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Russian Aggression against Ukraine in 2022 under *Jus ad Bellum**

*Bence Kis Kelemen***

Abstract

On 24 February 2022, Russia launched a full-scale invasion against Ukraine. This invasion marks a new milestone in the ongoing armed struggle between the two states since 2014, when Russia annexed a part of Ukraine, namely Crimea and Sevastopol and supported armed resistance in the Eastern part of the country. President Putin pointed to a number of international legal justifications for the invasion, i.e. self-defense, humanitarian intervention and perhaps intervention by invitation. This article examines all possible Russian justifications for the use of force, and concludes, that they have no basis in lex lata international law. However, the arguments advanced seem similar to the slippery slope arguments used by Western powers in their armed conflicts in the past two decades. The paper also offers a glance at the response of the international community to the invasion.

Keywords: Russia, Ukraine, aggression, jus ad bellum, NATO.

1. Introductory Remarks

On 24 February 2022, Russia launched a full-scale invasion against Ukraine.[1] The conflict can legitimately be seen as the largest armed conflict in Europe since World War II, causing serious and long-lasting damage not only to the parties involved in the conflict, but also to the region and the global economy as a whole.[2] This paper analyzes the armed attack launched by Russia through the lens of the international law on the use of force (*jus ad bellum*), in particular, the justifications Russia has advanced to legitimize its invasion. There are, and certainly will be some, who consider this armed conflict as another nail in the coffin of the entire international

* A different version of this article has already been published in Hungarian, *see* Bence Kis Kelemen & Mátyás Kiss, 'Oroszország 2022-es inváziója Ukrajna ellen a jus ad bellum tükrében', *Katonai Jogi és Hadijogi Szemle*, Vol. 10, Issue 4, 2023, pp. 7-48.

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1 *See e.g.* www.reuters.com/world/europe/russia-has-launched-full-scale-invasion-ukraine-kyiv-says-2022-02-24/.

2 Suffice it to mention that from the beginning of the conflict 8.1 million refugees left Ukraine's territory until 11 April 2023. Furthermore, the global economy has suffered a severe blow. *See* at https://data.unhcr.org/en/situations/ukraine and www.oecd.org/newsroom/russia-s-war-of-aggression-against-ukraine-continues-to-create-serious-headwinds-for-global-economy.htm.

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legal order,[3] but as this article shows, although Russia's military actions clearly violate the prohibition on the use of force, they – in and of themselves – cannot be regarded as a complete failure of international law. The article first deals with the immediate antecedents of the conflict and its 'beginning' in 2022 (Section 2). In turn, the legality of Russian military actions is analyzed under *jus ad bellum* (Section 3), which is then supplemented by states' reactions to the invasion (Section 4), Finally, the paper draws some conclusions, and elaborates on the consequences of the unlawful use of force on the part of Russia (Section 5).

At the outset, it must be pointed out, that this analysis deals solely with the legality of the invasion under the *jus ad bellum régime*, which means that it does not relate to international humanitarian law issues, such as possible violations of the law of armed conflict, nor does it elaborate on international criminal law questions. Only one supplementary remark is necessary in connection with this issue, namely, that the legality assessment of a military operation presupposes compliance with all applicable legal standards, may that be a *jus contra bellum* norm or an international humanitarian law principle or perhaps even a human rights obligation. Consequently, illegality in one mentioned field can taint the overall legality of the operation. However, it does not mean, that legality or illegality in one field automatically influences the legality of the operation under the other applicable legal *régime* as well. This means, that a military operation can be legal under international humanitarian law even if the use of force was wrongful.[4]

3 Lilla Nóra Kiss & Mónika Palota, 'Is Putin's War being another nail in the international legal order's coffin?', *Dialogue for Regional Security & Science*, 20 April 2022, at https://security-science.org/2022/04/20/is-putins-war-being-another-nail-in-the-international-legal-orders-coffin/?fbclid=IwAR3PuX9P_7eXdtf89GX_FfvazH-Gpk_w7zsz7WWnL98E-6vnNYHrAVwf1sA. This phenomenon is not new. For example, as early as the 1970s, Thomas M. Franck 'killed' the prohibition on the use of force, which he then 'resurrected' in 2003 just to kill it again in the context of the war in Iraq. *See* Thomas M. Franck, 'Who Killed Article 2(4)? or: Changing Norms Governing the Use of Force by States', *The American Journal of International Law*, Vol. 64, Issue 5, 1970, pp. 809-837; Thomas M. Franck, 'What happens Now? The United Nations after Iraq', *The American Journal of International Law*, Vol. 97, Issue 3, 2003, p. 609. *See* more recently, Monica Hakimi, 'What Might (Finally) Kill the *Jus ad Bellum?', Public Law and Legal Theory Research Paper Series*, No. 688, 2020, pp. 1-20. However, as early as 2011, Gábor Kajtár noted that it would be premature to talk about the death of the prohibition of on the use of force, as the norm and the connected system of *jus contra bellum* are capable of rebuilding themselves and successfully overcoming existing obstacles. *See* Gábor Kajtár, 'Az általános erőszaktilalom rendszerének értéktartalma és hatékonysága a posztbipoláris rendszerben', *in* Gábor Kajtár & Gábor Kardos (eds.), *Nemzetközi jog és európai jog: új metszéspontok – Ünnepi tanulmányok Valki László 70. születésnapjára*, Saxum – ELTE ÁJK, Budapest, 2011, p. 77. I agree with this latter position, which is presented in the context of this paper as well.

4 Carsten Stahn, ''Jus ad bellum', 'jus in bello'… 'jus post bellum'? – Rethinking the Conception of the Law of Armed Force', *The European Journal of International Law*, Vol. 17, Issue 5, 2006, pp. 924-925; Christopher Greenwood, 'The relationship between ius ad bellum and ius in bello', *Review of International Studies*, Vol. 9, Issue 4, 1983, p. 223; *Cf*. Human Rights Committee, General Comment No. 36, 3 September 2019, CCPR/C/GC/36, para. 70.

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2. Factual and Historical Background of the Invasion

First, it is submitted, that the historical background of the territory that is now the internationally recognized Ukraine is immaterial for the purposes of an analysis pertaining to the use of force against the state, therefore I will restrict myself to the 'immediate' antecedents of the invasion, which brings us to 2013.

