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WHY THE WEST CANNOT QUESTION THE RUSSIAN AGGRESSION IN UKRAINE

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Introduction

The military invasion of Ukraine by the Russian Federation has dominated the news since late February 2022. Russian aggression is being seen as one of the greatest threats to the global economy and international peace and security. Russia has been making consistent inroads into Ukrainian territory from the North, East, and South. Ukrainian officials have been reporting the loss of civilian life and property as well. Reports from various sources also suggest that the Russian forces have been violating *jus ad bellum* and *jus in bello* as the world watches on.

The Russian belligerence is not a sudden development. Russia has been escalating its military presence across the Ukrainian border for months. However, the Russia-Ukraine conflict has been on for over eight years. Since 2014, Russia has found several excuses to invade Ukraine ranging from the democratic removal of the then President of Ukraine, the need to demilitarise Ukraine, to accusing Ukraine of being Nazis, even claiming that genocide is going on. Irrespective of the veracity of these claims, one thing is certain: Russia did not set out to resolve these issues through pacific settlement nor wait for United Nations Security Council (hereinafter, 'UNSC) authorisation but resorted to unilaterally use of force in violation of the United Nation Charter (hereinafter 'Charter'). Russia annexed Crimea in 2014 through a referendum and has managed to keep the conflict in the regions of Donetsk and Luhansk alive since.

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The West has at various points condemned and even formally brought in resolutions in the UN against Russia's presence in Ukraine. But do they have standing? Or did the West actually provide Russia with sufficient justifications for its actions?

This article analyses the background of the Ukraine-Russia situation and dives deep into the justifications put forth by Russia for its intervention in Ukraine. The article will go on to test these claims and justifications against the established norms of international law *inter alia respect* for sovereign equality, territorial integrity, the prohibition on the use of force, the right to self-determination, and non-intervention. The author will argue that both the West (through their position in the cases of Kosovo, South Sudan, Iraq, Afghanistan, Syria etc.) and Russia (through their interference in South Ossetia, and Nagorno-Karabakh) have weakened the international legal system to the extent that the system is not in a position to secure Ukraine its rights. Discussing whether the People's Republics of Donetsk and Luhansk have a right to external self-determination through remedial secession, and the potential solutions to the Russia-Ukraine conflict are beyond the scope of this paper.

Background

Ukraine, which was the breadbasket of Europe and the second most populous and second largest former republics of the USSR, gained independence in 1991 following a referendum.[1] Even Russian speaking Ukrainians overwhelmingly supported Ukraine's independence. At the time of independence, Ukraine also had the third-largest stockpile of nuclear weapons. In 1994, by way of the Budapest Memorandum, Ukraine committed to transfer all the nuclear weapons in its possession to Russia.

[1] Matthew Mpoke Bigg, A history of the tensions between Ukraine and Russia., The New York Times, Mar. 26, 2022.

In return, Russia, the United Kingdom, and the United States of America (hereinafter, 'USA') promised to respect Ukraine's sovereignty.[2]

Ukraine is not a homogenous nation. It has several pockets of ethnic minorities. Most critical of them at this point are the Crimean Peninsula and the Region of Donbas i.e., Donetsk and Luhansk. The Crimean Peninsula is a geostrategic territory for Ukraine and Russia.

According to the 2001 census, 58.5% of the Crimeans were Russians, 24.4% Ukrainians, and 12.1% Crimean Tatars.[3] Despite its predominantly Russian population, the USSR preferred to administer Crimea as a part of the Ukrainian Soviet Socialist Republic for administrative convenience.[4] It served as a regional military base for several decades.[5] In 1991 during the deep political crisis in the USSR, a referendum was held in Crimea wherein 93.26% of the people voted to form an independent State within the USSR. Though both Ukraine and Russia recognised this, it could not be implemented due to the collapse of the Soviet Union.[6] Subsequently, Crimea's Supreme Council on 5 May 1992, proclaimed Crimea's independence that would take effect on 2 August 1992. However, on 13 May 1992, the Supreme Council of Ukraine declared the proclamation to be unconstitutional, and also dissolved the Crimean Parliament and Supreme Council.[7] Crimeans were declared to be Ukrainian citizens. This

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[2] Id.

[3] Christian Walter, Postscript: Self-Determination, Secession and the Crimean Crisis 2014, in SELF-DETERMINATION AND SECESSION IN INTERNATIONAL LAW 295 (Christian Walter, et. al. 2014)

[4] The statements of N. Khrushchev's son, quoted in A. de Nesnera, Khrushchev's Son: Giving Crimea Back to Russia Not an Option, Voice of America (6.3.2014)

[5] Tetyana Malyarenko and David J. Galbreath, Crimea: Competing Self-Determination Movements and the Politics at the Centre. 65(5), EUROPE-ASIA STUDIES 915 (2013)

[6] Anatoly Kapustin, Crimea's Self-Determination in the Light of Contemporary International Law, 75 ZAÖRV, 109-10 (2015).

[7] Id. at 110

was followed by the abolition of the official status of the languages of Russian and Crimean Tartar in favour of a single national language – Ukrainian.[8]

Since 1993 itself, the Russian Duma has contended that the transfer of Crimea to Ukraine is illegal. In 1996, the Ukrainian Constitution granted Crimea the status of 'The Autonomous Republic' within Ukraine. Subsequently, Ukraine and Russia signed the 1997 Treaties of Friendship, Cooperation and Partnership in which Russia yet again acknowledged the inviolability of the Ukrainian borders.[9]

Victor Yanukovych was elected the President of Ukraine in 2010. He hoped to direct Ukraine's relationship with Russia and refused to sign the European Union-Ukraine Association Agreement. Ukrainians were already discontent with the alleged corruption of the government, and the fallout of the Agreement proved to be the final nail in the coffin. Massive protests known as the Euromaidan Revolution or the Revolution of Dignity broke out. Consequently, Yanukovych was impeached and Petro Poroshenko took over in February 2014. Yanukovych's impeachment procedure did not comply with the procedural requirements set in the 1996 Constitution of Ukraine, but the outcome was nevertheless accepted by most States. The Russian Federation was one of the few countries which continued to recognise him as the legitimate President of Ukraine. Poroshenko, though pro-Russian, reoriented Ukraine towards the European Union. Russia for its part responded by annexing Crimea.

[8] Id. at 111

[9] Oleksandr Merezhko, Crimea's Annexation in the Light of International Law. A Critique of Russia's Legal Argumentation. 2, KYIV-MOHYLA L. & POL. J., 44 (2016).

Stability in Crimea was under pressure since the mid-2000s due to attempts of 'Ukrainianization'.[10] Further, Yanukovych who was removed by the 2014 protest was very popular in Crimea.[11] His removal from office served as a trigger for the secessionist movement in the Crimean Peninsula.[12]

In late February 2014, Crimea was taken over by the so-called *green men* and private armies (National Guards). Many of them spoke Russian and sometimes used official Russian military vehicles and equipment.[13] It remained unclear whether these groups were merely well-equipped militias or Russian soldiers in disguise. They took an active part in military operations — blocking roads, effecting security checks, and taking over Ukrainian public institutions (including the Supreme Council of Crimea) and military installations.[14] Russia at first denied any link with them but eventually acknowledged the presence of Russian soldiers[15] on the pretext of defending the ethnic Russians in the region.

