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The Effectiveness of International Law in the Russia and Ukraine Conflict (2022-2024)

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ABSTRACT

There are different interpretations on what effectiveness in international law means. In this dissertation, effectiveness is assessed in the context of the Russia and Ukraine conflict with particular emphasis on the prohibition of the use of force and the principle of territorial integrity. It is guided by the central research question: *to what extent, and in what ways, has international law remained effective in practice in response to the Russia–Ukraine conflict?* Rather than equating effectiveness with full compliance or successful enforcement, the study examines how international law operates across three interconnected dimensions: normative effectiveness, state compliance, and institutional effectiveness.

At the normative level, international law has remained effective in offering clear and widely accepted standards of legality. Russia's use of force was repeatedly identified as unlawful by a broad range of states and international bodies. Legal arguments invoking self-defense and genocide prevention failed to gain acceptance. The core rules governing the use of force retained their authority and clarity throughout the conflict.

In terms of compliance, the conflict reveals divergent patterns among Russia, Ukraine, and third states. Russia's persistent non-compliance shows the limits of international law in constraining a determined major power. Ukraine, by contrast, consistently framed its conduct within the language of self-defense and actively engaged international legal institutions, reinforcing its position as an injured state acting within the law. Most notably, international law proved more effective in shaping the behavior of third states, as reflected in widespread condemnation, sanctions, respect to Ukraine's recognized territorial borders, military support framed in legal terms, and engagement with accountability mechanisms.

At the institutional level, international law activated multiple mechanisms of response through the United Nations, international courts, and regional organizations. Enforcement remained constrained by structural features such as veto power and dependence on state cooperation. Institutions nonetheless continued to articulate legal assessments, initiate proceedings, and anchor political and economic measures in legal claims.

Overall, the dissertation contributes to contemporary debates on international law's effectiveness by demonstrating that institutional constraints do not negate the law's authority or relevance.

They condition how international law operates, and where its effects are most likely to be observed in practice.

Keywords:

International law; effectiveness; prohibition of threat or use of force; territorial integrity; Russia–Ukraine conflict; international organizations.

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I will remember this experience for the rest of my life, and I will miss every step of it.

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LIST OF ABBREVIATIONS

UN	United Nations
UNSC	United Nations Security Council
UNGA	United Nations General Assembly
ICJ	International Court of Justice
ICC	International Criminal Court
EU	European Union
NATO	North Atlantic Treaty Organization
P5	Permanent Five Members of the Security Council
ECHR	European Court of Human Rights
CoE	Council of Europe
OSCE	Organization for Security and Cooperation in Europe
US	United States of America
UK	United Kingdom
OTP	Office of the Prosecutor of the International Criminal Court
JIT	Joint Investigation Team
BRICS	Intergovernmental organization comprising ten countries: Brazil, China, Egypt, Ethiopia, India, Indonesia, Iran, Russia, South Africa and the United Arab Emirates.
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
SWIFT	Society for Worldwide Interbank Financial Telecommunication
EPF	European Peace Facility
EUMAM	European Union Military Assistance Mission
CSDP	The Common Security and Defense Policy

CHAPTER 1: INTRODUCTION

"The Gods had condemned Sisyphus to ceaselessly rolling a rock to the top of a mountain, whence the stone would fall back of its own weight."

- Albert Camus, *The Myth of Sisyphus*[1]

1.1 Background and Relevance of the Study

Periods of intensified geopolitical tension place significant pressure on the international legal order. In such moments, international law is often expected to take the role as the "*hero"* who should regulate everything for the sake of international security and peace. Yet the conflicts to which international law is applied frequently reflect recurring patterns, in which familiar principles are tested again, even if it is under different historical circumstances. The image from the *Myth of Sisyphus* can sometimes appear to operate on comparable conditions of repetition.[2] In this sense, every conflict becomes an example of how the same recognized international principles keep being violated, but from different scenarios, as a "rock" that keeps falling to international law itself. It matters precisely because it is lifted again in each new conflict, but still raises questions about how the effectiveness of international law should be understood. Consequently, studying "failures" is how we understand limits.

Cohen describes international law as a *"fabric"* whose integrity is repeatedly tested, adding that, finding a way to keep it as a whole, or to *"mend the tears once they have formed,"* has become a noticeable scholarly concern.[3] More concretely, within this context, the "unprovoked" use of force in Ukraine in February 2022, intensified even more the scholarly and institutional debate concerning the stability and future direction of the international legal order.[4] The conflict has

[1] Albert Camus, *The Myth of Sisyphus and Other Essays*, trans. Justin O'Brien (Vintage International, 1991): 95.
[2] *See* J. Mührel and L. Mührel, which uses the myth from the perspective of the international lawyers who work on international law research, the same as the stone that must once again push up. Jasper Mührel and Linus Mührel, "International Law in the Face of Absurdity: Learning from Camus' Sisyphus," Verfassungsblog, October 24, 2025.https://verfassungsblog.de/international-law-in-the-face-of-absurdity/ Last accessed on 30 October 2025.
[3] Harlan Grant Cohen, "Finding International Law, Part II: Our Fragmenting Legal Community," *New York University Journal of International Law and Politics* 44 (2012): 1050.
[4] Stewart Patrick, "Rules of Order: Assessing the State of Global Governance," (Carnegie Endowment for International Peace, September 2023): 2.

created debates whether international law is ineffective.[5] The scale and the long duration of the conflict brought again the attention to questions of norm compliance, enforcement and the capacity of international law to "help" in such tensions.[6]

From a purely human perspective, the conflict has brought about unspeakable suffering, making it impossible to discuss international law's effectiveness without acknowledging first the profound human costs. While acknowledging the terrible situations we have testified from the conflict, the concern that the next ones may be even worse is persistent and creates the environment to look closely at every action taken.[7]

Beginning this study in a reflective tone, when applying for this PhD in 2022, selecting a research topic centered on the Russia and Ukraine conflict meant engaging with an unfolding and unpredictable situation. At that stage, the duration, trajectory, and legal consequences of the conflict remained open questions, as its legal and political consequences were impossible to anticipate. Yet, precisely because of this uncertainty (and because the conflict immediately became a defining issue in international relations) it was clear that the topic would remain relevant and deeply embedded in many years to come.

After 2022, nothing really "returned to normal," either on the ground in Ukraine or in international law debates. Many predicted that this conflict had a short story and would be over

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[5] *See* Jill Goldenziel, "An Alternative to Zombieing: Lawfare between Russia and Ukraine and the Future of International Law," *Cornell Law Review Online* vol. 108, no.1 (2023): 15. The metaphor Goldenziel uses for the situation is quite interesting, as it calls it the same as with *"zombie stories,"* stating that in the end, the legal order may be strengthened only if Ukraine has successful lawfare strategy.; Almohawes explains how veto power reflects on the international law effectiveness. Mohamad Almohawes, "International Relations and Its Effect on Enforcement of International Law: The Case Studies of Ukraine and Syria," *Access to Justice in Eastern Europe* 2025, vol. 8 no. 1 (2025): 12.; Atul Alexander, "Russia-Ukraine conflict: has international law failed?", The Leaflet (28 February 2022) https://theleaflet.in/analysis/russia-ukraine-conflict-has-international-law-failed Last accessed on 30 October 2025.; Rinke and Bremer argue that *"finding that international law is in crisis is nothing new." See,* Franziska Rinke and Philipp Bremer, "Crisis of International Law?" *International Reports - Konrad-Adenauer-Stiftung* (2024) https://www.kas.de/en/web/auslandsinformationen/artikel/detail/-/content/crisis-of-international-law Last accessed on 30 October 2025.

[6] See Ingrid Wuerth Brunk and Monica Hakimi, "Russia, Ukraine and the Future World Order," *American Journal of International Law* 116, no. 4 (2022): 693.; Yogendra Kumar Verma, "The Russia–Ukraine Conflict: Violations of International Law and the Future of Global Order," *International Journal of Civil Law and Legal Research* 4, no. 1 (2024): 210.

[7] *See* Jens Iverson, "Why Ukraine and the International Community Should Demand that Russia Renounce Territorial Expansion," *OpinioJuris* (2025). https://opiniojuris.org/2025/12/15/why-ukraine-and-the-international-community-should-demand-that-russia-renounce-territorial-expansion/ Last accessed on 16 December 2025.

in days, and others saw the risk behind it.[8] Yet, what cannot be doubted is that for a lot, the idea of a possible *World War III* was quite present after years of unresolved conflict.[9] For this reason, the adoption of a focused two-year chronological approach was necessary, to examine how international organizations, Russia, Ukraine, including other states, would respond over time; and tracing how these responses interacted with key principles of international law. As of late 2025, the conflict is still ongoing, and its repercussions continue to evolve. Moreover, it is not easy to undertake this research, when, alongside this specific conflict, new ones are emerging, impacting the entire world.

Legal researchers are working in a moment in which the foundational principles of international law (even though already strained for many years) appear increasingly at risk because of the pressure that they are facing. Related to this study, the conflict broad sphere makes it necessary to narrow the scope of analysis. Accordingly, among the many principles that form the foundation of international law, this study focuses on the prohibition of the use of force and the protection of territorial integrity, which stand at the center of the legal debate surrounding the Russia and Ukraine conflict.

The prohibition on the use of force, and the principle of territorial integrity, operate on three levels at once. They are simultaneously legal rules *and* fundamental principles, and they also function as core norms of international law. They provide the clearest lens through which to examine how international law responds and how the international community mobilizes its tools. It has been seen many times that states, the same as in the case of Russia, tend to "justify"

[8] *See* Oona A. Hathaway, "International Law Goes to War in Ukraine," *Emory International Law Review* 38, no. 3 (2024): 576.

[9] It has been a topic that can create worries for the future of the world order. Many scholars have mentioned this rhetoric in their work, especially with the nuclear weapons debate. *See for example,* Ángel Torres-Adán, "Has World War III Started? Geopolitical Preferences, Conspiratorial Thinking and Individual Threat Perceptions of a Global Conflict in Slovakia," *European Security* (2025): 1–24; Terry McWang, "How an International Court of Human Rights Could Reduce Armed Conflicts Worldwide: A Proposal for a New International Legal Order Centered on Human Rights," in *Conflict Then and Now: Historical and Modern Perspectives on World War III*, Global Law Scholars Class of 2025, 74–86; Jacob Wolfe, "Imperial Nostalgia: The War for the Kievan Rus Legacy" (master's thesis, University of Louisville, 2024), Electronic Theses and Dissertations, Paper 4435, 62.; Hiroyuki Akita, *The Looming Risk of World War III*, EUI RSC Policy Brief 2024/23, Global Governance Programme (European University Institute, 2024): 1–6; Wadim Strielkowski, *Can the War in Ukraine Turn into the Nuclear World War III?* (October 29, 2022).

the use of force in accordance with international law.[10] In this tension between norms and practice, undeniably lies the enduring struggle of international law.

This thesis rejects the common tendency to treat use-of-force crises as a referendum on whether international law "works," linking effectiveness to multiple dimensions instead of a single yes/no verdict. Such framing risks overlooking the more nuanced ways in which international law continues to work. By analyzing effectiveness rather than legality alone, this study seeks to move beyond abstract assessments and to evaluate how international law functions in practice. Mentioning here Nilsson, he notes that, debates about the effectiveness of international law have become almost *"fashionable"* in legal scholarship.[11] Perhaps because moments of violations of key principles force scholars to keep asking, again and again, what international law is actually doing when it is most stressed.

However, before turning to the understanding of effectiveness, it is also necessary to clarify the use of terminology in this study. The term *conflict* is employed deliberately, rather than *war* or *armed conflict*. This choice is made not to deny the existence of an armed conflict, but more to adopt a broader analytical frame that captures the operation of international law beyond humanitarian law classifications, without predetermining the analysis through a single doctrinal lens. In this sense, conflict is used as a more inclusive and neutral term.

The term conflict, commonly employed in scholarly work, allows for an examination of the full range of international legal issues engaged by the situation between Russia and Ukraine, including questions of the use of force, territorial integrity, state and institutional response, without limiting the analysis to the classification thresholds required under the law of armed conflict.[12]

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[10] *See Letter Dated 24 February 2022 from the Permanent Representative of the Russian Federation to the United Nations Addressed to the Secretary-General*, U.N. Doc. S/2022/154 (Feb. 24, 2022): 6; *Letter Dated 20 March 2003 from the Permanent Representative of the United States of America to the United Nations Addressed to the President of the Security Council,* U.N. Doc. S/2003/351 (Mar. 21, 2003): 1; *Letter Dated 9 October 2019 from the Permanent Representative of Turkey to the United Nations Addressed to the President of the Security Council, U.N. Doc. S/2019/804 (Oct. 9, 2019): 1.*

[11] Ian Brownlie, "The Reality and Efficacy of International Law," *British Yearbook of International Law* 52, no. 1 (1981): 1.

[12] *See* Maryna Rabinovych, "The Interplay between Ukraine's Domestic Legislation on Conflict and Uncontrolled Territories and Its Strategic Use of 'Lawfare' before Russia's 2022 Invasion of Ukraine – A Troubled Nexus?" *Review of Central and East European Law* 47 (2022): 269.

On the other hand, regarding the term *"war,"* Greenwood argues that the disappearance of this term from contemporary international law is not simply linguistic, as instead, since the adoption of the UN Charter in 1945, it eliminated the classical legal category of it, meaning that calling a situation a "war" does not produce any distinct legal effects.[13]

1.2 Understanding *"Effectiveness"* in International Law

"Effectiveness," it is fair to say, may be one of the most frequently used, yet least clearly defined, terms in legal research. It is often mentioned in legal documents like courts decisions, resolutions, but rarely, does anyone pause to agree or to try to define, what exactly they mean by it. Territorial issues, particularly those arising from unlawful situations, remain among the most sensitive aspects of international relations, making them a crucial testing ground for assessing the *"validity"* and effectiveness of international law.[14]

First, in its most basic sense, effectiveness simply asks a common-sense question: *does something actually work?* Under this understanding, it can be concluded that a rule is effective, if it produces the result it was designed to achieve.[15] According to the Oxford English Dictionary, the noun effectiveness can be scholarly traced from the early seventeenth century, with its earliest recorded use dating to 1607 in the writings of Robert Parker.[16] The term derives from the Latin *effectivus*, meaning to *"accomplish."*[17] Assessing effectiveness therefore involves examining whether, *"how well,"* and to what degree, an action, rule, or system succeeds in accomplishing the purpose for which it was designed.[18]

Things become considerably more complicated once this idea is carried into the realm of international law. Different definitions that can be found in literature highlight this complexity,

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[13] Christopher Greenwood, "The Concept of War in Modern International Law," *International and Comparative Law Quarterly* 36, no. 2 (1987): 283.

[14] Enrico Milano, "The Concept of Effectiveness in International Law," in *Unlawful Territorial Situations in International Law* (Brill 2006): 22.

[15] *See* Cambridge Dictionary, s.v. *"effectiveness."* https://dictionary.cambridge.org/dictionary/english/effectiveness Last accessed on 30 October 2025.

[16] *See Oxford English Dictionary*, s.v. "effectiveness," https://www.oed.com/dictionary/effectiveness_n?tl=true Last accessed on 30 October 2025. The book of Parker can be accessed on: https://archive.org/details/bim_early-english-books-1475-1640_a-scholasticall-discours_parker-robert_1607/mode/2up

[17] *See* "Effective," *Online Etymology Dictionary*, https://www.etymonline.com/word/effective Last accessed on 30 October 2025.

[18] Prakash Patel, "Efficacy, Effectiveness, and Efficiency," National Journal of Community Medicine 12, no. 2 (2021): 34.

with each author setting out to produce his own definition of it. Consequently, the lack of a singular definition makes us create this puzzle to be solved in our own work.

In international law, it is generally accepted that effectiveness refers to whether legal rules are actually observed in practice, distinct from whether they are formally binding.[19] It cannot be equated with the validity or even the existence of legal rules, which derive their normative force from the legal system itself. At the same time, it would be artificial to treat international law as operating in isolation from factual conditions, and effectiveness becomes a way of observing the space where legal normativity meets reality.

Judge Serghides, writing in the context of the European Convention on Human Rights, analyzes effectiveness and argues that it is not only an interpretive tool but also an inherent element of every treaty provision, reflecting the expectation that international norms are drafted to have real effect.[20] This perspective shows that international law is drafted with the aim of influencing behavior and outcomes, without suggesting that a failure of implementation risks a norm's legal validity. Rather, such failure points more to a breakdown in the norm's capacity to operate effectively under particular political or institutional conditions. In the context of the Russia and Ukraine conflict, this approach informs the present study, which examines effectiveness not by asking what the law ideally requires in abstract terms, but by observing whether and how legal norms have produced effects in practice. In the end, this is the whole point: is international law actually accomplishing anything that contributes to peace?

Some scholars instinctively equate international law effectiveness with compliance. As Sellers notes, in a way to be effective *"it must be obeyed."*[21] From this perspective, in a basic sense, international law may be effective if states decide to follow and be "obeyed" by its rules, and ineffective if they do not. But, if states largely control how international law is made, it makes sense that rules are effective when they reflect state perspectives, as they will not "break" what they create. The difficulty, however, arises when interests shift or diverge and states can contest

[19] Hiroshi Taki, "Effectiveness," *Max Planck Encyclopedia of Public International Law* (Oxford University Press, February 2013). <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e698> Last accessed on 30 October 2025.

[20] Daniel Rietiker and Sofie Steller, "The Principle of Effectiveness: And Its Overarching Role in the Interpretation and Application of the ECHR," *Völkerrechtsblog*, October 10, 2022.

[21] Mortimer N. S. Sellers, "The Effectiveness of International Law," in *Republican Principles in International Law* (Palgrave Macmillan, 2006): 52.

the very rules they once supported.[22] But one must also never forget that there is no authoritative "police force" in the international system, and this absence inevitably shapes the way effectiveness can be understood. Kelsen already recognized this structural gap, noting that without a central authority empowered to determine and enforce compliance, the operation of international legal norms is unavoidably fragile, and effectiveness can therefore be criticized in many forms.[23] Compliance itself turns out to be a slippery indicator. States may comply with legal rules for reasons entirely unrelated to law, which can be for political convenience or even strategic interest.[24]

There is also the other side of the coin when talking about state compliance. Scholars like Howse and Teitel note, that international law often aligns with a state's own interests, including here even reputational considerations, which makes it difficult to isolate compliance that comes, "genuinely", from what may be from a states "self-interest".[25] Koh suggest that international law works because repeated engagement with legal norms gradually makes compliance habitual, as those norms become embedded in domestic institutions and therefore are increasingly difficult to ignore.[26] Yet, what matters in the end is that effectiveness is not about whether a state formally complies with the law, but about whether the law actually made a difference to how the state decided to act.[27]

Helfer and Slaughter argue in their work on judicial decisions, that the compliance of states with court decisions often depends as much on how workable and convincing those decisions are as on the authority of the court itself.[28] Giving another perspective on institutional authority and its effect. Which again, does not necessary tell much on international law itself.

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[22] Christoph Schreuer, "Sources of International Law: Scope and Application", *The Emirates Center for Strategic Studies and Research*, Series 28 (2000): 1.

[23] Danilo Zolo, "Hans Kelsen: International Peace through International Law," European Journal of International Law 9, no. 2 (1998): 315.

[24] Philip Moremen, "State Compliance with International Law," in Perceptions of State: The US State Department and International Law (Cambridge: Cambridge University Press, 2024): 65–103.

[25] Robert Howse and Ruti Teitel, "Beyond Compliance: Rethinking Why International Law Really Matters," *Global Policy 1*, no. 2 (May 2010): 129.

[26] Harold Hongju Koh, "Why Do Nations Obey International Law?" *Yale Law Journal* 106 (1997): 2602.

[27] Timothy Meyer, "How Compliance Understates Effectiveness," *Proceedings of the Annual Meeting (American Society of International Law)* 108 (2014): 169.

[28] Laurence R. Helfer and Anne-Marie Slaughter, "Why States Create International Tribunals: A Response to Professors Posner and Yoo," *California Law Review* 93, no. 3 (2005): 918. See also, Maja Munivrana, "The Effects

Other scholars shift the focus to enforcement, arguing that law cannot be effective without credible consequences for violation. Here, international law is often judged in a strict way, particularly in areas involving the use of force, where enforcement mechanisms may be selective and often dependent on powerful states. At the same time, as Goldenziel, Blochberger and Granholm note, some of the most significant international legal developments in recent decades have come from cases in which "weaker" states in terms of power, have prevailed, suggesting that enforcement is not exclusively shaped by power alone.[29]

Reducing effectiveness to either compliance or enforcement risks missing how international law actually functions in practice. Compliance may occur for reasons unrelated to law, while enforcement may fail even where legal norms remain clear and widely accepted. Focusing exclusively on either dimension offers, at best, a partial picture. For this reason, this thesis adopts an understanding of effectiveness, which incorporates compliance and enforcement, together with the institutional aspects. Effectiveness is therefore understood as the capacity of international law to function across different levels by providing clear standards of legality, by shaping state behavior and responses, and by activating institutional mechanisms of accountability and consequence.

1.3 The Research Questions

This dissertation is guided by the central research question: *To what extent, and in what ways, has international law remained effective in practice in response to the Russia and Ukraine conflict (2022–2024)?*

This question is qualitative and evaluative in nature, focusing on the extent to which international law has functioned in practice rather than on causal or hypothesis testing. Exactly because, as Purvis, Nicholas and Tai also note, the evaluative method is particularly suited to assessing effectiveness.[30] To address this main question, the analysis proceeds through a set of more focused sub-questions.

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and the Effectiveness of the Functioning of the International Criminal Court," in *The ICC at 25: Lessons Learnt*, ed. Nóra Béres (Miskolc–Budapest: Central European Academic Publishing, 2023): 78.

[29] Jill I. Goldenziel, Sean Michael Blochberger, and Tyler Granholm, "Weapon of the Weak: Lawfare and State Power in the International Court of Justice," *Harvard International Law Journal* vol. 66 no. 2 (2025): 568.

[30] Alison Purvis, Victoria Nicholas, and Joanna Tai, "What's Your Problem? Writing Effective Research Questions for Quality Publications," *Journal of University Teaching and Learning Practice* 21, no. 10 (2024): 7.

- On a Conceptual / Methodological aspect: What does *"effectiveness"* even mean in international law and how can it be assessed in situations of prolonged violation?
- On a Normative Dimension: How do the core principles of international law relevant to the conflict, such as the prohibition on the use of force, self-defense, and territorial integrity structure legal assessment, even where they did not secure compliance?
- On a Compliance Dimension: What do theories and mechanisms of compliance in international law suggest about how states responded to legal obligations?
- On Enforcement and Accountability: What do judicial, quasi-judicial, and institutional mechanisms reveal about the capacity of international law to respond to violations in the absence of centralized enforcement?
- On Institutional spectrum: How have international organizations responded to the conflict in relation to these principles, and what patterns of practice emerge from these responses?
- Taken together, what do the legal principles invoked, the enforcement mechanisms employed, and the institutional responses suggest about the resilience and vulnerabilities of the international legal order?

Having all these questions in mind, we have a clear frame on what to look about effectiveness. In line with Meyer's observation, effectiveness does not primarily depend on the content of a legal rule, but on whether the existence of the law made a difference to state behavior.[31] The key focus is therefore whether international law altered how states acted compared to how they would have acted in its absence.

1.4 Methodology and Approach

As mentioned, this dissertation adopts a qualitative, doctrinal and evaluative legal research approach, starting from the idea that international law is best understood by examining how it is interpreted and applied in practice. The analysis therefore engages with treaties, customary international law, judicial decisions, and resolutions of international organizations, alongside other relevant legal materials. Doctrinal analysis provides the necessary legal foundation, but it is not treated as sufficient on its own. Particular attention is given to official statements, resolutions, and actions taken by states and international organizations, which are analyzed to

[31] Timothy Meyer, "How Compliance Understates Effectiveness," *Proceedings of the Annual Meeting (American Society of International Law)* 108 (2014): 169.

assess how international law has been invoked and operationalized over time. This reflects an understanding of international law as a system that develops through interaction between legal norms and practice. In addition, the thesis engages with existing scholarship in international law, drawing on academic contributions that inform contemporary interpretations of the relevant legal principles in the context of the conflict.

The work is based on two leading methods, such as process tracing and content analysis. The first one is employed to follow the sequence of legal and institutional developments over time. The second one is used to examine official documents, statements, and resolutions issued by states and international organizations. By analyzing the language, framing, and legal references contained in these materials, the study assesses how international law has been articulated and mobilized in practice. Importantly, international law effectiveness should not be mistaken with the international organization's effectiveness.

The focus of the dissertation is not to provide an exhaustive account of all actions taken by states or international organizations, nor to resolve all associated doctrinal debates. Rather, it seeks to identify key legal and institutional reactions as indicators of how international law functions in practice when confronted with serious violations.

The time frame is from the first day of 2022 to 2024 with a chronological approach mostly of the time. This is treated as a concentrated period in which broader structural dynamics of international law become visible. As Lorenc et al., have concluded, a set of events would be meaningless if not traced in this way, because such approach allows the study to identify patterns in legal argumentation, institutional engagement, and responses to alleged violations.[32] References to events or legal developments outside this period are included only where they assist in contextualizing or clarifying the analysis. The later developments do not alter the evaluative conclusions of the study. The descriptive dimension of the methodology is considered essential, as it places the reader in direct engagement with the factual and legal reality of the

[32] As the author states, without chronology events lack meaning, since both individual occurrences and broader processes can only be properly interpreted when placed within a temporal sequence. *See* Jakub Lorenc, Krzysztof Mrozowski, Aleksandra Oniszczuk, Jacek Staniszewski, and Klaudia Starczynowska, "How Is Chronological Thinking Tested?" *Edukacja. An Interdisciplinary Approach* 1 (2013): 84.

conflict.[33] Allowing each reader to assess its effectiveness independently of what this thesis will show and acknowledging that conclusions about the effectiveness of international law may vary, even when grounded in the same empirical record.

Finally, the methodology maintains a clear distinction between the analysis of state responsibility and questions of individual criminal responsibility. While issues of international criminal law arise in parallel, as it will be seen in the *Courts involvement* part, they are addressed separately in order to preserve analytical clarity and to ensure that the assessment of effectiveness remains focused on international law at the level of state conduct.

1.5 Structure of the Dissertation

This dissertation is divided into *five Chapters.* Focusing on a progressive approach it is designed to move from conceptual foundations to practice, and finally to evaluative analysis. Driven by the main idea that the effectiveness of international law in the Russia and Ukraine conflict cannot be meaningfully assessed in isolation. It must be built up *step by step.*

Chapter 1 introduces the research by outlining the context, aims, research questions, methodology, and the concept of "effectiveness." It clarifies that effectiveness is not treated as a measure of success or failure, with a *Yes* or *No* matric, but as a multi-dimensional concept.

Chapter 2 sets out the foundational legal framework of the thesis. It traces the sources, subjects, and core principles of international law relevant to the study, situating the Russia and Ukraine conflict within this broader framework, with particular emphasis on the prohibition of the use of force, self-defense, and the principle of territorial integrity. This chapter establishes the normative baseline against which Russia's and Ukraine conduct is later assessed.

Chapter 3 shifts from norms to behavioral and systemic dynamics. It presents the mechanisms of enforcement and compliance in international law, discussing both theoretical perspectives on state behavior and the practical tools, judicial and non-judicial, through which international norms are upheld, also adding the role of accountability in responding to violations, without yet assessing their operation in the Russia and Ukraine conflict.

[33] *See* more about the descriptive methodology idea at, Marcus Kreuzer, "The Structure of Description: Evaluating Descriptive Inferences and Conceptualizations," *Perspectives on Politics* 17, no. 1 (2019): 122–139.

Chapter 4 turns to institutional practice. It delves into the responses of international organizations in the Russia and Ukraine conflict, assessing the contributions and limitations of the United Nations, international courts, and regional bodies. It is descriptive + analytical. While other organizations are referenced where relevant throughout the thesis (like NATO, Council of Europe or OSCE), the analysis concentrates on those institutions that constitute the principal forums for the application and contestation of international law.

Chapter 5 builds directly on groundwork established in the preceding chapters. Rather than assessing effectiveness incrementally, this chapter adopts a synthetic and evaluative perspective, shifting the focus from *"what happened"* and *"how international law responded"* to the question of "*what this reveals about international law's effectiveness."*

Effectiveness is assessed across three interrelated dimensions:

(1) *normative effectiveness,* understood as the continued clarity and authority of the applicable legal rules;

(2) *state compliance effectiveness,* examined through patterns of acceptance, resistance, and response by states; and

(3) *institutional and accountability effectiveness,* focusing on how legal and institutional mechanisms operated in practice when faced with violations.

Anyone could ask: *Why didn't this author evaluate effectiveness as it went along, instead of postponing it to Chapter 5?*

The true answer is that evaluating effectiveness requires comparison, synthesis, and a distance view of facts. Analyzing it in each part of a "new discussion" would fragment the analysis and may look like a created *bias.* That is why the approach that this author follows, is important to be done only in the *end*, as it recognizes that international law functions as a connected system, in which norms, states, institutions, and responses influence one another, and evaluating effectiveness thus, requires seeing the system as a whole, rather than drawing conclusions from isolated elements.

CHAPTER 2: THE FOUNDATIONS AND PRINCIPLES OF INTERNATIONAL LAW

Ubi Societas, Ibi Jus – where there is a social structure, there is law.[34]

2.1 International Law: History, Definition and Purpose

International law, a concept long debated by scholars and shaped over centuries, continues to serve as the foundational framework for relations among sovereign states and other global actors. It is seen as a *web* of legal norms and practices that impact everyone, even if we don't engage with it; as it goes in evolving and shaping the world.[35] However, there has been continuous debate over the effectiveness and very existence of international law. Different scholars over the years have analyzed and questioned (and continue to do so) the very deep existence of international law and even the reasons for *"calling it law"*.[36]

With simple reasoning, if we assume that there are nearly 200 states in the world today, each one with its own system of governance, cultural identity and national interest, it naturally creates a need for common practices to enable effective communication among these states, ensuring a peaceful and secure life; which international law provides. Throughout the years, several definitions of international law have arisen from academic discussions and legal documents. To show some of these definitions, in its September 7, 1927, *Lotus case* ruling, the Permanent Court of International Justice remarked, *"International Law governs relations between independent*

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[34] *See* Alessandro Levi, "Ubi societas, ibi ius", *Saggi di teoria del diritto*, Bologna, Zanichelli (1924): 47-94.

[35] Sundhya Pahuja, "No Future without History: The Future of International Law." *Australian Journal of International Affairs 79 No. 1 (2025)*: 81.

[36] *See, for example,* Anthony D'Amato, "What 'Counts' as Law?", Faculty Working Papers, Paper 132 (1982): 14. https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1131&context=facultyworkingpapers Last accessed on 30 October 2025. D'Amato has a perspective that diplomatic statements and official communications often may influence; which undermines the credibility of international law to be seen as genuinely "law." He also addresses the argument that the absence of coercive enforcement mechanisms prevents it from qualifying as genuine law.; Oona A. Hathaway and Scott J. Shapiro, "Outcasting: Enforcement in Domestic and International Law," *Yale Law Journal* 121, no. 2 (November 2011): 257. Hathaway and Shapiro contend that critiques denying international law's status as genuine law rely on an overly narrow and flawed understanding of enforcement, wrongly assuming law must be enforced internally and by coercion, as it does in modern states.; The enforcement factor is often the main reason for debate and as Raponi concludes, many legal scholars regard international law with skepticism and treat it as quasi-law due to its lack of enforceability, particularly against powerful states. Sandra Raponi, "Is Coercion Necessary for Law? The Role of Coercion in International and Domestic Law," *Washington University Jurisprudence Review* 8, no. 1 (2015): 37.

States."[37] As Philip Allot defines it, "*it is the self-constituting of all humanity through the law*," emphasizing its transformative and collective nature.[38] It is also defined in the UN Charter as "*the general principles of law recognized by the civilized nations,*" referring to the foundational norms shared across legal systems.[39] Philip C. Jessup reflected that international law should be referred to as *"law applicable to states in their mutual relations and to individuals in their relations with states,"* thus broadening its scope beyond inter-state relations.[40] As a result, according to all these non-ending definitions while searching, we simply conclude that international law can be understood, as a body of rules that governs the relations between sovereign states, as well as between states and other international actors, such as international organizations and, in some cases, individuals.

For centuries, the only way to study and analyze international law has been through the work of many legal scholars and jurists, often referred to as the doctrine. Much of international legal theory and interpretation depended in this way on the publications and commentaries of influential scholars before the development of official international institutions. Their influence is still recognized today, as it is clearly stated in *Article 38(1)(d)* of the Statute of the International Court of Justice.[41] But, as Fassbender and Peters note in *The Oxford Handbook of the History of International Law*, there were so few academics actively researching the history of international law in the 19th and 20th centuries, that this dearth of research has been labeled as an *"intellectual scandal"*.[42] Adding that this could be because they didn't think they were sufficiently competent to do it, or it could be because lawyers don't find it in their scope or in their interest or personal background to study historical events.[43] Regardless of the reason, we are left with a limited amount of material to read about the *history* of international law.

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[37] Permanent Court of International Justice, *The Case of the S.S. "Lotus" (France v. Turkey),* Judgment No 9, September 1927, PCIJ Series A.

[38] Philip Allot, "The Concept of International Law", *European Journal of International Law 10* (1999): 37.

[39] United Nations Charter, 1945 *Article 1* and *Article 38 (1).*

[40] Philip C. Jessup, "A Modern Law of Nations", (New York: Macmillan, 1948): 17.

[41] *Article 38(1)(d)* of the Statute of the ICJ, the *"teachings of the most highly qualified publicists of the various nations"* are listed as a subsidiary means for the determination of rules of law.

[42] Bardo Fassbender and Anne Peters, "Introduction: Towards a Global History of International Law," in The Oxford Handbook of the History of International Law, ed. Bardo Fassbender and Anne Peters (Oxford University Press, 2014): 20.

[43] *See* Ibid.

Do we have a clear beginning time of international law? When did the history of international law start? The earliest notions of international order stem from antiquity with Cicero (106–43 BCE).[44] A Roman philosopher, who articulated the concept of *natural law,* and his influence extended into medieval Christian thought, particularly through St. Augustine,[45] and later St. Thomas Aquinas, who elaborated the concept of a *just war*, in which as he notes, the wars were done for morally justified reasons and with the right intention.[46] Introducing Diggelmann's stance, he notes that the historical development of international law has often been divided into distinct periods, each shaped by particular legal, political and cultural contexts; and the way one defines these periods and where one chooses to begin, is not fixed.[47] Any effort to periodize the history of international law is unavoidably molded by the subjective criteria of the observer.[48] From this perspective, if we view the origins of international law through the lens of rules governing war and peace, many scholars trace its roots back to ancient civilizations where customary norms and practices regulated armed conflict.

Ultimately, the rules for regulating international relations have existed since ancient civilizations. *Ius gentium*, commonly known as the law of nations, is an early example illustrating how the Romans established guidelines for coexistence with non-Roman peoples.[49] For example, Boas notes that modern public international law is largely based on the complex legal system that the Roman Empire formed and set the stage.[50] Meanwhile, during the Middle Ages, the *"Just War"* theory laid the philosophical groundwork for some modern principles by clarifying under what conditions initiating war could be considered legitimate.[51] Hugo Grotius, widely regarded as the

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[44] *See* Cicero, *De Re Publica and De Legibus, in Cicero: On the Commonwealth and On the Laws*, ed. James E. G. Zetzel (Cambridge University Press, 1999).

[45] *See* Amaya Amell, "The Theory of Just War and International Law: From Saint Augustine, through Francisco de Vitoria, to Present," *Hispanic Journal* 38, no. 1 (2017): 66.

[46] *See* Olivia Chidera Maduabuchi, Innocent Anthony Uke and Raphael Olisa Maduabuchi, "Epistemic Implications of St. Thomas Aquinas' Just War Theory on Global Peace," *Open Journal of Philosophy* 13, no. 3 (2023): 568.

[47] Oliver Diggelmann, "The Periodization of the History of International Law", in The Oxford Handbook of the History of International Law, ed. Bardo Fassbender and Anne Peters (Oxford University Press, 2014): 1004-1007.

[48] Ibid., 1005. He observes that the periodization of international law is not objective but depends on the specific concept of international law adopted; for instance, if one's focus is on sovereignty and territorial states, then the "beginning" of international law might be placed in the late Middle Ages, if focus is on interstate intercourse, it may be between 1450 and 1200 BC etc.

[49] *See* W.W. Buckland, *A Text-Book of Roman Law from Augustus to Justinian* (Cambridge: Cambridge University Press, 1921): 53.

[50] Gideon Boas, *Public International Law* (Cheltenham, UK: Edward Elgar Publishing, 2012): 6.

[51] *See* Stanley Windass, "Saint Augustine and the Just War," *Blackfriars* 43, no. 509 (1962): 460–468.

"Father of International Law", in his work *De Jure Belli ac Pacis* (On the Law of War and Peace) made a profound impact and contribution to the history of law. He made a significant step to the conceptual framework that sets the "*law of nations*" apart from "*natural law*".[52] While natural law includes moral principles universal to human nature and tangible through reason, the law of nations relates specifically to the rules and agreements that govern interactions between sovereign states. As we also know, he introduced the concept of *jus ad bellum* (the right to go to war) and *jus in bello* (the right to conduct within war). His role in history continued even with the Nuremberg Trials, as they introduced the prosecution of crimes against humanity, war crimes and aggression, by turning Grotius's moral vision into enforceable norms.[53] Later institutions also built on these precedents.

Nevertheless, what is often considered the starting point of the modern state system is the Peace of Westphalia of 1648.[54] This agreement, reached after a series of religious wars in Europe, introduced the principle of state sovereignty,[55] and the notion that no state should interfere in another state's internal affairs.[56] From that point onward, states began basing their mutual relations on the principles of reciprocity, multilateral treaties, and formal diplomacy, creating in this way a new era in the history of international law.

We should acknowledge that in the moment we recall the concept of international law, our thoughts immediately connect it with the figure of the philosopher Jeremy Bentham, who is widely known as the author who gave shape to this term at the end of the 18th century in his work *An Introduction to the Principles of Morals and Legislation*.[57] Coming from the "law of nations," everyone became familiar with the new term "international law", emphasizing a set of

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[52] Jiří Chotaš, "Grotius on the Foundation of Natural Law," in *Sacred Polities, Natural Law and the Law of Nations in the 16th–17th Centuries*, ed. Hans W. Blom, vol. 7 (Brill, 2022): 223–241.

[53] *See* Ziv Bohrer, "Nuremberg and Grotius's Scholarship as Non-Grotian Moments: On Novelty-Bolstering in International Law," *Grotiana* 44, no. 1 (2023): 30–64.; Mary Jean Lopardo, "Nuremberg Trials and International Law*," University of Baltimore Law Forum* 8, no. 2 (1978): Article 18.

[54] Luís Moita, "A Critical Review on the Consensus around the 'Westphalian System,'" JANUS.NET*, e-journal of International Relations* 3, no. 2 (November 2012): 18. https://www.redalyc.org/pdf/4135/413536170002.pdf

[55] *See* Derek Croxton, "The Peace of Westphalia of 1648 and the Origins of Sovereignty," *The International History Review* 21, no. 3 (1999): 569–591.

[56] *See* Patrick Milton, "Guarantee and Intervention: The Assessment of the Peace of Westphalia in International Law and Politics by Authors of Natural Law and of Public Law, c. 1650–1806," in *The Law of Nations and Natural Law 1625–1800*, ed. Simone Zurbuchen, vol. 1 (Brill, 2019), 186–226.

[57] Jeremy Bentham, An Introduction to the Principles of Morals and Legislation (1789), Library of Economics and Liberty. <https://www.econlib.org/library/Bentham/bnthPML.html> Last accessed on 30 October 2025.

rules common to all the states. Then we have figures like Henry Wheaton codifying state practice in works such as *Elements of International Law,*[58] and this period also saw the rise of multilateral diplomacy and conventions, such as the Hague Conferences of 1899 and 1907, which codified aspects of the laws of war.[59] Then, in the twentieth century, the horrors of the World Wars forced a radical rethinking of international law's role. Hans Kelsen developed the *Pure Theory of Law,* advocating for a hierarchical structure of legal norms, with international law at the top.[60]

While trying to define the purpose of international law, it must be emphasized that foundational legal instruments themselves articulate its purposes across several aspects of international relations. However, these codified objectives do not exist in a vacuum, they have been influenced by broader philosophical thought and they have also been interpreted and expanded upon by numerous scholars. One of the earliest and most influential philosophical contributions comes from Kant, who regarded international law as a teleological framework aimed at ensuring peace, founded upon the principles of fairness and democracy.[61] Building on this moral perspective, Sellers also highlights, the idea that justice is the ideal that justifies or may justify international law, and it is the purpose that international law should seek to serve and defend.[62] In contrast to these normative approaches, from the perspective of legal pragmatism and positivism, which posit that the objective of international law is to establish a stable framework for state interactions through predictable rules and procedures, Hakimi critiques this stance as excessively limited, emphasizing that international law not only facilitates cooperation but also structures conflict.[63]

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[58] Henry Wheaton, Elements of International Law, ed. William Beach Lawrence (Boston: Little, Brown and Company, 1855).

[59] Convention (II) with Respect to the Laws and Customs of War on Land, with Annex of Regulations, July 29, 1899, 187 Consol. T.S. 429; and Convention (IV) Respecting the Laws and Customs of War on Land, with Annex of Regulations, October 18, 1907, 205 Consol. T.S. 277.

[60] Hans Kelsen, Pure Theory of Law, trans. Max Knight (Berkeley: University of California Press, 1967), Oujda Library. https://cdn.oujdalibrary.com/books/612/612-pure-theory-of-law-(www.tawcer.com).pdf .

[61] Immanuel Kant, To Perpetual Peace: A Philosophical Sketch [1795], in Perpetual Peace and Other Essays, trans. Ted Humphrey (Indianapolis: Hackett Publishing Company, 1983).

[62] Mortimer Sellers, "The Purpose of International Law Is to Advance Justice - and International Law Has No Value Unless It Does So." ASIL 111 (2017): 301.

[63] Monica Hakimi, "The Work of International Law," *Harvard International Law Journal* Vol. 58, no.1 (2017): 46.

Ultimately, these contrasting perspectives converge on a central question: whether the international legal system effectively serves its intended purpose. Of course, this question does not lend itself to a simple or absolute answer, as scholars have different perspectives. According to Professor Anthony Arend, legal standards have a bigger effect in "low politics" than in "high politics," when a state's basic national security interests are at stake.[64] In this context, it is important to recognize that modern international law is both fragmented and dynamic and as such, debates are immensely common. Scholars like Koskenniemi have critiqued its indeterminacy and politicization,[65] while others, such as Higgins, emphasize its adaptability.[66] This divergence prompts a fundamental question: Is international law a malleable tool of politics? (Koskenniemi) Or a flexible, evolving framework for cooperation and justice? (Higgins) The most plausible response likely lies somewhere in between, since contemporary issues such as cybersecurity, climate change, universal jurisdiction and the use of force in conflicts like the Israeli Gaza conflict, or related to this topic, the Russia with Ukraine conflict, still challenge the limits and stability of international law.

2.2 The Sources of International Law

The conduct of states, international organizations and other global actors is bound by an intricate weave of written mandates and customary understandings that collectively give full meaning to international law. In legal theory, a distinction is often drawn between formal sources, which refer to the recognized legal methods through which rules come into existence and acquire binding force and material sources, which provide the evidentiary or historical background that informs how and why these rules apply in practice. However, when it comes to international law, using the term "formal source" can be misleading, as, unlike domestic legal systems, where laws are created through structured legislative processes, international law does not have a centralized law-making authority.

The framework for identifying these sources is articulated in *Article 38(1)* of the Statute of the International Court of Justice, which remains the most authoritative point of reference and

[64] Anthony Clark Arend, as cited in Michael J. Glennon, "Sometimes a Great Notion," *The Wilson Quarterly 27*, no. 4 (2003): 49.
[65] *See* Martti Koskenniemi, "The Politics of International Law", *European Journal of International Law 1*, no. 4 (1990): 4-32.
[66] *See* Rosalyn Higgins, Problems and Process: International Law and How We Use It (Oxford: Clarendon Press, 1995): 1–16.

includes treaties, customary international law, general principles of law, judicial decisions and the teachings of esteemed publicists worldwide, emphasizing that international law derives its authority from state practice and consensus rather than a formalized legislative process.[67] Even though, through legal debate, there are as many theories about sources of international law as there are bout international law itself.[68]

The subject of international law sources is extensive and complex, including many legal traditions, interpretations and academic discussions. Accordingly, the present section offers a general and simply introductory overview to lay the foundation for more specific focus on practice in the later chapters.

When talking about treaties, we get a clear picture of them from the 1969 *Vienna Convention on the Law of Treaties*, which defines a treaty as a written international agreement between states (and in some cases international organizations), that is regulated by international law.[69] Treaties can take many names, but what is important is that while treaties do not generate law in the abstract, they function as key instruments through which binding legal commitments are established within the structure of international law.

Many treaties also serve as authoritative expressions of customary international law, as seen in the 1986 *Vienna Convention on the Law of Treaties*, whose core provisions are widely treated as binding even on non-party states. Customary international law itself is formed through the general and consistent practice of states, accepted as legally binding *(opinio juris) and* its rules are unwritten sources of international law.[70] Customary International Law is the main evidence of state practice and has been maybe perhaps one of the most discussed topics among scholars,

[67] Statute of the International Court of Justice, art. 38(1), June 26, 1945, 59 Stat. 1031, T.S. No. 993.
[68] Samantha Besson and Jean d'Aspremont (ed.), "The Sources of International Law: An Introduction," *The Oxford Handbook of the Sources of International Law* (Oxford University Press, 2017): 4.
[69] *Vienna Convention on the Law of Treaties*, May 23, 1969, art. 2(1)(a), 1155 U.N.T.S. 331.
[70] Panos Merkouris, Jörg Kammerhofer and Noora Arajärvi, eds., Customary International Law as a Source of International Law: Doctrine and History, part in The Theory, Practice and Interpretation of Customary International Law: The Rules of Interpretation of Customary International Law (Cambridge: Cambridge University Press, 2022): 103.

mostly for the magnitude in which it can be spread and interpreted, but also because it can be difficult to prove conclusively.[71]

From *pacta sunt servanda,* we get that, treaties are binding only on states which become parties to them, and that they bear a legal and moral obligation to respect them. To continue, from *pacta tertiis nec nocent nec prosunt,* we get that treaties neither create obligations nor confer rights upon third states without their consent; however, when a rule appears in many treaties and reflects a widespread state practice accompanied by *opinio juris,* it may turn into customary law.[72] The way international actors respond plays a central role in the study of international law, both in identifying whether a customary rule truly exists from a positivist standpoint and in evaluating, from a more pragmatic view, how much influence that rule actually has on the behavior of states.[73] Thus, the relationship between treaty law and custom reveals the dynamic nature of international law, where the consent of states and their actual behavior together may shape the authority of legal norms.

General principles of law also stand as a distinct source of international law, carrying equal normative weight alongside treaties and customary law, even though they frequently operate in a complementary or gap-filling capacity in practice.[74] By contrast, the decisions of international courts and tribunals and the writings of highly qualified publicists function as subsidiary means for the determination and interpretation of rules of international law, rather than as independent sources in themselves.[75]

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[71] Christoph Schreuer, "Sources of International Law: Scope and Application", *The Emirates Center for Strategic Studies and Research*, Series 28 (2000): 6-7.

[72] Anthony D'Amato, "Treaties as a Source of General Rules of International Law" (Faculty Working Paper No. 120, Northwestern University School of Law, 1962): 4. https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1119&context=facultyworkingpapers

[73] Juergen Bering, "The Prohibition on Annexation: Lessons from Crimea." New York University Journal of International Law and Politics 49, no. 3 (2017): 775.

[74] Christoph Schreuer, "Sources of International Law: Scope and Application", The Emirates Center for Strategic Studies and Research, Series 28 (2000): 7.

