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## Legal analysis of Probable Russian invasion in Ukraine

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*Come to think of Russia, distinct images of military build-up on the borders of Ukraine conjure up. Russia repeats some of its precedented steps in 2022, as it deploys around 100,000 troops on the periphery of Ukraine, but unlike 2014's invasion in Crimea, Ukraine hasn't been attacked and annexed yet. Moreover, shared past and common history further imply the involvement of nationalistic and geostrategic interests. With varying possibilities of future Russian or other states' transgressions, necessary discussions regarding the fundamental ideas of state sovereignty and territorial integrity remain called for. Moreover, is it permissible to preclude a country from entering into diplomatic relations or alliances? And are sanctions that effective as underlined by the West? Analyzing such questions and the concept of self-defense within the spectrum of international law has become imperative in the light of recent movement-beyond-the-borders situations. Hence, it's worth exploring various facets of international law to dwell on the idea of certain aspects of the state and quell thoughts of furthering expansionist tendencies.*

**Keywords:** *military, invasion, international law.*

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### INTRODUCTION

Lust for supremacy has got some countries moving to establish self-delineated boundaries in contemporary times. Geopolitical interests triumph over solidarity and harmonious coexistence. Foundational ideas of sovereignty, territorial integrity, and self-defense get reinvented at every step according to one's convenience. Further, international law is either

subverted or circumvented when it's against the principal state. Not to mention, the military might of some countries permits them to bend the international rules to validate their actions. Precisely, vis-à-vis Russia, ideas of invasion ring louder than ever, as it reinforces its troops along the Ukrainian border. Though left to chances, the idea of invasion cannot be rejected without consideration as it has enough potency to reform the existing structure of states and create a paradigm of aggrandizement for self-serving interests. International law harbors solutions for the problems posed by such acts, but what remains to be seen is how effectively it is implemented and to what extent the states adhere to it. Therefore, it's imperative to hold on to international law, so it holds on to us.

## HISTORY

Russia, the world's largest country, shares deep socio-cultural <sup>1</sup>ties with Ukraine, as both constituted the bygone era of the Soviet Union as one. The special relationship that these two countries exude dates back to even before the days of the Russian Empire in the 18<sup>th</sup> century.<sup>2</sup> Moreover, Ukrainian men played an important role as a part of the Soviets in defeating Germany in World War II.<sup>3</sup> Millions of Russian workers work in Ukraine, and the other way round, and notably the Russia-Ukraine border is the second-largest migration corridor in the world.<sup>4</sup> Further, Crimea consists majorly of the Russian-speaking population. The Russian troops crossed the border in 2014 with a justification, "to ensure proper conditions for the people of Crimea to be able to freely express their will". The Crimean parliament, on March 6, decided to secede from Ukraine and join Russian Federation. However, the common notion was that the referendum was rigged and tilted towards Russian interests, as armed personnel was present at the polling booth and numerous voting irregularities were reported. Finally, on March 21, President Putin formally passed the law (ratified) to integrate Crimea into the

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<sup>1</sup>Krishnadev Calamur, 'Why Ukraine Is Such A Big Deal For Russia'(NPR, 21 February 2014)  
<<https://www.npr.org/sections/parallels/2014/02/21/280684831/why-ukraine-is-such-a-big-deal-for-russia>>  
accessed 08 January 2022

<sup>2</sup>*Ibid*

<sup>3</sup>*Ibid*

<sup>4</sup>*Ibid*

Russian Federation. <sup>5</sup>Subsequently, pro-Russian gunmen besieged government buildings of Donetsk, Luhansk, Horlivka, and Kramatorsk in Eastern Ukraine. The death count in this tug of war has reached 14,000 till today.<sup>6</sup>

