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# International Responsibility of States and Jus Cogens Norms

## The conflict between Ukraine vs. Russian Federation

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I would like to dedicate this thesis to my parents, without whom I would not have made it this far. As well as to my Advisor Dra. Maria Isabel Tavares, and the rest of the professors who guided me on this journey. And finally, a huge thank you to my friends Beatriz, Claúdia, Marisa and Susana for their patience and unconditional support.

# Abstract

The ongoing conflict between Ukraine and Russia has raised several challenges for IL in regulating the violation of international norms (*jus cogens* norms) for the possible crime of genocide committed by Ukraine and the use of force in the Russian attack. The limitations of International Law in this type of conflict situation, implicating a Great Power such as Russia, have been widely discussed among the experts. In a nutshell, Russia claims that Ukraine is committing genocide as justification for its aggression. This claim is vigorously disputed by Ukraine, which has petitioned the ICJ on behalf of the Genocide Convention against Russia to request an indication of temporary sanctions. The ICJ has granted Ukraine's request for provisional measures directing Russia to quickly end the conflict. Ukraine has sued Russia in the ICJ, basing jurisdiction on the Genocide Convention, to which both states are parties. The lack of international mechanisms to give a proper response to those violations has been a significant challenge for the international community. This thesis aims to discuss the challenges faced by the ICJ and the ICC in the international dispute resolution processes by analyzing the case of Ukraine v. Russian Federation. Despite the fact that Russia has not complied with the ICJ's binding ruling, the weight of the world's opinion is growing against Russia's illegal conduct.



***Keywords*:** International Court of Justice; Ukraine; Russian Federation; Use of force; *Jus Cogens norms*; United Nations Charter; International mechanisms; International challenges; State Responsibility; International Responsibility; Countermeasures; Military support; Non-Military Support;

## Abbreviations

ARSIWA – Articles on Responsibility of States for Internationally Wrongful Acts

CL – Customary Law

DARS – Draft Articles on Responsibility of States

DRC – Democratic Republic of Congo

EC – European Council

EU – European Union

GA – General Assembly

HR – Human Rights

IC – International Courts

ICC – International Criminal Court

ICJ – International Court of Justice

IHL – International Humanitarian Law

IL – International Law

ILC – Internacional Law Commission

ILO – International Legal Order

IMF – International Monetary Fund

MS – Member States

NATO – North Atlantic Treaty Organization

PM – Prime Minister

RUF – Revolutionary United Front

SC – Security Council

UK – United Kingdom

UN – United Nations

UNGA – United Nations General Assembly

UNTAET – United Nations Transitional Administration in East Timor

US – United States

VCLT – Vienna Convention on the Law of Treaties

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## Chapter I - Introduction and Background Context

The conflict between Russia and Ukraine has emerged as a complex and protracted crisis, marked by territorial disputes, political tensions, and armed confrontations. In this thesis it will be examined the legal dimensions of the conflict, focusing on the violation of international norms and the potential breach of *jus cogens* obligations.

The conflict, which escalated in February 2022 with the involvement of the self-proclaimed Donetsk and Luhansk republics[1], has had far-reaching implications for regional stability and the ILO. Understanding the legal framework that governs the behaviour of states and the consequences of their actions is crucial for comprehending the gravity of the situation and exploring avenues for resolution. It will be provided a contextual backdrop, tracing the historical and political factors that have contributed to the conflict, highlighting the events leading up to the outbreak of hostilities and the territorial dispute involving the eastern regions.

Moreover, the concept of *jus cogens* norms[2], considered as peremptory norms of IL, comes into focus. These fundamental principles are recognized as non-derogable and universally binding, representing the highest standard of legal obligations. It´s important to understand the characteristics and significance of this norms, to provide examples of such norms and evaluate whether the actions of Russia constitute a breach of these norms. There´s also big challenges in holding Russia accountable and the broader implications for the ILO. The impact of the conflict on regional stability, HR, and the norms governing state behaviour requires careful consideration and analysis. It´s necessary to explore possible resolutions and future perspectives, taking into account diplomatic efforts, international cooperation, and the responsibility of the international community in resolving the conflict.

Before entering the main conflict, it´s important to have some quick background facts to understand how this escalated to the invasion by Russia in 2022 and why did Ukraine fill a case against them in the ICJ.

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[1]KIRBY, Paul – *"Why is Russia invading Ukraine and what does Putin want?"* - BBC NEWS (2022).
[2]DE WET, Erika – "*Jus Cogens and Obligations Erga Omnes*" (2013, Jan. 15). In SHELTON, Dinah (Ed) - The Oxford Handbook on HR (OUP 2013).

It all started when *Viktor Yanukovych* was elected president in 2010[3], defeating the PM Yulia Tymoshenko[4]. Then, in November 2013, there were massive protests in Ukraine's capital, against the President for changing his mind and rejecting a pending association agreement with the EU, and instead choosing to stablish closer ties with Russia and a Russian loan bailout[5]. The protests widened, escalating the conflict, and Yanukovych fled to Russia in February 2014, where he lives in exile ever since[6]. In March 2014, Russia annexed Crimea from Ukraine, and supported pro-Russian separatists fighting the Ukrainian military in the Donbas war. This attack was highly debated and condemned by the international community because Russia justified their invasion as a humanitarian Intervention[7], which will be explained further. Then, in April 2014, an armed conflict began in eastern Ukraine between Russia-backed separatists and the Ukrainian military. And since then, Russia has been supporting separatist rebels in eastern Ukraine.

Moving forward a bit, a few months before the invasion, in 2021, Russian troops were concentrating around Ukraine's borders, and when asked about it, they repeatedly denied plans to attack. And since evil never comes alone, in a provocative act, on February 21, 2022, Vladimir Putin recognized the independence of self-proclaimed people's republics in Donetsk and Luhansk, two regions in eastern Ukraine where Russian-backed separatists had been fighting Ukrainian security forces since 2014[8]. Later, on February 24, 2022, Russian troops officially invaded Ukraine, embarking on an unprovoked military aggression against an independent European country[9], resulting in tens of thousands of deaths on both sides and instigating Europe's largest refugee crisis since World War II.

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[3]*Viktor Yanukovych* was elected president of Ukraine twice, in 2010 and 2014. He was initially declared the winner of the 2004 presidential election, but the election was overturned by the courts after the Orange Revolution.
[4]HARDING, Luke – "*Yanukovych set to become president as observers say Ukraine election was fair*" - The Guardian (2010, 8 Feb.).
[5]PIDOPRYGORA, Svitlana – "*Ukrainian comics and War in Ukraine*" - Blog for Transregional Research (2022, Sep. 27).
[6]ROTH, Andrew – "*Ukraine's ex-president Viktor Yanukovych found guilty of treason"* - The Guardian (2019, Jan.).
[7]KOSTAKOS, Georgios – "*The UN and the Russian-Ukrainian War*" - In A. Mihr & C. Pierobon (Eds.), Polarization, Shifting Borders and Liquid Governance: Studies on Transformation and Development in the OSCE Region) - Springer Nature Switzerland AG, pp. 383-397 (2023).
[8]See note 1.
[9]ELSHERBINY, Asmaa – "*Europe on Fire: the Russo-Ukrainian War, Its Causes and Consequences*" – Mansoura University, pp. 7-8 (2022, Mar.).

Since the conflict in 2014, Russia has been degrading Ukraine's image and doing propaganda where they portrayed the Ukrainian government as neo-Nazis and accused them of perpetrating genocide against ethnic Russians in eastern Ukraine[10]. And with that, Putin claimed that the purpose of the operation was to "protect the people" of the Donbas[11], in the Russian-controlled breakaway republics of Donetsk and Luhansk, from the act of Genocide that Ukraine was committing. However, these claims have been widely discredited by international organizations and legal international experts. Many authors argue that the invasion violates the article 2(4) of the UN Charter, which requires UN MS to refrain from the "use of force against the territorial integrity or political independence of any state". Also, the UN has verified more than 8,000 civilian deaths, including over 438 children, in the first year of the conflict, and Russian forces have perpetrated possible war crimes and crimes against humanity during their invasion[12].

On February 26, 2022, Ukraine filed an application at the ICJ to initiate proceedings against Russia, under the Genocide Convention[13] - Article IX. They sought to address Russia's groundless claims that genocide had occurred in the Luhansk and Donetsk oblasts of Ukraine and establish that Russia had no lawful basis to take military action on the basis of those false claims. They also requested the ICJ to exercise its authority and to indicate provisional measures to preserve their rights and to limit the ongoing and irreparable harm to the Ukrainian people as well as their sovereignty and territorial integrity within its internationally recognized borders. On March 16, 2022, the ICJ imposed the provisional measures[14], calling on Russia to suspend military operations and for military units to cease advancing, as well as calling on all parties to refrain from actions that may prolong the conflict. On July 1, 2022, Ukraine filed its Memorial, which cataloged how Russia, since 2014, has put forward a false narrative where they have been accusing them and its officials of committing genocide. They further said that the Russian Federation has used these allegations as a pretext for launching a new phase of its

[10]BARNES, Julian E. – "*Russia intensifies its propaganda campaign against Ukraine"* - The NY Times - (2022, Oct.).
[11]QIBLAWI, T., HODGE, N., LISTER, T., & KOTTASOVÁ, I. – "Why Donbas is at the heart of the Ukraine crisis" - CNN News (2022, Feb. 22).
[12]BLINKEN, Antony J. - "*War crimes by Russia's forces in Ukraine* - US Department of State*"* - Official website of the US Government (2022, Mar. 24).
[13]ICJ - "*Allegations of Genocide under the Genocide Convention (Ukraine v. Russian Federation)"* - Order, 16 March 2022.
[14]Being one of the fastest cases to be answered by the court; See note 13.

aggression against them, to invade more territory and to commit atrocities against thousands of innocent Ukrainians[15].

A few days later, on July 21 and 22, respectively, Latvia and Lithuania were the first states to fill declarations of intervention in the proceedings as parties to the case, regarding the allegations of genocide under the Genocide Convention. Followed by more states that supported Ukraine, the court found 32 declarations, under the article 63 of the statute, admissible[16]. The only one being inadmissible was the declaration from the US, due to its reservation to the article IX[17], is not bound by that provision of the Convention and, therefore, may not intervene in relation to its construction.

