

Special Issue, the Second GPDRL College of Law International Conference on Legal, Socio-economic Issues and Sustainability

Research Article

DID RUSSIA INVADE INTERNATIONAL LAW IN UKRAINE

Adnan Mahmutovic

Submitted on 12 Feb 2023 / Revised 1st 24 Feb 2023 / Revised 2nd 07 Mar 2023 /
Approved **10 Mar 2023** / Published online: **23 Mar 2023**

Summary: 1. The Annexation of Crimea and Self-determination Denied. – 1.1. *Introduction.* – 1.2. *Annexation of Crimea.* – 1.3. *The right to self-determination.* – 2. History of recognising breakaway republics. – 3. Russia invaded international treaties. – 4. International law will prevail. – 5. Conclusion.

Keywords: Annexation, International law, Self-determination, Russian invasion, International Criminal Court.

ABSTRACT

Background: *It has been a year since Russia heavily invaded Ukraine, leading to prolonged violence and devastation. Russia had previously disregarded international law by annexing Crimea, violating the principle of the use of force, and breaking numerous treaties that safeguard Ukraine's sovereignty and territorial integrity. Despite the invasion occurring a year ago, Ukraine remains in a dire situation, with the conflict causing significant harm to its people and infrastructure. This paper aims to examine the legal implications of Russia's*

Adnan Mahmutovic

PhD in Law, Assistant Professor, College of Law, Al Yamamah University, Saudi Arabia.

a_mahmutovic@yu.edu.sa

<https://orcid.org/0000-0002-3553-2870>

Author, solely responsible for writing and research. **Competing interests:** Author confirms that I have no competing interests. **Disclaimer:** The author of this manuscript declares that their opinions and views expressed are free of any impact from any organizations. **Translation:** This manuscript was written by the author in English.

Managing editor – Dr Yuliia Baklazhenko. **English Editor** – Lucy Baldwin.

Guest Editors of the Special Issue: Dr. Mohammed Albakjaji, Prince Sultan University, and Dr. Maya Khater, Al Yamamah University, Saudi Arabia.

Copyright: © 2023 Adnan Mahmutovic. This is an open access article distributed under the terms of the Creative Commons Attribution License, (CC BY 4.0), which permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited.

How to cite: Adnan Mahmutovic 'Did Russia Invade International Law in Ukraine' 2023 Special Issue Access to Justice in Eastern Europe 1–17. <https://doi.org/10.33327/AJEE-18-6S003>

invasion from an international perspective, and to consider the potential repercussions of such actions.

Methods: *This research paper analyses the legal implications of the conflict between Russia and Ukraine, focusing on Russia's invasion and annexation of Crimea. Through the application of legal positivism, which seeks to analyse the law in a way that is objective and value-neutral, the paper argues that Russia's actions contravene Ukraine's sovereignty and territorial integrity.*

Conclusion and recommendations: *The Russian Federation's invasion of Ukraine and subsequent territorial seizure constitutes a violation of international law. While there are ways to address this violation, the possession of nuclear weapons by a state may make it difficult to take action. The ICC is investigating the situation in Ukraine and can prosecute individuals for international crimes, but national courts also have a crucial role in ensuring justice. Notwithstanding, it is imperative for the international community to unite and condemn aggression against independent nations, with a critical mass of states prepared to take measures to halt or decrease acts of aggression while also providing assistance to victims. It is vital to demonstrate that international law remains valid and binding, and that the illegitimate use of force will never be accepted or even tolerated.*

1 THE ANNEXATION OF CRIMEA AND SELF DETERMINATION DENIED

1.1 Introduction

Since 1991 and its independence, Ukraine has become an area of increasing tensions with Russia, both inherited from historical processes and developed during the post-Cold War era. Ukraine has had a tangled history with Russia, with tensions over issues like natural gas pricing and the status of its Russian-speaking populations.¹ Furthermore, some in Russia have seen Ukraine's drift towards the West, and particularly its association with the European Union and NATO, as a threat to Russia's security and interests.² Therefore, the country has been marked by conflicting interests and deep-seated divisions.³ However, most of the Ukrainian population support a pro-Western stance, and as a result, their calls for preserving Ukraine's sovereignty today have been backed by many Western European nations. The conflict in Ukraine has been ongoing since 2014, when Russian forces annexed Crimea and pro-Russian separatists took control of areas in the eastern regions of Ukraine. Since then, there have been numerous outbreaks of violence, with innocent civilians caught in the crossfire.

The ongoing conflict in Ukraine, like the one in Syria, is a bloody business because of the devastating impact on the lives of ordinary people, and it is the responsibility of the international community to take action to prevent and resolve these conflicts. This bloody business has shaken the international order to its core and now represents one of the main global security challenges. On February 24th, 2022, the Russian president took further action by ordering troops to be sent into Ukraine from various directions and explained to Russian citizens that his objective was to "demilitarize and de-Nazify

1 Eve Conant, 'Russia and Ukraine: The Tangled History that Connects—and Divides—Them' (*National Geographic*, 24 February 2023) <<https://www.nationalgeographic.com/history/article/russia-and-ukraine-the-tangled-history-that-connects-and-divides-them>> accessed 6 March 2023.

2 Ronald D Asmus, *A Little War That Shook the World: Georgia, Russia, and the Future of the West* (St Martin's Press 2010).

3 Bartosz Gierczak, 'The Russo-Ukrainian Conflict' (*ResearchGate*, 8 May 2020) <https://www.researchgate.net/publication/349948624_The_Russo-Ukrainian_Conflict> accessed 6 March 2023.

Ukraine” or, in other words, to eliminate military presence and fascist ideologies.⁴ He stated that his intentions were to protect individuals who have been subjected to oppressive actions and genocide by the Ukrainian government.⁵ However, these claims found no factual grounds to support them.

Many legal scholars and researchers have written on the topic and have provided a variety of perspectives on the legal implications of the conflict.⁶ Some of the key issues that have been discussed include the annexation of Crimea by Russia,⁷ the role of separatist groups in eastern Ukraine,⁸ the responsibility of states for the actions of non-state actors,⁹ and the applicability of the laws of war to the situation in Ukraine. Some of them pointed out that the latest crisis is not about Crimea or parts of Ukraine, it is about undermining the norms and international law and threatening the international peace and security system.¹⁰ The Russian Federation’s actions in recent years have raised serious concerns about the effectiveness of the international legal order in maintaining peace and security. Therefore, this paper aims to examine the legal implications of Russia’s invasion from an international perspective, and to consider the potential repercussions of such actions. Additionally, the paper will highlight that Russia is not only violating Ukraine’s territorial sovereignty but also openly disregarding international law. The goal of this paper is to demonstrate that international law remains valid and binding, and that the illegitimate use of force will never be accepted or even tolerated.

1.2 Annexation of Crimea

In March 2014, Russia and the Republic of Crimea signed a treaty of annexation, in which Crimea was annexed by the Russian Federation. Russia annexed Crimea following a controversial referendum in which a majority of people in the region allegedly voted in favour of joining the Russian Federation. According to international law, a treaty can only be concluded between states that have the capacity to enter into legal relations.¹¹ Therefore, any treaty involving Crimea would have to be concluded between Russia and Ukraine, not just Russia and Crimea, as it would have to respect the territorial integrity and sovereignty of Ukraine. From an international law perspective, the treaty of annexation between Russia and Crimea is likely to be considered void *ab initio*.