In the contemporary scenario, when there is a threat of annexation from the Russian side, although not formal, the Ukrainian authorities are evaluating the chances of 2014 repeating itself from top to bottom. The warning stems from Russian Federation's opposition to Ukraine's involvement in NATO in any capacity and its disinclination to the west's aggressive approach and military support to Ukraine. Since Ukraine's increased involvement with the West may open doors for NATO to establish a closer presence near its borders in what Russia refers to as "the Near Abroad."<sup>7</sup> NATO's military activities in Eastern Europe, especially the 1999 Belgrade bombing,<sup>8</sup> and its attempt to increase influence in the East, especially in Georgia and Ukraine, have stimulated Russia to amass troops on the borders of Ukraine.<sup>9</sup> For ensuring that the chances of an explosive outbreak are minimized, the Russian Federation wants Ukraine to forgo its right to join NATO and wants NATO to return to its pre-1997 borders.<sup>10</sup> Not to mention, recent Russian maneuvering has increased the probability for itself to conjoin with the separatist groups of the Donetsk People's Republic (DPR) and Luhansk People's Republic (LPR) to control the Donbas region of Ukraine.<sup>11</sup> And the concept of "Novorossiia" has alarmed Ukraine regarding possible Russian expansion, since it's about historically Russian territories in Eastern Ukraine<sup>12</sup>

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<sup>5</sup>'The crisis in Crimea and eastern Ukraine' (*Britannica*) <<https://www.britannica.com/place/Ukraine/The-crisis-in-Crimea-and-eastern-Ukraine>> accessed 08 January 2022

<sup>6</sup>*Ibid*

<sup>7</sup> Robert Kagan, 'New Europe, Old Russia' (*Carnegie Endowment for International Peace*, 6 February 2008) <<https://carnegieendowment.org/2008/02/06/new-europe-old-russia-pub-19898>> accessed 06 January 2022

<sup>8</sup> Joseph Laurence Black & Professor J L Black, *Russia Faces Nato Expansion: Bearing Gifts or Bearing Arms?* (Rowman & Littlefield 2000) 110-15

<sup>9</sup> Paul Kirby, 'Is Russia preparing to invade Ukraine? And other questions' (*BBC News*, 7 January 2022) <<https://www.bbc.com/news/world-europe-56720589>> accessed 08 January 2022

<sup>10</sup> *Ibid*

<sup>11</sup> Samir Puri, 'Why is Russia amassing troops at its borders with Ukraine' (*IISS*, 3 December 2021) <<https://www.iiss.org/blogs/analysis/2021/12/why-is-russia-amassing-troops-at-its-border-with-ukraine>> accessed 07 January 2022

<sup>12</sup> Roger McDermott, 'Putin's War for Novorossiia' (*The Jamestown Foundation*, 2 September 2014) <<https://jamestown.org/program/putins-war-for-novorossiia/>> accessed 04 January 2022

## INTERNATIONAL LAW

The activities around Ukraine do not suggest a frozen conflict with no active hostilities. Owing to such a scenario: international law must be looked at from various angles to ensure commitment to universal peace. Lack of an independent authority in implementing international law is not an appropriate reason to dispense with such norms, as they serve as cognitive, explanatory devices, and their absence would lead to a massive depreciation in whatever the world has achieved over the last seven decades.

## SOVEREIGNTY

It all started with the Peace of Westphalia, the foundation of the modern concept of state sovereignty. The treaties propounded “moderation of interstate aggression by a balance of power in which States endeavor to ensure that no actor within the international system wields an excessive measure of power that could upset the equilibrium”.<sup>13</sup> Further, philosophers like Immanuel Kant stuck to the idea of establishing a community of nations to regulate interstate ties by subordinating sovereignty to law.<sup>14</sup> However, the political and military might of international relations made the goal unattainable.<sup>15</sup> Today, the term in discussion rests on the principle that the concerned state is free to pursue its internal matters without outside influence, which suggests that the government controls its people, resources, etc<sup>16</sup>.

Not to mention, the principles of international law prescribe a set of rules to uphold international security, indicating that states must put a check on their acts if they move beyond the agreeable boundaries of behavior and deter other states from exercising sovereignty<sup>17</sup>. the UN charter of 1945 article 2(4) proscribes states from using threat and force for general peace<sup>18</sup>. Diplomatic arsenal and democratic processes must be exhausted before resorting to military

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<sup>13</sup> Peter H. Wilson, *Europe's Tragedy: A History of The Thirty Years War*, (Belknap Pr 2009) 754

<sup>14</sup> Adam Twardowski, 'The Return of Novorossiya: Why Russia's Intervention in Ukraine Exposes the Weakness of International Law', (*Minnesota Journal of International Law*, 2015) <<https://scholarship.law.umn.edu/mjil/351>> accessed 03 January 2022

<sup>15</sup> *Ibid*

<sup>16</sup> "Sovereignty". *A Dictionary of Law* (Oxford University Press 21 June 2018)

<sup>17</sup> Bakhtiyar Tuzmukhamedov, *Power Politics, International Law, and Global Security*, (The Oxford Handbook of the International Law of Global Security 2018)

<sup>18</sup> United Nation Charter, art 2

usage. Further, title to territory and sovereignty hinges on international recognition, which in Ukraine's case, is a condition fulfilled by unequivocal validation from countries across the globe, including Russia<sup>19</sup>. As a result, Ukraine exercises sovereignty over its territory and legitimate authority over all the illegally Russian-occupied territories.