[75] Charles C. Jalloh, "Subsidiary Means for the Determination of Rules of International Law," annexed *to Report of the International Law Commission, Seventy-Second Session* (26 April–18 June and 5 July–6 August 2021), UN Doc. A/76/10, 186, GE.21-11083: 189.

2.3 The subjects of International Law

The foundation of any legal system rests on the identification of its subjects, that is, the entities to which rights and duties attach. Entities recognized as subjects of international law are those granted international legal personality and, this status enables them to possess rights and obligations within the international legal framework.[76] Those entities that are recognized as subjects of international law include states, international organizations and, under certain conditions, non-state actors like national liberation movements and individuals. States are the original and most significant subjects, having full international legal personality and the *Montevideo Convention on Rights and Duties of States* (December 1934) defines them in *Article 1* as *"persons of international law"*, also highlighting all the statehood criteria to be met.[77] States can be considered both the subjects and at the same time, the authors of international law.[78] International Organizations are secondary subjects that were created by treaties among states and they have legal personality determined by their constituent treaties.[79] There are also individuals as limited subjects as modern international law increasingly recognizes them, given the fact that they have historically not been recognized.

2.3.1 Introduction to the Russia and Ukraine Conflict

At this point, it becomes difficult to speak meaningfully about the effectiveness of international law in the abstract without grounding the analysis in the conduct of states themselves. However prominent international organizations may be in shaping discourse or facilitating responses to conflicts, it is states that remain the primary subjects of international law, and it is through their actions that the legal rules are ultimately tested. The continuing conflict between Russia and Ukraine offers a concrete example of how these states, as international law subjects, operate under conflict and how their actions affect the legal system as a whole.

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[76] Bin Cheng, "Introduction to Subjects of International Law," in International Law: Achievements and Prospects, ed. Mohammed Bedjaoui (Dordrecht: Martinus Nijhoff Publishers, 1991): 23.

[77] Although neither Russia or Ukraine is a party to the Montevideo Convention on Rights and Duties of States, the criteria set out in Article 1 (permanent population, defined territory, government and capacity to enter into relations with other states) are widely regarded as reflecting *customary international law* and are therefore applicable to both states. *See* Montevideo Convention on the Rights and Duties of States, Dec. 26, 1933, 165 L.N.T.S. 19, art. 1.

[78] Timothy Meyer, "How Compliance Understates Effectiveness," *Proceedings of the Annual Meeting (American Society of International Law)* 108 (2014): 169.

[79] Reparation for Injuries Suffered in the Service of the United Nations, Advisory Opinion, I.C.J. Reports 1949, 174.

The relationship between Russia and Ukraine is deeply rooted in centuries of shared history, marked by periods of unity and division. From the 9th to the 13th centuries, there existed a federation of East Slavic tribes known as *Kyivan Rus*.[80] Both Russia and Ukraine consider *Kyivan Rus* as their cultural and historical origin.[81] The divergence in their paths became more and more pronounced during periods of Mongol rule, Polish-Lithuanian control and ultimately, inclusion in the Russian Empire and the Soviet Union. Russia and Ukraine were the two leading republics in the Soviet Union and Ukraine played a significant role in the USSR, contributing 30% of the overall industrial output and a quarter of the food supply.[82] This laid a foundation for closer ties between them, given the significant contributions to the Soviet economy. The closeness aspect can be seen also on the people's perspective, as according to a study conducted in 2005 by John O'Loughlin and Paul Talbot, more than 90% of the Russians surveyed expressed a desire for economic and political union between Russia and Ukraine.[83] These findings suggest that the longing for union may be driven not only by the geopolitical strategies but also by a historical memory of economic interdependence (that, as it will be presented through the paper, President Putin has declared many times) and such sentiments highlight the complex layers that continue to influence the Russian-Ukrainian relations over the years, even today.

In the Budapest Memorandum of 1994, along with the United States (US) and the United Kingdom (UK), Russia was one of the countries that provided Ukraine with guarantees about its territorial integrity in exchange for Ukraine handing over the Soviet nuclear weapons that remained in storage on its territory.[84] They signed a border treaty on January 28, 2003, which was later approved by both parliaments.[85] The agreement confirmed Ukraine's boundaries as they were in 1991, when the Soviet Union broke apart, including Crimea and the Donbas region and

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[80] *See* Jacob Wolfe, "Imperial Nostalgia: The War for the Kievan Rus Legacy" (master's thesis, University of Louisville, 2024), Electronic Theses and Dissertations, Paper 4435.

[81] Zeyu Jiang, "How Identities Become Crucial in Contemporary Conflicts and Interactions: Intangible Heritage in the Russo-Ukrainian War," in *AHM Conference 2023: Diasporic Heritage and Identity* (2023): 103.

[82] Saul Bernard Cohen, *Gjeopolitika: Gjeografia e Marrëdhënieve Ndërkombëtare* (Tiranë: AiiS, 2016), 234.

[83] John O'Loughlin and Paul F. Talbot, "Where in the World is Russia? Geopolitical Perceptions and Preferences of Ordinary Russians," *Eurasian Geography and Economics* 46, no. 1 (2005): 23-50.

[84] David S. Yost, "The Budapest Memorandum and Russia's Intervention in Ukraine," *International Affairs* 91, no. 3 (May 2015): 505.

[85] President of Russia, "Vladimir Putin Signed the Federal Law on the Ratification of the Treaty between the Russian Federation and Ukraine on the Russian–Ukrainian State Border," President of Russia (official Kremlin website), April 23, 2004. http://en.kremlin.ru/events/president/news/30820 (accessed May 30, 2025).

recognized respect for the territorial integrity of each other and the inviolability of the state borders that separate them.[86]

After gaining independence in 1991, Ukraine has oscillated between pro-European and pro-Russian governments, culminating with the Euromaidan protests in 2013 and the subsequent ousting of the pro-Russian president. This led to the annexation of Crimea by Russia and the ongoing conflict in the Donbas region of Eastern Ukraine, further widening the divide between the two countries. As President Putin has strongly "protected", the 2014 change of government in Ukraine amounted to a Western backed step and a rigged electoral process designed to weaken Russian influence, arguing more that intervention in Crimea was followed after many years of unsuccessful diplomatic engagement and was therefore *"necessary"* and considering it as not having *"other choice."*[87]

It signaled a turning point in the harmony of regional powers, as it became a significant legal issue at the time, concerning the violation of international law and the principles of the UN Charter, raising urgent questions about state sovereignty, territorial integrity and the prohibition on the use of force enshrined in *Article 2(4)* of the UN Charter.

The scholarly discussion about the Crimean situation is quite rich, but as Professor Žalimas notes, the arguments used by the Russian lawyers in researching this topic were mainly in defense of the official position of the Russian Federation and calls them as *"a lawfare strategy to weaken the positions of the opponent in the international arena"*.[88] Arguably, this interpretation is not without flaws, as we don't have all the materials produced by Russian legal researchers, to put a statistic to it, but it stands as an interesting point of view on the situation.

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[86] Yuliia Zahumenna and Andrii Voitsikhovskyi, "Adherence to the Principle of Inviolability of Borders as a Basis for International Law and Order: In the Context of the Russian-Ukrainian Armed Conflict," *Janus.net, e-journal of International Relations* 15, no. 2 (2024): 213.

[87] Vladimir Putin, "Address by the President of the Russian Federation," February 24, 2022, *The Kremlin.* http://en.kremlin.ru/events/president/news/67843 Last accessed on October 30, 2025.

[88] Dainius Žalimas, "Russian Justification of the Annexation of Crimea and Nazi Propaganda: Great Similarities and Minor Differences", Constitutional Court of the Republic of Moldova, (June 2017). https://www.constcourt.md/libview.php?l=en&idc=9&id=1045&t=/Media/Publications/RUSSIAN-JUSTIFICATION-OF-THE-ANNEXATION-OF-CRIMEA-AND- Last accessed on 30 October 2025.

Russia then claimed that it was acting by the will of the Crimean people, expressed in a rapid, organized referendum.[89] The United Nations (UN) never acknowledged this vote, which declared the referendum invalid as it was conducted under military occupation, and could not be considered in any way legal under international law.[90] The international community rejected the legality of the annexation, with the United Nations General Assembly (UNGA) passing *Resolution 68/262* affirming the territorial integrity of Ukraine.[91] The Russian government, on the other hand, claimed its actions were lawful because of the principle of self-determination and that it was protecting Russian-speaking people from alleged discrimination.[92] Yet, according to Ukraine this referendum was unconstitutional, and the Venice Commission determined that the referendum violated both domestic constitutional provisions and international democratic standards and could not produce any legal effect under international or Ukrainian law.[93]

Following the annexation and the escalation of hostilities in Eastern Ukraine, diplomatic efforts led to the Minsk Agreements (Minsk I in 2014[94] and Minsk II in 2015[95]) with the involvement of the Organization for Security and Cooperation in Europe (OSCE), Germany and France, which were meant to de-escalate the conflict and establish a ceasefire framework.[96] Violations of the ceasefire persisted on both sides and the political provisions of the agreements were never fully implemented. Åtland notes, that three may have been the reasons. One, the vagueness and

[89] *See* Milena Ingelevič-Citak, "Crimean Conflict – From the Perspectives of Russia, Ukraine, and Public International Law," *International Criminal Law Review* 15, no. 2 (2015): 29.

[90] United Nations, "So-Called Referenda in Russian-Controlled Ukraine 'Cannot Be Regarded as Legal': UN Political Affairs Chief," *Peace and Security*, 27 September 2022. https://news.un.org/en/story/2022/09/1128161 Last accessed on 30 October 2025.

[91] The international community, through General Assembly Resolution 68/262, explicitly called upon all States to refrain from recognizing any change in the status of Crimea and Sevastopol based on the referendum and to avoid actions that may be seen as justifying Russia's annexation. See United Nations General Assembly, Territorial Integrity of Ukraine, *A/RES/68/262*, 27 March 2014.

[92] Mike Collett White and Ronald Popeski, "Crimeans Vote Over 90 Percent to Quit Ukraine for Russia," *Reuters*, March 16, 2014. https://www.yahoo.com/news/crimea-vote-joining-russia-moscow-wields-u-n-024050097--finance.html Last accessed on 30 October 2025.

[93] Anne Peters, "The Crimean Vote of March 2014 as an abuse of the Institution of the Territorial Referendum", Christian Calliess (ed), Liber amicorum Torsten Stein (2017): 262.

[94] Organization for Security and Co-operation in Europe, Protocol on the Results of Consultations of the Trilateral Contact Group (Minsk Agreement I), 5 September 2014. https://www.osce.org/home/123257 Last accessed on 30 October 2025.

[95] Organization for Security and Co-operation in Europe, Package of Measures for the Implementation of the Minsk Agreements (Minsk II), 12 February 2015. https://www.osce.org/cio/140156 Last accessed on 30 October 2025.

[96] *See* United Nations Security Council, Provisional Verbatim Record of the 9546th Meeting, 12 February 2024, UN Doc. S/PV.9546.

ambiguity of the language, secondly, the debates on the order and timing agreed upon measures, and thirdly the parties lacked trust and were hesitant to begin implementation, afraid the other side would use it and place them in a precarious situation.[97] To add, regarding self-proclaimed "people's republics," despite the declared independence in May 2014, Minsk II agreement specified that the two regions had a "special status" and were not to be considered on the basis of independent statehoods.[98]

Recalling the *Munich Security Conference* in 2007, Vladimir Putin articulated a vision of Russia reclaiming the international influence he believed *"had been lost"* following the dissolution of the Soviet Union.[99] He strongly criticized what he described as the dominance of a unipolar international system, a concept he associated primarily with Western, and especially the US, preeminence in global affairs since the end of the Cold War. More broadly, as Barron also notes, the speech signaled Russia's kind of dissatisfaction with the existing post–Cold War order and revealed an ambition to challenge the geopolitical order.[100]

In the summer of 2021, the world was faced with a letter by President Putin, where he called Ukraine *"an anti-Russia project that they will never accept"* allegedly in collaboration with the Western powers and that *"Ukraine's sovereignty is possible only in partnership with Russia."*[101] Later on, tensions escalated dramatically in late 2021, when Russia began amassing thousands of troops along Ukraine's borders. In early February 2022, satellite images showed around 130,000 Russian troops mobilized along the Russian-Ukrainian border, which reinforced the possibility of *"an attack."*[102] Despite diplomatic efforts to defuse the situation, including talks between the US, North Atlantic Treaty Organization (NATO) and Russia, no consensus was reached. Putin

[97] Kristian Åtland, "War, Diplomacy and More War: Why Did the Minsk Agreements Fail?" *International Politics* (2024): 17. https://www.ffi.no/en/publications-archive/war-diplomacy-and-more-war-why-did-the-minsk-agreements-fail Last accessed on 30 October 2025.

[98] Masahiko Asada, "The War in Ukraine under International Law: Its Use of Force and Armed Conflict Aspects," *International Community Law Review* 26, no. 1-2 (2024): 9.

[99] *See* Vladimir Putin, "Putin's Famous Munich Speech 2007," video, YouTube, November 19, 2015. https://www.youtube.com/watch?v=hQ58Yv6kP44 Last accessed on 30 October 2025.

[100] Kiegan Barron, "The Annexation of Crimea and EU Sanctions: An Ineffective Response," *The Arbutus Review* 13, no. 1 (2022): 126.

[101] Vladimir Putin, "On the Historical Unity of Russians and Ukrainians," President of Russia (official Kremlin website), July 12, 2021. <http://en.kremlin.ru/events/president/news/66181> Last accessed on 30 October 2025.

[102]The Independent, "New satellite images show Russian military activity as '130,000' troops now on Ukraine border" by Thomas Kingsley, 15 February 2022, https://www.independent.co.uk/news/world/europe/russia-ukraine-satellite-images-b2015354.html Last accessed on 30 October 2025.

repeated these themes in a national address just days before the invasion of Ukraine. In his speech, he declared that *"Ukraine was not a neighboring country but an inalienable part of Russia's history, culture and spiritual space."*[103] This was followed by reasons offered to explain why Russia officially recognized Donetsk and Luhansk as independent states (internationally recognized as part of Ukraine), which as such was condemned by many states and international organizations as a violation of international law.[104] Following this speech, on February 24, 2022, Russia launched a full-scale invasion of Ukraine. Additionally, and interestingly, in an interview with Tucker Carlson in February 2024, President Putin advanced the claim that Ukraine is an *"artificial state,"* contending that its borders were shaped by decisions taken by Vladimir Lenin after the 1917 Russian Revolution, showing, once again, this "refusal" to accept Ukraine as separate from Russia.[105]

The 2022 invasion by Russia was a challenge to the rule-based international order. In response to the situation, Ukraine filed cases before international courts, including the International Court of Justice (ICJ) and the European Court of Human Rights (ECHR), while the International Criminal Court (ICC) opened an investigation into possible war crimes and crimes against humanity. Russia, on the other hand, claimed that its armed aggression stems also from the existential threat posed by the expansion of the United States and NATO, forcing Russia to respond with an armed attack to eliminate the threat and establish a multi-polar reality.[106] A thorny issue that arises when tracing the sequence of events which led to the 2022 invasion, adding here also the violation of the core principles of the UN Charter, like territorial integrity and the prohibition of the use of force. What is clear from this new challenge that the world is facing is that Russia has put at risk the very norms that uphold international peace and security, especially on the consequences for the authority and integrity of the legal system, which claims to bind all nations equally. As it has

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[103] Vladimir Putin, "Address by the President of the Russian Federation," President of Russia (official Kremlin website), published February 21, 2022. <http://en.kremlin.ru/events/president/transcripts/67828> Last accessed on 30 October 2025.

[104] Rene Värk, "Russia's Legal Arguments to Justify Its Aggression Against Ukraine," *International Centre for Defense and Security*, November 2022: https://icds.ee/wp-content/uploads/dlm_uploads/2022/11/ICDS_Analysis_Russias_Legal_Arguments_to_Justify_its_Aggression_Against_Ukraine_Rene_Vark_November_2022.pdf

[105] *Exclusive: Tucker Carlson Interviews Vladimir Putin*, YouTube video, February 9, 2024, posted by Tucker Carlson. https://www.youtube.com/watch?v=fOCWBhuDdDo Last accessed on October 30, 2025.

[106] Vidya Nadkarni, et al., "Forum: The Russia–Ukraine War and Reactions from the Global South," *The Chinese Journal of International Politics* 17, no. 4 (2024): 453.

indicated that it would end its so-called "special military operation" only if Ukraine accepted a set of conditions, which include limits on its military capacity, changes to its political orientation, and full recognition of Russia's territorial claims.[107]

From an internal perspective of law, Russia's post-2022 legislative package and its enforcement record can be analyzed as a domestic implementation strategy aimed at consolidating the state's official position internally and in the face of international community. According to *OVD-Info* (an independent project fighting for human rights and against repressions in Russia), as of January 2024, there have been at least *260 cases* for disseminating *"fake news"* about the conflict, *147 cases* for *"discrediting"* the armed forces, and *52 cases* for *"public appeals to extremist activity,"* among other categories.[108] Taken together, the combination of legislation and enforcement functions as a "chilling mechanism," as it reduces the space for factual reporting, civil society monitoring, and most importantly legal contestation; conditions that are directly relevant to international law effectiveness, because they affect the transparency, the availability of evidence, domestic accountability for violations, and the practical ability of individuals and organizations to engage with international mechanisms. As the scholar, Moskwa, also adds at his work after long monitoring of the conflict, individuals who question "the war" (as from the Russian now known, "wartime censorship law")[109] or express sympathy for Ukraine, may risk prosecution even for minor or private forms of expression (often based on social media activity,) while other measures have led to the suspension of independent media outlets, and the blocking of Western news sources, together with major social media platforms, cited as *"extremist,";* significantly constraining access to information and public debate.[110] Yet, this is the reality of individuals living in Russia right now. On the other hand, unlike Russia, Ukraine has not criminalized general criticism, nor has it developed a broad offence structure against those who

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[107] Marko Milanovic, "Revisiting Coercion as an Element of Prohibited Intervention in International Law," *American Journal of International Law* 117, no. 4 (2023): 627.

[108] *See* Persecution of the anti-war movement report. January 2024. https://ovd.info/en/persecution-anti-war-movement-report-january-2024#5; See also for the list of amendments done by Russia to its legislative laws and more: https://airtable.com/apprUADiPiM2GKGXg/shr5LibdcC0yK4zSm/tblb1uvcX0EoITrgI?viewControls=on Last accessed on 30 October 2025.

[109] As a consequence of the so-called *wartime censorship legislation*, state-aligned media are restricted from describing the events in Ukraine as a *"war"* or *"invasion"* and are instead required to adopt the official terminology of a *"special military operation."*

[110] Dagmara Moskwa, "'For We Are One People': Russo–Ukrainian War in V. Putin's Russia's Official Discourse," *Studia Polityczne* 53, no. 3 (2025): 72.

may be "Anti-Ukrainian"; excluding here martial law measures, as these are formally grounded in a state of emergency and are framed as temporary and security-driven.

While the conduct of Russia and Ukraine forms the core of this analysis, the reactions of third states also constitute an important dimension of the conflict's international legal context. States supporting, opposing, or remaining neutral in relation to the conflict have engaged through sanctions, diplomatic statements, military assistance, and importantly, positions taken within international organizations; all of which contribute to shaping the normative and institutional environment in which international law operates. At the same time, the scale, diversity, and rapidly evolving nature of these responses make a comprehensive, state by state analysis neither feasible nor methodologically coherent within the scope of this work. Accordingly, third state conduct is addressed at a general level in different parts of the work, focusing on representative patterns, rather than on an exhaustive account of individual actions.

Following the Russian invasion of Ukraine, a wide range of states adopted coordinated political, economic, and diplomatic responses, including sanctions, diplomatic expulsions, and restrictive measures, reflecting a broad pattern of "state level opposition" to Russia's actions under international law.[111] In particular numerous European states expelled Russian diplomatic personnel on grounds ranging from alleged intelligence activities, to Russia's military conduct in Ukraine, illustrating a coordinated diplomatic response employing lawful measures, to express non-recognition of actions viewed as violations of international law.[112] In response to the extensive sanctions imposed after the invasion of Ukraine, the Russian government formally designated several states as engaging in *"unfriendly actions"* against Russia, its companies, and

[111] The footnote provides a consolidated overview of state reactions, so, to have the main actions all together, summarizing the principal and official positions adopted by "individual" states as reflected in their public statements and documented responses; of course, without purporting to offer an exhaustive or continuously updated account. https://en.wikipedia.org/wiki/Government_and_intergovernmental_reactions_to_the_Russian_invasion_of_Ukraine Last accessed on 30 October 2025.

[112] The 1961 *Vienna Convention on Diplomatic Relations* (Article 9 paragraph 1) permits a receiving State to declare diplomatic personnel *persona non grata* without justification, and, as confirmed by the *Articles on Responsibility of States for Internationally Wrongful Acts Commentary* (adopted by the International Law Commission in 2001), such measures form part of lawful diplomatic practice rather than constituting countermeasures under international law. *Vienna Convention on Diplomatic Relations*, adopted April 18, 1961, entered into force April 24, 1964, 500 UNTS 95.; International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries* (2001), 133, para. 14.; Katherine Whitely Marklund, *The Lawfulness of EU Restrictive Measures against Russia under International Law: Countermeasures and the Doctrine of State Responsibility* (Stockholm University 2024): 27.

its citizens.[113] Thereby, imposing significant *"countersanctions"* against those *"unfriendly states."*[114]

2.4 Key Principles of International Law

The modern international legal system is based on several foundational principles designed to maintain peaceful relations among states. Analyzing these principles of international law, aims to explore how these principles may be applied, interpreted and possibly challenged in practice. Lowe analyzes that, based on the principles of the *Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States* (adopted by the UN General Assembly as *resolution 2625 XXV*), these norms are articulated as principles rather than detailed rules, functioning as guiding standards that inform legal reasoning rather than operating in a strictly binary*, "all-or-nothing*"[115] manner, that rules do.[116]

Principles in international law carry weight across a range of contexts, reflect the fundamental values of the legal order, and may interact with one another in complex ways. However, this does not mean that they lack binding force or can be freely displaced. In particular, the prohibition of the use of force and the obligation to respect territorial integrity function both as foundational principles and as binding rules of international law. The use of self-defense does not suspend or overrides the prohibition on the use of force, but operates as a narrowly exception within the same legal framework. This structure shows that while principles allow for contextual application, they do not make core Charter obligations flexible or at any point optional. At least this is understandable, given that they are in conformity with what states have agreed on, since

[113] *Russian Federation Government Decree* mentioned, Albania, Andorra, Australia, Canada, Iceland, Japan, Liechtenstein, Monaco, Montenegro, New Zealand, North Macedonia, Norway, San Marino, Singapore, South Korea, Switzerland, Ukraine, the United States, the United Kingdom (including Jersey, Anguilla, the British Virgin Islands, and Gibraltar), Micronesia, Taiwan, and all Member States of the European Union. "Russia issues list of countries, considering their 'unfriendly actions," March 2022. https://www.aa.com.tr/en/russia-ukraine-crisis/russia-issues-list-of-countries-considering-their-unfriendly-actions/2526541 Last accessed on 30 October 2025.

[114] Simon Volkov, "Between Scylla and Charybdis: Sanctions Compliance for International Companies Divesting from Russia," *Virginia Journal of International Law* 64, no. 2 (2024): 448.

[115] As Vaughan Lowe explains, referencing Ronald Dworkin's distinction, rules are applied in an "all-or-nothing" character. *See* Ronald Dworkin, "Taking Rights Seriously" (Cambridge, Harvard University Press, 1977).

[116] Vaughan Lowe, *"International Law",* Clarendon Law Series, (Oxford University Press, 2007): 101.

principles themselves cannot become norms of international law *"without anyone knowing about it."*[117]

To evaluate the legality and implications of state conduct in the Russia and Ukraine conflict, it is key to recognize the fundamental principles of international law that are involved. This includes the prohibition of force, respect for territorial integrity and sovereignty, the right to self-determination, the prohibition of aggression, adherence to international humanitarian law and the principle of state and individual accountability for internationally wrongful acts. Collectively, these principles provide the normative foundation of the post-World War II international legal framework, established to guarantee peace, protect human rights and promote accountability. This research will focus exclusively on two fundamental and interconnected principles (even if others will be addressed where relevant in context): the prohibition of the use of force as outlined in *Article 2(4)* of the UN Charter and the principle of territorial integrity, which is established in both the UN Charter and customary international law.

2.4.1 The Prohibition of Threat or Use of Force in International Law

The use of force is one of the most controversial areas of international law, as it has led, through the years, to different disagreements between states and scholars. In every research paper that delves into the conflict between Russia and Ukraine, regardless of the context, it is impossible not to encounter the international law prohibition of the use of force at least once. Consequently, its significance in such studies makes it essential to analyze.

The prohibition of the use of force derives from two sources of law: customary international law and treaty law (*Article 2(4)* of the UN Charter). Many of the prohibitions of force before the UN Charter were merely focused on "war," which, understandably, it is a broader notion than force.

According to O'Connell, the antithesis of force, aggression and war is peace; and international law is considered, by this definition, the rule of peace.[118] Those who held the belief that humanity could avoid the use of force with the assistance of the law were the ones who developed the peace regime in this particular aspect, and in fact, the UN Charter is the foundation of the present

[117] Lea Brilmayer, "Option or Obligation? Third-State Support for the Enforcement of International Law," *Yale Journal of International Law* 50, no. 1 (2025): 100.

[118] Mary Ellen O'Connell, "Peace and War", in The Oxford Handbook of the History of International Law, ed. Bardo Fassbender and Anne Peters (Oxford University Press, 2014), 272.

peace regime.[119] Nonetheless, in the post Charter age, the international community has seen a number of significant military interventions and conflicts despite the strong normative posture of the Charter against the use of force.

When we think briefly about the "threat of the use of force", it immediately evokes the idea of a warning or an ultimatum that will lead to an unlawful scenario. This impression is largely correct when discussing threats issued unilaterally by states, as *Article 2(4)* of the UN Charter also prohibits the threat of force against the territorial integrity or political independence of any state. However, not all threats fall outside the bounds of international legality. There have been instances when the threat of force has contributed to lawful outcomes, such as when *Resolution 678* of the UN Security Council authorized the use of force against Iraq unless it withdrew from Kuwait by a given date, or when NATO threatened the use of force in enforcing *Resolution 836,*[120] which called for the withdrawal of heavy weapons from UN-declared safe areas in Bosnia and Herzegovina.[121] These situations do not constitute violations of *Article 2(4)* because they were expressly authorized under *Chapter VII* of the Charter by the Security Council, which bears primary responsibility for the maintenance of international peace and security. However, such cases are exceptional and must not be equated with unilateral threats made by states, which are generally regarded as contrary to the spirit of the Charter. Accordingly, because of the nature of the research, this chapter concentrates on inter-state threats and uses of force, without the specific UNSC authorization.

2.4.1.1 *Article 2(4)* of the Charter of the United Nations

Motivated by the collective memory of war's horrors and a shared determination to secure a stable future, the *Allied nations* in San Francisco, signed a treaty committing to spare future generations the scourge of war.[122] Recognizing that aggression had frequently resulted in worldwide devastation, they aimed to create a framework that would prohibit the illegal use of

[119] *See* Ibid.

[120] The NATO threat must not be confused with a state's threat, as the purpose of NATO's threat was to enforce a Security Council resolution for the protection of civilians and the implementation of international peace and security, not to coerce a sovereign state for NATO's own political ends. Still, debate can be understood if it sounds ambiguous, as *Resolution 836* did not explicitly authorize NATO to threaten.

[121] Marc Weller (ed.), "Introduction: International Law and the Problem of War", *The Oxford Handbook of The Use of Force in International Law* (2015): 19.

[122] UN Charter pmbl. *See also*, Thomas M. Franck, "Who Killed Article 2(4)? Or: Changing Norms Governing the Use of Force by States," *The American Journal of International Law* 64, no. 5 (1970): 809.

force while at the same time preserving national sovereignty and stability. Such commitment ultimately took shape in the *United Nations Charter*, where *Article 2(4)* stands as fundamental component of contemporary international law.

Reflecting a firm commitment to international peace, *Article 2(4)* clearly states that:

> *"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."*[123]

This article of the UN Charter makes it apparent that the intended purpose is to prohibit not just the *use of force* but also the *threat* of the use of force. In this respect, together with the emphasis on peace, we have *paragraph 3* of the same article, which asserts that members should resolve their disputes by peaceful means. Importantly, since the creation of the UN Charter, the state parties have made efforts to elaborate on the provisions of the UN Charter on the use of force in different UNGA resolutions.[124]

When discussing the foundational legal norms that govern the conduct of nations on the global stage, we immediately think of the *Resolution 2625, Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States*. Emphasizing the need for peaceful coexistence and mutual respect among states, this fundamental document, adopted by the UN General Assembly in 1970, has become an element of contemporary international law. The principles laid out in the Declaration, importantly mentioning here the "non-use of force", are designed to encourage states to act justly and lawfully. According to *Resolution 2625(XXV),* no state should use or threaten to use force against the territorial integrity or political independence of another state, and further clarifies that any territorial acquisition resulting from the threat or use of force shall not be recognized as lawful.[125] Yet, to fully appreciate the implications of this resolution, it is crucial to understand the foundational language of *Article 2(4)* of the UN Charter from which these norms derive. What, then, does *Article 2(4)* imply by stating that the use of force or the threat of force is prohibited?

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[123] United Nations, *Charter of the United Nations*, June 26, 1945, 1 UNTS XVI.

[124] Christine Gray, "International Law and the Use of Force", *(Oxford University Press, Second Edition 2004*): 8.

[125] United Nations General Assembly, *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations,* GA Res. 2625 (XXV), October 24, 1970.

The drafters of the UN Charter did not provide a direct definition. It is probable that the Australian delegates who suggested the format of this article did not examine the term's general meaning, but rather took into consideration what international diplomatic experience had taught.[126] The term *use of force* in *Article 2(4)* is clearly directed to all state members of the United Nations to prevent any military operations by one state against another that are not in accordance with the purposes of the UN Charter (unless they fall under recognized exceptions).

Pre-Charters instruments, like the *Kellogg-Briand Pact* (1928) and state practice, laid the groundwork for treating armed aggression as illegal.[127] Likewise, the *Covenant of the League of Nations* contributed to this evolution by promoting collective security measures and seeking to prevent unilateral recourse to war.[128] By recognizing that any threat to peace or act of war affected the whole League, *Article 11* of the *League of Nations Covenant* marked a major step toward outlawing war by laying the idea that armed aggression should be treated not as a sovereign right but as a violation of collective security.[129] There were also other international instruments, such as the unratified *Draft Treaty of Mutual Assistance* and the League's 1925 and 1927 Assembly resolutions deeming aggressive war an international crime, thereby merely reaffirming existing principles without surpassing the League Covenant's legal framework.[130] Whether these legal developments amounted to the establishment of a customary norm that prohibited the use of force and was subsequently implemented in *Article 2(4)* of the UN Charter remains debated.[131] Still, consistent with the position adopted in this research, the creation of the Charter avoided using the term "war" by focusing on the broader concept of the use of force.

Over decades, state consensus has solidified around the understanding that armed or military force used by one state against another generally falls within the prohibition that we today see

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[126] Anthony D'Amato, "The Meaning of Article 2(4) in the U.N. Charter," *Northwestern Public Law Research Paper* No. 13-30 (revised from Chapter 3 in *International Law: Process and Prospect*, 2nd ed., 1995), September 6, 2013: 1-15.

[127] *See General Treaty for Renunciation of War as an Instrument of National Policy* (Kellogg-Briand Pact), signed 27 August 1928, 94 LNTS 57.

[128] United Nations Office at Geneva, "Covenant of the League of Nations, League of Nations Archives: Digitized Collections," <https://www.ungeneva.org/en/about/league-of-nations/covenant> Article 10, 12, 13, 15. Last accessed on 30 October 2025.

[129] League of Nations, Covenant of the League of Nations, Article 11, 28 June 1919.

[130] Erin Kimberley Pobjie, "Use of Force" and Article 2(4) of the UN Charter: The Meaning of a Prohibited 'Use of Force' between States under International Law, (PhD Dissertation at the University of Köln, May 2019): 39.

[131] Ibid., 40.

from *Article 2(4).* However, "force" is a notion that goes broader than "armed force" as it may be inclusive of other methods.[132] A question that remains unresolved in scholarly discussions. As Heselhaus observes, this uncertainty arises partly because the prohibition functions within a wider Charter framework on collective security, employing concepts such as threats to peace, aggression, and armed attack; and partly because of ongoing debates over the limits of self-defense, which continue to shape and complicate understandings of what constitutes *"force"*[133]

Kelsen posits that 'the use of force' referenced in *Article 2(4)* encompasses both armed conflict and breaches of international law, that entail an assertion of authority, within the limits that a territory could have, without necessarily involving the use of arms.[134] This remains relevant to modern international law, as the use of force may include modern forms such as artificial intelligence driven attacks or biological weapons, which raise complex legal questions. This is largely due to the rapidly advancing technological world, and the current trend with new developments, which makes it difficult to fit within an existing legal framework.[135]

There have also been interpretations by the International Court of Justice. In the case, *Nicaragua v. United States* (1986), the ICJ categorized the provision of weapons, logistical support and financing for military and paramilitary operations as an unlawful *"use of force."*[136] The court relied on the *Friendly Relations Resolution* principles on the use of force, which played an important role, and on the grounds offered by the states,[137] concluded that the United States had not justified its conduct, as its arguments were framed as statements of international policy rather than assertions of existing international law, constituting a prima facie violation of the principle of non-use of force.[138] Most importantly, in relation to the ICJ ruling, it is widely regarded as

[132] Mung'ale, A. N., "Efficacies of Article 2(4) of the UN Charter in Regulating the Threat or Use of Force in International Relations; a Case Study of Iraq-US War in 2003," (Thesis of Master of Arts, University of Nairobi, October 2005): 18.
[133] Sebastian Heselhaus, "International Law and the Use of Force," in *Encyclopedia of Life Support Systems – Sample Chapters (*EOLSS Publishers), 7, https://www.eolss.net/sample-chapters/c14/E1-36-01-02.pdf
[134] Ian Brownlie, "International Law and the Use of Force by States", (Oxford: Oxford University Press, 1963): 361.
[135] Suleiman Usman Santuraki, "Contemporary Trends in Cyber Warfare and the Use of Force in International Law: Demystifying Article 2(4) of the UN Charter," *Fountain University Law Journal* 1, no. 2 (2024): 139.
[136] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States),* Judgment, 1986 I.C.J. 14 (June 27).
[137] Ibid., paragraph 191.
[138] Christine Gray, "International Law and the Use of Force", (Oxford University Press, Second Edition 2004): 67.

affirming the jus cogens status, which states are not permitted to derogate from.[139] By this, no state may acknowledge achievements resulting from the use of force and no state can help the responsible state to maintain it in effect.

In the *Iran v. United States* (2003), the ICJ reiterated that only actions constituting an *"armed attack"* trigger self-defense, implying that *"use of force"* includes armed or violent acts aimed at another state's territory or assets.[140] The judgment reflects in some way the court's effort to preserve the restrictive scope of permissible force under the Charter, affirming that unilateral military action must meet an evidentiary and legal standard. However, as Professor Thomas M. Franck has argued, the meaning of the Charter is not fixed; rather, it is subject to continuous interpretation and adaptation through state practice, including the actions, rhetoric and voting behavior.[141]

To return to the *jus cogens* debate, academics generally agree that the prohibition on the use of force is peremptory.[142] However, this raises the question of whether it is *Article 2(4)* as a whole or the substantive prohibition itself that carries this status. From the literature, it can be observed that not everyone who supports the idea that the prohibition on the use of force has *jus cogens* status necessarily believes that all of *Article 2(4)* of the UN Charter carries that same weight. Some scholars adopt a more careful distinction, suggesting that it is the core principle, *"the*

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[139] Nicaragua v. United States case, paragraph 190. The court agreed upon this without delving into the issue of whether the meaning of the article had been set or evolved over time.

[140] *Oil Platforms (Islamic Republic of Iran v. United States of America),* Judgment, 2003 I.C.J. 161 (Nov. 6).

[141] Thomas M. Franck, Recourse to Force: State Action Against Threats and Armed Attacks (Cambridge: Cambridge University Press, 2002), 7–8.

[142] The prohibition of the use of force is commonly regarded in academic literature as a norm of jus cogens, reflecting its fundamental and nonderogable character in international law. *See, for example,* James A. Green, "Questioning the Peremptory Status of the Prohibition of the Use of Force," Michigan Journal of International Law 32, no. 2 (Winter 2011): 215–258. *See* especially p. 216, where the author provides nearly a full page of references supporting this view.; Ashley S. Deeks, "Consent to the Use of Force and International Law Supremacy," Harvard International Law Journal 54, no. 1 (Winter 2013): 1-60; Tom Ruys, "The Meaning of 'Force' and the Boundaries of the Jus ad Bellum: Are 'Minimal' Uses of Force Excluded from UN Charter Article 2(4)?" American Journal of International Law 108, no. 2 (2014): 159–210; Mbori Otieno, Emmah Wabuke and Smith Otieno, "The Fission and Fusion in International Use of Force: Relating Unlawful Use of Force and the War Crime of Disproportionate Force Not Justified by Military Necessity," Case Western Reserve Journal of International Law 48, no. 1 & 2 (Spring 2016): 303–328; Federica D'Alessandra, "Accountability for Violations of the Prohibition against the Use of Force at a Normative Crossroads," Harvard International Law Journal 58, Online Journal (Spring 2017): 7–13; Olivier Corten and Vaios Koutroulis, "Chapter 22: The Jus Cogens Status of the Prohibition on the Use of Force: What Is Its Scope and Why Does It Matter?" in Peremptory Norms of General International Law (Jus Cogens), edited by Dire Tladi (Leiden: Brill, 2021): 629–667.

prohibition of the use of force" itself, that should be considered peremptory.[143] In this view, the jus cogens nature applies to the rule in substance, rather than to *Article 2(4)* in its entirety. This approach finds further support in works that highlight how the threat of force, which is also part of *Article 2(4),* does not enjoy the same recognition in state practice or customary international law and thus cannot be said to hold peremptory status.[144]

While interpretations of intent may vary, one undeniable fact remains: the use of force by one state against another requires a conscious decision to engage in such an action. This awareness is closely linked to the notion of *willingness*, since it suggests, at a first glance, an informed choice to ignore international law principles.[145] In this regard, it is important to remember the 1969 *Vienna Convention on the Law of Treaties*, which sets the standard on the interpretation of treaties, by stating that everything shall be interpreted in *"good faith"*, meaning that the terms of the treaty should be interpreted in light of their context and purpose.[146] This principle ensures that treaties are applied purely within their intended purpose, and when this is connected with a state willingly engaging in the use of force (while still being bound by treaties), it exposes the contradiction between legal commitments and actual state behavior, questioning the enforceability of international law.

Turning now to the prohibition of the "threat of force," the term remains undefined in the Charter, the *travaux préparatoires*, or in the resolutions of the General Assembly that interpret the principle of non-use of force.[147] To be analyzed at a basic level, a "threat" may be considered an expression of intent to inflict harm or impose negative consequences through coercion. However, different from the everyday language, where a threat might imply intimidation or

[143] *See* Karen Parker and Lyn Beth Neylon, "Jus Cogens: Compelling the Law of Human Rights," *Hastings International and Comparative Law Review* 12 (1989): 437; Alexander Orakhelashvili, "The Impact of Peremptory Norms on the Interpretation and Application of United Nations Security Council Resolutions," *European Journal of International Law* 16, no. 1 (2005): 63. As Orakhelashvili points out the peremptory norm is the underlying prohibition of the use of force (jus cogens), which is expressed through *Article 2(4).* However, *Article 2(4)* is not absolute in itself because the Charter system includes built in exceptions, especially via the Security Council's powers under Chapter VII.

[144] James A. Green, "Questioning the Peremptory Status of the Prohibition of the Use of Force," *Michigan Journal of International Law* 32, no. 2 (2011): 228.

[145] Oliver Corten, "The Law against War: The Prohibition on the Use of Force in Contemporary International Law", 2nd ed., vol. 7, French Studies in International Law (2021): 87.

[146] *Vienna Convention on the Law of Treaties*, art. 26, art. 31, May 23, 1969, 1155 U.N.T.S. 331.

[147] Olivier Corten, The Law Against War: The Prohibition on the Use of Force in Contemporary International Law, *French Studies in International Law* (Oxford: Hart Publishing, 2021): 110.

warning on something, in legal terms, a threat under *Article 2(4)* carries specific implications for state behavior and the maintenance of international peace and security. It involves credible declarations or demonstrations of a state's intent to use force against another state, if certain demands are not met. The ICJ, the UNGA and the UNSC, while they have not given a precise, universally accepted definition of 'threat', have all confirmed that the threat of use of force is illegal when it violates the UN Charter or is used coercively against another state.[148]

A notable attempt to clarify this concept can be found in *Article 13* of the *Draft Code of Crimes Against the Peace and Security of Mankind*, adopted by the International Law Commission. The original provision described a threat of aggression as *"declarations, communications, demonstrations of force, or any other measures"* that could reasonably lead a state to believe that aggression could be planned against.[149] But, in the end, it was excluded from the final version of the Code due to concerns about the suitability of criminalizing threats in international criminal law. Similar approach can be also found in *Article 10* of the *Covenant of the League of Nations*, which, rather than clearly prohibiting threats of war, focused more on outlining the collective response mechanisms in situations involving threats or dangers of aggression.[150]

What can be seen while researching through articles, statements, resolutions, etc., states and international organizations hardly mention the threat of force, nor do legal researchers focus that much on the threat. If it does show up in any statements or resolutions, it usually comes together with the prohibition of the use of force; rarely on its own. It may be that defining a "threat of force" under international law sometimes relies on subjective judgments,[151] and as some scholars and states contend,[152] the process is fundamentally challenging, if not impossible.[153] Ultimately,

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[148] *See for example* International Court of Justice, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, July 8, 1996: p. 44; United Nations General Assembly, *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations,* GA Res. 2625 (XXV), October 24, 1970: 123; United Nations Security Council, *Resolution 487 (1981),* June 19, 1981, S/RES/487: 10.

[149] International Law Commission, *Report of the ILC on the Work of Its Forty-First Session*, *Yearbook of the International Law Commission* 1989, vol. II, Part Two, 68.

[150] Covenant of the League of Nations (adopted 28 June 1919, entered into force 10 January 1920) 108 LNTS 188.

[151] International Law Commission, *Summary Record of the 1,885th Meeting* (21 May 1985), UN Doc. A/CN.4/SR.1885, paragraph 49.

[152] On the state's perspective *see,* International Law Commission, *Summary Record of the 2,135th Meeting*, 12 July 1989, UN Doc. A/CN.4/SR.2135, 293, para. 2 (statement by ILC Member Riyadh Mahmoud Sami Al-Qaysi).

[153] Agata Kleczkowska, *Threats of Force and International Law: Practice, Responses and Consequences* (Routledge, 2023): 18-19.

this author concludes that a case-by-case approach is always required and needed, despite that in practice may be quite impossible to be detected as a violation.

On the other hand, the lack of a definition for both, use of force or threat of the use of force, within the UN Charter, does not mean that the term should be interpreted arbitrarily, but that their meaning must be logically inferred based on specific factors, including the purpose of the UN Charter as a whole, state practice, the ICJ Jurisprudence, Customary International Law and general principles. As the ICJ has pointed out in its *Advisory Opinion on the Legality of the threat or use of nuclear weapons,* the notions of a "threat" and "use of force" are equivalent to each other and if the actual use of force was unlawful in a particular situation, for any reason that there can be, the threat of using force would also be unlawful.[154]

Riding through interpretation, what is clear through the wording of the *Article* is to whom it is directed. It prohibits the threat or use of force in international relations between states, but does not apply to internal conflicts within a single state, meaning that civil wars fall outside the scope of *Article 2(4),* unless and until such conflict acquires an international dimension.[155] However, even in such cases, the legal analysis changes significantly when the state concerned expressly authorizes foreign military intervention. In situations where the government provides a valid consent, the prohibition on the use of force is not engaged, as a sovereign state has the right to permit the presence and operations of foreign forces on its territory.[156] This means that the restrictions of the Charter's applicability become clear: while *Article 2(4)* controls the use of force between states, its reach is limited where valid consent from a government exists, so highlighting that the prohibition is not absolute but dependent on the type of the force and the legal setting in which it occurs.

Life goes on and conflicts persist in today's world, as they likely will in the future. While peace may follow some, history has shown that conflicts can also lead to long term instability. In this non-stopping and evolving international landscape, it is crucial not to overlook criticisms that highlight weaknesses within international legal frameworks. One notable example is Wippman's

[154] International Court of Justice, *Legality of the Threat or Use of nuclear weapons*, (July 8, 1996): 63, para. 48.
[155] *See* Oliver Dörr and Albrecht Randelzhofer, "Ch. I Purposes and Principles, Article 2(4)," in The Charter of the United Nations: A Commentary, vol. 1, 3rd ed., ed. Bruno Simma et al. (Oxford: Oxford University Press, 2012): 13.
[156] Ibid.

research, *The Nine Lives of Article 2(4),* which critically examines the ongoing debates about the survival and relevance of this article; and naturally raises many questions about its role.[157] His analysis prompts important questions about the real-world function and effectiveness of *Article 2(4)*, and how it has repeatedly been declared "obsolete" by realists and skeptics, only to be revived by defenders, who continue to affirm its legal and normative significance.[158]

Yet, despite all the analyses and criticisms that can be found, *Article 2(4)* has shown to be a solid legal argument over time, exhibiting its resilience akin to a cat with nine lives (inspired by the metaphor of Wippman's work title). Its enduring presence in legal and political discourse, despite recurrent challenges, invites a closer examination of the criticisms it faces because of its scope, relevance and enforceability.

During the post-Cold War era, increasing instances of unilateral military actions and other violations of international norms led many scholars to question whether *Article 2(4)* was still a viable legal constraint on state behavior. In *"How War Left the Law Behind,"* Glennon, from the University of California, argues that repeated violations undermine binding force.[159] From the perspective of those who support the continued relevance of international law, one can say that this perspective clearly undermines the foundational legal framework designed to uphold international peace and security. While Glennon acknowledges that the norm still influences state behavior, he contends that its practical effect is not strong enough for it to be considered binding international law.[160] This argument reflects a broader realist skepticism, suggesting that legal norms lacking a strong enforcement mechanism cannot meaningfully constrain or limit state conduct. However, this view risks mistaking occasional non-compliance for legal irrelevance, overlooking the fact that even imperfectly followed rules can continue to shape state conduct.

It is also true that international law, unlike domestic law, lacks a centralized enforcement mechanism and states sometimes act contrary to legal prohibitions, but this does not make

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[157] David Wippman, "The Nine Lives of Article 2(4)," *Minnesota Journal of International* Law 62, no.2 (2007): 387-406.
[158] Ibid., 387.
[159] Michael J. Glennon, "How War Left the Law Behind," New York Times, November 21, (2002), <https://www.nytimes.com/2002/11/21/opinion/how-war-left-the-law-behind.html> Last accessed on 30 October 2025.
[160] Wippman, "The Nine Lives of *Article 2(4),"* 390.

international law ineffective or irrelevant. Legal explanations are constantly used, even by countries supposedly violating the law, which emphasizes the normative authority and legitimizing significance of legal norms. In the view of this researcher, it is difficult to engage with the study of international law while disregarding the normative and structural value of provisions such as *Article 2(4).*

Expanding on Glennon's argument, in *"Limits of Law, Prerogatives of Power: Interventionism after Kosovo"*, he examines the broader failure of the prohibition to achieve its intended goals in practice.[161] This kind of viewpoint, such as Glennon's, can be argued by others as a form of "threat" to dismantle the cooperative and rule-based international order that has been instrumental in maintaining relative global peace since World War II.[162] As in general legal reasoning, the existence of violations does not equate to the absence of law, rather, it highlights the necessity of enforcement mechanisms. If only noncompliance rendered a rule obsolete, no legal system, domestic or international, could function. Moreover, the very fact that states go to great lengths to justify their actions, often invoking self-defense under *Article 51* of the UN Charter, demonstrates the enduring force that the norm has. This further emphasizes the fact that these criticisms of *Article 2(4)* help to see the Russia and Ukraine conflict in a larger perspective.