It is clear that the annexation of Crimea by Russia constitutes a flagrant violation of Ukraine’s sovereignty and territorial integrity as it was done without the consent of the Ukrainian

- 4 FP Staff, “‘Demilitarise and Denazify’: How Vladimir Putin Justifies Russia’s Invasion of Ukraine” (*Firstpost*, 24 February 2022) <<https://www.firstpost.com/world/demilitarise-and-denazify-how-vladimir-putin-justifies-russias-invasion-of-ukraine-10405181.html>> accessed 6 March 2023.
- 5 Paul Kirby, ‘Why Did Russia Invade Ukraine and Has Putin’s War Failed?’ (*BBC News*, 24 February 2023) <<https://www.bbc.com/news/world-europe-56720589>> accessed 6 March 2023.
- 6 Rokoua Mataiciwa, ‘The Russian-Ukrainian War: An Explanatory Essay Through the Theoretical Lens of International Relations’ (*ResearchGate*, 22 June 2022) <<https://doi.org/10.13140/RG.2.2.18975.64169/1>> accessed 6 March 2023.
- 7 Oleksandr Merezhko, ‘Crimea’s Annexation in the Light of International Law: A Critique of Russia’s Legal Argumentation’ (2016) 2 *Kyiv-Mohyla Law and Politics Journal* 37, doi: 10.18523/kmlpj88181.2016-2.37-89.
- 8 Ivan Katchanovski, ‘The Separatist War in Donbas: A Violent Break-Up of Ukraine?’ in NN Petro (ed), *Ukraine in Crisis* (Routledge 2017) ch 5.
- 9 Tracey German and Emmanuel Karagiannis (eds), *The Ukrainian Crisis: The Role of, and Implications for, Sub-State and Non-State Actors* (Routledge 2018).
- 10 Michał Woźniak, ‘The Ukraine Crisis and Shift in US Foreign Policy’ (2016) 18 (2) *International Studies* 87, doi: 10.1515/ipcj-2016-0011.
- 11 See Art 2 (a), Vienna Convention on the Law of Treaties (with annex) (adopted 23 May 1969, entered into force 27 January 1980) [1987] UN Treaty Series 1155/18232.

government. Under Article 134 of the Constitution of Ukraine, Crimea is considered to be an “inseparable constituent part of Ukraine.”¹² Article 138, paragraph 2 of the Ukrainian Constitution states that the Autonomous Republic of Crimea has the right to organise local referendums in accordance with the laws of Ukraine.¹³ This means that the referendums organised in Crimea must pertain to issues that are specific to the region and must be in compliance with the laws and regulations of Ukraine.

The autonomy of Crimea is limited by the Ukrainian Constitution, which states that Crimea is an autonomous republic within Ukraine and that it cannot secede from Ukraine. Despite a clear constitutional constraint, the Supreme Council of Crimea and the Sevastopol City Council adopted as joint resolution the Declaration of Independence of the Autonomous Republic of Crimea and Sevastopol on March 11, 2014.¹⁴ The resolution (Article 3) stated that if a majority of voters in a referendum held on March 16, 2014 voted in favour of the proposal, the Autonomous Republic of Crimea will turn to the Russian Federation with the proposition to accept the Republic of Crimea on the basis of a respective interstate treaty into the Russian Federation as a new constituent entity of the Russian Federation. On March 15, the United States drafted a resolution that declared the upcoming secession referendum in Crimea to be invalid. The resolution was vetoed by the Russian Federation and China.¹⁵ The Constitutional Court of Ukraine declared the Resolution of the Verkhovna Rada of the Autonomous Republic of Crimea No. 1702-6/14, which called for an all-Crimean referendum, to be unconstitutional. As a result, the resolution was considered null and void from the day that the Constitutional Court issued its judgment.¹⁶ The President of Ukraine, Petro Poroshenko, in his inaugural address on June 7, 2014, emphasised the importance of Crimea to Ukraine, and stated that “Crimea is, was and will be Ukrainian.”¹⁷ This statement reflects the official position of the Ukrainian government regarding the status of Crimea, which is that it is an integral part of Ukraine and that its annexation by Russia in 2014 was illegal and illegitimate. The annexation was also widely condemned by the international community, including the UN General Assembly,¹⁸ the EU, and many other countries such as the USA and UK have made statements that the annexation of Crimea is illegal, and numerous countries and international organisations have imposed sanctions on Russia as a result.¹⁹ At the same time, Russian-backed separatists seized part of the Donbas of south-eastern Ukraine, consisting of the Luhansk and Donetsk oblasts.

12 Constitution of Ukraine No 254 k/96-BP of 28 June 1996 (as amended of 02 March 2014) ch X <<https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80/ed20140302#Text>> accessed 6 March 2023.

13 *ibid.*

14 Resolution of the Supreme Council of the Autonomous Republic of Crimea No 1727-6/14 ‘Declaration of Independence of the Autonomous Republic of Crimea and the city of Sevastopol’ of 11 March 2014 <<https://www.voltairenet.org/article182723.html>> accessed 6 March 2023; Natalia Cwicinskaja, ‘The Case of the City of Sevastopol: Domestic and International Law’ (2017) 5 (3) *Russian Law Journal* 69, doi: 10.17589/2309-8678-2017-5-3-69-85.

15 Somini Sengupta, ‘Russia Vetoes UN Resolution on Crimea’ (*The New York Times*, 15 March 2014) <<https://www.nytimes.com/2014/03/16/world/europe/russia-vetoes-un-resolution-on-crimea.html>> accessed 6 March 2023.

16 Decision No 3-pp/2014 in Case No 1-15/2014 (Constitutional Court of Ukraine, 20 March 2014) [2014] *Official Gazette of Ukraine* 27/776.

17 ‘Poroshenko Sworn in as Ukraine’s President, Says Crimea “Will Be Ukrainian”’ (*NBC News*, 7 June 2014) <<https://www.nbcnews.com/news/world/poroshenko-sworn-ukraines-president-says-crimea-will-be-ukrainian-n125146>> accessed 6 March 2023.

18 ‘General Assembly Adopts Resolution Calling upon States Not to Recognize Changes in Status of Crimea Region’ (*United Nations Press*, 27 March 2014) <<https://press.un.org/en/2014/ga11493.doc.htm>> accessed 6 March 2023.

19 ‘International Reactions to the Annexation of Crimea by the Russian Federation’ (*Wikipedia*, March 2023) <https://en.wikipedia.org/wiki/International_reactions_to_the_annexation_of_Crimea_by_the_Russian_Federation> accessed 6 March 2023.

1.3 The right to self-determination

International law recognises a right to the self-determination of peoples.²⁰ In 1995, the International Court of Justice determined that the right to self-determination possesses an “*erga omnes character*”, meaning that every state has an obligation to the entire international community to support the right.²¹ The UN Charter states that “equal rights and self-determination of peoples” is the foundation for building friendly relations between nations.²² It recognises the right of self-determination for all “peoples” but it does not provide a definition for the term “peoples” or establish guidelines for how this right should be exercised. So far, this right has mainly been invoked by colonised communities.²³ However, the Friendly Relations Declaration provides a more detailed explanation of self-determination, which includes the right for a people to freely decide their political status and to develop economically, socially, and culturally without outside interference.²⁴ The lack of specificity in the original definition may be due to it being a rejection of the traditional idea of a divine right to govern.

