the maintenance of international peace and security. In case of any threat to peace or act of aggression, under the Charter, the Council is entitled to impose sanctions or use military force to preserve and restore peace and security. In case the Council fails to decide on imposing sanctions or any countermeasure due to the relationship between the resolution and one of the permanent members of the Council, UN General Assembly is entitled to hold an emergency meeting to discuss the issue.⁷

Regarding the Ukrainian crisis, the Security Council has failed to decide to call for Russian military operations against Ukraine to cease due to using the Russian veto power.

5 Art 1 of the Convention on the Prevention and Punishment of the Crime of Genocide by General Assembly resolution 260 A (III) of 9 December 1948.

6 United Nations Secretary-General, 'Secretary-General's Remarks to the General Assembly on Ukraine' (23 February 2022) <<https://www.un.org/sg/en/content/sg/statement/2022-02-23/secretary-generals-remarks-the-general-assembly-ukraine>> accessed 10 June 2022.

7 Charter of the United Nations (n 3).

Consequently, the Council has called for the Eleventh Emergency Special Session of the General Assembly to discuss the issue of the Russian invasion of Ukraine in an attempt to submit the recommendations required to maintain international peace and security and cease acts of aggression. Given that this resolution was procedural, the Council managed to make it despite the Russian protest against this action.⁸ In this regard, the UN Secretary-General welcomed the unity of the Security Council in achieving a peaceful solution in Ukraine and said in a statement that 'Today, for the first time, the Security Council is speaking with one voice for peace in Ukraine'.⁹

The way in which the Security Council tried to prevent the Russian invasion of Ukraine recalls the urgent and imperative need for a reconsideration of the composition of the Security Council and the powers and immunity of the member states, and a separate reconsideration of veto power for each permanent member state, which is a fundamental reason for the disruption and failure of the Council in issuing a resolution regarding any international dispute directly or indirectly involving one of these states or any of their allies.

3.2 The Role of the United Nations General Assembly in Attempts to Cease Russian War Against Ukraine

On 2 March 2022, the General Assembly endorsed a resolution by a majority of 141 states, with 35 states abstaining from the vote and five states voting against the resolution, namely: Russia, Belarus, North Korea, Syria, and Eritrea. The resolution condemns and denounces the Russian military action, calls for Russia to cease its aggression, and demands immediate, complete, and unconditional withdrawal of all its military forces from Ukrainian territory. Furthermore, it urges Russia to reverse its decision to declare Donetsk and Luhansk as independent states and adhere to the international law and rules of the UN Charter. It also emphasises the commitment of the international community to Ukraine's sovereignty, independence, and territorial unity.¹⁰

The UN General Assembly also adopted a resolution on 7 April 2022 calling for Russia to be suspended from the Human Rights Council. The resolution received a two-thirds majority of those voting, minus abstentions, in the 193-member Assembly, with 93 nations voting in favour and 24 against.¹¹ Although the resolutions of the UN General Assembly are legally non-mandatory, these resolutions have moral and political power, especially when these resolutions are overwhelmingly issued, and the Security Council is unable to act due to one of the permanent member states using its veto power. Thus, it can be argued that the General Assembly's approval of the resolution means the overwhelming rejection of most states regarding the illegal and unjustified attacks against Ukraine, which increased the imposition of political isolation on Russia.¹²

8 Resolution 2623, adopted by the United Nations Security Council on 27 February 2022.

9 United Nations Secretary-General, 'Security Council Speaks with One Voice for Peace in Ukraine' (6 May 2022) <<https://news.un.org/en/story/2022/05/1117742>> accessed 10 June 2022.

10 Resolution ES-11/1, adopted by the Eleventh Emergency Special Session of the United Nations General Assembly on 2 March 2022.

11 'UN General Assembly votes to suspend Russia from the Human Rights Council' (*UN News*, 7 April 2022) <<https://news.un.org/en/story/2022/04/1115782>> accessed 10 June 2022.

12 V Romo, 'Russia vetoes UN Security Council resolution that Denounces its Invasion of Ukraine' (*NPR*, 25 February 2022) <<https://www.npr.org/2022/02/25/1083252456/russia-vetoes-un-security-council-resolution-that-denounces-its-invasion-of-ukra>> accessed 10 June 2022.

