THE INTERNATIONAL LAW AND THE RUSSIAN - UKRAINE CONFLICT RESOLUTION

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ABSTRACT

This paper examines a summary of the historical ground of the Russian and Ukraine War along with basic principles of international law in dispute resolution. The paper classifies the basic principles of international law as including the principle of non-use of force; the principle of the territorial integrity of the state; the principle of peaceful settlement of international disputes; and the principle of international good faith.

The study upon which this paper is based is the analysis of the prevailing situation in Ukraine concerning the UN Charter and International law. The study has found the situation in Ukraine to be fueled by the expansionism policy by Russia. The war has resulted in the massive killing of innocent people. International law has been ignored and the world is indeed witnessing. Given the situation in Ukraine, it is high time for the UN to effectively intervene to control and contain the situation. There are tangible pieces of evidence that demonstrate the violations of international law. This is in particular violation related to human rights. By doing so, the UN will be implementing its obligatory duties and should not end up with declarations. Thus, it is recommended that the UN should get the lead in the efforts of Russia and Ukraine dispute resolution.

This paper underscores the value of implementing the UN Charter and international law to solve international disputes. It divulges the negative impacts of using war as a means to solve international disputes. It reminds the world of the impotence of using peaceful means as a comprehensive method of solving disputes permanently.

***Keywords*:** International Law, Disputes, Conflict and Resolution

INTRODUCTION

The war between Russia and Ukraine started in February 2014. The problem indeed was based on the political status of Crimea and Donbas which were internationally recognized as part of Ukraine. Since then, Russia does not agree. This being the stance, Russia annexed Crimea in 2014. This event by Russia was shortly followed by the war in Donbas between the people who were in fouvour of the separation of Donbas from Ukraine and Ukraine's state force. Since 2014, there has been fighting in Donbas between these two groups. The tension increased in 2021 when Russia built a military base beside Ukrainian territory. The hostility continued and on 24 February 2022 the current war started.[i] The purpose of this paper is to explain the situation in Ukraine in line with the principles of international law including those enshrined in the UN Charter with the view to ascertain whether there is any violation. This paper has examined a brief on the historical ground of the Russian and Ukraine War along with basic principles of international law in dispute resolution. The study has employed a descriptive method to make an analysis of the international UN Charter concerning the prevailing situation in Ukraine. Different pieces of literature have been navigated during analysis. The method has enabled the study to meet its objective. The findings reveal that there have been violations of the principles of international law. These include the principle of peaceful coexistence, the Principle of Non-Use of Force or Threat of Force, the Principle of Peaceful Settlement of International Disputes, the Principle of Non-Interference and the Principle of Equal Rights and Self-Determination of Nations and Peoples. The study recommends to the UN and international community to take robust initiatives to address the situation.

BRIEF SUMMARY ON THE HISTORICAL GROUND OF THE RUSSIAN AND UKRAINE WAR[ii]

The current problem started when Ukraine became an independent country in 1991[iii]. Since then, this fact has not gained support from Vladimir Putin, the president of Russia who is insisting that Ukraine, too, is part of Russia. In his televised speech on 21 February 2022, he claimed:

> "Ukraine is not just a neighboring country or us, it is an inalienable part of our history, culture and spiritual space.

Los Angeles Times Data and Graphics staff (26/02/2022) have written:

> Ukraine was among several Soviet republics that became independent countries as the Soviet Union collapsed. The Baltic countries of Estonia, Latvia and Lithuania eventually joined the North Atlantic Treaty Organization, as did several former members of the Soviet-era Warsaw Pact.[iv]

Formerly, the conflict had been fuelled by the decision of Ukraine to decline the economic integration with Europeans Union in 2013 during President Viktor Yanukovych regime. Some of the people were not happy with that declaration[v]. There emerged the protest and the police intervened to cub the situation in the Capital City, Kiev. The situation had gone worse and as corollary, President Yanukovych was forced to flee the country to Russia in 2014. This quickened as alleged, the invasion of Ukraine by Rusia.[vi]

In this, Cory Welt (2022) observes that:

> Russia's invasion of Ukraine occurred soon after Yanukovych fled to Russia in February 2014. Russian government officials cast the Revolution of Dignity as a Western-backed "coup" that, among other things, could threaten the security of the ethnic Russian population in Ukraine's Crimea region, could eject Russia's Black Sea Fleet from the region, and even could bring Ukraine into NATO. The Russian government covertly deployed forces to Crimea and, after holding what most observers consider to have been an illegal referendum, declared it was incorporating Crimea (with a population of about 2 million) directly into the Russian Federation.[vii]

In connection with the removal of President Yanukovych, Congressional Research (2021)[viii] has written:

> Before 2014, the Russia-Ukraine relationship occasionally suffered turbulence, with disputes over Ukraine's ties to NATO and the EU, the status of Russia's Crimea-based

> Black Sea Fleet, and the transit of Russian natural gas via Ukraine to Europe. By the end of 2013, ex-President Yanukovych appeared to make a decisive move toward Russia, postponing an association agreement to establish closer political and economic ties with the EU and agreeing instead to substantial financial assistance from Moscow. This decision provoked the Euromaidan protests and, ultimately, led to Yanukovych's removal from power.