The Russian Federation has argued that the people of Eastern Ukraine have a right to self-determination, and that this right justifies its actions in the region. The self-determination of the Donbas region has been a contentious issue since the outbreak of the conflict in 2014. The region has a significant population of ethnic Russians and Russian-speakers, and some separatist groups in the region have sought to exercise their right to self-determination by seeking autonomy or independence from Ukraine. Some would understand the self-determination of the two autonomous regions as a continuation of what has been already agreed in the Minsk II agreement. The Minsk II agreement is a peace deal reached in 2015 to end the ongoing conflict in Eastern Ukraine between Ukrainian government forces and pro-Russian separatists. It calls for measures of political autonomy for the two autonomous republics of Donetsk and Luhansk, as well as other measures to normalise the situation along the Ukraine-Russia border. It was unanimously endorsed by the UN Security Council.²⁵

The right of peoples to self-determination is a fundamental right under international law, recognised by the UN Charter and in various human rights instruments.²⁶ Despite the potential impact of territorial disputes on populations and the significant role of self-determination in international law, there exists an unexplored paradox concerning the lack of emphasis on self-determination in territorial disputes presented to the ICJ.²⁷ The primary reasons for this are the Court’s prioritisation of the principle of stable boundaries and states’

20 Glen Anderson, ‘A Post-Millennial Inquiry into the United Nations Law of Self-Determination: A Right to Unilateral Non-Colonial Secession?’ (2016) 49 (5) *Vanderbilt Journal of Transnational Law* 1183, 1185.

21 *East Timor (Portugal v Australia)* [1995] ICJ Rep 90, 102 (30 June 1995).

22 See Ch I, art 1, para 2, United Nations Charter (UN Charter) (adopted 26 June 1945, entered into force 24 October 1945) <<https://www.un.org/en/about-us/un-charter>> accessed 6 March 2023.

23 Louis Busingye, ‘Remedial Secession – A Principle or a Mere Theory of International Law’ (ResearchGate, 8 August 2020) <https://www.researchgate.net/publication/343525239_Remedial_Secession_-_A_principle_or_a_mere_theory_of_International_Law_2#fullTextFileContent> accessed 6 March 2023.

24 Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, UNGA Res 2625 (XXV) (24 October 1970) UN Doc A/RES/25/2625.

25 Minsk Agreement on Ukraine Crisis (12 February 2015) <<https://www.telegraph.co.uk/news/worldnews/europe/ukraine/11408266/Minsk-agreement-on-Ukraine-crisis-text-in-full.html>> accessed 6 March 2023.

26 Catriona Drew, ‘The East Timor Story: International Law on Trial’ (2001) 12 (4) *European Journal of International Law* 663, doi: 10.1093/ejil/12.4.651.

27 Yusra Suedi, ‘Self-Determination in Territorial Disputes Before the International Court of Justice: From Rhetoric to Reality?’ (2023) 36 (1) *Leiden Journal of International Law* 161, doi: 10.1017/S0922156522000620.

prioritisation of their territorial integrity.²⁸ The ICJ has defined self-determination as the obligation to consider the freely expressed will of peoples, and this was emphasised in the Western Sahara case,²⁹ where the Court required consultation with the inhabitants of a particular territory. When it comes to the Donbas region, we can agree that all peoples have the right to freely determine their political status and pursue their economic, social, and cultural development. This right applies to all peoples, including ethnic minorities within a state.

However, the right to self-determination is not synonymous with secession. The right of self-determination has been understood as having two distinct aspects: “internal self-determination” and “external self-determination”. Internal self-determination refers to the protection of minority rights within a state, while external self-determination refers to the right to secede from a state.³⁰ It does not automatically include the right to unilaterally secede from a state to create a separate state. Instead, it can be exercised in different ways, such as through greater autonomy within a state or through the protection of minority rights. Some authors suggest a new typology with four categories: polity-based, secessionary, colonial, and remedial forms. This new framework provides a more nuanced and comprehensive approach to understanding the various claims to self-determination, their legal basis, and their implications for contemporary international relations.³¹ The right to secede is a complex one that can depend on a variety of factors such as the historical, cultural, and political context of the situation. In general, it is up to individual states to decide how they will interpret and apply the principle of self-determination within their borders.

The right to self-determination is generally considered to be the last resort to severe human rights violations and oppression.³² The right to secession is only allowed 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.³³ This is known as “remedial secession” which is a modern interpretation of the principle of self-determination, and it is only allowed under certain circumstances and under the supervision of the international community.³⁴ The principle of Remedial Secession is based on the United Nations principle of the “Responsibility to Protect”, which holds that states and the international community have a responsibility to protect people from such atrocities.³⁵ However, the principle of Remedial Secession is not universally recognised and accepted by the international community, and its application can be controversial. There is no agreement among nations on what level of restriction on internal self-government would justify a region breaking away. The International Court of Justice sidestepped the issue in the Kosovo case by determining the legality of declaring independence, rather than examining the act of seceding.³⁶ The people of Donbass may face two challenges in claiming the right to self-determination: first, the restriction on their self-government may not be severe enough to justify secession. Second,

28 *ibid.*

29 See, *Western Sahara* (Advisory Opinion) (16 October 1975) [1975] ICJ Rep 12, 25, para 59.

30 Rocky Esposito, ‘Ukraine, Self-Determination, and Emerging Norms for Unilateral Secession of States’ (2021) 19 (1) *Washington University Global Studies Law Review* 139.

31 Tom Sparks, *Self-Determination in the International Legal System: Whose Claim, to What Right?* (Hart Publishing 2023).

32 Jure Vidmar, ‘Remedial Secession in International Law: Theory and (Lack of) Practice’ (2010) 6 (1) *St Antony’s International Review* 38.

33 Nicolás Brando and Sergi Morales-Gálvez, ‘The Right to Secession: Remedial or Primary?’ (2019) 18 (2) *Ethnopolitics* 107, doi: 10.1080/17449057.2018.1498656.

34 *ibid.*

35 See, 2005 World Summit Outcome, UNGA Res A/RES/60/1 (16 September 2005) paras 138, 139.

36 *Accordance with international law of the unilateral declaration of independence in respect of Kosovo* (Advisory Opinion) [2010] ICJ Rep 403 (22 July 2010).

the ability to secede may be determined before the fact, after the fact, or as a gradual process, depending on the severity of each new restriction imposed on Donbass.³⁷

2 HISTORY OF RECOGNISING BREAKAWAY REPUBLICS

It is important to note that Russia has a history of recognising breakaway republics in areas where it has territorial aspirations. When Putin became president, there was a clear change in Russia's approach towards the former Soviet republics. The focus of Russian foreign policy was to maintain influence and control over these countries, particularly those in Eastern Europe and the Caucasus region. The Kremlin's primary goal was to prevent these countries in Eastern Europe and the Caucasus from aligning with Western political and military structures. Following the collapse of the Soviet Union, several breakaway republics emerged in post-Soviet states, South Ossetia and Abkhazia in Georgia,³⁸ Transnistria in Moldova,³⁹ Artsakh (also known as Nagorno-Karabakh) between Azerbaijan and Armenia,⁴⁰ and more recently, Crimea, Donetsk, and Luhansk in Ukraine. Many of these conflicts have been ongoing for several decades. Each of these separatist movements, known as "frozen conflicts", arose from different geographical, political, and ethnic grievances. They pose a common issue: how can international law evaluate the legitimacy of these breakaway movements? While international law has dealt with issues related to secessionist movements in the past, unilateral secessions by non-colonised states or proto-states raise unique factual and legal issues.⁴¹ One of them is that statehood is no longer based solely on effectiveness and the right to self-determination, but also on compliance with peremptory norms.⁴² Peremptory norms are immutable legal rules, which means that states cannot opt-out of or deviate from their requirements. If a secessionist entity violates peremptory norms, the international community will not recognise it as a state, and there will be a legal obligation not to acknowledge its statehood. This is because the international community has a legal obligation to uphold peremptory norms and prevent their violation. This could explain why countries like Bangladesh, Bosnia, and Kosovo were able to achieve statehood through unilateral secession, while other entities like Abkhazia, South Ossetia, and Transnistria have not been recognised as states.⁴³

The actions taken by the Russian state towards Ukraine, including the annexation of Crimea in 2014, the alleged support for separatist rebels in eastern Ukraine, and the imposition of economic sanctions on Ukraine, have been widely seen as a violation of the principle of non-intervention. The United Nations General Assembly Resolution A/RES/25/2625 (XXV), issued on October 24, 1970, reinforced the principle of non-interference in the internal affairs of states as a fundamental principle of international law.⁴⁴ It holds that

37 Esposito (n 32).

38 Bruno Coppieters, 'The Roots of the Conflict' (1999) 7 *Accord, A Question of Sovereignty: The Georgia-Abkhazia Peace Process* 18.