3.3 The Role of the International Justice Court in Attempts to Cease Russian War Against Ukraine

The International Court of Justice (ICJ) in The Hague considers disputes between states, although it is not entitled to interfere by the agreement of the relevant states. The Ukrainian government has filed a case against Russia before the ICJ according to the Convention on the Prevention and Punishment of the Crime of Genocide 1948, demanding that Russia cease its military operations, which started on 24 February 2022. Ukraine has asked the Court to consider Russia's allegations that Ukraine has committed genocide in the Donbas region as grounds for the Russian invasion. Moreover, Ukraine has asked the Court to take temporary measures via an immediate suspension of military operations until the final judgment of the case is issued.¹³

The ICJ Resolution was issued on 16 March 2022, with 13 votes in favour and two votes against the resolution (Russia and China). The Court declared in its resolution that no genocide acts had been committed in Luhansk and Donetsk, in contrast to the Russian claim that its invasion of Ukraine was grounded on the prevention and punishment of the crime of genocide. Therefore, the Court has demanded that Russia and other forces that support or control it immediately cease military operations on Ukrainian territory, as the Russian grounds for the attack have been proved false. The Court emphasised in its final and binding resolution that Russian military forces are the perpetrators of intentional homicide, causing serious injuries to Ukrainian nationals during its invasion of Ukraine. But unfortunately, the Court's judgments lack the traditional execution procedures that make them efficient.¹⁴

After all, in its attempts to reach a peaceful solution and cease Russian aggression over Ukraine, the UN still pursues its efforts to support the Ukrainian people through its work in the human rights protection field, providing humanitarian assistance and safe passages to evacuate civilians from hazardous areas and allowing them free movement. The UN Human Rights Council investigates facts regarding human rights in Ukraine, works on recording numbers of civilian casualties, and reports violations of human rights and international humanitarian law, such as arbitrary arrests, ill-treatment, and public humiliation of Ukrainian civilians and war captives. All these actions have a critical role in putting an end to the Russian violation of international law and ceasing further bloodshed.¹⁵

4 STATES' RESPONSE TO RUSSIAN INVASION OF UKRAINE

Most states have denounced the Russian attack on Ukraine due to the absence of legal grounds and the losses and atrocities for Ukrainian civilians and their devastated cities. These states have called for a peaceful settlement of the conflict in compliance with the UN Charter by ending the military action and returning to negotiations and diplomacy.¹⁶

13 International Court of Justice, 'Press Release, Ukraine institutes proceedings against the Russian Federation and requests the Court to indicate provisional measures, No. 2022/4' (27 February 2022) <<https://web.archive.org/web/20220228120743/https://www.icj-cij.org/public/files/case-related/182/182-20220227-PRE-01-00-EN.pdf>> accessed 10 June 2022.

14 International Court of Justice, 'Order, Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide, Ukraine vs Russian Federation' (16 March 2022) <<https://www.icj-cij.org/public/files/case-related/182/182-20220316-ORD-01-00-EN.pdf>> accessed 10 June 2022.

15 United Nations Secretary-General (n 6).

16 A Osborn, P Nikolskaya, 'Russia's Putin Authorises "Special Military Operation" against Ukraine' (*Reuters*, 24 February 2022) <<https://www.reuters.com/world/europe/russias-putin-authorises-military-operations-donbass-domestic-media-2022-02-24/>> accessed 10 June 2022; J Mackenzie, 'Ukraine Claims Control over Kyiv Region as Russia Looks East' (*Reuters*, 3 April 2022) <<https://www.reuters.com/world/europe/red-cross-heads-again-mariupol-russia-shifts-ukraine-focus-2022-04-02/>> accessed 10 June 2022.