On 6 March 2014, the Parliament of Crimea adopted Resolution No.1702-6/14 which provided for a secession referendum. On 11 March 2014, the Crimean Parliament adopted the Declaration of Independence.[16] On 16 March 2014, the referendum on the status of Crimea was held. 83.1% of

[10] Statement by the OSCE High Commissioner on National Minorities to the Permanent Council of 18 June 2009, https://www.osce.org/hcnm/37812

[11] Vladislav Tolstykh. Reunification of Crimea with Russia: A Russian Perspective, 13(4) CHINESE JOURNAL OF INTERNATIONAL LAW, 883 (2014).

[12] Walter, supra note 3 at 297

[13] *Id.*

[14] Alissa de Carbonnel, *How the separatists delivered Crimea to Moscow,* REUTERS https://www.reuters.com/article/us-ukraine-crisis-russia-aksyonov-insigh-idUSBREA2B13M20140312 (014).

[15] *Direct Line with Vladimir Putin, President of Russia*, 2014. [TV programme] Channel One. http://en.kremlin.ru/events/president/news/20796.

[16] Walter, *supra* note 3 at 297

Crimeans took part in the referendum. 96.77% voted in favour of the reunification of Crimea with Russia.[17] Consequently, Crimea was declared a sovereign Republic on 17 March 2014. On 18 March 2014, a Treaty was signed between Russia and Crimea to authorise the accession and ratified.[18] Accordingly, two new entities were formed within the Russian Federation – the Republic of Crimea and the federal city of Sevastopol. Subsequently, Russia unilaterally terminated the 1997 Treaties citing the impossibility of performance and *rebuc sic standibus*. This was the first time since World War II that a European State annexed the territory of another.

Simultaneously, the Donbas Region also threatened to break away. Russia backed militia is alleged to be instrumental in this breakaway as well. As Ukraine tried to regain control over these regions, Russian backed forces appeared to be ready to capture more Ukrainian territory. Consequently, a peace deal called Minsk-I was entered into between Russia, Ukraine and the separatist. The agreement however was short-lived and full-scale fighting broke out in the region in January 2015. Another peace deal titled Minsk-2 was brokered. Putin installed puppet governments in the two regions.

Ukraine is home to an ultranationalist movement called the Azov Battalion. Azov was formed in 2014 and fights the Russian-backed forces in eastern Ukraine, alongside Ukraine's National Guard. Azov's stated purpose is "to lead the white races in a final crusade against inferior races".[19] The USA has been training and supporting the Azov battalion.

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[17] *Id.* at 298

[18] Kapustin, *supra* at 111

[19] Darpan Singh, *Putin wants de-Nazification but how much is Ukraine Nazified?*. INDIA TODAY, https://www.indiatoday.in/news-analysis/story/vladimir-putin-de-nazification-ukraine-nazified-russia-ukraine-war-1929009-2022-03-24 (2022).

Ukraine and North Atlantic Treaty Organisation

Volodymyr Zelensky was elected the President of Ukraine in 2019 by a huge margin. He began to crack down on pro-Russian voices. Putin for his part responded by deploying an increased number of troops along the Ukrainian border. Zelensky has also consistently attempted to convince the North Atlantic Treaty Organisation (hereinafter, 'NATO') to allow Ukraine to join the alliance.[20] Post the collapse of the USSR, NATO has added several former Soviet Republics such as the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland etc. to the alliance thereby strengthening the NATO presence in the region.[21] By 2020, Ukraine had become one of the six enhanced opportunity partners of NATO and regularly held military exercises with NATO. Ukraine's intent was clear – they wanted to become a part of NATO. Russia, which had consistently opposed the eastern expansion of NATO, demanded a "security guarantee" from NATO (particularly USA) that no new members from the former Soviet States, particularly Ukraine would be admitted to the alliance.[22] NATO flat out rejected this demand. In what seems like retaliation, on 21 February 2022, Russia granted recognition to Donetsk and Luhansk as independent States and provided military assistance to maintain the peace. It must be noted that separatists controlled only one-third of the territory of the said regions. Three days later, Russia launched a full-scale invasion of Ukraine, to protect Russia and demilitarise Ukraine and de-nazify the State. The ground and air forces attacked military and

[20] Paul Kirby, *Why has Russia invaded Ukraine and what does Putin want?*. BBC, https://www.bbc.com/news/world-europe-56720589 (2022).
[21] NATO, *NATO's military presence in the east of the Alliance*. https://www.nato.int/cps/en/natohq/topics_136388.htm (2022).
[22] Spectator, Full text: Putin's declaration of war on Ukraine. https://www.spectator.co.uk/article/full-text-putin-s-declaration-of-war-on-ukraine (2022).

civilian targets deep inside Ukraine. The invasion has been widely condemned by the world. Contrary to Ukraine's hopes, the West has not sent any troops to support Ukraine. Instead, they have given diplomatic support, and military equipment, and offered to rescue Zelensky out of Ukraine.[23]

Putin's Claims

There is no necessity to speculate on the motives of Russia behind the aggression in Ukraine. Putin in his television address on 24 February 2022 justified the aggression with multifarious reasons. He blamed the West, in particular, USA for threatening the security of Europe through the Eastward expansion of NATO and hardening their position. He also points to NATO's refusal to grant the security guarantees he demanded. Putin claimed that it was a matter of survival for Russia and thus, invoked Art. 51 of the Charter.

The other aspect that Putin focussed on was the situation in Donbas. The Russian leader alleged that Ukraine was committing genocide in Donbas and Luhansk for over eight years and that the people of Donbas are seeking help from Russia. Putin announced that Russia would be conducting a *special military operation* citing the right to self-determination of Ukraine enshrined in Art. 1 of the Charter, and the Treaty of Friendship and Mutual Assistance with Donetsk People's Republic and Luhansk People's Republic (hereinafter, 'People's Republic') signed two days earlier. Presumably referring to Azov albeit without naming the group, he accused the USA and NATO of supporting neo-Nazis. He claimed that if Russia did not intervene at this point, the neo-Nazis in Ukraine will take over

[23] Hindustan Times, *Ukraine President rejects US offer to evacuate Kyiv: 'I need ammunition, not a ride'*. https://www.hindustantimes.com/world-news/ukraine-president-rejects-us-offer-to-evacuate-kyiv-i-need-ammunition-not-a-ride-101645851924324.html (2022).

Crimea and not respect their free choice of Crimea and Sevastopol district to re-join Russia. Crimeans in Putin's opinion would not survive without Russia's intervention.