39 Mihály Borsi, 'Transnistria – An Unrecognized Country Within Moldova' (2007) 10 (4) *South East Europe Review (SEER)* 45.

40 Glenn E Curtis, *Armenia, Azerbaijan, and Georgia: Country Studies* (Federal Research Division Library of Congress 1995) 18-25.

41 Glen Anderson, 'Unilateral Non-Colonial Secession and the Criteria for Statehood in International Law' (2015) 41 (1) *Brooklyn Journal of International Law* 1.

42 *ibid.*

43 *ibid.*

44 UNGA Res 2625 (XXV) (n 25). The United Nations General Assembly Resolution 2625, "The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States" was adopted by the General Assembly on 24 October 1970, during a commemorative session to celebrate the twenty-fifth anniversary of the United Nations.

states should not interfere in the internal affairs of other states, and is closely related to the principle of state sovereignty, which recognises the equal and exclusive rights of states to govern their own territory.⁴⁵ This principle prohibits any type of interference, encompassing not only military intervention but also any acts of intervention or coercion aimed at the State's political, economic, or cultural elements including its personality.⁴⁶ However, some authors argue that Art. 2(4) prohibits only the use of force that threatens the territorial integrity and political independence of a state.⁴⁷ Other uses of force, such as rescuing citizens abroad, would be allowed since they do not threaten the state's territorial integrity or political independence. These authors believe that the second part of Art. 2(4), which requires force to be compatible with the United Nations' purposes, supports their position.⁴⁸ The historical development of rules on the limitation of the use of force supports the idea that all documents aimed at limiting the use of force specifically refer to the use of force that endangers another state's territorial integrity and political independence. For example, the Briand-Kellogg Pact prohibited war, the Montevideo Convention of 1933 prohibited the acquisition of territory by force, and the General Assembly resolution on the definition of aggression prohibited aggression. While these documents aimed to ban the most serious form of the use of force - force that threatens the existence of another sovereign state - it is not necessarily accurate to assume that the UN Charter only prohibits this specific type of force. The Charter's revolutionary significance lies in its use of the term "force" instead of "war" or "aggression," implying a ban on all forms of force except for the exceptions it provides. Had the Charter intended to only prohibit force that endangers territorial integrity and political independence, it would have used the same rhetoric as previous documents.

3 RUSSIA INVADED INTERNATIONAL TREATIES

In the post-Cold War period, Russia has generally favoured a conservative approach to the international legal order, emphasising the importance of territorial sovereignty and the primacy of state sovereignty over the rights of individuals and other non-state actors. However, it is important to note that Russia's focus on territorial sovereignty and state sovereignty has long been at odds with its foreign policy practice in the Commonwealth of Independent States (CIS) region, where it has often sought to assert its dominance over its neighbouring states. Since 2008, Russia's conduct towards its CIS neighbours has been seen as increasingly aggressive and expansionist, reflecting a belief in hierarchy rather than sovereign equality. The Russia-Georgia war in August 2008 is widely seen as a turning point in Russia's foreign policy, marking a shift towards a more assertive stance towards the West. Since the war, Russia has been involved in several conflicts and disputes with Western-aligned countries, including the invasions of Georgia and now Ukraine. These actions have been seen as an attempt to prevent these countries from integrating with Western institutions such as the European Union and NATO.

In addition, Russia has been criticized for its domestic policies, which have been seen as a rollback of democratic freedoms and human rights. This has led to questions about the future of governance not only in Russia but also across the Federation. Furthermore, Russia has

45 Zhang Naigen, 'The Principle of Non-Interference and its Application in Practices of Contemporary International Law' (2016) 9 Fudan Journal of the Humanities and Social Sciences 449, doi: 10.1007/s40647-016-0126-y.

46 Florica Bra?oveanu and Constantin Anechitoe, 'The Principle of Non-interference in Internal Affairs' (2015) 15 (2) Ovidius University Annals, Economic Sciences Series 76.

47 DW Bowett, 'The Use of Force in the Protection of National' (1957) 43 Transactions of the Grotius Society 114.

48 *ibid.*

been involved in the Syrian civil war and has been militarising the Arctic. All these actions have raised concerns about Russia's intentions and its role in the international community. This represents a departure from its traditional approach and has reached its limits in the era of the current president Putin. One of the clear signs of this departure has been the violation of the 1975 Helsinki Final Act, which reaffirmed the inviolability of the existing borders of European states, the non-use of force, and the peaceful settlement of disputes.⁴⁹

Furthermore, the annexation of Crimea also violated the 1994 Budapest Memorandum, in which Ukraine, along with other states, gave up its nuclear weapons in exchange for security guarantees from the United States, United Kingdom, and Russia, including the commitment to respect Ukraine's territorial integrity.⁵⁰

Treaties signed between Russia and Ukraine have been aimed at ensuring the territorial integrity and sovereignty of both nations. One of the most notable of these is the 1997 Treaty of Friendship, Cooperation, and Partnership between the Russian Federation and Ukraine.⁵¹ This treaty reaffirmed the commitment of both countries to recognise the inviolability of existing borders, and respect for territorial integrity and mutual commitment not to use its territory to harm the security of each other.⁵² Russia has also been accused of violating several other international treaties, such as the Intermediate-Range Nuclear Forces Treaty, the New Strategic Arms Reduction Treaty, the Open Skies Treaty, and the Incidents at Sea Agreement.⁵³ These examples demonstrate the serious nature of Russia's alleged treaty violations and the potential consequences for international security and stability. The Russian military intervention in Ukraine has been widely condemned as an act of aggression by the international community, including by the United Nations.⁵⁴ Representatives of various states and international organisations, such as the Council of Europe,⁵⁵ the OSCE,⁵⁶ NATO,⁵⁷ the EU,⁵⁸ the African Union,⁵⁹ the Economic Cooperation Organisation of Western African