Many governments have submitted military, defence, and logistical aid for Ukraine, purchasing and supplying weapons, ammunition, defence systems, and others support and enhance the military capacities of the Ukrainian Army without engagement in actual military actions to deter Russian aggression. The anti-Ukrainian invasion states have applied a set of non-military procedures against Russia, including the imposition of various economic, commercial, and financial sanctions that aim at crippling the Russian economy, targeting individuals, banks, and Russian companies, as well as political sanctions, prohibition of aviation, banning some Russian press media, and other sanctions and large scale boycotts in various fields such as commerce, sports, and entertainment, given that these sanctions do not represent a violation of international human rights law as long as they are meant to urge the state violating the international law to stop its breaches.¹⁷

5 RUSSIAN WAR AGAINST UKRAINE AND VIOLATION OF INTERNATIONAL LAW RULES

Undoubtedly, the Russian attack against Ukraine is an explicit breach of international law principles and rules as stipulated in the UN Charter and customary international law since Russian forces have violated a combination of international law rules, especially those regarding respect for the equality in national sovereignty of states, the principle of peaceful settlement of disputes, the principle of non-use of power or threat within mutual relationships among states that may threaten the maintenance of international peace and security, the principle of non-intervention in matters which are essentially within the domestic jurisdiction of any state, and the principle of good faith in international obligations.¹⁸

5.1 Russian War against Ukraine and the Principle of Non-use of Power or Threat within Mutual Relationships among States

First, the Russian military operations violate the principle of prohibiting the use of power stipulated by the UN Charter. The preamble prohibits the use of power except in the mutual interest of all members, as stipulated in para. 4 Art. 2, which notes that states must refrain from using power or threat against the territorial integrity or political independence of any state.¹⁹

5.2 Russian War against Ukraine and the Principle of Non-intervention in Internal Matters of States

Russia has violated the international law and legitimacy regarding its international obligation to respect the principle of non-intervention in internal matters of states and to respect its sovereignty. Russia has intervened in matters that are considered within states'

17 M Quinn, 'What to Know About New U.S. Sanctions Targeting Russia over Ukraine' (CBS News, 23 February 2022) <<https://web.archive.org/web/20220224034030/https://www.cbsnews.com/news/russia-sanctions-ukraine-us-biden/>> accessed 10 June 2022; J Neal, 'The War in Ukraine and International Law' (Harvard Law Today, 2 March 2022) <<https://today.law.harvard.edu/the-ukraine-conflict-and-international-law/>> accessed 10 June 2022.

18 Green, Henderson, Ruys (n 2).

19 Charter of the United Nations (n 3).

domestic jurisdiction, which is a violation of the general principles and a *jus cogens* rule of international law, as stipulated in para. 7 Art. 2 of the Charter.²⁰

5.3 Russian War against Ukraine and the Rules of International Humanitarian Law

Russian behaviour has exceeded the rules and principles of international humanitarian law, approved by the Geneva and Hague Conventions and others, which aims to protect individuals suffering from the ravages of armed conflicts, and objects that are not directly related to hostilities since they used internationally banned weapons like cluster bombs and do not discriminate between the civil and military objectives. Military air strikes hit civilian areas, not just military ones, which has led to the killing of a large number of innocent civilians and captives. Russian aviation has launched random airstrikes on infrastructure, targeting residential areas, including shelling gas lines, sewage, drinking water, and electricity systems, medical services such as civil hospitals, food stores, plants, civilian airports, governmental administrative buildings, religious and cultural sites, and other similar places and buildings, and destroying scientific and cultural property, which has led to thousands of civil casualties, and the displacement of about four million Ukrainians looking for safety, protection, and humanitarian assistance.²¹

Various reports issued by international organisations have indicated that Russia, in addition to its aggression, has committed a combination of violations of international humanitarian law provisions, which are considered war crimes and crimes against humanity. During the war operations in Ukraine, many actions of random shelling of civilians have taken place. The infrastructure has been targeted and destroyed with no justification. Russian forces have deemed all Ukrainian territories permissible and turned them into a battlefield, with non-discrimination between civil and military buildings. The Russian shelling has reached schools, universities, hospitals, stores, and libraries, as well as targeting places of worship, shopping places, and all state facilities and governmental buildings and institutions with their infrastructure. Since Russian forces launched their attacks, at least one thousand Ukrainian civilians have been killed, and about two thousand have been injured. Russian forces used airstrikes and heavy artillery and missiles, targeting overpopulated areas, which led to endangering civilians and unnecessary and disproportionate destruction of their property. For example, the Russian attacks targeted the Zaporizhzhia nuclear power plant, which severely damaged the building and injured two people. The report issued on 25 March 2022 by the Office of the High Commissioner for Human Rights stated that 47 civilians were killed on 3 March when the Russian airstrikes attacked two schools and many residential compounds in Chernihiv. In addition, Russian shelling destroyed the Mariupol hospital, which resulted in the injury of 17 civilians, including children and pregnant women.²²