Of course, criticisms of *Article 2(4)* can take many forms, as the nature of conflicts in each case throughout history varies and each case presents unique legal and political complexities. This variability is exactly what has led to the widespread debate over the article's application and effectiveness. One of the most persistent criticisms of *Article 2(4)* is that its enforcement may be perceived as inconsistent and politically motivated. This criticism is more difficult to address with facts, as it focuses on the motivation of states that violate international law principles. However, patterns in international responses may be found and interpreted. As a pillar of the Charter, the prohibition on the use of force often seems to be vulnerable to the strategic interests of powerful states, particularly within the UN Security Council. Scholars have emphasized that the enforcement structure relies heavily on cooperation among the five permanent members of

[161] Analyzing sixty-five international conflicts that resulted in millions of deaths between 1945 and 1996, he challenges the perspectives of scholars such as Louis Henkin and Thomas Franck, rejecting the idea that modern state interactions reflect a functioning, Charter-based legal system. *See* Charles Tiefer, "Review of Limits of Law, Prerogatives of Power: Interventionism after Kosovo", American Journal of International Law 96, no. 2 (2002): 490.
[162] Marcelo G. Kohen, "Is the U.S. Practice of Using Force Changing International Law?" World Editorial and International Law 2, no. 1 (2003): 8.

the Security Council, which historically has been lacking.[163] It should be noted here that, although it will be examined further in the chapter on international organizations, the veto power held by its five permanent members can impede collective action against violations and complicate the situation even more. Also, as Glennon notes, issues involving *"high politics,"* like national security, are more complex and compliance with international law is often more selective, and can naturally be politically driven.[164]

Historically, we have examples where powerful states or coalitions used force without clear UN Security Council authorization or in questionable legal circumstances. For instance, the United States invasion of Iraq in 2003[165] remains one of the most controversial uses of force in recent history, as it was widely condemned as an illegal war,[166] and perhaps, this conflict is the closest parallel to Russia's invasion of Ukraine.[167] The US justified the use of force by a letter sent to the Security Council,[168] stating that the actions being taken were based on prior Council resolutions, particularly *Resolutions 678* and *687*.[169] As Hendrickson and Tucker observe, many criticisms of the Iraq invasion (especially by those who initially supported it) focused less on the decision to

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[163] Hitoshi Nasu, "The UN Security Council's Responsibility and 'The Responsibility to Protect'", *Max Planck UNYB* (2011): 396.; Jan Phillip Graf, "The Death of the Prohibition on the Use of Force: An Attempt at Reimagination," *Völkerrechtsblog – International Law and International Legal Thought*, 15 February 2022. <https://voelkerrechtsblog.org/an-attempt-at-reimagination/> (accessed 30 May 2025). Jean Allain, "The True Challenge to the United Nations System of the Use of Force: The Failures of Kosovo and Iraq and the Emergence of the African Union," *Max Planck UNYB 8* (2004): 245.

[164] Michael J. Glennon, "Sometimes a Great Notion," *The Wilson Quarterly 27*, no. 4 (2003):49.

[165] The claim made by the United States and the United Kingdom was that Iraq possessed weapons of mass destruction in violation of UN Security Council resolutions. These weapons were said to pose a threat to international peace and security and the operation, known as "Operation Iraqi Freedom," was initiated without authorization from the United Nations Security Council. *See* Jane K. Cramer and A. Trevor Thrall, eds., "Why Did the United States Invade Iraq?", *Routledge Global Security Studies (New York: Routledge, 2012):*1-25, but for more interesting analysis or information, the whole book is a good suggestion especially the 10th part of Jane K. Cramer and Edward C. Duggan, "In pursuit of primacy: why the United States invaded Iraq", page 201.

[166] UN Secretary-General Kofi Annan stated in September 2004 that, *"From our point of view and the UN Charter point of view, it [the war] was illegal." See* Ewen MacAskill and Julian Borger, "Iraq War Was Illegal and Breached UN Charter, Says Annan," from *The Guardian*, published September 16, 2004. <https://www.theguardian.com/world/2004/sep/16/iraq.iraq> Last accessed on 30 October 2025.

[167] Ingrid Brunk Wuerth and Monica Hakimi, "Russia, Ukraine and the Future World Order," *American Journal of International Law* 116, no. 4 (2022): 690.

[168] *See* Letter dated 20 March 2003 from the Permanent Representative of the United States of America to the United Nations addressed to the President of the Security Council, UN Doc. S/2003/351 (20 March 2003).

[169] Mahmoud Hmoud, "Use of Force against Iraq: Occupation and Security Council Resolution 1483," *Cornell International Law Journal* 36 (2003): 435.

invade and more on how poorly the occupation was executed.[170] Similarly, going back in time, with the same conflict actors, Russia's annexation of Crimea in 2014 was a clear violation of *Article 2(4),* yet international responses remained largely limited to economic sanctions.[171] The structural limits in maintaining the Charter's prohibition on the use of force are shown by the absence of a strong collective enforcement mechanism (especially via the UNSC, where Russia maintains veto authority). Few would trust systems allowing an actor to diverge from the rules without any form of penalty. And, as many scholars have acknowledged, the UNSC will therefore probably not be able to resolve any issue involving one of these countries or one their close allies.[172]

Additionally, as mentioned in the context of this criticism, NATO's intervention in Kosovo (1999), which was conducted without explicit UN authorization, raised further questions about the selective application of *Article 2(4).*[173] While some commentators attempted to invoke the doctrine of "humanitarian intervention," no such exception is codified in the Charter. It therefore raised serious legal questions about whether some "other extra Charter justifications" can be invoked without undermining the normative coherence of *Article 2(4).* Even UN Secretary-General Kofi Annan, who expressed concern over NATO's lack of Security Council authorization, agreed on the validity of force *"in the pursuit of peace"* when diplomacy has been tried; and blamed the Yugoslav authorities at the time for rejecting a peaceful settlement.[174] To add, President Boris Yeltsin strongly condemned NATO's 1999 air campaign against Yugoslavia and called NATO's operation *"nothing other than an open aggression, that created a dangerous precedent that could cause acute destabilization."*[175] Yet today, that same Russian Federation,

[170] David C. Hendrickson and Robert W. Tucker. "Revisions in need of revising: What went wrong in the Iraq war." *Survival* 47, no. 2 (2005): 9.
[171] Lauri Mälksoo, "The Annexation of Crimea and Balance of Power in International Law," *European Journal of International Law* 30, no. 1 (2019): 305.
[172] Juergen Bering, "The Prohibition on Annexation: Lessons from Crimea," *New York University Journal of International Law and Politics* 49, no. 3 (2017): 770.
[173] Ved P. Nada, "Legal Implications of NATO's Armed Intervention in Kosovo", *Naval War College International Law Studies* 75 (2000): 314.
[174] United Nations, Press Release *SG/SM/6938*, Secretary-General Says Security Council Must Be Central to Use of Force, March 24, 1999.
[175] United Nations Security Council, 3988th Meeting, Provisional Verbatim Record, *S/PV.3988*, 54th Year, March 24, 1999, pg. 3.

even though with e different president,[176] has defended its own use of force using, as many scholars consider them, equally conflicting legal arguments, therefore exposing the changing and frequently contradictory character of state interpretations of international law.[177]

Thus, does it matter who the violator is, who the allies are and how the action is framed politically? We have different forms of violations, or different ways in which they arise. Yet, they expose again a deeper structural inconsistency in the international legal system: the capacity of certain states to frame legal arguments *ex post facto* and the inability of existing enforcement mechanisms to ensure a clear and uniform compliance.

Contributors to law enforcement have also noted that the lack of reliable enforcement mechanisms creates a view that the Charter's prohibitions are insufficient in guiding state behavior.[178] While it is important to recognize that complete uniformity in international law enforcement may be unrealistic, these patterns of selectivity and inaction raise legitimate concerns about the normative worth of *Article 2(4).* The objective is to recognize the necessity of systems guaranteeing fairer implementation of the Charter's principles, not to diminish its significance. Based on this, perhaps the most significant weakness of *Article 2(4)* is the lack of strong enforcement mechanisms. While the UN Charter prohibits force, it does not provide an automatic enforcement mechanism when violations occur. This perspective is analyzed in the

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[176] President Putin has, on several occasions, invoked the authority of international law, for example, during the 2003 Iraq War, he emphasized that *"the use of force, according to existing international laws, can only be sanctioned by the United Nations,"* reinforcing the principle that action without Security Council authorization are unlawful. *See* CNN, "U.S. Urges Putin to Drop Iraq Debt," CNN, December 18, 2003. <https://edition.cnn.com/2003/WORLD/europe/12/18/sprj.irq.uk.baker/> Last accessed on 30 October 2025.

[177] As a topic will be better analyzed at the last Chapter, but for some reference, *See* James A. Green, Christian Henderson and Tom Ruys, "Russia's Attack on Ukraine and the Jus Ad Bellum," *Journal on the Use of Force and International Law* 9, no. 1 (2022): 10. – They state that Russia's legal arguments for its military actions in Ukraine lack substantive evidence and do not meet the criteria established under international law for the use of force and reflect a broader pattern of "legal manipulation."; Masahiko Asada, "The War in Ukraine under International Law: Its Use of Force and Armed Conflict Aspects", *International Community Law Review* 26, 1-2 (2024): 7. She analyses that it cannot be argued that a threat to Russia existed at that time, even if one accepts the theory of anticipatory self-defense against an incoming armed attack.; Rene Värk, "Russia's Legal Arguments to Justify Its Aggression Against Ukraine*," International Centre for Defense and Security*, November 2022: 1. https://icds.ee/wp-content/uploads/dlm_uploads/2022/11/ICDS_Analysis_Russias_Legal_Arguments_to_Justify_its_Aggression_Against_Ukraine_Rene_Vark_November_2022.pdf – Värk states that the Russian justifications lack legal merit and considers them to be "*opportunistic and dangerous*".

[178] Frederic L. Kirgis, "Enforcing International Law," *American Society of International Law Insights*, January 22, 1996. <https://www.asil.org/insights/volume/1/issue/1/enforcing-international-law> Last accessed on 30 October 2025.

chapter on international organizations regarding the UN Security Council veto limitation. However, it is also somewhat connected to other criticisms that are mentioned in this chapter, especially the view that the lack of enforcement mechanisms leads to politically motivated applications of Article 2(4), as Goldsmith adds, "*the treaty's prohibitions do little work in influencing national behaviors*".[179]

Another important criticism of *Article 2(4)* that must not be left out is the ambiguity surrounding the prohibition of the 'threat of force.' This matter is particularly critical given Russia's military buildup near Ukraine in 2021-2022. As discussed in the paragraphs above, the Charter does not specify what exactly constitutes a "threat", nor does it delineate the actions that fall under the "use of force". This has allowed states considerable leeway in interpreting these terms to their advantage, potentially undermining the Charter's purpose. Bruno Simma's analysis, in his commentary on the UN Charter, reveals that this prohibition has an obvious obstacle due to the uncertainty regarding the words of the UN Charter's provisions and the questionable connections to one another.[180]

One of the most famous cases that has led to widespread discussion about the threat of the use of force is the *Nicaragua v. United States case*. Nicaragua asked the ICJ to condemn the US also for the threat of the use of force. Along with explicit declarations from US officials stating they aimed to pressure the Nicaraguan government, Nicaragua claimed that the US had not only used force, through actions such as mining her harbors and supporting the contras, but also threatened to use force, particularly through repeated military maneuvers along her borders and in adjacent seas.[181] Despite this, the Court declined to find a violation of the prohibition on threats of force under *Article 2(4).* As no ground was given in support of this, it is hard to draw from it a clear definition of the notion 'threat'. Thus, this case highlights the interpretive uncertainty surrounding what qualifies as a "threat."

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[179] *See* for eg., Jack Goldsmith, "Is the U.N. Charter Law?" Lawfare, April 16, 2018. https://www.lawfaremedia.org/article/un-charter-law Last accessed on 30 October 2025.

[180] Bruno Simma, The Charter of the United Nations: A Commentary, 2nd ed. (Oxford University Press, 2002): 135.

[181] Memorial of Nicaragua, April 30, 1985, Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Pleadings, Oral Arguments, Documents, vol. 1 (The Hague: International Court of Justice, 1985), 60, paragraph 217, 132, paragraph 507, 119, paragraph 457.

As highlighted by Corten, for military maneuvers to be considered to violate *Article 2(4)* of the UN Charter, there must be either explicit statements or clear evidence suggesting an imminent intention to launch an invasion or armed assault.[182] However, we have seen direct threats and what has happened as a result of them. Even though such statements may not, on their own, constitute a clear violation of *Article 2(4)* of the UN Charter (that is, an illegal threat of force), former US Secretary of State Colin Powell, during the lead-up to the 2003 Iraq War, explicitly stated that *"the threat of force must remain."*[183] Yet, this declaration, made in the context of pressuring Iraq to comply with *Resolution 1441* (2002),[184] creates a gap between what international law asserts and how states behave and has gone through history with no much mention as it has rarely been addressed in subsequent legal discourse, despite its apparent conflict with the spirit of *Article 2(4).*

This legal silence can, in part, be explained by the dual nature of threats in international relations. On one side, threats of force are employed in coercive diplomacy to prevent aggression or coerce compliance without using force. On the other hand, *Article 2(4)* prohibits both the use and threat of force and international law has long struggled to draw a clear line between legitimate political pressure and illegal coercive threats. Adding more to the complexity that "threat" already has in itself, while states routinely engage in forms of political or economic pressure, the explicit threat of military force may raise legal debate, *inter alia*, as it may also be a 'threat to international peace'. In the sense of *Article 2(3)* of the UN Charter, every state should use peaceful means.[185] Furthermore, this is also reaffirmed in General Assembly *Resolution 2625* (XXV), which states that:

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[182] Oliver Corten, "The Law against War: The Prohibition on the Use of Force in Contemporary International Law", 2nd ed., vol. 7, French Studies in International Law (2021): 117.

[183] United Nations Security Council, Provisional Verbatim Record of the 4707th Meeting, February 14, 2003, UN Doc. S/PV.4707, 20–21.

[184] Resolution 1441 (2002) of the United Nations Security Council, UN Doc. S/RES/1441 (2002), was approved on November 8, 2002. Although it did not permit the automatic use of force, the resolution warned of "serious consequences" for continued non-compliance and gave Iraq another opportunity to fulfill its disarmament obligations.

[185] *Article 2(3)* of the UN Charter requires all member states to resolve international disputes peacefully in order to maintain international peace, security. Scholars remain divided on whether the use or threat of force can ever be compatible with this obligation, particularly in situations where it is invoked as a means of maintaining or restoring peace.

"Such a threat or use of force constitutes a violation of international law and the Charter of the United Nations and shall never be employed as a means of settling international issues."[186]

When it comes to any situation that involves the use of force, the most important thing to pay attention to in relation to *Article 2(4)* is whether or not the violation is against the political independence or territorial integrity of a state. As we might recall here, the UK claimed in the Corfu Channel case that its use of force in Albanian waters to recover evidence that might indicate who was responsible for the two British warships being destroyed by mines did not violate *Article 2(4)* because its action did not threaten the territorial integrity or the political independence of Albania, as the article requires. This argument was not accepted by the ICJ and for many years has been interpreted in different ways, whether based on the facts presented by the UK or on the interpretation given regarding *Article 2(4).*[187]

Scholars continue to debate whether the prohibition's effectiveness determines its legal standing or whether its continued recognition is sufficient to maintain its binding nature. As currently analyzed, international law is often violated, but that does not render it non-binding. Based on the abovementioned position, plenty of scholars still support the existence of *Article 2(4).* As long as international law protects all states against any action against their territory, however serious it may be, it is still a fundamental legal safeguard. As Gray posits, the gap between the prohibition of the use of force and the practice should not always be viewed as evidence of the ineffectiveness or pointlessness of international law.[188] Most importantly, we should see that the great volume of literature devoted to the prohibition on the threat or use of force reflects its significance to today's reality.

It is within this normative and scholarly context that Russia's 2022 invasion of Ukraine must be examined. The legal arguments presented by the Russian Federation and Ukraine, particularly concerning *Article 2(4)* and *Article 51*, have reignited global debate. While building the road for

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[186] United Nations General Assembly, *Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations*, 24 October 1970, UN Doc. A/RES/2625 (XXV).

[187] See Christine Gray, "International Law and the Use of Force", *(Oxford University Press, Second Edition 2004*): 30.

[188] Ibid., 23.

the last chapter, connecting the dots requires more than identifying doctrinal inconsistencies, as it is also important to look into how states strategically interpret legal norms (often for political reasons) and how these interpretations test the authority of international law.

2.4.2 Self-defense: *Article 51* of the Charter of the United Nations

Article 51 of the Charter of the United Nations, together with *Article 2(4)* already discussed, is the subject of continuing disagreement. From scholarly works to simple moot courts involving students, and to procedures before the International Court of Justice as the highest judicial instrument, these differences have been discussed innumerable times.[189]

Article 51 of the United Nations Charter is the key provision that governs *the right of self-defense* under international law, and reads as follows:

> *"Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security."*[190]

Despite the fact that *Article 2(4)* of the Charter forbids the use of force or the threat of force in regard to international relations, *Article 51* provides an exception to this rule. The framers of the Charter tried to hold a delicate balance as on one hand, they sought to restrict unilateral uses of force by states, while on the other, they recognized that states must keep their right to defend themselves when subjected to an armed attack. Yet, *Article 51* does not identify what constitutes as "armed attack." Seeing it from Green's point, linguistic differences between the Charter text adds uncertainty to the meaning of *"armed attack",* since the French version appears broader

[189] Leung Fiona Nga Woon, Resolving the conundrums in Articles 2(4) and 51 of the Charter of the United Nations – A matter of Treaty Interpretation (independent research paper, City University of Hong Kong, 2010): 2.
[190] United Nations Charter, Article 51.

("*agression armée* - armed aggression") while the English version has a narrower formulation, further reinforcing the ambiguity of the word used, rather than resolving it.[191]

Article 51 is important to be analyzed in this research because Russia has cited it to justify its invasion of Ukraine. As it is well known, states have a right to "individual" and "collective self-defense." In the case of collective self-defense, Russia claimed that it was protecting Donetsk and Luhansk (a region also referred to as the Donbas).[192] While this interpretation was widely rejected by the international community,[193] it nonetheless highlighted the legal and political importance that *Article 51* holds when faced with such conflicts.[194] With respect to individual self-defense, Russia relied on assertions of broader security threats, including NATO's eastward expansion, alleged future risks to its national security, and claims that Ukraine posed a potential military danger.[195]

In the matter of *Nicaragua v. United States*, the International Court of Justice noted that an armed conflict to be considered as such, must reach a particular *"scale and effect,"* and consequently, as Upeniece also notes, not all armed conflicts may fall under this article.[196] Thus, in this sense, it should be mentioned that the use of this Article, to be lawful under international law, must satisfy some important components, such as: the existence of an armed attack, necessity, proportionality, immediacy and reporting to the Security Council.

To start, the existence of an armed attack, was considered in the adoption of the UN Charter, as Marxsen argues, to avoid in any form a *"anticipatory self-defense,";* as if there was no factual

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[191] James A. Green, "The 'Ratione Temporis' Elements of Self-Defence," *Journal on the Use of Force and International Law* 2, no. 1 (2015): 4.

[192] Letter dated 24 February 2022 from the Permanent Representative of the Russian Federation to the United Nations addressed to the Secretary-General, UN Doc. S/2022/154 (24 February 2022). http://en.kremlin.ru/events/president/news/67828 Last accessed on 30 October 2025.

[193] *See* Joseph M. Isanga, "Ukraine–Russia Armed Conflict: Holding the U.N. Security Council Veto-Wielding and Nuclear-Armed Russia Accountable and Upholding International Rule of Law," *Tulsa Law Review* 60, no. 3 (2025): 383.

[194] Silvia Cavandoli and Gary Wilson, "Distorting Fundamental Norms of International Law to Resurrect the Soviet Union: The International Law Context of Russia's Invasion of Ukraine," *Netherlands International Law Review* 69, no. 1 (2022): 1.

[195] *See,* André W. M. Gerrits, "The Ideological and Philosophical Context of the War," in *Europe and the War in Ukraine: From Russian Aggression to a New Eastern Policy*, ed. László Andor and Uwe Optenhögel (Foundation for European Progressive Studies, 2023), from page 6 with NATO and throughout the pages explained.

[196] Vita Upeniece, "Conditions for the Lawful Exercise of the Right of Self-Defense in International Law," *SHS Web of Conferences* 40 (2018): 1.

conflict, other methods could be considered.[197] However, this idea has faced many criticisms. Specifically, some argue that anticipatory self-defense can be considered lawful in response to an "imminent attack,"[198] as also shown in the Secretary-General's 2005 report *In Larger Freedom*, in which it was accepted that anticipatory self-defense may be lawful where it is strictly limited by the requirement of imminence.[199] Consequently, while the requirement of an armed attack was originally intended (and interpreted) to exclude anticipatory self-defense, practice and doctrinal developments appear to indicate a more flexible interpretation in this regard.

To continue with necessity, it has traditionally been understood as deriving from the *Caroline incident of 1837*,[200] in which the US Secretary of State, Daniel Webster, articulated that the necessity of self-defense must be *"instant, overwhelming, leaving no choice of means, and no moment for deliberation."*[201] As a result, the so-called *"Webster formula,"* has been cited by the Nuremberg Tribunal[202] and even during the deliberations,[203] of the UN Security Council.[204] This means that this formulation came to be treated apart from historical practice, as a foundational reference point. Starting from this perspective, the "no choice of means" can be understood as imposing a strict threshold of last resort, limiting lawful self-defense to situations in which non-

[197] Christian Marxsen, "Armed Attack," in *Max Planck Encyclopedias of International Law*, last updated May 2025. https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e241 Last accessed on 30 October 2025.

[198] Noam Lubell, "The Problem of Imminence in an Uncertain World," in *The Oxford Handbook of the Use of Force in International Law*, ed. Marc Weller (Oxford: Oxford University Press, 2015): 718.

[199] Matthew C. Waxman, "Regulating Resort to Force: Form and Substance of the UN Charter Regime," *European Journal of International Law* 24 (2013): 160.; *Also mentioned by* James A. Green, "The 'Ratione Temporis' Elements of Self-Defense," *Journal on the Use of Force and International Law* 2, no. 1 (2015): 17.

[200] The *Caroline case* arose from an 1837 incident, in which British forces crossed into United States territory and destroyed the vessel *Caroline*, which they claimed was being used to support armed raids by American nationals against British-controlled Canada, triggering a huge diplomatic dispute over the limits of lawful self-defense across borders. Yaroslav Shiryaev, "The Right of Armed Self-Defense in International Law and Self-Defense Arguments Used in the Second Lebanon War," *Acta Societatis Martensis* 81 (2008): 82.

[201] Letter from Mr. Webster to Lord Ashburton (6 August 1842), *British and Foreign State Papers*, 1841–1842, vol. XXX (London: James Ridgway, 1857): 7.

[202] Judgment of the International Military Tribunal for the Trial of the German Major War Criminals, Nuremberg (1946), in *Trial of the Major War Criminals before the International Military Tribunal*, vol. I (Nuremberg: International Military Tribunal, 1947): 205.

[203] UN Security Council, *Provisional Verbatim Records*: S/PV.1024 (1962), para. 110 (Ghana); S/PV.2148 (1973), para. 10 (Egypt); S/PV.2283 (1981), para. 148 (Sierra Leone); S/PV.2293 (1981), para. 69 (Egypt); S/PV.3653 (1996), para. 15 (Egypt).

[204] Christopher O'Meara, *Necessity and Proportionality and the Right of Self-Defence in International Law* (PhD diss., University College London, 2018): 17.

forcible alternatives are genuinely unavailable in any form. Additionally, since the time of the *Caroline case*, the criterion of necessity has been crystallized into binding norms of customary international law, through state practice and *opinio juris*.[205] Thereby giving in this way to necessity a gatekeeping role, shifting the legal inquiry from the existence of a threat to the availability of other lawful alternatives.

Turning to proportionality, it demands a careful balance between the interests of the "aggressor" and the "defender", requiring that any defensive response remains regulated; so that it is not excessive in relation to the scale and nature of the unlawful attack.[206] Accordingly, while any use of force may trigger the right of self-defense, proportionality operates to constrain the intensity, duration and means of that response.[207] Shifting the focus from whether force may be used, to how far this "force" it may go and requiring that self-defense remains limited to what is necessary to stop the armed attack and not extend beyond that purpose.

Another element is, immediacy, which, while important, it is less emphasized. As Asada explains, to be within immediacy conditions, there must not be an *"undue time-lag"* between the starting point of an armed attack and the reaction through self-defense.[208] Yet, as Elgawari notes, in practice responses may be delayed due to the need for evidence of the armed attack, as well as the need to assess attribution, scale, and appropriate measures,[209] adding that a delayed response can still be lawful where the time taken is reasonably explained by the circumstances.[210] This means that it does not work as a strict temporal requirement, allowing self-defense to remain lawful where delay is justified by the need to verify other elements.

Reporting to the Security Council, is the last but not the least important element. Based on Halberstam interpretation, *Article 51* operates as a temporary and residual exception to the

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[205] James A. Green, "The 'Ratione Temporis' Elements of Self-Defence," *Journal on the Use of Force and International Law* 2, no. 1 (2015): 7.

[206] Onder Bakircioglu, "The Right to Self-Defence in National and International Law: The Role of the Imminence Requirement," *Indiana International & Comparative Law Review* 19, no. 1 (2009): 9.

[207] Vita Upeniece, "Conditions for the Legal Commencement of an Armed Attack," *SHS Web of Conferences* 68 (2019): 2

[208] Masahiko Asada, "The War in Ukraine under International Law: Its Use of Force and Armed Conflict Aspects," *International Community Law Review* 26, no. 1-2 (2024): 18-19.

[209] Zaid Ali Elgawari, "Preemptive Self-Defense in Public International Law: An Analysis through the Lens of International Court of Justice Jurisprudence," *Access to Justice in Eastern Europe* 8, no. 1 (2025): 9.

[210] Ibid., 17.

prohibition on the use of force, permitting self-defense only so long as the UNSC has not actively assumed responsibility for the situation, after which unilateral force is no longer legally justified.[211] Importantly, *Article 51* does not prescribe any fixed format for such reporting, requiring only that those measures taken in self-defense, to be reported *"immediately."*[212] Compliance with this reporting, therefore, lies in its importance for transparency, allowing the state to demonstrate its conformity with international law (as it signals a state's willingness).

Clearly, even for *Article 51* of the Charter, there have been a lot of discussions and criticism over the years. Closely linked with *Article 2(4),* a major criticism of it is that sometimes it may be considered to be manipulated in its interpretation or to serve the strategic interests of the states.[213] In attempting to prevent the use of force, the drafters of the UN Charter wanted to prioritize responsibility over the use of force within the Security Council. However, *Article 51* has led to states seeking to justify their military action against another state *ex post facto*, and as Graf argues, states have transformed self-defense from an exception into a rule, often claiming legal "cover" for unilateral military interventions.[214] Acknowledging this criticism does not imply that *ex post* invocation of self-defense is per se unlawful, but rather it should be observed on the fact that its legal invocation must be in line with the Charter's objectives and purpose so as to prevent, in any way the "erosion" of international norms.

2.4.3 Territorial Integrity

Having examined the prohibition of the use of force under *Article 2(4),* it is essential to address one of its core protections - *territorial integrity.* The Russian President has made clear by invading Ukraine that he now challenges a key principle of the post-World War II order, which is the principle that *international borders cannot be altered with force*. This has been explicitly reaffirmed by the UN General Assembly in its *1970 Declaration on Principles of International*

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[211] Malvina Halberstam, "The Right to Self-Defense Once the Security Council Takes Action," *Michigan Journal of International Law* 17 (1996): 230.

[212] James A. Green, "The Article 51 Reporting Requirement for Self-Defense Actions," *Virginia Journal of International Law* 55 (2015): 10.

[213] *See* Beer, who has a special focus on the victims' side of use of *Article 51*, noting that *"victims should not be allowed to manipulate the legal system due to not wanting to end their wars."* Yishai Beer, "When Should a Lawful War of Self-Defense End?" *European Journal of International Law* 33, no. 3 (2022): 915.

[214] Jan Phillip Graf "The Death of the Prohibition on the Use of Force: An Attempt at Reimagination," *Völkerrechtsblog – International Law and International Legal Thought*, 15 February 2022. <https://voelkerrechtsblog.org/an-attempt-at-reimagination/> Last accessed on 30 October 2025.

Law concerning Friendly Relations, noting that it constitutes a violation of international law, and as such *"shall never be employed as a means of settling international issues*."[215] This is quite ironic when looking back at history, because nations have pursued for centuries their territorial expansion through war.[216] However, since the end of World War II, the international system has been organized around territorially bounded states whose borders have remained largely unchanged through the use of force.[217]

Territorial integrity emerged as a concept during the course of the 19th century. Its early roots go back to 1856, in *the General Treaty for the Re-Establishment of Peace* following the Crimean War, where major European powers explicitly pledged to respect the independence and territorial integrity of the Ottoman Empire, reflecting an early international recognition of the principle.[218] After World War I, the principle of territorial integrity was further codified, as seen in the *"Fourteen Points",* a speech given in a joint session of the two houses of the US Congress in January 1918 where (US) President Wilson called for a peaceful post war Europe to be established, inter alia, through *"specific covenants for the purpose of affording mutual guarantees of political independence and territorial integrity to great and small states alike."*[219]

A key legal milestone in the development of the concept was the *Covenant of the League of Nations*, whose *Article 10,* required member states to respect and uphold the *territorial integrity* and political independence of the members. This principle was incorporated into the second part of *Article 2(4)* of the UN Charter at the request of smaller states, who sought stronger guarantees for their independence and international peace and security.[220] It has been reaffirmed through

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[215] UN General Assembly, *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations*, GA Res. 2625 (XXV), (24 October 1970) art. 1, para. 1.

[216] Davit Avagyan, "From Principles to Practice: Resolving the Perceived Conflict between Territorial Integrity and Self-Determination in International Law," *Southwestern Journal of International Law* 31 (2024): 25.

[217] Ingrid Brunk and Monica Hakimi, "The Prohibition of Annexations and the Foundations of Modern International Law," *American Journal of International Law* 118 (2024): 418.

[218] Christian Marxsen, "Territorial Integrity in International Law: Its Concept and Implications for Crimea," *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht (Heidelberg Journal of International Law)* 75, no. 1 (2015): 8.

[219] Ibid.; *For more See* Woodrow Wilson, 65th Cong., 2d sess., *Congressional Record,* vol. 56 (January 8, 1918), 681.

[220] *The United Nations Conference on International Organization*, *Yearbook of the United Nations 1946–1947*, 19.

decades of state practice and resolutions and has served as a cornerstone of the international system.

Since violations of *Article 2(4)* frequently manifest as violations of territorial integrity, the use of force and territorial integrity are intrinsically connected. When one state uses force against another, it frequently violates the latter's borders, occupies its territory, or tries to alter its political status, all of which are actions that compromise the concept of territorial integrity. Therefore, evaluating whether a state's political independence or territorial integrity has been jeopardized is usually the first step in the legal evaluation of whether *Article 2(4)* has been violated.

States have sometimes used the terms "threats of force" and "threats to territorial integrity and political independence" as synonyms.[221] Although in legal interpretation, they reflect related but distinct concepts. "Threat of force" refers broadly to any coercive pressure suggesting the possible use of armed force, whereas "threats to territorial integrity" target a state's sovereign control over its territory. Drawing on the insights of D'Amato, also the terms "territory" and "territorial integrity" are often referred to as the same thing, but in practice they are quite different.[222] Although territory (as state boundary) signifies the physical geographical domain over which a state exercises its sovereignty (its land, waters and airspace),[223] territorial integrity by contrast carries a normative dimension that reinforces the inviolability of those boundaries.[224] This distinction becomes especially salient in legal debate, where the defense of territorial integrity embodies both a material and a symbolic dimension of state sovereignty. Through *uti possidetis juris*, international law reinforces this logic by prioritizing stability over "redrawing borders", and as Castellino notes (even though he talks about territories in a colonial context), it

[221] Agata Kleczkowska, Threats of Force and International Law: Practice, Responses and Consequences (Abingdon, UK: Routledge, 2023): 43.; *See for example* United Nations Security Council, Letter dated 21 March 1962 from the Permanent Representative of Israel addressed to the President of the Security Council, 21 March 1962, UN Doc. S/5098, 2.

[222] D'Amato, "The Meaning of Article 2(4)," 1-15.

[223] *Delimitation and Demarcation of State Boundaries: Challenges and Solutions* (OSCE, 2017): 9, https://www.osce.org/sites/default/files/f/documents/9/2/363466.pdf

[224] Paul R. Hensel, Michael E. Allison, and Ahmed Khanani, "Territorial Integrity Treaties and Armed Conflict over Territory," *Conflict Management and Peace Science* 26, no. 2 (2009): 122.

reflects a systemic preference for order even where those "inherited" boundaries are historically contingent or imperfect.[225]

Apart from *Article 2(4),* territorial integrity has long been recognized as a foundational element of state sovereignty, predating the UN Charter and of course rooted in customary international law. Dörr and Randelzhofer explain, that the terms *"territorial integrity"* and *"political independence"* are not meant to restrict the general scope of the prohibition, but rather clarify that certain uses of force, (for example in maritime contexts) may fall outside the Article's intended reach.[226] For example, under the *UN Convention on the Law of the Sea*, states may lawfully use armed force in specific situations, such as combating piracy (*Article 105–110*) or exercising the right of hot pursuit (*Article 111*).[227] These enforcement actions, even if involving military force, are not directed against any state's territorial integrity and are therefore not considered violations of *Article 2(4).* These exceptions reveal that territorial integrity is not an absolute "shield" against all uses of force, but a conditional protection within a collective security framework.[228]

[225] Joshua Castellino, "Territorial Integrity and the 'Right' to Self-Determination: An Examination of the Conceptual Tools," *Brooklyn Journal of International Law* 33 (2008): 508.

[226] Oliver Dörr and Albrecht Randelzhofer, "Ch. I Purposes and Principles, Article 2(4)," in The Charter of the United Nations: A Commentary, vol. 1, 3rd ed., ed. Bruno Simma et al. (Oxford University Press, 2012): 15.

[227] Ibid.

[228] Christian Marxsen, "Territorial Integrity in International Law: Its Concept and Implications for Crimea," *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht (Heidelberg Journal of International Law)* 75, no. 1 (2015): 21.

CHAPTER 3: ENFORCEMENT AND COMPLIANCE IN INTERNATIONAL LAW

-A nation can survive its fools and even the ambitious. But it cannot survive treason from within. - Marcus Tullius Cicero

3.1 Defining Enforcement and Compliance

This chapter started intentionally with a quote by Cicero: not to be seen in the sense of a historical flourish, but as a metaphor, daring to quote it as "timeless," for the structural fragility of any legal or political order when its most powerful members turn against the foundational principles they have always protected. Cicero spoke of the Roman Republic, but his words also resonate with the crisis facing the international legal system today. As a permanent member of the United Nations Security Council, Russia was not only bound by the rules of international law but was entrusted with their defense.[229] As the Roman poet Decimus Iunius Iuvenalis famously asked, *Quis custodiet ipsos custodes?*[230] Who will guard the guards themselves? A question standing as a metaphor of the enforcement paradox.

International law is recognized for its uniqueness. This is because it operates without a centralized enforcement authority that can be comparable to a domestic police force or a court system. Instead, its effectiveness depends on two closely related but distinct concepts: *enforcement and compliance.* After discussing the principles of international law that were violated in the Russia and Ukraine conflict, it naturally raises two important questions: *How is international law enforced; a*nd; *what makes states comply with international law in the absence of a global authority capable of giving "the international obedience"?* To explore these questions, this section begins by clarifying the meaning and role of enforcement and compliance, within international law. Many think of or treat them as the same; however, these concepts are distinct. Most importantly, as enforcement closely relates to compliance, it must be understood

[229] *See* United Nations, *Charter of the United Nations,* 24 October 1945, 1 UNTS XVI, Article 24(1).

[230] It has been used as a question in many legal researches. *See for example*, Steven William Kayuni, "Quis Custodiet Ipsos Custodes (Who is Guarding the Guardians)? – Decision Processes in the ICC's Offences Against the Administration of Justice," *The Law & Practice of International Courts and Tribunals* 15, no. 2 (2016): 345–384.; Chris Knight, "Quis Custodiet Ipsos Custodes - Why the European Court of Justice is the EU's Own Worst Enemy," *Trinity College Law Review* 9 (2006): 91-102.

that the means of enforcement that are available under international law, help to secure and support the idea of *compliance itself*. To understand it more simply, compliance can be seen as "the goal" and enforcement as the processes and mechanisms that support this goal.

First, let us delve into what defines enforcement. Simply searching the word *"enforcement"* in Cambridge Dictionary, it is defined as *"the process of making sure that ... [people, states] obey a law or rule, or making a particular situation happen or be accepted."*[231] However, in legal theory, this concept is more nuanced. Kleinfeld for example, views enforcement as a *"weak necessity,"* it helps make law effective and gives it practical force; but law can still be considered law even without enforcement.[232] For him, enforcement is part of what strengthens and supports the legal system, but it is not the defining feature that makes a norm legally "valid." This is an interesting perspective, as it acknowledges that law is more than just "obedience under threat", yet it also reminds us, and brings us back to reality, that without some form of effective enforcement, legal norms risk becoming symbolic rather than functional.

In his work *The Foundations of the Authority of International Law and the Problem of Enforcement*, Fitzmaurice noted that "*the law is not binding because it is enforced; it is enforced because it is already binding."*[233] In other words, enforcement does not create a legal obligation, but it assumes that one already exists. In international law, this means that enforcement is rather than about creating duties, about supporting those legal rules that states have previously agreed to. In the sense that, a state complies with international law when it acts consistently with its treaty obligations, customary international law, or general principles of law; regardless of whether enforcement mechanisms are triggered or not. Röben further describes enforcement as a form of public action, aiming at either preventing or reacting to the violation of a legal norm, and although he argues this concept is drawn from national administrative law, it also fits international law, as it reflects the need for any legal system to uphold its rules.[234] This is because any legal system, regardless of its level of institutional centralization, must have

[231] Cambridge University Press, Cambridge Dictionary, s.v. "enforcement," Accessed on June 2, 2025. https://dictionary.cambridge.org/it/dizionario/inglese/enforcement

[232] Joshua Kleinfeld, "Enforcement and the Concept of Law," The Yale Law Journal 121, no. 8 (2011): 311.

[233] G.G. Fitzmaurice, "The Foundations of the Authority of International Law and the Problem of Enforcement," The Modern Law Review 19, no. 1 (1956): 2.

[234] Volker Röben, "The Enforcement Authority of International Institutions," *German Law Journal* 9, no. 11 (2008): 1966.

mechanisms capable of upholding the validity and effectiveness of its rules. The legal norms subject to enforcement in international law are, in turn, grounded in the foundational principle of *pacta sunt servanda*, which requires that treaties in force be performed in "good faith". Binder further observes that compliance with *pacta sunt servanda* also produces "*direct consequences at the national level*", insofar as states are required to organize their internal legal orders in a manner that enables the fulfilment of their international obligations.[235]

Secondly, we now turn to the concept of compliance to define. A simple search of the word "compliance" in the Cambridge Dictionary, defines it as *"the act of obeying a law or rule."*[236] While this offers a useful starting point, scholarly literature provides a more fully nuanced understanding. Compliance in international law can be seen as the processes or mechanisms, whether legal, institutional, or political, through which adherence to legal obligations is secured,[237] often imperfectly,[238] and typically relying on principles of state responsibility,[239] legal authority, or external pressure, rather than on centralized coercion.[240]

Kingsbury notes that, scholarly discussions about compliance often assume that it simply means following legal rules, while the real challenge lies in how to measure, monitor and improve it.[241] This surface-level understanding is, however, incomplete. He further adds that "compliance" in international law is neither independent nor self-defining, but instead requires deeper exploration through legal theory; as different conceptions of law produce significantly different understandings of what constitutes as such.[242] That is why, in the following section, we will

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[235] Christina Binder, "Stability and Change in Times of Fragmentation: The Limits of *Pacta Sunt Servanda* Revisited," *Leiden Journal of International Law* 25, no. 4 (2013): 673.

[236] Cambridge University Press, Cambridge Dictionary, s.v. "compliance," Accessed on June 2, 2025. https://dictionary.cambridge.org/it/dizionario/inglese/compliance

[237] *See* Frederic L. Kirgis, "Enforcing International Law," *American Society of International Law - ASIL Insights* 1, no. 1 (1996). https://www.asil.org/insights/volume/1/issue/1/enforcing-international-law (Accessed June 2, 2025)

[238] Ibid., last paragraph.

[239] *See* Yuji Iwasawa, "Various Means of Enforcement in International Law," *Harvard International Law Journal* 65 (2023): 13-24.

[240] Jana von Stein, "International Law: Understanding Compliance and Enforcement," in *The International Studies Encyclopedia,* ed. Robert A. Denemark (Chichester, UK: Wiley-Blackwell, 2010): 4.

[241] Benedict Kingsbury, "Chapter One: The Concept of Compliance as a Function of Competing Conceptions of International Law," in *Trilateral Perspectives on International Legal Issues: From Theory Into Practice* (Leiden: Brill, Nijhoff, 2023): 9.

[242] Ibid.

briefly examine some of these theoretical approaches to explain the variations in how compliance is interpreted.

3.2 Theoretical Frameworks on State Behavior Compliance

Why states comply or do not comply with international law is a question that can have different answers offered by international relations theories. For a better understanding of what follows, enforcement and compliance demand more than legal regulations, because its complex structure requires an understanding of the reasons driving state behavior. While legal scholars emphasize that compliance is the "norm", political scientists are more skeptical.[243] Gray argues that expectations of perfect compliance are often unreasonably elevated, and that disappointment with partial or imperfect actions frequently leads to claims that international law is ineffective, which is not always the case.[244] That is why theories and factors are important to be included, so that we can have a general view that complements the legal analysis of this research.

One major theory of compliance is the rationalist or realist approach, which argues that states follow international law mostly when it aligns with their own interests.[245] In *How Nations Behave: Law and Foreign Policy*, Henkin suggests that it may be that states, through rational analysis, determine that the benefits from violating a rule may be even greater than what the cost would be.[246] This may reflect a rationalist perspective which views states as self-interested actors, making strategic choices based on a *"cost-benefit"* reasoning.[247]

The constructivist perspective offers a different view, suggesting that states comply with international law because of social norms, identity and the desire to be seen as legitimate

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[243] Beth A. Simmons, "International Law and State Behavior: Commitment and Compliance in International Monetary Affairs," *American Political Science Review* 94, no. 4 (December 2000): 832.
[244] Christine Gray, "International Law and the Use of Force", *(Oxford University Press, Second Edition 2004*): 24.
[245] Rachel Brewster, "Unpacking the State's Reputation," *Harvard International Law Journal* 50, no. 2 (Summer 2009): 235.
[246] Louis Henkin, "How Nations Behave: Law and Foreign Policy", 2nd ed. (New York: Columbia University Press, 1979): 69-74.
[247] *See* Reviewed work 2nd ed.: "How Nations Behave by Louis Henkin", *Michigan Law Review* 78, no. 5 (1980): 826. https://doi.org/10.2307/1288079

members of the international community.[248] From this viewpoint, compliance is driven by the states desire to be perceived as "legitimate" and responsible members of the international community, as adherence to international law reinforces their normative standing.

According to the managerial theory, non-compliance is usually not intentional but results from unclear rules, lack of capacity, or practical difficulties in implementation.[249] Thus, if it happens that countries do not follow international rules, it's usually not because they are trying to "break" them on purpose. As Tallberg adds, non-compliance is better addressed through support measures like capacity building, clearer interpretation of rules and greater transparency, rather than "punishing" the country.[250] Cooperation, from this view, is key.

Liberal theory approaches compliance by looking at *"who gains and who loses from cooperation"*.[251] From this perspective, whether states comply with international law depends on how legal rules affect different groups within society and how those effects are filtered through domestic political and legal institutions.[252] Over time, as certain actors benefit from international cooperation, their interests can become embedded in domestic politics, making compliance more stable and, in some cases, also more self-enforcing.

It is well understood that no single compliance theory fully explains why most states follow international law most of the time.[253] Instead, each theory captures different parts of this huge puzzle and together they offer a broader and a more complete understanding of how compliance works in today's international legal system.

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[248] Jutta Brunnée and Stephen J. Toope, "Constructivism and International Law," in *Interdisciplinary Perspectives on International Law and International Relations: The State of the Art*, ed. Jeffrey L. Dunoff and Mark A. Pollack (Cambridge University Press, 2012): 28.

[249] Jonas Tallberg, "Paths to Compliance: Enforcement, Management and the European Union," *International Organization* 56, no. 3 (Summer 2002): 613.

[250] Ibid.

[251] Kal Raustiala, "Compliance &(and) Effectiveness in International Regulatory Cooperation," *Case Western Reserve Journal of International Law* 32, no. 3 (2000): 411.

[252] Kal Raustiala, "Domestic Institutions and International Regulatory Cooperation: Comparative Responses to the Convention on Biological Diversity," *World Politics* 49, no. 4 (1997): 507.

[253] Silvia Patillo, Theories of Compliance with International Law (Bachelor's thesis, International Relations, Oslo New University College, 2022): 30.

3.3 Factors Influencing State Compliance with International Law

Compliance with international law can be shaped by various legal and contextual factors. History has shown that even when rules are clear and enforcement mechanisms are in place, states do not always comply. It's interesting that, in classical international law, people often didn't separate the question of why states *actually* obey from why they *should* obey, because the answer was usually just assumed to lie in some higher *"natural law"* idea, almost like a moral or semi-theological baseline.[254] Moreover, since then compliance was often seen as one of the core challenges in international legal studies, because as some argue, law can only function effectively if it includes authoritative interpretation and centralized enforcement.[255] To respond to this challenge, scholars have focused on "compliance" or more precisely "obedience" (as Louis Henkin termed it), arguing that states often follow international law due to other factors, which may be reputational concerns,[256] reciprocity, or long-term strategic interests, even in the absence of formal enforcement mechanisms.[257] The following part outlines some of the most commonly cited factors that influence whether or not a state complies with its international legal obligations.

To start, legal norms that are vague or open to interpretation often reduce the likelihood of compliance. States may use this legal uncertainty and ambiguity to avoid fulfilling obligations. As Goldsmith and Posner note in *The Limits of International Law*, drawing on findings from other scholars, treaty compliance would likely be more widespread, if treaty provisions were drafted with more precision, leaving in this way, less room for misinterpretation.[258] So, legal clarity is not just a matter of good drafting, because when the rules are clear, excuses to ignore or violate them become harder to justify. In this researcher's focus, a clear example here is *Article 51* of the UN Charter. The term "armed attack" is not clearly defined and the scope and duration

[254] Harold Hongju Koh, "Why Do Nations Obey International Law?" *Yale Law Journal* 106 (1997): 2599.
[255] Robert Howse and Ruti Teitel, "Beyond Compliance: Rethinking Why International Law Really Matters," *Global Policy 1*, no. 2 (May 2010): 128.
[256] *See* Philip Moremen, "State Compliance with International Law," in Perceptions of State: The US State Department and International Law (Cambridge: Cambridge University Press, 2024): 65–103.
[257] Louis Henkin, "How Nations Behave: Law and Foreign Policy", 1st ed. (New York: Praeger, 1968).
[258] Jack L. Goldsmith and Eric A. Posner, *The Limits of International Law* (Oxford: Oxford University Press, 2005), 83–84.

of self-defense measures are unclear, which has led to various uses in cases of violations.[259] Yet, this is not only because the wording is vague, but because states and scholars disagree on how to interpret and apply it in specific situations. This, though, it is not the only perspective. Tallberg gives another interesting one, by stating that this lack of precision is sometimes intentional and even useful as the issue being regulated may be very complex or constantly changing, so it can be better to use flexible language in a treaty.[260] But, as can be seen from the example of *Article 51*, this kind of view does not apply universally.