-
- 49 Helsinki Final Act: Declaration on Principles Guiding Relations between Participating States (adopted at the Conference on Security and Co-operation in Europe, 1 August 1975) <<https://www.osce.org/helsinki-final-act>> accessed 6 March 2023.
- 50 Memorandum on Security Assurances in Connection with Ukraine's Accession to the Treaty on the Non-Proliferation of Nuclear Weapons (Ukraine–Russian Federation–United Kingdom of Great Britain and Northern Ireland–United States of America) (5 December 1994) [2021] UN Treaty Series 3007/52241.
- 51 Treaty on Friendship, Cooperation and Partnership between Ukraine and the Russian Federation (Ukraine–Russian Federation) (31 May 1997) [2021] UN Treaty Series 3007/52240.
- 52 *ibid*, art 2.
- 53 US Department of State, 'Russia's Violation of the Intermediate-Range Nuclear Forces (INF) Treaty' (*US Department of State Archived Content*, 4 December 2018) <<https://2017-2021.state.gov/russias-violation-of-the-intermediate-range-nuclear-forces-inf-treaty/index.html>> accessed 6 March 2023.
- 54 Aggression against Ukraine, UNGA Res ES-11/1 (18 March 2022) UN Doc A/RES/ES-11/1.
- 55 Situation in Ukraine 2.3 (CoE Committee of Ministers, 24 February 2022) CM/Del/Dec(2022)1426bis/2.3.
- 56 Zbigniew Rau and Helga Maria Schmid, 'Joint statement by OSCE Chairman-in-Office Rau and Secretary General Schmid on Russia's launch of a military operation in Ukraine: Press Release' (*Organization for Security and Co-operation in Europe (OSCE)*, 24 February 2022) <<https://www.osce.org/chairmanship/512890>> accessed 6 March 2023.
- 57 North Atlantic Treaty Organization, 'Statement by NATO Heads of State and Government: Press Release (2022) 061' (*North Atlantic Treaty Organization (NATO)*, 24 March 2022) <https://www.nato.int/cps/en/natohq/official_texts_193719.htm> accessed 6 March 2023.
- 58 Josep Borrell, 'Russia's aggression against Ukraine: Press Statement by High Representative/Vice-President Josep Borrell' (*European Union External Action*, 24 February 2022) <https://www.eeas.europa.eu/eeas/russias-aggression-against-ukraine-press-statement-high-representativevice-president-josep_en> accessed 6 March 2023.
- 59 Macky Sall and Moussa Faki Mahamat, 'Statement from Chair of the African Union, HE President Macky Sall and Chairperson of the AU Commission HE Moussa Faki Mahamat, on the situation in Ukraine' (*African Union*, 24 February 2022) <<https://au.int/en/pressreleases/20220224/african-union-statement-situation-ukraine>> accessed 6 March 2023.

States,⁶⁰ and the Organisation of American States⁶¹ have all strongly denounced the unlawful nature of the intervention and emphasised the importance of defending the basic principles of the international law.

The Russian military aggression against the internationally recognised sovereign state of Ukraine, including the annexation of Crimea, constitutes a blatant violation of fundamental principles of international law and the established system of international security. Such principles, as enshrined in customary and conventional international law, include the principle of state sovereignty and equality among states, as well as the principle of inviolability of state borders.⁶² Under International law, all states have the right to exercise control over its domestic affairs without interference from other states. One of the key principles of international law is the sovereignty of states, which holds that each nation has the right to govern itself without external interference.⁶³ This principle is reflected in the United Nations Charter, which states that “all Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state.”⁶⁴ Some authors argue that the Russian invasion was a clear sign of aggression.⁶⁵ Acts of aggression are a serious violation of international law. The prohibition of aggression is considered a peremptory norm of international law, also known as a *jus cogens* norm.⁶⁶ Art. 53 of the 1969 Vienna Convention on the Law of Treaties stipulates that peremptory norms already exist *de lege lata*, and that such norms were non-derogable legal rules.

Some argue that Russia’s actions constitute a violation of Art. 2(4) of the United Nations Charter, which prohibits the threat or use of force against the territorial integrity or political independence of any state.⁶⁷ Again, grave breaches of the prohibition on the use of force, such as acts of occupation, have also been widely condemned in the past. Some of these situations are ongoing, such as the occupation of Nagorno-Karabakh by Armenia, and Palestine by Israel.⁶⁸ The UN Charter states a clear prohibition on the threat or use of force between states with a few exceptions. The most important of these exceptions is the right of self-defence as outlined in Art. 51 of the United Nations Charter. This article asserts that a state can use force to defend itself if it is the victim of an armed attack. In the Cold War era, the USSR and USA commonly used the concept of self-defence to legitimise their armed interventions. The Brezhnev Doctrine was employed by the Soviet Union to justify its suppression of the Prague Spring and invasion of Afghanistan.⁶⁹ On the other hand, the USA justified its interventions

60 Economic Community of West African States, ‘Communique on the War in Ukraine’ (ECOWAS, 27 February 2022) <<https://ecowas.int/ecowas-commission-communique-on-the-war-in-ukraine>> accessed 6 March 2023.

61 Organization of American States, ‘Statement from the OAS General Secretariat on the Russian Attack on Ukraine: Press Release E-008/22’ (Organization of American States (OAS), 24 February 2022) <https://www.oas.org/en/media_center/press_release.asp?sCodigo=E-008/22> accessed 6 March 2023.

62 Merezhko (n 8).

63 Kofi Annan, ‘Two Concepts of Sovereignty’ (United Nations Secretary-General, 18 September 1999) <<https://www.un.org/sg/en/content/sg/articles/1999-09-18/two-concepts-sovereignty>> accessed 6 March 2023.

64 UN Charter (n 23) ch I, art 2, para 4.

65 Marcin Marcinko and Bartosz Rogala, ‘The Ukrainian Crisis: A Test for International Law?’ (2016) 5 (1) Polish Review of International and European Law 37.

66 Peremptory Norms of General International Law (*jus cogens*) [2019] ILC Rep A/74/10, ch V, paras 46-57.

67 John B Bellinger III, ‘How Russia’s Invasion of Ukraine Violates International Law’ (Council on Foreign Relations (CFR), 28 February 2022) <<https://www.cfr.org/article/how-russias-invasion-ukraine-violates-international-law>> accessed 6 March 2023.

68 Anne Lagerwall, Robert Kolb and Olivier Corten, *Le principe ex injuria jus non oritur en droit international* (Bruylant 2016).

69 Nikolas Stürchler, *The Threat of Force in International Law* (Cambridge Studies in International and Comparative Law, CUP 2009).

in Nicaragua and Grenada by citing self-defence. However, the state must prove that it was an armed attack and that the force used was necessary and proportional to the attack.

Another exception to the prohibition on the use of force is the authorisation of the use of force by the United Nations Security Council. The Security Council has the primary responsibility for maintaining international peace and security, and it may authorise the use of force in situations where peaceful means have been exhausted or would be ineffective. Due to its design, the Security Council has frequently been unable to reach a decision during the Cold War era and more recently. It has consistently proven ineffective in addressing incidents involving one or more of the P5 members, such as the United States or Russia. Nonetheless, if the United Nations Security Council decides to take action against a member state, its decision is binding on all 193 U.N. members. However, such binding decisions can be vetoed by the five permanent members of the council, which includes Russia. Therefore, if Russia chooses to veto a council resolution, the resolution would not be adopted.