## LEGITIMATE AUTHORITY AND TERRITORIAL INTEGRITY

The Ukrainian government is elected democratically by the conscious minds of the state, which automatically legitimizes its authority. Russian conditions regarding western arms exports to Ukraine are unjustifiable since international law permits the transfer of weapons and training of the army or personnel of legitimate authorities.<sup>20</sup> Resolution 68/262 titled "Territorial Integrity of Ukraine" recalls Article 2(4), and at the same time, UNGA Resolution 2625 (XXV) result, the Friendly Relations Declaration, 1970, disallows territories from being forcibly acquired by another state and crafts rules and norms that are agreeable to the international lawyers and states to support 'friendly relations'<sup>21</sup>. The ICJ, in the Corfu channel case, underscored that "between independent States, respect for territorial sovereignty is an essential foundation of international relations"<sup>22</sup>. Further, acts like Helsinki Final Act (1975) and the treaty on Friendship between Russia and Ukraine signifies respect for the boundaries of the European states and unqualified acknowledgment of the periphery of former constituents of the Soviet Union, especially Ukraine, inclusive of Crimea.

Also, The Russian Federation doesn't possess any cognizable rights against the territory of its neighbors.<sup>23</sup> Ironically, the foreign policy incorporated by the Russian government in 2013,

<sup>19</sup> 'Overview of Security Council Meeting Records' (*Security Council Report*, 19 March 2014)

<<https://www.securitycouncilreport.org/un-documents/document/spv7144.php>> accessed 04 January 2022

<sup>20</sup> Patrycja Grzebyk, 'Classification of the Conflict between Ukraine and Russia in International Law (Ius ad Bellum and Ius in Bello)' (*Polish Yearbook of International Law*, 2014)

<<https://journals.pan.pl/publication/122308/edition/106610/polish-yearbook-of-international-law-2014-no-xxxiv-classification-of-the-conflict-between-ukraine-and-russia-in-international-law-ius-ad-bellum-and-ius-in-bello-grzebyk-patrycja>> accessed 06 January 2022

<sup>21</sup> Moyn S and Özsu U, *The UN Friendly Relations Declaration at 50: An Assessment of the Fundamental Principles of International Law* (Cambridge University Press 2020)

<sup>22</sup> *United Kingdom of Great Britain and Northern Ireland v Albania* [1949] [ICJ] 15 XII 49

<sup>23</sup> Thomas Grant, 'Russia's Invasion of Ukraine: What does International Law Have to Say?' (*Lawfare Blog*, 25

August 2015)<<https://www.lawfareblog.com/russias-invasion-ukraine-what-does-international-law-have-say>> accessed 05 January 2022

denounced coercive and arbitrary steps taken outside the defined framework of the UNSC and discredited any politically and self-serving motivated interpretation of international <sup>24</sup>laws when dealing with the idea of state sovereignty, territorial integrity, and rights of people to self-determination. Further, when an active threat of invasion looms over Ukraine the G7 countries have warned Russia of using any force in changing the international border, as its strictly prohibited under international law.<sup>25</sup>

## ALLIANCES AND DIPLOMATIC RELATIONS

In this era of globalization, countries are bound to interact with one another to sustain peacefully and realize their needs. Countries shall not be restricted from forging cooperative international relations. Each main diplomatic relation approach to international law-making and compliance underlines corresponding foreign policy decision-making<sup>26</sup>. In the case of *Nicaragua v the United States of America, 1984*, regarding military and para-military activities, the ICJ, concerning an alliance, in particular, pronounced "Similar considerations apply. Whatever the impact of individual alliances on regional or international political-military balances, the Court is only competent to consider such questions from the standpoint of international law. From that aspect, it is sufficient to say that State sovereignty extends to the area of its foreign policy, and there is no rule of customary international law to prevent a State from choosing and conducting a foreign policy in coordination with that of another State."<sup>27</sup> The particular judgment was hailed by Nicaragua's ally, the USSR. Moreover, a sovereign state assumes the freedom to choose and conduct its foreign policy in coordination with that of another state of its choice.<sup>28</sup> Russian diplomatic predicaments cannot be valid grounds for