Then, Ukraine was later led by president Poroshenko who initially introduced the reform in the country. The International monetary Fund (IMF) appreciated his efforts. The reforms made include a banking system, increase transparency in government business, health services and fighting against corruption. However, on the other hand, the government was alleged to fail to fight against corruption. In this, the Congressional Research (2021)[ix] has observed:

> Since Ukraine's 2014 Revolution of Dignity, the results of Ukraine's reform efforts have been mixed. During Poroshenko's presidency, the International Monetary Fund (IMF) praised key reforms, including a reduction of the fiscal deficit, an increase in gas prices (retaining subsidies for lower-income households), and a reform of the banking system. Observers also noted progress in public procurement transparency, decentralization, and health care reform. At the same time, domestic and international stakeholders criticized the government under Poroshenko for slowly implementing, failing to complete, or backsliding on key reforms, particularly with regard to anti-corruption efforts.

As corollary above, during the election in 2019, the present president, Mr. Volodymy Zelensky won the election. He was defeated (by then, President Petro Poroshenko. The main cause for his failure was his alleged failure to combat corruption. Explaining the defeat of President Petro Poroshenko in the election, Congressional Research (2021)[x] has portrayed:

> Ukraine's president is Volodymyr Zelensky, previously a popular actor-comedian and producer. In April 2019, Zelensky defeated incumbent Petro Poroshenko, 73% to 24%, in a second-round presidential election. Zelensky's victory appeared to reflect widespread disillusionment with Ukraine's political establishment. Many Ukrainians believed Poroshenko had failed to combat corruption and, generally, had not done

> enough to restore the country's economic health after almost five years of conflict with Russia.

On the other hand. Russia has not ended its intention to influence Ukraine's policy particularly its foreign policy whilst claiming to protect pro-Russian populations in these regions. Cory Welt (2022) is of the view that:

> Many observers believe that Moscow sought to complicate Ukraine's domestic development and foreign policy and to increase Russian leverage in potential negotiations over Ukraine's future trajectory. To date, the conflict has led to more than 10,000 combatant deaths and almost 3,400 civilian fatalities. Ukraine has registered more than 1.4 million people as internally displaced persons[xi].

In line with above synopsis, Cory Welt (2022) further explains:

> In 2014, the Obama Administration said it would impose increasing costs on Russia, in coordination with the EU and others, until Russia "abides by its international obligations and returns its military forces to their original bases and respects Ukraine's sovereignty and territorial integrity.[xii]

The present war started on 24, February 2022. The Russian troop forcibly moved into Ukraine and crossed the eastern board near the city of Kharkiv. It has attacked from Donbas region, border of Belarus and Crimea in the south of Ukraine. There have been serious impacts on people of Ukraine following the invasion.

World Economic Forum has written:

> More than eleven million people have left their homes in Ukraine so far: 5.3 million of which have left to neighbouring countries, while 6.5 million people are now internally displaced in the country itself amidst the continuation of the war. The UN's children agency believes that two-thirds of all Ukrainian kids have been impacted and have had to flee their homes.[xiii]

On 9 May 2022, Ukraine asked the United Nations Human Rights Council to convene an extraordinary session of UN Human Rights to discuss the war crimes committed by Russia in

Ukraine. In this, the Permanent Representative of Ukraine to the UN Office and other international organizations in Geneva, Yevheniia Filipenko, said:

> Together, we can send another powerful message to Putin and his cabal of war criminals: you are isolated like never before. We want to see practical steps on the part of the UN in connection with Russia's violation of human rights in Ukraine and the war crimes that it commits daily against our people," Filipenko said, noting that this, in particular, is an investigation by a special investigative commission of crimes in Bucha and in other territories liberated after the occupation.[xiv]

THE VIOLATIONS OF THE BASIC PRINCIPLES OF INTERNATIONAL LAW IN RELATION TO RUSSIAN- UKRAINE WAR

The Concept of Basic Principles

The basic principles of modern international law may be defined as those of its generally recognized norms that have the greatest importance for resolving the major problems of international relations. International law comprises rules guidelines and laws guiding the relationship among the nations.[xv]

Above all the basic principles of modern international law are embodied in the Charter of the United Nations. Some of them, however, are presented in it very briefly. Accordingly, at the initiative of the Socialist States, the United Nations elaborated the contents of some of these basic principles. That work was followed by the adoption by the United Nations General Assembly in 1970 of a Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nation.[xvi] That Declaration contains seven principles, namely:

a) the principle that States shall refrain in their international relations from the threat or use of force;

b) the principle that States shall settle their international disputes by peaceful means;

c) the duty not to intervene in matters within the domestic jurisdiction of any State;

d) the duty of States to co-operate with one another in accordance with the Charter;

e) the principle of equal rights and self-determination of peoples;

f) the principle of sovereign equality of States;

g) the principle that State shall fulfill in good faith the obligations assumed by them in accordance with the Charter.

This does not imply, of course, that there are only seven basic principles in international law. The Declaration did not consider as its task to provide a full list of the basic principles of international law.

The Final Act of the Conference on Security and Cooperation in Europe that was held in Helsinki in 1975 contains ten basic principles. In addition to those contained in the Declaration of 1970, it lists the principle of the inviolability of frontiers, the territorial integrity of States and respect for human rights, and fundamental freedoms. This, too, does not exhaust the list. For the time being there is no single international document that lists all the basic principles of modern international law.[xvii]

In connection with the concept of basic principles of international law, one should note the conception of basic rights and duties of States. Back in 1949 at the request of the UN General Assembly, a draft Declaration of the Rights and Duties of States containing 14 articles was submitted by the UN International Law Commission. That draft did not receive a final endorsement of the General Assembly and was forwarded to governments for comments. Since there were very few responses, the General Assembly did not pursue this matter further.[xviii]

The Classification of Basic Principles

- The principle of Peaceful Coexistence

The principle of peaceful coexistence occurs in two formulations: the principle of peaceful coexistence of States belonging to different social systems and the principle of peaceful coexistence of States independently of differences in their political, economic and social systems. In international documents the second formulation is usually employed. In effect, both formulations refer to the peaceful coexistence of States possessing different social structures.