Perhaps the most pertinent part of Putin's speech vis-à-vis this paper is his observation of the West's intervention in Belgrade, Iraq, Libya, and Syria. He categorically blamed the West for deviating and disregarding the norms of international law and intervening in these countries without the sanctions from the UNSC. Though Putin did not spell it out further, it appears that Russia would be doing something similar in Ukraine. To this end, the goal of Russia's intervention according to Putin's speech was to demilitarise and denazify Ukraine, to bring the perpetrators to justice, and protect the people from genocide. He clarified that he did not propose to occupy Ukraine.[24]

Validity of the Claims

Putin broadly puts forth two justifications for his special operation in Ukraine: Ukraine's attempts to join NATO and to protect the people in the People's Republic. To verify the validity of these claims under international law, it is important to identify norms which are at play.

Sovereign Equality

Sovereign equality indicates that every sovereign State possesses the same legal rights as any other sovereign State in international law. This principle is etched in Art. 2(1) of the Charter of the United Nations and is considered the foundation of every other norm of international law.[25] It enjoys

[24] Spectator, supra note 22

[25] Christian Tomuschat, International Law: Ensuring the Survival of Mankind on the Eve of a New Century: General Course on Public International Law, RECUEIL DES COURS - ACADÉMIE DE DROIT INTERNATIONAL DE LA HAYE 161 (2001).

unanimous recognition by the members of the international community[26] and has been relied on by the ICJ in numerous cases including Corfu Channel, Case concerning the Arrest Warrant, Lockerbie, Case concerning the Continental Shelf (Libya/Malta), Nicaragua etc.[27]

The principle amongst other things convey:

a) States are juridically equal;

b) They enjoy rights inherent in their full sovereignty;

c) The State's personality, territorial integrity and political independence must be respected.[28]

In short, no State is allowed to trump over another because of the former's political, economic, military prowess, etc.

Prohibition on Use of Force

The prohibition on the use of force is so firmly etched in international law that it is the most frequently cited and most widely accepted *jus cogens* norm now.[29] The use of force as an instrument of national policy has been comprehensively prohibited since the General Treaty of 1928 also known as the Kellogg-Brian Pact. This principal norm of international law of our time,[30] is etched in Art. 2(4) of the UN Charter. The sole exception in the

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[26] W.E. Butler. Territorial Integrity and Secession: The Dialectics of International Order in SECESSION AND INTERNATIONAL LAW: CONFLICT AVOIDANCE - REGIONAL APPRAISAL 111 (Julie Dahlitz, ed., 2003).

[27] Corfu Channel, United Kingdom v Albania, Judgment, Compensation, (1949) ICJ Rep 244; Arrest Warrant of 11 April 2000, Congo, The Democratic Republic of the v Belgium, ICJ Rep 3, [2002] ICJ Rep 75; Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie, Libyan Arab Jamahiriya v United Kingdom [1992] ICJ Rep 3; Continental Shelf, Libya v Malta, [1985] ICJ Rep 13; Case Concerning Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America) 1986 I.C.J. 14,

[28] Report of Rapporteur of Sub-Committee I/1/A to Committee I/1: Chapter II, 1 June 1945; UNCIO VI 717 et seq; Summary Report of Eleventh Meeting of Committee I/1, 4 June 1945 UNCIO VI 331 et seq.

[29] Nicaragua supra note 27

[30] Louis Henkin, The Reports of the Death of Article 2(4) are Greatly Exaggerated (1971) 65 AM. J. INT'L L. 544

Charter is found only in Art. 51. It encapsulates the inherent and customary right to self-defence.[31] It is a Charter exception to the prohibition on the use of force but must only be in response to an actual or imminent armed attack.[32] Any other use of force will qualify as aggression.[33]

Territorial Integrity

Territorial integrity is a founding principle of the United Nations and an integral part of the *jus cogens* prohibition on the use of force. The principle entitles a nation to exercise sovereignty over the area within its borders, without unwarranted incursions by other States.[34] Territorial integrity is the material expression of State sovereignty and jurisdiction.[35] International law fiercely guards it. It finds a place in Art. 10 of the Covenant of the League of Nations, the Stimson Note of 7 January 1932 and the Friendly Relations Declaration [Hereinafter 'FRD']. It is also found in the 1963 Charters of the Organisation of African Unity, Helsinki Final Act, 1975, amongst others.

Self-determination

Perhaps the norm from which Russia can draw its strength is the right of people to self-determination. Common Art. 1(1) of the 1966 International Covenants on Human Rights reads thus: *All people have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural*

[31] Nicaragua supra note 27, 176 and 193.

[32] Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion) [2004] ICJ Rep 136, ¶ 139

[33] UNGA 'Definition of Aggression' Res. 3314 (XXIX) (14 December 1974), Art. 1

[34] IAN BROWNLIE, THE RULE OF LAW IN INTERNATIONAL AFFAIRS, 53-54 (1998); S. NEIL MACFARLANE, NORMATIVE CONFLICT – TERRITORIAL INTEGRITY AND NATIONAL SELF-DETERMINATION (2010)

[35] Butler supra note 26

development.[36] The right to self-determination is enjoyed by people and not by States. Self-determination is also spelt out in Art. 1(2) of the Charter, but not as a right, but a principle. It is in Resolution 1514 of the United Nations General Assembly [Hereinafter 'UNGA'] that the principle was recognised as a right.

Resolution 1541 holds that subjection of peoples to alien subjugation, domination, and exploitation amounts to the denial of fundamental human rights, violative of the Charter and a major impediment to world peace. Though classically applied in situations of decolonisation, the right is a permanent and continuing right[37] available to all people,[38] even those in independent sovereign States.[39]

Self-determination grants people the right to carry out their affairs, without any outside interference. It prohibits States from meddling in the affairs of others "*in a manner that seriously infringes upon the right of that State 'freely to determine [its] political status and economic, social and cultural development'*".[40] Self-determination reinforces the duty to respect political independence and territorial integrity. Acts or threats of foreign military intervention, aggression and occupation are regarded as egregious infringements of self-determination.[41] Thus, all situations of military

[36] International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR); International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR) Art. 1(1)

[37] JAMES CRAWFORD, THE CREATION OF STATES IN INTERNATIONAL LAW 88 (2006)

[38] UNGA '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) Principle 5, ¶¶ 1 and 2 [hereinafter, G. A. Res. 2625]

[39] Nicaragua supra note 27 at p. 108

[40] ANTONIO CASSESE, SELF-DETERMINATION OF PEOPLES: A LEGAL APPRAISAL 55 (1995).

[41] G.A. Res 38/16 (22 November 1983), Res 1723 (XVI) (20 December 1961), Res 2649 (XXV) (30 November 1970), Res 2949 (XXVII) (8 December 1972), Res 33/28 (7 November 1978), Res 38/180A-D (19 December 1983), Res 41/162A-C (4 December 1986), Res 43/54A-C (6 December 1988), Res 45/83 (13 December 1990), Res 34/22 (14 November 1979), Res 33/6 (21 October 1980), Res 37/6 (28 October 1982), Res 45/3 (15

invasion, or belligerent occupation, unless justified by Art. 51 of the Charter, would be a breach of the right of self-determination.[42]

In the context at hand, self-determination may be invoked by Ukraine against Russia as well as by Russia, on behalf of Donetsk and Luhansk, against Ukraine.