To continue with the factors, the structure and credibility of organizations supervising or supporting compliance might also matter. Treaty bodies and international courts can improve legal compliance by making violators more visible and responsible. This idea of the role that other bodies may have can be connected also with pressure and reputational concerns. International law operates within a community of states where reputation matters; and as Brewster states, "reputation is information."[261] A state's past actions may influence its relations, given that it will probably do the same in the future.[262] States may also comply to maintain credibility, avoid criticism, or remain in good standing with allies and partners. Simmons points out that governments are often influenced by the behavior of neighboring states, as they are more likely to make and honor legal commitments if others in their region are mostly doing the same.[263]

From a more economic perspective, Röben argues that states are more likely to comply with international law when the benefits of cooperation outweigh the costs of possible violation and when credible enforcement mechanisms make non-compliance riskier or more expensive.[264] This perspective views, the presence of enforcement mechanisms not only in a way that "stops"

[259] Nick van der Steenhoven, "Conduct and Subsequent Practice by States in the Application of the Requirement to Report under UN Charter Article 51," *Journal on the Use of Force and International Law* 6, no. 2 (2019): 243-246.
[260] Jonas Tallberg, "Paths to Compliance: Enforcement, Management and the European Union," *International Organization* 56, no. 3 (Summer 2002): 614.
[261] Rachel Brewster, "Unpacking the State's Reputation," *Harvard International Law Journal* 50, no. 2 (Summer 2009): 235.
[262] Ibid.
[263] Beth A. Simmons, "International Law and State Behavior: Commitment and Compliance in International Monetary Affairs," *American Political Science Review* 94, no. 4 (December 2000): 832.
[264] Volker Röben, "The Enforcement Authority of International Institutions," German Law Journal 9, no. 11 (2008): 1983.

violations but also as a means to help stabilize legal norms by signaling their importance. But, reflecting on what is happening with Russia, a state may still violate international law when compliance is seen as more "harmful" to their interests than defiance, even under pressure.

Of course, as the most debated topic, another factor may be: political will. Compliance often depends on a state's willingness to accept and act on international obligations. Political leaders may weigh their strategic interests before choosing to comply. Brunk and Hakimi note that, political will plays a decisive role in compliance, emphasizing that the future of international law may depend less on the violator and more on whether other states are committed enough to core legal principles to defend them, even when their own interests are not directly threatened.[265] This perspective brings the focus beyond the parties which may be directly involved in a conflict but to a broader collective responsibility.

Even though it is a 1964 article, *Different Perceptions of Agreements and Disagreements* by Jan F. Triska, offers a perspective that may be much more understandable for today's reality. In this article he discussed his idea that compliance with law depends largely on the social reality in which we are currently living, because at its core one must understand that, international law cannot move faster than the broader political or social structures within which it operates.[266] The Russia and Ukraine conflict offers a contemporary illustration of Triska's insight. Since the annexation of Crimea, despite the fact that many agree that Russia committed international law violations, enforcement mechanisms have failed to operate fully, so long as the situation remains an ongoing armed conflict. By mentioning the veto power here, it may confirm the view that international law functions more as a reflection of political consensus and that compliance with legal norms depends not on the law itself, but on the broader social reality in which that law operates (who holds power, what their interests are and how the system is set up).

Lastly, a legal norm or institution is more likely to be followed when it is seen as legitimate. States are more prone to comply with decisions from bodies perceived as fair, impartial and

[265] Ingrid Wuerth Brunk and Monica Hakimi, "Russia, Ukraine and the Future World Order," *American Journal of International Law* 116, no. 4 (2022): 693.
[266] Jan F. Triska, "Different Perceptions of Agreements and Disagreements," *Proceedings of the American Society of International Law at Its Annual Meeting* 58 (1964): 61.

representative.[267] Conversely, institutions viewed as biased or politicized may struggle to secure compliance. Thus, they have a huge role to play by showing their strong commitment to international law. For example, one of the most notable features of the International Court of Justice's jurisprudence is its consistent refusal to engage with the possibility of non-compliance by states. The Court, in many cases, has carefully avoided discussing the consequences of a state's failure to fulfill its legal obligations or comply with the Court's ruling. It clearly highlights the *pacta sunt servanda* principle and the fact that every state must act in good faith in relation to every international obligation. This presumed compliance is a perfect form of the Court affirming the authority of international law and thereby protecting in this way its own institutional legitimacy.

A clear illustration of this approach is found in the Interpretation of Peace Treaties with Bulgaria, Hungary and Romania. Put shortly, the case concerned the refusal of Bulgaria, Hungary and Romania to appoint national arbitrators under post-WWII treaties, after the Court confirmed the obligation of those states to appoint national arbitrators.[268] Following the situation, the Court declined to prescribe consequences or consider enforcement measures. Instead, it maintained the presumption that states would comply with treaty obligations. This never happened as the states simply ignored the opinion of the Court, thereby highlighting a core limitation of the advisory function and compliance, but still showing the Court's commitment to upholding its authority and the authority of international law by reinforcing the presumption of good faith and legal obligation among states.

We can still search and see that this factor, through different scholarly views may vary. But as Simmons noted, a major limitation in most scholarly studies on compliance is that they struggle to prove that states follow international law for reasons beyond their own short-term interests.[269] It is basically impossible, as it often appears ambiguous and, at times, biased. Therefore, while different theories of compliance offer valuable insights, determining the true motives behind

[267] Jonathan Jackson, Ben Bradford, Mike Hough and K. H. Murray, "Compliance with the Law and Policing by Consent: Notes on Police and Legal Legitimacy," in *Legitimacy and Compliance in Criminal Justice*, ed. Adam Crawford and Anthea Hucklesby (London: Routledge, 2012), 5.

[268] International Court of Justice, *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania*, Second Phase, Advisory Opinion, [1950] I.C.J. Rep. 221.

[269] Beth A. Simmons, "International Law and State Behavior: Commitment and Compliance in International Monetary Affairs," American Political Science Review 94, no. 4 (December 2000): 819.

state behavior remains deeply complex, often leaving scholars to interpret patterns. Adding here Reisman's idea, many scholars believe that states comply with international law not just because of fear or pressure, but because they feel a moral obligation or a sense of *"what is right,"* acting according to conscience or shared ethical values.[270]

To conclude, taken together with other factors that may be analyzed in scholarly discussions, these factors demonstrate that compliance is a multi-dimensional process. It is rarely the result of a single cause, but rather a combination of all of them (legal, political, and institutional influences). Understanding these influences is essential for assessing how effective international law is in practice and where its enforcement mechanisms may fall short. Importantly, as Iwasawa also notes, to strengthen compliance with international law, it is necessary to improve each of the mechanisms of enforcement and to use them in the best way to ensure that states act in conformity with their international obligations.[271] At the same time, while international relations theory has long sought to identify the factors that influence compliance with the prohibition on the use of force, as Tomuschat observes, these debates have not produced a clear account of what actually prompts states *"to have recourse to, or to abstain from",* armed force.[272] Thus, leaving a gap that may need to be addressed in future research.

3.4 Mechanisms of Enforcement

In international law, enforcement is decentralized. In the absence of a central authority, international law depends on a mosaic of mechanisms to assure adherence. By their nature, they can be divided and recognized as judicial mechanisms and non-judicial mechanisms.

While trying to find scholarly work that directly analyzes the concept of "enforcement" in international law, one quickly realizes how hard it is to find such legal materials. Despite its importance to legal systems, it appears not to receive sufficient attention, even though it is mentioned in every article possible that touches the topic of state conflicts.

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[270] W. Michael Reisman, "The Enforcement of International Judgments," The American Journal of International Law 63, no. 1 (1969): 2.

[271] Yuji Iwasawa, "Various Means of Enforcement in International Law," *Harvard International Law Journal* 65 (2023): 24.

[272] Christian Tomuschat, "Effectiveness and Legitimacy in International Law," *Heidelberg Journal of International Law* 77 (2017): 315.

Brunnée raised the same concern regarding the lack of academic focus on enforcement in international law, suggesting that the idea of enforcement is often avoided perhaps because it reminds us of its *"weaknesses"*.[273] This hesitation is echoed by other scholars. As early as 1956, Fitzmaurice, acknowledged that even for those working daily in the field of international law, enforcement remains one of its most complex and elusive dimensions, and many of international lawyers may not feel fully equipped to address and analyze it at its core.[274] The author's scope and objective in this research are thus modest. Situations such as the Russia and Ukraine conflict revive these questions again, not only as theoretical dilemmas but as urgent legal challenges.

Guss offers an interesting conceptualization, by framing enforcement as the mechanism through which law seeks to make its norms *"actual"* in the world.[275] On this account, enforcement is not just about the existence or recognition of legal rules, but about ensuring that they are made to *"obtain, because they are backed by power,"* understood not narrowly as coercion, but as legally constituted authority.[276] Calling it a *"efficacy-based,"* form of legal enforcement, he emphasizes that law is effective when it has the capacity to translate normativity into real-world effects.[277]

There have been many scholars who have questioned the enforcement altogether. In 1964, in a much earlier phase of international legal thought, writing in the midst of Cold War politics, Fisher argued that because enforcement depends on the political will of states and particularly on the veto power of the five, it becomes structurally impossible.[278] In his view, the international legal system faces a binary choice: either accept no adjudicative institutions at all, or accept one that is inevitably subject to a *de jure* veto. Similarly, Kirgis describes the enforcement tools of international law as *"imperfect",* noting that they often operate slowly, if at all; reinforcing the

[273] Jutta Brunnée, "Enforcement Mechanisms in International Law and International Environmental Law," in *Ensuring Compliance with Multilateral Environmental Agreements*, ed. Ulrich Beyerlin, Peter-Tobias Stoll and Rüdiger Wolfrum (Brill, Nijhoff, 2006): 1-2.
[274] G.G. Fitzmaurice, "The Foundations of the Authority of International Law and the Problem of Enforcement," *The Modern Law Review* 19, no. 1 (1956): 1.
[275] Joshua Kleinfeld, "Enforcement and the Concept of Law," *Yale Law Journal* 121 (2011): 296.
[276] Ibid.
[277] Ibid., 300-301.
[278] Roger Fisher, "The Veto as a Means of Making Third-Party Settlement Acceptable," *Proceedings of the American Society of International Law at Its Annual Meeting* 58 (1964): 123–129.

idea that enforcement remains one of the system's most persistent unresolved gaps.[279] This persistent fragility in enforcement mechanisms leads not only to continuous criticism, but also to a recurring need for justification within the legal community itself.

As d'Aspremont begins his article, international lawyers often return to the question of enforcement not because they doubt the law's existence itself, but because each new violation that happens, forces them to defend its meaning in a system where power often outruns justice.[280] We see again a point of view that reflects the law's persistent normative authority, yet its implementation reaches the same conclusion, as it is often at the mercy of political will. Political will that has existed even in the creation of the UN Charter despite criticism. Slomanson observed that, critics of enforcement in international law, often overlook the fact that this enforcement limitation was a choice made by the state architects of the UN Charter.[281] It was easier to be part of it, precisely because it preserved flexibility and political control. In this logic, limited enforcement was not to be seen as a flaw, but rather as a calculated compromise.

Rather than denying the value of enforcement altogether, other scholars have proposed some alternative approaches. For instance, Tomuschat argues that international law cannot rely on one-size-fits-all enforcement, but it needs a proper infrastructure that is flexible and adaptable to specific characteristics.[282] Put more simply, enforcing environmental law might require different tools than enforcing human rights or territorial disputes. Thus, the "infrastructure" of enforcement in international law must be by nature, diverse. Elena Katselli Proukaki in her book *The Problem of Enforcement in International Law: Countermeasures, the Non-Injured State and the Idea of International Community*, suggests that enforcement in international law can also come through collective mechanisms, like countermeasures by non-injured states, reflecting a

[279] Frederic L. Kirgis, "Enforcing International Law," *American Society of International Law - ASIL Insights* 1, no. 1 (1996): last paragraph. https://www.asil.org/insights/volume/1/issue/1/enforcing-international-law (Accessed June 2, 2025)

[280] Jean d'Aspremont, "The Collective Security System and the Enforcement of International Law," in The Oxford Handbook of the Use of Force in International Law, ed. Marc Weller (Oxford University Press, 2015), 2.

[281] William Slomanson, *Fundamental Perspectives on International Law*, 6th ed. (Cengage Learning, 2011), 402.

[282] Christian Tomuschat, "Enforcement of International Law: From the Authority of Hard Law to the Impact of Flexible Methods," *Heidelberg Journal of International Law* (ZAÖRV) 79, no. 3 (2019): 587.

shift from bilateral enforcement toward a broader, community-based responsibility.[283] However, their effectiveness and legitimacy remain contingent upon clear legal limits, proportionality, and safeguards against potential abuse. Accordingly, collective enforcement mechanisms offer a "potential" for enhancing the future effectiveness of international law, but do not in themselves guarantee a uniformly positive or even stable enforcement framework.

3.4.1 Judicial Mechanisms

The two main judicial mechanisms of enforcement in international law include institutions such as the International Court of Justice, which adjudicates disputes between states and gives advisory opinions on legal questions referred by UN organs; and the International Criminal Court which prosecutes individuals for international crimes, including genocide, crimes against humanity, war crimes and the crime of aggression. Although, their institutional effectiveness may be discussed, they derive their authority from treaties and possess binding decision-making powers.

The International Court of Justice, established under the Charter of the United Nations and governed by its own Statute, serves as the main judicial body of the UN. As it is an "international" court, it has civil jurisdiction over sovereign states (even though enforcing its decisions can be very complex).[284] The Court, in this way, stands as a safeguard of the normative structure of international law. From *Article 36(1)* of the ICJ Statute, we understand that states alone have the authority to bring cases before the Court and from *Article 94(1)* of the UN Charter we understand that they undertake to comply with the decision of the ICJ. Even though, there is also *Article 36(3)* of the UN Charter, which allows the UNSC to recommend judicial settlement before the ICJ, this mechanism has only been used when it recommended that Albania and the UK refer their dispute on the Corfu Channel to the Court.[285] Making states the ones that decide, and if they ignore the Court, the enforcement mechanisms available, logically it means that the court may in a way cease working.

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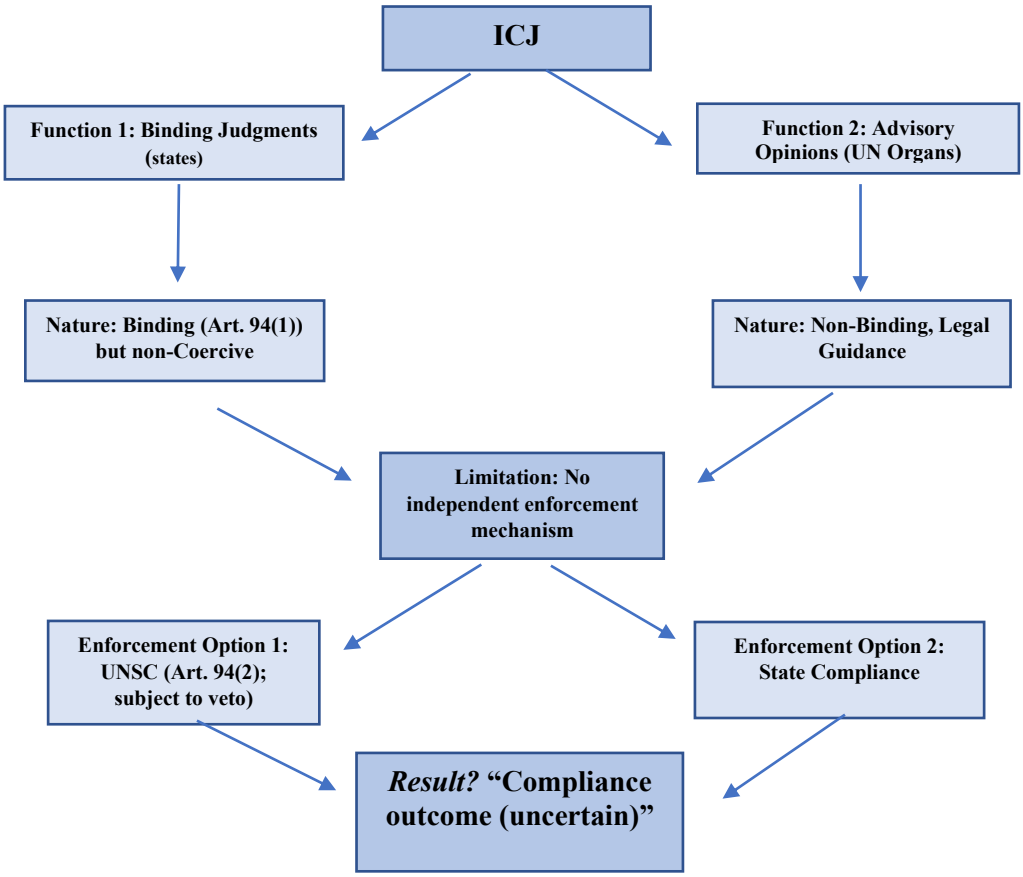
[283] Elena Katselli Proukaki, *The Problem of Enforcement in International Law: Countermeasures, the Non-Injured State and the Idea of International Community* (Routledge, 2010).

[284] Statute of the International Court of Justice, June 26, 1945, 59 Stat. 1055, T.S. No. 993, Article 34(1).

[285] Tom Ginsburg, "The Institutional Context of the International Court of Justice", *Public Law and Legal Theory Working Paper Series*, No.779 (2021): 4.

In *Article 59* of the Statute of the ICJ we see that the decision of the Court is binding between the parties to the dispute and only related to that specific case. Which means that its scope it is limited and cannot apply to the judgment of other situations or serve as a biding precedent for a future case. If a judgment is rendered by the ICJ and a state, refuses, to comply with it, the other party may go and refer the matter to the UN Security Council, which, under *Article 94(2)* of the UN Charter, has the authority to make recommendations or to take measures to enforce the judgment.



The diagram above illustrates the functional and structural logic of the ICJ as a judicial mechanism of international law. As understood, it performs two principal functions: first, it gives binding judgments in cases between states; and second, it issues non-binding advisory opinions when requested by UN organs. On the surface, this gives the ICJ a real legal authority. But, as practice has shown, when conflicts arise and need to be solved, the problem it is not *"in arriving*

at an answer in [international] law, but in enforcing an answer in law."[286] *Article 94(1)* of the UN Charter asserts that UN Member States are obliged to comply with ICJ judgments in cases to which they are parties, thereby confirming the binding character of such decisions. However, these judgments do not have a coercive nature. This *non-coercive nature* comes from the absence of an independent enforcement mechanism (such as a police force), as highlighted in the central limitation of the diagram. Instead, enforcement depends either on action by the UNSC under *Article 94(2)* (body historically subject to geopolitical interests and veto constraints), or on voluntary state compliance. This, too, is increasingly complicated looking more and more on the veto power. These represent the only practical ways a decision of the ICJ can be enforced. This makes the ICJ a unique legal mechanism of international law, clearly missing the "force" element, but with legal authority and relying totally on the hope and perception that states will follow the law in order to preserve its effectiveness. Whether that hope turns into real-world compliance, is a different question, one this study will take up in the next chapters.

In contrast, the International Criminal Court, created by the Rome Statute, has criminal jurisdiction over individuals accused of committing the most serious international crimes.[287] This jurisdiction is complementary to national criminal jurisdictions, meaning that it only prosecutes cases when national courts are unwilling or unable to do it. The status of the ICC as a subject of international law is clearly established in *Article 4(1)* of the Rome Statute, which provides that it has international legal personality. This confirms the fact that the ICC possesses legal capacity to act on the international stage, enter into agreements and exercise rights and obligations under international law. Although the Statute does not explicitly limit the ICC's international legal personality in terms of subject matter (*ratione materiae*), this does not imply that the Court possesses unlimited legal capacity under international law.[288]

When states become a party to the Rome Statute, they agree to submit themselves to the jurisdiction of the ICC. A State that is not a party to the Statute may also choose to accept the jurisdiction of the ICC. As Judge Hans-Peter Kaul of the ICC noted, and as is well known, the

[286] W. Michael Reisman, "The Enforcement of International Judgments," *The American Journal of International Law* 63, no. 1 (1969): 1.
[287] Rome Statute of the International Criminal Court, 17 July 1998, 2187 UNTS 90, Article 1.
[288] Sascha Rolf Luder, "The Legal Nature of the International Criminal Court and the Emergence of Supranational Elements in International Criminal Justice," *International Review of the Red Cross* 84, no. 845 (March 2002): 82.

Court is entirely dependent on effective criminal co-operation, especially regarding the arrests and surrender of suspects to the ICC.[289] Given this nature, the ICC must focus on the improvement of its enforcement mechanisms.[290] It relies on member states to arrest and turn over suspects, gather evidence and carry out sentences since it does not have its own police force. While the Rome Statute obliges States Parties to cooperate fully with the ICC, in practice, compliance has been inconsistent. Scholars have pointed out that the ICC's lack of direct enforcement power put into question its ability to hold individuals accountable.[291]

There have been some ICC cases that have marked history. In the case *Prosecutor v. Thomas Lubanga Dyilo*, the Court delivered its first judgment, convicting Lubanga, a Congolese militia leader, for the conscription and use of child soldiers under the age of 15 and served 14 years of imprisonment.[292] This is a good precedent of prosecuting such crimes. The ICC has also issued arrest warrants for sitting heads of state, challenging the idea of absolute immunity. Notable examples include the cases of Sudan's former president Omar al-Bashir and Russia's president Vladimir Putin, both of which are discussed in greater detail in the chapter on international organizations.

The effectiveness of the ICC has been one of the most debated topics in recent years among legal scholars, especially with the arrest warrant of President Putin, and as Farah notes, the *"law-making"* functions of the ICC remain the least looked into.[293] Even when enforcement fails, it must be accepted that the ICC sends a powerful symbolic message that no one is above the law, shaping future expectations and behavior.

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[289] Hans-Peter Kaul, The International Criminal Court: Trigger Mechanisms for ICC Jurisdiction, address at the Max Planck Conference on "Unity and Diversity of the Judiciary and Law in Iraq," November 26, 2011: 6.

[290] Marcus Vinicius de Freitas, The Role of the International Criminal Court in Preventing Crimes Against Humanity and in the Rebuilding of Nations, PB-26/25 (Policy Center for the New South, April 2025): 9.

[291] *See* Thomas Cristiano, "The Arbitrary Circumscription of the Jurisdiction of the International Criminal Court," *Critical Review of International Social and Political Philosophy* 23, no. 3 (2020): 352.; Wolfgang Kaleck and Miriam Saage-Maaß, "Corporate Accountability for Human Rights Violations Amounting to International Crimes: The Status Quo and Its Challenges," *Journal of International Criminal Justice* 8, no. 3 (2010): 700.; Stuart Ford, "Can the International Criminal Court Succeed? An Analysis of the Empirical Evidence of Violence Prevention," *Loyola of Los Angeles International and Comparative Law Review* 43 (2020): 103.

[292] The Prosecutor v. Thomas Lubanga Dyilo, ICC-01/04-01/06, Judgment, Updated July 2021, International Criminal Court.

[293] Paolo Davide Farah, "The ICC as a Mechanism for Global Justice and Rule of Law," ICC Jurisprudence and the Development of International Humanitarian Law, ed. Martin Faix and Ondřej Svaček (Palgrave MacMillan, forthcoming 2023), Working Paper No. 2023-42: 3.

These courts do more than settle disputes or prosecute crimes, because as they also serve to protect the most fundamental norms of the international legal order. In the end, the very purpose of *jus cogens* norms and *erga omnes* obligations (to protect the core values of the international community) would be undermined if there were no legal mechanisms to enforce them.[294] While these mechanisms may have limitations, their existence affirms that violations of international law are not legally invisible and that the world has a framework to look into for accountability. As such, there is still hope of workings things out. Moreover, even though the ICC is not a mechanism for enforcing the prohibition of the use of force itself, it is still a "downstream" accountability mechanism that responds to criminal consequences arising from violations of that prohibition.

3.4.2 Non-Judicial Mechanisms

In contrast to what has been discussed, there are also non-judicial enforcement mechanisms upon which international law relies on. These refer to measures created and designed to induce compliance without using courts or tribunals. Such mechanisms include diplomatic pressure, sanctions, embargoes and the collective actions authorized by the UNSC under *Chapter VII* of the UN Charter. Although these enforcement mechanisms are political in character, they are not to be considered legally arbitrary; especially when used as a reaction or response to violations of binding international obligations.

Diplomatic pressure, whether bilateral or multilateral, can be used to isolate a violating state and to require, in this way, a behavior change.[295] This means that using diplomacy, as Forsberg and Marley note, through support or pressure, can help guide a state's behavior in a peaceful way, making it more likely to reach a positive outcome and less likely to escalate conflict or cause any harm.[296] Among the most widely used non-judicial enforcement mechanisms are sanctions and embargoes, each serving a specific coercive function in international law. Sanctions typically

[294] Elena Katselli Proukaki, *The Problem of Enforcement in International Law: Countermeasures, the Non-Injured State and the Idea of International Community* (London and New York: Routledge, 2010): 10.
[295] *See* Naif Al-Mulla, "Chapter 2: Diplomatic Pressure in Global, Multilateral Diplomacy," in Going Along to Get Along (Leiden: Brill, 2024): 14–35.
[296] Erik Forsberg and Jonathan Marley, Diplomacy and Peace in Fragile Contexts (Paris: OECD, September 2020): 32.

refer to the economic or the financial restrictions imposed by states or international bodies. They are legally authorized forms of "coercion" used to change behavior that goes against the rules, but unlike unauthorized coercion, which is itself illegal and can lead to further sanctions.[297] Kanapiyanova observes that, international sanctions, in their narrower sense, are designed to induce compliance with international legal norms by increasing the political, economic and practical costs of the conduct being targeted, or by constraining the ability to continue activities considered not in accordance with international law.[298] Embargoes, on the other hand, are often broader and more targeted restrictions which prohibit the transfer of specific goods. Sanctions and embargoes are frequently used in response to violations of jus cogens norms, in this way, serving as instruments of accountability in the absence of judicial intervention. In the context of the Russia and Ukraine conflict, sanctions have been employed with the stated aims of limiting Russia's economic capacity and applying political pressure to influence the course of the war.[299]

Gong et al., argue that recent year's sanctions have been widely used as mechanism to induce states to comply with international law principles, but the failure to change a country's behavior, can cause them to lose their impact, allowing states to ignore their obligations without facing real consequences.[300] Creating in this way, again the dilemma of symbolic enforcement versus actual compliance.

Perhaps the most powerful non-judicial enforcement tool lies in the authority of the United Nations Security Council under Chapter VII of the UN Charter. As Article 39 of the Charter provides, it enables the Council to determine the existence of a threat to the peace, breach of the peace, or act of aggression, and to take binding measures accordingly, ranging from sanctions to military intervention. Furthermore, *Article 25* of the Charter, confirms that all the UN member states must accept and carry out Security Council decisions made under Chapter VII. Over time,

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[297] Jean d'Aspremont, "The Collective Security System and the Enforcement of International Law (or a Catharsis for the Austinian Imperatival Complex of International Lawyers)," in *The Oxford Handbook of the Use of Force in International Law*, ed. Marc Weller (Oxford: Oxford University Press, 2013): pg. 3 on SSRN.

[298] Zhuldyz Kanapiyanova, "European Union's Sanction Packages against Russia: Contents and Implications," *Eurasian Research Journal* 5, no. 3 (Summer 2023): 86.

[299] *See* Erika Szyszczak, "Sanctions Effectiveness: What Lessons Three Years into the War on Ukraine?" *Economic Observatory*, February 19, 2025. https://www.economicsobservatory.com/sanctions-effectiveness-what-lessons-three-years-into-the-war-on-ukraine (Accessed on June 2, 2025)

[300] Yingzhen Gong et al., "Study on Compliance and Practice of International Law and Remedies," *SHS Web of Conferences* 148 (2022): 1.

the Security Council has exercised this authority in various cases such as during the Gulf War in 1990,[301] the imposition of sanctions on Iran[302] and North Korea,[303] and interventions in conflicts like those in Libya[304] and the former Yugoslavia.[305] *Article 39* of the UN Charter contains undefined terms such as "threat to the peace," "breach of the peace," and "act of aggression," creating a significant textual void that requires interpretation. Because the Charter does not give a clarification of these concepts, the scope and meaning of *Article 39* have largely been shaped by how the Security Council has interpreted and applied them in practice over the years. As De la Serna Galván explains, even though the Security Council has broadened its interpretation of "threat to the peace" since the Cold War, it must still act in good faith and remain within the limits of international law, including jus cogens, the UN Charter and the Vienna Convention.[306]

3.5 Accountability as an Intermediary Mechanism between Compliance and Enforcement

Within the framework of compliance and enforcement, accountability occupies an intermediary position rather than making a separate or autonomous mechanism. Compliance concerns the extent to which states conform their actions with their international legal obligations;[307] while enforcement refers to the application of laws, rules, or agreements, and the consequences that follow when they are violated.[308] Accountability, by contrast, focuses on the attribution of responsibility and the initiation of legal processes once compliance has failed, even where effective enforcement remains limited. In this sense, accountability works as a bridge between compliance and enforcement, encompassing both state responsibility and individual criminal

[301] UN Security Council Resolution 678, Iraq-Kuwait, S/RES/678 (29 November 1990).
[302] UN Security Council Resolution 1737, Non-proliferation (Iran), S/RES/1737 (23 December 2006).
[303] UN Security Council Resolution 1718, Non-proliferation/Democratic People's Republic of Korea, S/RES/1718 (14 October 2006).
[304] UN Security Council Resolution 1973, The situation in Libya, S/RES/1973 (17 March 2011).
[305] UN Security Council Resolution 827, International Criminal Tribunal for the former Yugoslavia (ICTY), S/RES/827 (25 May 1993).
[306] Mónica Lourdes de la Serna Galván, "Interpretation of Article 39 of the UN Charter (Threat to the Peace) by the Security Council: Is the Security Council a Legislator for the Entire International Community?" *Anuario Mexicano de Derecho Internacional* 11 (2011): 184.
[307] Heath Pickering, "Why Do States Mostly Obey International Law?" *E-International Relations*, (4 February 2014): 1.
[308] *See* more broadly the interesting work of, Joshua Kleinfeld, "Enforcement and the Concept of Law," *Yale Law Journal* 121 (2011): 293-315.

responsibility mechanisms.[309] Although accountability should not be mistaken for a "guarantee" of compliance, it still represents an important component of international law's effectiveness by ensuring that violations are formally acknowledged, are legally assessed, and are subjected to an institutional response.

International law is founded on sovereign states as its principal subjects of accountability. At the same time, accountability has gradually expanded to encompass international organizations, within the scope of their attributed competences.[310] Notwithstanding its use in scholarly debates, as Brunnée notes, it is still difficult to find a legal definition of what it consists of.[311]

There is also a scholarly discussion on differencing legal accountability vs. legal responsibility. Vandenbogaerde explains that, their use is often ambiguous, which can cause the two concepts to be used interchangeable.[312] As Roeben notes, in international law, responsibility *"is an institution,"*[313] and as such, it refers to the rules that apply when a state breaches its legal obligations, allowing other states to seek cessation, reparation, or take countermeasures;[314] while accountability more broadly refers to the creation of institutional mechanisms to assess compliance and respond to unlawful conduct in a more organized and collective form.[315] Ferejohn, also adds another distinction of accountability, in which the political one is exercised

[309] *See* Antonio Prencipe, "Accountability Between Compliance and Legitimacy: Rethinking Governance for Corporate Sustainability," *Sustainability* 17 (2025): 1. While the topic of Prencipe is on sustainability governance, see it about the discussion on accountability between technical compliance and ethical legitimacy.

[310] Volker Röben, "Accountability," *Max Planck Encyclopedia of International Procedural Law*, Oxford Public International Law, last updated May 2020, para. 3. https://opil.ouplaw.com/display/10.1093/law-mpeipro/e2378.013.2378/law-mpeipro-e2378 Last accessed on 30 October 2025.

[311] As she notes even the term "accountability" does not have direct equivalent in different languages. Jutta Brunnée, "International Legal Accountability through the Lens of the Law of State Responsibility," *Netherlands Yearbook of International Law* 36 (2005): 4.

[312] Arne Vandenbogaerde, *Towards Shared Accountability in International Human Rights Law: Law, Procedures and Principles* (Intersentia, 2016): 36.

[313] Volker Röben, "Responsibility in International Law," in *Max Planck Yearbook of United Nations Law*, vol. 16 (2012), ed. Armin von Bogdandy and Rüdiger Wolfrum (Koninklijke Brill 2012), 105.

[314] *See* Yuji Iwasawa, "Various Means of Enforcement in International Law," *Harvard International Law Journal* 65 (2023): 11.

[315] Volker Roeben, "Accountability," *Max Planck Encyclopedia of International Procedural Law*, Oxford Public International Law, para. 8.

directly by affected political actors, while the legal accountability is exercised by independent institutions, such as courts, that assess conduct on the basis of law rather than political interest.[316]

Mulgan, who considers accountability as a *"chameleon-like"* mechanism, argues that accountability, in its most basic or typical definition, is about being held accountable for one's acts or lack of actions; clearly to some authority.[317] Indeed, it is the clearest and most reasonable definition to be understood at first glance. Yet, we do not have form of "official" understanding of what accountability really means. As Brunnée points out, even though we are living in times where it is mentioned everywhere and by "anyone", we do not have a clear *legal* explanation on what it consists of.[318]

In the past, power and decision making were mainly exercised by states within their own territory. Over time, authority has shifted to other forms, most importantly international organizations. As power moved away from the territorial state, it became a bit harder to know who should be held responsible. This created "accountability gaps," which can be understood as situations where decisions are made, but no clear actor can be held legally or politically accountable. Finally, as Curtin and Nollaemper note, these gaps have become more visible and more controversial over time.[319]

[316] John Ferejohn, "Accountability in a Global Context," IILJ Working Paper 2007/5, Global Administrative Law Series (New York University School of Law, 2007): 6.
[317] Richard Mulgan, '"Accountability": An Ever-Expanding Concept?' *Public Administration* (2000): 555.
[318] Jutta Brunnée, "International Legal Accountability Through the Lens of the Law of State Responsibility" *Netherlands Yearbook of International Law* (2006): 4.
[319] Deirdre Curtin and André Nollkaemper, 'Conceptualizing Accountability in International and European Law' *Netherlands Yearbook of International Law (2006)*: 6.

CHAPTER 4: THE ROLE OF INTERNATIONAL ORGANIZATIONS

The world will not be destroyed by those who do evil, but by those who watch them without doing anything.

- Albert Einstein[320]

4.1 The United Nations Involvement

The United Nations was a creation of the era of institutionalized international cooperation after the Second World War. It was created with the understanding that conflict may not disappear, and thus to address complex global challenges. The founding nations realized they needed a more powerful and all-encompassing international organization to replace the League of Nations (after learning from its failure).[321] As we proceed to witness in every crisis that arises in the world, the UN continues to stay strong; even showing a kind of "hope" for conflicts that the future may bring. This is because, even in moments of failure, it represents *something rather than nothing*: a shared forum, a common language of law for every state, and an institutional space where conflicts can be addressed without immediate recourse to force.

It was created in order to prevent *wars* and ensure that no nation would ever again be allowed to invade another country's territory by force. Replacing the Covenant of the League of Nations, the Charter of the United Nations was signed in June 1945 by representatives of fifty founding States and subsequently ratified and entered into force in October 1945. It outlined the organization's primary objectives, which included *maintaining international peace and security*.[322] All other objectives, notably of great importance, such as promoting sovereign equality, international cooperation, peaceful dispute resolution, social progress and human rights protection, were aimed at protecting the organization's first two main objectives. The expansion of the organization's membership has led to 193 member states, and there will likely be more in the years to come. It is a reflection of how different and diverse states can come under a shared commitment to dialogue, peace and mutual respect.

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[320] Goodreads, Albert Einstein Quotes, https://www.goodreads.com/quotes/8144295-the-world-will-not-be-destroyed-by-those-who-do Last accessed on 30 October 2025.

[321] The League of Nations is still a great source for reflection on the various challenges facing international organizations. *See* Cezary Mik, "The League of Nations' Capacity for Reform and Adaptation", *International Community Law Review* 17, no.2 (2015): 189-215.

[322] Charter of the United Nations, *Article 1(1).*

In a history full of crises and changes, the UN has shown itself to be active and defensive of its member states sovereignty. It comprises six main organs, each with distinct functions but together of great importance to the international community: *(i)* the Security Council, responsible for the international peace and security; *(ii)* the General Assembly, a democratic body for global discussions and resolutions; *(iii)* the UN Secretariat, which manages the organization's administrative functions; *(iv)* the Economic and Social Council, overseeing economic and social matters; *(v)* Trusteeship Council, now inactive;[323] *(vi)* the International Court of Justice or the *World Court*, standing as an arbiter on legal disputes between states.[324]

The involvement of Russia and Ukraine in the United Nations dates back to the immediate aftermath of the Second World War. The Soviet Union was a founding member of the UN. During the Yalta conference, Joseph Stalin proposed that each of the Soviet republics be granted an individual seat in the UN.[325] It was later compromised that only two republics would have these seats: the Ukrainian Soviet Socialist Republic and the Byelorussian Soviet Socialist Republic (alongside the Soviet Union itself). Seen from a political perspective, this was a logical strategic move to not overextend the Soviet Union's influence in the organization. Following this, both the Soviet Union and its two republics were among the original 51 members that signed the UN Charter. In 1991, after the Soviet Union faced various difficulties, its dissolution was signed and the Commonwealth of Independent States was then formed to manage the aftermath and facilitate cooperation among the former Soviet republics.[326] The first article of the Fifth Declaration, called *"On UN Membership,"* indicated that the eleven signatory states agreed that the *Commonwealth of Independent States* would support the Russian Federation in taking over the Soviet Union's membership in the United Nations, including its permanent seat on the

[323] It was established to oversee the administration of trust territories as they transitioned toward self-government or independence. As of November 1, 1994, it has officially suspended operations, and it does not actively manage any trust territory; instead, it simply meets formally on rare occasions as needed to fulfill its original rules. Even though, in 2021, UN Secretary-General Antonio Guterres proposed repurposing the inactive Trusteeship Council as a multi-stakeholder platform to address different global challenges. *See* Bharat H. Desai, "The Repurposed UN Trusteeship Council for the Future", *Environmental Policy and Law* 52 (2022): 223–235.

[324] *See* United Nations, "Main Bodies", https://www.un.org/en/about-us/main-bodies Last accessed on 30 October 2025.

[325] *See* for e.g., Lumen Learning, "The Yalta Conference," https://courses.lumenlearning.com/suny-hcccworldhistory2/chapter/the-yalta-conference/ Last accessed on 30 October 2025.

[326] Urs W. Saxer, "The Transformation of the Soviet Union: From a Socialist Federation to a Commonwealth of Independent States," *Loyola of Los Angeles International and Comparative Law Review 14* (1992): 581-715.

Security Council.[327] The Russian Federation subsequently declared itself the successor state to the Soviet Union, inheriting its seat on the UNSC, including here its permanent member status and its nuclear arsenal. Ukraine, on the other hand, continued its independent participation as a UN member state, and since then, it has remained active by engaging with the UN on various issues. Their relationship with the UN has undoubtedly evolved alongside their respective dynamics, shaping in this way their roles within the international community.

4.1.1 The Security Council Between Veto Power and Collective Action

The United Nations Security Council plays a central role within the framework of the UN Charter. It serves as a primary body in maintaining peace and international security. It comprises five permanent members (usually referred to as P5), of which the Russian Federation is one and 10 non-permanent members who are elected for two years; all united to resolve international conflicts through peaceful means. The five permanent members have the extraordinary "luck" or "curse," depending on how they are analyzed, to use the veto power, which can change the road of many important issues. As the Council holds primary enforcement authority under international law, the resolutions passed by the UNSC under *Chapter VII* of the UN Charter, legally bind all member states. For instance, under *Article 39* the Council is empowered to determine the existence of any threat to the peace, breach of the peace, or act of aggression, and can make recommendations or decide what measures shall be taken following *Articles 41* and *42* to maintain or restore peace and security. This framework makes the UNSC the only international body authorized under the UN Charter to permit the use of force collectively.

Approximately a month before the invasion of Ukraine began, in January 2022, the UNSC held its first meeting to discuss ways of de-escalating the crisis, since there were many reports of tension between the two states.[328] Moscow denied any intention of launching a war within Ukraine's internationally recognized borders and, in the same meeting, the Russian Federation's delegate emphasized even more the idea that *"while countries are attempting to reduce tensions, they are instead inciting panic".*[329] Starting here the long road of rejection (to the UN stance and

[327] Yehuda Z. Blum, "Russia Takes Over the Soviet Union's Seat at the United Nations," *European Journal of International Law* 3, no. 1 (1992): 356.
[328] UNSC, "Situation along Russian Federation-Ukraine Border Can Only Be Resolved through Diplomacy, Political Affairs Chief Tells Security Council," 8960th Meeting, SC/14783, January 31, 2022.
[329] Ibid. 9th paragraph.

not only) against the "Russian invasion", as it seems, without a finish line on the horizon (at least soon).

On 21 February 2022, the Council held an emergency meeting where the UN political affairs chief declared that the Russian Federation's decree recognizing Donetsk and Luhansk's independence, *"violates Ukraine's territorial integrity and sovereignty"* and as a consequence threatens international peace and security.[330] The early diplomatic efforts to de-escalate tensions seemed to not be effective because, on 24 February 2022, a Russian military operation began in Ukraine. This raises the question of whether the escalation might have been prevented through earlier, or alternative, action by the international community, particularly within the framework of the United Nations. Given the massive Russian military build-up in December 2021 and early 2022, despite the fact that Russia officially denied any plans to invade, Jankovic and Roeben observe, that the situation constituted a "hidden" or implicit threat of force under *Article 2(4)* of the UN Charter.[331]

Following the meeting, the Russian Federation took another step in which it communicated the legal justification for its military action in Ukraine to the Secretary General of the United Nations and to the Security Council. This communication, transmitted by Russia's Permanent Representative, invoked *Article 51* (self-defense) of the UN Charter and was circulated as Security Council document *S/2022/154.*[332] While the submission of a notification to the Security Council fulfils a procedural aspect associated with claims of self-defense, it must be noted that such notification does not, in itself, render the use of force in any way lawful (if it is the case of the violation of the prohibition of the use of force). Under international law, *Article 51* permits self-defense only in response to an *armed attack* and subject to the requirements of necessity and proportionality.

Any issue that the Secretary General believes might jeopardize the preservation of global peace and security may be brought to the Security Council's attention, as can be seen from *Article 99* of

[330] UNSC, "Conflict in Ukraine Must Be Averted 'at All Costs', Political Affairs Chief Tells Security Council as Delegates Reject Moscow's Recognition of Donetsk, Luhansk" 8970th Meeting, SC/14798 February 21, 2022.
[331] Sava Janković and Volker Roeben, "The Threat of Russia's Force in Ukraine," *Journal on the Use of Force and International Law* 11, no. 1–2 (2024): 91.
[332] *See* it articulated at *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation),* Provisional Measures, (Order of 16 March 2022): 13, para. 33.

the UN Charter. This provision is an important tool enabling the Secretary General to initiate discussions, or actions aimed at preventing conflicts, before they escalate. It also serves as a tool through which it might signal the urgency and seriousness of a situation. As such, *Article 99* could have served as a mechanism for early intervention, allowing for the mobilization of diplomatic efforts or the implementation of preventive measures to address tensions. However, the success of these interventions might differ depending on a number of factors, such as the particulars of each case and the parties' willingness to engage and reach a solution. Therefore, the success of diplomatic actions in situations (involving Russia, or any other state) may be considered to rely on the cooperative dynamics among international actors,[333] the strategic use of diplomatic channels,[334] and a shared commitment to resolving any disputes that may arise, within the framework of international law.[335]

In the purposes and principles of the UN Charter, it is specified that all members must avoid threatening or using force against any state's territorial integrity or political independence, in line with the UN objectives.[336] Albania and the United States submitted the draft resolution *S/2022/155* to halt the Russian Federation's "military actions" against Ukraine in support of this principle. It reaffirmed the Security Council's protective nature of safeguarding Ukraine's sovereignty and territorial integrity by condemning Russia's actions. The draft resolution on ending the Ukraine conflict by withdrawing its military forces from Ukraine's recognized borders (as violating Article 2, paragraph 4 of the United Nations Charter), got support from 11 member states,[337] but was *vetoed* by the Russian Federation.[338] As a permanent member, Russia invoked its right under *Article 27(3)* of the UN Charter to veto a significant Security Council resolution that would require Moscow to immediately cease its attack on Ukraine, rendering the draft resolution unapprovable regardless of the number of affirmative votes. Following the vote, Russia's delegate justified the use of the veto, arguing that the draft was

[333] *See* Helen Milner, "International Theories of Cooperation among Nations: Strengths and Weaknesses," *World Politics* 44, no. 3 (1992): 466–496.
[334] *See* Emmanuel Spyridakis, "The Role of Diplomacy in Handling International Crises in the Post-Bipolar Era", *ELIAMEP Working Papers*, Hellenic Foundation for European and Foreign Policy (1997): 6.
[335] *See* Andrew T. Guzman, "A Compliance-Based Theory of International Law," *California Law Review* 90, no. 6 (2002): 1823-1887.
[336] *Charter of the United Nations* (1945), art. 2, para. 4.
[337] China, India and the United Arab Emirates abstained from voting.
[338] UNSC, "Security Council Fails to Adopt Draft Resolution on Ending Ukraine Crisis, as Russian Federation Wields Veto", 8979th Meeting, SC/14808 February 25, 2022.

against the interests of the Ukrainian people, adding that *"his country's troops are not bombing cities nor targeting civilians,"*[339] by defining in this way, *veto*, as just a *"mechanism to ensure balance in the world, and not a privilege"*.[340] This refused, in this way once again, to acknowledge the criticisms and international law violation concerns of the UNSC. Since the creation of the United Nations, the permanent members of the UNSC have used their veto power 271 times, with the vast majority exercised by the United States and Russia.[341]

Regarding the resolution, the veto by a permanent member prevented the Council from fulfilling its primary responsibility for international peace and security, and created a need for action. Following this, the UNSC *Resolution 2623,* adopted on February 27, called for an unusual emergency special session of the United Nations General Assembly, with the 193-member states to address the situation regarding Russia's military operation in Ukraine's territory.[342] This move by the Council was a direct response to a situation where peaceful resolutions were urgently needed to stop the conflict. The context leading to this decision was marked by Russia's veto on the last draft resolution, which makes it more complex as, as a member state, it is both a participant in the conflict and at the same time an important gatekeeper of the Council's resolutions.

As per *Article 27(2)* of the UN Charter, nine Security Council members must approve procedural decisions, and, even though Russia voted against the adoption of the resolution, it still didn't change the outcome because it received eleven votes in favor. The Council's capacity in this case to make decisions notwithstanding the great resistance from a permanent member, showed again the UN Charter's intended flexibility in ensuring that procedural steps may still be taken to address challenges of international peace and security. This important process allows the Council to maintain a degree of operational capability, despite disputes among its permanent members; allowing for a continuing debate and action. In March 2022, other meetings were held to address

[339] Ibid., 12th paragraph https://press.un.org/en/2022/sc14808.doc.htm

[340] UNSC, "Security Council Calls Emergency Special Session of General Assembly on Ukraine Crisis, Adopting Resolution 2623 (2022) by 11 Votes in Favor, 1 Against, 3 Abstentions", 8980th Meeting, SC/14809 February 27, 2022.

[341] Katy Malloy, "Ukraine v. Russia: A Case for Change in International Enforcement," *William & Mary Law Review* 65, no. 5 (2024): 1254.