> Knowing how to live together in harmony is an essential part of human life, and is something that comes from both the heart and the mind. It allows us to create a

> more empathetic and understanding society, where we can reach agreements and solve problems more easily, and move forward as one.[xix]

Historically, Socialist States do not consider that this principle operates in their mutual relations; there it is replaced by the principle of socialist internationalism. Similarly, capitalist States do not consider that this principle governs their mutual relations.

The principle of peaceful coexistence of States belonging to different social systems was first employed as a principle governing the foreign policy of the Soviet socialist State. It had since served as the basic principle governing the USSR's foreign policy and subsequently that of other socialist countries with different social system. It was embodied in the USSR Constitution as the principle governing the Soviet State's foreign policy (Art. 28).[xx]

The Soviet State worked hard to persuade capitalist States to adopt the principle of peaceful coexistence so that it might become a binding principle of international law. This required many years. Gradually the very course of events forced capitalist States to turn toward recognition of that principle. A major stage along such a course was the official recognition of the Soviet State by most capitalist States in the 1920s. During the Second World War, in which the Soviet State and several Capitalist States joined forces in fighting against fascism and aggression, the subsequent defeat of fascism and the rising tide of the world's democratic movement produced a situation in which the principle of peaceful coexistence was embodied in the United Nations Charter – the basic document of modern international law.[xxi]

Although the term peaceful coexistence is not used in that Charter, it forms a dominant theme throughout the Charter. States are called upon to practice tolerance and live together in peace with one another as good neighbours, to develop friendly relations among nations. The United Nations, the Charter states, must be a Centre for harmonizing the actions of nations in achieving their general objectives.

Naturally, these propositions refer to all States, but in the context of actual reality it is not difficult to see that "to practice tolerance" means above all to recognize the existence of different socio-economic systems; and that "to live together in peace with one another as good neighbors" it aimed primarily at achieving peace and good-neighborly relations among States

with different social structures. And that is, in fact, the principle of peaceful coexistence of States belonging to different social systems.

Yet even after the United Nations Charter had been adopted the Government of the United States long persisted in rejecting the very idea of peaceful coexistence of States with different social systems. It took the US 27 years to finally recognize that principle. In a document entitled Basic Principles of Relations between the United States and the Soviet Union, signed in Moscow on 29 May 1972 it is stated that they will proceed from the common determination that in the nuclear age, there is no alternative to conducting their mutual relations based on peaceful coexistence.[xxii]

Differences in ideology and the social systems of the USSR and the USA are not obstacles to the bilateral development of normal relations based on the principles of sovereignty, equality, non-interference in internal affairs and mutual advantage." In the early 1980s, however, there occurred a substantial shift in US policy away from peaceful coexistence and towards a cold war.

In the 1970s the term "peaceful coexistence" came to be used with increasing frequency in UN documents and regional and bilateral international documents. That principle also presupposes the existence of other important principles of international law such as the non-use of force or threat of force, respect for sovereignty, and no interference in internal affairs. It reflects the substance of these principles in a general form even though its won scope is wider. It prohibits the implementation of policies aimed at a confrontation between States possessing different social structures and imposes an obligation to conduct policies that encourage cooperation among them which is a policy of international détente.[xxiii]

Taking into consideration of the above principle, you come to conclude that what is taking place in Ukraine is pertinent violation of the principle of peaceful coexistence of States independently of differences in their political, economic and social systems. This, in particular violates principles of the non-use of force or threat of force, respect for sovereignty, and no-interference in internal affairs.[xxiv] It is vividly reported that Russian does not want Ukraine to have a political, social and economic relationship with NATO and European Union.[xxv]

- The Principle of Non-Use of Force or Threat of Force

The principle of the non-use of force or threat of force first appeared in international law in the period between the Great October Socialist Revolution in Russia in 1917 and the Second World War (1939 - 1945). It appeared initially as a principle banning aggressive wars. It replaced the right of a State that existed in international law before the Revolution of 1917 to wage war (*jus ad bellum*). According to that principle each State could have recourse to war against any other State in the event of any dispute between them. The idea that aggressive wars are criminal and illegitimate met with wide support.[xxvi]

The United Nations Charter marked an important stage in the further development of the principles of the non-use of force or threat of force. The Charter does not only limit itself to a prohibition of aggressive wars but also prohibits threats of force and the use of force in international relations. Paragraph 4 of Article 2 of the Charter states:

> "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations."

Presently, the most authoritative interpretation of the principle of the non-use of force or threat of force is still the one provided by the Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States and in the Definition of Aggression adopted by the United Nations General Assembly in 1970 and 1974 respectively, and also by the 1975 Final Act of the Conference on Security and Cooperation in Europe.

The main element in the principle of the non-use of force or threat of force is the prohibition of wars of aggression, i.e. prohibition to have recourse to wars in relations among States. The Declaration states that

> "A war of aggression constitutes a crime against the peace."