The interventions can be seen as a very positive key in this case, since they allow states to participate in the proceedings and have their voices heard by supporting Ukraine, and where the ICJ will take them into account, in its decision-making process. Also, they can demonstrate the collective dimension of bilateral litigation, as even bilateral disputes can have an impact on the international community. They can influence the interpretation of the Genocide Convention, since the interventions focuses on articles I, II, III, IV, VIII, and IX. Despite the importance that is associated with it, Russia contended that the declarations of intervention are not "relevant" to the case.

# I. Russia's Legal Justification – "History Repeats Itself"

The Russian intervention has sparked intense debate and scrutiny regarding the legal justifications put forth by Russia. In an attempt to legitimize its use of force, they have presented several arguments, including claims of self-defense, protection of its citizens, and allegations of genocide[18]. It´s important to note that these justifications have been met with skepticism and criticism from legal experts who question their compatibility with IL, which we will see further.

[15]See note 10.
[16]Point 102 of the Order of 5 June 2023 from the ICJ.
[17]Point 94 to 99 of the Order of 5 June 2023 from the ICJ.
[18]EINER, Allen S. – "*Stanford's Allen Weiner on Russia's invasion of Ukraine and the laws of war"* - Stanford Law School Blogs (2023, Feb. 21).

One of Russia's main arguments is self-defense, citing the article 51 of the UN Charter[19], which allows MS to defend themselves against armed attacks and engage in collective self-defense. But this argument is widely contested because since there is no evidence of Ukraine´s attack, the Russian invasion is questionable and becomes a violation of the prohibition on the use of force outlined in Article 2(4) of the UN Charter. Another justification provided was the protection of Russian citizens living in Eastern Ukraine. Russia contends that it has the right to use force to safeguard the well-being of its citizens in other countries. Nevertheless, some legal experts[20] have disputed this justification, pointing out that IL does not support such interventions based solely on the risk faced by a state's citizens abroad. Allowing such actions would set a precedent for states interfering in the internal affairs of others whenever their citizens are deemed at risk. Likewise, Russia has also alleged that Ukraine is perpetrating genocide against their native speakers within its borders, using this claim to justify its military intervention. However, this argument is unsupported by factual evidence. Even if the claim were substantiated, it still would not provide a legal basis for Russia's use of force[21].

The international community has extensively criticized these justifications, highlighting their inconsistency with established international legal principles[22], and mainly because it was not the first time that Russia used the same arguments to justify such actions. In 2014, a significant event took place in Crimea, a region located in the southern part of Ukraine. This event was the annexation of Crimea by the Russian Federation[23], that occurred against the backdrop of political unrest and tensions in Ukraine, particularly following the ousting of Ukraine's President *Viktor Yanukovych*[24].

The situation in Crimea began to escalate when unidentified armed individuals, later revealed to be Russian military personnel, took control of key government buildings and infrastructure in the region. Following these actions, a controversial referendum[25]

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[19]"Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the SC and shall not in any way affect the authority and responsibility of the SC under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security".
[20]See note 18.
[21]See note 18.
[22]"*Statement by Members of the IL Association Committee on the Use of Force*". In Just Security (4 Mar. 2022).
[23]See note 9.
[24]MARXSEN, Christian – "*The Crimea Crisis – An IL Perspective*" - Zeitschrift für ausländisches öffentliches Recht und Völkerrecht (Heidelberg Journal of IL), 74/2 (2014), pp. 367-391 (2014, Nov. 7).
[25]Venice Commission, Opinion on "*Whether the Decision taken by the Supreme Council of the autonomous Republic of Crimea in Ukraine to organise a Referendum on becoming a constituent territory of the Russian*

was held on March 16, 2014, in which residents were asked to vote on whether they wanted to join Russia or remain part of Ukraine with increased autonomy. The referendum resulted in an overwhelming majority in favor of joining Russia, which resulted in Crimea declaring its independence from Ukraine and subsequently requested to be incorporated into the Russian Federation. Shortly after, Russia officially accepted Crimea's request, and the region became part of their territory.

The UN GA passed a resolution affirming the territorial integrity of Ukraine and declaring the referendum and subsequent annexation illegal[26]. The international community largely did not recognize Crimea's incorporation into Russia and considered it a violation of IL, including the principles of territorial integrity and the prohibition of the acquisition of territory by force.

Comparing this case with the situation in Ukraine, we can state that in both situations it involves Russia´s aggression and territorial dispute, with them being accused of violating IL. Where they had far-reaching geopolitical implications and have strained relations between Russia and the rest of the world. It seems that the West have learned from the annexation of Crimea and is avoiding falling into the Russian trap of appeasement in the current situation that Ukraine is living.

Another case happened in 2008, where a conflict erupted between Georgia and Russia, primarily centered around the breakaway regions of South Ossetia and Abkhazia. The conflict had its roots in long-standing tensions and separatist movements in these regions, which had sought independence from Georgia since the early 1990s[27]. The situation escalated on the night of August 7, 2008, when Georgia launched a military operation to regain control over South Ossetia, which had *de facto* independence with Russian support. Their move was met with a swift and significant response from Russia, which launched a large-scale military intervention in the region and conducted airstrikes on Georgian targets. The conflict quickly spread beyond South Ossetia, with fighting also occurring in Abkhazia and other parts of the country[28]. The Georgian military was

*Federation or Restoring Crimea's 1992 Constitution is Compatible with Constitutional Principles*", Opinion no. 762/2014 (2014, Mar. 21). Doc. CDL-AD(2014)002-e.

[26]See note 24.

[27]LOTT, Alexander – "*The Tagliavini Report Revisited: Jus Ad Bellum and the Legality of the Russian Intervention in Georgia"* - Merkourios, Vol. 28, No. 74, pp. 4-21, 2012 (2012, Feb. 27).

[28]See note 27.

outmatched by the Russian forces, and within a matter of days, their troops had advanced into Georgian territory, including areas outside the separatist regions.

The conflict resulted in a significant loss of life and displacement of people, with both military personnel and civilians affected. There were reports of HR abuses and violations of IHL during the hostilities. After several days of intense fighting, a ceasefire agreement[29] was brokered by the French President *Nicolas Sarkozy*, who was serving as the President of the EU at the time. The ceasefire called for an end to hostilities, the withdrawal of forces to their pre-conflict positions, and the establishment of international monitoring mechanisms. The conflict had far-reaching consequences for the region. Russia recognized South Ossetia and Abkhazia as independent states, a move that was strongly condemned by Georgia and other countries[30]. The aftermath of the conflict also deepened divisions between Georgia and the separatist regions, further complicating the prospects for a peaceful resolution[31]. This situation raised concerns about the use of force, the protection of civilian populations, and the territorial integrity of states.

Like the case in Ukraine, both countries have found themselves caught between the East and the West, facing Russian aggression and territorial disputes. They both have submitted formal applications to join the EU and are vulnerable to Russian influence. The West has given Ukraine and Moldova candidate status, while given Georgia potential candidate status, and listed areas that need improvement in order to obtain that status.

The biggest difference was that in the past Russia presented its military actions as humanitarian interventions or actions taken to protect the rights of ethnic Russians and Russian-speaking populations in those regions. In the case of Crimea, as we saw above, Russia justified its intervention by claiming to protect the rights of the Russian-speaking population and ensuring their safety and self-determination[32]. This justification was widely criticized, with many countries considering their actions as an act of aggression and a violation of Ukraine's territorial integrity. Similarly, in the conflict with Georgia, Russia portrayed its military intervention as a response to protect ethnic Russian populations, to maintain peace in the breakaway regions of South Ossetia and

[29]JACINTO, Leela - "*Sarkozy: Russia, Georgia agree to peace plan"* - France 24 (2008, Oct. 25).
[30]AP – "*Russia guilty of violations during 2008 war with Georgia, says Europe's top court*" - Euronews (2021, Jan. 26).
[31]See note 27.
[32]MARXSEN, Christian – "*The Crimea Crisis – An IL Perspective*" - Zeitschrift für ausländisches öffentliches Recht und Völkerrecht (Heidelberg Journal of IL), 74/2, pp. 384-388 (2014, Nov. 7).

Abkhazia[33]., and to prevent further HR violations. However, this argument was seen as a violation of state's sovereignty and an illegal occupation of its territories[34].

The characterization of these military actions as humanitarian acts by Russia has been criticized and rejected by the international community and many countries and organizations, including the UN and the EU, that have already condemned Russia's actions as unlawful and in violation of IL[35]. These conflicts have raised concerns about the abuse of humanitarian justifications to legitimize acts of aggression and interference in the internal affairs of sovereign states.

## II. *Jus Cogens* Norms

A *jus cogens* norm, also known as a peremptory norm of IL, refers to a fundamental principle or rule that is considered to be of such importance in IL that it holds a superior status compared to other norms[36]. They have a higher legal standing and are binding on all states, regardless of their consent. They cannot be set aside or modified by any treaty or agreement, and are characterized by their fundamental nature and the recognition of the international community as being essential for the maintenance of international order and the protection of basic HR. They cover a range of principles, including prohibitions of aggression, genocide, slavery, torture, racial discrimination and crimes against humanity[37].

Determining the requirements for the fulfillment of a *jus cogens* norm can be complex. These norms emerge from customary IL and are established through consistent and widespread practice among states, coupled with the belief that the norm is legally obligatory (*opinio juris*). Over time, as states adhere to and recognize certain norms as non-derogable, they gain the status of *jus cogens* norms[38].

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[33]HAFKIN, Gregory – "*The Russo-Georgian War of 2008: Developing the Law of Unauthorized Humanitarian Intervention after Kosovo*" – Boston University IL Journal - ILJ 28.1 - pp. 221-229 (2010).
[34]See note 27.
[35]EC (n.d.) – "*Timeline - EU sanctions against Russia*" – Council of the EU (2024).
[36]See note 2.
[37]See note 2.
[38]VERDROSS, Albert - "*Jus Dispositivum and Jus Cogens in IL*" - American Journal of IL, vol. 60, pp. 55-244 (1966, Jan.).

The ICJ has recognized certain norms as *jus cogens*, such as the prohibition of genocide and the prohibition of torture[39]. However, the precise scope and content of *jus cogens* norms are subject to ongoing interpretation and debate.