The Russian military operations violating Ukraine's sovereignty on the grounds of fighting genocide in Donbas are considered an aggression crime, according to Art. 1 of Resolution No. 3314, which identified aggression as the use of the armed force of one state against another state's sovereignty, territorial integrity, or political independence, or any other way that violates UN Charter. These violations consist of invading or attacking any region of

20 Ibid.

21 Office of the High Commissioner for Human Rights, 'Situation in Ukraine' (25 March 2022) <<https://www.ohchr.org/en/statements/2022/03/situation-ukraine>> accessed 10 June 2022.

22 Ibid; N Roth, 'What Happened at Ukraine's Zaporizhzhia Nuclear Power Plant and What Are the Implications?' (*The Nuclear Threat Initiative*, 9 March 2022) <<https://www.nti.org/atomic-pulse/what-happened-at-ukraines-zaporizhzhia-nuclear-power-plant-and-what-are-the-implications/>> accessed 10 June 2022.

other countries, the military occupation or inclusion of any other country's region or part of it by force, shelling sites of any country by dropping bombs or any other weapons, the blockade of any ports and beaches of a country, attacking the air, land, or maritime armed forces of one state by the armed forces of another state, one state using its armed forces in a region of another state with the consent of the hosting state, one state allowing its region to be under the control of another state to commit an act of aggression against a third state, or aggression by sending armed gangs, irregular forces, or mercenaries by or on behalf of any state.²³

According to this definition, the Russian war against Ukraine can be described as aggression. The core of aggression is the use of military power, i.e., when violence prevails in the relationships among states, which leads to ending any cordial relationship among such states, given that the mere threat of resorting to military force is not sufficient on its own to achieve the act of aggression. The aggression may consist of an actual war, whether it is a clash between the military forces of two states or a one-sided abuse. The attempt to ascertain whether military force has been used against Ukraine does not require much effort; the Russian forces have clearly attacked Ukraine, which contradicts the maintenance of national sovereignty respect values and promotes international peace and cooperation.²⁴

On the other hand, resorting to military force has to be illegal, i.e., in violation of the UN Charter or international law principles, to be considered aggression. The Russian war against Ukraine does not have legal grounds and is not based on any of the exceptions by which the UN Charter allows the resort to force. Hence, launching a unilateral war is a substantial encroachment on the UN as an organisation, the Security Council as a governing body that has the right of delegation by force against any state threatening international peace and security, and an encroachment on the provisions and rules of the UN and the different resolutions issued regarding collective security systems. Therefore, it is not only aggression against Ukraine but also the global order as a whole, which constitutes an eradication of the roles of the authorities and organisations responsible for the maintenance of international peace and security.²⁵

6 THE POTENTIAL INTERNATIONAL MECHANISMS TO HOLD RUSSIA ACCOUNTABLE FOR ITS ATTACK ON UKRAINE

The International Criminal Court is a permanent criminal judicial body with jurisdiction over the prosecution of individuals accused of committing the most serious crimes under international law. These crimes are war crimes, military aggression, genocide, and crimes against humanity. The International Criminal Court has the right to practice its powers concerning a crime under its jurisdiction, according to Arts. 13 and 14 of the Statute of the court, if the case is referred to the prosecutor of the Court by a state party to the Statute or by the Security Council (SC) under Chapter VII of the UN Charter. Furthermore, any state party or person may file a case with the prosecutor of the Court, who may decide to commence the investigation if he or she considers that there is a reasonable basis to do so.²⁶

23 United Nations General Assembly Resolution 3314 (XXIX) (Definition of Aggression), adopted by the General Assembly on 14 December 1974.