It entails a severe responsibility for States that have recourse to such a war. In particular, these documents indicate that the following are prohibited:

i) any action constituting a threat of force of direct or indirect use of force against another State (an example of a violation of that norm is provided by the constant recourse by the United States to threats or use of force as a means of exerting pressure on other States);

ii) the use or threat of force for the purpose of violating existing international frontiers of another States, for settling international disputes, including territorial disputes and issues relating to state frontiers, or for violating international demarcation lines, including armistice lines;

iii) reprisal with the use of armed force (this includes so called "pacific blockade", i.e. the blockading of ports of another State through the use of armed forces in peacetime. A well-known example of such a blockade was the "quarantine" imposed by the United States against Cuba in 1962) and the present war between Russia and Ukraine as shall be discussed later in this paper.

iv) measures to encourage the organization of irregular force or armed bands, including mercenaries (for example, the sending of armed bands into Angola and Afghanistan);

v) the organization, instigation, assistance, or participation in acts of civil war or in terrorist acts in another State, or connivance at organized activities within one's own territories aimed at carrying out such acts when they are associated with the threat or use of force (for example, the overthrow of President Allende's government in Chile at the initiative of the United States' CIA);

vi) military occupation of a State's territory following the use of force in violation of the United Nations Charter;

vii) the acquisition of the territory of another State as a result of the threat or use of force. An example is provided by Israel's occupation of seized Arab territories;

viii) acts of violence that deprive peoples of their right to self-determination, freedom and independence, an example is provided by Israel`s occupation of seized Arab territories.

Generally, the definition of Armed Aggression of 1974 contains an incomplete list of such actions, prohibited by international law, that constitute particularly serious and dangerous forms of illegal use of force. In particular, they include activities involving the use of armed force listed above in paragraphs 2 and 7.

An important norm of modern international law that is closely associated with the principle of prohibiting the use or threat of force is the right to self-defense. That norm is formulated in Art. 51 of the United Nations Charter, which states that:

> "Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations."

Self-defence is not an exception from the operation of the principle of prohibiting the use of force, for the latter is a prohibition on being first to use force. The right of self-defence is a right to take countermeasures in the event that armed force is employed by other States. Article 51 of the United Nations Charter limits such use of armed force for self-defence to situations of armed aggression. Thus, according to the United Nations Charter, and hence according to modern international law, a State or States may apply armed force against another State only in the following cases:

i) While participating in measures being carried out in accordance with resolutions of the UN Security Council to prevent or remove threats to peace or suppress acts of aggression or other breaches of peace. These are measures of the United Nations Organization; and

ii) In carrying out the right to individual or collective self-defence in the event of armed attack. A State may then operate against the aggressor either alone or in alliance with other States.

One should also add Art. 107 of the United Nations Charter which provides for the possible use of forces against the Second World War's aggressor States.

Modern international law also embodies the right of peoples of colonial and dependent countries to have recourse to armed force against metropolitan countries that impede their right to self-determination. This, too, is a legitimate form of the self-defence. In its general form that proposition follows from the United Nations Charter, but it is expressed more concretely in many international documents, including the Geneva Agreements of 1954 on Indochina, numerous resolutions of the United Nations General Assembly, and especially the Declaration of 1970 on Principles of International Law.[xxvii]

Naturally, the principle of the non-use of force does not extend to events taking place within a State, since international law does not govern intrastate relations. A component part of the principle of the non-use of force or threat of force concerns the prohibition of propaganda for war, which may also be viewed as an independent norm.

What is going on in Russia- Ukraine war is a breach of the principle of non-use of force. It is reported that Russia has invaded Ukraine by the use of force. Example Congressional Research Service has explained:[xxviii]

> In 2018, Russian forces forcibly prevented Ukrainian naval vessels from passing through the Kerch Strait to reach Ukrainian shores, illegally detained 24 crew members for 10 months, and returned their heavily damaged ships after two more months. Ukraine and its international partners considered the incident to be a major violation of international law and an escalation in Russia's efforts to control maritime access to eastern Ukraine.

- The Principle of Peaceful Settlement of International Disputes

The principle of a peaceful settlement of international disputes is embodied in the United Nations Charter. It's Art. 2 (3) states:

> "All Members shall settle their international disputes by peaceful means in such a manner that international peace security, and justice, is not endangered."

The most authoritative international documents that elaborate on the substance of that principle are the Declaration on Principles of International Law of 1970 and the Final Act of the Conference on European Security of 1975. According to these documents, the principle under consideration means that:

i) States have the duty to settle their international disputes with other States only through peaceful means in accordance with the relevant propositions of the United Nations Charter;

ii) States may themselves select appropriate means for resolving their disputes; and

iii) if the use of one peaceful means does not lead to the resolution of the disputes States must seek other peaceful means.

The current war between Russia and Ukraine is a vivid example of a violation of this principle. Presently, all attempts to solve the dispute through peaceful settlement of this war have been in vain.

- The Principle of Non-Interference

The principle of non-interference, which is closely associated with the principle of the sovereign equality of States, experienced a parallel development in international law. Under bourgeois international law the substance of that principle was limited, since in many cases it permitted foreign intervention, and even armed intervention, as well as other forms of interference in the internal affairs of other States. In modern international law the substance of that principle is much wider. Zhang N (2016)[xxix] has underscored the principle of Non-interference in the following word:

> The principle of non-interference is that sovereign states shall not intervene in each other's internal affairs. It is the general principle of contemporary international law that the non-interference in each other's internal affairs is based on the respect for states' sovereignty and territorial integration, which governs the relations between states in regard to their rights and obligations.