The story begins with Viktor Yanukovych, then president of Ukraine, who failed to enter into an association agreement with the EU in light of Russian opposition to the treaty, which lead to protests and President Yanukovych's subsequent removal from power in 2014.[5] In the last days of February 2014, Russian separatist militants and the Russian military took control of Crimea and Sevastopol, where they quickly organized a referendum for the purpose of seceding from Ukraine and acceding to Russia.[6] The UN's General Assembly afterward adopted resolution 68/262, which declared that the referendum has 'no validity'.[7] International legal scholars widely declared Russia's actions unlawful, because they violated the principle of non-use of force,[8] and/or the prohibition of external intervention.[9]

In parallel with the events in Crimea and Sevastopol, pro-Russian forces took action in Eastern Ukraine as well. The separatists gained significant territories in April and May 2014 and declared their independence as the Donetsk and Luhansk People's Republics. These separatist entities have been fighting Ukrainian government forces with Russian support ever since.[10]

This leads us to 2021, when in November, Russia started to deploy troops along the border with Ukraine for the second time that year. On 21 February 2022 the Donetsk and Luhansk People's Republics, jointly requested President Putin to recognize the two republics as states, which he did and ordered 'peacekeepers' to enter these territories. Subsequently Russia announced that the separatist 'states' have requested military assistance from Russia. This marks the beginning of Russia's full-scale invasion against Ukraine on 24 February 2022. The attack was launched from three distinct directions: from the North (from the territory of

5 Christin Marxsen, 'The Crime Crisis. An International Law Perspective', *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, Vol. 74, 2014, pp. 368-369.

6 Mary Ellen O'Connell, 'The Crises in Ukraine – 2014', *in* Tom Ruys *et al*. (eds.), *The Use of Force in International Law. A Case-Based Approach*, Oxford University Press, Oxford, 2018, pp. 855-856.

7 Resolution adopted by the General Assembly on 27 March 2014, A/RES/68/262, para. 5.

8 O'Connell 2018, pp. 861-871; Robin Geiß, 'Russia's Annexation of Crimea: The Mills of International Law Grind Slowly but They Do Grind', *International Law Studies*, Vol. 91, 2015, pp. 431-432.

9 The authors claim, that Russia did not use force against Ukraine during the annexation of Crimea and Sevastopol, however its actions constituted unlawful intervention. *See* Russell Buchan & Nicholas Tsagourias, 'The Crisis in Crimea and the Principle of Non-Intervention', *International Community Law Review*, Vol. 19, Issue 2-3, 2017, p. 193.

10 *See* at www.bbc.com/news/world-europe-26919928 and www.rferl.org/a/separatists-declare-luhansk-peoples-republic/25364894.html. József Padányi & János Tomolya, 'Háború és béke Ukrajnában, avagy keleten a helyzet változatlan – 2. rész', *Hadtudomány Folyóirat*, Vol. 27, Issue 3-4, 2017, p. 29.

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Belarus), from the East (Russia) and from the South (Crimea).[11] At time of writing, the armed conflict between Russia and Ukraine is still ongoing but Belarus did not actively enter the conflict.

3. Legal Analysis of the Invasion under Jus ad Bellum

The starting point for the international legal analysis of the Russian invasion launched on 24 February 2022 must be Russia's own justifications offered for the military operation. This follows from the judgment of the ICJ in the *Nicaragua case*, in which the judges held that legal views can only be attributed to states which they have formulated themselves.[12] Accordingly, the letter sent by Russia to the UN Security Council on the day of the attack (Article 51 letter), in which[13] the state expressed its legal views in relation to the attack serves as the aforementioned starting point.

The Article 51 letter was unusual not only in terms of its purpose but also in its form, since it did not take the form of a 'letter' in the traditional sense in which the state announced the reasons for its military operation, but it was a written version of President Putin's speech in Kremlin at 6 a.m. on the day of the invasion.

In his speech, President Putin first complained about NATO's expansion to the east and pointed out the various violations of international law committed by the 'West' in recent years, such as the bombing of Belgrade and Libya and the occupation of Iraq and military actions in Syria.[14] Although some authors see these lines as an announcement of self-defense against the threat posed by NATO to Russia,[15] I believe, the better approach is to consider them as political statements, as Russia has in fact announced and carried out self-defense actions against Ukraine, but it has not taken any military action against any NATO Member State.[16]

However, in addition to the above, the Article 51 letter expresses a genuine legal view on Russia's invasion against Ukraine, which essentially bases the legality of the 'special military operation' on the right of self-defense under Article 51 of the UN Charter. As part of its right to self-defense, Russia invoked the protection

11 *See e.g.* https://tass.com/world/1407325; www.france24.com/en/europe/20220221-putin-recognises-ukraine-rebel-regions-as-independent; www.theguardian.com/world/2022/feb/21/ukraine-putin-decide-recognition-breakaway-states-today; www.dw.com/en/russia-says-donbas-separatists-ask-putin-for-military-support/a-60893224; www.nytimes.com/interactive/2022/world/europe/ukraine-maps.html.

12 ICJ, *Military and Para Military Activities in and against Nicaragua (Nicaragua v United States of America)*, Merits, Judgment of 27 June 1986 ICJ Reports, 14. (*Nicaragua case*) at 124, para. 266.

13 Letter dated 24 February 2022 from the Permanent Representative of the Russian Federation to the United Nations addressed to the Secretary-General, 24 February 2022 S/2022/154 (Article 51 letter).

14 Article 51 letter, pp. 2-3.

15 James A. Green *et al.*, 'Russia's attack on Ukraine and the *jus ad bellum', Journal on the Use of Force and International Law*, Vol. 9, Issue 1, 2022, pp. 8-13.

16 Reference must be made to the Russian threats against Finland's and Sweden's accession to NATO. *See e.g.* at www.bbc.com/news/world-europe-61420185, or www.theguardian.com/world/2022/jun/29/russia-condemns-nato-invitation-finland-sweden. As Finland joined NATO, it remains to be seen what the response of Russia will be.

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of its own nationals against an alleged genocide, a preventive type of self-defense justified by the threat coming from the territory of Ukraine, and a collective self-defense alongside the Donetsk and Luhansk People's Republics.[17] In addition to the above, the reference to genocide is typically a legal basis advanced for justifying humanitarian interventions, furthermore, in connection with the requests for assistance from the Donetsk and Luhansk People's Republics intervention by invitation as a standalone justification may also arise. These justifications will be examined separately below.