[342] UN News, "Security Council vote sets up emergency UN General Assembly session on Ukraine crisis" *United Nations Peace and Security Topics*, February 27, 2022 https://news.un.org/en/story/2022/02/1112842 Last accessed on 30 October 2025.

the Russian situation, merely because of the attack on the largest nuclear power station in Europe,[343] and regarding France and Mexico proposing a resolution that demanded an instant end to hostilities and strict adherence to international humanitarian standards.[344]

A strong reaction was made by the president of Ukraine, Volodymyr Zelenskyy, who raised two questions at the April meeting of the UNSC: *"Are you ready to close the United Nations?"*[345] and *"Do you think that the time for international law is gone?"*.[346] The president's questions at the UNSC surely create an environment for debate and confrontation of the facts. These are questions that lead to many other vital questions concerning the institution's effectiveness and commitment to upholding international law by ensuring global peace. Though historical parallels are difficult by nature, some scholars note that the current state of events is similar to the fall of the League of Nations, raising concerns also about the possible end of the UN.[347] Notably, it differs from its predecessor in legal authority, universality, or even operational capacity, yet, these advantages do not eliminate the structural vulnerability created by the permanent membership and veto rights.

This highlights a critical moment for the UN, asking for a more reflective view on its ability to fulfill its founding principles. President Zelenskyy called in the same April meeting of the UNSC for the expulsion of Russia from the Security Council, a call that challenges in this way the very structure and foundation that the UNSC holds itself upon.

Being permanent members, China, France, the Russian Federation, the United Kingdom and the United States have all used their veto power on several situations since 1946. But what has never happened since then is the expulsion of a member state for persistently violating the principles of the UN Charter, as *Article 6* states (by the UNGA upon the recommendation of the UNSC). Furthermore, *Chapter V* of the UN Charter, which outlines the composition of the Council and *Chapter XVIII* of the UN Charter regarding amendments do not provide a direct mechanism for

[343] United Nations Security Council, S/PV.8986 (March 4, 2022): 4.
[344] United Nations Security Council, S/PV.8988 (March 7, 2022): 14.
[345] Kristen E. Eichensehr, ed., "Russian Invasion of Ukraine Draws Widespread-but Not Universal-Condemnation," *American Journal of International Law* 116, no. 3 (2022): 614.
[346] UN News, "Ukraine's President calls on Security Council to act for peace, or 'dissolve' itself", *Peace and Security Topic*, April 5, 2022. https://news.un.org/en/story/2022/04/1115632 Last accessed on 30 October 2025.
[347] Daniel Warner, "The End of the League of Nations as a Precursor to the End of the United Nations?", May 12, 2023. https://www.counterpunch.org/2023/05/12/the-end-of-the-league-of-nations-as-a-precursor-to-the-end-of-the-united-nations/ Last accessed on 30 October 2025.

the removal of a permanent member from the Council. Importantly, two-thirds of the member states of the UNGA must approve any changes to the Charter, including ones that may permit the expulsion of a permanent member, and the concurrence of all the Security Council's permanent members. But, as it may now be understandable Russia can veto any substantive Security Council resolution, including any attempt to amend the Charter in a way that could lead to its removal. Given the situation, unless Russia consents to its expulsion or suspension, it looks impossible to remove it from the Council.

The UNSC met again in November 2022 to discuss another violation of international law, on the use of missile strikes against Ukraine's infrastructure. The president, speaking in the capacity of his state, Ghana, underscored the need for the parties to uphold their commitments under international and humanitarian law, emphasizing even more their moral and legal duty to protect innocent people from harm; by also highlighting the importance of making the distinction between civilians and combatants.[348] This debate continued even in other sessions where more and more cases of violation were discussed by the state members of the Council, asking again for respect for international law principles.[349]

Another major discussion on the violation of territorial integrity for Ukraine came when Russia used missiles and drones to attack the Black Sea ports of Odesa, Chernomorsk and Mykolayiv, severely destroying vital infrastructure, grain supplies and causing deaths among civilians.[350] In addition to this violation, the wave of assaults on Ukrainian ports seriously jeopardizes food supply around the world, especially for developing countries.[351] Highlighting in this way the huge impacts that a conflict can have on the entire world.

These assaults also go against the text of different international agreements, like those made before under the Black Sea Grain Initiative, which are meant to guarantee the secure passage and export of food products.[352] In the continuous condemnations that the UN Security Council

[348] UNSC, "Maintenance of peace and security of Ukraine", S/PV.9202 (November 23, 2022): 14.
[349] *See* United Nations Security Council S/PV.9208, S/PV.9216, S/PV.9245, S/PV.9254, S/PV.9256, S/PV.9262.
[350] UNSC, "Maintenance of peace and security of Ukraine", S/PV.9382 (July 21, 2023): 2.
[351] UNSC, *Russian Federation Attacks on Ukrainian Ports Risk Far-Reaching Impacts for Food in Developing Countries, Under-Secretary-General Tells Security Council*, 9382nd meeting, SC/15362, 21 July 2023. https://press.un.org/en/2023/sc15362.doc.htm Last accessed on 30 October 2025.
[352] An agreement was made during Russia's invasion of Ukraine by Turkey, Russia, Ukraine and the UN. Russia threatened to back out of the agreement if its demands weren't satisfied. No new agreement to extend it had been

member states have directed towards Russian actions, the representative of Albania warned that allowing international law to be flouted could shift the world from rule of law to *"law of the jungle,"* undoing in this way 78 years of progress and leading to chaos.[353] In this sense, we are living in a situation where the international community has to re-evaluate its commitment to the rule of law, and all the channels via which it attempts to maintain peace and resolve conflicts. Because clearly, when countries violate international law principles, without facing significant consequences, it cannot escape the fact that it could undermine the very foundation of international order and the principle that laws, rather than power, should govern state interactions.[354] If these principles are not consistently upheld and those who violate them are not held accountable, the international system is left open to unilateral acts that could lead to insecurity and ongoing conflicts.

4.1.2 General Assembly: A forum for debate

The United Nations General Assembly serves as an important global democratic forum for deliberation, for policy-making and representation on a wide array of international issues. Composed of 193 Member States, it provides an international institutional space in which debates and resolutions carry significant political weight and reflect the collective views of the international community on matters of peace, security, and global concerns. It holds meetings in regular session every year at the UN Headquarters in New York from September to December, unless itself, or a majority of its members, decides differently. Additionally, the Assembly can also meet in special or emergency sessions when it is needed.

The General Assembly, often referred to as a "world parliament", has a link to international law even though it does not create it directly.[355] Grounded in the mandate established by the UN Charter, it tasks the Assembly with studying and recommending measures to encourage the development and codification of international law, thereby facilitating political cooperation

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signed, causing the agreement to expire in July 2023. *See* UN News, "One year of the Black Sea Initiative: Key facts and figures", *Humanitarian Aid Topic*, July 10, 2023. https://news.un.org/en/story/2023/07/1138532 Last accessed on 30 October 2025.

[353] UNSC, "Maintenance of peace and security of Ukraine", S/PV.9414(September 8, 2023):4

[354] *See* Andrew T. Guzman, "A Compliance-Based Theory of International Law," *California Law Review* 90, no. 6 (2002): 1826.

[355] M. J. Peterson, "The UN General Assembly", (New York, Taylor and Francis Group, 2006)

among states.[356] To add, *Article 2(2)* of the UN Charter requires all Members to perform their Charter commitments in good faith. Thus, it must be understood, that even without specific Charter obligations, the UN member states are required for the sake of the community, to act on the UN recommendations. This duty implies that, while the UNGA resolutions might not directly impose legal obligations in the way that international treaties do, there exists a moral and political expectation for states to consider and act upon these recommendations. The significance of this obligation was eloquently captured by *Judge Sir Hersch Lauterpacht*, who, in his separate opinion on the *South West Africa Voting Procedure case*, emphasized the legal weight of the UN recommendations. He notes that:

> *"A Resolution recommending ... a specific course of action creates some legal obligation which, however rudimentary, elastic and imperfect, is nevertheless a legal obligation and constitutes a measure of supervision. The State in question, while not bound to accept the recommendation, is bound to give it due consideration in good faith."*[357]

By this logic, one of the factors that contribute to the effectiveness of the UNGA resolutions, is that despite being explicitly non-binding, there is a sense and perception to look at them as they are.[358] By encouraging a culture of compliance and respect among member states, the perceived authority of UNGA resolutions can enhance their practical influence and, consequently, affect the effectiveness of international law. However, in practice, it can be observed that this ideal is far from reality and exists a gap between the ideal role of the UNGA resolutions, and their actual impact in the case of the Russia-Ukrainian conflict. This discrepancy, as Krisch notes, highlights the need for mechanisms that can more effectively bridge and shape this gap between the legal and moral obligations of states, and their actual conduct in international relations.[359]

The General Assembly took significant steps to uphold its responsibilities in the face of challenges within the Security Council. In order to call for an emergency special session of the UNGA, *resolution 2623* was adopted at the Security Council's *9880th meeting.* The emergency

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[356] Charter of the United Nations (1945), *Article 13(a).*

[357] *See* Blaine Sloan, "Chapter I: The Nature and Function of United Nations General Assembly Resolutions," in *United Nations General Assembly Resolutions in Our Changing World* (Brill, 1992): 5–51.

[358] Ibid., Chapter 3, 105.

[359] Nico Krisch, "The Decay of Consent: International Law in an Age of Global Public Goods," *American Journal of International Law* 108, no. 1 (2014): 11.

special session with only tenth of its kind since the adoption of *the resolution 377 A(V) "Uniting for Peace"* in 1950,[360] shows its capacity to step in when the Security Council is challenged by the veto power. Under General Assembly *resolution 377A(V),* if the Council is unable to fulfill its role in preserving international peace and security due to a lack of consensus among its permanent members, the General Assembly is empowered to step in, and can continue to review the situation by making recommendations for member states to undertake collective actions.[361] As noted by the International Court of Justice in its *Kosovo Advisory Opinion*, the *United for Peace Resolution* confirmed the UNGA's competence to address matters of international peace and security when the Council is unable to act.[362] Logically, this mechanism therefore serves as a safety valve, which ensures that even in the event of deadlock at the UNSC level, the international community will still have a forum through which it may respond collectively to such emergencies.

While the Assembly's resolutions have, as mentioned, a non-binding nature, they carry considerable political weight when it comes to addressing crises, because no single nation has a form of "veto power" and the international community seeks to resolve crisis collectively. Consequently, this positions the UNGA in a more active political role in responding to international security threats. Nebenzya, as the Russian Ambassador, claimed on the first meeting held on the 11th session, that the so-called "*special military operation*" protects the people of Luhansk and Donetsk from what he describes as a *"torture and genocide by the Kyiv dictatorship over eight years".*[363] Even in the second UN General Assembly emergency session on the Russia and Ukraine conflict, the Russian Ambassador blamed Ukraine for *"painting a false, one-dimensional picture"* of the situation in Ukraine.[364] The remarks made by Ambassador

[360] It has been followed by other resolutions, like *Resolution 2625 (XXV)* of 1970, which approved the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States that the territory of a state should not be the object of acquisition by another state by threat or use of force, or *Resolution 3314 (XXIX)* of 1974, which interprets aggression as the use of armed force by a state against the territorial integrity of another state as a violation of the UN Charter.

[361] UNGA, "Resolution 377(V), Uniting for Peace," November 3, 1950, UN Doc A/RES/377(V).

[362] ICJ, "Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion." (ICJ Reports 2010): 403.

[363] UN News, "General Assembly holds emergency special session on Ukraine", *United Nations Peace and Security Topics*, February 28, 2022. https://news.un.org/en/story/2022/02/1112912 Last accessed on 30 October 2025.

[364] UN News, "Ukraine: Competing drafts on humanitarian assistance debated at General Assembly", *Humanitarian Aid Topics*, March 23, 2022. https://news.un.org/en/story/2022/03/1114552 Last accessed on 30 October 2025.

Nebenzya shed light on a typical tactic often discussed by many international relations scholars, which may be used by states in international forums to contextualize their acts in a way that aims to defend their position.[365]

Therefore, the General Assembly's active participation in addressing challenges to international security extends beyond merely adopting resolutions. As it permits states to debate narratives inside this forum of the UNGA to express their opinions and seek support or understanding from other countries. A forum in which, the Russian Federation's actions since the annexation of Crimea have been condemned by the majority of the UN member states.[366] Countering this idea, Baturo and Gray, argue that states in the UNGA speeches must take into consideration (through others) the perspectives of other member states and that public impressions of the effectiveness and neutrality of the UN may change, if leaders, in any way, bring their personal politics into the discussion.[367] Highlighting in this way the need of focusing more on consensus-building and the respectful exchange of ideas across nations.

To go back at the UNGA emergency special session, on March 2, 2022, member states of the UN, adopted a resolution, by clearly demanding the Russian Federation *"to refrain from any further unlawful threat or use of force against Ukraine,"* to *"withdraw all of its military forces"* from Ukraine's territory and to *"reverse the decision related to the status of certain areas of Donetsk and Luhansk."*[368] *Resolution ES-11/1* characterized Russia's actions as *aggression* in violation of Ukraine's territorial integrity, reflecting a strong legal condemnation by the UNGA. This set the groundwork for coordinated international responses and measures grounded in international law. In response, the Russian Federation's representative dismissed the resolution as politically motivated and emphasized that nothing would change as a result of this document as it had no practical effect, accusing its supporters of presenting themselves as *"champions of*

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[365] *See for example* Alisher Faizullaev, *Symbolic Insult in Diplomacy: A Subtle Game of Diplomatic Slap*, Brill Research Perspectives in Humanities and Social Sciences; Brill Research Perspectives in Diplomacy and Foreign Policy (Brill, 2017).

[366] United States Mission to the United Nations, "Remarks at a UN General Assembly Emergency Special Session on Ukraine," statement by Ambassador Dorothy Shea, New York, 24 February 2025. https://usun.usmission.gov/remarks-at-a-un-general-assembly-emergency-special-session-on-ukraine/ Last accessed on 30 October 2025.

[367] Alexander Baturo and Gray Julia. "Leaders in the United Nations General Assembly: Revitalization or Politicization?" *The Review of International Organizations* (2024): 28.

[368] UNGA, "Aggression against Ukraine." A/RES/ES-11/1, March 2, 2022.

international law" while allegedly disseminating false information.[369] This position remained unchanged during the session, reflecting even more Russia's continued rejection of the General Assembly's "authority" and conclusions. Despite the strong language and broad support for *Resolution ES-11/1* by other states, the General Assembly's actions were not accompanied by any obedience to follow a "stop-act" of the invasion from the Russian side, which caused the UNGA to meet again for a new resolution on March 24. This subsequent resolution reiterated the demands of the earlier text and further emphasized the obligations that every state has from international law.[370]

Following the human rights monitoring mission in Ukraine's latest update of March 2022, confirming 1,119 killed persons and massive destruction of houses, hospitals and schools, with humanitarian law violations, the international community couldn't stay indifferent.[371] Given the situation, the UNGA adopted on April 7 a new resolution *suspending Russia's membership* in the United Nations Human Rights Council[372] (UNHRC).[373] This decision sent a clear message, that membership in bodies that are devoted to the promotion and preservation of international principles, come with the clear expectation of respecting those principles. Consequently, any different means of doing so is not acceptable.[374] Russia became the second country in history to have its membership rights revoked within the Council, following the case of Libya in 2011. Notably, it is also the only permanent member of the Security Council to undergo such a revocation.

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[369] UNGA, "General Assembly Overwhelmingly Adopts Resolution Demanding Russian Federation Immediately End Illegal Use of Force in Ukraine, Withdraw All Troops"11th emergency special session, 5th and 6th meeting, GA/12407.

[370] UNGA, "Humanitarian consequences of the aggression against Ukraine." A/RES/ES-11/2, March 24, 2022.

[371] Office of the United Nations High Commissioner for Human Rights, "Update on the human rights situation in Ukraine. Reporting period: 24 February – 26 March" (March 28, 2022): 1 https://www.ohchr.org/sites/default/files/2022-03/HRMMU_Update_2022-03-26_EN.pdf

[372] UNHRC is an intergovernmental body within the UN system whose role is to promote and protect human rights. *See* Patrick J. Flood, "The U.N. Human Rights Council: Is Its Mandate Well-Designed?" *ILSA Journal of International & Comparative Law* 15, no. 2 (2009): 471-484.

[373] UNGA, "Suspension of the rights of membership of the Russian Federation in the Human Rights Council." A/RES/ES-11/3, April 7, 2022.

[374] Even though, unlike other resolutions of the eleventh emergency special session, ES-11/3 received a higher number of "Against" votes, from 24 members and 58 abstentions. While ES-11/1 and ES-11/2 got 5 Against.

Such "suspension measures" can create discussions about how these bodies can better address situations where member states are accused of serious international law principles-violation, as *"the tip of the iceberg"* (in this case human rights violations), while still preserving the council's integrity and mission.[375] The Russian representative reacted by criticizing the Human Rights Council as being exploited for the purposes of a specific group of states and objected to remaining part of, as he mentioned *"a mechanism used for blackmail"* and *"dominated by states with histories of human rights violations."*[376] This stance accompanied Russia's withdrawal from the Council, a move that has been interpreted by some as an attempt to *"maintain a degree of dignity"* and autonomy within the framework of diplomatic relations, but that was criticized, by the United Kingdom's representative, (as for this author's perspective) – ironically - as being *"like someone being fired tendering their resignation."*[377]

Until then, *resolution ES-11/3* of the UNGA was the most abstained,[378] with 58 votes against and 18 absences. The high number of abstentions raises the question of whether some states were reluctant to endorse a precedent for suspending a state from a UN body on the basis of conduct happening outside the forum's immediate mandate, fearing that similar reasoning could later be invoked against them. In the sense that today's *accusers* could be tomorrow's *accused*. This concern might have its origins in the international legal doctrine of sovereign equality, which holds that any action taken against one state should, in theory, be justified against any other state under similar circumstances.[379] This concern becomes clearer when compared to the UNHRC's 2011 suspension of Libya, during the revolt against Muammar Gaddafi's rule, which is often cited as a precedent but occurred under different legal and political conditions. Libya's suspension happened amid broad international consensus, including within the UNSC, and was

[375] Wolfgang Benedek, "The War in Ukraine from a Human Security Perspective," *Peace Human Rights Governance* 7, no. 1 (2023): 19.

[376] UNGA, "General Assembly Adopts Text to Suspend Russian Federation from Human Rights Council, Continuing Emergency Special Session on Humanitarian Crisis in Ukraine" 11th emergency special session, 10th and 11th meeting, GA/12414, April 7, 2022.

[377] Ibid., 8th paragraph.

[378] It is included up to that time because, with 73 votes against and 12 absentees, *resolution ES-11/5* subsequently received the greatest number of abstentions from the eleventh emergency special session of the UNGA.

[379] *See* Brad R. Roth, "The International Law of Sovereign Equality", *Sovereign Equality and Moral Disagreement* (October 2011): 53-92.

accompanied by enforcement action authorized under Chapter VII of the UN Charter.[380] While concerns about precedent and sovereign equality may explain part of this abstention behavior, empirical studies of UNGA voting suggest that legal considerations alone are insufficient. Rather, voting patterns should have a great focus, because as Farzanegan and Gholipour work, and, Amighini and Herrero analyze, they appear to be influenced by a range of political and strategic factors, including defense cooperation agreements with Russia, ideological or geopolitical alignment, economic ties, and maybe in some aspect also the absence of historical conflict with the Soviet Union.[381] While these political factors may appear peripheral in a purely doctrinal legal analysis, they are quite relevant for understanding how international law operates in practice when powerful states are in the focus.

To pass on, the Assembly took another significant step concerning the veto power of the UNSC permanent members on April 26, 2022, when it adopted a landmark resolution, the *"Veto Initiative",* mandating that the five permanent members of the Council to provide justifications for their veto uses.[382] Following a veto use by any permanent member, the President of the UNGA will convene a meeting within 10 working days to debate the situation related to the veto. Importantly, it must be noted that, this is the closest the Assembly has come to making the UNSC more accountable for its use of the veto in cases of such violations.[383]

For the first time, on 8 June 2022, the UNGA convened a special discussion to address China's and Russia's veto against a resolution in the Security Council.[384] This step followed the adoption of General Assembly Resolution *76/262*, and Russia's frequent use of its veto power highlighted a trend that worries the international community about the balance of power inside the UN Security Council. As noted by Olabuenaga's analysis, *resolution 76/262* significantly enhances

[380] UN News, "General Assembly suspends Libya from rights body; Ban says regional change must come 'from within'," March 2011. https://news.un.org/en/story/2011/03/367882 Last accessed on 30 October 2025.
[381] *See* Mohammad Reza Farzanegan and Hassan F. Gholipour, "Russia's Invasion of Ukraine and Votes in Favor of Russia in the UN General Assembly." *International Interactions* 49, no. 3 (2023): 454-470.; Alessia A. Amighini and Alicia García Herrero, "Soft vs. Hard Power Impact on UN Voting Against Ukraine", *SSRN,* (2023): 1-18.
[382] UNGA, "Standing mandate for a General Assembly debate when a veto is cast in the Security Council" A/RES/76/262, April 28, 2022.
[383] Cecilia Jacob, "A New Politics of International Criminal Justice: Accountability in Ukraine and the Israel–Gaza War," *International Affairs* 100, no. 6 (2024): 2571.
[384] China and Russia used their veto power on a draft resolution on what was happening in the Democratic People's Republic of Korea. *See* United Nations General Assembly, "Letter dated 2 June 2022 from the President of the Security Council addressed to the President of the General Assembly", A/76/853, June 3, 2022.

the UN's governance framework by altering power distribution, even though the extent of its political impact remains uncertain.[385] This change reflects the realization that the Council and the UN more broadly, must adjust to the complexity of contemporary international relations when decisions that impact world peace and security need participation from a larger range of actors. This approach necessitates a thorough examination of the veto's implications.

While in February President Putin recognized the "independence" of Donetsk and Luhansk, in September 2022, he signed decrees for the occupied Ukrainian regions of Kherson and Zaporizhzhia to be formally annexed to Russia.[386] Responding to the attempted annexation, the UNGA adopted *resolution ES-11/4*, condemning it as a clear violation of international law principles[387] and the UN Charter, saying clearly that it *"has no validity under international law, and does not form the basis for any alteration of the status of these regions of Ukraine.*"[388]

It received 143 votes in favor, marking it as the resolution with the highest number of supportive votes in the entire session, reaffirming once again the principle that no territory acquired by use of force or threat of force shall be considered to be legal. As Barber observes, although the General Assembly's declaration is not legally obligatory, it surely functions as *"an authoritative determination"* regarding the attempted annexations of the regions of Ukraine; directing legal consequences and advancing the development of international law.[389] By doing so, it aims to foster a world order based on the rule of law and mutual respect among nations.[390]

The last resolution of the emergency special session that was adopted in 2022, by the UNGA, was about the creation of mechanisms for reparation of damage, loss, or injury and an

[385] Pablo Arrocha Olabuenaga, "G.A. Res. 76/262 on a Standing Mandate for a General Assembly Debate When a Veto Is Cast in the Security Council (U.N.)." *International Legal Materials* 62, no. 2 (2023): 284–288.
[386] Andrew Roth, " Putin signs decree paving way for annexing Ukraine territories of Kherson and Zaporizhzhia" *The Guardian*, September 30, 2022, https://www.theguardian.com/world/2022/sep/29/putin-to-sign-treaty-annexing-territories-in-ukraine-kremlin-says Last accessed on 30 October 2025.
[387] State sovereignty, territorial integrity and the prohibition of acquiring territory by force.
[388] UNGA, "Territorial integrity of Ukraine: defending the principles of the Charter of the United Nations." A/RES/ES-11/4, October 12, 2022.
[389] Rebecca Barber, "An Early Assessment of the General Assembly's 2022 Veto Initiative." *Global Governance: A Review of Multilateralism and International Organizations* 29, no. 3 (2023): 346-366.
[390] *See* UNGA resolution 67/1 and 72/119. As the "Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels," adopted on 24 September 2012, stands as the UNGA's most precise resolution concerning the rule of law.

international register of damage as a record of evidence for everything caused by Russia against Ukraine.[391] It clearly noted that:

> *"Russia, must be held accountable for any violations of international law in or against Ukraine […] and that it must bear the legal consequences of all its internationally wrongful acts, including making reparation for the injury, including any damage, caused by such acts."*[392]

The concept derived from the UNGA *resolution ES-11/5* (of an international register of damages) was found to be acceptable and also supported by the Deputy Minister of Justice of Ukraine during a hearing held at the meeting of the *Committee on Legal Affairs and Human Rights* of the Parliamentary Assembly of the Council of Europe, in which it highlighted that in Ukraine *"material destruction were unimaginable,"* and new mechanisms to fix the damages were needed.[393] This form of support showed the importance of establishing a clear and organized method to address the consequences of the conflict. To add, it surely aligns with Ukraine's efforts to combine reliance on existing legal processes with support for supplementary mechanisms aimed at facilitating accountability and compensation (including the establishment of the Register of Damage for Ukraine).[394] This resolution is also in conformity with the principles laid out in the *Articles on the Responsibility of States for Internationally Wrongful Acts* by reaffirming the need for accountability, the importance of state sovereignty and the legal consequences of violations of international law, including the obligation to make reparations for injuries caused by such acts.[395]

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[391] UNGA, "Furtherance of remedy and reparation for aggression against Ukraine" A/RES/ES-11/5, November 14, 2022, para. 4.

[392] A/RES/ES-11/5, para. 2.

[393] Ministry of Justice of Ukraine, "How Ukraine Sees the Process of Establishment of Compensation Mechanism: Iryna Mudra Addressed the Participants of PACE Hearings," December 13, 2022. https://www.kmu.gov.ua/en/news/yak-ukraina-bachyt-protses-stvorennia-mekhanizmu-kompensatsii-iryna-mudra-vystupyla-na-slukhanniakh-u-parie Last accessed on 30 October 2025.

[394] Kaja Kowalczewska and Barbara Pauli, *Polish Review of International and European Law* 13, no. 2 (2024): 254.

[395] International Law Commission, "Articles on Responsibility of States for Internationally Wrongful Acts, 2001," *United Nations*. https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf

On the other hand, many delegations during the UNGA meeting criticized this resolution about exceeding the mandate and responsibilities of the Assembly.[396] Despite criticisms, this approach mirrors past UN practices for ensuring state reparation for damages caused by armed aggression, notably when, following Iraq's invasion and occupation of Kuwait, UNSC Resolution 674,[397] acknowledged Iraq's reparations obligation and proposed collecting claim-related information for restitution or compensation by Iraq, aligned with international law.[398] This *juxtaposition* of support and criticism keeps reflecting the broader debate within the international community on the UN's authority as well as its function and mandate in upholding international law; that looks like it will be eternal as long as new conflicts are emerging.

ES-11/6 was the sixth resolution adopted by the UNGA almost one year after the invasion, aiming for a comprehensive, just and lasting peace for Ukraine and reaffirming once again its commitment to the sovereignty and territorial integrity of its internationally recognized borders.[399] With 141 votes in favor and only 7 against, it once again underscored the international community's solidarity with Ukraine and its condemnation of Russia's actions. In order to bring about peace in Ukraine, it demanded Russia to put an end to hostilities, withdraw its forces and uphold fundamental values, that a state respecting international law should have.[400]

The UNGA continues to condemn Russia for all its unlawful-as-per-international-law actions and it demands that it immediately cease its aggression against Ukraine by taking accountability and responsibility for all the repeated requests of the General Assembly and the International Court of Justice[401].[402] As of February 2025, the seventh resolution was adopted. *ES-11/7*

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[396] Maurizio Arcari, "The Conflict in Ukraine and Its Implications for the United Nations System of Collective Security," in *The International Legal Order and the War in Ukraine*, *Italian Yearbook of International Law* (IYIL) 32 (2022): 146.

[397] UNSC, S/RES/674 (29 October 1990).

[398] Ivan Horodyskyy and Markiyan Bem, "Mission Is Possible? Legal and Institutional Challenges of Compensation Mechanism for Ukraine," *Syracuse Law Review* 73, no. 2 (2023): 479-502.

[399] UNGA, "Principles of the Charter of the United Nations underlying a comprehensive, just and lasting peace in Ukraine" A/RES/ES-11/6, February 23, 2023.

[400] Elena Curizio Vila, "La invasión a Ucrania: polaridades y perspectivas", *Revista Mexicana de Política Exterior* 127, (2023): 297-310.

[401] *See* the ICJ order of April 19, 2017, on provisional measures in the case concerning the Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination *(A/72/4)* & order of March 16, 2022 on provisional measures in the case concerning Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide *(A/77/4)*.

reaffirms the urgent need to end the conflict and to pursue peace in accordance with the principles of the UN Charter, including respect for territorial integrity of Ukraine and the need to ensure accountability for the crimes committed, under international law violations.[403] It was supported by 93 Member States, with 18 votes against and 65 abstentions. Keeping the work and debate on the conflict still at focus.

The UNGA's ongoing involvement with the conflict is clearly indicative of its dedication to international law, serving as a reminder of the foundational values upon which the UN was established. It is not only to defend Ukraine's rights and sovereignty from Russia's actions but also to uphold its integrity and order, so that international law's effectiveness will not be at risk.

4.2 International Courts Involvement

The involvement of international courts in international armed conflicts is complex and contentious, surely because they have different purposes, diverse material scope and jurisdiction.[404] Also, it is generally accepted that, as international courts become more involved in these conflicts, criticisms of their involvement also increases.[405] All this because they play a critical role, that is merely seen to be accompanied, as Steininger and Deitelhoff note, by *"a high-risk course of action",* based on the political nature of conflicts but also on their impact on the world.[406] To add, proceedings before international courts are typically lengthy and are therefore "ill suited" to bringing an immediate end to these kind of conflicts. Their contribution lies instead in a more complementary function, namely, the clarification of contested legal questions that may arise from these conflicts, and the reinforcement of the legal and normative

[402] UNGA, "Situation of human rights in the temporarily occupied territories of Ukraine, including the Autonomous Republic of Crimea and the city of Sevastopol" A/RES/78/221, December 19, 2023.
[403] UNGA, *Resolution ES-11/7: Advancing a comprehensive, just and lasting peace in Ukraine*, 11th Emergency Special Session, A/RES/ES-11/7 (24 February 2025).
[404] Ana Rita Gil, *Judicial Relief in War Times? Ukraine v. Russia (2022) before the International Court of Justice*, Lisbon Public Law Working Paper Series, no. 2023-1 (2023): 5.
[405] *See* Silvia Steininger and Nicole Deitelhoff, "Against the Masters of War: The Overlooked Functions of Conflict Litigation by International Courts," *Law and Contemporary Problems* Vo. 84, no. 4 (2021): 95–122. Reference 4 on page 96 directs to additional related articles.
[406] Ibid., 95.

standing of a party, which later may become relevant in subsequent diplomatic processes, including peace negotiations.[407]

The International Criminal Court, the International Court of Justice and regional bodies, including the European Court of Human Rights, are among the organizations that are frequently used to assess the effectiveness of international law. Each of them has its function in the international arena. A lot of attention has been given in the last years to their involvement in the Russia and Ukraine conflict. The core focus, of course, should be their ability to ensure that their decisions are respected and enforced for the sake of international security and peace and on how these organizations have addressed the complex issues resulting from the conflict between Russia and Ukraine; by applying standards of international law. Making it quite fascinating to analyze based on the nuanced understanding of their roles.

Although the European Court of Human Rights has addressed cases related to the situation in Ukraine, its case law will not be examined in this chapter. This choice is justified by the fact that the majority of applications before the Court concern events in Crimea and eastern Ukraine, predating the full-scale invasion of 2022, while only a limited number of cases are directly connected to Russia's aggression launched in February 2022, still with a human rights focus.[408] More fundamentally, this chapter focuses on state and third-state compliance as indicators of international law's institutional effectiveness, and the ECHR's jurisdiction is primarily triggered by individual applications, and even in interstate cases its remedial structure is centered on human rights protection than the evaluation of collective state responses. In addition, following Russia's expulsion from the Council of Europe on March 2022 and its subsequent withdrawal from the *European Convention on Human Rights* on September 2022, the Court's jurisdiction is

[407] Anna Wyrozumska, "The Russian 'Special Military Operation' in Ukraine before International Courts," *Polish Yearbook of International Law* 42 (2022): 23.

[408] *See for example,* as in *Ukraine and The Netherlands v. Russia*, the European Court of Human Rights referred to extensive and recurring violations in areas under Russian control, including patterns of abduction, torture, summary executions, and indiscriminate attacks against civilians. The Court also noted evidence of widespread ill-treatment and unlawful detention of civilians and combatants, forced labour, religious persecution, targeting of journalists, destruction and appropriation of property, restrictions on the use of the Ukrainian language, and the alleged transfer of children to Russia, concluding that these practices showed a continuing violation of the rule of law. *See* Joseph M. Isanga, "Ukraine–Russia Armed Conflict: Holding the U.N. Security Council Veto-Wielding and Nuclear-Armed Russia Accountable and Upholding International Rule of Law," *Tulsa Law Review* 60, no. 3 (2025): 409.

confined to violations committed prior to that date.[409] By this, the ECHR is no longer able to adjudicate alleged human rights violations arising from the ongoing phase of the conflict, which limits, the relevance of its case law for the purposes of this analysis. To add more, effective compensation for victims remains something unresolved, as Russia has consistently declined to comply with ECHR judgments and has ceased cooperation following its exclusion from the Council of Europe (CoE).[410]

4.2.1 The International Court of Justice

The International Court of Justice is the principal judicial organ of the United Nations. Established by the United Nations Charter in 1945, its mandate is twofold, first, to settle legal disputes submitted by states (contentious cases) and secondly, to provide advisory opinions (advisory proceedings) on legal questions referred to it by the UN organs and specialized agencies.[411] It was deliberately constructed, in the aftermath of total war, as the judicial arm of the United Nations, and *Article 92* of the UN Charter makes that clear enough. To add, it also carries the DNA of an earlier failure, mentioning here the Permanent Court of International Justice, which had already shown that adjudication between states was possible, but it was also fragile and dispensable when political pressure became existential.

The Court is composed of fifteen judges of different nationalities, elected by both the UN General Assembly and the Security Council for a nine-year term. The judges serve in their personal capacities as independent jurists, not as representatives of their governments, which

[409] Analyzed from the perspective of Wyrozumska, for an extended period, the Council of Europe tolerated Russia's non-compliance with judgments of the European Court of Human Rights, including through domestic constitutional mechanisms designed to set aside unfavourable rulings. Russia's eventual expulsion marked a turning point, signalling that persistent disregard to legal obligations cannot be without any institutional consequences. Although this was reached only after ongoing violations, it nonetheless indicates that tolerance has limits and may serve as a cautionary signal to other states regarding the costs of undermining the rule of law. *See* Anna Wyrozumska, "The Russian 'Special Military Operation' in Ukraine before International Courts," *Polish Yearbook of International Law* 42 (2022): 23.

[410] By November 2025 owed approximately EUR 2.96 billion to applicants in cases already decided. Department for the Execution of Judgments of the European Court of Human Rights, *Register of Just Satisfaction Concerning the Russian Federation,* https://www.coe.int/en/web/execution/register Last accessed on 30 October 2025. *See also* for more information about the Court at: Maruša T. Veber, *EU Sanctions and Russia's Frozen Assets*, Study requested by the AFET Committee, European Parliament, Directorate-General for External Policies of the Union (November 2025): 48-51.

[411] *See* International Court of Justice "How the Court Works", https://www.icj-cij.org/how-the-court-works. Last accessed on 30 October 2025.

reinforces the Court's function as an impartial judicial body within the international legal system. *Article 34(1)* of the ICJ's Statute provides that only States may be parties in cases before the Court, and to add more specifically, as of *Article 36*, they can stand before the Court only if both parties have agreed to it.

While reading this thesis, one may wonder about the relevance of the ICJ discussions to this research. Clearly, and genuinely, while the present case has been framed primarily around the Genocide Convention, it is not limited to it, as other disputes between Ukraine and the Russian Federation have engaged different legal instruments and claims. The short answer is that its importance lies not in genocide as such, but in the role of the ICJ as evidence of institutional, normative, and compliance *effectiveness* in a use of force context, which is directly related to the research focus of this work. Also, as it has general jurisdiction over disputes between States concerning international law, and the fact that the use of force was not used as a "reason," it creates interest through legal scholars. Even though it was not from it directly, the ICJ arose directly out of Russia's justification, as evidence of the system response, and as Russia claimed a *right to use force* to prevent alleged genocide.

4.2.1.1 Ukraine v. Russian Federation

Russia's annexation of Crimea in 2014 and its continued military actions in Ukraine are the main causes of the legal conflicts that have brought the ICJ into the frame. Seeking to challenge Russia's actions through lawful and institutional means, Ukraine turned to the Court to assert its rights and to hold Russia accountable under international law.

To date, Ukraine has initiated two major cases against Russia, invoking international conventions:

- *2017 Case:* Ukraine filed a case titled, *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination*;
- *2022 Case:* A second case titled, *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide*.

In response to escalating conflicts and alleged violations in Ukraine, the Deputy Foreign Minister of Ukraine, Olena Zerkal, submitted on January 2017 a formal request to the ICJ, seeking immediate provisional measures against Russia, in order to prevent further acts, allegedly amounted of *"terrorism and discrimination"*.[412] As the Statute clearly notes, the ICJ has jurisdiction over "*all matters specially provided for ... in treaties and conventions in force*".[413] Given the fact that Ukraine and Russia are parties to these treaties, they have, at least in principle, accepted the Court's jurisdiction over disputes arising under them.[414] Despite the debate, criticism and sides to take for the first case (as it falls outside the scope of this research), what is important and relevant to mention is the judgment of the Court.[415] As the Permanent Representative of Ukraine to the United Nations mentions (*A/78/783* and *S/2024/183)*, for the first time (together with the later days judgment of 2 February 2024) since the ICJ's inception in 1945, it has found that the Russian Federation is in violation of international law.[416] While the Court did not uphold all of Ukraine's claims, the judgment nonetheless marked a very significant instance in which the Russian Federation was found to have acted inconsistently with binding treaty obligations under international law, highlighting even more the continued relevance of treaty-based jurisdiction as a mechanism for judicial accountability.

The second case started with Ukraine, who filed the Application with the Court, on 26 February 2022, following two days from the use of force by the Russian Federation. Ukraine argued that

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[412] ICJ, "*Request for the Indication of Provisional Measures of Protection* Submitted by Ukraine (Ukraine v. Russian Federation)", January 16, 2017. https://www.icj-cij.org/sites/default/files/case-related/166/19316.pdf

[413] *Statute of the ICJ*, Article 36 (1).

[414] Ukraine is a party to the Convention on the Prevention and Punishment of the Crime of Genocide, having ratified the Convention on 15 November 1954. The Russian Federation is also a party to the Genocide Convention, ratified on 3 May 1954. They both had reservations to Article IX, but later were withdrawn.

[415] While the findings of the ICJ are undoubtedly significant, particularly in establishing that the Russia violated binding treaty obligations, they also reveal a more ambivalent outcome when assessed against the broader scope of Ukraine's claims. The Court's rejection of the majority of Ukraine's allegations, especially those relating to the substantive financing of terrorism, indicates that the core narrative advanced by Ukraine was not fully endorsed at the merits stage. The violations identified by the Court, although legally meaningful, were relatively narrow in scope and largely procedural or specific in nature, rather than addressing the central factual and legal accusations touching the dispute. Accordingly, it may be argued that Ukraine achieved a form of partial legal victory, in the sense that the Court confirmed certain breaches and thereby reinforced the principle of state accountability under treaty law. Yet, this outcome falls short of a comprehensive judicial validation of Ukraine's position. The judgment thus illustrates a broader structural feature of international adjudication on the facts that while courts can affirm violations within clearly defined jurisdictional limits, they may simultaneously leave the most politically and legally contentious aspects of a dispute still unresolved.

[416] Letter dated 21 February 2024 from the Permanent Representative of Ukraine to the United Nations addressed to the Secretary-General, annex, UN Doc. A/78/783–S/2024/183 (21 February 2024).

Russia had misused the *Genocide Convention* (on the interpretation, application, its fulfilment) by claiming that *genocide* was occurring in eastern Ukraine and by invoking this allegation as a justification for the use of force.[417] On this basis, Ukraine requested the indication of provisional measures, in accordance with *Article 41* of the Statute of the ICJ and *Articles 73, 74* and *75* of the Rules of the ICJ (on the procedural framework governing requests for provisional measures), asking the Court to order Russia to suspend its military operations.[418]

What is quite noticeable is the fact that Ukraine did not ground its claim before the ICJ on the prohibition of the use of force, as per *Article 2(4)* of the UN Charter. Given the centrality of the prohibition of force to the conflict, this seems counterintuitive at first glance. However, this was not merely a strategic choice. Rather, it reflects a jurisdictional limitation, as the Russian Federation has not accepted the Court's compulsory jurisdiction under *Article 36(2)* of the ICJ Statute. In this context, Ukraine relied on the Genocide Convention, which provided an available jurisdictional basis through Article IX. Remembering here the reason that Russia claimed that it used force, namely because of alleged "genocide" of the people in the regions of Donetsk and Luhansk, and given that the Genocide Convention does not permit the use of military force as a means of prevention, this legal framing also carried a strategic dimension. In this sense, presenting Russia as a "violator" of the Convention allowed Ukraine, irrespective of the Court's definitive ruling on the existence of genocide, to require the Court to indirectly confront the risk that the Convention could be misused as a vehicle for legitimizing unilateral force.

After the *Request for the Indication of Provisional Measures Submitted by Ukraine*, and after a hearing date was decided, through a letter from the Russian Ambassador to the Netherlands, with the justification that the hearings were scheduled at short notice, they informed the Court that they would not participate in the oral proceedings of the Court.[419] But, as it has been seen and stated in many ICJ cases, despite the non-participation by a party, this is not considered by the

[417] *Request for the Indication of Provisional Measures Submitted by Ukraine* (Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)) (27 February 2022) ICJ - 182-20220227-WRI-01-00-EN.
[418] Ibid., 1.
[419] Document (with annexes) from the Russian Federation setting out its position regarding the alleged "lack of jurisdiction" of the Court in the case 7 March 2022 https://www.icj-cij.org/sites/default/files/case-related/182/182-20220307-OTH-01-00-EN.pdf

Court as a reason to not proceed with the case.[420] This non-participation may be considered also of negative impact for the party, including on the aspect of the procedural consequences. In the absence of submissions or supporting material from Russia concerning the existence of genocide, the Court observed that it lacked evidentiary material capable of substantiating such allegations. As a result, Russia's non-participation effectively limited the factual basis upon which the Court could assess the claim of genocide. However, it is doubtful whether Russia could provide any form of "proof" of committing genocide in the Donbas region, even if it had appeared before the Court, as it has never made public any of that.[421]

Going back, President Putin had asserted, in an official address on 21 February 2022, that a *"genocide"* was occurring in Ukraine.[422] It became like a game of "words" at a first glance: from one side there was Ukraine's Ministry of Foreign Affairs calling Russia's claim on genocide as *"baseless and absurd",* while on the other hand it was Russian Ambassador to the European Union, who stated that it was enough to understand what is happening by just looking at the term [genocide] in international law.[423]

Differently from one or the other stances, what mattered was the Court, and acting under its powers to preserve the parties rights while the case proceeded, the ICJ delivered its order on 16 March 2022, requiring Russia to stop its military actions and to ensure that any forces or groups under its control did not advance further; also by directing both states to avoid any conduct that could aggravate the conflict.[424] However, notwithstanding its issuance, Russia's subsequent

[420] *See for example Aegean Sea Continental Shelf (Greece v. Turkey), Verbatim Record, Oral Arguments on Jurisdiction, Minutes of the Public Sittings held at the Peace Palace,* The Hague, 9–17 October and 19 December 1978, ICJ, 327.; *Arbitral Award of 3 October 1899 (Guyana v. Venezuela), Jurisdiction of the Court, Judgment,* ICJ Reports 2020, 464, para. 25, 26; *United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran), Provisional Measures, Order of 15 December 1979,* ICJ Reports 1979, 13, para. 13.; *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America),* Judgment, ICJ Reports 1986, 23, para. 27.

[421] Dai Tamada, "War in Ukraine and the International Court of Justice: Provisional Measures and the Third-Party Right to Intervene in Proceedings," *International Community Law Review* 26 (2024): 43.

[422] *See* Vladimir Putin, "Address by the President of the Russian Federation," February 21, 2022, *The Kremlin.* http://en.kremlin.ru/events/president/transcripts/statements/67828 Last accessed on 30 October 2025.

[423] *Request for the Indication of Provisional Measures Submitted by Ukraine* (27 February 2022): 4.

[424] *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v Russian Federation)*, Order of 16 March 2022, 231, para. 86.

conduct indicates a continued failure to give effect to the measures delivered by the Court, a non-doubted form of "refusal".[425]

From the Russian Federation's perspective, Ukraine was not in the right, when considering the scope of the Genocide Convention. For them, Ukraine's application represented an attempt to place before the Court disputes concerning the legality of the use of force and the recognition of the Donbas entities by employing the Genocide Convention as a procedural stop, notwithstanding that these matters are neither regulated by the Convention nor within the Court's jurisdiction absent state consent.[426] Russia tried to emphasize even more the fact that the Court could not indicate provisional measures without first establishing, at least *prima facie*, that jurisdiction existed.[427] The *"prima facie"* standards indicate that the Court verifies that its jurisdiction is at least not *"logically excluded*," even though it does not stand as a guarantee to its competence.[428]

In Russia's view, the Convention has no provisions regulating interstate use of force or about the recognition of states.[429] Moreover, it denied that it's so called "military operation" was legally grounded in the Convention at all, emphasizing more the idea that it was based on the right of self-defense under *Article 51* of the UN Charter and customary international law;[430] a position, as they note, formally communicated to the UN Secretary General and the Security Council on 24 February 2022.[431] Maybe, a deliberate effort to put the focus of the legal assessment of the conflict into a normative framework that is well known for its compulsory judicial scrutiny form. Requesting in this way that the Court decline the indication of provisional measures and subsequently "*remove the case from its list*."[432]

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[425] This has been also highlighted by the Permanent Representative of Ukraine to the United Nations. *See* Letter dated 21 February 2024 from the Permanent Representative of Ukraine to the United Nations addressed to the Secretary-General, annex, UN Doc. A/78/783–S/2024/183 (21 February 2024): 2, para. 6.

[426] Russian Federation, *Document setting out the position of the Russian Federation regarding the alleged "lack of jurisdiction" of the Court in the case* (7 March 2022)

[427] Ibid., 2, para. 6 and 8.

[428] Ana Rita Gil, *Judicial Relief in War Times? Ukraine v. Russia (2022) before the International Court of Justice*, Lisbon Public Law Working Paper Series No. 2023-1 (Lisbon Public Law Research Centre, 2023): 12.

[429] Russian Federation, *Document* (7 March 2022): 2-3, para. 10; 3, para. 12 and 13.

[430] Ibid., 4, para. 15; 5-6, para. 20

[431] Russian Federation, *Letter dated 24 February 2022 from the Permanent Representative of the Russian Federation to the United Nations addressed to the Secretary-General*, UN Doc. S/2022/154 (24 February 2022).

[432] Russian Federation, *Document* (7 March 2022): 6, para. 24.

Coming back again at the Court order of 16 March 2022, differently from what Russia was expecting, the ICJ concluded that it had *prima facie* jurisdiction to decide on the case.[433] To recall, the expectations of Russia on the other hand, were grounded in its position that the dispute between the parties concerned the legality of the use of force under the United Nations Charter and customary international law, rather than the interpretation or application of the Genocide Convention, and therefore fell outside the scope of *Article IX.* A position that appears persuasive when assessed in light of the manner in which the conflict has predominantly been framed at the international level as a question of the lawfulness of the use of force, rather than as a dispute concerning genocide.

At the same time, however, it is clear that the text of the Genocide Convention does not address the lawfulness of the use of force as such. From this perspective, Ukraine's argument (that Russia's military operation has violated the Convention) may be understood as linking Russia's alleged violation of the Convention to the asserted unlawfulness of its military action under the United Nations Charter and customary *jus ad bellum* rules.[434] In this sense, and as argued in scholarly literature, the assessment of the legality of the military operation under the law on the use of force becomes inseparable from the evaluation of compliance with the Genocide Convention, functioning as a necessary preliminary issue rather than an independent legal question.[435]

To continue with the Court arguments, the motives of jurisdiction fell under the fact that Ukraine's claim was brought under the Genocide Convention and both States were parties without reservations to *Article IX*.[436] Which means that "what we had" from Ukraine claims, was considered enough, as the Court used the words *"sufficiently clear"* for the evidences presented by the parties, in which Ukraine "won" the first fight.[437]

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[433] *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v Russian Federation)*, Order of 16 March 2022, 16, para. 47 and 48.