The principle of no-interference is embodied in the United Nations Charter (Article 2(7)). Authoritative interpretations of that principle are provided in the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and on the Protection of Their Independence and Sovereignty (1965), the Declaration on Principles of International Law of 1970 and the Helsinki Final Act (1975). According to the United Nations Charter it is prohibited to intervene in matters which are essentially within the domestic jurisdiction of any States."

The concept of "domestic affairs of a State" or "matters which are essentially within the domestic jurisdiction of any State" is not a territorial concept. Not everything that occurs on a territory of a given State relates to its domestic affairs. For example, an attack on a foreign embassy whose status is established by international law is not a purely domestic matter. At the same time many relations that extend beyond a State's territorial boundaries fall essentially within its domestic jurisdiction. For example, a treaty concluded by two States, providing it does not affect the rights and interest of third States, is an internal matter of the parties to the agreement in which a third State has no right to intervene.

According to the Declaration of 1970 the principle of non-interference constitutes a prohibition of direct or indirect intervention for any reasons "in the internal or external affairs of any other

state". In accordance with that Declaration the substance of that principle includes the following:

i) prohibition of armed intervention or all other forms of interference or attempted threat against the personality of the State or against its political, economic and cultural elements;

ii) a prohibition of economic, political or any other measures whose aim is to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from its advantages of any kind;

iii) a prohibition of measures designed to organize, assist, foment, or permit subversive, terrorist or armed activities directed towards the violent overthrow of the regime of another State;

iv) a prohibition of interference in civil strife in another State;

v) a prohibition of the use of force to deprive peoples of their national identity; and

vi) the right of every State to choose its political, economic, social and cultural systems without interference from other States.

The international legal concept of "matters which are essentially within the domestic jurisdiction of any State" is a legal concept whose substance changes as international law develops. In the course of such development an increasing number of matters to some extent (and usually not directly but through a State's internal law) fall under international legal regulations and therefore cease to be exclusively matters of internal jurisdiction. For example, following the conclusion of a number of pertinent international treaties in recent years the status of individuals, which until recently was entirely regulated by internal legislation of States, is now partly regulated by international law even though it basically continues to fall under internal jurisdiction.

Yet such a widening of the range of objects regulated by international law (not directly but through internal law) does not imply a widening of possibilities to interfere in such affairs directly. As there are corresponding international treaties any participants in such a treaty may submit a claim to other participants with regard to the execution of its terms. But such claims can only be presented to a State in accordance with the terms of the corresponding treaty and of international law as a whole.

The crudest violations of the principle of non-interference are associated with the imperialist policies from a position of strength, especially US policies. This is illustrated by such actions as the American intervention in Vietnam, the organizing by the United States of the overthrow of the Allende government in Chile (1973), its attempt at armed intervention in Cuba (1961), its sending of armed bands into the territory of the Democratic Republic of Afghanistan, armed provocations against Angola, Ethiopia, Iran and interference by Western powers in the domestic affairs of the Polish People's Republic and Democratic Republic of Congo.

And the Russia and Ukraine, too, provides another good example of the violation of the principle of non-interference as explained earlier in this paper. The Ukraine gained its independence since 1991. It has the right to exercise its autonomy without interference as presently observing.

- The Principle of Equal Rights and Self-Determination of Nations and Peoples

The emergence of the principle of the self-determination of peoples (nations) dates to the period of bourgeois revolutions. In the 19th Century, as it sought to establish its rule, the bourgeoisie proclaimed the "principle of nationality" and struggled to establish autonomous national States in Europe. But the "principle of nationality" was not universally recognized even in European international law, for the existence of a colonial system and of some European multinational empires was in sharp contradiction with the principle of the self-determination of nations.[xxx]

Remarking on the origin of the principle of self-determination, Chen, Yichao (2010)[xxxi] has written:

> The thought of self-determination could stem from the Social Contract Theory of John Lock and Jean-jacques Rousseau. But as a concept in the international law, self-determination was originated from Europe in 19 century. In the Italian Risorgimento, the separatist movements in the Austro-Hungarian monarchy, 1866 Prague Peace Treaty, "the concept of self-determination had a substantial impact on the European community".25 And during the World War I, Woodrow Wilson who is the president of USA put forward the principle of self-determination in his famous Fourteen Points as the foundation of the peace in Europe. Self-determination as an important political principle was also expatiated by Lenin in the Russian Revolution in the early 20th Centuries.

Following Russia's Socialist Revolution in 1917 Decree on Peace gave that principle new and deeper content. Because it was primarily aimed at helping the struggle against imperialism's colonial system the principle of self-determination of nations and peoples proclaimed by the Soviet State was strongly opposed by colonial powers, and it was only 30 years later that it became a norm of general international law.

The increased influence of the Soviet Union on the international scene and the upsurge/increase of the democratic and national liberation movement generated by the struggle against fascism during the Second World War resulted in the inclusion of the principle of self-determination of nations and people into the United Nations Charter. At the initiative of the USSR, that principle was also reflected in several resolutions of the United Nations. This served to consolidate its role as one of the basic principles of modern international law.

The post-war period was marked by an intense struggle for its implementation, greater concreteness and further development. That struggle proceeded along a wide front, above all in the vast territories of Africa and Asia, where colonial peoples rose against foreign rule one after another, within the United Nations, and in political and legal doctrines.

In the colonies imperialist powers often relied on the force of arms in attempting to hold back the growing movement for independence. Within the United Nations, in particular, in the drafting of the covenants of human rights, colonial powers vigorously opposed the inclusion of a wider and more comprehensive formulation of the principle of self-determination of nations and peoples than the one in the United Nations Charter. Some representatives of the bourgeois doctrine of international law sought to show that this principle was not in fact a principle of international law.