Before turning to the issues of self-defense, it is useful to outline the international legal framework applicable to inter-state use of force. First, the prohibition on the use of force is one of the most basic principles of modern international law.[18] This norm exists as a treaty norm in Article 2(4) of the UN Charter and – according to the ICJ – it can also be regarded as a customary rule.[19] The International Law Commission considers this to be one of the peremptory norms of international law (*jus cogens*).[20] The content of the prohibition on the use of force relates to the use of cross-border armed force between states, accompanied by a ban on threatening to use such force as well.[21]

There are exceptions to the prohibition on the use of force. There are two generally recognized exceptions to the ban, which are the right of self-defense and a resolution of the UN Security Council authorizing the use of force under Chapter VII of the Charter.[22] In addition, there are situations which either do not fall within the scope of the ban itself or exist as an additional stand-alone exception. For example, according to János Bruhács, non-international armed conflicts, *i.e.* internal armed conflicts also serve as an exception,[23] furthermore, the consent of the territorial state is also commonly considered as an exception in international legal scholarship.[24] Last but not least, humanitarian intervention can also be mentioned as a disputed 'exception' from the ban on interstate use of force.[25]

Given the fact, that the Russian legal views underlying the invasion were essentially contained in an Article 51 letter, that is to say, referring to the right to self-defense, it is appropriate to briefly outline the nature and content of that rule as well. The right to self-defense, like the prohibition on the use of force, is of a

17 Article 51 letter, pp. 5-7.

18 János Bruhács, 'Jus Contra Bellum – Glosszák az erőszak nemzetközi jogi tilalmához', *in* László Blutman (ed.), *Ünnepi kötet dr. Bodnár László egyetemi tanár 70. születésnapjára*, SZTE ÁJTK, Szeged, 2014, p. 73.

19 *Nicaragua case*, at 89, para. 188.

20 Fourth report on peremptory norms of general international law (jus cogens) by DIRE Tladi, Special Rapporteur, 31 January 2019, A/CN.4/727, para. 68.

21 UN Charter, Article 2(4). Stuart Casey-Maslen, *Jus ad Bellum – The Law on Inter-state Use of Force*, Hart, Oxford, 2020, pp. 20-22.

22 Noam Lubell, *Extraterritorial Use of Force Against Non-State Actors*, Oxford University Press, Oxford, 2011, p. 26.

23 János Bruhács, *Nemzetközi jog I. – Általános rész*, Dialóg Campus, Budapest-Pécs, 2011, p. 241.

24 Casey-Maslen 2020, p. 39.

25 In theory, many forms of humanitarian intervention could be justified, but most of them cannot be seen as a valid exception from the prohibition, and thus rightful use of force. *See* Gábor Sulyok, *A humanitárius intervenció elmélete és gyakorlata*', Gondolat, Budapest, 2004, pp. 175-218.

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treaty and customary law norm quality and it is also of *jus cogens* nature,[26] according to which, in the event of an armed attack, the use of interstate force for defensive purposes is permitted, subject to the requirements of necessity and proportionality,[27] while notifying the UN Security Council and pending collective action by the organization.[28]

3.1. Protection of Nationals

Although the notion of 'protection of nationals' as a legal basis of self-defense does not appear *expressis verbis* in the Article 51 letter of Russia, but the letter itself refers in several places to this underlying factual situation. President Putin indicated in his speech that there is an ongoing genocide in Donbas against millions of people who can only rely on Russia.[29] The letter marked the priority objectives of the defensive action as a pushback against genocide and ill-treatment, as well as the protection of the Russian people.[30]

The protection of nationals is of course also reflected in international legal scholarship, but it is by no means clear that it can be lawfully relied on as a ground for self-defense. For example, Yoram Dinstein takes the view that the use of force against diplomatic delegates, visiting dignitaries can clearly serve as a lawful reason for action in self-defense, as well as an attack on individuals for reasons of belonging to a nationality.[31] Others accept this legal basis only in case of attacks against heads of states or former heads of states.[32] Others, such as Gábor Kajtár, point out that although states tend not to condemn acts that respond to attacks on nationals, this is rejected by the majority of international lawyers and state practice.[33] This is also true for attacks on diplomatic missions.[34]

When considering this issue, it is worth pointing out, first, that 'attacks on nationals' is not included in UN General Assembly Resolution 3314(XXIX), which defines aggression and gives an illustrative list of possible forms of aggressions,[35] furthermore the ICJ in the *Nicaragua case*, blurring the concepts of aggression and

26 UN Charter, Article 51. *Nicaragua case* at 84, para. 176. Gábor Kajtár, 'Az önvédelem jogának *jus cogens* természete', *in* Gábor Béli *et al*. (eds.), *Emlékkötet Herczegh Géza születésének 90. évfordulója alkalmából*, Publikon, Pécs, 2018, p. 125; Tom Ruys, *'Armed Attack' and Article 51 of the UN Charter – Evolutions in Customary Law and Practice*, Cambridge University Press, Cambridge, 2010, p. 28.

27 Christine Gray, *International Law and the Use of Force, 3rd edition*, Oxford University Press, Oxford, 2008, p. 150; Gábor Kajtár, 'Az erőszak tilalma', *in* András Jakab & Balázs Fekete (eds,), *Internetes Jogtudományi Enciklopédia*, 2018, [51].

28 UN Charter, Article 51.

29 Article 51 letter, p. 5.

30 Id. p. 6.

31 Yoram Dinstein, *War, Aggression and Self-Defense, 6th edition*, Cambridge University Press, Cambridge, 2017, pp. 219-220.

32 Casey-Maslen 2020, pp. 59-60.

33 Kajtár 2018, p. 57.

34 Gábor Kajtár & Gergő Balázs, 'Beyond Tehran and Nairobi: Can Attacks against Embassies Serve as a Basis for the Invocation of Self-Defense?', *European Journal of International Law*, Vol. 32, Issue 3, 2021, pp. 887-888.

35 3314(XXIX), Definition of Aggression, Adopted on 14 December 1974, A/RES/3314.

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armed aggression, deemed armed attack the most grave form of the use of force.[36] This does not preclude states from considering acts of violence against their nationals as an armed attack, but it still indicates that when they had a chance to create an illustrative list for such measures, this had been left out.