Principle of non-interference

International law prohibits the coercive interference of one State in the internal affairs of another State.[43] It is a corollary of the right of every State to exercise its sovereignty as well as of the principles of territorial integrity and political independence. FRD prohibits intervention, directly or indirectly, in the internal or external affairs of another State.[44] This includes armed interventions and any other form of interference that is against the personality of the State. Further, attempts of one State to coerce another State to subordinate the exercise of the latter's sovereignty is categorically prohibited. The Resolution also explicitly forbids any attempt by a State to foment armed activities that aim to overthrow the political regime in another State. By extension, States must not intervene in the civil strife of another State.[45]

Non-intervention is affirmed in the charters of the Organisation of American States and the African Union as well. The principle is a part of

October 1991), Res 46/18 (20 November 1991), Res. ES-6/2 (14 January 1980), Res 35/37 (20 November 1980), Res 36/34 (18 November 1981), Res 37/37 (29 November 1982); UN Doc. A/37/P2, 43; A/38/PV.34 (A/38/PV.34 (25 November 1983); A/Res/39/3A (17 October 1984); Res 34/22 (14 November 1979); S. C. Res. 252 (21 May 1968), Res 478 (20 August 1980), Res 446 (22 March 1979); Res 662 (9 August 1990), Res 541 (18 November 1983), Res 550 (11 May 1984)

[42] Cassese supra note 40 at 99

[43] Nicaragua supra note 27 p. 108, ¶ 205

[44] G. A. Res. 2625 Principle 3; UN General Assembly, Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty, 21 December 1965, A/RES/2131(XX) Art. 1 (hereinafter, 'G. A. Res. 2131')

[45] G. A. Res. 2625 Principle 3; G. A. Res. 2131 Art. 2

customary international law.[46] Violations of the principle of non-intervention are viewed as a threat to international peace and the Charter.[47]

Testing the Claims against the Norms

Putin's justifications for intervention can be categorised into two categories: Ukraine's attempts to join NATO and the protection of the People's Republics. And the claims need to be analysed in detail against the norms of international law expounded above.

Ukraine's Wishes to Join NATO

Russia has been wary of NATO's eastward expansion since its inception. The inclusion of Ukraine in the North Atlantic Alliance would prove to be geo-strategically perilous for Russia. Russia and Ukraine share a long border alongside the Black Sea. The Black Sea offers Russia access to the Mediterranean Sea and therefrom to the Atlantic Ocean. Therefore, the Black Sea is of immense economic and military value to Russia. Allowing the presence of the West's military in the region is not alluring to Russia. But that is absolutely no justification for Russia to stop Ukraine from joining an alliance of its choice.

The principles of non-intervention, sovereign equality, and self-determination imply that every State has the right to choose its own political, social and economic systems.[48] This includes the right to choose its foreign policy which also embraces the right to choose alliance and membership freely.[49] Thus, Russia does not have any legitimate justification under international law to prevent Ukraine from exercising its sovereignty by attempting to join NATO.

Protection of the People's Republics

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[46] Nicaragua supra note 27, ¶ 202
[47] G. A. Res. 2625 Principle 3; G. A. Res. 2131 Preamble
[48] Nicaragua supra note 27 ¶ 258
[49] Id. at ¶ 205

Putin claims that the people of the Region of Donbas have been facing humiliation and genocide since 2014 and that they are now independent States under international law. Consequently, Russia is entitled to intervene to assist their self-determination struggle. By doing so, Russia is only exercising its right to collective self-defence.

Russia's traditional position:

Russia has traditionally and consistently favoured territorial integrity and non-interference in the domestic affairs of other States. This position was unambiguously articulated in Russia's Written Statement in the Kosovo Advisory Opinion. Russia affirmed that Kosovo's Declaration of Independence is contrary to the territorial integrity of Serbia. It cited Art. 2(2), FRD, and the Helsinki Final Act to emphasise on the peremptory nature of the norm. Russia insisted that territorial integrity is indispensable to international peace and stability.[50]

Russia also recognised self-determination as an essential principle of contemporary international law as well as its universal application. It ironically emphasised on the exercise of self-determination by the people without external interference.[51] The Written Statement goes on to emphasise that in the post-colonial era, internal self-determination is preferred over external self-determination and that unilateral remedial secession may be exercised only in the most extreme cases where "*violent* acts of discrimination are *continuously* committed against the people in question and *all the possibilities for a resolution* of the problem *within* the existing State have been exhausted. Secession has been described as a

[50] Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo (Advisory Opinion) [2010] ICJ Rep 403, Written Statement by the Russian Federation, 16 April 2009, ¶¶ 76-78

[51] Id. at ¶ 80

measure of *last resort*, where the *very existence of the people, or its characteristic features, are in danger*" (*emphasis supplied*).[52] In fact, Russia states that external self-determination of the nature of unilateral remedial session must be limited to circumstances such as an outright armed attack by the parent State – Otherwise, *all efforts* should be taken in order to *settle* the tension between the parent State and the ethnic community concerned *within the framework of the existing State* (*emphasis supplied*).[53]

From the background of the situation at hand, it is amply clear that neither the Crimean situation nor the situation in the Donbas situation fulfills a single requirement laid out by Russia. A UNHCR report from April 2014 concluded that some attacks on the "ethnic Russian community" occurred, but that these "were neither systematic nor widespread".[54] Similarly, experts observing the situation in Ukraine have opined that Putin's claims of Nazification and genocide are fictitious and are intended to suit Putin's narrative.[55] At the outset, Russia has on two occasions accepted the sovereignty of Ukraine. In fact, the 1997 Treaty specifically deals with the Crimean Peninsula. This would imply that Ukraine has undeniable *jus contra omnes* over Crimea and that Russia has once and for all lost the right to raise "any legally grounded claims" to Crimea. Ergo, Russia intervened in Ukraine in clear violation of the principle of territorial integrity without sufficient cause. Further, neither the situation in Crimea nor the Donbas Region crossed the threshold to qualify for unilateral

[52] Id. at ¶ 87
[53] Id. at ¶ 88
[54] UNHCR, Report on the Human Rights Situation in Ukraine, 15 April 2014, ¶ 7; Walter, supra note 3 at 299-300; Veronika Bílková, The Use of Force by the Russian Federation in Crimea. 75 ZAÖRV (2015).
[55] Rachel Treisman, Putin's claim of fighting against Ukraine 'neo-Nazis' distorts history, scholars say, NPR, https://www.npr.org/2022/03/01/1083677765/putin-denazify-ukraine-russia-history (2022).

remedial secession – in 2014 or now. Most importantly, as per Russia, even in those extreme circumstances people gain a right to unilateral remedial secession. That in itself does not imply that a third State may intervene to aid and assist people in seceding. Direct third State intervention is an entirely different concept that needs to be elaborately analysed.