As mentioned above, the international legal framework for these norms is established by sources of IL such as treaties, customary practices and general principles of law. The treaties that reflect these norms are binding on all states, and any provision that conflicts with these norms is considered null and void. For example, the article 7 of the Rome Statute of the ICC outlines the crimes against humanity, which include acts such as murder, torture, enforced disappearance, and sexual violence when committed as part of a widespread or systematic attack directed against any civilian population[40]. Also, the article 53 of the VCLT establishes that a treaty that conflicts with a peremptory norm of general IL is void, emphasizing the supremacy of *jus cogens* norms over conflicting treaty obligations[41]. Additionally, the article 51 of the UN Charter preserves the inherent right of individual or collective self-defense in the event of an armed attack, which will be explored. Furthermore, we have the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment that contains provisions that prohibit torture in all circumstances. For example, in the article 4 of the Convention is established the obligation of states to prevent and punish acts of torture, emphasizing the non-derogable nature of this prohibition. Finally, in the Genocide Convention, through its provisions in the articles II to VI, is established that the *jus cogens* norm prohibiting genocide, where states are obligated to prevent and punish acts of genocide, regardless of any conflicting national laws or practices.

The consequences of violating *jus cogens* norms include the non-recognition of illegal acts, the prohibition of invoking them as a justification or defense, and the obligation of states to cooperate in their prevention and punishment[42]. Also, as expected in this cases, other states have a legal interest in preventing and remedying violations of *jus cogens* norms, and they may invoke their responsibility to take action to ensure compliance.

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[39]For example, Case T-315/01 - "*Kadi v Council and Commission"* - ECR II-3649 (2005, Sep. 21).
[40]MCDOUGALL, Carrie - "*The Crime of Aggression under the Rome Statute of the ICC"* - Cambridge University Press, 2nd ed., pp. 1-42 (2021, Jun.).
[41]LINDERFALK, Ulf - "*The Creation of Jus Cogens – Making Sense of Article 53 of the VCLT*" - Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrech, ZaöRV 71, pp. 359-378 (2011).
[42]LINDERFALK, Ulf – "*The legal consequences of jus cogens and the individuation of norms"* - Leiden Journal of IL, Vol. 33, No. 4, pp. 893-909. (2020, Dec. 1).

The ILC, an expert legal body of the UN, has the mandate to promote the progressive development of IL and its codification. They have explored the issue of peremptory norms of general IL, aiming to clarify the principles involved and how such norms might be identified[43]. For example, the ILC works on the articles on Responsibility of States for Internationally Wrongful Acts[44]. More recently, in 2022, the ILC adopted a draft conclusion on the identification, application and legal consequences of *jus cogens*[45], which aimed to provide a comprehensive understanding of the legal effects and the processes through which norms achieve that status. They serve as a reference but does not preclude the possibility of other norms attaining *jus cogens* status in the future.

The most relevant norm to be discussed in this thesis is the prohibition of the use of force, that it´s considered one of the fundamental principles of the UN Charter and is recognized as a peremptory norm from which no derogation is permitted. The ICJ has called the prohibition against the use of force "a cornerstone of the UN Charter"[46]. One of the most important articles on this matter is the article 2(4) of the UN Charter that establishes the general prohibition on the use of force, both on the actual use of force and the threat to use such force[47] "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 or in any other manner inconsistent with the purpose of the United Nations". As well as the article 8 bis from the ICC Statute that defines the "crime of aggression" as the "planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the UN".

There are only two explicit exceptions to the article 2(4): force used in the case of self-defense; or when authorized by the SC. The first scenario is found in the article 51 of the Charter that mention if a state suffers from an "armed attack", that state retains an

[43]CRAWFORD, James - "*The ILC's ARSIWA: A Retrospect*" - The American Journal of IL, Vol. 96, No. 4, pp. 874-890 (2002, Oct.).
[44]For instance, the articles 40 and 41 deal with serious breaches of obligations under peremptory norms, specifying that all states must cooperate to bring an end to such breaches through lawful means.
[45]ILC - "*Draft conclusions on identification and legal consequences of peremptory norms of general international law (jus cogens), with commentaries*" – UN (2022).
[46]"*Case Concerning Armed Activities on the Territory of the Congo (DRC v. Uganda), Judgment of 19 December 2005"* - ICJ Reports (2005, Dec. 19).
[47]AREND, Anthony C. & BECK, Robert J. - "*IL and the Use of Force – Part II, Point 3: The UN Charter framework for the resort to force"* – Routledge, pp. 29-46 (1993).

inherent right to defend itself by using force against the attacking state until the SC is able to take action[48]. And this right can be exercised either individually or collectively when receiving assistance from another state to attack. Always in mind that the states that take such actions need to report them immediately to the SC[49]. The second scenario is contained in Chapter VII of the Charter (articles 39-51), mainly in the article 39 that says that the SC is empowered to "determine the existence of any threat to the peace, breach of the peace or act of aggression". We can determine that the Council can authorize, under the articles 41 and 42, the members of the UN to use force against the recalcitrant state. And even in cases of self-defense, the use of force must meet certain criteria, including necessity, proportionality, and immediacy[50]. Any use of force beyond these limits may be considered a violation of the prohibition.

## Chapter II - Self Defense

The article 51 of the UN Charter, as mentioned before, preserves the inherent right of individual or collective self-defense in the event of an armed attack, as it provides that "nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the UN, until the SC has taken measures necessary to maintain international peace and security".

The relationship between the articles 2(4) and 51 of the UN Charter is often subject to legal debate, particularly concerning the legality of preemptive self-defense[51]. The article 2(4) broadly prohibits the use of force, but the article 51 allows for self-defense under specific conditions, namely, if an armed attack occurs. The tension arises over what constitutes an "armed attack" and whether states can act in anticipation of such an attack[52].

[48]See note 19.
[49]See note 47.
[50]RUYS, Tom – *"Armed Attack" and Art. 51 of the UN. Charter 2: Evolutions in CL and Practice - Chapter 2: "Armed attack" and other conditions of self-defence"* - Cambridge University Press, pp. 53-125 (2010).
[51]DINSTEIN, Yoram - *"War, Aggression and Self-Defence – Part III: Exceptions to the prohibition of the use of inter-state force. 7 – The Concept of Self-Defense"* - Cambridge University Press, 5th edition, pp. 187-241 (2011).
[52]An example of the application of the art. 51 is the Six-Day War in 1967. Israel launched pre-emptive air strikes against Egypt, arguing that it was acting in self-defense against an imminent attack by Egyptian

The resolution 3314 that was adopted by the UNGA, helps to clarify what constitutes an act of aggression, aiding in the enforcement of international norms and potentially deterring aggressors[53]. It discusses the concept of "first strike," where the initial use of armed force by a state can be presumed as an act of aggression unless the SC decides otherwise based on the severity of the act. This resolution came to introduce the idea of indirect aggression, which involves significant participation by a state in armed activities that could be equated with direct acts of aggression. This reflects a shift in how IL views state responsibility, particularly when non-state actors or proxy forces are involved[54].

It may seem obvious that the terms "force" and "armed conflicts" are inter connected, but the truth is that they carry different meanings, since the second one is more serious. There are two major implications here, firstly, as Adil Ahmad Haque said "*an insufficiently grave use of force does not constitute an armed attack and does not trigger the right of self-defense*"[55], and secondly, the article 51 doesn't allow the use of an armed force against a non-state actor on the territory of another state without its consent. Which means that a non-state actor cannot act within the meaning of the article 2 (4), leading to a prohibition of the use of the article 51[56].

This distinction between the use of force and an armed attack is crucial in IL, as the latter justifies self-defense under Article 51. Not all uses of force meet the threshold of an armed attack[57], which is necessary to invoke self-defense legitimately. As the ICJ as stated before "*the most grave forms of the use of force*"[58] constitute an armed attack. It´s inherent that the violation of the article 2 (4) of the UN Charter triggers the right of self-defense under the article 51.

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forces. Israel's actions were based on the interpretation that an "armed attack" need not occur; an imminent threat was sufficient justification under Article 51 for self-defense.

[53]WILMSHURT, Elizabeth - *"Definition of Aggression - GA resolution 3314 (XXIX)- 14 December 1974"* - Audiovisual Library of IL (2008, Aug.).

[54]DINSTEIN, Yoram - "*War, Aggression and Self-Defence – Part II: The Illegality of war. 5 – The Crime of Agression*" - Cambridge University Press, 5th edition, pp. 124-162 (2011).

[55]HAQUE, Adil A. – "*The UN Charter at 75: Between Force and Self Defense – Part one*" – Just Security (2020, Jun. 24).

[56]As so, we have the examples of the invasion and occupation of parts of Syria by the U.S. and Turkey that violates the U.N. Charter – see SC – "*As Regional Violence Spills Over to Syria, Special Envoy, Briefing Security Council, Urges De-escalation, Refocus on Country's Political Process*" – UN, 9459th Meeting, SC/15470 (2023, Oct. 30).

[57]See note 50.

[58] See note 55.

For a better understanding, while the term "use of force" in IL is broad and encompasses any military action by one state against another, regulated by the article 2(4), which requires all members to refrain from threatening or using force against the territorial integrity or political independence of any state[59], the term "armed attack" is considered a more severe form of the use of force and is the only scenario under which the right to self-defense is explicitly recognized, as per the article 51. An armed attack involves a significant scale and effect, and it typically refers to military actions that result in substantial damage or loss of life[60].

The ICJ has played a crucial role in clarifying this distinction, particularly in landmark cases such as the *Nicaragua Case* (1986)[61], where the court distinguished between the mere use of force (which might include minor skirmishes or border incidents) and armed attacks (which involve substantial acts of aggression like invasions or significant strikes). The Court indicated that not all incidents of the use of force activate the self-defense mechanism under Article 51. For example, in situations where military actions do not reach the intensity of an armed attack (e.g., limited border clashes), the right to self-defense does not automatically apply[62]. This distinction aims to prevent escalations based on minor or less severe military engagements, thereby upholding international peace and security. And the second one involves the *armed activities on the territory of Congo* (2005)[63], where the ICJ reiterated its stance that self-defense could only be invoked in response to proven armed attacks. The court denied Uganda's claim of self-defense against the DRC because Uganda failed to prove that it was responding to armed attacks attributable to the DRC.