Tom Ruys, with a comprehensive analysis of customary international law, showed that even though certain states such as the US, UK, Israel and France support self-defense actions based on the protection of nationals, this is not sufficient, without the support of the majority of states, to establish a customary basis for the existence of such a right of self-defense.[37]

Owing to the above, it can be concluded that Russia's 'self-defense' actions cannot be justified based on the protection of nationals in the absence of a customary international law norm to that end. In particular, the fact that the Soviet Union, Russia's predecessor, has repeatedly objected to such actions, *e.g.* the US military operations in Panama in 1965, the Tehran Hostage Crisis, and in connection with the adoption of the aggression General Assembly resolution.[38] Although it should also be noted that Russia later referred to just this legal basis, *e.g.* in the case of its military actions against Georgia in 2008[39] and during the annexation of Crimea and Sevastopol, among others.[40]

The invasion by Russia on this basis would still be unacceptable, even if such customary law norms existed. This is because it is widely accepted in both literature and state practice that protracted large-scale military operations, such as the ongoing armed attack against Ukraine, cannot be launched due to perceived or real attacks on nationals.[41] It should also be noted that in the course of just a few years Russia issued some 720,000 passports to the Russian-speaking population living in Eastern Ukraine, as it did in the case of Georgia, Crimea and Sevastopol, in fact creating the community of nationals whose protection could be invoked in the future,[42] in other words, creating a pretext for intervention. Tamás Hoffmann also argues that Russia's conduct in this regard constitutes an abusive exercise of rights.[43] However, there is room for criticism here, namely, a generally accepted principle of international law is that the state decides who it considers to be its citizen,[44] and international law does not unconditionally recognize the prohibition of abuse of rights as a general international law norm.[45] Nevertheless, it should be

36 *Nicaragua case* at 91-93. pp. 191, and 193., Marko Milanovic, 'Special Rules of Attribution of Conduct in International Law', *International Law Studies*, Vol. 96, 2020, p. 332. It should be noted, however, that according to Kajtár, 'armed attack' is a form of 'aggression', where 'armed attacks' are the most severe forms of 'aggression'. *See* Gábor Kajtár, *A nem állami szereplők elleni önvédelem a nemzetközi jogban*, ELTE Eötvös, Budapest, 2015, p. 75. I also share this latter view.

37 Ruys 2010, p. 240, and 243.

38 Id. pp. 221, 225-226, and 233.

39 Id. p. 232.

40 Marxsen 2014, p. 372; O'Connell 2018, p. 863.

41 Ruys 2010, p. 244; Gray 2008, p. 159.

42 Green 2008, pp. 15-16.

43 Tamás Hoffmann, 'War or peace? – International legal issues concerning the use of force in the Russia-Ukraine conflict', *Hungarian Journal of Legal Studies*, Vol. 63, Issue 3, 2022, pp. 215-216.

44 János Bruhács, *Nemzetközi jog II. – Különös rész*, Dialóg Campus, Budapest-Pécs, 2011, p. 153.

45 Alexandre Kiss, 'Abuse of Rights', *Max Planck Encyclopedia of Public International Law*, 2006, para. 10.

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emphasized that the effectiveness of citizenship[46] is at least questionable in these 720,000 cases. In this case, based on the practice of the ICJ, it cannot be expected from other states to recognize citizenship that is not based on a real and factual relationship between the state and the individual.[47] However, it is important to note that this does not imply a positive obligation on states to grant genuine citizenship, but merely that in the absence of this, other states will not be obliged to recognize citizenship that is not in conformity with the principle of effectiveness.[48] Although the customary international law nature of this rule is debatable for individuals with either single or dual citizenship,[49] it further reinforces the finding that citizenship can be granted even in the absence of a real and factual relationship, and it does not constitute an abuse of rights.[50]

Moreover, of course, the principles of necessity and proportionality would still have been violated by the invasion in question even if the right to self-defense would be applicable in the situation at hand.[51]

Up until now, we have of assumed, for the sake of argument, that Russia's implications are factually accurate as to the attacks and genocide against the Russian population living in Ukraine. It should also be noted however that, although there is evidence of widespread human rights violations in Eastern Ukraine since the beginning of the 2014 conflict, the fact that this would have consistently been directed against Russian nationals remains questionable.[52]

Last but not least, it should be pointed out that the protection of nationals also has an anticipatory self-defense aspect, which is discussed in turn.

3.2. Anticipatory Self-Defense

The discussion of anticipatory self-defense must begin with a very brief conceptual overview, as there is a terminological confusion in international legal scholarship in this respect. Thus, there are no universally used concepts when it comes to preventive operations.[53] I believe that a distinction can be drawn between reactive and anticipatory self-defense, where the former responds to an armed attack that

46 In the *Nottebohm case*, the ICJ ruled on the requirement of the effectiveness of citizenship in the context of providing diplomatic protection. This can be assessed based on various factors, such as the person's place of residence, center of interests, family ties, participation in public life, commitment to a state, and the upbringing of their children. *See* ICJ, *Nottebohm Case (second phase)*, Judgment of 6 April 1955, 1955 ICJ Reports 4. (*Nottebohm case*) at 22. Some of these attachment factors can naturally be present among the Russian population living in Eastern Ukraine as well.

47 It should be noted that this has been determined in connection with diplomatic protection, *see Nottebohm case* at 23; and Mónika Ganczer, *Állampolgárság és államutódlás*, Dialóg Campus, Budapest-Pécs, 2013, p. 67.

48 Ganczer 2013, pp. 68-69.

49 Id. pp. 75-76, and 78-80.

50 However, this is nuanced by the fact that at the time of the judgment, the requirement of effectiveness was not established as a customary international law rule. Therefore, the ICJ's decision may have been influenced by the prohibition of abuse of rights, which, however, did not appear in the judgment.

51 Green 2008, p. 16.

52 Id. p. 15.

53 *See e.g.* Craig Martin, 'Challenging and Refining the "Unwilling or unable" Doctrine.' *Vanderbilt Journal of Transnational Law*, Vol. 52, Issue 2, 2019, pp. 415-416; Lubell 2011, p. 55.