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<sup>24</sup> See paras 15 & 31b

<sup>25</sup> Lara Jakes, 'Diplomats Warn Russia of 'Massive Consequences' if it Invades Ukraine' (*The New York Times*, 12 December 2021) <<https://www.nytimes.com/2021/12/12/us/politics/g7-russia-ukraine.html>> accessed 05 January 2022

<sup>26</sup> Joel H. Westra, 'International Law and Foreign Policy' (*Oxford Research Encyclopedias*, 24 May 2017) <<https://oxfordre.com/politics/view/10.1093/acrefore/9780190228637.001.0001/acrefore-9780190228637-e-439>> accessed 10 January 2022

<sup>27</sup> *Nicaragua v United State* [1986] ICJ 14

<sup>28</sup> Lauri Malksoo, 'Russia, sanctions, and the future of international law' (*Oxford University Press Blog*, 11 September 2017) <<https://blog.oup.com/2017/09/russia-sanctions-international-law/>> accessed 6 January 2022

refraining Ukraine from forging or entering into alliances with like-minded nations or for self-preservation.

## SANCTIONS

Sanctions are political and economic instruments used against states or organizations to guard general peace, national and international security interests, and international law.<sup>29</sup> The primary aim of sanctions is not to inflict punitive damages on the violating state but pressurize the same into returning to the status quo ante and ceasing its wrongful conduct.<sup>30</sup> It's a fact that western countries are sincere supporters of the idea of sanctions. The broad term of sanctions can be divided into two parts:

- centralized sanctions
- decentralized sanctions.

The former relates to the sanctions imposed by the UNSC, and the latter refers to the sanctions imposed by the individual countries. Centralized sanctions carry more weight than decentralized ones since the UN lays out the former, which becomes binding on all the member states.<sup>31</sup> However, when one of the P5 countries is a party to a conflict, technicalities of veto power, also called the Yalta formula<sup>32</sup>, render minimal chances of implementation of centralized sanctions.<sup>33</sup> Furthermore, the Russian Federation deems all the sanctions, except those decided by the UNSC, unilateral and illegitimate.<sup>34</sup> Adding insult to injury, Russia being a P5 country, incapacitates the UNSC in taking a collective decision against itself. Moreover, financial sanctions against economic rivals are violative of fair play rules of the WTO unless

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<sup>29</sup> 'Sovereignty' (*Britannica*, 06 August 2019) <<https://www.britannica.com/topic/sovereignty>> accessed 80 January 2022

<sup>30</sup> Antonios Tzanakopoulos, 'The EU's latest sanctions against Russia: The legal basis and how they will work in practice' (*London School of Economics Blog*, 1 August 2014) <<https://blogs.lse.ac.uk/europpblog/2014/08/01/the-eus-latest-sanctions-have-the-potential-to-put-pressure-on-russia-over-ukraine-but-it-is-too-early-to-tell-how-effective-they-will-be/>> accessed 05 January 2022

<sup>31</sup> Antonios Tzanakopoulos, 'Explainer: how will sanctions against Russia work?' (*The Conversation*, 30 July 2014) <<https://theconversation.com/explainer-how-will-sanctions-against-russia-work-29920>> accessed 06 January 2022

<sup>32</sup> United Kingdom of Great Britain and Northern Ireland (n 22)

<sup>33</sup> Thomas Grant (n 23)

<sup>34</sup> United Kingdom of Great Britain and Northern Ireland (n 22)

the rights of a nation are contravened.<sup>35</sup> To illustrate the ineffectiveness of financial sanctions, the imposition of the Export Control (Sanctions) Order 2014 by Britain after Crimean annexation was argued by Rosneft as, “provisions on financial assistance are contrary to Article 52 of the Partnership Agreement, which provides for the free movement of payments and capital between the Russian Federation and the EU.” Such loopholes diminish the likelihood of optimal utilization of decentralized sanctions.<sup>36</sup>