The determination of whether an incident qualifies as an "armed attack" and thus justifies self-defense includes considerations of Scale and Effects, Intent and Source, Necessity and Proportionality, and Immediate response[64]. The attack must be of

[59] See note 47.
[60] See note 50, pp. 126-249.
[61] ICJ - "*Case Concerning Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. USA), Judgment of 27 June 1986*" - ICJ Reports (1986).
[62] BLANK, Laurie R. – "Irreconcilable Differences: The Thresholds for Armed Attack and International Armed Conflict" – Notre Dame Law Review, Vol. 96, No. 1, Article 5, pp. 252-253 (2020, Nov. 13).
[63] ICJ - *"Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment of 19 December 2005"* - ICJ Reports (2005, Dec.)
[64] The Caroline Case (1837): This is a cornerstone case in the law of self-defense, where the U.S. Secretary of State Daniel Webster articulated that self-defense must be necessary, instant, and overwhelming, with no choice of means or moment for deliberation. This formulation has been highly influential in shaping the customary IL standard for a lawful self-defense response. And the Case of Nuclear Weapons Advisory

significant scale and effect to be considered an armed attack, which includes considerations of the damage, casualties, and overall impact of the military actions. Also, the intent behind the use of force and the identity of the attackers (whether state or non-state actors) can also influence the classification[65]. Nonetheless, the actions taken must be necessary (no other reasonable means to avert the threat) and proportional (the response must not be excessive in relation to the military threat posed). Self-defense must be an immediate response to an armed attack. There cannot be a significant delay between the attack and the response, which must be aimed at repelling or deterring the attack[66].

Tacking a step back in time, since 1945, it has been established that the exercise of the right of self-defense is not symmetrical in nature in relation to the prohibition of the threat or use of force, so the state could not immediately intervene in the exercise of the right of self-defense against threats of the use of force against it[67]. However, in a case of an armed attack, the collective security system could be activated, with the SC taking on the role of the main actor. This approach reinforced the institutionalization of international society, diminished the scope of private justice in international relations and, to a certain extent sidelined the possibility that states could lawfully resort to force[68].

But in recent years, the interpretation of "armed attacks" has expanded slightly to address non-conventional threats, such as large-scale terrorist attacks[69]. Moreover, the concept of "imminent threats" or anticipatory self-defense remains controversial. While some argue that the potential for devastating armed attacks (e.g., with nuclear weapons) justifies preemptive self-defense[70], IL traditionally requires an actual armed attack to occur before the right to self-defense is activated.

With this being said, there is a debate surrounding Ukraine's right to self-defense under IL, especially in light of the ongoing missile and drone attacks by Russia on Ukrainian civilian targets. Following Ukrainian President Volodymyr Zelenskyy's

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Opinion (ICJ, 1996): The ICJ discussed the legality of using nuclear weapons, emphasizing that any use of force in self-defense must meet the strict criteria of necessity and proportionality.

[65]See note 50.

[66]See note 50, pp. 250-367 (2010).

[67]LOPES, Azeredo A. – “"International Legal Regimes – Chapter I: Use of force and IL”, Universidade Católica Editora Porto, Vol. 1, pp. 83-84 (2020, Mar.).

[68]See note 67; and FRANCK, Thomas M. – “*Recourse to Force, State Action Against Threats and Armed Attacks”*, Cambridge, p. 43 (2002).

[69]The attacks of 2001, September 11, led to a broadening of perspective regarding what constitutes an armed attack, acknowledging that large-scale terrorist actions could trigger a state's right to self-defense.

[70]See note 51.

statements that the war was "*gradually returning to the territory of Russia*"[71] there have been drone attacks near Moscow and other Russian regions, which Russia claims to have intercepted. About this, David Scheffer, a law professor at Arizona State University, mentions that Ukraine has the right to undertake military strikes on Russian territory to deter, prevent, and repel Russian aggression[72]. This includes targeting military bases in Russia but excludes attacks on civilians. Scheffer emphasized the legality of such actions as long as they target military installations and not civilians. The use of drones, missiles, aircraft, and cruise missiles by Ukraine is generally permitted, but Ukraine has agreed with its Western allies not to use Western-made weapons to strike deep into Russian territory. This is to prevent escalation of the war, as NATO members fear that such actions could be used by Russia as a pretext to escalate the conflict further[73].

# I. Collective Self Defense

Collective self-defense is a principle recognized under IL that allows a state to use force in defense of another state that has been attacked, provided that the latter state has requested such assistance. This concept is articulated in Article 51 of the UN Charter, which permits states to defend themselves not only individually but also collectively.

This right is similar to individual self-defense but includes some specific conditions, since it requires to involve multiple states (two or more states, one of which is the victim of the armed attack), and it can include international organizations alongside multiple states[74]. In a practical way, there are three major requirements: an armed attack, a request for assistance, and proportionality and necessity. A state claiming to be the victim of an armed attack must formally declare it, setting the stage for collective self-defense, aiming to prevent misuse of the self-defense pretext for aggressive actions. Also, the victim state must specifically request assistance, identifying the states from which

[71]RIEGERT, B. - "*How far does Ukraine's right to self-defense extend*?" – DW – Politics / Ukraine (2023, Aug. 28).
[72]See note 71.
[73]VERSTRAETE, Wannes - "NATO stands ready to prevent escalation of the war in Ukraine" – EGMONT (2023, Jun. 20).
[74]DINSTEIN, Yoram - *"War, Aggression and Self-Defence – Part III: Exceptions to the prohibition of the use of inter-state force. 10 – Collective Self-Defense"* - Cambridge University Press, 5th edition, pp. 278-302 (2011).

help is sought, to ensure the action remains defensive and is supported by a legitimate international mandate[75].

Perhaps the most notable instance of collective self-defense is the NATO military alliance[76], which considers an armed attack against one or more members as an attack against all, under the article 5 of the NATO Treaty[77]. This was famously invoked after the 2001, September 11, attacks in the US.

While traditional interpretations of collective self-defense involve military actions, non-military support can also be considered under this framework if it directly contributes to the defensive capabilities of the state under attack. This can include logistical support, financial aid, intelligence sharing, and other forms of assistance that bolster the defense efforts of the victim state[78].

Exploring the situation of Russia's aggression against Ukraine from the perspective of the right to collective self-defense under IL, it´s easy to see the limitations of the UN SC due to Russia's veto power and the resultant deadlock, which prevents the SC from taking decisive action[79]. About this, Dr. Pavel Doubek stated that the right to collective self-defense as established under customary IL, exists independently of defense treaties or the SC resolutions[80]. This right is crucial for Ukraine as it faces an unprovoked military invasion by Russia. In the landmark *Nicaragua case*[81], as mentioned before, the ICJ stipulated two procedural prerequisites for legitimately exercising the right to collective self-defense. Firstly, the state under the attack must formally request assistance. Secondly, there must be an explicit declaration by the attacked state confirming suck actions. While the customary status of these requirements is debated among international community, both criteria have been fulfilled in the current situation. The Ukrainian President Volodymyr Zelensky has declared many times the Russian Federation's actions as an act of aggression against Ukraine and has called for international support. This

[75]See note 61; see note 74.
[76]NATO - "Collective defence and Article 5" (2023, Jul. 4).
[77]But we can have another ones, such as Nicaragua Case (1986) that was mentioned before, and the Oil Plataform Case (2003), and also the Wasw Pact and the League of Arab States include clauses related to collective self-defense.
[78]See note 74.
[79]PAIGE, Tamsin P. – "Stripping Russia's veto power on the SC is all but impossible. Perhaps we should expect less from the UN instead" – The Conversation (2023, Sep. 21).
[80]DOUBEK, Pavel - "*War in Ukraine: Time for a Collective Self-Defense*?" – OpinioJuris (2022, Mar. 29).
[81]See note 61.

includes a specific appeal to NATO to implement and enforce a no-fly zone over Ukraine[82].

Also, Dr. Doubek criticizes the effectiveness of diplomatic negotiations and economic sanctions against Russia, noting their failure to halt Russian aggression. He points out the significant civilian impact of the conflict, with frequent attacks on civilian targets like hospitals and theaters, arguing that the employment of collective self-defense is justified due to the ineffectiveness of less invasive measures and the urgent need to protect civilians and critical infrastructure like nuclear power plants[83].

On the other hand, broadly interpreting collective self-defense could allow states to bypass the SC's authority on matters of international peace and security, potentially leading to more unilateral military actions under the guise of "defense". Mary Ellen O'Connell argues against liberal interpretations of self-defense that could justify almost any use of force if broadly linked to defensive purposes[84]. And even expanding the concept to include economic and informational warfare could escalate conflicts and reduce opportunities for peaceful resolutions. Authors like Kenneth Anderson have already expressed concerns about the implications of such interpretations for global peace, suggesting that they might encourage states to take aggressive preventive actions that could destabilize international order[85].

Ultimately, the urgency and ethical imperative to intervene using collective self-defense might be a necessary course of action despite the risks, comparing to the ongoing civilian suffering and the clear threat to global security, particularly regarding nuclear safety.

## II. Military and Non-Millitary Support

[82]HENKHAUS, Luke – "No-*Fly Zones", Explained, And Why We're Unlikely To See One Over Ukraine"* - Texas A&M Today (2022, Mar. 15).
[83]See note 80.
[84]O´CONNELL, Mary Ellen – "Forever Air Wars and the Lawful Purpose of Self-Defence" – Journal on the Use of Force, Vol.9, No.1 (2022, Jan.)
[85]ANDERSON, Kenneth – "Humanitarian Inviolability in Crisis: The Meaning of Impartiality and Neutrality for U.N. and NGO Agencies Following the 2003-2004 Afghanistan and Iraq Conflicts" - Harvard HR Journal, Vol. 17, pp. 72-74 (2004).

The nature of the support given to Ukraine has ranged from comprehensive economic sanctions against Russia, provision of military equipment, financial aid, humanitarian assistance, and political support through international forums.