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has already occurred, and the latter seeks to 'respond' to something that has not yet come to pass.[54]

In its Article 51 letter, Russia referred not only to the protection of nationals, but also to a form of anticipatory self-defense. In his speech, President Putin stressed that self-defense is being used against threats and a more serious – future – 'calamity'.[55] References to anticipatory self-defense appear in several places in the text, *e.g.* when it comes to threats to Russia's security stemming from Ukrainian territory, activities to acquire nuclear weapons and the historical circumstance that the threats posed by Nazi Germany were not timely addressed during World War II. President Putin noted: "[w]e will not make such a mistake a second time."[56]

In order to assess the Russian invasion under *jus ad bellum*, it is essential to recall the fact that Article 51 of the UN Charter requires an armed attack that has already occurred in order to activate the right to self-defense.[57] Negotiations and preparatory documents prior to the adoption of the treaty clearly demonstrate that the contracting parties initially intended to exclude the possibility of self-defense against attacks that have not yet occurred.[58] Therefore, in my view, it is not possible to rely on preventive self-defense under the treaty law (UN Charter) provision. That does not, of course, preclude the right to self-defense as a customary norm from having undergone, since the adoption of the Charter, a modification which already accepts the possibility of anticipatory self-defense.

In order to assess this, it should first be pointed out that international law clearly excludes the possibility of 'preventive self-defense' against latent and thus only potential threats.[59] Of course, fact is that many states have continued to carry out such defensive actions, for example in recent years through targeted killings,[60] such as the targeted killing of Iranian General Qasem Soleimani.[61]

Besides preventive self-defense, another form of anticipatory self-defense can also be construed, namely preemptive self-defense, which is designed to respond to imminent threats.[62] Some authors consider that, since it was possible to rely on anticipatory self-defense before 1945, that is to say, before the adoption of the UN Charter, this situation remains essentially the same today.[63] Others do not consider

54 Ruys 2010, p. 253.

55 Article 51 letter, p. 7.

56 Id. pp. 4-5, and 7. The quote is from p. 4.

57 This is supported by the English and French versions of the Charter as well. *See* UN Charter, Article 51.

58 Kajtár 2015, p. 98.

59 Kajtár 2018, para. 54. The case law of the ICJ also seems to support this approach. ICJ, *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Uganda)*, Judgment of 19 December 2005, 2005 ICJ Reports, p. 168, at 58-59, para. 143, paras. 146-147.

60 *See e.g.* the targeted killing program of the US. *See* Bence Kis Kelemen, *Célzott likvidálás a nemzetközi jogban – különös tekintettel a felfegyverzett pilóta nélküli repülőgépek alkalmazására*, Publikon, Pécs, 2023, pp. 61-64.

61 The preventive nature of the operation stems from a statement by the then US Secretary of State Mike Pompeo. *See* Bence Kis Kelemen & Mátyás Kiss, 'The targeted killing of Qasem Soleimani: A case study through the lens of jus ad bellum', *Hungarian Journal of Legal Studies*, Vol. 63, Issue 3, p. 189.

62 Kajtár 2018, paras. 53-54.

63 Kinga Tibori-Szabó, *Anticipatory Action in Self-Defense – Essence and Limits under International Law*. Springer, The Hague, 2011, pp. 283-286.

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this argument to be acceptable.[64] I agree with the latter view, because I consider the adoption of the Charter as a watershed event, which as *a lex posteriori*, has overwritten the previous customary law and thus all the practice based on that former law.[65] Since the adoption of the Charter, there has been no change in international law that would have included any form of anticipatory self-defense into the framework of rules applicable for interstate use of force.[66] It is also worth noting that, at the time of the so-called 'six-day war' in 1967, Israel itself did not rely on anticipatory self-defense, despite the fact, that it is understood as the classical example for preemptive self-defense. It needs to be noted however, that Israel later changed its views and adopted the anticipatory self-defense position.[67]

Based on the above, Russia could not have invoked any form of anticipatory self-defense (preventive or preemptive) in the absence of such a legal basis in *lex lata* international law. Still, it is not possible to simply disregard the fact that a significant number of international lawyers accept the possibility of self-defense against imminent threats.[68] Nevertheless, the Article 51 letter does not mention any specific, imminent threats that would need to be addressed by means of a self-defense measure, which would indicate, that the special military operations should be seen as preventive self-defense measures which are widely regarded as unlawful under international law. In addition, even if the possibility of preemptive self-defense were accepted, Russia has not in any way demonstrated that Ukraine is about to launch an imminent attack against Russia,[69] which, under the case law of the International Court of Justice, would be an obligation of the victim state.[70]

3.3. Collective Self-Defense alongside the Separatist Republics

Russia's Article 51 letter also contains a very interesting and problematic reference point, namely that Russia conducts its special military operations on the basis of treaties of friendship and mutual assistance with the People's Republics of Donetsk and Luhansk, as the separatist republics have requested Russia's assistance.[71] This can be understood as a form of collective self-defense.

First, it is extremely important to note that Article 51 of the UN Charter does not only regulate the issue of individual self-defense, but also allows states to act in collective self-defense. In the *Nicaragua case*, the ICJ established the most basic conditions for the applicability of collective self-defense measures, namely that the victim state should suffer an armed attack, which needs to be reported to the

64 Ruys 2010, p. 19; Dinstein 2017, p. 223.
65 Ruys 2010, p. 259.
66 *See e.g.* Tibori-Szabó 2011, pp. 283-284.
67 John Quigley, 'The Six Day War-1967', *in* Tom Ruys *et al*. (eds.), *The Use of Force in International Law. A Case-Based Approach*, Oxford University Press, Oxford, 2018, pp. 131-132, and 134-135.
68 Kajtár 2018, paras. 54-55.
69 Green *et al*. 2022, p. 14.
70 ICJ, *Oil Platforms (Islamic Republic of Iran v United States of America)*, Judgment of 6 November 2003, 2003 ICJ Reports, p. 161, at 33, para. 61.
71 Article 51 letter, p. 6.

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Security Council[72] and, of course, the victim state should seek assistance from other states.[73]

Based on the above, a very important requirement is the 'state status' of the requesting entity. It is therefore necessary to investigate whether the separatist republics can be regarded as states.