Direct Third State Intervention

The understanding regarding direct third State intervention is not that uniform and a great deal of evidence can be marshalled to support or deny the right to armed intervention in furtherance of a self-determination struggle.

A *prima facie* examination of the Charter's Arts. 2(1), 2(4) and 2(7) indicate that direct intervention is categorically illegal. This finding is supported by Principle 1, paragraphs 4, 7, 8 and 9, and Principle 3, paragraphs 1, 2 and 3 of the FRD, Arts. 3(a), 3(f), 3(g) and 6 of the Definition of Aggression, Art. 11(c) of the Inadmissibility Declaration,[56] Nicaragua case,[57] Armed Activities in the Congo case.[58] Scholars such as Islam,[59] Cassese,[60] Anderson,[61] and Tomuschat[62] have reached the same conclusion although Cassese asserts that Art. 2(7) is inapplicable where

[56] G. A. Res. 2131

[57] Nicaragua supra note 27, p.126, ¶ 246, 209

[58] Case concerning Armed Activities on the Territory of the Congo (the Democratic Republic of the Congo v. Uganda) [2005] ICJ Rep 168, ¶ 241

[59] Rafiqul Islam, The Use of Force in Self-Determination Claims, 25, Indian Journal of International Law, 435 (1985).

[60] Cassese supra note 40 at 199-200

[61] Glen Anderson, Unilateral Non-Colonial Secession in International Law and Declaratory General Assembly Resolutions: Textual Content and Legal Effects, 41 DENVER JOURNAL OF INTERNATIONAL LAW AND POLICY, 234-5 (2013)

[62] Christian Tomuschat, Secession and Self-Determination in SECESSION: INTERNATIONAL LAW PERSPECTIVES 44 (Marcelo G. Kohen ed., 2006).

the principle of self-determination applies.[63] Crawford holds that a group engaged in armed rebellion in furtherance of their self-determination against the State is not to be considered as a contravention of territorial integrity. In such situations, the principle of self-determination takes priority over the prohibition of the use of force against the territorial integrity of the State. This primacy can imply the phrase 'territorial integrity of any State' in Art. 2(4) is read down so far as action in furtherance of self-determination is concerned, as the territory of any self-determination unit as defined.[64]

Vidmar views Paragraph 5 itself as a 'notable expansion' of the principle of territorial integrity[65] and asserts that this position is supported by the doctrine of remedial secession.[66] Dugard and Raic supported direct third State intervention by referring to the Saving Clause. The 1970 Declaration as the name suggests primarily addresses States. Consequently, the Saving Clause can be assumed to be addressed to third States. It is argued therefore that *contrario* third States would be entitled to support a people which attempt to secede, even if such support would eventually lead to the infringement of the territorial integrity of the target State but only if the Parent State is not in compliance with the right of self-determination and such support is in compliance with other principles of the Charter.[67]

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[63] Cassese supra note 40 at 174

[64] Crawford supra note 37 111

[65] Jure Vidmar, Unilateral Declarations of Independence in International Law in STATEHOOD AND SELF-DETERMINATION: RECONCILING TRADITION AND MODERNITY IN INTERNATIONAL LAW 74 (Duncan French, ed., 2013)

[66] Id. at 75

[67] John Dugard and David Raic, The Role of Recognition in the Law and Practice of Secession in SECESSION: INTERNATIONAL LAW PERSPECTIVES 103 (Marcelo G. Kohen ed., 2006).

Several legal scholars have strongly refuted this stand and contended that there is no right to direct or even indirect armed intervention.[68] Jurists like Higgins have consistently insisted that the Third States must desist from aiding rebels.[69] Pails goes to the extent of saying that direct armed intervention is unlawful even when the right to self-determination of a people is being ruthlessly suppressed, and they desperately seek assistance.[70]

Scholars like Gray take a milder position and insist that while pacific measures are permissible, an armed intervention was not envisaged by the FRD.[71] He argues the UNSC when addressing "support" to peoples engaged in the struggle for decolonisation, avoided language that would have affirmed a right to armed measures. The emphasis instead was on isolating the government that was forcibly resisting them.[72]

Soviet jurists support and encourage the use of force by peoples struggling for self-determination and authorise intervention by third parties on behalf of such peoples.[73] The Soviet doctrine is equally vigorous in condemning,

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[68] Philip Kunig, 'Intervention, Prohibition of' MPEPIL (April 2012). http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1434 ¶ 34; Georg Nolte, Secession and External Intervention in SECESSION: INTERNATIONAL LAW PERSPECTIVES 76-93 (Marcelo G. Kohen ed., 2006) 76-93; Stefan Oeter, Recognition and Non-Recognition with Regard to Secession in SELF-DETERMINATION AND SECESSION IN INTERNATIONAL LAW, 51 (Christian. Walter, et. al., 2012).

[69] Rosalyn Higgins, International Law and Civil Conflict, in THE INTERNATIONAL REGULATION OF CIVIL WARS, 170 (Evan Luard 1972)

[70] Rodney Pails, International Law: An Analytical Framework 70 Univ. Tas. L. Review 96 (2001)

[71] CHRISTINE GRAY, INTERNATIONAL LAW AND THE USE OF FORCE 63-4 (2008); CASSESE supra note 40 at 150-55; HEATHER A. WILSON, INTERNATIONAL LAW AND THE USE OF FORCE BY NATIONAL LIBERATION MOVEMENTS 29-33 (1988)

[72] S. C. Res. 445 (1979), ¶ 7 (Nov. 23, 1979); and S. C. Res. 428, (May 6, 1978) (Complaint by Angola Against South Africa)

[73] KR Schmeltzer, Soviet and American Attitudes towards Intervention: The Dominican Republic, Hungary and Czechoslovakia 11 VA. J. INT'L L. 97, 101 (1970).

as unlawful, aid given to governments frustrating the right of a people to self-determination.[74] Schwebel in his dissenting opinion questioned why it is permissible for States to provide moral, political, and humanitarian assistance while it is not lawful to intervene with force and provide arms, supplies, and other logistical support.[75]

This doctrinal position is questioned by the likes of Frowein who doubt whether a case can be made for such armed intervention to have developed as part of the public international law. He points out that even during the period of decolonisation, the western countries were extremely cautious not to accept the legality of third State intervention in an armed struggle on the side of those fighting for decolonisation.[76]

Buchheit compares the unilateral secessionist attempts to that of colonialism and opined that while parent States can neither use force nor seek military assistance from third States to quell a secessionist movement, the secessionist group would be fully entitled to seek and receive external aid, and third-party actors have no duty to refrain from interference.[77] Tancredi, on the other hand, affirmed that the decolonisation framework is not transposable to secessionist conflicts.[78]

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[74] LEE C. BUCHHEIT, SECESSION: THE LEGITIMACY OF SELF-DETERMINATION 37 (1978).