In terms of military support for Ukraine by third states, there was the assistance given by Germany that created some international debate on whether it was a lawful action[86]. They had the right to provide aid to Ukraine through its own armed forces, including the possibility of using force in collective self-defense, even extending to Russian territory if necessary and proportionate[87]. However, the German political debate was focused on avoiding direct involvement in the conflict rather than asserting the right of self-defense. The legal issue of Germany's military assistance was that they chose not to report its assistance to the UN SC under the right of self-defense, which raised questions about its compliance with reporting requirements. Germany argued that its military aid did not involve the exercise of collective self-defense. For example, in the *Nicaragua case* the ICJ's characterized the United States' arms supplies to non-state actors, a use of force[88]. Although state practice regarding inter-state military support has been more restrained, and Germany's assistance to Ukraine was deemed lawful as it supported Ukraine's exercise of its right of individual self-defense.

The question of whether Germany's military aid violated neutrality laws was raised. Traditional neutrality laws prohibited providing military assistance to belligerents, but contemporary IL, with the prohibition of force as a cornerstone, called for a reassessment of neutrality obligations[89]. The focus shifted to preventing war and protecting the victim of an unlawful armed attack. Therefore, the old neutrality obligation should not apply when a state exercises its right of individual self-defense. Germany's stance on the Ukraine conflict is often referred as "non-belligerency" rather than neutrality, drawing parallels to the US' position during World War II. The legal justifications for Germany's military assistance to Ukraine were even similar to those employed by the US during that time[90]. In conclusion, Germany's military assistance to Ukraine was deemed lawful under IL, supporting Ukraine's right of self-defense.

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[86]KREB, Claus - *"The Ukraine War and the Prohibition of the Use of Force in IL"* - Torkel Opsahl Academic EPublisher Brussels, pp. 13-19 (2022).
[87]HERSZENHORN, Davis M., BAYER, LILI & BURCHARD, Hans – "Germany to send Ukraine weapons in historic shift on military aid" – Politico (2022, Feb.).
[88]See note 61.
[89]BOTHE, Michael - "*The Law of Neutrality*" - In Fleck (2021).
[90]US - "Ukraine Democracy Defense Lend Lease Act of 2022" – LTD, No. 117-118 (2022, May 9).

Along-side Germany, many NATO countries, have supplied a variety of military equipment and defense systems to Ukraine[91], such as the US, the Uk, France[92], Canada[93], Poland and the Czech Republic[94]. In the case of the US, they have played a pivotal role in supporting Ukraine amid its conflict with Russia, marking itself as the largest provider of military assistance to the country. Since President Biden's administration began, the US has delivered approximately $44.9 billion in security assistance, with a substantial $44.2 billion of that total being dispatched after Russia's escalated aggression in February 2022[95]. In a significant development on March 12, 2024, the administration approved an additional $300 million package of military aid[96]. Also, the UK stands as a prominent supporter of Ukraine, positioning itself among the top supporters such as the US and Germany, where they have committed almost £12 billion in total support to Ukraine, with £7.1 billion earmarked specifically for military assistance[97]. Furthermore, on January 12, 2024, the UK government pledged an additional £2.5 billion for the year 2024/25. In addition to these countries, several other NATO members and partners have contributed various forms of military assistance, ranging from lethal weapons to non-lethal aid such as medical supplies, body armor, and other tactical equipment necessary for sustaining military operations.

Now focusing on non-military support, to justify this type of support as part of collective self-defense under IL, we can rely on several legal arguments, starting with the article 51 of the UN charter[98], that historically has been understood to mean direct military assistance, but given the changing nature of modern geopolitical international conflicts, which now often involve non-state actors and cyber threats, we can debate on whether we can go for a broader interpretation and include economic sanctions, financial aid,

[91] BBC - *"Ukraine weapons: What arms are being supplied and why are there shortages?"* - BBC News (2024, Apr. 19).
[92]France has provided Caesar self-propelled howitzers, anti-tank missiles, and has participated in training missions.
[93]Canada's contributions have included Armored vehicles, Artillery systems, Ammunition and tactical gear.
[94]Poland and Czech Republic have transferred Soviet-era tanks and infantry fighting vehicles, complementing Ukraine's existing military hardware.
[95]MILLS, C. - "*Military assistance to Ukraine since the Russian invasion"* - House of Commons Library. (2024, Mar. 27).
[96]That includes the supply of Javelin anti-tank missiles, Stinger anti-aircraft missiles, High Mobility Artillery Rocket Systems (HIMARS), Counter-battery radar systems, Drones and surveillance equipment, Ammunition and small arms.
[97]With Next generation Light Anti-tank Weapons (NLAWs), Multiple-launch rocket systems, Anti-tank and anti-aircraft systems, Training and logistical support.
[98]See note 19.

intelligence sharing, and other forms of non-military support[99]. These elements can be seen as essential components of modern defensive strategies, especially when they directly contribute to a state's ability to defend itself. Secondly, over time, the practices of states can influence the interpretation of legal norms. Many states have participated in or endorsed non-military measures as part of collective defensive efforts, particularly in contexts like the Ukrainian conflict[100]. Prominent IL scholars and jurists, such as those on the ICJ, often discuss the adaptability of IL to contemporary challenges. Their opinions and rulings can provide a jurisprudential basis for expanding the scope of collective self-defense. Thirdly, we go back to the principles of necessity and proportionality, since non-military support can also be necessary for the defense of the state and proportional to the threat faced[101]. Lastly, justifying non-military support on ethical grounds can also strengthen legal arguments, particularly when such support directly alleviates human suffering or prevents violations of HR, which aligns with the broader goals of the UN and IL.

In the specific case of Ukraine, the EU has been a major contributor of financial and humanitarian assistance[102]. The aid has been aimed at addressing both immediate humanitarian needs and longer-term economic stabilization, mobilizing billions of euros in aid, including emergency financial packages to support Ukraine's government budget, economic stabilization, and recovery. And has provided emergency humanitarian assistance to meet the needs of civilians affected by the war, such as medical supplies, food, shelter, and support for displaced persons. The EU has also discussed plans for substantial contributions to the future reconstruction of Ukraine, ensuring long-term recovery and integration into European structures. As for the US, excluding the financial and military support mentioned above, they have provided humanitarian aid aimed at addressing the immediate needs of the populations affected, such as support for refugees, internally displaced persons, and access to essential services like health care and sanitation[103].

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[99]SKANTZ, Madeline Holmqvist - "*The Unwilling or Unable Doctrine - The Right to Use Extraterritorial Self-Defense Against Non-State Actors*" - Stockholm University Faculty of Law (2017).
[100]EC - "*EU sanctions against Russia explained*" – Council of the EU (2024).
[101]O'MEARA, Christopher - "Necessity and Proportionality and the Right of Self-Defence in IL" - Faculty of Laws, University College London (2018).
[102]EU - "*EU Solidarity with Ukraine*" (2024).
[103]TBILISI, Embassy – "U.S. HUMANITARIAN AID FOR UKRAINE WAR TOPS $2.6 BILLION" – US Embassy in Georgia (2023, Aug. 29).

Numerous other countries have also stepped in to provide financial and humanitarian support to Ukraine[104], including Canada, the UK, Japan, South Korea, among others. Canada has provided humanitarian assistance along with financial grants and loans to support economic stability and governance. The UK, beyond military support mentioned above, has committed substantial humanitarian aid to help manage the crisis, including support for healthcare and housing for refugees. And Japan and South Korea have contributed to international funding efforts, providing financial resources to aid Ukraine's economy and humanitarian needs.

In addition to governmental aid, multiple international organizations and NGOs have been actively involved in providing humanitarian relief directly to affected populations in Ukraine and neighbouring countries sheltering Ukrainian refugees. For example, the IMF[105] and the World Bank[106] have offered financial assistance packages aimed at economic stabilization and recovery, and the Red Cross and other NGOs are providing medical aid, psychological support, and basic necessities to those impacted by the conflict[107].

## III. Countermeasures

Countermeasures are actions taken by a state in response to another state's internationally wrongful act. These actions, although normally would be considered unlawful, are permitted under IL to compel the wrongdoing state to cease its illegal act and comply with its international obligations[108]. The article 49 of the ARSIWA (2001) adopted by the ILC, stipulates that countermeasures must be taken in response to an internationally wrongful act of another state and must be aimed at inducing that state to comply with its obligations. Also, the articles 50, 52 and 54 are also very important to

[104]WOLF, Christopher & DAVIS JR:, Elliott - "*Countries That Have Committed the Most Aid to Ukraine*" – US News (2024, Feb. 24).
[105]GOPINATH, GITA – "*IMF Executive Board Approves US$15.6 Billion under a New Extended Fund Facility (EFF) Arrangement for Ukraine as part of a US$115 Billion Overall Support Package*" – IMF (2023, Mar. 31).
[106]The World Bank – "*World Bank Group Financing Support Mobilization to Ukraine since February 24, 2022*" (2024, Apr. 5).
[107]RED CROSS - "*Supporting the mental health of people affected by the humanitarian crisis in Ukraine*" – EU Office (2024, Apr. 17).
[108]CRAWFORD, James - "*ARSIWA*" – UN, pp. 8-9 (2012).

mention since are the ones that define what can or cannot be a countermeasure, and to what extent can be legally taken.

To qualify as countermeasures, actions must be a response to a prior internationally wrongful act, to a breach of international obligations by another state, being the primary purpose to prompt the offending state to fulfil its international obligations. The scale and scope of the countermeasures must correspond to the gravity of the breach and the damage caused[109], and cannot, under IL, involve the use of force, in line with the UN Charter's principles. The states interested in apply these types of sanctions must notify the offending state of their intent of doing so, offering a chance for the state to cease its wrongful behaviour[110]. Countermeasures should also be suspended if the issue is being addressed through peaceful dispute resolution mechanisms.

Widespread sanctions have been imposed on Russia by a broad coalition of countries to pressure it economically in response to its actions in Ukraine[111]. They can be divided into three different categories such as: economic sanctions that includes the financial, energy, defence and technology sectors; individual sanctions that includes asset freezes and travel bans, oligarchs and elites; and finally, diplomatic sanctions[112].