The Donetsk and Luhansk republics have existed since 2014 as *de facto* independent entities from Ukraine. The formation of the republics was heavily dependent on Russian external assistance. However, Ukraine has not waived any form of territorial claim for the territories of these two separatist entities in the meantime, and still seeks to return these territories under its control in the ongoing armed conflict. At the time of writing, Russia has annexed these territories along with the Kherson and Zaporizhzhia Oblasts by way of referendums.[74]

Statehood in international law is usually determined on the basis of the rules of the Montevideo Convention, in such a way that a state is a subject of international law with a permanent population, a defined territory, a government and the capacity to enter into relations with other states.[75] The separatist republics seemed to meet these requirements, as they had a defined territory, a relatively stable population, a government and even had an international treaty with Russia, so they had 'relations with other states'. However, the issue cannot, of course, be resolved in such a simple way, as the territory and population concerned is also claimed by another internationally fully recognized state, Ukraine.

It is expedient to examine the issue through the notion of secession. In the event of secession, a state is formed without the consent of the sovereign or territorial state with the use or threat of force.[76] In an in-depth analysis of state practice, James Crawford pointed out that, before 1945, existence of the state was not subject to the consent of the territorial state, but required the latter not to be able to restore its jurisdiction over the entity, thus, the new state achieves effective independence.[77] By contrast, since 1945, no state has become a member of the UN – and with that, has gained quasi-universal recognition – without the sovereign state having recognized the seceding entity as a state.[78] Bangladesh, with its secession from Pakistan was formed in a comparable situation with the separatist republics in Eastern Ukraine. Bangladesh first declared its independence and then India attacked Pakistan. Considerable international recognition for Bangladesh however has not materialized until the military defeat of Pakistan in 1971, and the subsequent recognition of the state by Pakistan later in 1974. This also marks the

72 *Nicaragua case*, at 93-94, para. 195.

73 Casey-Maslen 2020, p. 75.

74 *See* at www.aljazeera.com/news/2022/9/30/putin-announces-russian-annexation-of-four-ukrainian-regions.

75 Montevideo Convention on the Rights and Duties of States, adopted at Montevideo, 26 December 1933, Article 1.

76 James Crawford, *The Creation of States in International Law, 2nd edition*, Oxford University Press, Oxford, 2006, p. 375.

77 Id. pp. 379, and 382.

78 Id. p. 390.

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admission of Bangladesh into the UN.[79] Nevertheless, according to Crawford, Bangladesh's situation was unique, as it was a so-called 'unit of self-determination', which has the right of self-determination of peoples and can therefore legitimately secede from the territory. The author based this characterization on the fact that first, Pakistan has committed genocide in Bangladesh, and second, Bangladesh was geographically and ethnically separate from Pakistan.[80]

By contrast, the international community, with the exception of Turkey, has not yet accepted the state status of the Turkish Republic of Northern Cyprus, which was consolidated by Turkish military forces in 1974 following a Cypriot *coup d'état*, in spite of the international treaty guaranteeing the independence and territorial integrity of Cyprus.[81] The same is true for armed conflicts in Chechnya, where the international community has treated the situation as a Russian internal matter, despite human rights violations and independence for several years.[82] In the same vein, the international community has not accepted the declaration of independence and subsequent accession to Russia of Crimea and Sevastopol.[83]

On the basis of prevailing state practice and literature, it can therefore be concluded that while remedial secession is[84] a right triggered by oppression, this only gives members of the international community the possibility to recognize the state, but this does not appear as an obligation.[85] Still, there are factors, that can prevent states from recognizing secessionist entities even in case of oppression, namely, if secession from the territorial state is a result of a violation of a peremptory norm of international law, such as the prohibition on the use of force.[86]

A similar issue was addressed by the ICJ in the *Kosovo Advisory Opinion*, in which the ICJ stated that in the 18-20th centuries there was no prohibition in general international law on the unilateral declaration of independence, either in the colonial context or beyond,[87] unless it violated a *jus cogens* norm.[88] However, the ICJ pointed out that, in order to answer the question referred by the General Assembly, it is not necessary to address the question of the right to self-determination and the question of remedial secession.[89] For example in 2014, Crimea's and Sevastopol's declarations of independence, and subsequent accession to Russia were unlawful as they were a result of an illegal use of force, in other

79 Id. pp. 141, and 393.
80 Id. p. 145.
81 Id. pp. 144-145.
82 Id. pp. 408-410.
83 Geiß 2015, p. 427.
84 Norbert Tóth, 'A népek önrendelkezési joga', *in* András Jakab & Balázs Fekete (eds,), *Internetes Jogtudományi Enciklopédia*, 2018, [33].
85 Jure Vidmar, 'Remedial Secession in International Law: Theory and (Lack of) Practice', *ST Anthony's International Review*, Vol. 6, Issue 1, 2010, pp. 40-42, and 50.
86 Geiß 2015, p. 448.
87 ICJ, *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion of 22 July 2010, 2010 ICJ Reports, p. 403, at 37, para. 79.
88 Id. at 38-39, para. 81.
89 Id. at 39, para. 83.

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words, a violation of a peremptory norm of international law.[90] In my view, this assessment should hold true for the separatist republics as well.

In conclusion, the Donetsk and Luhansk People's Republics have been *de facto* independent entities since 2014 – subsequently annexed by Russia – and characterized by a sort of ethnic distancing from the majority population of Ukraine. Moreover, there is no doubt that in recent years there have been several human rights violations in the region. At the same time, the territorial state has not recognized the independence of these entities and is engaged in continuous armed conflict with them and Russian armed forces in order to regain control over the territories. Furthermore, the separatist republics are not geographically separated from the territorial state, and Russia's external intervention is contrary to treaties ensuring the territorial integrity of Ukraine, such as the Budapest Memorandum of 1994[91] or the subsequent 1997 agreement.[92] On this basis, the separatist republics do not, in my view, have the status of a 'unit of self-determination' similar to that of Bangladesh. This is reinforced by the fact that these entities have been formed in violation of the prohibition on the use of force committed by Russia, which in turn creates an obligation of non-recognition on the part of the international community, as confirmed by the International Law Commission in the Articles of State Responsibility for Internationally Wrongful Acts.[93] Other authors dealing with the issue reached a similar conclusion, claiming that the recognition of a new state in an ongoing armed conflict would constitute a breach of international law.[94] It is also important to note that at the time of writing only three members of the UN have officially recognized the entities at hand, specifically Russia, Syria[95] and North Korea.[96]

In addition, it should be noted that referendums[97] on Ukraine's territory can of course be regarded as illegal not only from an international law perspective, but also under domestic Ukrainian law. This is because according to Ukraine's Constitution, the territory of Ukraine can only be modified in the course of an all-Ukrainian referendum,[98] which has not been implemented in these cases, nor is such a referendum currently underway.