Nevertheless, as a result of continuing changes in the international correlation of forces in favour of the national liberation movement, peace and socialism, the principle of self-determination of nations and peoples experienced a further development. That was reflected in several international documents, among which the most important ones are the Declaration on the Granting of Independence to Colonial Countries and Peoples of 1960, adopted at the initiative of the USSR, Art. I of the covenants on human rights, and the Declaration on Principles of International Law of 1970, which provides a comprehensive definition of the substance of the principle of equal rights and self-determination of nations and peoples.

In modern international law, the substance of that principle includes the following propositions:

i) all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development;

ii) every State has the duty to respect this right;

iii) every State has the duty to promote, through joint and separate action, the realization of the principle of equal rights and self-determination of people;

iv) every State has the duty to refrain from any forcible action which deprives peoples of their right to slf-determination, freedom and independence;

v) in struggling for independence colonial peoples may use all necessary means; and

vi) the subjection of peoples to alien domination and exploitation is prohibited.

The principle of self-determination of nations and peoples does not mean that a nation (people) has a duty to seek to establish an independent State or a State that unifies the entire nation. The right of a nation to self-determination is a right. It also follows that this principle does not predetermine the international legal status of a particular nation (people). A nation (people) has the right to freely unite with one or more other nations (peoples), and in that case, depending on the character of the association, the corresponding national entities may or may not appear in international relations as subjects of international law. A nation (people) may choose how it will create a State that will then be a subject of international law.

Thus, the creation of state entities that are subjects of international law depends on the free decision of the nation. As noted in the Declaration on Principles of International Law of 1970 the establishment of a sovereign and independent State, the free association or integration with an independent state, or the emergence into any other political status freely determined by a people constitutes modes of implementing the right of self-determination by that people.

Russia- Ukraine war demonstrates how Russia has breached this principle. It is observed that Russia does not want Ukraine's relationship with the EU and NATO. This power should be left in h hands of the Ukrainians people to decide. It is their right and to do so without any interference.

- The Principle of Fulfilling International Obligations in Good Faith

The principle means that States must fulfill in good faith obligations that derive from norms of international law. Since international legal norms are created through either an explicit or tacit agreement, a State that has consented to be bound by a particular norm of international law is legally bound by that consent and cannot revoke it.

The principle of fulfilling international obligations in good faith is one of the oldest principles of international law and emerged together with it. Without its acceptance, the very existence of international law is not possible.

The particular importance of that principle derives from the fact that in international relations there is no administrative structure to enforce compliance with international legal norms and hence the fulfillment of international obligations depends primarily on the goodwill of individual States[xxxii].

At present time, it is embodied in the United Nations Charter. Its preamble emphasizes the resolve of United Nations Members to "establish conditions under which ……. respect for obligations arising from treaties and other sources of international law can be maintained". It is expected that all Members shall fulfill in good faith the obligations assumed by them in accordance with the Charter (Art. 2[1]).

The substance of that principle is made more concrete in several international documents, and especially in the Vienna Convention on the Law of Treaties of 1969, the Declaration on Principles of International Law of 1970, and the 1975 Final Act of the Helsinki Conference on Security and Cooperation in Europe.

The substance of that principle includes, above all, the proposition that each State has the duty to fulfill in good faith the following obligations:

i) Those that it adopts in accordance with the United Nations Charter. This emphasizes the basic role of the United Nations Charter in modern international law;

ii) Those that follow from generally recognized principles and norms of international law. This stresses the importance of generally recognized principles and norms of modern international law; and

iii) Those that follow from local international treaties currently in force, according to generally recognized principles and norms of international law.

The practice of imperialist powers, and especially that of the United States, offers many examples of crude violations of international obligations, including aggressive wars, armed intervention, threats of force, and violations of international treaties. In particular, in past years the United States has violated numerous treaties and agreements with the USSR.

Having embarked on a course aimed at aggravating the international situation and the arms race, the United States is promoting reactionary trends in its foreign policy. This can only result in further violations of its international obligations.

In consistently pursuing a policy of peace, peaceful coexistence, and the development of international cooperation all countries should attach particular importance to the principle of fulfilling international obligations in good faith.

Currently we are witnessing breach of the agreement by Russia. For example, the Congressional Research (2021) has written:

> With respect to eastern Ukraine, Russia and Ukraine formally participate in a conflict resolution process structured around a set of measures known as the Minsk agreements. Russia refuses to engage in a similar conflict resolution process with respect to Crimea, as Russia claims to have annexed that region. The Minsk agreements were signed in 2014 and 2015 by representatives of Russia, Ukraine, and the Organization for Security and Cooperation in Europe (OSCE) — members of what is known as the Trilateral Contact Group—together with Russian proxy authorities in eastern Ukraine.[xxxiii]

Many provisions in the Minsk Agreement which have not been implemented. For instance, the requirement of the withdrawal of heavy weapons from the defined zone, immediate and comprehensive cease-fire, safe access and delivery of humanitarian aid to those in need, and restoration of full Ukrainian control over the border with Russia. The failure to adhere to those provisions agreed upon in the Minsk Agreement is a violation of the principle of fulfilling International Obligation in Good Faith.

- The Principle of Sovereign Equality of States

The principle of sovereign equality of States includes respect for the sovereignty of all States and their equal rights in international relations. These two component parts may also be viewed as independent principles of international law.