For a better understanding, the economic sanctions target Russia´s major banks and financial institutions, restricting their access to international banking services and capital markets, including limiting their ability to transact in major currencies and access to SWIFT[113]. Alongside with restrictions on the export of technology and equipment crucial for the oil and gas industry, aiming to impact Russia's primary revenue source[114]. And bans on exports of high-tech items, particularly those that can be used in military and security contexts[115]. As for the individual sanctions, we have decisions made with the purpose of targeting politicians, businessmen, and other individuals tied to the Kremlin,

[109]KRIVENKOVA, Maria V. & MUSABAYEVA, MILYAUSHA A. – "*Proportionality of Countermeasures as a condition of their legitimacy*" - Journal of Interdisciplinary Research, pp. 292-293.
[110]Article 52 of the ARSIWA "*Conditions relating to resort to countermeasures*".
[111]ANDERSON, BURMAN, FRALEY, KLEHM, LAPIDOR & SVOBODA - "*What Sanctions Has the World Put on Russia?*" – Lawfare (2022, March 4).
[112]NELSON, Rebecca M. – "*The Economic Impact of Russia Sanctions*" – Congressional Research Service (2022, Dec. 13).
[113]The global financial messaging service. See note 112.
[114]EU - "*EU Solidarity with Ukraine - Sanctions on energy*" (2024).
[115]SWANSON, A. - *"The U.S. extends technology restrictions to Belarus and the Russian oil industry*" - The New York Times. (2022, Mar. 2).

freezing their assets abroad, and banning them from entering sanctioning countries[116]. Along with specific sanctions targeting the wealthy and powerful individuals around President Vladimir Putin, intended to weaken his support base within Russia. And for diplomatic sanctions, we have the reduction in diplomatic interactions and expulsions of Russian diplomats from various countries as a direct response to Russian intelligence activities abroad considered hostile[117].

In a nutshell, several countries have implemented sanctions against Russia's actions[118]. To illustrate that, we can talk about how the US has been one of the most stringent enforcers of sanctions against Russia, targeting a broad spectrum of sectors and individuals[119]. As well as the EU that has implemented extensive sanctions affecting the financial, energy, and defense sectors, and also worked to decrease its dependency on Russian energy sources[120]. Similar to the US, the UK has targeted wealthy Russians with close ties to the Kremlin, freezing assets and imposing travel bans[121]. Countries like Canada, Australia, Japan, and South Korea have joined also joined the US and EU in imposing similar sanctions against Russia, reflecting a global response[122].

These sanctions have had a significant impact on the Russian economy by restricting growth in the country because the limitation of access to international financial markets and crucial technologies caused a stifled economic growth and development[123]. The Russian rubble has experienced volatility, impacting the country's economic stability[124]. They also contributed to rising inflation, affecting the cost of living for ordinary Russians, and have led to a decline in foreign investment in Russia. The strategic objectives behind these sanctions are quite clear since the world intent to deter further aggression and discourage Russia from further aggressive actions in Ukraine and elsewhere. As well to punish the illegal actions, serving as a punitive measure for the

[116]KRASHENINNIKOV, FEDOR - "*Are sanctions on Russian oligarchs effective?"* - Wilson Center (2023, Apr. 21).
[117]US Embassy & Consulates in Italy - "Countries expel Russian diplomats in protest over Ukraine" (2022, May 1).
[118]See note 111.
[119]See note 12.
[120] See note 35.
[121]SINGERS, Bryn - "*US and UK target Russian oligarch affiliates in latest round of sanctions*" – Jurist (2023, Apr. 15).
[122]See note 111.
[123]See note 112.
[124]KURMANAEV, Anatoly - "*Drastic economic moves highlight Russia's wartime bind*" - The New York Times. (2023, Aug. 15).

annexation of Crimea and involvement in the destabilization of Eastern Ukraine[125]. This reflects a global disapproval of Russia's actions on the international stage, aiming to isolate it diplomatically and economically.

## IV. Can a supporting state be considered a legitimate military target?

Whether supporting a state with non-military means can make that state a legitimate military target is a contentious issue. Most IL scholars emphasize that non-military support, such as economic sanctions or humanitarian aid, does not legally make these supporting states legitimate military targets[126]. The international norm and legal frameworks underpinning collective self-defense focus predominantly on military actions, and extending this to include non-military support as a cause for legitimate military response by an aggressor would represent a significant and contentious expansion of the law[127].

Legal experts generally uphold that only direct military actions can render a state a legitimate target for military retaliation under the traditional understanding of self-defense in IL[128]. The contributions of financial aid, intelligence sharing, or sanctions are considered part of a broader diplomatic and economic strategy rather than acts of war. These forms of support are aimed at stabilizing the recipient state and pressuring the aggressor through non-violent means, which aligns with international efforts to maintain peace and security without escalating military conflict[129].

In the context of the ongoing conflict in Ukraine, the consensus among NATO and the international legal experts suggests is that while cyber and other forms of non-military engagement are critical aspects of modern warfare, they do not, in themselves, justify military attacks on those providing such support. The strategic use of non-military tools

[125]See note 111.
[126]ICRC – "*If armed forces are using a hospital or school as a base to launch attacks or store weapons, are those places then a legitimate military target*?" (2022, Mar. 7).
[127]JACHEC-NEALE, Agnieszka - "*Targeting State and Political Leadership in Armed Conflicts*" – Journal of Transnational Law, Vol. 51, No. 3, Article 18 (2018, May).
[128]See note 127.
[129]See note 99.

aims to complement military defenses and impose costs on the aggressor, thereby enhancing overall security and stability without directly engaging in combat operations.

This interpretation is supported by current practices and the prevailing attitudes within international relations, where there is a clear distinction between military and non-military actions in the context of collective self-defense[130]. Therefore, the academic and practical perspectives largely reject the idea that providing non-military support to Ukraine could legitimize attacks against those supporting states. Michael N. Schmitt and Sean Watts in their works[131] on the interpretive boundaries of the UN Charter's Article 51 suggest that non-military support does not constitute an armed attack and thus should not render the supporting states as legitimate military targets. Their discussions emphasize that collective defense activities should be strictly defensive and proportionate to the threat faced. Additionally, Jens David Ohlin[132] explores the ethical implications of warfare, and points out that non-military support aimed at stabilizing a state under attack aligns with broader ethical norms of international relations, intended to support sovereignty and prevent conflict escalation.

# Chapter III - Limits of International Law

## I. United Nations, Security Council and General Assembly

The UN SC and General Assembly played a crucial role in responding to Russia's violation of the prohibition on the use of force. Recognizing the urgency of the situation, efforts were made to condemn Russia's actions and send a strong message from within the UN. A draft resolution[133] condemning Russia's actions was presented to the SC on February 25, garnering support from a clear majority of 11 members. However, the resolution failed to be adopted due to a Russian veto. Several countries, including Mexico

[130]CHERRY, John & RIZZOTTI, Michael – "*UNDERSTANDING SELF-DEFENSE AND THE LAW OF ARMED CONFLICT*" – Lieber Institute, Articles of war (2021, Mar. 9).
[131]SCHMITT, Michael N. & WATTS, Sean – "*State Opinio Juris and IHL Pluralism*" – IL Studies, U.S. Naval War College, Vol. 91 (2015).
[132]OHLIN, Jean David – "*Cyber War - Law and Ethics for Virtual Conflicts*" – Oxford University Press (2015).
[133]Draft resolution on aggression by the Russian Federation against Ukraine in violation of the Charter of the UN, UN Doc. S/2022/155, 2022, Feb. 25.

and Norway, expressed their strong criticism of Russia's invasion as a violation of the UN Charter. The abuse of veto power by the aggressor was condemned, as it undermined the very purpose and foundation of the Charter[134]. Despite the concerns raised about the abusive use of the veto, the SC followed its established practice and convened an emergency special session of the UN General Assembly.

The General Assembly, through its Uniting for Peace resolution adopted on March 1[135], 2022, expressed its condemnation of Russia's use of force as aggression. This resolution, although not legally binding, received support with a clear two-thirds majority of 141 votes in favor and only 5 votes against, along with 35 abstentions. The adoption of this resolution sent a strong signal from the international community, highlighting Russia's egregious violation of the prohibition on the use of force[136].

While the SC´s draft resolution was vetoed, the General Assembly's resolution served as a significant response to Russia's actions. It underscored the collective condemnation of the international community, emphasizing the severity of the violation and the need to uphold the prohibition on the use of force. The adoption of the resolution demonstrated the determination of the UN to address such violations and hold the offending state accountable, despite the lack of legally binding measures.

Regarding the non-military measures under the article 41 of the UN Charter, the SC has broad discretion to decide on these measures to enforce its resolutions, and may include comprehensive or partial interruption of economic relations, communication, and the severance of diplomatic ties[137]. They are not inherently punitive and can be implemented in situations where threats to peace and security do not directly arise from state actions violating international obligations. Such measures have been employed in diverse scenarios including the establishment of special criminal tribunals and *ad hoc* territorial administrations like the UNTAET, through Resolution 1272 of October 25, 1999. Therefore, economic sanctions or institutional sanctions, while not explicitly termed as such in the Charter, have evolved through state practice and the operational activities of the UNs, particularly through the establishment of the Sanctions

[134]"*Existing Legal Limits to SC Veto Power in the Face of Atrocity Crimes"* - Cambridge University Press (2022).
[135]Draft Resolution on Aggression against Ukraine, UN Doc. A/ES-1L, 1 March 2022.
[136]See note 134.
[137]This list, originating from demands by the USSR in 1944, is indicative rather than exhaustive, highlighting the flexibility the SC possesses in choosing appropriate sanctions (*Lagrande & Eisemann*, 2005).

Committee[138]. These sanctions can target both states and individuals, illustrating their versatility and precision in addressing specific threats to international peace and security under Chapter VII of the Charter[139].

As historical examples we have the case of *Rhodesia*[140], where the SC, under the Resolutions 232 (1966) and subsequent sanctions, prohibited commercial relations with Rhodesia, addressing the threat to peace posed by its racist regime. The case of *Angola*[141], where the SC imposed sanctions on UNITA through Resolution 864 of September 15, 1993, aiming to cut off funding and material support to end the hostilities. And more recently, the SC has targeted non-state actors like the *RUF in Sierra Leone*[142] with measures intended to restrict their operations, demonstrating the expanding scope of the article 41 to include actions against individuals and non-state entities (Resolution 1343 of March 7, 2001).