24 Wuerth (n 2).

25 J Trahan, 'A Reminder of the Importance of the Crime of Aggression: Considering the Situation of Russia and Ukraine' (*Opinio Juris*, 4 February 2022) <<http://opiniojuris.org/2022/02/04/a-reminder-of-the-importance-of-the-crime-of-aggression-considering-the-situation-of-russia-and-ukraine/>> accessed 10 June 2022.

26 The Rome Statute of the International Criminal Court, adopted in Rome, Italy on 17 July 1998 and entered into force on 1 July 2002.

The Court shall not have the right to practice its jurisdiction over the crime of aggression committed by states that are not parties to the Rome Statute. Therefore, the crime of aggression committed by Russia in the territory of Ukraine shall not be subject to the jurisdiction of the Court, considering that both Russia and Ukraine have not acceded to the Rome Statute, and accordingly, the Russian citizens are excluded from the jurisdiction concerning the referral of the case to the Court either by Ukraine or by the prosecutor. Simultaneously, the referral of the case to the Court by the SC is excluded because Russia is a permanent member of the Council.²⁷

Nonetheless, the previous obstacle can be overcome by prosecuting Russia in one of the states that recognise universal jurisdiction in cases of aggression since no laws prevent any state whose laws apply the principle of universal jurisdiction from prosecuting the perpetrators of crimes of aggression, regardless of their nationality or the place where they committed their crimes. In this case, the national court entrusted with the resolution of the dispute in trials *in absentia* can ensure that Russian political and military leaders need not be removed from their positions in order to be arrested and punished for their crimes, given the judicial immunity that these leaders possess.²⁸

The pre-trial proceedings concerning universal jurisdiction for serious war crimes committed during the Russian invasion of Ukraine have already begun in several states as of 5 April 2022. The pre-trial proceedings have involved Ukraine, Germany, Poland, Lithuania, Spain, and Sweden in preparation for the initiation of investigation proceedings and prosecution against the suspected perpetrators of these crimes before the national courts of these states, thereby enhancing the possibilities of effective accountability for those responsible for these crimes.²⁹

7 CONCLUSIONS

The Russian military operation in Ukraine is clearly an attempt to manipulate international law and align it with its interests and objectives. This is done by disrupting the established principles of international law, particularly the principle of the equality of the national sovereignty, independence, and territorial integrity of all states. This will result in the spread of chaos in the international system and a return to the era of world wars, especially with the lack of credibility in the allegations and real motives behind Russia's military invasion of Ukraine. The present research has discussed the lack of a legal basis for Russia's justification of its aggression against Ukraine. Furthermore, the arguments presented by Russia to justify its aggression against Ukraine and its claim of acting in self-defence or as a humanitarian intervention are unsubstantiated allegations and therefore cannot be accepted. Ukraine has not committed or threatened to commit an armed attack against Russia, and therefore no evidence supports Russia's allegations of genocide in the Donetsk and Luhansk regions.

27 Trahan (n 25).

28 T Dannenbaum, 'Mechanisms for Criminal Prosecution of Russia's Aggression Against Ukraine,' Just Security, New York University School of Law (10 March 2022) <<https://www.justsecurity.org/80626/mechanisms-for-criminal-prosecution-of-russias-aggression-against-ukraine/>> accessed 10 June 2022; H Siddique, 'Could the International Criminal Court Bring Putin to Justice over Ukraine?' (*The Guardian*, 2 March 2022, <<https://www.theguardian.com/world/2022/mar/02/could-international-criminal-court-bring-putin-to-justice-over-ukraine>> accessed 10 June 2022).

29 H Stephenson, T Dannenbaum, 'What are War Crimes—and Will Putin Be Tried for Them?' The Fletcher School of Law and Diplomacy (5 April 2022) <<https://web.archive.org/web/20220405183346/https://sites.tufts.edu/fletcherussia/what-are-war-crimes-and-will-putin-be-tried-for-them/>> accessed 10 June 2022.

Moreover, the Russian protest that other states do not respect international law is merely a failed attempt to distract global attention.

Hence, the Russian war against Ukraine is an unlawful use of force, an act of aggression, and a blatant violation of the peremptory norms of international law. Russia's large-scale destruction of administrative buildings, educational and medical facilities, and water and power plants is an internationally prohibited form of aggression, a serious violation of the laws and customs applicable in international armed conflict within the scope of international law, and thus is subject to international responsibility.