[75] Nicaragua supra note 27, Dissenting Opinion of Judge Schwebel 351 ¶ 180

[76] Jochen A. Frowein, Self-Determination as a Limit to Obligations in MODERN LAW OF SELF-DETERMINATION (Christian Tomuschat et al. 1993) 213.

[77] BUCHHEIT supra note 74 at 222.

[78] Antonello Tancredi, A Normative "Due Process" in the Creation of States through Secession, in SECESSION: INTERNATIONAL LAW PERSPECTIVES 189-90 (Marcelo G. Kohen ed., 2006).

Several jurists like Friedman,[79] Wright,[80] and Hall[81] have opted for refraining from involvement. Refrainment is backed for two main reasons. There is undoubtedly a possibility of abuse of right of intervention, especially in contravention to the set principles of non-intervention and prohibition on the use of force. Also, the risk of escalation of the conflict is writ large. This position expects the warring parties to fight and decide amongst themselves the outcome of the conflict[82] and that external parties must not intervene and tamper.[83]

The Russian Federation is well aware that there is no universal recognition for direct third State intervention in support of a secessionist group. Further, it would be extremely difficult for Russia to establish that the secessionist groups qualify the threshold for direct third State intervention. This is perhaps why Russia chose to recognise Crimea's referendum and recognise Donetsk and Luhansk as "People's Republics" – States under international law.[84]

However, such recognition during an ongoing conflict is not lawful under international law. Summarising the position of law, Hersch Lauterpacht stated that:

> "Recognition is unlawful if granted *durante bello*, when the outcome of the struggle is altogether uncertain. Such recognition is a denial of the sovereignty of the parent State… Premature recognition is wrong not only because, in denying the sovereignty of the parent

[79] Wolfgang Friedmann, Intervention, Civil War and the Role of International Law, ASIL, 72-3 (1965).

[80] Quincy Wright, US Intervention in the Lebanon, 53 AJIL, 116 (1959)

[81] W. E. HALL, A TREATISE ON INTERNATIONAL LAW 346 (8th ed. 1904).

[82] Wouter G. Werner, Self-Determination and Civil War 6 J. CON. SEC. L. 171, 187. (2001).

[83] BUCHHEIT supra note 74 at 40; JOHN MOORE, LAW AND THE INDO-CHINA WAR 194 (1972); HIGGINS supra note 69 at 175

[84] Spectator, supra note 22

State actively engaged in asserting its authority, it amounts to unlawful intervention. It is wrong because it constitutes an abuse of the power of recognition. It acknowledges as an independent State a community which is not, in law, independent and which does not, therefore, fulfil the essential conditions of statehood".[85]

Collective self-defence

Russia claimed to invoke Art. 51 of the Charter granting Russia the inherent right to collective self-defence on behalf of the People's Republics. However, as established above, Russia's recognition of the Region of Donbas as States is without sanctity and therefore, no right to collective self-defence can arise. This has been reinstated by the Independent International Fact-Finding Mission on the Conflict in Georgia Report wherein the Mission held that "the inadmissibility of an intervention upon invitation by the South Ossetian de facto Government would be undermined by allowing collective self-defence in favour of South Ossetia … a right [to collective self-defence] would not de-escalate, but escalate the conflict and therefore run counter to the objectives of the United Nations".[86] Moreover, as there is no actual or imminent attack, no possible claim under Art. 51 could be made. Lastly, Russia's engagement in Ukraine, both in 2014 as well as now, has been offensive, intended to disintegrate Ukraine's democratically elected government rather than to defend the ethnic minorities of Ukraine.[87]

Has Russia changed its stance over time? It is unlikely. Firstly, the Written Statement was submitted less than half a decade before Russia's

[85] HERSCH LAUTERPACHT, Recognition of States in International Law 53(3) YALE L.J., 385–458.
[86] INDEPENDENT INTERNATIONAL FACT-FINDING MISSION ON THE CONFLICT IN GEORGIA REPORT, II, 282
[87] BÍLKOVÁ supra note 54 at 47

interference in Crimea. Secondly, as recently as 2013, Russia staunchly opposed the external dimension of self-determination beyond the colonial context,[88] favoured *"reducing the role of the use of force in international relations*" and warned against "*arbitrary and politically motivated interpretation of fundamental international legal norms and principles such as non-use of force, ... respect for sovereignty and territorial integrity of states, right of peoples to self-determination".*[89] Thirdly, Russia continues to block all attempts by Crimea's entry into the UN in order to protect the Serbian interest.[90]

Thus, it is clear that Russia is hypocritical in its treatment of two States in its own neighbourhood. But can the West amplify this hypocrisy and stop Russia in its tracks? Unfortunately, no.

Why West can't question

The West has no moral standing to question Russia's hypocrisy simply because the West is guilty of the same hypocrisy. Where arguments of self-defence could not justify military interventions, the West has developed novel doctrines such as humanitarian intervention and responsibility to protect and in turn weakened the prohibition on third State armed intervention.

Humanitarian Intervention

[88] Human Rights Committee, 4th Periodic Report of Russia, CCPR/C/84/Add.2 (Feb. 22, 1995), 5th Periodic Report of Russia, CCPR/C/RUS/6 (Dec. 9, 2002), 6th Periodic Report of Russia, CCPR/C/RUS/6 (Feb. 5, 2008), 7th Periodic Report of Russia, CCPR/C/RUS/7 (Jan. 29, 2013)

[89] Concept of the Foreign Policy of the Russian Federation, Approved by President of the Russian Federation V. Putin, Feb. 12, 2013, ¶¶. 31 and 32

[90] Louis Charbonneau, An independent Kosovo can never join U.N.: Russia, REUTERS (Jan. 17, 2008) https://www.reuters.com/article/us-serbia-kosovo-un-idUSN165309320080117

Humanitarian intervention refers to the use of force by one or more States in another with the aim of preventing major human rights violations[91] at the hands of the parent State.[92] There are arguments for and against humanitarian intervention. On the one hand, there are those who seek to justify the humanitarian intervention by arguing that it is essential to prevent a 'humanitarian catastrophe', to prevent and suppress large-scale violations of human rights, 'ethnic cleansing' etc.[93] On the other hand, it is argued that humanitarian intervention is non-permissive as without UNSC authorization intervention is illegal under international law.[94] As it *prima facie* violates Art. 2(4) and resolutions of the UNGA such as Resolution 2131.

Humanitarian intervention, however, is claimed by some writers to be a second implied limitation on the prohibition on the use of armed forces by States.[95] Lauterpacht as early as 1950 held that *"ultimately peace is more endangered by tyrannical contempt for human rights than by attempts to assert through intervention the sanctity of human personality"*[96] Similarly, Tomuschat asserts that in extreme circumstances humanitarian intervention must be acknowledged not only as morally defensible but also

[91] Anthea Roberts, Legality versus Legitimacy in HUMAN RIGHTS, INTERVENTION, AND THE USE OF FORCE at 180 (Philip Alston and Euan MacDonald (ed) 2008).