As the crisis escalated, Russia used legal rhetoric to justify its intervention in a way that could be denied. Russia aimed to create ambiguity between legal and illegal actions, using uncertainty in international law to obscure its justifications and making false claims about threats to Russians and Russian speakers. These justifications exploited legal and normative grey areas and reflected western liberal discourse. Russia claimed to be protecting its citizens, intervening by invitation, and referenced the western focus on human protection and Kosovo's secession from Serbia to argue for remedial secession. These claims were weak and were not intended to convince most states of the legality of Russia's actions but rather to create enough uncertainty to limit punitive western responses and gather support from friendly CIS states.⁷⁰ The justification offered by President Putin for the Russian invasion of Ukraine, which included protecting Russia from NATO's alleged eastern expansion and protecting ethnic Russians from alleged oppression by the Ukrainian government, do not fall within the exception of self-defence as outlined in Article 51 of the United Nations Charter. Self-defence under international law is limited to the use of force in response to an actual armed attack, and it must be necessary and proportionate to the attack.⁷¹

Russia's justification for the annexation of Crimea and its involvement in the eastern Ukraine conflict, which were based on the protection of ethnic Russians and the alleged oppression by the Ukrainian government, do not meet the criteria of an armed attack and therefore, cannot be considered as a legal justification for the use of force. Even if Russia could provide evidence that Ukraine had committed or planned to commit attacks on Russian citizens in the Ukrainian regions of Donetsk and Luhansk, it would not be a valid justification for an action in collective self-defence under Art. 51 of the United Nations Charter. This is because Donetsk and Luhansk are not recognised as sovereign states by the UN, and therefore, the principle of collective self-defence, which allows a UN member state to take military action to defend another UN member state, would not apply. Also, Putin's statements that Ukraine was committing "genocide" against Russians in Donetsk and Luhansk, were a weak attempt to justify Russia's use of force by invoking international law. As we have already explained, neither the United Nations Charter nor the 1948 Convention on the Prevention and Punishment of the Crime of Genocide authorise parties or UN member states to use force as a response to acts of genocide or serious human rights abuses. According to international law, the use of force is only authorised in self-defence or by the UN Security Council.

70 Roy Allison, 'Russian "Deniable" Intervention in Ukraine: How and Why Russia Broke the Rules' (2014) 90 (6) *International Affairs* 1255.

71 UN Charter (n 23) ch VII, art 51.

4 INTERNATIONAL LAW WILL PREVAIL

The ongoing conflict in Ukraine serves as a testament to the fact that international law is a framework that primarily recognises the principle of force. While the system of international law acknowledges the equality of states, it also implies that certain states possess a greater degree of equality and thus the right to use force to subjugate disobedient governments of sovereign nations. This is a clear indication of an attempt to undermine the principles of international law and reduce it to a concept where there is no differentiation between good and bad actions, but rather, a balance of power. The utilisation of unilateral force in such circumstances destabilises the international relations system and provides legitimacy to the use of force for achieving geopolitical objectives. This ultimately undermines the values and principles on which the framework of international law is founded.

In this regard, it is worth mentioning that the head of Russian diplomacy recently attempted to relativise the Russian aggression against Ukraine by comparing it to the brutal military operations carried out by the Israeli army in territories with a majority Palestinian population. It is imperative to note that the principle of justice must be universally accessible and impartial, regardless of the actors and location involved. The absence of justice for all implies the abuse of the principle of justice as it cannot be selectively applied. However, it is important to acknowledge that the violation of international humanitarian law provisions by one country cannot be justified or in any way relativised by the practices of other nations.

The effectiveness of international justice is contingent upon the voluntary cooperation of states. International justice institutions lack the means of compulsory enforcement as law enforcement agencies exist solely within the purview of national legal systems. This constitutes a significant ambiguity within the framework of international law, which has a pronounced impact on its efficiency. Specifically, the International Criminal Court is entirely dependent on the willingness of state law enforcement and military entities to carry out investigations and make arrests. Additionally, this international justice institution is not financially autonomous, as it relies on annual membership fees from member states and voluntary contributions for funding. These factors contribute to the reality that the scope and implementation of international justice is determined by the actions and efforts of international actors, who are considered subjects of international law and provide it with substance and meaning. As such, the functionality of international justice institutions is contingent upon the agreement and cooperation of the signatory states of the agreements that established them.

The use of force without proper legal justification can lead to the destabilisation of world peace and security. It can also lead to a violation of human rights and humanitarian law, displacement of civilians, economic sanctions and other forms of punishment by the international community. On October 16, 2022, the Foreign Ministers of Estonia, Latvia, and Lithuania issued a joint statement calling to close the 'legal loophole' and hold accountable those responsible for the crime of aggression against Ukraine.⁷² The United Nations and the International Criminal Court are among the institutions that are responsible for upholding and enforcing international law, and can take action against states or individuals who violate it.

In the past, the International Criminal Court has shown reluctance to engage in conflicts involving major powers. However, some progress has been made. In 2016, the Office of the Prosecutor of the ICC, after conducting an examination for nearly eight years, initiated

72 'The Ministers of Estonia, Latvia and Lithuania Call to Establish a Special Tribunal to Investigate the Crime of Russia's Aggression: Joint Statement' (*Ministry of Foreign Affairs of the Republic of Lithuania*, 16 October 2022) <<https://urm.lt/default/en/news/the-ministers-of-estonia-latvia-and-lithuania-call-to-establish-a-special-tribunal-to-investigate-the-crime-of-russias-aggression>> accessed 6 March 2023.

investigations into individuals accountable for crimes committed during the South Ossetia and Georgia conflict.⁷³ In March 2022, arrest warrants were issued for three individuals, including the former Minister of Internal Affairs of the self-proclaimed Republic of South Ossetia.⁷⁴ Despite significant pressure from the administration of the United States, the Appeals Chamber of the ICC unanimously resolved to authorise the initiation of an investigation into war crimes and crimes against humanity perpetrated by coalition forces in Afghanistan since May 2003.⁷⁵

The prosecution of individuals accused of committing crimes within Ukraine poses a significant challenge. The Ukrainian government holds primary responsibility for conducting investigations and holding perpetrators accountable within its territorial jurisdiction. Recent developments have shown progress in this area, with the conclusion of a trial in which a soldier of the Russian Federation pleaded guilty to the murder of a Ukrainian civilian during the onset of aggression. Additionally, two other soldiers were convicted of committing the offense of indiscriminately targeting civilians through the use of artillery. The Chief Prosecutor of Ukraine has acknowledged that there are currently 80 similar cases involving captured Russian Federation soldiers that are under investigation.⁷⁶ In the imminent future, an additional 34,000 reports of alleged crimes will be subject to further inquiry.⁷⁷ Additionally, an investigation has been launched into a recent ruling by the self-proclaimed Donetsk People's Republic court, in which two British nationals and one Moroccan national were sentenced to death.⁷⁸

On March 2, 2022, the Office of the Prosecutor (ICC) announced that it was launching an investigation into crimes within its jurisdiction that were committed on Ukrainian territory, following a referral from several states regarding the situation in Ukraine.⁷⁹ The ICC prosecutor will now request authorisation from the ICC judges to open an official investigation.⁸⁰ Ukraine and Russia are not members of the International Criminal Court, which means that they cannot demand an investigation. However, the ICC has jurisdiction to investigate war crimes, crimes against humanity, and genocide but not the crime