90 Marxsen 2014, p. 384.
91 Memorandum on security assurances in connection with Ukraine's accession to the Treaty on the Non-Proliferation of Nuclear Weapons adopted on 5 December 1994, UNTS, 3007.
92 Treaty on Friendship, Cooperation, and Partnership between Ukraine and the Russian Federation adopted on 31 May 1997, UNTS, 3007.
93 Draft articles on Responsibility of States for Internationally Wrongful Acts Adopted on 12 December 2001, A/RES/56/83, Article 41(2).
94 Green *et al*. 2022, p. 18.
95 *See* at www.reuters.com/world/middle-east/syria-recognizes-independence-sovereignty-donetsk-luhansk-state-news-agency-2022-06-29/.
96 *See* at www.aljazeera.com/news/2022/7/13/n-korea-recognises-breakaway-of-russias-proxies-in-east-ukraine.
97 Marxsen 2014, p. 380. *See* at www.bbc.com/news/world-europe-27360146.
98 Constitution of Ukraine of 28 June 1996, Article 73. In connection with Crimea, *see* Marxsen 2014, pp. 380-381.

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In conclusion, the Donetsk and Luhansk People's Republics are not states, which means that Russia cannot rely on the assistance requested by them as a justification for its invasion in the form of collective self-defense.

3.4. Humanitarian Intervention

It has already been pointed out above that Russia in its Article 51 letter referred to genocide in Eastern Ukraine as a legal ground for its intervention.[99] This reference, although contained in the declaration of an act of self-defense, may also be interpreted as a so-called 'humanitarian intervention'. Given that no *expressis verbis* reference is made to this by Russia, I will only briefly discuss this issue.

According to Gábor Sulyok, a comprehensive concept of humanitarian intervention cannot be defined, but there are elements that, taken together, create the notion of humanitarian intervention. It is important to point out that humanitarian intervention is not a legal title and is therefore not an exception to the prohibition on the use of force, but rather a quality associated with the use of force itself. In case of a humanitarian intervention, a state or an international organization uses force on the territory of another state without its consent because of serious, mass and deliberate human rights violations, with the aim of stopping or preventing these atrocities.[100] I also believe that a distinction should be made between unilateral and collective forms of humanitarian intervention. While in the case of a unilateral humanitarian intervention, where the state decides unilaterally to use force, is by definition illegal, in case of a collective humanitarian intervention, the UN Security Council may, under Chapter VII of the Charter, authorize military operations for the purposes of a humanitarian intervention which can therefore be legitimate under *jus ad bellum*.[101]

Since no Security Council decision allowing the use of force has been adopted prior (nor after) to Russia's invasion, it cannot in any event be considered a collective humanitarian intervention. Unilateral interventions are inherently associated with illegality. A similar conclusion appears to have been reached by the ICJ in a case brought by Ukraine, stating that

> "it is doubtful that the [Convention for the Prevention and Punishment of the Crime of Genocide],[102] in light of its object and purpose, authorizes a Contracting Party's unilateral use of force in the territory of another State for the purpose of preventing or punishing an alleged genocide."[103]

99 Article 51 letter, p. 5.

100 Sulyok 2004, pp. 64-68.

101 Bence Kis Kelemen, 'Humanitárius intervenció? Az Egyesült Államok 2017-2018-as szíriai légicsapásainak *jus ad bellum* elemzése', *in* Bence Kis Kelemen *et al.* (eds.), *Ünnepi tanulmánykötet Bruhács János 80. születésnapja tiszteletére*, PTE ÁJK, Pécs, 2019, pp. 137-138.

102 Convention for the Prevention and Punishment of the Crime of Genocide of 9 December 1948.

103 ICJ, *Allegations of Genocide Under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v Russian Federation)*, Order of 16 March 2022, para. 59.

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In addition, it should also be noted that there is no evidence whatsoever of a former or ongoing genocide in Ukraine against the Russian population of the country.[104] This seems to be confirmed by the ICJ's order, according to which there is currently no evidence in the ICJ's possession that genocide has been committed in Ukraine.[105]

3.5. Intervention by Invitation

Finally, the part of the Russian Article 51 letter concerning the request for assistance of the separatist people's republics[106] may, in the absence of the latter's status as states, be interpreted as a consent to the use of force from within Ukraine. Russia has sought to justify the occupation of Crimea and Sevastopol – among others – in a partially similar manner in 2014, when it relied on the consent of Viktor Yanukovych, former Ukrainian President, who has been removed from power unconstitutionally preceding his consent to Russian military operations in Ukraine.[107] Irrespective of this, it should of course be pointed out here, that Russia did not rely on this justification *expressis verbis*, therefore I will address this issue only briefly.

It is generally accepted in international law that the use of force for which the territorial state has given its consent is not in breach of the prohibition on the use of force.[108] According to the commentary to the UN Charter, in case of consensual military operations, the 'in their international relations' condition of the prohibition is not met and is therefore not covered by the ban itself.[109]

Of course, there are also conditions for giving consent lawfully, namely that it must be given in advance or in the course of the operation concerned.[110] It is also very important who gives the consent, as it seems clear that the consent must come from the central government and from its highest levels.[111] In parallel, direct or indirect military support to opposition groups is prohibited under international law.[112] This norm was confirmed by the ICJ in the *Nicaragua case*.[113] The only exception to this general rule is the support of national liberation movements in their fight against colonial or foreign rule or apartheid systems, which is a accepted by international legal scholarship and state practice.[114]

104 Green *et al*., 2022, p. 26
105 *Ukraine v Russian Federation*, Order of 16 March 2022, para. 59.
106 Article 51 letter, p. 6.
107 Marxsen 2014, pp. 374-375.
108 Casey-Maslen 2020, p. 39.
109 Oliver Dörr, & Albrecht Randelzhofer, 'Ch.I. Purposes and Principles, Article 2(4)', *in* Bruno Simma *et al*. (eds.), *The Charter of the United Nations: Commentary. Volume I*, Oxford University Press, Oxford, 2012, para. 33.
110 Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries. Adopted on 12 December 2001, A/RES/56/83, p. 73.
111 Gábor Kajtár, 'The Use of Force Against ISIL in Iraq and Syria-A Legal Battlefield', *Wisconsin International Law Journal*, Vol. 34, Issue 3, 2017, p. 558, Casey-Maslen 2020, p. 41
112 Erika De Wet, *Military Assistance on Request and the Use of Force*, Oxford University Press, Oxford, 2020. p. 24. Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, 2625(XXV), 24 October 1970, para. 1.
113 *Nicaragua case*, at 99-100, para. 209.
114 De Wet 2020, pp. 24-26.