[92] R. Lillich, Forcible Self-Help by States to Protect Human Rights 53 IOWA LR 325 (1967-1968).

[93] Antonio Cassese, Ex injuria jus oritur: Are We Moving towards International Legitimation of Forcible Humanitarian Countermeasures in the World Community? 10 EJIL 23-30 (1999); Abraham Sofaer, International Law and Kosovo 36 STAN. L. REV 4 (2000); MARTIN A DIXON & ROBERT MCCORQUODALE, CASES & MATERIALS ON INTERNATIONAL LAW (6th edn. 2000) 579

[94] Jonathan J. Charney, Anticipatory Humanitarian Intervention in Kosovo 93 AJIL 835-6 (1999).

[95] F. TÉSON, HUMANITARIAN INTERVENTION: AN INQUIRY INTO LAW AND MORALITY 145 (1988); Werner supra note 82 at 179-195

[96] HERSCH LAUTERPACHT, INTERNATIONAL LAW AND HUMAN RIGHTS 32 (1950)

as legally justified.[97] However, the 2005 World Summit Outcome[98] adopted by the UNGA, which has an entire section dedicated to the use of force, has no trace of a right of intervention for democratic or humanitarian purposes. The ILC has also affirmed that the issue of humanitarian intervention in foreign territory is not included in the state of necessity.[99] West, in particular, the NATO appealed for the right to humanitarian intervention in Kosovo[100] and Russia denounced it.[101] The rest of the States in the international community were divided though the majority of States especially those from the Third World were far from accepting the unilateral right to humanitarian intervention.[102]

Responsibility to Protect

A closely related concept gaining prominence in recent debates is the responsibility to protect doctrine (R2P). The idea was conceptualised in the 2001 Report of the International Commission on Intervention and State Sovereignty. R2P applies when serious and irreparable harm is occurring or is imminently likely to occur and large-scale loss of life happens or is apprehended. It may or may not be with genocidal intent but must be produced by deliberate State action or State neglect or State's inability to

[97] Tomuschat supra note 62.

[98] UNGA, In larger freedom: towards development, security and human rights for all, Report of the Secretary-General, A/59/2005 (Mar. 21 2005)

[99] UNGA, A/CN.4/498/Add.2, ¶ 287

[100] Javier Solana, Secretary-General of NATO, Press Statement of Mar. 23 1999 < https://www.nato.int/docu/pr/1999/p99-040e.htm>; D. Kritsiotis, The Kosovo Crisis and NATO's Application of Armed Force against the Federal Republic of Yugoslavia 49 ICLQ 340 (2000); THE CRISIS IN KOSOVO 1989-1999 495 (Marc Weller (ed) 1999)

[101] S. C. Res. 1035 (Mar. 24, 1999), 1050 (May 14, 1999)

[102] Oliver Corten, Human Rights and Collective Security: Is There an Emerging Right of Humanitarian Intervention in HUMAN RIGHTS, INTERVENTION, AND THE USE OF FORCE 119 (Philip Alston and Euan MacDonald (ed) 2008).

act, or in a failed State situation.[103] In such situations, R2P triggers the residual responsibility of the broader international community.

The primary body authorised to respond in such a situation is the UNSC but it does not exclude the possibility of the responsibility being carried out by the UNGA, regional organisations, or even coalitions of the willing. The Commission also stipulated that legitimate interventions would require 'just cause', right intention, last resort, the proportionality of means, and reasonable prospects of success.

The concept soon became part of the UN's ambitious proposals for reforms as evidenced by the December 2004 Report by the High-Level Panel on Threats, Challenges and Change. It was then embraced by the UN Secretary-General's March 2005 Report 'In Larger Freedom'. It was subsequently adopted by the UNGA in Resolution 60/1, the 2005 World Summit Outcome and has since been cited by the UNSC in Resolution 1674 (2006) where the Council 'reaffirmed' States' responsibility to protect populations from genocide, war crimes, ethnic cleansing, and crimes against humanity.

The 2005 Secretary-General Report[104] leaves no doubt as to the multilateral character of the implementation of the duty to protect. There is no ambiguity that would allow any unilateral right of armed intervention, a fact also reflected in the very clear positions adopted by States like Ukraine (on behalf of Georgia, Uzbekistan, Ukraine,

[103] International Commission on Intervention and State Sovereignty, Principles for Military Intervention in THE RESPONSIBILITY TO PROTECT xii (2001)

[104] UNGA *supra* note 98 ¶ 139

Azerbaijan, Moldova),[105] Uganda,[106] San Marino,[107] Russia,[108] Chile.[109] More importantly, no State has officially taken the opposite position. Thus, R2P cannot be used to justify unilateral intervention. And yet, NATO has invoked the doctrine to authorise armed intervention in cases of Libya[110] without waiting for the first ports of call namely UNSC and UNGA to respond. And now Russia talks about protecting people in Ukraine from genocide.

It is ironic that both sides advocate for principles that they rejected in other instances and the Ukraine invasion is yet another testament to these contradictory positions of convenience. Russia, which for decades championed the principle of respect for the territorial integrity of States, particularly during its struggle with separatists in Chechnya and Tatarstan, and even during the Kosovo debates, started advocating the principle of self-determination for Russian speaking populations in Crimea and the peoples of the Region of Donbas. The Western States, which constantly supported the Kosovo separatist movement since 1998 and recognized Kosovo just a few hours after the DoI on 17 February 2008, suddenly rediscovered, because of the crisis in Ukraine, the merits of the principle

[105] A/59/PV.88, 7 April 2005, 22 held that humanitarian intervention can be undertaken only as a last resort measure and under the explicit mandate of the Security Council.

[106] A/59/PV.88, 7 April 2005, 8 affirmed that prior authorisation of the Security Council is a must.

[107] A/59/PV.86, 6 April 2005, 24 considered that responsibility to protect is collective and must remain within the purview of the Security Council.

[108] A/59/PV.87, 7 April 2005, 6 asserted that any intervention on humanitarian grounds must only be done when authorised by the Security Council.

[109] A/59/PV.86, 6 April 2005, 20 succinctly summarised that the emphasis was not on recognising a right to humanitarian intervention but on reiterating that it is for the Security Council to act in such extreme situations.