- 73 International Criminal Court, 'ICC Pre-Trial Chamber I Authorises the Prosecutor to Open an Investigation into the Situation in Georgia: Press Release' (*International Criminal Court*, 27 January 2016) <<https://www.icc-cpi.int/news/icc-pre-trial-chamber-i-authorises-prosecutor-open-investigation-situation-georgia>> accessed 6 March 2023.
- 74 *Situation in Georgia* ICC-01/15 (Prosecutor's application pursuant to article 58 for warrants of arrest against Mikhail Mindzaev, Gamlet Guchmazov and David Sanakoev ICC-01/15-34-Conf-Exp) (International Criminal Court, 10 March 2022) <<https://www.icc-cpi.int/georgia>> accessed 6 March 2023.
- 75 *Situation in the Islamic Republic of Afghanistan* ICC-02/17 (International Criminal Court, 5 March 2020) <<https://www.icc-cpi.int/situations/afghanistan>> accessed 6 March 2023.
- 76 'Ukraine Identifies 600 Russian War Crime Suspects: Prosecutor' (*Al Jazeera*, 31 May 2022) <<https://www.aljazeera.com/news/2022/5/31/ukraine-has-identified-600-russian-war-crime-suspects-prosecutor>> accessed 6 March 2023.
- 77 Julia Mueller, 'Ukraine Prosecutor Says it has Documented 34,000 War Crimes, Including Genocide' (*Yahoo news*, 18 September 2022) <https://news.yahoo.com/ukraine-prosecutor-says-34-173655183.html?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuYmluZy5jb20v&guce_referrer_sig=AQAAALKITCHFYA_mNEI5Kmp7oZBSZC1PeD9-zD6SsLM4pBsDeflhQ8pvRWz-JjZCh54RrXmz7QaXWU9cSbX9J9PF00LXlvkjdVBLnVhC6Wohwy4rA2ZMeM87GGb0A8qFtNcElhc-GIJxOOnKPArJYunPsmMqEbKtsyNAcbv8pK0aL2> accessed 6 March 2023.
- 78 Ed Upright and others, 'June 9, 2022 Russia-Ukraine News' (*CNN*, 9 June 2022) <https://edition.cnn.com/europe/live-news/russia-ukraine-war-news-06-09-22#h_88bd17594808e126430e216f7b69c584> accessed 6 March 2023.
- 79 Karim AA Khan QC, 'Statement of ICC Prosecutor, Karim AA Khan QC, On the Situation in Ukraine: Receipt of Referrals from 39 States Parties and the Opening of an Investigation' (*International Criminal Court*, 2 March 2022) <<https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-qq-situation-ukraine-receipt-referrals-39-states>> accessed 6 March 2023.
- 80 *Situation in Ukraine* ICC-01/22 (International Criminal Court, 2 March 2022) <<https://www.icc-cpi.int/ukraine>> accessed 6 March 2023.

of aggression. The ICC's jurisdiction over the crime of aggression is subject to certain conditions. Both the state in which the act of aggression occurred and the state of which the individuals committing the aggression are nationals must be parties to the ICC's statute and must have ratified the amendment to the statute relating to the crime of aggression.⁸¹ Since Russia and Ukraine have not done so, the ICC does not have jurisdiction over the act of aggression. The ICC can exercise jurisdiction over acts of aggression committed by a state against another state through a referral by the UN Security Council (UNSC) under Chapter VII of the United Nations Charter.⁸² This referral bypasses the requirement for both states to have accepted the ICC's jurisdiction. However, it is unlikely for the UNSC to make such a referral due to Russian veto power.

The Ukrainian government has called for the establishment of a special international tribunal specifically for the purpose of determining individual responsibility for acts of aggression committed in Ukraine. Some scholars have already provided an analysis of such an idea, suggesting that it would be legally problematic.⁸³ However, they discussed two possible options. The creation and jurisdiction of a tribunal to prosecute war crimes and crimes against humanity in Ukraine could be based on Ukrainian domestic law. This would allow for the prosecution of Russian nationals for the crime of aggression. This legal foundation could be further supported by an agreement with the United Nations or another regional organisation, which would make the tribunal compliant with relevant human rights law instruments. This would make the tribunal be regarded as having been "established by law".⁸⁴ The crime of aggression is considered a "leadership crime" as it is typically committed by leaders or high-ranking officials of a state or organisation.⁸⁵ This refers to the main obstacle to holding individuals accountable for committing international crimes - immunity. In regard to respect for Russia's sovereignty, it would not be legally permissible to invoke any exceptions to immunities *ratione personae*, as such exceptions have been strongly rejected by the International Law Commission (ILC) and the International Court of Justice (ICJ) based on existing practice and *opinio juris*. As a result, the Russian President, Prime Minister, and Minister of Foreign Affairs are legally protected by immunities as long as they remain in office.⁸⁶ According to the authors, this option has several drawbacks. Firstly, it has a unilateral character, meaning it is done by one country or group of countries without the consent of other countries. Secondly, it carries a risk of abuse, as any number of states can create an international tribunal by concluding a treaty among themselves which would claim to bypass immunities and exercise jurisdiction on any incumbent or past Head of State for international crimes allegedly committed. Thirdly, even if immunities can be bypassed, the problem of cooperation remains unresolved. This would mean that the tribunal would still have difficulties in obtaining the cooperation of the state and its officials to carry out its mandate.⁸⁷

The second option proposed seems more reasonable. It is based on the "Uniting for Peace" resolution as a basis for a broad interpretation of the United Nations General Assembly's

81 Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) pt 2, art 5 <https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtmsg_no=XVIII-10&chapter=18&clang=_en> accessed 6 March 2023.

82 *ibid*, pt 2, arts 5 para 2, 13 (b).

83 Olivier Corten and Vaios Koutroulis, *Tribunal for the Crime of Aggression Against Ukraine - A Legal Assessment: In-Depth Analysis Requested by the DROI Subcommittee* (European Parliament 2022) <[https://www.europarl.europa.eu/RegData/etudes/IDAN/2022/702574/EXPO_IDA\(2022\)702574_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/IDAN/2022/702574/EXPO_IDA(2022)702574_EN.pdf)> accessed 6 March 2023.

84 *ibid*.

85 Rome Statute (n 84) pt 3, art 25, para 3 (b).

86 Corten and Koutroulis (n 86).

87 *ibid*.

(UNGA) powers.⁸⁸ This would allow the UNGA to create a special tribunal similar to the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), or to defer the situation in Ukraine to the ICC, due to the inability of the United Nations Security Council (UNSC) to address the issue because of the veto of one of its permanent members, Russia. This would allow for the prosecution and judgement of the crime of aggression to be made not by a group of states but by a body representing the international community, which would provide maximum legitimacy to the process.⁸⁹

On a different note, the civil and military officials responsible for committing crimes of genocide, war crimes, and crimes against humanity can be brought to justice because the International Criminal Court can have jurisdiction if such crimes are committed on the territory of a state that recognises the Court's jurisdiction. Ukraine has twice declared its acceptance of the Court's *ad hoc* jurisdiction.⁹⁰ On 20 May 2021, the Verkhovna Rada (Parliament of Ukraine) adopted Bill no. 2689 "On amendments to certain legislative acts on the Enforcement of International Criminal and Humanitarian Law".⁹¹ Furthermore, 39 member states of the Court have already requested an investigation, which in a certain way accelerates the process, as the Prosecutor is no longer obligated to seek the Court's approval.

The ICC's role in investigating and prosecuting international crimes in Ukraine is an important step in ensuring accountability for those who have committed heinous acts. However, it is also important to note that the ICC is a court of last resort, meaning that it can only investigate and prosecute crimes when national courts are unable or unwilling to do so. Therefore, it is crucial that Ukraine continues to strengthen its own judicial system and take steps to ensure that those responsible for international crimes are held accountable at the national level as well.

5 CONCLUSION

The Russian Federation has invaded a fellow member state of the United Nations, forcibly separating territory belonging to that country, which no other member state had previously done, apart from that of Iraq against Kuwait. While Iraq's invasion and annexation of Kuwait was met with a strong international response and collective self-defence by other states, the situation with the Russian Federation, a nuclear power, is different. International law may be perceived as weak towards nuclear powers because the possession of nuclear weapons by a state can be seen as a deterrent to military action and intervention by other nations, as the potential use of nuclear weapons can result in devastating consequences. Additionally, the United Nations Security Council, where decisions on international actions are made, has five permanent members who possess nuclear weapons, which can make it difficult to act against them.