The increasing use of sanctions against non-state actors has sparked discussions about ensuring the rights of individuals affected by these measures. This aspect underscores the evolving nature of the SC interventions under the article 41, balancing the need for effective action with the principles of IL and HR.

## II. Collective Security System

The UN Charter established a groundbreaking collective security system, predicated on the concept of collective responsibility for maintaining international peace. This framework distinctly emphasizes the role of major powers in upholding and, if necessary, restoring IL. A collective security system is theoretically self-sufficient, operating without needing an external adversary. Although the UN Charter initially mentioned "*enemy states*"[143] due to the ongoing World War II, this was anticipated to be

[138]UN SC – "*Sanctions*"- Official website of the UN (2024).
[139]See note 138.
[140]GALTUNG, Johan - "*On the Effects of International Economic Sanctions: With Examples from the Case of Rhodesia*" - World Politics, Vol. 19, No. 3 pp. 378–416 (1967).
[141]UN SC - "*Report of the SC Committee established pursuant to resolution 864 (1993) concerning the situation in Angola (S/2002/243)*" – Reliefweb (2002).
[142]VINES, Alex & CARGILL, Tom - "*The Impact of UN Sanctions and Their Panels of Experts: Sierra Leone and Liberia*" - International Journal, Vol.65, No. 1, pp. 45-67 (2009).
[143]Charter of the UN – San Francisco 1945, article 107.

a temporary situation. The system's universal design has evolved, incorporating all states into the UN, thereby internalizing security measures within its membership.

The UN functions under a system where potential violators are already part of the collective, with the SC playing a pivotal role[144]. Unlike political-military alliances like NATO, which are formed based on perceived threats to their members, the UN's security mechanism operates without presupposing external adversaries[145]. The SC bears the principal responsibility for international peace and security (article 24 (1) of the UN Charter), acting on behalf of the MS[146]. This representative relationship is critical for understanding the intended break from past experiences by the states that designed the collective security system. The SC is an "aristocratic" body with limited membership[147] - 15 members, including 5 permanent and 10 non-permanent members (article 23 of the UN Charter), which allows for efficient decision-making compared to the General Assembly's broader membership.

Under the article 39, the SC determines the existence of any threat to peace, breach of peace, or act of aggression, recommending or deciding upon measures to maintain or restore international peace and security[148]. This provision grants the SC significant discretion in defining what constitutes these threats, and actions taken under this provision are assumed to represent a consensus of the international community (article 27 (3) of the UN Charter)[149].

Also, some historical examples of the SC actions could be the designation "*breach of peace*" over "*act of aggression*" during the *Korean War* in 1950[150] and the *Iraq-Kuwait* conflict in 1990[151], the adoption of the Resolution 1368[152] that recognized international terrorism as a threat to international peace, and the adoption of the Resolution 2177[153] that declared the Ebola outbreak in 2014 a threat to international peace as well, marking

[144]See note 138.
[145] DINSTEIN, Yoram – "*War, Aggression and Self-Defence – Part III: Exceptions to the prohibition of the use of inter-state force. 11 – Collective Security*" - Cambridge University Press, 5th edition, pp. 303-350 (2011).
[146]See note 145.
[147]UN SC – "*Current Members: PERMANENT AND NON-PERMANENT MEMBERS*" – UN (2024).
[148]See note 50.
[149]See note 50.
[150]UN Command – "*History of the Korean War*" – US Government (2024).
[151]O´CONNELL, Mary Ellen - "*Enforcing the Prohibition on the Use of Force: The U.N.'s Response to Iraq's Invasion of Kuwait*" - Maurer Faculty (1991).
[152]Resolution 1368 (2001), adopted by the SC at its 4370th meeting, on 2001, Sep. 12.
[153]Resolution 2177 (2014), adopted by the SC at its 7268th meeting, on 2014, Sep. 14.

the first time a health crisis was classified as such. As we can state, the adaptability of the term "*threat to peace*" has allowed the SC to address a wide array of issues from internal conflicts affecting HR[154] to health pandemics impacting global stability.

## III. State Responsibility

State responsibility is a fundamental principle in IL that addresses the conditions under which a state is considered responsible for wrongful acts or omissions that breach its international obligations. This concept is crucial for maintaining international order and ensuring that states adhere to their commitments under IL[155].

The general principles of state responsibility for internationally wrongful acts assert that such responsibility arises solely from the commission of an internationally wrongful act, regardless of the nature of the norm violated[156]. This principle is now widely accepted by states and international courts[157], marking a shift from older notions where damage or fault were considered necessary for establishing state responsibility. Instead, it highlights that any breach of IL, irrespective of its consequences, may trigger it. Defined under article 2 of the ARSIWA[158], this consists of two elements, subjectively, the conduct (either an action or omission) must be attributable to the state, and objectively, must constitute a breach of an international obligation[159]. As for article 3 of the ARSIWA[160], it reflects a general principle of IL that the internal law of a state cannot be used as justification for not fulfilling international obligations. This is also echoed in Article 27 of the VCLT (1969), which reinforces the principle that a state cannot invoke the provisions of its internal law as a defense for failing to perform a treaty.

[154]The establishment of no-fly zones during the *Kurdish conflict* in Iraq highlighted both the Council's proactive stance and the complex legality of its resolutions.
[155]METYCH, Michele - "The responsibility of states" – Britannica (2024).
[156]TAVARES, Maria Isabel - "*International Legal Regimes – Chapter IX: Responsibility of States for Internationally Wrongful Acts*" - Universidade Católica Editora Porto, Vol. 1, p. 632 (2020, Mar.).
[157]Cases like the *Barcelona Traction Light & Power Co. (Belgium v. Spain), 1970*, illustrate how IC have historically approached state responsibility, emphasizing the repercussions of state actions that violate international obligations.
[158]"There is an internationally wrongful act of a State when conduct consisting of an action or omission: (a) is attributable to the State under IL; and (b) constitutes a breach of an international obligation of the State".
[159]See note 156, pp. 639-640.
[160]"The characterization of an act of a State as internationally wrongful is governed by IL. Such characterization is not affected by the characterization of the same act as lawful by internal law".

Under IL, a state found to be responsible for a wrongful act is required to fulfill specific legal obligations as outlined in the ARSIWA. Firstly, the offending state must immediately cease the wrongful act if it is still ongoing, ensuring that the violation does not continue to affect the injured party, as stated in article 30 (a) of the ARSIWA[161]. Secondly, depending on the circumstances surrounding the wrongful act, the state may also be required to provide assurances and guarantees that the act will not be repeated in the future, as specified in article 30 (b) of the ARSIWA[162]. This is particularly important in situations where there is a risk of recurrence, which could cause further harm or instability. And lastly, the state is obligated to make full reparation for the injury caused by the wrongful act, including any damage that has resulted. This obligation is comprehensive and includes restitution, compensation, and satisfaction, as necessary to cover all the consequences of the wrongful act, detailed in article 31 of the ARSIWA[163]. This ensures that the injured party is adequately compensated for their loss and that justice is upheld in international relations.

In this context we have some relevant cases, such as the *Phosphates in Morocco Case* (1938), that underlined the principle that the mere commission of an internationally wrongful act, irrespective of damage, triggers responsibility. As for the *Rainbow Warrior Case* (1990), it was responsible for highlighting the application of these principles, specifically the disregard of damage as a necessary element for establishing state responsibility. The following cases, *Rompetrol Group N.V. vs. Romania* (2013) and *Ituango Massacres vs. Colombia* (2013), reinforced the principle that internal laws are irrelevant when adjudicating on matters of international responsibility. Lastly, we can also mention the application of the Genocide Convention (*Croatia vs. Serbia*, 2015), that supports the irrelevance of domestic laws in the context of international obligations and responsibilities[164].

It´s important to note that the cessation mentioned above, involves compliance with the primary obligation being breached. It is only relevant in cases where the wrongful

[161]Commentaries to the draft ARSIWA - (extract from the Report of the ILC on the work of its Fifty-third session, Official Records of the GA, Fifty-sixth session, Supplement No. 10 (A/56/10), chp.IV.E.2) – ILC, pp. 216-222 (2001, Nov.).
[162]See note 161.
[163]See note 161, pp.223-231.
[164]Application of the Genocide Convention (*Croatia v. Serbia*) - OVERVIEW OF THE CASE – ICJ (2015).

act continues at the time of adjudication[165]. According to Olivier Corten, cessation confirms respect for the rule of law by ensuring ongoing violations are halted (The Obligation of Cessation) [166]. Also, as Maja Davidovic stated, the assurances of non-repetition may be necessary depending on the risk, the severity of the violation, and the nature of the breached obligation[167]. These are future-oriented and aim to prevent the offending state from committing similar violations.

When a state is obliged to make reparations, that act can take various forms depending on what is feasible and appropriate for rectifying the situation. The primary form of reparation is restitution[168], and involves returning the situation to the state that existed before the wrongful act was committed. This is the preferred method unless it proves to be materially impossible or involves a disproportionate burden. In this case compensation[169] is awarded, and covers both economic and non-economic damages, providing monetary payment for losses that cannot be physically or literally restored. In some cases, where neither restitution nor compensation can fully address the harm caused, satisfaction[170] may be required. This can include public apologies, formal acknowledgments of the breach, and other actions aimed at addressing non-material damages or the injury's symbolic aspects. These measures are particularly relevant in cases where the damage is more to dignity or moral interests rather than material harm.

In the realm of IL, two key issues emerge when considering the legal consequences of the conflict between Russia and Ukraine: the state responsibility of the Russian Federation for aggression and the individual criminal responsibility of the Russian leadership for the crime of aggression.