[110] Roland Paris, The 'Responsibility to Protect' and the Structural Problems of Preventive Humanitarian Intervention, 21(5) INTERNATIONAL PEACEKEEPING 569-603 (2014).

of territorial integrity and other basic principles of international law often violated by these same Western States during the last decades.[111]

The war has challenged the system of contemporary international law.[112] However, the situation did not emerge out of the blue. Even as the International Court of Justice delivered the Kosovo Advisory Opinion, the world community was well aware of the risk of it being viewed as a precedent for several such movements to secede with the assistance of direct and armed third State interventions.[113] Separatist groups in South Ossetia and Abkhazia cited Kosovo to reaffirm their claim for independence from Georgia; Transnistria attempted to break away from Moldova, and Russia supported this.[114] Russia in fact relied on the Kosovo precedent to justify the annexation of Crimea. With the very intent to avoid this situation, the West, especially NATO attempted to portray Kosovo as a *sui generis* situation.[115] Such a technique was never likely to work as the same factors that made Kosovo possible can either be refuted or replicated in other situations.[116] The *sui generis* argument was just the West's attempt

[111] Théodore Christakis, Self-Determination, Territorial Integrity and Fait Accompli in the Case of Crimea 75 ZAöRV 75, 77 (2015)

[112] Oleksandr Merezhko, Crimea's Annexation by Russia - Contradictions of the New Russian Doctrine of International Law 75 ZaöRV 167, 174 (2015)

[113] Peter Hilpold, Secession in International Law in KOSOVO AND INTERNATIONAL LAW: THE ICJ ADVISORY OPINION OF 22 JULY 2010 59 (Peter Hilpold (ed) 2012); Colin Warbrick, Kosovo: The Declaration of Independence 57 Brit. Inst. of. Int. & Comp. Law 675, 679 (2008).

[114] N Kulish and C.J. Chivers, Kosovo is Recognized but Rebuked by Others, N.Y. TIMES, (Feb. 19, 2008) <http://www.nytimes.com/2008/02/19/world/europe/19kosovo.html>

[115] Hilpold supra note 113 at 47; James Summers, The Internal and External Aspects of Self-Determination Reconsidered in STATEHOOD AND SELF-DETERMINATION: RECONCILING TRADITION AND MODERNITY IN INTERNATIONAL LAW (Duncan French (ed), 2013) 229; Snezana Trifunovska, The Impact of the "Kosovo Precedent" on Self-Determination Struggles in KOSOVO: A PRECEDENT? THE DECLARATION OF INDEPENDENCE, THE ADVISORY OPINION AND IMPLICATIONS FOR STATEHOOD, SELF-DETERMINATION AND MINORITY RIGHTS (James Summers (ed), 2011) 378; Warbrick supra note 113

[116] Stefan Wolff and Annemarie Peen Rodt, Self-Determination After Kosovo 65 EUROPE-ASIA STUDIES 799, 806 (2013)

to extricate itself from the chaos it made i.e., creating one rule for itself while demanding others to follow established principles.[117]

Furthermore, Kosovo simply cannot be considered *sui generis* because every case of unilateral declaration of independence and subsequent attempt at secession has been and will be unique as regards the historical and factual background and the "*causes* and *epiphenomena*"[118] against which it must be examined. Kosovo is as unique as Bangladesh, South Ossetia and Abkhazia.[119] Most importantly, there is an irrefutable and inherent injustice in granting one ethnic group this right while denying it to countless others by referring to that one case as being *sui generis*.[120] Thus, Kosovo is a precedent for many such other "unique cases" to emerge in the future.

All the points above demonstrate that the situation at hand is a consequence of years of the weakening of the international legal system. All of the West's actions in Kosovo, Iraq, Libya, Afghanistan, and South Sudan and its inaction when Russia intervened in South Ossetia and Nagorno-Karabakh have led to the situation today. Ukraine has become the scapegoat, the sacrificial lamb, of the weakened prohibition on the

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[117] James Ker-lindsay, Preventing the Emergence of Self-Determination as a Norm of Secession: An Assessment of the Kosovo "Unique Case" Argument 65(5) EUROPE-ASIA STUDIES 851(2013)

[118] Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo (Advisory Opinion) Separate Opinion of Judge Cancado Trindade, 523 paras 6 – 7 [2010] ICJ Rep 403 ¶ 46

[119] Vakhtang Vakhtangidze, The Impact of Kosovo: A Precedent for Secession in Georgia? in KOSOVO: A PRECEDENT? THE DECLARATION OF INDEPENDENCE, THE ADVISORY OPINION AND IMPLICATIONS FOR STATEHOOD, SELF-DETERMINATION AND MINORITY RIGHTS 408 (James Summers (ed), 2011).

[120] JACK HOLMBERG FORSYTH, SELF-DETERMINATION, SECESSION, AND STATE RECOGNITION: A COMPARATIVE STUDY OF KOSOVO, ABKHAZIA AND SOUTH OSSETIA (2012) 51.

unilateral use of force. As Marcelo Kohen put it when writing about the events in Crimea:

"Are the accusers being consistent? They are the ones who encouraged the secession of Kosovo by any means, who supported the secession of South Sudan, who used force without Security Council authorisation and conducted a policy that led to the de facto fragmentation of Iraq, Afghanistan, and Libya. […] When the Kosovo parliament declared independence, those same governments affirmed that the violation of the Serbian Constitution was irrelevant and that international law did not prohibit unilateral declarations of independence. […]. Vladimir Putin's government is paying them with the same coin. […] Contradiction in international policy and disregard for international law when it suits the interests of one side or another come at a price. Western capitals have been left helpless against Russia. Not militarily or economically. They have been morally helpless. By dint of ignoring the basic rules governing international relations and invoking spurious legal arguments or claiming that the actions in question 'did not constitute precedents', by dint of promoting the break-up of states, imposing a culture of force in international relations, those who claim to represent democratic values on the international stage have ended up weakening the framework of international law and the system of collective security."[121]

In fact, Putin himself cited the cases where the West flouted international law to suit their agenda. Even if the West is able to establish that Putin's twin claims i.e., Ukraine's willingness to join NATO, and alleged genocide lack veracity, Russia are not estopped from employing doctrines of

[121] Christakis supra note 111 at 77-78.

humanitarian intervention or responsibility to protect – as the West has on several occasions in the past.

No doubt, Russia's aggression is a textbook example of the violation of the prohibition on the use of force. And yet, the West has no moral standing to question Russia. The West may have assumed that its disrespect for the norms of international law affirmed in the Charter would be inconsequential because of its hegemony on the world stage. There simply wasn't another power that could challenge the West. But with time, Russia has grown strong – strong enough to emulate the West in the most infamous manner. The respect for international law, particularly the prohibition on the use of force grows all the more important as more and more actors gain military prowess.

If Ukraine had not felt vulnerable, it would have probably never approached NATO for membership, and *ergo* not have faced the wrath of Russia. At the same time, Ukraine would probably not have faced this situation if NATO had kept its promise and allowed Ukraine to join the alliance. From threatening States into not buying oil from Iran to demanding that Ukraine not join NATO, the stronger States have done everything to restrict the free exercise of sovereignty by smaller States. At the same time, the West and Russia block the effective functioning of the UNSC using their veto powers. The world cannot afford smaller States like Ukraine to fall prey to the "tit for tat" games of the bigger States. The world order is based on sovereign equality which at the least should imply the right to survive without fear of coercion and retaliation for the exercise of sovereignty. It is no more sufficient for States who perceive themselves as the "Big Brother(s)" to respond decisively, effectively, and consistently, in case of violation by one actor but also exercise tremendous restraint. – in

it lies the future of international law as we know it, and by extension, the world itself.