[434] Yue Cao, "Noble Motives, Unjustified Reasoning: A Comment on Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)," *Foundation for Law and International Affairs Review* 3, no. 2 (2022): 177.

[435] Ibid.

[436] *Order of 16 March 2022,* 11, para. 25 and 27; 16, para. 45.

[437] Ibid., 15, para. 44.

This procedural outcome does not amount to a determination on responsibility, but rather it indicates that Ukraine succeeded in meeting the jurisdictional and plausibility thresholds required at this stage of the proceedings. On the other hand, with respect to Russia, it looked like the Court tried to be clear, stating that its reliance on collective self-defense under *Article 51* of the UN Charter*,* could give rise to a distinct dispute arising under a different legal framework, and may therefore engage obligations under more than one treaty simultaneously.[438] Consequently, as Cao mentions, *"the existence of such parallel disputes does not deprive the ICJ of jurisdiction over one of them."*[439]

What came as a response from Russia, was not a surprise anymore. They affirmed that would not take this decision into account.[440] A stance that was against *Article 94* of the Statute, which it compels all members of the United Nations, if party, to comply with the ICJ's decisions. Afterwards, regarding enforcement, Ukraine as the party whose decision is in favor, if deems necessary, has the right to submit a non-compliance to the Security Council. But, as we already have mentioned at the United Nations involvement, veto power comes to play again.

A known practice of the ICJ cases, is the participation by third States before the Court, which arises in specific situations, like, when they can demonstrate an interest of a legal nature that may be affected by the Court's decision, and by contrast (operates as a right rather than a permission) whenever the Court is engaged in the interpretation of a convention; in this way, all the States parties to that instrument are entitled to intervene, with the consequence that the interpretation ultimately adopted by the Court will bind them equally.[441]

Following the Order of 16th March 2022, other States requested to intervene in the main procedure.[442] What has made a difference is that other the fact that is quite unprecedented in ICJ

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[438] Ibid., 16, para. 46.

[439] Yue Cao, "Noble Motives, Unjustified Reasoning: A Comment on Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)," *Foundation for Law and International Affairs Review* 3, no. 2 (2022): 176.

[440] Bezabh Abebe Bahiru, "Challenges of Dispute Settlement through the International Court of Justice (ICJ): The Case of *Ukraine v. Russian Federation*—The Decision on Provisional Measures on Alleged Violation of the Genocide Convention," *European Scientific Journal* 18, no. 29 (September 2022): 75.

[441] *Statute of the International Court of Justice*, June 26, 1945, 59 Stat. 1055, T.S. No. 993, articles 62–63.

[442] As reflected in the intervention record available up to October 2025, twenty-three States participated in the intervention proceedings: nine submitted new declarations (Austria, Czechia, Finland and Slovenia jointly; Bulgaria; Estonia; Germany; Poland, which also sought permission to intervene under Article 62; and Spain), six maintained

practice , namely such a high number of third state interventions, is the participation of states, who are traditionally very restrictive in recognizing jurisdiction to the Court, such as the US.[443] It must be mentioned that the intervenient States supported Ukraine's claims, both on jurisdiction and on the merits, despite showing different approaches on the degree of the case. As articulated, for example, by the Norwegian Foreign Minister, Norway's intervention was intended to put a broader message beyond the immediate parties to the dispute, signaling that this use of force, this "aggression" as he points out, against Ukraine, is not regarded by the international community as lawful or in any way, acceptable.[444]

Currently the situation of the case in the Court is still pending. The Court, in its Judgment of 2 February 2024, reaffirmed a core structural principle of international law, namely that while jurisdiction depends on state consent, the binding force of international legal obligations does not, and a state's responsibility subsists independently of whether it has accepted the Court's jurisdiction or not.[445] It also drew a clear jurisdictional boundary around Ukraine's claims on the Memorial of 1 July 2022[446], rejecting those submissions that sought to characterize Russia's use of force and its recognition of the so-called Donetsk and Luhansk "People's Republics" as violations of *Articles I* and *IV* of the Genocide Convention, while allowing only the claim concerning Russia's interpretation and application of the Convention itself to proceed to the merits.[447] In doing so, the Court reaffirmed that neither the prohibition of the use of force nor questions of territorial recognition fall within the Convention's material scope, even when framed through allegations of genocide.

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their earlier declarations without modification (Canada and the Netherlands jointly; France; Italy; Portugal; and Romania), and eight adjusted their original declarations (Australia; Denmark; Latvia; Lithuania; Luxembourg; New Zealand; Sweden; and the United Kingdom).

[443] Even though the US made a reservation regarding Article IX of the Convention, as, before any dispute "the specific consent" of the US is required. *See* Ana Rita Gil, *Judicial Relief in War Times? Ukraine v. Russia (2022): 17.*

[444]"Norway Has Officially Supported Ukraine's Case against Russia at the International Court of Justice (ICJ)," *The Local*, November 26, 2022. https://www.thelocal.no/20221126/norway-supports-ukraines-case-against-russia-at-the-international-court-of-justice Last accessed on 30 October 2025.

[445] *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Preliminary Objections, (Judgment of 2 February 2024): 422, para. 150. To add, from the five permanent members of the Security Council, only the United Kingdom accepts the compulsory jurisdiction of the ICJ.

[446] Ukraine, *Memorial*, *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)* (1 July 2022): 106, para. 178.

[447] Judgment of ICJ (2 February 2024): 422, para 149.

Taken together, the subsequent procedural developments before the ICJ confirm that the Court did not ultimately uphold the core of Ukraine's original claim in the 2022 proceedings. While Ukraine succeeded in seizing the Court and in framing the dispute under the Genocide Convention, the Judgment of 2 February 2024 significantly narrowed the case to a declaratory question concerning the absence of genocide, thereby excluding the broader legal framework relating to the use of force. The later admission of counter-claims by Russia further shows this shift. By allowing this responsibility-based claims to proceed within a case that had been procedurally confined to declaratory relief, the Court effectively altered the structure and orientation of the proceedings. In this sense, the litigation evolved away from Ukraine's original strategic framing and toward a more symmetrical, yet procedurally imbalanced dispute. Accordingly, the case cannot be characterized as a substantive judicial endorsement of Ukraine's claims, as it reflects a procedurally complex but substantively limited outcome, in which Ukraine achieved initial jurisdictional success but saw the central elements of its claim progressively constrained and reshaped through the Court's jurisdictional and procedural reasoning.[448]

Unsurprisingly, the Court's response has been read in different ways, depending on what one thinks international adjudication can realistically (or not) achieve in such circumstances. The discussion below examines both of these perspectives. In what follows, the terms *"loss"* and *"wining"* are employed as analytical shorthand for two contrasting evaluative criteria, (not in a literal or adversarial sense), through the scholarship debates.

- ***Position One: "Ukraine Has Lost Before the ICJ"***

This position, that Ukraine "lost," seems to be more argued by pro-Russian personalities and scholars, but it is not confined to them. There are also the ones that are sympathetic to Ukraine's position on the use of force, but in practice, they still stand with this "theory" of defeat, as a matter of treaty law and jurisdiction. More on the concluding aspect that Ukraine's 2022 application under the Genocide Convention was flawed and ultimately unsuccessful. From this perspective, the proceedings did not produce meaningful judicial condemnation of Russia and, in

[448] *See*, Opinio Juris, "ICJ's Recent Order in Ukraine v Russia Genocide Case: Declaratory Relief, Asymmetric Counter-Claims, and Direct Connection Requirement," 24 February 2026, https://opiniojuris.org/2026/02/24/icjs-recent-order-in-ukraine-v-russia-genocide-case-declaratory-relief-asymmetric-counter-claims-and-direct-connection-requirement/ Last accessed on 20 April 2026.

some respects, as ambassador of Russia to Namibia, Dimitry Lobach, also notes, in some respects *it may have even "weakened"* Ukraine's own position.[449]

It should be acknowledged at the outset that identifying explicitly pro-Russian academic commentary is not without difficulty. Much of the relevant literature is published in Russian language journals that are difficult to translate with precision, and (even after trying to use tools of translation) there is a real risk of mischaracterizing arguments if translation is imprecise. Despite these limitations, a considerable number of (English-written works of) Russian and non-Russian scholars articulate criticisms that closely align with Russia's legal position before the Court, that can be used for this discussion.

Starting with the criticism, such one is advanced by Pimenova, who characterizes Ukraine's reliance on the Genocide Convention as *"nothing more than a clever procedural trick",* which should instead be understood as an *"abuse of the process"* rather than a genuine invocation of treaty rights.[450] In this view, Ukraine did not seek to "vindicate" substantive obligations under the Convention, but it rather tried to instrumentalize it in order to secure jurisdiction over a dispute that properly belonged to the law on the use of force. This skepticism toward Ukraine's strategy was not limited to academic commentary; it was also reflected within the Court itself.

When discussing the *"Ukraine Has Lost",* we should first mention those who opposed the "win," and that actually have a huge role at the ICJ. When the Court decided that it had *prima facie* jurisdiction to decide on the case, not every judge voted in favor. For example, Judge Gevorgian and the Judge Xue voted against, with the first judge mentioned, being of Russian nationality.[451] Under the Court's Statute, it does not constitute a conflict of interest,[452] yet, it has gained skeptical stances from different scholars.[453] Although the conflict-of-interest debate, that the

[449] Article of Dmitry Lobach, the Russian Ambassador to Namibia entitled "Russia Defeated Ukraine Twice in the International Court of Justice." https://namibia.mid.ru/upload/iblock/34f/jfsyik0yojfibc7hfyur3hpp7x9l777y.pdf

[450] Sofya Dmitrievna Pimenova, "*Ukraine v. Russia: A Commentary on the Order of 16 March 2022 on the Request for the Indication of Provisional Measures*," *HSE University Journal of International Law*, no. 1 (2023): 102.

[451] Order of the ICJ, 16 March 2022, 24, para. 86.

[452] Article 57 of the ICJ's Statute even allows judges the right to express their own view if the decision is not the same as what all the judges agree on.

[453] Also, as Gapsa argues, none of the judges (including here also the ones that voted in favor even because they were not in full accordance with the order) that raised doubts on the case, had them before in a similar case, as for example, the one of Armenia v. Azerbaijan (para. 98). Miłosz Gapsa, *All We Need to Know About the Provisional Measures of the International Court of Justice in Allegations of Genocide (Ukraine v. Russian Federation), but the*

judge was Russian, as in a kind of way may be understood as him being "pro-Russian" (or at least that he is more compatible with the ideas of his country of origin, because of history, culture etc.), the unprecedented voting pattern nonetheless reinforces these scholarly doubts about judicial neutrality.

To pass on the analysis from a different angle, while acknowledging Ukraine's *"undoubtedly excellent lawyering,"* Cao argues that the case nonetheless produced *"a bad precedent of manipulative reasoning"* designed to advance political objectives rather than to clarify treaty obligations.[454] Crucially, it emphasizes that the Genocide Convention neither authorizes nor prohibits the use of force. Adding here the perspective of Kulick, who raises questions concerning where does the legality of military actions fall, and he observes that all this is a matter of the *ius contra bellum*, standing undoubtfully as a violation of the prohibition on the use of force under Article 2(4) of the UN Charter and *jus cogens* norms.[455] From this perspective, Ukraine's argument required the Court to stretch the Convention beyond its textual and systemic limits, and victory, understood as judicial validation of Ukraine's narrative, simply did not materialize.

These doctrinal concerns ultimately found significant confirmation in the Court's Judgment on Preliminary Objections of 2 February 2024. As Milanovic explains, Ukraine's case was *"non-obvious,"* precisely because no article on the Genocide Convention *"clearly applies to false allegations of genocide or to uses of force based upon them."*[456] On the decisive issue of

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Media Reports Inaccurately (Vilnius: Vilnius University Press, 2023): 54. *See also,* Ana Rita Gil, *Judicial Relief in War Times? Ukraine v. Russia (2022) before the International Court of Justice*, Lisbon Public Law Working Paper Series No. 2023-1 (Lisbon Public Law Research Centre, 2023): 15; Patrick R. Hugg, Dmytro Luchenko, and Lyra Jakulevičienė, eds., The Impact of War and Extraordinary Situations on Law in the Context of Aggression against Ukraine (2024), 116; Bezabh Abebe Bahiru, "Challenges of Dispute Settlement through the International Court of Justice (ICJ): The Case of *Ukraine v. Russian Federation*—The Decision on Provisional Measures on Alleged Violation of the Genocide Convention," *European Scientific Journal* 18, no. 29 (September 2022): 73.

[454] Yue Cao, "Noble Motives, Unjustified Reasoning: A Comment on Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)," *Foundation for Law and International Affairs Review* 3, no. 2 (2022): 183.

[455] Andreas Kulick, "Provisional Measures after *Ukraine v. Russia* (2022)," *Journal of International Dispute Settlement* 13 (2022): 331.

[456] Marko Milanovic, ICJ Delivers Preliminary Objections Judgment in the Ukraine v. Russia Genocide Case, Ukraine Loses on the Most Important Aspects, EJIL: Talk!, 2 February 2024 https://www.ejiltalk.org/icj-delivers-preliminary-objections-judgment-in-the-ukraine-v-russia-genocide-case-ukraine-loses-on-the-most-important-aspects/ Last accessed on 30 October 2025.

subject-matter jurisdiction, Ukraine therefore failed. In Milanovic's assessment, *"Ukraine lost",* because the Court *"essentially killed Ukraine's creative argument,"* notwithstanding the fact that it had been considered quite reasonable at the provisional measures stage and that it also gained support from numerous intervening states.[457]

The significance of this outcome is even more reinforced by the voting record itself. Particularly striking is the fact that the *ad hoc* Judge Yves Daudet, appointed by Ukraine, voted against the rejection of Ukraine's complaint (though must not be forgotten that it is a French judge that was appointed only in this case).[458]

From this standpoint, Ukraine's loss may not be considered merely symbolic. By accepting jurisdiction only over the "narrow" question of whether Ukraine had committed genocide in eastern Ukraine, the Court placed Ukraine in a procedurally defensive posture within proceedings it had itself initiated, as the broader theory, that Russia's reliance on genocide allegations constituted a violation of the Convention, was decisively excluded from the merits phase.

Going back again at Kulick, he highlights the irony inherent in the Court's Order of 16 March 2022. As he notes, on one hand, the ICJ ordered Russia to suspend its military operations; on the other hand, it did so while itself was expressly lacking competence to adjudicate the legality of the use of force matters.[459] Thus, regardless of the fact that the Genocide Convention regulates conduct during armed conflict, it *"does not make any pronouncements as to whether or not armed conflict may be commenced or ceased."*[460] In this form, it showed a new face of the limits of international adjudication, which, as Kulick concludes, more importantly *"demonstrates the limits of international law."*[461]

From this doctrinal and institutional perspective, Ukraine's case before the ICJ thus falls short of its apparent objectives, and taken together these arguments support a narrative of defeat. There

[457] Ibid.
[458] Ibid., *see also* Sergiy Sydorenko, "Why Ukraine Failed in The Hague, and What It Needs to Change to Win Cases against Russia," February 7, 2024. https://www.eurointegration.com.ua/eng/articles/2024/02/7/7179091/ Last accessed on 30 October 2025.
[459] Andreas Kulick, "Provisional Measures after *Ukraine v. Russia* (2022)," (2022): 339.
[460] Ibid., 331.
[461] Ibid., 339.

are also authors who see the case from the perspective of effectiveness, not as the "loss" of Ukraine before the Court, but in that perspective in which, enforcement of the Court may seem impossible. Gil, is one of these scholars, who argues that *"enforcement seems to be a fantasy,"* that even the most positive and enthusiastic supporters of international law cannot be convinced to such a degree.[462] So, if Russia won't be enforced through the ICJ, then in some way, Ukraine has really lost.

- ***Position Two: "Ukraine Has Not Lost, and May Be Said to Have 'Won' in a Broader Legal Sense"***

A contrasting position, widely advanced by Western scholars and practitioners of international law, rejects the idea that Ukraine's case before the ICJ should be looked at only through the prism of direct doctrinal success or failure. Instead, this approach situates the case proceedings within a broader jurisprudential and strategic context, where "victory" or success is measured not only by final judgments on the merits, but also by the normative clarification we get (including their impact), the narrative and the mobilization of international support.

From this perspective, Ukraine's application was never realistically aimed at obtaining a merits judgment declaring Russia's military action illegal. Rather, its primary objective may have been to challenge the legal plausibility of invoking genocide prevention as a justification for the use of force. In that respect, Ukraine succeeded in bringing before the Court a question of great gravity: whether a State may unilaterally invoke genocide prevention to legitimize military intervention, absent credible evidences. As Koh stated in his oral argument for Ukraine at the ICJ, as a contest between force and law, *"Putin's short game is force and the world's long game is law."*[463] Viewed in this broader sense, Ukraine may be regarded as having prevailed before the ICJ by reinforcing the authority of international law over unilateral force, regardless of the final judgment.

Several commentators emphasize this idea that even if it is on relatively modest accounts, Ukraine achieved something unprecedented. Mälksoo notes that, Ukraine managed to make

[462] Ana Rita Gil, *Judicial Relief in War Times? Ukraine v. Russia (2022): 28.*

[463] *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, provisional measures, verbatim record of public sitting, March 7, 2022, CR 2022/2, para. 38. *See* also, Jill Goldenziel, "An Alternative to Zombieing: Lawfare between Russia and Ukraine and the Future of International Law," *Cornell Law Review Online* vol. 108, no.1 (2023): 15.

Russia *"sort of accountable"* before the ICJ for the first time in the Court's history.[464] While this accountability was limited and procedural in nature, it nonetheless cannot be denied that it marked a significant symbolic and institutional moment, particularly given Russia's long-standing resistance to international adjudication.[465]

This assessment is reinforced by the Court's Order on provisional measures of 16 March 2022. Despite Russia's ongoing "special military operation," the Order was widely perceived as a significant legal and political message. Marin and Manova observe that the Order underscored the gravity of Ukraine's allegations and was widely interpreted as a notable victory for Ukraine, even in the absence of compliance.[466] At the same time, they analyze that the Court's decision to limit the scope of the issues to be examined at the merits stage, deprived Ukraine of the opportunity (even in the event of success) to seek reparations in the future, such as the confiscation and transfer of frozen Russian State assets.[467] Thus, even if it illustrates that Ukraine's is going for the "win" in reality it is very circumscribed.

Another dimension of Ukraine's success lies in the unprecedented level of third-State participation. McIntyre explains that, Ukraine's position was already strengthened during the preliminary objections phase, when thirty-three States intervened in support of its legal arguments.[468] From this standpoint, *"emerging victorious on stage"* carried independent value.[469] The participation allowed Ukraine to demonstrate political and legal support, transforming the case to look more in favor than ever for Ukraine.

At the same time, this phenomenon is not without its risks. Tamada, in his work, warns that the greater the pressure placed on the ICJ through extensive third-State interventions, the greater the

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[464] Lauri Mälksoo, "Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation), Judgment," *American Journal of International Law* 118, no. 3 (2024): 522.

[465] Given that Russia has historically resisted being constrained by international courts, the fact that Ukraine succeeded in bringing Russia before the ICJ at all already carries institutional significance. *See also,* Katy Malloy, "Ukraine v. Russia: A Case for Change in International Enforcement," *William & Mary Law Review* 65, no. 5 (2024): 1231–1282.

[466] Nikolay A. Marin and Bilyana Manova, "Putin's Russia before the International Court of Justice," *Polish Yearbook of International Law* 43 (2023): 161.

[467] Ibid., 163.

[468] Juliette McIntyre, "Pyrrhic Victory or Inconsequential Loss? The International Court of Justice Judgment on Preliminary Objections in *Ukraine v. Russia*," *Melbourne Journal of International Law* 25, no. 2 (2024): 19.

[469] Ibid.

danger that judicial outcomes may appear politically influenced, thereby risking undermining the Court's authority as an impartial arbiter.[470] From this, Ukraine's success or *"win,"* in mobilizing support carries an ambivalence: it strengthens legitimacy externally while potentially straining it internally.

Other scholars emphasize the expressive and systemic value of Ukraine's recourse to judicial settlement. Gapsa, as one of these scholars, argues that by choosing to confront Russia not only, as he states, on *"the battlefield,"* but also before the ICJ, Ukraine strongly affirms its identity as a State committed to peaceful dispute resolution.[471] In this view, he adds that a clear loss at the Court, even in the first stages, would have risked confidence in international law itself.[472] As Nicholson observes, while the illegality of Russia's invasion was already clear under international law, the decision of the ICJ made it more clear to the world to see, and significantly narrowed the space for any continued contestation of that conclusion, including by Russia itself.[473]

Nonetheless, even supporters of this broader "victory" narrative recognize important limitations. Wigard, Pomson, and McIntyre caution that certain legal contentions advanced by intervening States, and motivated by political solidarity, may ultimately complicate Ukraine's path to the merits by introducing sorts of doctrinal obstacles rather than clarifying the issues before the Court.[474] Ukraine's success, therefore, is neither uncomplicated nor in any way to be considered cost-free.

Finally, Wyrozumska highlights that, although the ICJ's Order concerned only provisional measures, it nonetheless provided Ukraine with *"authoritative confirmation of the dubious*

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[470] Dai Tamada, "War in Ukraine and the International Court of Justice: Provisional Measures and the Third-Party Right to Intervene in Proceedings," *International Community Law Review* 26 (2024): 68.

[471] Miłosz Gapsa, *All We Need to Know About the Provisional Measures of the International Court of Justice in Allegations of Genocide (Ukraine v. Russian Federation), but the Media Reports Inaccurately* (Vilnius University Press, 2023): 55.

[472] Ibid.

[473] Rowan Nicholson, "The International Court of Justice Has Ordered Russia to Stop the War. What Does This Ruling Mean?" March 2022. https://theconversation.com/the-international-court-of-justice-has-ordered-russia-to-stop-the-war-what-does-this-ruling-mean-179466 Last accessed on 30 October 2025.

[474] Kyra Wigard, Ori Pomson, and Juliette McIntyre, "Keeping Score: An Empirical Analysis of the Interventions in *Ukraine v. Russia*," *Journal of International Dispute Settlement* 14, no. 3 (September 2023): 326.

quality of Russia's legal arguments" in reasoning and justifying the use of force.[475] Russia's refusal to comply, coupled with its challenge to the Court's jurisdiction, it further damages its international standing and contributed to a risky pattern of disregard for international judicial decisions that Wyrozumska notes as *"dangerous for the whole international community."*[476]

Conclusively, taken together, these analyses support the idea that Ukraine did not "lose" before the ICJ in any straightforward sense. Rather, it had a different path, as it succeeded on reshaping the legal and normative terrain. Whether this constitutes victory, or if it leads to international law effectiveness, depends less on formal outcomes than on one's conception of what international adjudication can realistically achieve in times of conflicts. From this author broader viewpoint, Ukraine did not "lose" so much as redefine the "game." It constrained the space in which genocide rhetoric can operate as a justificatory tool, (as a practice now from different ICJ cases) it imposed evidentiary discipline on future claims, and "moved" and mobilized international community as a forum of resistance against narratives of force. These outcomes may not translate into immediate remedies, but they carry enduring jurisprudential weight. As Lerch and Zamfir conclude, it was "*an important step in proving the illegality [of the conflict] under international law.*"[477]

What the ICJ did do was draw a judicial line around the use of genocide allegations as legal justification. Whether that constitutes loss or victory depends less on the judgment itself than on the theory of international law one brings to it. As is evident from the submissions and procedural documents of both parties, Russia and Ukraine relied on different points of the Court's jurisprudence to support their respective positions, selectively invoking prior ICJ case law in line with their distinct legal narratives.

4.2.2 The International Criminal Court

As a secondary and indirect accountability mechanism that must be included in this work, stands the International Criminal Court. The creation of ad hoc tribunals like those in Nuremberg, Tokyo, Rwanda and the former Yugoslavia served as initial steps by the international community

[475] Anna Wyrozumska, "The Russian 'Special Military Operation' in Ukraine before International Courts," *Polish Yearbook of International Law* 42 (2022): 23.
[476] Ibid.
[477] Marika Lerch and Ionel Zamfir, *International Court of Justice Preliminary Decision in Ukraine v. Russia (2022)* (European Parliamentary Research Service and Directorate General for External Policies, March 2022): 2.

to address the lack of mechanisms to hold individuals accountable for serious international crimes; however, these tribunals had inherent limitations despite demonstrating the potential effectiveness of international justice.[478] In order to address the need for a valid and widely recognized court, the International Criminal Court was established as a permanent autonomous court through the adoption of the Rome Statute of the International Criminal Court in 1998, and entered into force in 2002. The Court's development of stringent rules and procedures was emphasized to guarantee its fairness and impartiality. Given that the ICC does not have its own police force or enforcement apparatus, it is indisputable that it depends on the cooperation of states parties and, in certain circumstances, other states. It is in the position of investigating and, if required, prosecuting those who are accused of the most serious crimes; that are of interest to the global community, including genocide, war crimes, crimes against humanity and crime of aggression.[479] Thus, as a creation to uphold the highest international ideals, now it must navigate the "rough-and-tumble" world of international relations that after every conflict becomes even more complex.[480]

The ICC operates based on the *principle of complementarity*, meaning that it complements national judicial systems and intervenes in cases where states are unable or unwilling to prosecute, distinguishing it from other institutions.[481] Because states often have the greatest access to witnesses, evidence and the resources needed to conduct procedures, the complementarity concept is founded on both respect for the main jurisdiction of states and efficiency; and effectiveness considerations.[482] Its jurisdiction extends to crimes committed on the territory of states party to the Rome Statute or by their nationals[483], as well as cases referred by the United Nations Security Council. In addition, a non-state party that willingly accepts the ICC's jurisdiction grants to the organization the authority to take action, and in this way, investigate.

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[478] Philippe Kirsch, "The role of International Criminal Court in Enforcing International Criminal Law," *American University International Law Review* 22, no. 4 (2007): 539-548.

[479] *See* International Criminal Court, "About the Court", https://www.icc-cpi.int/about/the-court. Last accessed on 30 October 2025.

[480] Olympia Bekou and Robert Cryer, "The International Criminal Court and Universal Jurisdiction: A Close Encounter?" *The International and Comparative Law Quarterly* 56, no. 1 (2007): 49-68.

[481] *Rome Statute*, art. 17.

[482] Xabier Agirre et al., "Informal expert paper: The principle of complementarity in practice," *International Criminal Court* (2003): 3.

[483] It only prosecutes individuals of at least 18 years old, not states, governments, or political parties.

The legal process of the ICC involves several key stages, which are quite important to be understood before delving into the Russia and Ukraine case. Thus, before commencing an investigation, a preliminary examination must evaluate the sufficiency of evidence, jurisdiction, gravity, complementarity and interests of justice as outlined in *Article 53* of the Rome Statute. When the ICC Prosecutor considers that there exists sufficient evidence to proceed with an investigation, it then requests authorization from a Pre-Trial Chamber of judges to open a formal investigation. Following an investigation, the ICC Prosecutor may press charges against those responsible for the alleged crimes. Before a trial phase begins, there may be pre-trial proceedings to address various legal issues and if the case proceeds to trial, it is heard before a Trial Chamber of judges. The Trial Chamber evaluates the evidence and determines if the accused is found guilty or not after being heard on the case. If the accused is found guilty, the ICC issues a sentence, which may include imprisonment or other penalties. It must be noted that the prosecutor plays a critical role in the ICC, as while the judges are of course important actors of the ICC, they are unable to adjudicate matters that the prosecutor has not done a thorough enough job investigating.[484]

The ICC has an important role in assessing the effectiveness of international law because its very intervention presupposes the existence of established international legal standards and fundamental principles that consequently require protection. On the other hand, it would be analytically incomplete to assess the conflict between Russia and Ukraine without considering this important mechanism of accountability. Because as it is generally accepted, its contribution to international law's effectiveness lies in indirect enforcement and compliance-inducing mechanisms that operate through accountability and normative reinforcement. From this author's perspective, the ICC acts as a *secondary, derivative indicator* of international law's effectiveness. Thus, if a violation of territorial integrity, use of force etc. happens, then every institutional reaction is needed, and triggered. Accordingly, the Court's role contributes by revealing the extent to which serious violations of foundational rules provoke concrete accountability processes.[485] As, when these norms are violated, from a state-to-state obligations

[484] Makau Mutua, "The International Criminal Court: Promise and Politics," *Proceedings of the Annual Meeting* (American Society of International Law) 109 (2015): 270.

[485] Even though there have been scholars who have more of a "pessimistic" view on the future of the ICC. Mentioning here Carney, which is for the abolishment of the ICC, by specifically adding that: *"Abolishing the ICC*

analysis, the individual criminal responsibility may arise, particularly through war crimes and the crime of aggression.

Articles 25–28 of the Rome Statute affirm the principle of *individual criminal responsibility* by providing that, international crimes give rise to personal liability, thereby rejecting the notion that such conduct can be attributed solely to the state.[486] As a principle central to contemporary accountability mechanisms, it enables international law to respond to serious violations by targeting those most directly responsible, and it look like it is embodied in all parts of the Rome Statute.

4.2.2.1 The ICC Investigations in Ukraine and Individual criminal responsibility

> *Cities and individuals alike, all are by nature disposed to do wrong, and there is no law that will prevent it, as is shown by the fact that men have tried every kind of punishment, constantly adding to the list, in the attempt to find greater security from criminals. . . In the course of time the death penalty became generally introduced. Yet even with this, the laws are still broken.*
>
> *Thucydides, History of the Peloponnesian War*[487]

There is a widely recognized truth in legal thought: rules exist to structure conduct. Whether they govern individuals, communities, or even states, they operate within a world that it is shaped by human decision making.[488] In this sense, law has always addressed human behavior first, even when it speaks in abstract or institutional terms. This has been showed across history, as legal systems have expanded their mechanisms of control and response in pursuit of the ideal form of *"order".*[489] At the same time, acts that depart from these rules have remained a constant presence, taking place alongside the development of law itself. Thucydides captures this

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is a long-term project that requires future imagination." See Charlotte Carney, "Abolishing the International Criminal Court," *The International Journal of Human Rights* (2025): 14.

[486] Yordan Gunawan and Ervizal Rizqy Pane, "Responsibility for Excessive Infrastructure Damage in Attacks: Analysing Russia's Attack in Ukraine," *Journal KIHDS* 9, no. 1 (2024): 219.

[487] *Trans. Rex Warner (Penguin Books, 1974), III.45, 220.*

[488] *See* Amin George Forji, "The Correlation between Law and Behaviour as Pillars of Human Society," *International Journal of Politics and Sociology* 6, no. 3 (2010): 85.

[489] John Blad, "The Essential Components of the Legal System," *International Journal of Law and Legal Studies* 11, no. 2 (June 2023): 2.

enduring condition when he reflects on the consistent strengthening of "punishment" in response to violations.

The ICC has been involved in examining allegations of crimes committed in the context of the Russian invasion of Ukraine since 2014. But, the thing with Russia and Ukraine conflict is that neither Russia nor Ukraine was a state party to the Rome Statute at the outset of the conflict, which indicates that neither of them could refer the situation to the Court through the ordinary mechanisms provided under the Statute. Ukraine only joined as a state party to the ICC on 1 January 2025.[490] What has made a big change at the time, to the situation, has been the fact that the ICC has received two declarations lodged by Ukraine accepting the ICC's jurisdiction concerning alleged crimes committed in its territory from November 2013 to the 2014 invasion and onwards.[491] This acceptance was made under Rome Statute *Article 12(3),* which permits a state that is not a party to the Statute to accept the Court's exercise of jurisdiction. It permits the ICC to investigate and potentially prosecute individuals responsible for these alleged crimes, marking an important step in addressing accountability for violations of international law in the context of the conflict. Ukraine's decision to engage the ICC through ad hoc jurisdiction rather than ratifying the Rome Statute is undoubtedly arguable.[492] While it has shown a degree of trust in the ICC and a willingness to cooperate with it after the conflict, this approach sits uneasily alongside its prolonged failure to become a state party.[493] However, it is necessary to acknowledge that a number of delicate political, legal and strategic factors might be at play in this situation.

To recall a part of the history of the conflict, April 25, 2014, marked the opening of the first preliminary investigation into the situation in Ukraine. On December 11, 2020, the Office of the Prosecutor (OTP) of the ICC released a statement regarding its findings on the situation in Ukraine. In light of the circumstances surrounding the conflict, the prosecutor concluded that

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[490] *See* ICC welcomes Ukraine as a new State Party, https://www.icc-cpi.int/news/icc-welcomes-ukraine-new-state-party Last accessed on 30 October 2025.

[491] International Criminal Court. "Ukraine accepts ICC jurisdiction over alleged crimes committed on 20 February 2014", September 8, 2015. https://www.icc-cpi.int/news/ukraine-accepts-icc-jurisdiction-over-alleged-crimes-committed-20-february-2014. Last accessed on 30 October 2025.

[492] Magdalena María Martín Martínez, "La Corte Penal Internacional frente al espejo a 25 años de la adopción del Estatuto de Roma", *Revista Electrónica de Derecho Internacional Contemporáneo* 6, 054 (2023): 13.

[493] Micaela Frulli, "International Criminal Justice at the Russia-Ukraine Crossroads", *The Italian Yearbook of International Law Online* 32, 1 (2023): 231-247.

there was sufficient evidence to believe that crimes against humanity and war crimes had been committed.[494] The 2020 report of the OTP examined several forms of alleged conduct in the Maidan Events and Crimea and eastern Ukraine, concluding that several crimes were committed violating the Rome Statute.[495] On the annual reporting requirement set by the *Relationship Agreement* between the United Nations and the International Criminal Court,[496] in the 2019-2020 report,[497] the ICC through the OTP outlined its ongoing efforts and activities on Ukraine, highlighting its proactive measures in collecting and evaluating evidence, finalizing admissibility assessments and maintaining active engagement with Ukrainian authorities and other stakeholders to ensure thorough and unbiased judicial proceedings.[498] Meaning that, in the effectiveness perspective, these reports showed that serious violations of international law did not remain institutionally unaddressed, even in the absence of immediate enforcement outcomes.

On February 25, 2022, following the start of the Russian invasion of Ukraine, the ICC Prosecutor Karim Ahmad Khan made a statement regarding the ICC's jurisdiction in the conflict to intervene, and pursue accountability for the alleged crimes.[499] By reaffirming the ICC's jurisdiction, Khan emphasized the seriousness of the situation and the potential for the ICC to play a role in addressing the crimes that were being committed.

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[494] ICC "Statement of the Prosecutor, Fatou Bensouda, on the conclusion of the preliminary examination in the situation in Ukraine", (December 2020). https://archive.ph/JUk4x#selection-1675.0-1675.121 Last accessed on 30 October 2025.

[495] The Rome Statute articles violated were: 8(2)(a)(i), 8(2)(a)(ii), 8(2)(b)(xxi), 8(2)(a)(vii), 8(2)(a)(v), 8(2)(a)(vi), 8(2)(b)(viii), 8(2)(b)(xiii), 7(1)(a), 7(1)(d), 7(1)(e), 7(1)(f), 7(1)(h), 7(1)(j), 8(2)(b)(i)-(ii), 8(2)(e)(i), 8(2)(b)(ix), 8(2)(iv), 8(2)(c)(i), 8(2)(c)(ii), 8(2)(b)(xxii), 8(2)(e)(vi) and 8(2)(b)(iv). *See* The Office of the Prosecutor of International Criminal Court, "Report on Preliminary Examination Activities 2020," December 14, 2020. https://www.icc-cpi.int/sites/default/files/itemsDocuments/2020-PE/2020-pe-report-eng.pdf

[496] By the UNGA A/RES/58/79 of December 9, 2003, which called for the conclusion of a relationship agreement between the United Nations and the International Criminal Court.

[497] Based on the invitation of the UNGA under article 6 of the *Relationship Agreement*, a report on its activities for the 2019-2020 period at the UNGA seventy-fifth session. *See* United Nations General Assembly, "Report of the International Criminal Court," A/RES/74/6, November 4, 2019.

[498] UNGA "Report of the International Criminal Court," A/75/324, August 24, 2020.

[499] He stated, *"My Office may exercise its jurisdiction over and investigate any act of genocide, crime against humanity or war crime committed within the territory of Ukraine since 20 February 2014 onwards."* International Criminal Court, "Statement of ICC Prosecutor, Karim A.A. Khan QC, on the Situation in Ukraine: "I have been closely following recent developments in and around Ukraine with increasing concern," February 25, 2022. https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-qc-situation-ukraine-i-have-been-closely-following Last accessed on 30 October 2025.

On 1 March 2022, Prosecutor Khan of the ICC took a procedural step toward addressing the situation in Ukraine by issuing a *memorandum* to the Presidency communicating his intention to formally request authorization from a Pre-Trial Chamber to initiate an investigation into the situation in Ukraine in accordance with Rome Statute *Article 15(3)*.[500] Exercising his *proprio motu*[501] powers, this move by Prosecutor Khan sets into motion the ICC's autonomous investigative mechanism into the situation in Ukraine.[502]

On 2 March 2022, a day later, Prosecutor Khan revealed that he had received referrals from 39 state parties,[503] which provided the legal basis for him to proceed with opening an investigation under *Article 14* of the Rome Statute,[504] meaning that it did not need further authorization.[505] The Statute makes no mention of the necessity for the situation to be linked to the referring state in terms of territory, the nationality of the suspects or victims, or fundamental interests. Yet, these referrals demonstrated the importance of which even this part of the research lies on, on the recognition by the international community of the need for accountability and the importance of upholding international law principles.[506] It also demonstrated how widely agreed upon the ICC is, as a "forum" for dealing with serious international crimes.

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[500] ICC, "Decision assigning the situation in Ukraine to Pre-Trial Chamber II" ICC-01/22, March 2, 2022.

[501] Translated from Latin, "proprio motu" means "on one's own initiative."

[502] Bernard Ntahiraja, "The ICC's Investigation into the Situation in Ukraine on the Basis of Referrals by Third States Parties to the Rome Statute: A Commentary," *International Criminal Law Review* 23, no. 1 (2023): 22.

[503] In March and April 2022, Japan, North Macedonia, Montenegro and Chile became the latest governments to join the referrals, increasing the total number of states that have done so to 43. The involvement of Japan, marked the first Asian state to refer to the situation in Ukraine. The countries that have referred the case of war crimes in Ukraine to the ICC listed in alphabetical order, are Albania, Australia, Austria, Belgium, Bulgaria, Canada, Colombia, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, North Macedonia, Norway, Netherlands, New Zealand, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland and the United Kingdom. https://www.icc-cpi.int/sites/default/files/2022-04/Article-14-letter.pdf

[504] Article 14 notes that, the referral mechanism allows a State Party, to trigger the Prosecutor's investigative mandate, by identifying a situation involving alleged international crimes and seeking an assessment of potential individual criminal responsibility.

[505] ICC, "Statement of ICC Prosecutor, Karim A.A. Khan QC, on the Situation in Ukraine: Receipt of Referrals from 39 States Parties and the Opening of an Investigation," March 2, 2022. https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-qc-situation-ukraine-receipt-referrals-39-states. Last accessed on 30 October 2025.

[506] *See the referrals importance analyze on* Bernard Ntahiraja, "The ICC's Investigation into the Situation in Ukraine on the Basis of Referrals by Third States Parties to the Rome Statute: A Commentary." *International and Comparative Law Review* 23, no. 1 (2023): 11-26.

Prosecutor Khan has been actively involved in the situation in Ukraine. The OTP started its work by launching a platform where anyone,[507] with information relevant to the Ukraine situation, could contact the Office investigators to help and contribute to accountability for international crimes.[508] Days later, the prosecutor visited the Medyka refugee reception center in Poland to hear firsthand the experiences of those who were forced to flee, due to the hostilities in Ukraine.[509] Becoming a participant in the *Joint Investigation Team* (JIT) together with Lithuania, Poland and Ukraine, marked another significant step in international cooperation and collaboration in the field of criminal justice. Established under the direction of Eurojust,[510] the JIT's goal is to make it easier to look into and prosecute claims of international crimes that have, allegedly, been committed in Ukraine, both within the governments involved and potentially before the ICC.[511] This collaboration allows for a rapid, and a real-time coordination with partner countries of the JIT, optimizing the process of evidence gathering and sharing. Although the JIT established in relation to Ukraine is frequently described as marking the ICC's *first participation* in such a mechanism, yet, the OTP of the ICC has in fact been involved, as Furger analyzes, for several years, in a JIT connected to the Libya situation.[512]

Recalling President Zelensky's questions in April 2022, on the future of the UN and international law, another important question was raised at the same meeting, but this time from the ICC

[507] Witnesses, survivors and affected communities.

[508] ICC, "Statement of ICC Prosecutor, Karim A.A. Khan QC, on the Situation in Ukraine: Additional Referrals from Japan and North Macedonia; Contact portal launched for provision of information," March 11, 2022. https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-qc-situation-ukraine-additional-referrals-japan-and Last accessed on 30 October 2025.

[509] ICC, "Statement of ICC Prosecutor, Karim A.A. Khan QC, on his visits to Ukraine and Poland: "Engagement with all actors critical for effective, independent investigations," March 16, 2022. https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-qc-his-visits-ukraine-and-poland-engagement-all-actors Last accessed on 30 October 2025.

[510] The framework for establishing Joint Investigation Teams among states can be found in Article 13 of the 2000 EU Convention on Mutual Assistance in Criminal Matters, as well as in the Council Framework Decision of June 13, 2002, on Joint Investigation Teams (OJ L 162). *See* for more information on the ITJ's operation*:* European Union Agency for Criminal Justice Cooperation, "Joint Investigation Teams: Practical Guide" 2021. https://www.eurojust.europa.eu/sites/default/files/assets/joint_investigation_teams_practical_guide_2021_en.pdf

[511] ICC, "Statement by ICC Prosecutor, Karim A.A. Khan QC: Office of the Prosecutor joins national authorities in Joint Investigation Team on international crimes committed in Ukraine," April 25, 2022. https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-qc-office-prosecutor-joins-national-authorities-joint Last accessed on 30 October 2025.

[512] *See for more* Andrea Furger, "Can They Deliver? The Practice of Joint Investigation Teams (JITs) in Core International Crimes Investigations," *Journal of International Criminal Justice* 22 (2024): 52.

representative.[513] *"What's the point of international law and of the International Criminal Court?"* - was the question raised by Prosecutor Khan at this meeting of the UN Security Council.[514] A question that is easily found in any recent international law scholarly debate,[515] and is further amplified, by the conflicts that the world is encountering, such as the conflict between Israel and Palestine; which started in a point where the focus was mainly on Russia and Ukraine.[516] The question invites reflection on the necessity of strengthening and supporting international law and the ICC, to guarantee that they continue to be useful instruments for resolving the complex issues of today's world. Highlighting in this way the need to see international law, as this author may cite, "not as a weapon of war but as a shield for humanity," inspired by the work of Gordon and Perugini, *Human Shields: A History of People in the Line of Fire*.[517]

In the UN Security Council meeting, Prosecutor Khan emphasized its commitment to engage in communication with Russia despite the lack of response.[518] A commitment, whose importance lies in the process of ensuring that all parties have the opportunity to participate and respond, but it can be analyzed also as a "show-off" to other nations that the Court is taking all necessary steps to ensure a fair and comprehensive process. Though it has been extensively criticized for accomplishing neither, it is a long-term goal for international justice and peace.[519]

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[513] *See* UN News, "Ukraine's President calls on Security Council to act for peace, or 'dissolve' itself", *Peace and Security Topic*, April 5, 2022. https://news.un.org/en/story/2022/04/1115632 Last accessed on 30 October 2025.

[514] ICC, "Statement of ICC Prosecutor, Karim A.A. Khan QC, at the Arria-Formula meeting of the UN Security Council on "Ensuring accountability for atrocities committed in Ukraine," April 27, 2022. https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-qc-arria-formula-meeting-un-security-council-ensuring Last accessed on 30 October 2025.

[515] *See for example* Mortimer N. S. Sellers, "The Purpose of International Law Is to Advance Justice—and International Law Has No Value Unless It Does So," *Proceedings of the Annual Meeting (American Society of International Law)* (2017): 303.; Maja Munivrana, "The Effects and the Effectiveness of the Functioning of the International Criminal Court," in Nóra Béres (ed), *The ICC at 25: Lessons Learnt* (Central European Academic Publishing, 2023): 90-91.

[516] The Effectiveness of International Law in Limiting Humanitarian Disasters in the Palestine–Israel Conflict," *Journal of Human Rights, Culture and Legal System* 5, no. 1 (March–June 2025): 240.

[517] Neve Gordon and Nicola Perugini, *Human Shields: A History of People in the Line of Fire* (Oakland: University of California Press, 2020), 13.

[518] ICC "Statement of ICC Prosecutor, Karim A.A. Khan QC, at the Arria-Formula meeting of the UN Security Council on "Ensuring accountability for atrocities committed in Ukraine," (April 27, 2022): 12th paragraph.

[519] *See* Catherine Gegout, "The International Criminal Court: Limits, Potential and Conditions for the Promotion of Justice and Peace," *Third World Quarterly* 34, no. 5 (2013): 800–818.

4.2.2.2 The ICC Arrest Warrants: Legal Analysis and Implications

On 22 February 2023, the ICC Prosecutor, Khan made a significant move by submitting a request to Pre-Trial Chamber II. In his request, he sought the issuance of arrest warrants for two individuals: Vladimir Vladimirovich Putin, the President of the Russian Federation, and Maria Alekseyevna Lvova-Belova, the Presidential Commissioner for Children's Rights in the Russian Federation.[520] Following this request, on 17 March 2023, Pre-Trial Chamber II issued the arrest warrants for Putin and Lvova-Belova. The Chamber found reasonable grounds to believe that both individuals were involved in the unlawful deportation and transfer of children from occupied territories of Ukraine to the Russian Federation, in direct violation of international humanitarian law and the Rome Statute, which underpins the ICC's legal authority.[521] This follows a plethora of evidence that emerged indicating their role in these crimes. The Chamber initially kept arrest warrants confidential to protect the investigation and safeguard those involved, but later disclosed them, with the ideal that this transparency would serve justice and help prevent further crimes.[522]

The Office of the Prosecutor identified that hundreds of children were deported from orphanages and children's care homes, allegedly for adoption in the Russian Federation.[523] The same situation was priorly observed by *Amnesty International*, which published its report in November 2022 on the deportation of Ukrainian civilians, including children, by Russian forces.[524] Another report by the *Independent International Commission of Inquiry on Ukraine,* on March 2023, found that Russia had forcibly deported children from occupied territories in Ukraine, to the

[520] ICC, "Statement by Prosecutor Karim A. A. Khan KC on the issuance of arrest warrants against President Vladimir Putin and Ms. Maria Lvova-Belova," March 17, 2023. https://www.icc-cpi.int/news/statement-prosecutor-karim-khan-kc-issuance-arrest-warrants-against-president-vladimir-putin Last accessed on 30 October 2025.

[521] International Criminal Court, "Situation in Ukraine: ICC judges issue arrest warrants against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova," March 17, 2023. https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-vladimir-vladimirovich-putin-and Last accessed on 30 October 2025.

[522] Ibid. 5th paragraph.

[523] ICC, "Statement by Prosecutor Khan", March 17, 2023.

[524] Amnesty International, "Ukraine: Like A Prison Convoy: Russia's Unlawful Transfer and Abuse of Civilians in Ukraine During Filtration", November 10, 2022. https://www.amnesty.org/en/documents/eur50/6136/2022/en/ Last accessed on 30 October 2025. It is based on an 88-person interview in which the participants informed that their only option was to travel to Russia, from which they could subsequently travel to other European countries. Following the report's conclusion, Amnesty International sent a letter to the Russian Federation's Ministry of Foreign Affairs to request an answer to some of the concerns they had discovered while researching the deportation or transfer of civilians.