Notwithstanding the importance of the efforts of the UN and the international community, they are unfortunately still not sufficient to defend Ukraine. The UN must implement the right of collective self-defence, according to the provisions of Art. 51 of the UN Charter, obliging the members of the UN to defend it and sending military forces to support it, on par with what happened when Iraq invaded Kuwait in 1990. At that time, the UN came to help Kuwait defend itself and began to use military force against Iraq. Furthermore, the Allied Coalition Forces were then able to evacuate Iraqi forces from Kuwait. In contrast, the international assistance to Ukraine in facing the Russian invasion has been limited to sending indirect supplies and military assistance to Ukraine, as well as imposing limited sanctions against Russia.

This research concludes with a set of recommendations that can be summarised in the following:

1. The Russian authorities must be forced to respect the principles enshrined in international law, among the most important of which are respect for the sovereignty and territorial integrity of states, non-use of power or threat, the principle of the peaceful settlement of international disputes, and finally, non-intervention in internal matters of states except in the cases outlined in the UN Charter.
2. Russia must respect the standards and limitations of contemporary international law, which restrict and limit the sovereignty of states within the scope specified by that law, and not return to the standards of traditional international law, which gave states absolute sovereignty and free rein to use armed force.
3. The Russian authorities must comply with the resolution issued by the International Court of Justice regarding the cessation of military operations against Ukraine. Furthermore, they should seek to resolve their dispute through diplomatic means to avoid isolation from the rest of the international community.
4. Russia must assume responsibility for what has been done to the Ukrainian people, from the extreme human suffering and immense destruction to the damage to the state's infrastructure.
5. The right of collective self-defence must be activated to preserve Ukraine's sovereignty, and we must search for other effective deterrence mechanisms to ensure that Russia will be punished for its illegal aggression. Moreover, we must defend the Ukrainian territorial integrity and unity against the Russian invasion.
6. We must reconsider the veto power of Russia and the other permanent five states of the Security Council and investigate which states exploit this power to violate the UN Charter, attack other states, and commit violations of international law provisions, including international human rights law, and international humanitarian law.