88 *ibid.*

89 *ibid.*

90 Embassy of Ukraine to the Kingdom of the Netherlands, Declaration of 9 April 2014, covering acts committed between 21 November 2013 and 22 February 2014. See, First Declaration by Ukraine (International Criminal Court, 9 April 2014) <<https://www.icc-cpi.int/sites/default/files/itemsDocuments/997/declarationRecognitionJurisdiction09-04-2014.pdf>> accessed 6 March 2023; Ministry of Foreign Affairs of Ukraine, Declaration of 8 September 2015, covering acts committed since 20 February 2014. See, Second Declaration by Ukraine (International Criminal Court, 8 September 2015) <https://www.icc-cpi.int/sites/default/files/iccdocs/other/Ukraine_Art_12-3_declaration_08092015.pdf#search=ukraine> accessed 6 March 2023.

91 'Ukraine and the Rome Statute' (*Parliamentarians for Global Action*, 2023) <<https://www.pgaction.org/ilhr/rome-statute/ukraine.html>> accessed 6 March 2023.

International law provides several mechanisms for addressing a violation of the territorial integrity of a sovereign state such as the invasion of Ukraine by Russia. These may include the prohibition on the threat and use of force by one state against another and the possibility of taking collective action to maintain international peace and security. The international community can impose economic and political sanctions against the offending state in response to its aggressive actions. Diplomatic pressure can be applied through the UN, regional organisations, and individual states to call for an end to the aggression and respect for the territorial integrity of Ukraine. The most important mechanism that this paper has put in focus is in the hands of the International Criminal Court (ICC), which has jurisdiction to prosecute individuals for international crimes.

The ICC has already opened a preliminary examination into the situation in Ukraine and is monitoring the situation in Crimea. It is an important step in ensuring accountability for those who have committed heinous acts, but national courts also have a crucial role to play in achieving justice.

As has been demonstrated, there is a legal basis for the prosecution of those responsible, however, the main reason why high-ranking Russian officials are unlikely to be prosecuted is that they are out of reach of the prosecution authorities. The Russian government is almost certain not to extradite them. A similar situation existed with Omar Al-Bashir, the former President of Sudan, who, despite being arrested in May of last year, has yet to be extradited. Instead, justice will be served to those who are caught. Regardless of these bleak predictions, it is important that the world unites in condemning aggression against independent countries. It is crucial that there is a critical mass of states that are willing, in one way or another, to stop or reduce the intensity of aggression, or to help the victims of aggression. It is important that the entire world sees that international law does indeed function, and that it is not worth being an aggressor.

REFERENCES

1. Allison R, 'Russian "Deniable" Intervention in Ukraine: How and Why Russia Broke the Rules' (2014) 90 (6) *International Affairs* 1255.
2. Anderson G, 'A Post-Millennial Inquiry into the United Nations Law of Self-Determination: A Right to Unilateral Non-Colonial Secession?' (2016) 49 (5) *Vanderbilt Journal of Transnational Law* 1183.
3. Anderson G, 'Unilateral Non-Colonial Secession and the Criteria for Statehood in International Law' (2015) 41 (1) *Brooklyn Journal of International Law* 1.
4. Asmus RD, *A Little War That Shook the World: Georgia, Russia, and the Future of the West* (St Martin's Press 2010).
5. Borsi M, 'Transnistria – An Unrecognised Country Within Moldova' (2007) 10 (4) *South East Europe Review* 45.
6. Bowett DW, 'The Use of Force in the Protection of National' (1957) 43 *Transactions of the Grotius Society* 111.
7. Bra?oveanu F and Anechitoae C, 'The Principle of Non-interference in Internal Affairs' (2015) 15 (2) *Ovidius University Annals, Economic Sciences Series* 76.
8. Brando N and Morales-Gálvez S, 'The Right to Secession: Remedial or Primary?' (2019) 18 (2) *Ethnopolitics* 107, doi: 10.1080/17449057.2018.1498656.
9. Busingye L, 'Remedial Secession – A Principle or a Mere Theory of International Law' (*ResearchGate*, 8 August 2020) <https://www.researchgate.net/publication/343525239_Remedial_Secession_-_A_principle_or_a_mere_theory_of_International_Law_2#fullTextFileContent> accessed 6 March 2023.

10. Coppieters B, 'The Roots of the Conflict' (1999) 7 *Accord, A Question of Sovereignty: The Georgia-Abkhazia Peace Process* 14.
11. Corten O and Koutroulis V, *Tribunal for the Crime of Aggression Against Ukraine - A Legal Assessment: In-Depth Analysis Requested by the DROI Subcommittee* (European Parliament 2022).
12. Curtis GE, *Armenia, Azerbaijan, and Georgia: Country Studies* (Federal Research Division Library of Congress 1995).
13. Cwicinskaja N, 'The Case of the City of Sevastopol: Domestic and International Law' (2017) 5 (3) *Russian Law Journal* 69, doi: 10.17589/2309-8678-2017-5-3-69-85.
14. Drew C, 'The East Timor Story: International Law on Trial' (2001) 12 (4) *European Journal of International Law* 651, doi: 10.1093/ejil/12.4.651.
15. Esposito R, 'Ukraine, Self-Determination, and Emerging Norms for Unilateral Secession of States' (2021) 19 (1) *Washington University Global Studies Law Review* 139.
16. Gierczak B, 'The Russo-Ukrainian Conflict' (*ResearchGate*, 8 May 2020) <https://www.researchgate.net/publication/349948624_The_Russo-Ukrainian_Conflict> accessed 6 March 2023.
17. Katchanovski I, 'The Separatist War in Donbas: A Violent Break-Up of Ukraine?' in Petro NN (ed), *Ukraine in Crisis* (Routledge 2017) ch 5.
18. Lagerwall A, Kolb R and Corten O, *Le principe ex injuria jus non oritur en droit international* (Bruylant 2016).
19. Marcinko M and Rogala B, 'The Ukrainian Crisis: A Test for International Law?' (2016) 5 (1) *Polish Review of International and European Law* 37.
20. Mataciwa R, 'The Russian-Ukrainian War: An Explanatory Essay Through the Theoretical Lens of International Relations' (*ResearchGate*, 22 June 2022) <<https://doi.org/10.13140/RG.2.2.18975.64169/1>> accessed 6 March 2023.
21. Merezko O, 'Crimea's Annexation in the Light of International Law: A Critique of Russia's Legal Argumentation' (2016) 2 *Kyiv-Mohyla Law and Politics Journal* 37, doi: 10.18523/kmlpj88181.2016-2.37-89.
22. Naigen Z, 'The Principle of Non-Interference and its Application in Practices of Contemporary International Law' (2016) 9 *Fudan Journal of the Humanities and Social Sciences* 449, doi: 10.1007/s40647-016-0126-y.
23. Sparks T, *Self-Determination in the International Legal System: Whose Claim, to What Right?* (Hart Publishing 2023).
24. Stürchler N, *The Threat of Force in International Law* (Cambridge Studies in International and Comparative Law, CUP 2009).
25. Suedi Y, 'Self-Determination in Territorial Disputes Before the International Court of Justice: From Rhetoric to Reality?' (2023) 36 (1) *Leiden Journal of International Law* 161, doi: 10.1017/S0922156522000620.
26. Tracey G and Karagiannis E (eds), *The Ukrainian Crisis: The Role of, and Implications for, Sub-State and Non-State Actors* (Routledge 2018).
27. Vidmar J, 'Remedial Secession in International Law: Theory and (Lack of) Practice' (2010) 6 (1) *St Antony's International Review* 37.
28. Woźniak M, 'The Ukraine Crisis and Shift in US Foreign Policy' (2016) 18 (2) *International Studies* 87, doi: 10.1515/ipcj-2016-0011.