## SELF DEFENCE

It is difficult to forget about the inherent right of self-defense of the states against imminent dangers. Article 51 of the UN Charter stresses, “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 United Nations.”<sup>37</sup> Members are obligated to inform the UNSC and not take any steps that would influence the responsibility and authority of the Organisation.<sup>38</sup>

Further, the act in concern must be a direct consequence of an imminent threat from the aggressor, and the retribution must be proportional to the nature of the transgression.<sup>39</sup> Adding to it, certain scholars and governments have argued for pre-emptive self-defense in the face of imminent danger, with no other possible tool at disposal as to lighten the tensions. The most famous case vis-à-vis this principle is the 1837 Caroline case, wherein British soldiers in Canada crossed the Niagara River to attack the American steamer Caroline, which helped

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<sup>35</sup> Ken Silverstein, ‘A Russian Invasion Of Ukraine Would Have Profound Implications For International Energy Markets’ (*Forbes*, 5 January 2022) <<https://www.forbes.com/sites/kensilverstein/2022/01/05/a-russian-invasion-of-ukraine-would-have-profound-implications-on-international-energy-markets/?sh=93efa714105c>> accessed 07 January 2022

<sup>36</sup> Ekaterina Aksenova, ‘Are sanctions against Russia legal under international and EU law? Can they limit trading and maritime services?’ (*Lexology*, 2 April 2015) <<https://www.lexology.com/library/detail.aspx?g=9271b30c-2e97-4438-b222-e5fd63d40d30>> accessed 06 January 2022

<sup>37</sup> Alex Potcovaru, ‘The International Law of Anticipatory Self-Defense and U.S. Options in North Korea’ (*Lawfare*, 8 August 2017) <<https://www.lawfareblog.com/international-law-anticipatory-self-defense-and-us-options-north-korea>> accessed 11 January 2022

<sup>38</sup> United Nation Charter, art 39

<sup>39</sup> *Ibid*

Canadian rebels. <sup>40</sup>The Britishers classified their actions as a part of “legitimate self-defense”. However, then-Secretary of State Daniel Webster asserted that force before the suffering of an attack can only be legitimized as “self-defense” when the necessity to respond is “instant, overwhelming, and leaving no choice of means, and no moment for deliberation.” <sup>41</sup>The U.N.’s 2004 High-Level Panel on Threats, Challenges and Change qualified the right of self-defense, when faced with imminent danger. <sup>42</sup>If we apply these principles in the situation at hand, it can be inferred that Ukraine can retort either if it’s directly attacked by Russia or if it has identified a certain impending threat of aggression from Russia. Seized with the fact that Russia is a signatory to the Budapest Memorandum on security assurances, 1994, <sup>43</sup>where it is obligated not to violate any Ukrainian territory, one may find it safe to assume that the Federation can be held responsible for its actions, and Ukraine can base its claim of self-defense if Russia takes such big of a leap in the current scenario.

## CONCLUSION

The world is in constant need of healing and the last thing it requires is an outbreak of needless wars. The hovering of Russian troops along the Ukrainian borders has already sent tremors in the west souring relations to an indeterminable extent. Russia must chart its territory responsibly to avoid global fallout, as China in East Asia, already putting efforts in consolidating Taiwan, has its eyes set on how the Ukrainian crisis unravels. International law has served its purpose in the past in various circumstances, and today, its potency must be harnessed yet again in breaking the revisionist tendencies and reinforcing the weakened norm of territorial integrity. It’s assessed that if Russia prevails, the new global order setup might be far more different from what Russia sought and far more regressive for what the society has achieved lately. Therefore, conscious restraint by the principal party or forceful intervention using international law will be required to curb the fanning of already glowing embers.

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<sup>40</sup> Edward Collins Jr. & Martin A. Rogoff, ‘The Caroline Incident of 1837, the McLeod Affair of 1840–1841, and the Development of International Law’ (*Taylor & Francis Online*, 11 June 2010)

<<https://www.tandfonline.com/doi/abs/10.1080/02722019009481522>> accessed 11 January 2022

<sup>41</sup> United Nation Charter (n 38)

<sup>42</sup> *Ibid*

<sup>43</sup> ‘Right to Self Defense’ (*US-Ukraine Foundation*) <<https://usukraine.org/policy-issues/right-to-self-defense>> accessed 10 January 2022