Russian Federation, since the time of the invasion, calling it a *"war crime"* according to the Geneva Convention IV, Article 147.[525]

A state official is *ipso facto* acting in an official capacity and by this is to be held accountable. The President of the Russian Federation, Putin, is charged both for his direct involvement and his failure as a leader to prevent or control the actions of his subordinates. In contrast, Lvova-Belova's allegations focus on her direct involvement, reflecting her operational role in executing the policies that led to the war crimes *(Article 25(3)(a) of the Rome Statute).* On the other hand, Moscow seemed to not be in accord with this move by the ICC, because after the warrants, in an official statement, they dismissed the allegations.[526]

The arrest warrants serve as a "crystal-clear" indicator that the current situation, as considered also by many, "a war crime" in Ukraine, is against international law principles.[527] Some scholars support the idea that the deportation and transfer of children may also be a crime of genocide, and that it should have been considered by the Court,[528] while others have analyzed that it does not meet the criteria for such a classification.[529] As evidenced by the changing allegations in the previous Omar al-Bashir second warrant, this discussion may result in future judicial reinterpretations of what qualifies as genocide, highlighting the dynamic character of

[525] United Nations Human Rights Council, "Report of the Independent International Commission of Inquiry on Ukraine," Fifty-second session, February 27–March 31, 2023, A/HRC/52/62.

[526] Anthony Deutsch and Stephanie van den Berg, "Explainer: What does the ICC arrest warrant mean for Putin?", *Reuters*, March 20, 2023. https://www.reuters.com/world/what-does-icc-arrest-warrant-mean-putin-2023-03-18/ Last accessed on 30 October 2025.

[527] Mikyoung Park, "ICC Arrest Warrants for Heads of State and Others: Implications for the Republic of Korea," *Korean Journal of International and Comparative Law* 13 (2025): 117.

[528] *See e.g.,* Hilly Moodrick-Even Khen, "The Forcible Transfer of Children from Ukraine as Genocide", The *International Journal of Children's Rights* 32 (2024): 78-118. It analyzes that because of the partial confidentiality of the warrants, it is unclear if the Chamber denied a request to issue these warrants on the grounds of genocide or if it was only asked to issue them on the grounds of war crimes and approved the request. Additionally, as it is known there is less of a burden of proof at the arrest warrant stage and no requirement for specific intent and proving a war crime is simpler than proving genocide.; *See also* Douglas Irvin-Erickson, "Is Russia Committing Genocide?", *Opinio Juris*, 24 April 2022. https://opiniojuris.org/2022/04/21/is-russia-committing-genocide-in-ukraine/ Last accessed on 30 October 2025.

[529] *See e.g.,* Noëlle Quénivet, "The Conflict in Ukraine and Genocide", *Journal of International Peacekeeping* 25, 2 (2022): 141-154.; *See also* Yulia Ioffe, "Forcibly Transferring Ukrainian Children to the Russian Federation: A Genocide?", *Journal of Genocide Research* (July 10, 2023): 315-351. Especially reference no. 10 page 316, which directs to various scholars arguing that genocide cannot be proven in this case.

international law.[530] Alternatively, it could identify several other violations in Ukraine that require further examination.

More than the violation of articles *8(2)(a)(vii)* and *8(2)(b)(viii)* of the Rome Statute, which views as a war crime the unlawful deportation, transfer, or unlawful confinement of protected persons, the seriousness of the case raises because it is related to a vulnerable population segment – children. This could imply violations of other international legal norms and conventions, including those protecting the rights of children.

In a more personal matter, Lvova-Belova took into custody a Ukrainian child and later declared that he had received Russian citizenship.[531] It is important to note that adopting children who were not Russian nationals was prohibited before the invasion and the adoption of Ukrainian citizens was made permissible by a *new law*.[532] This move can raise ethical and legal concerns, as when a new law facilitates actions that would otherwise be prohibited by that state, this may conflict with international norms protecting children during armed conflict. Building on the gravity of these violations, it is important to recognize that one of the foundational principles of international law has always been the protection of children, particularly in the context of armed conflicts.[533] As per the UN *Convention on the Rights of the Child*, it is fundamental to prioritize the best interests of children in all actions, and decisions, that might impact them.[534] Ioffe analyzes, that the treatment of Ukrainian children appears to violate *Articles 7, 8, 9, 10,* and *16* of the *Convention on the Rights of the Child*, which protect a child's "*identity, nationality, family unity and freedom"* from arbitrary interference.[535] The issue of child deportation and transfer is specifically covered also in *Article 50* of the *Fourth Geneva Convention*, which guarantees that

[530] *Prosecutor v. Omar Hassan Ahmad Al Bashir,* "Pre-Trial Chamber I, Second Decision on the Prosecution's Application for a Warrant of Arrest", 12 July 2010, ICC-02/05-01/09-94. A year later from his first warrant (ICC-02/05-01/09-1), in 2010, the ICC issued a second warrant adding three counts of genocide, a crime that was not alleged against him in the first warrant.

[531] Office of the High Commissioner for Human Rights, "Update on the Human Rights Situation in Ukraine, 1 August – 31 October 2022" (2022).

[532] Patricia Fronek, Karen S. Rotabi Casares and Marina Lypovetska, "The taken children of Ukraine", *International Social Work* (November 2023).

[533] Geraldine Van Bueren, "The International Legal Protection of Children in Armed Conflicts," *The International and Comparative Law Quarterly* 43, no. 4 (1994): 809-826

[534] *United Nations Convention on the Rights of the Child* (1989), art. 3.

[535] Yulia Ioffe and Andreas Umland, *Forcible Transfer and Deportation of Ukrainian Children: Responses and Accountability Measures* (Workshop requested by the DROI Subcommittee, Policy Department for External Relations, European Parliament, PE 754.442, January 2024), 12.

children under occupation have their civil status preserved in accordance with the laws of their home country.[536]

Russia, on the other hand is not required by law to assist the ICC because it is a non-state party.[537] In 2000, Russia showed its initial support for the ICC by signing the Rome Statute. However, it never ratified the treaty, and in 2016, Russia formally withdrew its signature,[538] following the publication of a report by the ICC categorizing the annexation of Crimea by Russia as an *"international armed conflict between Russia and Ukraine".*[539] Even though in practice nothing would have to change, as the action was more of a symbolic non-acceptance of the ICC stance, still, complicates international efforts to hold Russian officials, including President Putin, accountable through the ICC.

There have been many calls and actions to "prosecute" Putin. In the United States, the prior president, Joe Biden, signed *the Justice for Victims of War Crimes Act*,[540] which broadens the authority of the US Department of Justice to prosecute war criminals found within the United States, irrespective of where the crimes occurred or the nationalities involved.[541] From this Act the logic is that *ideally*, Putin's war crimes (as for the ICC grounds) might now be prosecuted in the United States courts according to the new law. Building on this legal development, the White House National Security Council spokesman emphasized that, Russia was undoubtedly committing war crimes; hence those responsible must be held accountable.[542] This accountability framework was first put into practice on 6 December 2023, when the US Department of Justice

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[536] Claude Pilloud, Yves Sandoz, Christophe Swinarski, and Bruno Zimmermann, "*Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949,"* (Martinus Nijhoff Publishers, 1987): 909.

[537] *The Vienna Convention on the Law of Treaties'* Article 34 shows that *pacta tertiis nec nocent nec prosunt*: a treaty does not create obligations or rights for a third state without its consent. *See* Beth Van Schaack, "State Cooperation & the International Criminal Court: A Role for the United States?" Santa Clara University (2011): 9.

[538] Order of the President of the Russian Federation dated November 16, 2016 No. 361-rp, "On the intention of the Russian Federation not to become a party to the Rome Statute of the International Criminal Court," (2016). http://publication.pravo.gov.ru/Document/View/0001201611160018 Last accessed on 30 October 2025.

[539] *See* ICC, "Report on Preliminary Examination Activities," November 14, 2016. https://www.icc-cpi.int/sites/default/files/iccdocs/otp/161114-otp-rep-PE_ENG.pdf

[540] Not to be mistaken, the Act was never primarily about arresting Putin. It was about normative signaling, future proofing accountability and aligning the US domestic law with international justice, without committing the US to the ICC.

[541] U.S. Senate. "Justice for Victims of War Crimes Act." S. 4240, 117th Cong. January 5, 2023.

[542] Nikki Carvajal, Jeremy Diamond and Kylie Atwood, "Biden: ICC's War Crimes Case Against Putin Is 'Justified'," *CNN,* March 17, 2023, https://edition.cnn.com/2023/03/17/politics/biden-putin-war-crimes-ukraine/index.html. Last accessed on 30 October 2025.

filed an indictment in the US District Court for the Eastern District of Virginia, against four members of the Russian armed forces or affiliated units, for alleged violations of the *War Crimes Act of 1996*.[543] But what has happened in reality stands far away from what *the Justice for Victims of War Crimes Act* may require. Putin met with the current (since January 2025) US President Donald Trump in the US state of Alaska in August 2025 to discuss a potential peace deal for Ukraine.[544] The reality is that, despite the expansion of US domestic jurisdiction, the Act does not displace the established rules of international law concerning the personal immunity of sitting heads of state, before foreign domestic courts. Putin continued to benefit from immunity *ratione personae* under customary international law, "shielding" him from arrest or prosecution by US authorities, in the absence of an international judicial mandate capable of taking such immunity. Accordingly, the risk stays only for Lvova-Belova (and others) who do not benefit from head of state immunity, only in the case that she was to enter US territory or a cooperating jurisdiction. Even though there have been authors who refuse this idea of immunity, such as Giuffre and Prosperi, who state that Putin, *"does not enjoy immunity from arrest and transfer to the Court."*[545] They argue that this position is reinforced by the ICC Appeals Chamber's finding, that head of state immunity does not bar the jurisdiction of an international criminal court, and cannot be invoked by States Parties when executing arrest and surrender requests issued by the Court; as reflected in *Article 27(2)* of the Rome Statute and affirmed in light of the ICJ's *Arrest Warrant* jurisprudence.[546]

To pass on, concerns have been expressed about the justice system for victims of serious crimes following Russia's April 28, 2023, implementation of a law criminalizing assistance to foreign and international bodies. Cooperation with international bodies is expressly forbidden by this law, especially those to which Russia is not a party, including the ICC and other ad hoc international tribunals that have the authority to bring charges against Russian officials and

[543] Congressional Research Service, *The First Prosecution Under the War Crimes Act: Overview and International Legal Context*, LSB11091 (Congressional Research Service, December 22, 2023) https://www.congress.gov/crs-products Last accessed on 30 October 2025.
[544] *See* 7 News, "Why Putin wasn't arrested in the US despite ICC warrant and won't be nabbed in Europe either," (21 August 2025) https://7news.com.au/news/world/why-putin-wasnt-arrested-in-the-us-despite-icc-warrant-and-wont-be-nabbed-in-europe-either-c-19758554 Last accessed on 30 October 2025.
[545] Mariagiulia Giuffrè and Luigi Prosperi, "*Alea Iacta Est: The ICC Issues Arrest Warrants against Vladimir Putin and Maria Lvova-Belova*," *Ordine internazionale e diritti umani*, Osservatorio sui Tribunali Internazionali Penali, no. 2 (2023): 399.
[546] Ibid., 398.

military personnel.[547] This shift makes it difficult to ensure accountability and may discourage victims of serious crimes from seeking justice.[548] Balkees Jarrah, at *Human Rights Watch*, has expressed concerns about the new law in Russia, calling it a *"new toxic"* worrying addition to the increasing number of severe criminal laws that have been implemented, under the pretext of *"state security."*[549] The law stipulates that there might be a five-year imprisonment sentence, a fine of up to one million rubles, roughly $12,000, as well as being forbidden from applying for certain jobs.[550]

This was not the only reaction that Moscow had after the ICC arrest warrants. A criminal investigation was initiated by Russia's *Investigative Committee* against the judges of the International Criminal Court who were involved in the arrest warrants. In connection with war crime accusations against President Putin, Russia issued an arrest warrant for the ICC judge who issued the original warrant. Judge Sergio Gerardo Ugalde Godinez was listed by the Russian Interior Ministry, as *"wanted under articles of the Criminal Code of the Russian Federation" without any mention of the alleged crimes."*[551] Before that on that list were also prosecutor Khan and other judges for *"making false accusations of guilt."*[552] But their final move was to put the ICC President Piotr Hofmanski on the wanted list without giving any information about the offense.[553] In any way that one can analyze it, if states begin to challenge the authority of

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[547] Federal Law of Russian Federation of April 28, 2023 No. 157-FZ "On Amendments to the Criminal Code of the Russian Federation and Article 151 of the Criminal Procedure Code of the Russian Federation." http://publication.pravo.gov.ru/Document/View/0001202304280051?index=4&rangeSize=1 Last accessed on 30 October 2025.

[548] Yet, it is to be considered an important aspect of the ICC for the victims to be heard. *See* Marcus Vinicius de Freitas, *The Role of the International Criminal Court in Preventing Crimes against Humanity and in the Rebuilding of Nations*, Policy Center for the New South, Policy Paper No. 26/25 (April 2025): 9.

[549] Human Rights Watch, "Russia: Law Targets International Criminal Court. New Move Against Accountability for World's Most Serious Crimes," May 5, 2023, https://www.hrw.org/news/2023/05/05/russia-law-targets-international-criminal-court. Last accessed on 30 October 2025.

[550] TASS, "New law sets the penalty for complying with illegal decisions of international organizations", April 28, 2023. https://tass.com/politics/1611359 Last accessed on 30 October 2025.

[551] Reuters, "Russia places another ICC official on its wanted list – TASS", November 7, 2023. https://www.reuters.com/world/europe/russia-places-another-icc-official-its-wanted-list-tass-2023-11-07/ Last accessed on 30 October 2025.

[552] Andrew Roth, "Russia issues arrest order for British ICC prosecutor after Putin warrant", *The Guardian,* May 19, 2023. https://www.theguardian.com/law/2023/may/19/russia-arrest-order-international-criminal-court-prosecutor-karim-khan Last accessed on 30 October 2025.

[553] TASS, "Russian Interior Ministry puts ICC president, vice-president, judge on wanted list", September 25, 2023. https://tass.com/society/1680079 Last accessed on 30 October 2025.

international courts through national legal actions, against international judges, it could undermine the global justice system and ensuring accountability for international crimes might become increasingly difficult, impacting in the end the overall effectiveness of the ICC and international law.

On March 2024 (followed by the applications of February 2, 2024 of the ICC Prosecutor) the Pre-Trial Chamber II of the ICC issued arrest warrants for two more individuals: Sergei Ivanovich Kobylash as the Commander of the Long-Range Aviation of the Aerospace Force and Viktor Nikolayevich Sokolov as the Commander of the Black Sea Fleet.[554] Both were accused due to their alleged roles in commanding forces that intentionally directed attacks against Ukrainian civilian infrastructure, causing civilian harm and civilian objects damage.[555] Again, Moscow reacted, by calling the warrants, *"spurious provocations that had no legal significance."*[556]

Another debate that has been largely discussed by scholars and never accepted by Russia has to do with the crime of aggression. The Rome Statute in Article 8 *bis* 1 defines *"crime of aggression"* as the *planning, preparation, initiation, or execution* by an individual with effective control or direction over a state's *political or military actions*; where the act by its *nature, severity, or scope*, clearly violates the UN Charter. Article 15 *bis*, 5 of the Rome Statute stipulates that the ICC cannot exercise jurisdiction over crimes of aggression committed by nationals or within the territory of non-member states. Since the not ratified obstacle of the Statute is still on, the ICC lacks the authority to prosecute Russian nationals for crimes of aggression. Despite the ICC's actions not necessarily resulting in a trial with Russian perpetrators, it must be accepted that it still applies significant international pressure if

[554] ICC, "Situation in Ukraine: ICC judges issue arrest warrants against Sergei Ivanovich Kobylash and Viktor Nikolayevich Sokolov," March 5, 2024. https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-sergei-ivanovich-kobylash-and Last accessed on 30 October 2025.

[555] ICC, "Statement by Prosecutor Karim A.A. Khan KC on the issuance of arrest warrants in the Situation in Ukraine," March 5, 2024. https://www.icc-cpi.int/news/statement-prosecutor-karim-aa-khan-kc-issuance-arrest-warrants-situation-ukraine Last accessed on 30 October 2025.

[556] Guy Faulconbridge, "Russia Dismisses ICC Warrants as Meaningless Provocation," *Reuters,* March 6, 2024. https://www.reuters.com/world/russia-dismisses-icc-warrants-meaningless-provocation-2024-03-06/ Last accessed on 30 October 2025.

aggression was to be specified by the court.[557] As Kunder also notes, nearly a century after the Nuremberg and Tokyo tribunals, no one has faced charges for the crime of aggression, even though there is a broad consensus that aggressive conflicts are illegal.[558] There are still obstacles in the way of filing accusations of aggression.

The Court's universal jurisdiction has been superseded by the need for the state's approval to prosecute such crimes.[559] As Ueki concludes in his work, one future option, if anything does not change, may be that when Putin loses his power, the subsequent government accepts the Rome Statute and enables cooperation with the ICC for potential successful prosecution under international law.[560] Yet, is needed to be mentioned that the ICC's jurisdiction is *nonretroactive*, meaning it cannot investigate events before the Statute's entry into force on July 1, 2002, except for states that ratified or acceded later; wherein jurisdiction extends only to crimes committed afterward, unless otherwise declared by the state.[561] This declaration allows the ICC to investigate and prosecute crimes that occurred before the Statute entered into force which may still be relevant for accountability or justice, providing a mechanism for addressing past violations of international law.

Continuing, the ICC system is supported by two fundamental pillars, which are the judicial pillar, represented by the Court itself and the operational pillar, which covers all the responsibilities of the state.[562] The first pillar ensures that justice is carried out following the principles set out in the Rome Statute, the treaty that created the ICC. The second pillar consists of the support and cooperation from states, without which the ICC would struggle to function effectively. As is currently understood, the ICC unlike national courts lacks its own enforcement mechanisms and its own police force to arrest suspects. Because it lacks sufficient enforcement

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[557] Asma Salari, Seyed Hossein Hosseini, "Russia's Attack on Ukraine: A Review of the International Criminal Court's Capacity to Examine the Crime of Aggression," *Access to Justice in Eastern Europe* 1 (February 2023): 8-27.

[558] Braden Kundert, "Justice Today, Peace Tomorrow: Reinventing the Crime of Aggression in the Age of Putin," *Lincoln Memorial University Law Review* 10, no. 3 (2023): 8.

[559] Yasuhiro Ueki, "Russia's Aggression against Ukraine and the Pursuit of Individual Criminal Responsibility," *US-China Law Review* 20, no. 1 (January 2023): 31-44.

[560] Ibid., 32.

[561] *See* Evhen Tsybulenko, Henna Rinta-Pollari, "Legal Challenges in Prosecuting the Crime of Aggression in the Russo-Ukrainian War." *Review of Central and East European Law* 48 (2023): 319–350.

[562] International Criminal Court, "Understanding the International Criminal Court," (2020). https://www.icc-cpi.int/sites/default/files/Publications/understanding-the-icc.pdf

authority, the ICC, like several previous international criminal tribunals from the past and present, must rely on state cooperation.[563] This paradox is profound as the ICC, which exists to impose justice on nations, cannot function without the help of those same nations. Once again, this dependency creates a dynamic where the application of international law is not just a matter of legal judgment but also of political will. International relations and geopolitical realities have a significant impact on the success of international law in it becoming clear in addition to what is morally and legally just.[564] This indicates that significant international cooperation and a commitment to these laws are necessary for international law to work effectively. The importance of this cooperation has also been highlighted by the UN General Assembly at various meetings.[565]

In the case of the arrest warrants, it can be held ”hostage” by the very concept it aims to transcend: national sovereignty. It is important to recognize this dynamic because it affects what we think of the roles and effectiveness of international organizations such as the ICC. President Putin can’t and won't be arrested in Russia, so the only way to get him before the court is through the cooperation of other states that are members of the ICC. If he travels in one of these states, they must arrest him in their territory as an obligation derived from the Rome Statute.[566]

As President of the ICC Piotr Hofmański has again stated, *“the execution of the warrants depends on international cooperation.”*[567] So, it is more about the international relations than focusing on laws? But what happens then to the Rome Statute, particularly *Articles 86 and 87*

[563] Jeremy Julian Sarkin, "Will the International Criminal Court Be Able to Secure the Arrest of Vladimir Putin When He Travels?" *International Human Rights Law Review* 12 (2023): 26-68.

[564] *See* for example, Alexander Orakhelashvili, “International Law and Geopolitics: One Object, Conflicting Legitimacies?” *Netherlands Yearbook of International Law* 39 (2008): 155-204. An analysis of the parallel study of the international law and geopolitics. As for this study, geopolitical thinking, whether it stems from expansionist strategies, containment policies, or scientific approaches, has continually influenced international law.

[565] *See,* for example, Resolution A/RES/67/97 (2012) on the rule of law at the national and international levels, acknowledging that collective security depends on effective cooperation; General Assembly 75th Session on the Report of the International Criminal Court, A/75/PV.19 on November 2, 2020, GA/12280 without a vote and A/RES/75/3 on November 4, 2020 acknowledging the necessity of comprehensive cooperation and assistance from states, the United Nations and other international and regional organizations for the ICC to effectively execute its mandate.

[566] Mikyoung Park, “ICC Arrest Warrants for Heads of State and Others: Implications for the Republic of Korea,” *Korean Journal of International and Comparative Law* 13 (2025): 122.

[567] International Criminal Court, "ICC arrest warrants in the situation of Ukraine: Statement by President Piotr Hofmański," YouTube video, posted March 17, 2022, https://www.youtube.com/watch?v=FbKhCAaRLfc. Last accessed on 30 October 2025.

which require states parties to cooperate with the court in the investigation and prosecution of crimes? Can the cooperation principle fail? Even if it happens in the case of Russia's arrest warrants, it won't be the first time that the cooperation principle breaks down and one of the ICC's member states fails to detain a suspect upon entering their borders. Similar to what happened with Omar al-Bashir, the former president of Sudan;[568] he visited a number of the ICC member states, including Chad, Djibouti, Jordan, Kenya, Malawi, South Africa and Uganda, but none of them detained him.[569] In a situation where countries do not fulfill their obligations under the Rome Statute, the ICC escalated the matter to the UN Security Council and rebuked those countries.[570] However, it appears that there is still resistance in South Africa to upholding the requirements outlined in the Rome Statute. As in August 2023 when it hosted a summit of the BRICS group,[571] it asserted that all of the leaders in attendance would have full diplomatic immunity, although President Putin did not attend.[572] Thus, potentially hindering the smooth operation of the ICC, nations' unwillingness to act against their own interests, or those of their allies, also raises great concerns about the ability of international law to hold those in power accountable. To add, as regarding the BRICS summit of 2025, Putin once again did not attend

[568] *Prosecutor v. Omar Hassan Ahmad Al Bashir*, "Pre-Trial Chamber I, Warrant of Arrest for Omar Hassan Ahmad Al Bashir", 4 March 2009, ICC-02/05-01/09-1. He got an issuance by Pre-Trial Chamber I of the ICC of an arrest warrant for his alleged responsibility under *Article 25(3)(a)* of the Rome Statute for crimes against humanity and war crimes allegedly committed in Darfur. And a second arrest warrant ICC-02/05-01/09-94, in 2010 for genocide.

[569] Human Rights Watch, "International Criminal Court: Jordan Was Required to Arrest Sudan's Bashir. Appeals Chamber Rules States Must Arrest Wanted Leaders", May 6, 2019. https://www.hrw.org/news/2019/05/06/icc-jordan-was-required-arrest-sudans-bashir Last accessed on 30 October 2025.

[570] *The Prosecutor v. Omar Hassan Ahmad Al Bashir*, Decision on the non-compliance by the Republic of Uganda with the request to arrest and surrender Omar Al-Bashir to the Court and referring the matter to the United Nations Security Council and the Assembly of State Parties to the Rome Statute, ICC-02/05-01/09-267, July 2016; ICC-02/05-01/09-139 for the failure by the Republic of Malawi to Comply with the Cooperation Requests Issued by the Court, December 2011; ICC-02/05-01/09-151 for non-compliance of the Republic of Chad, March 2013; ICC-01/09-02/11-1032 for Kenya non-compliance, August 2015; ICC-02/05-01/09-266 for non-compliance by the Republic of Djibouti, July 2016; ICC-02/05-01/09-302 for the non-compliance by South Africa, July 2017; ICC-02/05-01/09-309 for non-compliance by Jordan, December 2017.

[571] BRICS is an acronym that refers to a group of five major emerging national economies: Brazil, Russia, India, China and South Africa.

[572] Yunqing Liu, "Revisiting the Customary International Law Avenue: Immunity of State Officials of Non-Party States in the Enforcement Proceedings of the International Criminal Court," *Chinese Journal of International Law* (2024): 27.

while being held in Brazil.[573] What Putin did, was visit Mongolia in September 2024, where they refused to arrest him, in clear violation of their obligations.[574]

As the legal framework is clear for member states more complications arise with non-member states. For cases like Russia, the ICC does not have the legal jurisdiction to directly implement its warrants within these state territories. Meaning that, while the court can issue arrest warrants, executing them may rely on international mechanisms, such as UNSC resolutions, which can mandate cooperation from all the UN member states, including those not party to the Rome Statute.[575] Where again Russia blocks everything. For a non-member state like Russia, the decision to comply with an ICC arrest warrant eventually becomes more of a political choice. This then marks a significant moment in international law, as when international pressure and strong reactions to unlawful actions become a primary thing, pressure like this has the potential to cause isolation and generate enough diplomatic tension to force changes, or at the very least draw attention to the problems at hand. Cryer mentions, that the ICC represents a *"new era in international law,"* and shows in this way the need for international law to work on adapting and finding new ways to enforce its mandate as much effectively as possible.[576] From a reform perspective, ideally and optimistically, if states gave more sovereignty to these institutions, worked on ensuring transparency and fairness in treaty negotiations and in a form prioritized multilateralism over unilateral or bilateral approaches, then we would likely see significantly enhanced international cooperation.[577]

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[573] *See* Reuters, "Brazil Due to ICC Arrest Warrant, Kremlin Aide Says," June 25, 2024. https://www.reuters.com/world/americas/putin-will-not-go-brics-summit-brazil-due-icc-arrest-warrant-kremlin-aide-says-2025-06-25/ Last accessed on 30 October 2025.

[574] ICC, "Ukraine situation: ICC Pre-Trial Chamber II finds that Mongolia failed to cooperate in the arrest and surrender of Vladimir Vladimirovich Putin and refers the matter to the Assembly of States Parties," 24 September 2024.https://www.icc-cpi.int/news/ukraine-situation-icc-pre-trial-chamber-ii-finds-mongolia-failed-cooperate-arrest-and Last accessed on 30 October 2025.

[575] Dapo Akande and Talita de Souza Dias, "Cooperation with the ICC: What the Security Council and ASP must do," *Institute for Security Studies*, Africa Report, March 15, 2019, 1-16. In this study, Akande and Dias assert that, in line with *Article 25* of the UN Charter, there is no reason why the UNSC cannot or should not demand all UN members to cooperate with the ICC.

[576] *See* Robert Cryer, "International Criminal Law vs State Sovereignty: Another Round?," *European Journal of International Law* 16, no. 5 (2006): 983.

[577] "International Law and Moral Obligation", *Rhetoric, Morality and International Law*, September 2020: 185-203. https://www.afri-ct.org/wp-content/uploads/2020/09/09-International-Law-and-Moral-Obligation.pdf

Another card used by state parties of the ICC for non-compliance is the ambiguity of the Rome Statute concerning the *"head-of-state immunity"*.[578] As Russia's head of state, Putin is subject to both functional and personal immunity. As mentioned, priorly, under customary international law, serving heads of state have immunity from the criminal jurisdiction of foreign states.[579] This customary immunity, combined with the gaps found in the analyses of *Articles 27* and *98* of the Rome Statute, provides ICC member states with a "pretext" for non-cooperation, as seen in other cases, like the arrest of Sudanese President Omar Al-Bashir. Although *Article 27* of the Rome Statute clearly shows that heads of state are not exempt from ICC prosecution, it does not clarify whether this provision applies universally, that is, to heads of state who are nationals of both member and non-member states. This lack of specificity leaves room for varied interpretations and for a potential misuse. Further complexity arises under *Article 98* of the Rome Statute, which permits states parties to be excused from cooperation, if it would conflict with existing international obligations regarding state or diplomatic immunities, or if it would violate binding international agreements. The interaction between *Articles 27* and *98* therefore creates a structural ambiguity that weakens the practical enforcement of the ICC arrest warrants, particularly in cases involving powerful non-member states. In practice, the case reveals a disjunction between the ICC's normative ambition to hold even the highest officials accountable and the continuing weight of sovereign immunity under customary international law.

Yet, due to the lifetime nature of arrest warrants, if one should take a positive stance, those who are still "free" will eventually appear before the court. This long-term approach is exactly for the importance of the ICC's commitment to justice and accountability, regardless of the time it may take. If the arrest happens from another state party, this would mark the first-ever arrest of a sitting head of state of a permanent UNSC member by an international criminal court. So, it depends on "political courage". To ensure that state members of the ICC are unable to cite these gaps again as a justification for their non-compliance, as Barnes also concludes, the Rome

[578] Jeremy Julian Sarkin, "Will the International Criminal Court Be Able to Secure the Arrest of Vladimir Putin When He Travels?" *International Human Rights Law Review* 12 (2023): 37.

[579] Dapo Akande and Sangeeta Shah, "Immunities of State Officials, International Crimes and Foreign Domestic Courts," *European Journal of International Law* 21, no. 4 (2010): 818.

Statute may need to be amended,[580] so it can include clarifications about *Articles 27* and *98*.[581] Reinforcing in this way the rule of law and ensuring that no one, not even heads of state, are above it. Adding here Ueki's observations, lessons from different parts of history have showed that, even in cases where a dictator lives in *"totalitarianism"* and commits grave atrocities, eventually their crimes one day will be brought to justice.[582]

4.3 The European Union

The Maastricht Treaty, which was signed in 1992 and went into effect in 1993, marked the creation of the European Union (EU). At its core, the EU is a response to Europe's own history. After centuries of war culminating in the devastation of the Second World War, European states confronted a difficult realization: peace could no longer be secured by a balance of power alone.[583] Cooperation had to be embedded in law and institutions as a structural commitment capable of channeling conflict and making a return to war both legally and politically unthinkable.

As a *sui generis* regional organization, the EU possesses treaty-based competences and legal personality that distinguish it from traditional international organizations. Through the institutional framework established by the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU), the EU can act both as a supranational authority and through cooperation between its Member States. When the EU responds to crises beyond its borders, it does so with the weight of its own historical experience: a deep awareness that legal norms are fragile without institutions willing to act on them, and that institutional action, in turn, is always conditioned by political consensus. The EU's reactions to violations of international law are therefore never purely legal or purely political.[584] They are the product of an order that

[580] Articles 121 and 122 of the Rome Statute. Proposals for amendments can originate from any state party or the ICC prosecutor and require a two-thirds majority vote for adoption among those present and voting. Following adoption, each State Party must ratify the amendments according to its national procedures.
[581] Gwen P. Barnes, "The International Criminal Court's Ineffective Enforcement Mechanisms: The Indictment of President Omar Al Bashir," *Fordham International Law Journal* 34, no. 6 (2011): 1619.
[582] Yasuhiro Ueki, "Russia's Aggression against Ukraine and the Pursuit of Individual Criminal Responsibility," *US-China Law Review* 20, no. 1 (January 2023): 31-44.
[583] History of the European Union 1945-59, https://european-union.europa.eu/principles-countries-history/history-eu/1945-59_en Last accessed on 30 October 2025.
[584] Laurent Pech, "The Rule of Law as a Well-Established and Well-Defined Principle of EU Law," *Hague Journal on the Rule of Law* 14 (2022): 117.

was built to manage precisely this uneasy coexistence. Pursuant to this, Article 13 TEU sets out the Union's institutional architecture, comprising the European Parliament, the European Council, the Council of the European Union, the European Commission, the Court of Justice of the European Union, the European Central Bank and the Court of Auditors.[585] Together, they form an integrated system through which political choices are translated into legally binding actions.

This legal and institutional identity also shapes the Union's conduct beyond its borders. *Article 21(1)*, first and second paragraph, TEU states that:

> *"The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, ... and by respect for the principles of the United Nations Charter and international law. The Union shall seek to develop relations and build partnerships with third countries, and international, regional or global organizations ..."*[586]

It frames EU external action as legally and value driven with the principles of international law.[587] In the context of Russia's invasion of Ukraine, this article of the TEU provides a form of the normative foundation for the Union's response, as the use of force against Ukraine directly engages core Charter principles. The second paragraph of the article further highlights the EU's stance for collective and coordinated responses to such violations, rather than unilateral action detached from the international legal order. In this sense, EU actions in response to the conflict can be understood not mainly as expressions of political solidarity with Ukraine, but rather as institutional responses that are defined by a legal commitment to maintain the principles of international law "protected". This understanding is reinforced by the 2011 *ATAA* judgment, when the Court of Justice of the European Union interpreted Article 21 TEU, as confirming that international law forms an integral part of the legal framework governing EU action, and in

[585] *See* Dermot Hodson et al., eds., *The Institutions of the European Union* (Oxford: Oxford University Press, 2022): 3.
[586] Consolidated Version of the Treaty on European Union, OJ C 202, 7 June 2016, Title V, *Article 21(1).*
[587] Jan Wouters, "The EU's Efforts to Uphold the International Rules-Based Order: Mission Impossible?" *Policy Analysis (2024): 2.*

doing so, it made clear that the Union, "*is bound to observe international law in its entirety*."[588] This interpretation reinforces the idea that EU external action, is not conceived as standing apart from the international legal order, as it is exercised within it.

While the conflict produced considerable economic disturbances within the EU, prompting, inter alia, the authorization of extraordinary state-aid measures, this internal economic dimension will not be addressed here.[589] The purpose of this part of the Chapter is to analyze the EU's response to the Russia and Ukraine conflict insofar as it shows the Union's role with key principles of international law. In this respect, where *erga omnes* obligations are violated (the case of the prohibition of the use of force) the legal interest in reacting, is not confined to the directly injured state. Other international actors, like the EU, may also respond through lawful measures directed at the state responsible for the violation. Despite facing disruptive developments such as Brexit, the Qatar-gate scandal, COVID-19, Israel and wider geopolitical tensions, the EU has shown that it can still respond actively, as this subchapter will show.[590] This understanding has been reflected in the EU legal order, where the Court of Justice has acknowledged that the Union's sanctions against Russia constitute a reaction to a serious violation of obligations owed to the international community, seen as a whole, pursued through *non-forcible means* available under international law.[591]

The European Council and the Council of the European Union have been meeting frequently in order to discuss the situation in Ukraine from different points of view. In the *Declaration by the High Representative on behalf of the European Union, on the Decisions of the Russian Federation Further Undermining Ukraine's Sovereignty and Territorial Integrity* (22 February 2022), the EU denounced Russia's recognition of the so-called Donetsk and Luhansk "republics"

[588] Court of Justice of the European Union, *Air Transport Association of America and Others v Secretary of State for Energy and Climate Change*, Case C-366/10, ECLI:EU:C:2011:864, para. 101.
[589] *See for more* Sara Poli and Francesca Finelli, "Context-Specific and Structural Changes in EU Restrictive Measures Adopted in Reaction to Russia's Aggression on Ukraine," *Eurojus*, 3 (2023): 20.
[590] Ylenia Maria Citino, "The Commission Package on Democracy, Interest Representation and Effective Citizens' Participation," in *Working Paper on European Democratic Instruments and Procedures During the Pandemic and Beyond*, ed. Cristina Fasone and Marta Simoncini (2023), 80.
[591] Court of Justice of the European Union, Case T-125/22, *RT France v Council of the European Union* (General Court, 27 July 2022): paragraph 86.

as *"a severe breach of international law and of the UN Charter,"*[592] explicitly linking its position to Article 2(4)'s prohibition on the use of force against another state's territorial integrity and political independence.[593] Refusing in this way, to recognize any territorial changes brought about through force. At its meeting on 24 February 2022, the European Council condemned the *"Russian Federation's unprovoked and unjustified military aggression against Ukraine,"* calling for the *"withdrawal of all Russian forces and military equipment from the entire territory of Ukraine,* "and demanded that Russia *"respect the internationally recognized borders of Ukraine."*[594] By framing Russia's actions as a violation of the prohibition of the use of force and a denial of Ukraine's territorial integrity, the EU positioned the conflict squarely within the realm of fundamental breaches of international law. This was not merely declaratory, as it laid the groundwork for a collective response (at the EU level).

Reflecting the Union's objectives of upholding international law, although Ukraine and Russia are not EU member states, the Council of the European Union has progressively adopted a series of restrictive measures, through acts amending the 2014 sanctions, commonly referred to as *"sanctions packages"*. Given the fact that the EU cannot use military force, restrictive measures are a key tool to respond to Russia's violation of territorial integrity.[595] The EU's foreign policy has never had sanctions as tough or wide-ranging as these.[596] To add, as of October 2025, the EU has adopted 19 sanctions packages.

In other words, EU sanctions packages are the lawful instruments through which the Union, acting as an international organization, implements its response to Russia's violation of

[592] European Council, *European Council Conclusions on Russia's unprovoked and unjustified military aggression against Ukraine*, 24 February 2022. https://www.consilium.europa.eu/en/press/press-releases/2022/02/24/european-council-conclusions-24-february-2022/ Last accessed on 30 October 2025.

[593] Council of the European Union, *Ukraine: Declaration by the High Representative…*, Press Release 144/22 (22 February 2022).

[594] Vadym Zheltovskyy, "From Transaction to Transformation: Explaining the Leadership Shift on EU Sanctions Policy Against Russia," *Studia Europejskie – Studies in European Affairs* 4 (2023): 34.

[595] EU restrictive measures have often been perceived as inadequately considered responses, primarily by the military aspect. *See* Kiegan Baron, "The Annexation of Crimea and EU Sanctions: An Ineffective Response," *The Arbutus Review* 13, no. 1 (2022): 120–131; Maria Perrotta Berlin, "The Effects of Sanctions," *Free Network Policy Briefs Series*, May 2022; Lunyka Adelina Pertiwi, "The EU's Approach to Sanctions on Russia: A Critical Analysis of the Existing Literature," *Central European Journal of International and Security Studies* 18, no. 3 (2024): 62.

[596] Luigi Lonardo, "Challenging EU Sanctions against Russia: The Role of the Court, Judicial Protection, and Common Foreign and Security Policy," *Cambridge Yearbook of European Legal Studies 25* (2023): 42.

international law. Maybe, saying "lawful" for some might sound daring, as they are generally considered lawful, but they are not uncontested, and criticism also matters. When observed from the perspective of EU law, as we will see, these measures are lawfully adopted within the Union's framework. At the level of international law, however, the characterization and status of such measures remains more complex. Yet, they are often seen as a tool for the enforcement of international law.[597]

The situation is quite clear when the sanctions are directed from the international organization to its member states, but the further debate arises when we have sanctions against a third nonmember state. Although the EU consistently frames its sanctions as *"restrictive measures"* adopted under the Common Foreign and Security Policy, international legal scholarship frequently assesses these measures through the lens of countermeasures. This does not reflect the EU's own position, but it can be regarded as rather an external effort to situate EU practice within the existing categories of general international law. This can be understandable, primarily because international law lacks a specific framework, governing measures, adopted outside the UN Security Council. Secondly, as it is the closest existing tool, we have to analyze them as a point of reference.

Within this debate, scholars such as Guerreiro, who contest the characterization of the EU sanctions as *lawful countermeasures*, argue that coercive measures adopted outside the framework of the UN Security Council amount to unilateral action rather than collective enforcement of international law.[598] From this perspective, only measures authorized by a global body with primary responsibility for maintaining international peace and security can claim a clear legal authority under international law, while the measures adopted by individual states or in this case, by regional organizations, risk reflecting only political or ideological preferences rather than objective legality.[599]

Yet this perspective does not exhaust enough the issue. International law does not contain a general prohibition on sanctions, but it also does not clearly authorize them as forms of collective

[597] James Gerard Devaney, "On Sanctions and the Enforcement of International Law: A Rule of Law Analysis," *Nordic Journal of International Law* (2025): 1.
[598] Alexandre Guerreiro, "Are European Union 'Sanctions' against Russia Compatible with International Law?" *Moscow Journal of International Law*, no. 3 (2025): 22.
[599] Ibid.

enforcement. Accordingly, it creates this legal grey zone, because there is no single, settled answer for/in international law. In this context, Alland's observation that countermeasures constitute a form of *"private justice"* is particularly instructive.[600] As he notes, such mechanisms tend to emerge precisely where the institutional systems of responsibility and peaceful settlement fail to operate effectively.[601] The simple logic is, let's say, if the UN Security Council, is not "functioning" then something has to be done.

Before delimiting the scope of the present analysis, it is necessary to briefly recall the legal framework governing the adoption of restrictive measures within the European Union. EU sanctions are generally adopted through a two-step process, combining decisions under the Common Foreign and Security Policy (CFSP), based on *Article 29* TEU, with implementing regulations under *Article 215* TFEU, which render the measures binding within the EU legal order. In the context of the measures adopted against the Russian Federation, these have included a wide array of restrictive actions, such as asset freezes, travel bans, financial restrictions, and sectoral sanctions targeting key areas of the Russian economy. The legality of such measures has been extensively scrutinized in the jurisprudence of the Court of Justice of the European Union, particularly with regard to fundamental rights, due process, and judicial review of listings. Cases such as *Kadi* have established that EU restrictive measures must comply with fundamental rights standards, even when implementing international obligations. This body of case law highlights the balance between foreign policy objectives and the protection of individual rights within the EU legal order. In light of these considerations, a comprehensive assessment of the legality of EU sanctions under international and EU law would require a more extensive and separate analysis, which falls beyond the scope of the present study.[602] Accordingly, this thesis primary

[600] Denis Alland, "Countermeasures of General Interest," *European Journal of International Law* 13, no. 5 (2002): 1234.

[601] Ibid.

[602] The international law, legality of sanctions, adopted outside the framework of the United Nations Security Council (particularly their characterization as countermeasures, retorsions, or forms of collective enforcement) has generated extensive and ongoing scholarly debate, with no settled consensus in doctrine. Notably, *see* Patrick Butchard, "Sanctions, Countermeasures, and Responding to Russia's Invasion of Ukraine," in *International Law after the Ukraine War*, ed. Alexander Giblin, Iain Chub, Patrick Butchard, and Kateryna Senatorova (London: Routledge, 2025); Elena Katselli Proukaki, "Enforcing Collective and Community Interests through Essential Security Clauses and Solidarity Measures in the Context of Russia's Aggression against Ukraine," *Journal of Conflict & Security Law* (April 2025); Pietro Magnani, *The Legality of EU Sanctions Against Russia: Third-Party Countermeasures and International Law* (Master's thesis, LUISS Guido Carli University, Degree Programme in

focus remains on how the EU, as an international organization, reacts to violations of international law principles. In this sense, effectiveness is to be understood not in terms of doctrinal legality, but in terms of the capacity of international law to generate structured, institutional responses in the face of violations. The EU's practice importantly illustrates how international legal norms can continue to shape behavior and generate consequences through institutional mechanisms, even in the cases where centralized enforcement remains limited. This understanding is further reflected in the Guidelines on implementation and evaluation of EU restrictive measures which provide that the *"introduction and implementation of restrictive measures must always be in accordance with international law."*[603]

The EU has responded to the conflict by imposing an extensive set of targeted restrictions on individuals,[604] and broad financial and sectoral sanctions[605] that have been steadily reinforced over time.[606] This is consistent with the EU's established practice, as it has a long history of adopting restrictive measures in response to violations of international law principles by third, nonmember states. Importantly to the case, this is a known practice of the EU, since March 2014 (against Russia) following the illegal annexation of Crimea and Sevastopol.[607] And, as Prof. Bret states, *"sanctions are a language that Moscow understands."*[608]

Politics: Philosophy and Economics, 2025); Marie Terlinden, "Recent Developments in the Sanctions Practice of the European Union: A Proportionality Review," *Institute for International Law, Working Paper no. 244* (2024); Katharina Meissner and Chiara Graziani, "The Transformation and Design of EU Restrictive Measures against Russia," *Journal of European Integration* 45, no. 3 (2023); Alexandra Hofer, "The EU's 'Massive and Targeted' Sanctions in Response to Russian Aggression: A Contradiction in Terms?" *Cambridge Yearbook of European Legal Studies* 25 (2023); Mirko Sossai, "Sanctioning Russia: Questions on the Legality and the Legitimacy of the Measures Imposed against the Invasion of Ukraine," *Roma Tre Law Review* 1 (2022); V. V. Voynikov, "EU Anti-Russian Sanctions (Restrictive Measures): Compliance with International Law," *Herald of the Russian Academy of Sciences* 92, suppl. 7 (2022); Marco Gestri, "Sanctions, Collective Countermeasures and the EU," *Italian Yearbook of International Law* 32 (2022).

[603] *Guidelines on Implementation and Evaluation of Restrictive Measures (Sanctions) in the Framework of the EU Common Foreign and Security Policy*, Doc. 5664/18, Brussels, 4 May 2018.

[604] Individual restrictive measures adopted in response to violations of Ukraine's territorial integrity are established under Council Decision 2014/145/CFSP and Regulation (EU) No. 269/2014 of 17 March 2014.

[605] Sectoral measures are based on Council Decision *2014/512/CFSP* and Regulation (EU) No. *833/2014*, with further restrictions added through Council Decision (CFSP) *2022/266* and Regulation (EU) *2022/263.*

[606] It can be found analyzed at *Poli and Finelli*, *Eurojust*, 3 (2023): 21.

[607] *See for more European Commission, Sanctions adopted following Russia's military aggression against Ukraine* https://finance.ec.europa.eu/eu-and-world/sanctions-restrictive-measures/overview-sanctions-and-related-resources_en Last accessed on 30 October 2025.

[608] Cyrille Bret, "*European Union / Russia Sanctions: What Next?"* Policy Paper No. 260 (March 2021): 8.

Restrictive measures follow a specific dual step legal structure. This dual step structure is required whenever restrictive measures are intended to produce binding legal effects on individuals or economic operators, irrespective of whether the measures are targeted at specific persons or are formulated in more general or sectoral terms. First, the Council adopts a decision under *Article 29 TEU* that defines the political and the foreign policy objectives of the sanctions. This is then followed by a regulation under *Article 215 TFEU*, which is essential because only a TFEU instrument can create binding obligations for individuals and companies.

To be stated, a *CFSP Decision* alone binds only the EU institutions and Member States, but it cannot directly affect private parties. This distinction has been confirmed by the Court of Justice, which has emphasized that judicial review depends on the presence of a TFEU legal basis. While acts adopted under the Common Foreign and Security Policy are, in principle, excluded from the Court's jurisdiction, *Article 24(1)* TEU and *Article 275(2)* TFEU preserve jurisdiction in relation to the legality of restrictive measures against natural or legal persons. In addition, once such measures are implemented through a regulation under *Article 215* TFEU, they fall within the Court's ordinary jurisdiction. As illustrated in Case C-72/15 Rosneft Oil Company,[609] the Court confirmed that its jurisdiction is not dependent on the form of the act, and that even CFSP-related measures may be subject to judicial review within these limits.[610] The unprecedented scope of the sanctions adopted in response to Russia's violation of Ukraine's territorial integrity has also generated extensive litigation before the EU courts. Challenges to these sanctions are possible, and they may be brought directly under *Article 263* TFEU or indirectly through preliminary references under *Article 267* TFEU.[611] Furthermore, as confirmed in Case C-872/19 P *Venezuela v. Council*, even a third State may qualify as a "legal person" with standing to challenge EU restrictive measures. This judicial control is particularly significant, because even when responding to serious violations of international law principles, the EU continues to act within the limits of the rule of law, ensuring that its measures remain legally grounded and

[609] Case C-72/15*, Rosneft Oil Company v. HM Treasury* and Others, EU:C:2017:236, para. 106: *"the jurisdiction of the Court is in no way restricted with respect to a regulation… adopted on the basis of Article 215 TFEU… [which is] subject, in principle, to full review of legality"*; *see* also Case C-402/05 P and C-415/05 P, *Kadi and Al Barakaat International Foundation v Council and Commission,* EU:C:2008:461, para. 326.