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As elaborated above, the separatist republics cannot be regarded as a 'unit of self-determination', their status as an international liberation movement cannot therefore be established. Consequently, this means that it is not only Russia that cannot rely on the invitation of separatist groups to legitimize its use of force, but even with the support of separatist groups it has breached the principle of non-intervention of international law.

4. The Reactions of the International Community to the Invasion

On 2 March 2022, the UN General Assembly held a session on the Russian-Ukrainian conflict. A resolution condemning Russia was adopted by an overwhelming majority in the General Assembly. 141 of the 193 UN members supported the resolution with 5 votes against and 35 abstentions.[115]

The resolution reaffirms the commitment of UN Member States to the sovereignty, independence, unity and territorial integrity of Ukraine. They condemn the Russian Federation's aggression against Ukraine "in the strongest terms". They call on Russia to put an immediate end to its use of force, to refrain in the future from any unlawful threat or use of force. They demand that Russian troops withdraw from Ukraine and return beyond internationally recognized borders.[116]

The resolution also calls on Russia to withdraw its decision recognizing the separatist republics, an act considered regrettable by UN member states. They call on Russia to comply with the Minsk agreements and condemn the violations of international humanitarian law. It is interesting that the decision describes the participation of Belarus as 'deplorable'. It also urges the parties to find a peaceful solution to the situation and to use diplomatic means.[117]

Reference has already been made to the UN General Assembly Resolution on 27 March 2014 relating to the events in Crimea and Sevastopol. This decision is substantially shorter than the latter. In this resolution, the General Assembly reaffirms Ukraine's territorial integrity, sovereignty and independence and calls on all states to refrain from actions that disrupt the territorial integrity of Ukraine. It urges the parties to seek a peaceful settlement through direct political dialogue. The resolution stresses that member states consider the Crimean and Sevastopol referendum held a few days earlier to be null and void, which they claim cannot constitute a basis for changing the status of Crimea and Sevastopol. They also call upon states and international organizations not to recognize Russian sovereignty over Crimea and Sevastopol.[118] The decision was supported by 100 states, with 11 against and 58 abstentions.[119]

As we can see, the decision condemning the invasion of 2022 was more consensual than the 2014 Crimea decision. The latter decision was adopted by

115 *See* at https://news.un.org/en/story/2022/03/1113152.
116 Resolution adopted by the General Assembly on 2 March 2022, A/RES/ES-11/1.
117 Id.
118 A/RES/68/262.
119 80th plenary meeting, Thursday, 27 March 2014, Official Records, A/68/PV.80.

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states with fewer votes against and fewer abstentions. It is interesting that the first resolution from 2014 does not even mention Russia. The subsequent decision, on the other hand, is much sharper and more focused on the Russian aggression.

Among the main UN bodies, events took place not only in the General Assembly, but also in the Security Council. Immediately after the outbreak of the 2022 war, the Security Council also wanted to adopt a statement condemning the Russian invasion. The resolution would have included a commitment to the territorial integrity, sovereignty and unity of Ukraine and condemnation of the Russian action.[120] However the resolution was not adopted later on, due to the veto of a permanent member of the Security Council: Russia.[121]

5. Conclusions

Based on the above, it can be concluded that Russia's invasion against Ukraine, which began in February 2022, clearly violates a peremptory norm of international law, specifically the prohibition on the use of force. This is because its attack can be justified neither by individual self-defense based on the protection of nationals or anticipatory self-defense, nor by collective self-defense alongside the separatist republics. Although Russia has not specifically referred to them, it can also be concluded that the invasion can be justified neither by a unilateral or collective version of humanitarian intervention, nor by intervention by invitation. Consequently, the Russian attack constitutes an unlawful use of force, aggression and even an armed attack, against which Ukraine enjoys the right of self-defense. It is also interesting to note that Russia has committed almost all commonly recognized forms of aggression in the course of its ongoing invasion against Ukraine.[122] It can also be concluded that besides Russia, Belarus also committed an act of aggression against Ukraine when it allowed its territory to be used to launch attacks against Ukraine by Russia.[123]

State practice following the invasion, namely that the international community – almost as a whole – condemns the Russian aggression and clearly does not accept the arguments put forward by Russia to justify its 'special military operations' sends a crystal-clear message. Of course, the fact that the Russian invasion undoubtedly goes beyond any criteria of necessity and proportionality may have contributed at least in part to the fact, that significantly more state condemned Russia's action in 2022 in comparison with 2014, when similar legal views were advanced but the use of force were more localized and less extensive.

However, as pointed out in the introduction, this does not mean that international law, in particular the *jus ad bellum régime*, is inoperable. Yes, the Russian aggression is clearly illegal, but even Russia continues to legitimize its own actions within the framework of the prohibition on the use of force, albeit it has adopted unacceptably broad interpretations of the law. The legal arguments

120 UNSC, Draft resolution, 25 February 2022, S/2022/155.
121 8979th meeting, Friday, 25 February 2022, Provisional, S/PV.8979.
122 A/RES/3314. *Cf*. Green *et al*. 2022, p. 6.
123 A/RES/3314, Article 3, point (f).

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advanced by the Russian Federation in this crisis clearly indicate the dangers of the slippery slope legal views adopted by many Western powers to justify their own use of force in the last two decades. Now we see how the same arguments and *opinio juris* can be used for less than 'noble' causes as well. I believe it is about time we (members of NATO) reconsider our previous approaches to what is acceptable under the *jus contra bellum* system and what is not, because we all heard the warning, loud and clear.

As far as the most important consequence of illegality of Russia's special military operations is concerned, this is the obligation of non-recognition on the side of the international community. This means, that states and international organizations cannot recognize any situation that results from the unlawful Russian invasion, in other words a violation of a peremptory norm of international law. This means that even if the war eventually comes to an end, and we were to assume that the Russian Federation can consolidate its conquests, the international community will still have an obligation not the regard the occupied territory as sovereign Russian land.

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