REFERENCES

1. Osborn A, Nikolskaya P, 'Russia's Putin Authorises "Special Military Operation" against Ukraine' (*Reuters*, 24 February 2022) <<https://www.reuters.com/world/europe/russias-putin-authorises-military-operations-donbass-domestic-media-2022-02-24/>> accessed 10 June 2022.
2. Convention on the Prevention and Punishment of the Crime of Genocide by General Assembly Resolution 260 A (III) of 9 December 1948.
3. Charter of the United Nations, signed on 26 June 1945, in San Francisco, after the United Nations Conference on International Organization, and which came into force on 24 October 1945.
4. Sanger DE, 'Putin Spins a Conspiracy Theory That Ukraine Is on a Path to Nuclear Weapons' (*New York Times*, 23 February 2022) <<https://www.nytimes.com/2022/02/23/us/politics/putin-ukraine-nuclear-weapons.html>> accessed 10 June 2022.
5. Siddique H, 'Could the International Criminal Court Bring Putin to Justice over Ukraine?' (*The Guardian*, 2 March 2022, <<https://www.theguardian.com/world/2022/mar/02/could-international-criminal-court-bring-putin-to-justice-over-ukraine>> accessed 10 June 2022.
6. Stephenson H, Dannenbaum T, 'What are War Crimes—and Will Putin Be Tried for Them?' The Fletcher School of Law and Diplomacy (5 April 2022) <<https://web.archive.org/web/20220405183346/https://sites.tufts.edu/fletcherrussia/what-are-war-crimes-and-will-putin-be-tried-for-them/>> accessed 10 June 2022.
7. Wuerth I, 'International Law and the Russian Invasion of Ukraine' (*Lawfare*, 25 February 2022) <<https://www.lawfareblog.com/international-law-and-russian-invasion-ukraine>> accessed 10 June 2022.
8. International Court of Justice, 'Order, Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide, Ukraine vs Russian Federation' (16 March 2022) <<https://www.icj-cij.org/public/files/case-related/182/182-20220316-ORD-01-00-EN.pdf>> accessed 10 June 2022.
9. International Court of Justice, 'Press Release, Ukraine institutes proceedings against the Russian Federation and requests the Court to indicate provisional measures, No. 2022/4' (27 February 2022 <<https://web.archive.org/web/20220228120743/https://www.icj-cij.org/public/files/case-related/182/182-20220227-PRE-01-00-EN.pdf>> accessed 10 June 2022.
10. Green JA, Henderson C, Ruys T, 'Russia's attack on Ukraine and the *jus ad bellum*' (2022) 9 (1) *Journal on the Use of Force and International Law* 4-30.
11. Mackenzie J, 'Ukraine Claims Control over Kyiv Region as Russia Looks East' (*Reuters*, 3 April 2022) <<https://www.reuters.com/world/europe/red-cross-heads-again-mariupol-russia-shifts-ukraine-focus-2022-04-02/>> accessed 10 June 2022.
12. Neal J, 'The War in Ukraine and International Law' (*Harvard Law Today*, 2 March 2022) <<https://today.law.harvard.edu/the-ukraine-conflict-and-international-law/>> accessed 10 June 2022.
13. Trahan J, 'A Reminder of the Importance of the Crime of Aggression: Considering the Situation of Russia and Ukraine' (*Opinio Juris*, 4 February 2022) <<http://opiniojuris.org/2022/02/04/a-reminder-of-the-importance-of-the-crime-of-aggression-considering-the-situation-of-russia-and-ukraine/>> accessed 10 June 2022.
14. Quinn M, 'What to Know About New U.S. Sanctions Targeting Russia over Ukraine' (*CBS News*, 23 February 2022) <<https://web.archive.org/web/20220224034030/https://www.cbsnews.com/news/russia-sanctions-ukraine-us-biden/>> accessed 10 June 2022.
15. Roth N, 'What Happened at Ukraine's Zaporizhzhia Nuclear Power Plant and What Are the Implications?' (*The Nuclear Threat Initiative*, 9 March 2022) <<https://www.nti.org/atomic-pulse/what-happened-at-ukraines-zaporizhzhia-nuclear-power-plant-and-what-are-the-implications/>> accessed 10 June 2022.
16. Office of the High Commissioner for Human Rights, 'Situation in Ukraine' (25 March 2022) <<https://www.ohchr.org/en/statements/2022/03/situation-ukraine>> accessed 10 June 2022.

17. Resolution 2623, adopted by the United Nations Security Council on 27 February 2022.
18. Resolution ES-11/1, adopted by the Eleventh Emergency Special Session of the United Nations General Assembly on 2 March 2022.
19. Dannenbaum T, 'Mechanisms for Criminal Prosecution of Russia's Aggression Against Ukraine,' *Just Security*, New York University School of Law (10 March 2022) <<https://www.justsecurity.org/80626/mechanisms-for-criminal-prosecution-of-russias-aggression-against-ukraine/>> accessed 10 June 2022.
20. 'UN General Assembly votes to suspend Russia from the Human Rights Council' (*UN News*, 7 April 2022) <<https://news.un.org/en/story/2022/04/1115782>> accessed 10 June 2022.
21. United Nations General Assembly Resolution 3314 (XXIX) (Definition of Aggression), adopted by the General Assembly on 14 December 1974.
22. United Nations Secretary-General, 'Secretary-General's Remarks to the General Assembly on Ukraine' (23 February 2022) <<https://www.un.org/sg/en/content/sg/statement/2022-02-23/secretary-generals-remarks-the-general-assembly-ukraine>> accessed 10 June 2022.
23. United Nations Secretary-General, 'Security Council Speaks with One Voice for Peace in Ukraine' (6 May 2022) <<https://news.un.org/en/story/2022/05/1117742>> accessed 10 June 2022.
24. Romo V, 'Russia vetoes UN Security Council resolution that Denounces its Invasion of Ukraine' (*NPR*, 25 February 2022) <<https://www.npr.org/2022/02/25/1083252456/russia-vetoes-un-security-council-resolution-that-denounces-its-invasion-of-ukra>> accessed 10 June 2022.