State responsibility for aggression has been established as a customary IL principle[171]. While the practice is not extensive, as mentioned before, it confirms the

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[165]STOICA, V. – "*Cessation, Assurances and Guarantees of Non-repetition. In: Remedies before the ICJ: A Systemic Analysis*" - Cambridge University Press, PP. 61-80 (2021, Jun. 17).
[166]CORTEN, Olivier - "*The Law of International Responsibility – The Obligation of Cessation*" - Oxford University Press, pp. 1245-1249.
[167]DAVIDOVIC, Maja - "*The Law of 'Never Again': Transitional Justice and the Transformation of the Norm of Non-Recurrence*" - International Journal of Transitional Justice, Vol.15, No. 2, pp. 386–406 (2021, July).
[168]BRENTON, Caroline – "*Restitution*" – Jus Mundi (2024, Feb. 27).
[169]FERNÁNDEZ, Antolìn – "Compensation" – Jus Mundi (2024, Mar. 12).
[170]RUBINS, Noah D., ANNIE, Pan & GAMBARINI, Camilla – "*Satisfaction*" - Jus Mundi (2024, May 24).
[171]With historical examples including the German wars of aggression in WWII, Iraq's invasion of Kuwait in 1990, and the wars between Eritrea and Ethiopia, as well as Uganda and the DRC – See note 86.

existence of an obligation of reparation for states that violate the prohibition of the use of force[172]. The mere commission of an internationally wrongful act triggers international responsibility, thus creating obligations for the offending state under the article 28 of the ARSIWA. Also, the Part II of the ARSIWA, titled "Content of International Responsibility of the State," addresses the legal consequences stemming from such acts. The initial chapters outline the basic regime, while Chapter III covers specific legal consequences for serious breaches of obligations under peremptory norms of general international law.

The difference in this case is that we have a serious international wrongful act that involves a violation of an obligation arising from a peremptory norm of IL (*jus cogens*), specifically the prohibition of the use of force (article 2(4) of the UN Charter). This type of violation leads to heightened international responsibility. Unlike the basic responsibility regime, this does not introduce new obligations for the offending state but strengthens existing obligations and creates obligations for all states in the international community[173]. James Crawford, in his commentary for the ILC, noted that this regime of aggravated responsibility is still evolving[174]. The principles encapsulated in articles 40 and 41 of the DARS are designed to handle violations that are so severe they demand a response from the entire international community, such as genocide or aggression. Which means that third states are obligated to the non-recognition[175] of the illegal situation resulting from the wrongful act - the use of force from Russia to invade Ukraine -, to the non-assistance in maintaining that situation, and to the mandatory cooperation to end it[176].

Ukraine is entitled to claim the costs incurred as a result of its exercise of the right to self-defense, provided it has conducted the hostilities in accordance with the law of international armed conflict. However, it is less clear whether third states can claim their costs resulting from military assistance provided to Ukraine[177]. Additionally, there is a question of whether third countries accepting refugees from Ukraine can seek compensation for the public funds used to accommodate them. The establishment of a

[172]See note 156.
[173]LANOVOY, Vladyslav - "Complicity in an Internationally Wrongful Act" - SHARES Research Paper 38 (2014).
[174]See note 156; CRAWFORD, James - "*ARSIWA*" – UN (2012).
[175] The ICJ advisory opinions have reaffirmed that all states have an obligation not to recognize or assist in maintaining situations created by serious breaches of IL, such as the construction of a wall in the occupied Palestinian territory.
[176] With the application of countermeasures, for example.
[177] In the past, the eligibility of war costs incurred by allies during military operations to repel aggression, such as in the case of Iraq's invasion of Kuwait, has been contested without clear legal reasoning.

comprehensive international compensation mechanism has been proposed by Ukraine and noted with interest by the Council of Europe's Committee of Ministers, and discussions are still ongoing in this regard[178].

In terms of individual criminal responsibility, the focus is on stabilizing the violated primary international rule of conduct. President *Putin* is under suspicion of having committed a crime of aggression[179]. As said before, Russia's use of force against Ukraine constitutes a manifest violation of the UN Charter, as per the ICC Statute's Article 8 bis (1)[180]. However, the ICC's jurisdiction over the crime of aggression was only activated in July 2018[181], and the Russian Federation has not yet acceded to the ICC Statute. In the case of aggression by a non-party state, the Court can only act if the situation is referred to it by the UN SC.

Currently, there is an intensifying international discussion about establishing a Special Tribunal for the crime of aggression, as demanded by the President of Ukraine at the UN General Assembly[182]. Simultaneously, there are calls to improve the ICC Statute to align the conditions for its jurisdiction over the crime of aggression with its universal orientation. This situation heightens the responsibility not only of the state committing the violation but also of all states under the principle of universal condemnation of serious breaches of international law. States are encouraged to take collective actions that are aimed at restoring peace and ensuring that international norms are respected.

## IV. State Roles – Injured vs. Non-Injured States

The ARSIWA make a distinction between injured and non-injured states when it comes to implementing state responsibility. An injured state is one that has rights to invoke the responsibility of another state due to a breach that directly affects it or breaches

[178]See note 86.
[179]GOODMAN, Ryan & HAMILTON, Rebecca - "*Model Indictment for Crime of Aggression against Ukraine: Prosecutor v. Vladimir Putin*" - In *Just Security* (2022, Mar.14).
[180]"Crime of aggression" means the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of UN".
[181]KRAB, Claus - "*On the Activation of ICC's Jurisdiction over the Crime of Aggression*" - in Journal of International Criminal Justice, vol. 16 (2018).
[182]"Speech by the President of Ukraine at the General Debate of the 77th session of the UN GA" (2022, September 22).

obligations that are owed to a group of states or the international community where the state is particularly affected[183]. James Crawford and Gérard Cohen-Jonathan[184] have contributed to our understanding of what constitutes an injured state. Crawford clarifies that an injured state is one to whom the obligation was individually owed, while Cohen-Jonathan suggests that the definition, while not explicitly outlined, can be inferred from the articles 42 and 48 of the ARSIWA.

Invoking state responsibility involves taking formal actions such as filing a complaint or initiating proceedings before an international Court[185]. This privilege is primarily granted to the injured state, ensuring that the offending state remedies the breach by ceasing the wrongful act, assuring non-repetition, and making appropriate reparations. Also, the criteria for an injured state according to the ARSIWA require that the state had obligations directly breached. This includes states individually affected by bilateral obligations or those that are part of a group or the entire international community, especially when specific conditions of the breach allow for their direct and individual identification as injured. Furthermore, a state can also be considered injured under two conditions if the breach affects a larger group: firstly, if the state is distinctly impacted compared to others who are owed the same obligation, and secondly, if all states to whom the obligation was owed face a fundamental change in the conditions under which the obligation must be performed[186].

Implementation through countermeasures, as we already discussed above, serves as a reaction to non-compliance with international obligations resulting from the initial wrongful act. They are intended to be proportionate responses that coerce the responsible state into fulfilling its obligations[187]. However, the use of countermeasures is strictly regulated under IL to prevent misuse and ensure that they are temporary and appropriate.

In conclusion, the framework of state responsibility and its enforcement through mechanisms such as countermeasures play an essential role in upholding order and adherence to IL. This framework highlights the need for state actions in response to

[183]See note 156, pp. 696-727.
[184]CRAWFORD, James - STATE RESPONSIBILITY - DOCUMENT A/CN.4/490 and Add. 1–7 - First report on State responsibility, Special Rapporteur.
[185]See note 183.
[186]See note 183.
[187]See note 108.

breaches to be carefully measured and aligned with the overarching principles of international legal obligations and justice.

## Chapter IV - Questions Raised – An Ongoing Debate Without Answers

The uncertain nature of the conflict between Russia and Ukraine raises questions about whether a negotiated peace or a ceasefire should be pursued. And according to the VCLT[188], a treaty procured through the threat or use of force in violation of IL principles is void. Therefore, any peace treaty validating Russian territorial gains would be invalid as long as Russian armed forces occupy the territories or the threat of hostilities persists. The only potential exception would be a UN SC resolution under Chapter VII of the UN Charter endorsing a peace treaty. However, such a resolution would be a precarious step due to the paramount importance of the prohibition of the use of force.

It is debated whether the SC has the power, within its broad discretionary powers, to adhere to Ukraine's possible request to conclude a peace treaty with territorial concessions to Russia, despite the limitations posed by the Vienna Convention[189]. Also, it is questioned whether the SC could order an end to hostilities against Ukraine's wishes, possibly out of fear of territorial escalation. And it´s very important to know that the SC would be prohibited from ceding Ukrainian territory to the Russian aggressor based on its core function of averting danger and the duty of states not to recognize acquisitions of territory by force[190].

It is also questioned if whether the SC could impose a binding ceasefire, temporarily freezing Russian territorial gains while leaving territorial status issues unresolved[191]. This would restrict Ukraine's right to self-defense, which is described as an inherent right of every state in the UN Charter. The relationship between the right to self-defense and the Council's power to maintain international peace and security is not decisively addressed in the Charter. While some argue that the SC can limit the exercise of self-defense to avoid an escalation of conflict, others remain skeptical. It is crucial to

[188]Article 52 “a treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of IL embodied in the Charter of UN”.
[189] See note 86.
[190] See note 86.
[191] See note 86.

avoid using this power except in extreme circumstances to prevent appeasement, encourage aggression, and weaken the prohibition of the use of force.

## Conclusion

The prohibition of the use of force, the right of self-defense, and the UN Charter's collective security system are critical elements at the heart of IL. The conflict in Ukraine, where a powerful country with veto power unleashed an aggressive war, highlights the precarious nature of these principles. While the prohibition of the use of force is fundamental for a universal legal order that protects all states regardless of their strength, the Ukraine war underscores the need to stabilize the politically sensitive legal boundary that demarcates the exercise of state power in international relations.

Failure to uphold the prohibition of the use of force could potentially lead to a dangerous shift in the international legal order, where the protections afforded to states would be compromised. It is essential, therefore, for legal scholars to clarify and fortify the border that separates permissible state actions from acts of aggression. However, the use of these instruments to safeguard this border remains a decision for political actors.

From an international legal policy perspective, Ukraine's decision to defend its statehood, territorial integrity, and way of life is commendable. By bravely standing up against aggression, Ukraine not only protects its own interests but also contributes to the resilience of the prohibition of the use of force at a critical moment. While the international community has not fully met Ukraine's legitimate expectations for support in its struggle, the assistance provided, especially considering the significant threats posed by the aggressor, has surpassed mere symbolic gestures.

Given the prolonged nature of the conflict, we must consider tightening existing sanctions or introducing new sanctions targeting additional key sectors of the Russian economy, particularly those that have shown resilience or adaptation to previous sanctions. Although it is crucial not to lose confidence and instead continue to act with unwavering determination. This includes the hope that governments, such as the author's own, will translate their promises of military assistance into tangible actions to support Ukraine.

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