The principle of sovereign equality of States is embodied in the United Nations Charter, Art. 2 (1), which states that "the Organization is based on the principle of the sovereign equality of all its members".

Interpretations of that principle are given in many authoritative international documents, and above all in the Declaration on Principle of International Law of 1970 and the Helsinki Final Act.

Sovereignty means a State's complete authority over its own territory and independence in international relations. Accordingly that principle obliges a State to respect the full authority of any other States constituting sovereign entities that are juridical equal. The principle of sovereign equality of States, established in the period of transition from feudalism to capitalism, has become one of the basic principles of bourgeois international law. But together with the principle of respect for the state sovereignty bourgeois international law also contained principles and norms that sanctioned its violation. Above all this was the right of a State to wage war. In addition, like other principles of international law, the principle of sovereign equality was only applied to "civilized" States. It was not applied, or at least not fully, to States in the East, where "civilized" States disregarded the sovereignty of the former (protectorates, interference in internal affairs, foreign settlements, consular jurisdiction, unequal treaties, etc).

In modern international law the substance of the principle of sovereign equality of States is wider. It includes the following propositions:

i) each State has the duty to respect the sovereignty of other States;

ii) each State has the duty to respect territorial integrity and political independence of other States;

iii) each State has the right to freely choose and develop its political, social, economic and cultural systems;

iv) all States are juridically equal. They have equal rights and obligations as members of the international community irrespective of differences in their economic, social and political systems;

v) each State constitutes a subject of international law from the time of its emergence;

vi) each State has the right to participate in the resolution of international questions that affect its interests in some way;

vii) each State possesses one vote at international conferences and international organizations; and

viii) States create norms of international law through agreements on the basis of equal rights. No group of States can impose on other States norms of international law that it creates.

The independence of States in international relations is not incompatible with the principle that each State has the duty to comply with international law since its norms are created through a concordance of wills of States acting as sovereign and equal subjects.

Of course, the legal equality of subjects of international law does not imply their actual equality. There is a certain contradiction between the principle of sovereign equality of States and their actual equality. From the point of view of the principle of democracy, it expresses itself especially sharply at international conferences and in international organizations. There are States with small population and others whose population is a thousand times larger each has a single vote. Nevertheless, the principle of sovereign equality of States is one of the cornerstones of the entire international system and is the primary principle of the United Nations Charter.

Since the existence of independent States remains an objective law of social development, the principle of their sovereignty is one of its manifestations. It serves to ensure each State's free development and to protect small States from imperialist policies of diktat and subjugation. It ensures equal participation by each State in the conduct of international affairs.

At the same time, the principle of sovereign equality protects large States from subordination to the wills of small States currently possessing a numerical superiority in universal international organizations.

In accordance with that principle decisions of international conferences and international organizations, as a rule, constitute recommendations and norms that are legally binding on States and can be created only with their consent. The imperialist policies of establishing military bases on territories of other States and of twisting arms to impose their point of view are clear violations of the principle of sovereign equality.

The situation in Russia-Ukraine war demonstrates the violation of this principle. The Congressional Research Service (2021)[xxxiv] has written:

> Much of the international community does not recognize Russia's purported annexation of Crimea. Many have condemned Russia's occupation as a violation of international law and of Russia's own international commitments. In particular, many consider it to be a violation of the 1994 Budapest Memorandum, in which Russia, together with the United States and the United Kingdom (UK), reaffirmed its commitment "to respect the independence and sovereignty and the existing borders of Ukraine," as well as the "obligation to refrain from the threat or use of force" against Ukraine. Since 2014, the U.N. General Assembly has voted several times, most recently in 2020, to affirm Ukraine's territorial integrity, condemn the "temporary occupation" of Crimea, and reaffirm non recognition of its annexation.

- The Principle of Respect for Human Rights

The struggle of the working class and of all progressive forces and the clashing interests among capitalist powers have produced a situation in which individual norms relating to the protection of human rights already appeared in the old international law. They include, for instance, a prohibition of the slave trade and the provisions of some international treaties concerning the protection of national minorities.

But a shift in international law concerning that issue occurred after Russia's Socialist Revolution of 1917 ushered in an era of socialist humanism. Having established a higher, socialist type of democracy, the Soviet State also initiated a persistent international struggle against all forms of exploitation and oppression of both individual nations and in support of their freedom and rights.

The Soviet Union's own example, its international struggle for human rights, an increasingly active struggle of the working class and of all progressive forces in capitalist countries, and the growing tide of the international liberation movement in the colonies compelled the ruling circles of capitalist States to make certain concessions to workers in providing for their rights both through internal legislation and through international agreements. Following the First World War and the consequent recarving of Europe's map a number of significant treaties appeared providing for the protection of national minorities, and the International Labour Organization was established.[xxxv]

With regard to the international protection of human rights, the most important changes took place after the Second World War. A growing tide in the struggle of people against the fascists, against their monstrous disregard for human rights, served to increase the Soviet Union's prestige and this made possible a situation in which the principle of respect for basic human rights and freedoms was embodied in the United Nations Charter – even though only in a general form. The Charter refers to the need to "reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small" (Preamble).

One of the aims of the United Nations is to develop international cooperation "in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion" (Art. 1). However, the United Nations Charter does not specify basic human rights and freedoms.

This is one of the reasons why the United Nations General Assembly adopted in 1948 the Universal Declaration of Human Rights that contains an extensive, although not fully complete, list of such rights. Today basic human rights and freedoms are embodied in two international documents, namely, the covenants on human rights adopted by the General Assembly in 1966 and now in force..

The principle of respect for human rights was also developed further in a number of special conventions adopted within the United Nations and its specialized agencies.

The principle of respect for human rights does not appear in the Declaration on Principles of International Law of 1970, but it has already been noted that the principles that it lists are not exhaustive. Today practically no one questions that principle's existence in general international law. In the Helsinki Final Act it was formulated as follows: "respect for human

rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief."

The substance of the principle of respect for human rights in general international law amounts to the following:

i) all States have the duty to respect the basic rights and freedoms of all persons on their territories;

ii) States have the duty not to permit discrimination on the basis of sex, race, language or religion;

iii) States have a duty to contribute to universal respect for human rights and basic freedoms and to cooperate with each other in achieving that objective.

Accordingly, the principle of respect for human rights is a principle of international law regulating the cooperation of States in protecting human rights.

The Russia-Ukraine war has involved the violation of the principle of human rights. For example, it is reported that:

> Russia had deliberately struck a maternity hospital in Mariupol on March 9, offering no warning. It labeled it a "clear violation" of international humanitarian law and a war crime. The report also cites a March 16 attack on a drama theater in Mariupol where up to 1,300 people had been seeking shelter.[xxxvi]

THE OBLIGATION OF UN IN INTERNATIONAL DISPUTE RESOLUTIONS

UN intervention to rectify the Russia-Ukraine situation is an international legal obligation. This obligation arises in the first place under the Charter.

Article 1 of the Charter states:

> "The Purposes of the United Nations are:
>
> To maintain international peace and security, and to that end: to take Effective collective measures for the prevention and removal of threats to the peace,

> and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in Conformity with the principles of justice and international law, Adjustment or settlement of international disputes orsituations which might lead to a breach of the peace."

Article 14 of the Charter provides:

> "Subject to the provisions of the article 12, the General Assembly may recommend Measures for peaceful adjustment of any situation, regardless of the origin, which it deems likely to impair the general welfare or friendly relations among nations, Including situation resulting from violation of the provisions ofthe present Charter setting forth the Purposes and principles of the United Nations''

Articles 33, 36 and 37 of the Charter vest the Security Council with wide powers for the maintenance of international peace and security. Article 33(2) provides that the Council shall, when it deems necessary, call upon the parties to settle their dispute by negotiation, inquiry, mediation, conciliation, arbitration, and judicial settlement.However, the Council's powers are not restricted to seeking a settlement through these means. It can recommend the methods or procedures of settlement.

Article 36(1) states:

> "The Security Council may, at any stage of a dispute of the nature referred to inArticle 33 or of a situation of like nature, recommend appropriate procedures or methods of adjustment."

Article 37 (2) goes even further. It empowers the Security Council torecommend the terms of the settlement:

> "If the Security Council deems that the continuance of the dispute is in fact likelyto endanger the maintenance of international peace and security, it shall decide whether to take action under Article 36 or to recommend such terms of settlement as it may consider appropriate."

Thus, in taking action to redress the situation in Ukraine, the UN would be merely implementing its first purpose, and discharging its duty under the Charter, Moreover,and

quite apart from its duty under the Charter, the obligation of the UN to intervene in order to secure a fair and equitable settlement is, even more, impelling in the case of the Russia-Ukraine war question.[xxxvii].

The UN bears a special responsibility in respect of the situation that now exists in Ukraine. The conflict has led todisastrous consequences for the people of Ukraine.

CONCLUSION

There has been enough empirical evidence to confirm the violations of international law in the Russian-Ukraine war. The pieces of literature reveal that, today negotiation and conversation are key tools for the sustainable settlement of international disputes rather than the use using of force in lieu. It has been fortunate that amicable international dispute resolution as an acceptable way of settling disputes has its foundation in the UN Charter, and the UN has the role to oversee its implementation. This being the case, UN Security Council has a fundamental obligation to make sure that the UN Charter is implemented by all member states. In this regard, taking action to redress the situation in Ukraine, the UN would be merely implementing its first purpose, and discharging its duty under the Charter, Moreover, and quite apart from its duty under the Charter, the obligation of the UN to intervene in order to secure a fair and equitable settlement is, even more, impelling in the case of the Russia- Ukraine war question.

The UN bears a special responsibility in respect of the situation that now exists in Ukraine. The conflict has led to disastrous consequences for the people of Ukraine. The UN is bound to repair the damage that has resulted from the war. The situation in Ukraine is not an issue of Ukrainians. It is a global issue. No country should hesitate to make sure that amicable solutions are achieved expeditiously. It is high time for all countries to come together regardless of their social, political, and economic background to make the war end. Badly enough, besides, the Crimea region which was annexed in 2014, it is known that in addition, Russia has announced the annexation of four regions namely: Luhansk, Donetsk, Zaporizhia and Kherson.[xxxviii]

Given the situation, no one will be safe in the future. The expansion policy must be hated and discouraged. It should not be given room to grow anymore. If the world does not stand firm against expansionism policy, others will follow. Today Russia has set a precedent that shall be

used by other countries as the ladder toward annexation of regions of other countries. That is where the global fear emanates and is grounded. It is in the record that the Second World War caused inter alia expansionism policy.

The World should not go back to those days.

It is therefore important to conclude that the UN should lead the global efforts to settle the disputes as its fundamental obligation of global peace keeping. In doing so, study has to be conducted to analyse the relationship between these two conflicting countries from its inception. The findings will be used in determining the situation basing on the principles embedded in the UN Charter as rightly explained earlier in this paper.

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