[610] Davide Genini, "How the War in Ukraine Has Transformed the EU's Common Foreign and Security Policy," Yearbook of European Law (2025): 16.

[611] Luigi Lonardo, "Challenging EU Sanctions against Russia: The Role of the Court, Judicial Protection, and Common Foreign and Security Policy," Cambridge Yearbook of European Legal Studies 25 (2023): 42.

subject to review. To clarify, the reference to EU treaty provisions serves to demonstrate the internal legality and institutional competence of the Union to act, rather than to assess the conformity of such measures with general international law.

Yet, what about measures of general application (bans on oil, coal, steel, luxury goods, technology etc.)? Why are they not subject to judicial review? To put it simple, general sectoral bans are not subject to judicial review because they do not directly affect the rights of identifiable individuals or companies. Under *Article 275(2) TFEU*, the Court's jurisdiction arises only when a measure targets specific persons, meaning that CFSP acts of general application fall outside its review unless implemented through a TFEU regulation.

With this distinction in mind, the Council's *first* package sanctions, included measures against the 351 members of the Russian State Duma who, on February 15, of the same year of the invasion, supported the motion calling on President Putin to recognize Donetsk and Luhansk.[612] Building on this, the EU adopted *Council Decision 2022/329*, (2nd package of sanctions against Russia) which amended its existing sanctions regime[613] to target a wider range of actors involved in supporting Russia's unlawful use of force, including sanctions against Vladimir Putin and Sergey Lavrov,[614] expanding the scope of restrictive measures, covering also Belarus.[615] Subsequent sanctions packages further expanded these listings, mentioning here for example, *Council Decision 2022/1907* (on the eighth package of sanctions against Russia) which added important ministers of the Russian Federation, reflecting once again the EU's progressively

[612] Council of the European Union, *EU Adopts Package of Sanctions in Response to Russian Recognition of the Non-Government Controlled Areas of the Donetsk and Luhansk Oblasts of Ukraine and Sending of Troops into the Region*, Press Release 151/22, February 23, 2022.

[613] *Council Decision 2014/145/CFSP of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine*, Official Journal of the European Union, L 78 (17 March 2014): 16.

[614] Council of the European Union, *Russia's Military Aggression against Ukraine: EU Imposes Sanctions against President Putin and Foreign Minister Lavrov and Adopts Wide-Ranging Individual and Economic Sanctions*, press release, 25 February 2022. https://www.consilium.europa.eu/en/press/press-releases/2022/02/25/russia-s-military-aggression-against-ukraine-eu-imposes-sanctions-against-president-putin-and-foreign-minister-lavrov-and-adopts-wide-ranging-individual-and-economic-sanctions/ Last accessed on 30 October 2025.

[615] *Council Decision 2022/329 of 25 February 2022 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine*, Official Journal of the European Union, L 50 (2022): 1.

widening approach to targeting those involved in undermining Ukraine's territorial integrity, sovereignty and independence.[616]

The third sanctions package introduced a combination of financial and information related restrictive measures, including the exclusion of key Russian banks from the SWIFT system,[617] while also including a closure of EU airspace to Russian aircraft and listing more measures against Russia and Belarus.[618] In doing so, it marked a structural broadening of the EU's sanctions policy, moving from targeted individual sanctions toward broader tools designed to disrupt key state functions and limit in this way the Kremlin's ability to finance or legitimize its invasion.[619] The exclusion from the SWIFT system, an option already discussed in response to Russia's annexation of Crimea, has been analyzed by Morra and Felicetti, as "*a domain of geopolitical leverage*."[620] Not a wrong thing to say, as it can be a very powerful weapon, since reliance on foreign controlled networks can quickly turn into a strategic weakness when sanctions are imposed, as it now happened to be experienced by Russia. Many scholars, and not only, have affirmed that these EU responses to Russia's invasion of Ukraine were unprecedented in its size and quickness of response, showing a unique level of unanimity among its member states.[621] What makes this legally relevant is that it shows how, when Member States are

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[616] *Council Decision 2022/1907 of 6 October 2022 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine*, Official Journal of the European Union, L 259 (2022). Containing an *Annex* listing additional persons and entities together with the statement reasons. https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022D1907 Last accessed on 30 October 2025.

[617] *Council Decision 2022/346 of 1 March 2022 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine*, Official Journal of the European Union, L 63 (2 March 2022): 7.

[618] *Council Decision 2022/356 of 2 March 2022 amending Decision 2012/642/CFSP concerning restrictive measures in view of the situation in Belarus*, Official Journal of the European Union, L 67 (2022): 105.

[619] In the same time period, the Council activated *Directive 2001/55/EC* on temporary protection. This gave immediate and collective protection status to displaced persons from Ukraine. It was the first time the directive had ever been used and it showed that the EU had a commitment about protecting the rights to asylum, human dignity and non-refoulement as set forth in the Charter of Fundamental Rights of the European Union. *See* Oksana Kuzmenko et al., "Legal Aspects of Temporary Protection for Ukrainians in the Member States of the European Union," *Juridical Tribune* 13, no. 2 (June 2023): 225–237.

[620] Concetta Brescia Morra and Raffaele Felicetti, *European Strategic Autonomy and the Cross-Border Payments Market in the Era of Deglobalization* (Study requested by the European Parliament's Committee on Economic and Monetary Affairs, 2025): 16.

[621] Giselle Bosse, "The EU's Response to the Russian Invasion of Ukraine: Invoking Norms and Values in Times of Fundamental Rupture," *Journal of Common Market Studies* 62, no. 5 (2024): 1222.; also in another work of the same author, Giselle Bosse, "Values, Rights, and Changing Interests: The EU's Response to the War Against

politically aligned, the EU's foreign and security policy can operate with far fewer practical obstacles than is usually the case.

The fourth sanctions package marked a shift toward broader *sectoral economic measures*, targeting key pillars of the Russian economy through bans on state-enterprise transactions, prohibiting new energy-sector investment and imposing export bans on luxury goods.[622] It deepened the strategy of using economic measures in response to serious breaches of peremptory norms. The fifth package amplified this approach by combining major trade restrictions (including the first EU embargo on Russian coal) with financial prohibitions, transport and export bans.[623] With respect to export restrictions, as the debate of legality under international law never ends, Ventouratou notes the idea that, international law does not impose a general responsibility on states to engage in economic ties with one another, nor does it ban the imposition of those economic measures.[624] Meaning that these measures are generally regarded as compatible with international law, so, their legality often depends more on treaty obligations between the states. From the EU's perspective, this legal space allows restrictive economic measures to function as a practical means of responding to the use of force. It is against this background that, from the fourth sanctions package onwards, the process itself began to adapt to the pressures of acting quickly and coherently, with the Commission increasingly shaping the content of measures, that tested the member states political limits in advance. Concretely, this new coordination mechanism took the form of informal consultations, later referred to as the

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Ukraine and the Responsibility to Protect Europeans," *Contemporary Security Policy* 43, no. 3 (2022): 531.; The Concert of Europe: The EU's Unity over Ukraine Has Given It Surprising Heft," *The Economist*, (March 2022) https://www.economist.com/europe/the-eus-unity-over-ukraine-has-given-it-surprising-heft/21808306 Last accessed on 30 October 2025.; Luigi Scazzieri, *"Have We Passed the High-Water Mark of European Unity on Ukraine?"* European Politics and Policy, June 15, 2022. https://blogs.lse.ac.uk/europpblog/2022/06/15/have-we-passed-the-high-water-mark-of-european-unity-on-ukraine/ Last accessed on 30 October 2025.; Adriano Dirri, "The EU's Reaction to the War in Ukraine: How Democratic Is It?" in *Working Paper on European Democratic Instruments and Procedures During the Pandemic and Beyond*, ed. Cristina Fasone and Marta Simoncini (2023): 94.

[622] *Council Decision 2022/430 of 15 March 2022 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine*, Official Journal of the European Union, L 87 I (2022): 56.

[623] *Council Regulation 2022/576 of 8 April 2022 amending Regulation No 833/2014 concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine*, Official Journal of the European Union, L 111 (2022): 1 – 4.

[624] Anna Ventouratou, "Litigating Economic Sanctions," *The Law & Practice of International Courts and Tribunals* 21 (2022): 600.

"confessionals".[625] Their main goal was to discuss the possible content of the next packages, crucial for building consensus among the member states. Importantly, they reduced the likelihood of open contestation at later stages.

Considering Russia as a state responsible for the ongoing conflict, the sixth sanctions package from the EU marked a major escalation by targeting Russia's core revenue and operational capabilities through a phased oil embargo and bans on oil transport services.[626] However, after this package, internal divisions became more visible, as several member states of the EU expressed reservations and secured derogations.[627] Mentioning here, Hungary, who strongly opposed the measure on the grounds that its economy was heavily dependent on Russian pipeline oil and had limited alternatives.[628] While international law was effective enough to trigger a strong and coordinated institutional response at the EU level, it cannot eliminate the economic and political constraints faced by individual States.

Adding more to the EU sanctions discussion, they are not automatic under the Treaties and are a political choice. Specifically, Articles 28[629] and 29 TEU[630] give the Council broad discretion, meaning that the decision to sanction Russia was a choice rather than a legally "triggered" obligation; reflecting a deliberate decision to respond to the violation of Ukraine's territorial integrity.[631] And, because the EU can decide *when*, *how*, and *against whom* to impose sanctions, it can raise a lot of debate, particularly concerning their scope, proportionality and long-term effectiveness. Exactly for this aspect, about the effectiveness of sanctions in practice, the EU also moved to strengthen their enforcement. Beginning in 2022, the Commission pushed for a more

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[625] Jan Lepeu, "Ukraine, the De-Targetization of EU Sanctions, and the Rise of the European Commission as Architect of EU Foreign Policy," *International Politics* 62 (2025): 983.

[626] *Council Regulation 2022/879 of 3 June 2022 amending Regulation No 833/2014 concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine*, Official Journal of the European Union, L 153 (2022): 56, points 15–17.

[627] Dirri, "The EU's Reaction to the War in Ukraine," 94.

[628] Anna Caprile and Cristina Cirlig, "*EU Sanctions against Russia 2025: State of Play, Perspectives and Challenges*," EPRS Briefing, European Parliamentary Research Service (February 2025): 13.

[629] *Article 28(1)* TEU *"Where the international situation requires operational action by the Union, the Council shall adopt the necessary decisions."*

[630] Article 29 TEU *"The Council shall adopt decisions which define the approach of the Union to a particular matter of a geographical or thematic nature."*

[631] Lonardo, "Challenging EU Sanctions against Russia: The Role of the Court, Judicial Protection, and Common Foreign and Security Policy," (2023): 46.

uniform approach to sanctions violations across Member States,[632] a process that ultimately led in 2024 to the adoption of EU legislation harmonizing criminal offences,[633] related to *violations* of restrictive measures.[634]

In spite of the discussions on the Russian invasion against Ukraine in its different dimensions, the European Council on June 2022, recognized the *"European perspective"* of Ukraine and granted the candidate status, (and the official start of accession negotiations in June 2024) signaling long-term support, for a state whose territorial integrity and political independence continue to be under attack.[635] This step had no precedent in EU practice as for an active conflict. While it is symbolic initially, granting Ukraine candidate the Council signaled that the EU's reaction to Russia's invasion was not limited to restrictive measures, but also included institutional commitments. Importantly to the international law perspective, while parts of the country were occupied, it rejected again, any attempt of change to recognized borders by force. The European Union itself emphasized that Ukraine's accession process carries particular significance in light of "*Russia's unjustified and unprovoked war of aggression*", explicitly linking enlargement policy to the defense of Ukraine's territorial integrity.[636]

The seventh package reinforced enforcement and financial controls by banning Russian gold imports,[637] tightening deposit rules, expanding export bans and restricting port access.[638] Increasing the economic and political cost of violating international norms, especially through

[632] It must be mentioned that there was a failure on the part of the majority of Member States to incorporate *Directive 2024/1226* into their national legislation by 20 May 2025, as the final date. *See* European Commission, *Infringements Decisions: Commission Takes Action to Ensure Complete and Timely Transposition of EU Directives*, Brussels, 24 July 2025.

[633] *See* Directive (EU) 2024/1226 of 24 April 2024 on the definition of criminal offences and penalties for the violation of Union restrictive measures, *Official Journal of the European Union*, L series (29 April 2024).

[634] Maruša T. Veber, *EU Sanctions and Russia's Frozen Assets*, Study requested by the AFET Committee, European Parliament, Directorate-General for External Policies of the Union, PE 754.487 (November 2025): 19.

[635] *European Council Conclusions on Ukraine, the Membership Applications of Ukraine, the Republic of Moldova and Georgia, Western Balkans and External Relations*, Press release 611/22, 23 June 2022.

[636] *Conference on the Accession to the European Union – Ukraine: General EU Position*, AD 9/24, LIMITE, CONF-UA 2, Brussels, 21 June 2024.

[637] *Council Regulation 2022/1269 of 21 July 2022 amending Regulation No 833/2014 concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine,* Official Journal of the European Union, L 193 (2022): 15.

[638] *Council Decision 2022/1271 of 21 July 2022 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine*, Official Journal of the European Union, L 193 (2022): 204, 201.

gold, the EU attacks a *substitute currency* that Russia relied on to cushion the shock of earlier sanctions. Because as of 2021, Russia ranked second among the largest producers on the export of gold.[639]

After the eighth package which was mentioned above (together with the second package), the ninth sanctions package significantly broadened technological pressure (by cutting Russia's access to drones)[640] and financial pressure (by transactions bans).[641] This package lifts the debate on the mechanisms preventing continued violations of territorial integrity through technological means. As *President von der Leyen* noted (when presenting the nineteenth sanctions package), limiting Russia's access to key technologies was considered *"crucial"* in light of its continued military actions, because as she tried to emphasize, the actions from Russia are not *the "actions of someone who wants peace,"*[642] and the main purpose is to support compliance with international law.[643]

To add more to the main idea of these packages' bans, marking the first year of the invasion, the tenth sanctions package further intensified the tightening of export and import bans on technologies and goods essential to Russia's military and industrial capacity, adding new financial and governance restrictions.[644] The sanctions become increasingly stronger and more

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[639] Zhuldyz Kanapiyanova, "European Union's Sanction Packages against Russia: Contents and Implications," *Eurasian Research Journal* 5, no. 3 (Summer 2023): 90.

[640] *Council Regulation 2022/2474 of 16 December 2022 amending Regulation No 833/2014 concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine*, Official Journal of the European Union, L 322 I (2022): 3.

[641] Ibid., 28; *See* also *Council Decision 2022/2478 of 16 December 2022 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine*, Official Journal of the European Union, L 322 I (2022): 617.

[642] Recent events support this statement. On 10 September 2025, the EU condemned intentional drone incursions by Russia into EU airspace. According to recent reporting, Russian unmanned aerial vehicles (drones) crossed into the airspace of EU countries (notably Poland and Romania) during the attacks against Ukraine. These steps triggered NATO responses, as Poland invoked its security procedures under the alliance and both Poland and Romania reportedly scrambled jets and deployed counter drone systems. *See* Reuters, "Ukraine's Zelensky Says At least Eight Drones Targeted Poland During Russian Attack," *Reuters*, September 10, 2025. https://www.reuters.com/business/aerospace-defense/ukraines-zelenskiy-says-least-eight-drones-targeted-poland-during-russian-attack-2025-09-10/ Last accessed on 30 October 2025.

[643] *Statement by President von der Leyen on the 19th Package of Sanctions against Russia*, Brussels, 19 September 2025, STATEMENT/25/2138.

[644] *See* Directorate General for Financial Stability, Financial Services and Capital Markets Union, "EU Adopts 10th Package of Sanctions against Russia for Its Continued Illegal War against Ukraine," *News Article*, 25 February

specific in order to target and to weaken the most significant sectors of the Russian economy and defense industry.[645] Meaning, as the conflict persisted, the EU increasingly concentrated on the structural elements of Russia's technical mechanisms, moving from broad sectoral pressure to more specific measures intended at closing loopholes and restricting other important sources of income.

The eleventh sanctions package focused on trade measures, by strengthening enforcement and preventing circumvention, introducing a new "anti-circumvention" tool.[646] Since circumvention undermines the effectiveness of sanctions, most sanctions regimes include provisions intended to prohibit such practices. This tool enables the EU to impose export restrictions on third countries facilitating the supply of dual-use and military relevant goods to Russia. Although the anti-circumvention tool may affect certain international obligations, particularly under international trade law, its wrongfulness should be precluded, because as Silingardi suggests, it responds *"to an internationally wrongful act"* committed by these states and seeks to induce compliance with international law.[647] Thus, any third country circumvention efforts should be considered as wrongful acts and subsequent responses should be seen as lawful.

The twelfth sanctions package further expanded the EU's restrictive regime by adding extensive new listings, imposing major trade bans and by also including a G7-coordinated prohibition on Russian diamonds (to take away this great source of income for Russia, which is thought to be worth €4 billion a year).[648] What has created debate is the language used in Article 12(g) of *Regulation 833/ 2014*, effective from 20 March 2024, which Commission's FAQ seeks to

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2023. https://finance.ec.europa.eu/news/eu-adopts-10th-package-sanctions-against-russia-its-continued-illegal-war-against-ukraine-2023-02-25_en Last accessed on 30 October 2025.

[645] Adriano Dirri, "The EU's Reaction to the War in Ukraine: How Democratic Is It?" in *Working Paper on European Democratic Instruments and Procedures During the Pandemic and Beyond*, ed. Cristina Fasone and Marta Simoncini (2023), 93.

[646] *See* Council of the European Union, "EU Adopts 11th Package of Sanctions against Russia for Its Continued Illegal War against Ukraine," *Press Release*, 23 June 2023: on the first paragraph of trade measures. https://ec.europa.eu/commission/presscorner/detail/en/ip_23_3429 Last accessed on 30 October 2025.

[647] Stefano Silingardi, "The EU 11th and 12th Packages of Sanctions against Russia: How Far Is the EU Willing to Go Extraterritorially?" *Global Trade and Customs Journal* 19, Issue 7–8 (2024): 4.

[648] *See* Directorate-General for Financial Stability, Financial Services and Capital Markets Union, "EU Adopts 12th Package of Sanctions against Russia for Its Continued Illegal War against Ukraine," *Press Release*, 18 December 2023. https://finance.ec.europa.eu/news/eu-adopts-12th-package-sanctions-against-russia-its-continued-illegal-war-against-ukraine-2023-12-18_en Last accessed on 30 October 2025.

explain both the rationale and the precise wording.[649] This ban indicates that EU exporters must include a "no reexport to Russia" clause in all of their contracts for exporting, selling, supplying, transferring, etc. The Commission's FAQs clarifies that the so-called *"No-Russia"* clause is narrowly framed, applying only to contracts that involve the export of goods from the EU to third countries.[650] By contrast, it does not extend to supply chains or commercial relationships that take place entirely outside the EU and are governed by *Regulation 833/2014*. At the same time, Article 12(g) marks a qualitative shift in sanctions enforcement, as it transforms a previously voluntary *due diligence* practice into a binding contractual obligation for EU exporters, relying on private law mechanisms to prevent circumvention while seeking to limit concerns about excessive extraterritorial reach.

Then, two years since Russia invaded Ukraine, the thirteenth package was adopted. Among other measures, it focused on listing individuals and entities involved in the forced transfer and deportation of Ukrainian children.[651] The repeated adoption of the EU sanctions packages shows that violations of international law principles, continues to generate structured institutional responses, even in the absence of centralized enforcement, and that the EU has returned, again and again, to its legal "toolbox".

Although sanctions packages adopted after the thirteenth, up to the nineteenth, lie beyond the scope of this study (2022-2024), they nevertheless continued to reinforce and adapt the EU's restrictive measures framework, further strengthening the Union's overall response to Russia's ongoing stance on the conflict.[652] They support the long-term enforcement of sanctions tied to territorial integrity and use of force, as the need to respond rapidly to imminent crises situations

[649] Silingardi, "The EU 11th and 12th Packages of Sanctions against Russia: How Far Is the EU Willing to Go Extraterritorially?" (2024): 5.

[650] European Commission, *"'No Re-export to Russia' Clause (Article 12g of Council Regulation 833/2014): Frequently Asked Questions"*, last updated 22 February 2024. https://finance.ec.europa.eu/system/files/2024-02/faqs-sanctions-russia-no-re-export_en.pdf

[651] Directorate-General for Financial Stability, Financial Services and Capital Markets Union, "EU Adopts 13th Package of Sanctions against Russia after Two Years of Its War of Aggression against Ukraine," *News Article*, 23 February 2024. https://finance.ec.europa.eu/news/eu-adopts-13th-package-sanctions-against-russia-after-two-years-its-war-aggression-against-ukraine-2024-02-23_en Last accessed on 30 October 2025.

[652] For an overview of sanctions packages adopted after the thirteenth, *See* European Commission, "Measures Adopted since 2022". https://finance.ec.europa.eu/eu-and-world/sanctions-restrictive-measures/sanctions-adopted-following-russias-military-aggression-against-ukraine_en Last accessed on 30 October 2025.

outside the Union has grown ever more essential over time.[653] Nonetheless, reactions from Russia have been against them. The Russian Ministry of Foreign Affairs openly criticized the EU's restrictive measures as illegal under international law, framing them as unjustifiable unilateral actions against the Russian Federation.[654] The framing has always been as politically motivated pressures rather than legitimate legal responses.[655]

In this evolving context, the EU also explored new and exceptional uses of its sanction's framework. It must be mentioned here that in May 2024, the Union agreed in principle that the extraordinary revenues generated from frozen Russian central bank assets could be channeled to support Ukraine's self-defense and its recovery and reconstruction.[656] This step marked a significant development, as it extended the function of restrictive measures beyond asset immobilization, towards the potential redirection of resources to, a third state, affected by the use of force against their recognized borders. However, translating this political choice into practice proved to be complex, as it exposed persistent divisions among the Member States and highlighted even more the difficulties of securing unanimity for such unprecedented measures.[657] These tensions were mirrored externally. In December 2025, the Central Bank of the Russian Federation publicly denounced EU proposals to make use of frozen Russian state assets, characterizing them as *"illegal"* under international law and threatening legal challenges and retaliatory measures.[658]

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[653] High Representative of the Union for Foreign Affairs and Security Policy, *Annual Progress Report on the Implementation of the Strategic Compass for Security and Defense* (March 2023): 8.

[654] Ministry of Foreign Affairs of the Russian Federation, *Foreign Ministry Statement on Retaliatory Measures to the 19th EU Sanctions Package against Russia*, 31 October 2025. https://mid.ru/en/foreign_policy/news/2056844/ Last accessed on 30 October 2025.

[655] *See* Reuters, "Kremlin Says Europe Will Feel the Recoil from Its 'Illegal' Sanctions on Russia," June 29, 2025 https://www.reuters.com/world/europe/kremlin-says-europe-will-feel-recoil-its-illegal-sanctions-russia-2025-06-29/ Last accessed on 30 October 2025.

[656] Council Decision (CFSP) 2024/1470 of 22 May 2024 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine, *Official Journal of the European Union*, L series (22 May 2024) ; and Council Regulation (EU) 2024/1469 of 22 May 2024 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine, *Official Journal of the European Union*, L series (22 May 2024).

[657] Maruša T. Veber, *EU Sanctions and Russia's Frozen Assets*, Study requested by the AFET Committee, European Parliament, Directorate-General for External Policies of the Union (November 2025): 11.

[658] *See* Reuters, "Russian Central Bank Says EU Plans to Use Its Assets Are Illegal," December 12, 2025. https://www.reuters.com/business/finance/russian-central-bank-says-eu-plans-use-its-assets-are-illegal-2025-12-12/ Last accessed on 30 October 2025.

As Moseienko observes, asset freezes can function as particularly effective measures since states have a strong incentive to retain control over them until full compensation for the injury caused has been secured.[659] Put differently, even if Russian forces were to withdraw, the question of frozen state assets would not be settled automatically, since claims for reparations would continue to stand. Building on this point, Webb argues that the scale of the harm suffered by Ukraine is likely to exceed the value of the frozen state assets, meaning no repayments would be necessary, and the EU's approach may be regarded as proportionate, while is asking to induce compliance and reparation.[660] More broadly, this approach reflects an effort to ensure that Ukraine receives at least a partial measure of compensation for the losses it has endured.

Another important step was the activation of the European Peace Facility (EPF).[661] The EPF is grounded in Articles *28(1), 41(2), 42(4)* and *30(1) TEU*, which provide the legal basis for the Council to adopt decisions by unanimity in situations requiring action in the field of international security. For the first time, the EU used this instrument to deliver military equipment to a third country, via *Council Decisions 2022/338* and *2022/339*, aimed at strengthening the capabilities and resilience of the Ukrainian armed forces with both lethal and non-lethal supplies.[662] The EPF then became a central tool of EU support, with the Union allocating *€6.1 billion* in military assistance to Ukraine between 2022 and 2024.[663] As Genini notes, this EU's first off-budget instrument, quickly developed into the main channel for organizing and financing the EU's military response to Ukraine, significantly expanding the Union's ability to act under the CFSP.[664]

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[659] Anton Moiseienko, "The Freezing of the Russian Central Bank's Assets," *European Journal of International Law* 34 (2023): 1018.

[660] Philippa Webb, *Legal Options for the Confiscation of Russian State Assets to Support the Reconstruction of Ukraine*, Study for the European Parliament (February 2024): 29, 49.

[661] *Council Decision (CFSP) 2021/509 of 22 March 2021 Establishing a European Peace Facility and Repealing Decision (CFSP) 2015/528*, 2021 OJ L 102/1.

[662] Genini, "How the War in Ukraine Has Transformed the EU's Common Foreign and Security Policy," (2025): 9.

[663] *See* European Peace Facility, https://www.consilium.europa.eu/en/policies/european-peace-facility/. Last accessed on 30 October 2025.

[664] Genini, "How the War in Ukraine Has Transformed the EU's Common Foreign and Security Policy," 6.

To ensure the continuity of this support over the longer term and acting with the participation of the European Parliament on the legal bases of Articles 212 and 322(1) TFEU,[665] the Union established the *Ukraine Facility* for the period 2024–2027, providing up to *€50 billion* in financial support for Ukraine's stability, reconstruction and reforms.[666] At the same time, its design created internal debate within the Union. Concerns were raised in particular about the conditionality attached to the Facility's implementation and about the precedent it might set,[667] for future forms of accession related financial assistance.[668] Notably, we can see that the Facility increased the European Parliament's involvement, as it must now oversee how the Commission monitors Ukraine's reform progress. In this way, the EU has relied on its own legal and financial architecture to project legal standards beyond its borders, while at the same time expanding its fiscal capacity in response to the extraordinary circumstances created by the conflict.

From everything we collect and analyze from the EU actions, it is evident that the restrictive measures present clear limitations. While they can exert political and economic pressure, they cannot, on their own, ensure compliance with international law, which highlighted the need for complementary mechanisms capable of addressing the legal consequences of the use of force. One such measure was the EU's support for establishing the International Centre for the Prosecution of the Crime of Aggression (ICPA) within Eurojust in The Hague, which assists in supporting and enhancing investigations into the crime of aggression.[669] Evidence collection has become one of the main elements of the international law response to the conflict and the establishment represents a significant shift in the EU's approach to accountability.

Lastly, in November 2022, the Council launched the EU Military Assistance Mission (EUMAM – initially for 24 months) in support of Ukraine.[670] The legal basis for EUMAM Ukraine is found

[665] Adriano Dirri, "The EU's Reaction to the Russian Invasion of Ukraine: Legal Challenges and the Role of the European Parliament," *NOMOS – Le attualità nel diritto* 3 (2024): 2.

[666] European Commission, *The Ukraine Facility,* https://commission.europa.eu/topics/eu-solidarity-ukraine/eu-assistance-ukraine/ukraine-facility_en Last accessed on 30 October 2025.

[667] *Regulation (EU) 2024/792 of 29 February 2024 Establishing the Ukraine Facility*, Brussels, 29 February 2024.

[668] Dirri, "The EU's Reaction to the War in Ukraine," 97.

[669] Monica den Boer et al., "Collecting Evidence of International Crimes in Ukraine: The Role of the Royal Netherlands Marechaussee," in *Reflections on the Russia–Ukraine War*, ed. M. Rothman, L. Peperkamp, and S. Rietjens (Leiden University Press, 2023): 464.

[670] The EU also undertook other security and defense initiatives during this period, such as adopting the *Strategic Compass* in March 2022 and strengthening cooperation within the *Common Security and Defense Policy*. Through

in *Articles 42(4)* and *43(2) TEU*, which allow the Council, acting unanimously, to establish CSDP missions that can include training, advisory functions and other forms of military assistance to non-EU states. This mission was created to train and prepare the Ukrainian armed forces, to help them defend Ukraine's territorial integrity within its internationally recognized borders.[671]

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it, the EU agreed for the first time, the erosion of the *International Liberal Order* as a consequence of the conflict in Ukraine. This refers to an open*, rules-based international order*, grounded in institutions like the United Nations and centered on norms of multilateral cooperation, where the behavior of states is shaped less by power and more by the shared principles. *See* for more, John Ikenberry, "The Future of the Liberal World Order," *Foreign Affairs* 90 (2011): 56.; Davide Genini, "How the War in Ukraine Has Transformed the EU's Common Foreign and Security Policy," *Yearbook of European Law* (2025): 4.

[671] *Council Decision (CFSP) 2022/1968 Establishing the European Union Military Assistance Mission in Support of Ukraine (EUMAM Ukraine)*, 17 October 2022.

CHAPTER 5: EVALUATING THE EFFECTIVENESS OF INTERNATIONAL LAW IN THE RUSSIA-UKRAINE CONFLICT

> *"Almost all nations observe almost all principles of international law and almost all of their obligations almost all of the time."*
>
> *-Louis Henkin, "How Nations Behave."*[672]

It is intentional that this chapter opens with Henkin's famous citation in his work of 1968, *How Nations Behave.* When something is in line and following the routine, quiet and lawful way, it can go overlooked. By this meaning, in the world that we are living today, most borders are not invaded; most treaties are kept; most diplomatic rules are respected, and most obligations are fulfilled daily. Yet, as Henkin's stance in the same work shows, this part of the reality of the international legal order should not mislead us into assuming that it is perfectly stable or obeyed.

This means that, we can discuss that, *yes*, Russia violated international law, but that alone does not prove that international law failed. If one treats effectiveness as prevention, the picture is hard to defend. A major armed attack happened. It continued. No legal statement reversed it. That point is not in dispute. So, if one insists on that metric, the chapter ends before it starts.

5.1 Normative Effectiveness

While the ongoing conflict has highlighted many violations from 2022 to 2024, the beginning of the conflict has a special significance for the "illegality" it may have regarding the use of force and territorial integrity, as enshrined in *Article 2(4)* of the UN Charter and in customary international law. Legally, one of Russia's claims was that its actions could be justified under *Article 51* of the UN Charter, the right to [collective] self-defense and claimed it was responding to a "genocide" against Russian speakers in Eastern Ukraine.[673] However, no credible evidence supported this claim, as on March 16, 2022, the ICJ issued a provisional order instructing Russia

[672] Louis Henkin, How Nations Behave: Law and Foreign Policy (Columbia University Press, 1968): 179. Henkin is in clear support of the notion that international law is important and effective. *See also* Kal Raustiala, "Compliance &(and) Effectiveness in International Regulatory Cooperation," *Case Western Reserve Journal of International Law* 32, no. 3 (2000): 397.

[673] Joseph M. Isanga, "Ukraine-Russia Armed Conflict: Holding the U.N. Security Council Veto-Wielding and Nuclear-Armed Russia Accountable and Upholding International Rule of Law", 60 *Tulsa Law Review* 377 (2025): 385.

to suspend its military operations, citing a lack of evidence for genocide and violation of international law.[674]

As seen throughout this paper, Putin has made a lot of statements which, while they may seem like politically oriented, they have been used to justify self-defense as a "proof." In the letter sent to the Security Council,[675] explaining the reasons of self-defense, Putin only attached the speech he delivered on 21 February 2022 and provided no clear legal justifications.[676] Legally speaking, even if evidence existed of attacks against Russian nationals in the Donbas region, such circumstances would not give rise to a right of collective self-defense under *Article 51* of the United Nations Charter.[677] This is because collective self-defense is limited to assistance provided to a *sovereign state* that has been subject to an armed attack, and neither Donetsk nor Luhansk were recognized at the time as states by the United Nations.[678] This is noted in the ICJ 2004 Advisory Opinion on the *Construction of a Wall in the Occupied Palestinian Territory,* where the Court clarified the scope of *Article 51* by emphasizing that the right of self-defense arises only in response to an armed attack carried out by one *"State against another State,"*[679] which these enteties do not fulfill as based on *Article 1* of the 1933 *Montevideo Convention on the Rights and Duties of States.*[680] As a result, claims based on their defense fall outside the scope of *Article 51* as a matter of international law, and unilateral recognition of these entities by Russia cannot generate legal entitlements capable of displacing in any form Ukraine's territorial integrity.

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[674] *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Aggression* (Ukraine v. Russian Federation), Request for the indication of provisional measures. (Order of 16 March 2022): para. 86*(1).*

[675] Circulated as Security Council document *S/2022/154,* 24 February 2022.

[676] *See* Vladimir Putin, "Address by the President of the Russian Federation," President of Russia (official Kremlin website), published February 21, 2022. <http://en.kremlin.ru/events/president/transcripts/67828> Last accessed on 30 October 2025.

[677] Adnan Mahmutovic, "Did Russia Invade International Law in Ukraine," *Access to Justice in Eastern Europe*, Special Issue (2023): 33.

[678] Syria recognized their independence in June 2022; North Korea recognized their independence in July 2022; Abkhazia and South Ossetia as Russian-backed regions also recognized them in February 2022.

[679] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ Reports 2004, 194, para. 139.

[680] Masahiko Asada, "The War in Ukraine under International Law: Its Use of Force and Armed Conflict Aspects," *International Community Law Review* 26, no. 1-2 (2024): 8.

As a matter of positive law, Ukraine's territorial integrity was not contingent on any consent, recognition, or effective control, but derived from its status as a sovereign state with internationally recognized borders. The attempted secession of Donetsk and Luhansk (but also the later Kherson and partial Zaporizhzhia) followed by their unilateral recognition, did not alter in any form Ukraine's territorial status. The territory of Ukraine, (including here also the regions as part of it), has been recognized by Russia as such since the signing of the Budapest Memorandum of 1994.[681]

On the Russia's individual self-defense claim it can also be mentioned the threat posed by NATO's expansion, which has been a subject of debate for many years. Considering it *"a matter of life and death,"* Putin highlighted that the *"red line"* was crossed by NATO.[682] This rhetoric sought to reframe the invasion as a defensive response to an allegedly imminent danger. Similarly, Russian strategic discourse after February 2022 reinforced this narrative. Sergey Karaganov, a political theorist and foreign policy thinker, noted after the 2022 use of force by Russia, that NATO was a *"political cancer"* and warned that the West's expansion threatened Russia's security, and that Ukraine had *"no right to be considered a sovereign state."*[683]

The pre- conflict conduct may be characterized as an unlawful threat of force within the meaning of *Article 2(4)* of the UN Charter.[684] In its resolution of 16 December 2021, the European Parliament assessed the large-scale deployment of Russian forces near Ukraine's borders as potentially constituting, either preparations for a military aggression, or a threat of the use of

[681] *Article 1* of the Joint Declaration of 5 December 1994 at Budapest by the leaders of the Russian Federation, Ukraine, the United Kingdom of Great Britain and Northern Ireland and the United States of America, as *UN Doc. A/49/765,* 5 December 1994, notes that: *"The Russian Federation, the United Kingdom of Great Britain and Northern Ireland and the United States of America reaffirm their commitment to Ukraine, in accordance with the principles of the Final Act of the Conference on Security and Cooperation in Europe, to respect the independence and sovereignty and the existing borders of Ukraine." See* also the work of, Claus Kreß, *The Ukraine War and the Prohibition of the Use of Force in International Law*, Occasional Paper Series no. 13 (Brussels: Torkel Opsahl Academic EPublisher, 2022): 4.

[682] *See the official statement at* The Kremlin, "Address by the President of the Russian Federation", 24 February 2022, http://en.kremlin.ru/events/president/transcripts/67843 Last accessed on 30 October 2025.

[683] *See* The Moscow Times, "Sanction the Right People in Russia," by Vladislav Inozemtsev, 28 April 2022 https://www.themoscowtimes.com/2022/04/28/sanction-the-right-people-in-russia-a77529 Last accessed on 30 October 2025.

[684] *See* Sava Janković and Volker Roeben, "The Threat of Russia's Force in Ukraine," *Journal on the Use of Force and International Law* 11, no. 1–2 (2024): 91

force against Ukraine, in violation of Russia's international obligations.[685] The deployment of Russian armed forces along Ukraine's borders, combined with coercive political demands and warnings of "military-technical measures," signaled a form of "readiness" to resort to force in order to influence Ukraine's choices.[686] In the absence of any lawful justification, the force being threatened would itself have been unlawful, rendering the threat likewise prohibited.[687] The Helsinki Final Act and the Vienna Document, while not constituting binding treaty law in the strict sense, establish politically binding commitments aimed at reducing the risk of armed conflict through military transparency, which were not respected.[688] There is also a distinction between political influence and coercion, where influence leaves the target state with many choices, and coercion does not. A threat or use of military force in violation of *Article 2(4)* in order to affect a state's external interests therefore may constitute coercion in the strict legal sense. In this respect, the threat linked to Ukraine's desire for closer alignment with NATO (also with the EU), followed by the actual use of force when those demands were not met, may represent a clear instance of coercion directed at another state's external affairs.[689] In this sense *Article 2(4)* of the Charter is not only about prohibiting force that may change borders, as it is mostly discussed in this thesis, but also about the freedom of states to make decisions concerning their external relations without being subjected to any armed pressure.

In *Nicaragua v. United States*, the ICJ highlighted that the principle of non-intervention *"forbids all States or groups of States to intervene, directly or indirectly, in the internal or external affairs*

[685] European Parliament, *Resolution of 16 December 2021 on the Situation at the Ukrainian Border and in Russian-Occupied Territories of Ukraine* (2021/3010(RSP)), 16 December 2021, para. C and D.

[686] *See* Andrew Roth, "Russia Issues List of Demands It Says Must Be Met to Lower Tensions in Europe," The *Guardian*, December 17, 2021. https://www.theguardian.com/world/2021/dec/17/russia-issues-list-demands-tensions-europe-ukraine-nato Last accessed on 30 October 2025.

[687] The notions of a "threat" and "use of force" are equivalent to each other and if the actual use of force was unlawful in a particular situation, for any reason that there can be, the threat of using force would also be unlawful. International Court of Justice, *Legality of the Threat or Use of nuclear weapons*, (July 8, 1996) 63, para. 48.

[688] These instruments require participating States, *inter alia*, to refrain from getting into major military maneuvers without prior notification, to invite observers to certain exercises, to permit joint inspections and verification missions, and to provide information concerning force levels and armaments. *See* Sava Janković and Volker Roeben, "The Threat of Russia's Force in Ukraine," *Journal on the Use of Force and International Law* 11, no. 1–2 (2024): 91.

[689] Marko Milanovic, "Revisiting Coercion as an Element of Prohibited Intervention in International Law," *American Journal of International Law* 117, no. 4 (2023): 603.

of other States."[690] The Court further clarified that not every use of force automatically qualifies as an armed attack capable of triggering the right of self-defense, and to be considered as such, must reach a particular *"scale and effect."*[691] Consequently, such actions need to be analyzed under customary international law through necessity, proportionality, immediacy and the reporting to the Security Council.

First, individual self-defense requires an armed attack to be directed against Russia. Collective self-defense requires an armed attack against another state, which then requests assistance.[692] To translate these "metrics" to the present conflict, we understand that such armed attack by Ukraine never occurred; and Donetsk and Luhansk did not possess statehood under international law. So, both individual and collective self-defense failed at the first step.

Secondly, as discussed in Chapter 2, we have evidence concerning the doctrine of anticipatory self-defense. The Secretary-General's 2005 report *In Larger Freedom*, creates a gap in the translation of the Charter, as it accepted that anticipatory self-defense, could be considered lawful where it is strictly limited by the requirement of imminence.[693] This is confusing, because the idea of the Charter was indeed to avoid in any form of *"anticipatory self-defense."*[694] Even if one were to accept, hypothetically, that anticipatory self-defense may exist as an exception, Russia has given no credible evidence that Ukraine launched or was about to launch an armed attack (against Russia). Thus, an imminent armed attack is to be refused. This conclusion is reinforced by the absence of any evidence prior to the invasion that NATO was preparing an imminent armed attack against Russia; a fact reinforced even more by the limited NATO military

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[690] *Military and Paramilitary Activities in and Against Nicaragua* (Nicar. v. U.S.), Judgment, 1986 I.C.J. Rep. 14, para. 205.

[691] Vita Upeniece, "Conditions for the Lawful Exercise of the Right of Self-Defense in International Law," *SHS Web of Conferences* 40 (2018): 1.

[692] Such requests have been common in relevant state practice, since from the inception of the UN. *See,* James A. Green, "The 'Additional' Criteria for Collective Self-Defence: Request but Not Declaration," *Journal on the Use of Force and International Law* 4, no. 1 (2017): 6.; *See* also, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)* (Merits), Judgment, I.C.J. Reports 1986, 14, para. 165 and 199.

[693] Matthew C. Waxman, "Regulating Resort to Force: Form and Substance of the UN Charter Regime," *European Journal of International Law* 24 (2013): 160.; *Also mentioned by* James A. Green, "The 'Ratione Temporis' Elements of Self-Defense," *Journal on the Use of Force and International Law* 2, no. 1 (2015): 17.

[694] Christian Marxsen, "Armed Attack," in *Max Planck Encyclopedias of International Law*, last updated May 2025. https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e241 Last accessed on 30 October 2025.

presence along its eastern frontiers when compared to the large-scale Russian troop build-up along Ukraine's borders.[695]

Thirdly, necessity requires that the use of force be a last resort. Claims relating to NATO expansion or alleged mistreatment of populations do not satisfy the necessity requirement, as they do not amount to armed attacks. Diplomatic engagement and UN mechanisms remained available and Russia did not choose to use them. As confirmed by the ICJ in the judgment of *Armed Activities on the Territory of the Congo*, security concerns that are essentially preventative in nature are insufficient to sustain a claim of self-defense.[696] Accordingly, the necessity criterion was not met.

Fourth, proportionality has to do with how far the "use of force" may go. Even in the case where self-defense is justified, force must be confined to what is strictly necessary to repel the attack. In the case of this conflict, the scale of force used by Russia indicates objectives extending very well beyond repelling any attack, thereby putting to rest any claim of proportionality.

Fifth, regarding immediacy, where the response to self-defense must be directly after the initial armed attack; it clearly does not apply to Ukraine's case as there was no attack against Russia. To be distinguished (because they may sometimes be mistaken as the same), imminence concerns the timing of the threat, while immediacy concerns the timing of the response. Russia's actions satisfy neither requirement, having no lawful basis for self-defense.

Finally, *Article 51* requires that measures taken in self-defense be "immediately" (and no other condition mentioned) reported to the Security Council, and this requirement generally it is accepted as of a material nature.[697] While not constitutive of the right itself, reporting is an important indicator of a state's good-faith reliance on self-defense. *Article 51* does not prescribe the form that notification must take, and past practice before the UNSC, shows that reporting

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[695] James A. Green, Christian Henderson, and Tom Ruys, "Russia's Attack on Ukraine and the *Jus ad Bellum*," *Journal on the Use of Force and International Law* 9, no. 1 (2022): 10-11.

[696] *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, ICJ Reports 2005, 168, para. 143.

[697] Meaning that, although *Article 51* imposes an obligation of immediate reporting, it is generally accepted that *non-compliance* with this requirement does not, by itself, render an otherwise lawful exercise of self-defense unlawful; even though in some way it may significantly weaken the credibility of the claim. *See* James A. Green, "The 'Ratione Temporis' Elements of Self-Defence," *Journal on the Use of Force and International Law* 2, no. 1 (2015): 10.

may occur also orally, as illustrated by the United Kingdom's oral notification to the Council during debates on its collective action in Jordan (1958).[698] Russia therefore, on the compliance aspect, had the opportunity to notify the Council of any claim to self-defense during the numerous Council meetings held before the invasion of Ukraine (given the deployment of Russian troops along Ukraine's borders since December 2021); yet chose not to do so, reinforcing the conclusion that its later *Article 51* notification was invoked only after the use of force had already started in Ukraine.[699]

Failure to satisfy any one of these requirements may be considered as sufficient to invalidate a claim of self-defense, and it looks like Russia has not ticked any of the boxes governing the lawful exercise of self-defense under international law. This emphasizes the need to closely review the limits of the self-defense exemption, given how such claims may be used to justify aggression. At the same time, it must be acknowledged that such interpretations have deep roots; remembering here the debates when the US justified its *post-9/11* military interventions under a broad interpretation of self-defense, particularly in Afghanistan (2001- widely accepted *initially*)[700] and Iraq (2003 - deeply contested, on a weak self-defense claim),[701] mirroring the same pattern we are seeing in Russia's stance (being contested).[702]

Consequently, in light of all the discussion above, where the conditions for lawful self-defense are not met, the use of force cannot be justified under *Article 51* and must be characterized as a violation of the prohibition on the use of force. Conversely, Ukraine has the full right to defend itself, including through collective self-defense, following the events of February 2022, as the

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[698] *See* UN Security Council, *Official Records*, 13th year, 831st meeting, July 17, 1958, 5–7, UN Doc. S/PV.831. Also, orally reporting it is mentioned in the work of Green, while analyzing non-traditional forms of reporting, James A. Green, "The Article 51 Reporting Requirement for Self-Defense Actions," *Virginia Journal of International Law* 55 (2015): 12.

[699] Even on 23 February 2022, the day before the invasion, Russia participated in the Security Council meeting and thus, had a further opportunity to invoke Article 51, whether orally or otherwise, yet, made no claim of self-defense prior to the start of the use of force. While at the same time, importantly, it denied any plans for a large-scale invasion.

[700] Devika Hovell and Michelle Hughes, "Self-Defense and Its Dangerous Variants: Afghanistan and International Law," *LSE Public Policy Review* 2, no. 3 (2022): 5.

[701] Nsama Jonathan Simuziya, "The (Il)Legality of the Iraq War of 2003: An Analytical Review of the Causes and Justifications for the US-Led Invasion," *Cogent Social Sciences* 9 (2023): 5.

[702] Andrea Maria Pelliconi, "Self-Defense as Remedial Self-Determination: Continuity in Russian Narratives to Justify Imperialism and the Use of Force," *Netherlands International Law Review* 71 (2024): 243.

conditions for lawful self-defense are all met.[703] This has not been treated as exceptional or controversial in practice, but has been broadly accepted as in accordance with *Article 51* of the UN Charter.[704]

If the main spectrum of effectiveness of international law was to see if the conflict was stopped, then the answer would be quite clear: *No.* As we still have an ongoing conflict, and there would be no point in studying international law if the present reality was the mere indicator of its effectiveness. That is why, normative effectiveness does not look on whether international law stopped this conflict, but at whether it is to be considered as authoritative, and if it has any relevance and interpretive power, even in the face of its principle's violation.

Starting with the role of legal norms themselves as standards of evaluation in practice, a *norm* is not effective because reality conforms and matches it perfectly. Nor because it exists *a priori* in abstraction. Rather, a norm is effective when it operates within social practice while retaining enough distance from that practice to assess and judge it. In this sense, although some patterns of behavior may influence how norms are interpreted, they do not collapse into behavior. As van Dijk observes, the gap between what *is* and what *ought to be* is exactly where normative effectiveness lives.[705] He further makes an important distinction between the *internal* effectiveness of a norm, which is the capacity of the norm to operate within the legal system by shaping legal reasoning, interpretation, and judgment; and the *external* effectiveness of the norm, which is measured by the extent to which the norm can produce concrete behavioral or social change.[706] This distinction is relevant for the present study, as it allows effectiveness to be assessed without reducing it only to compliance outcomes.

We mentioned above whether international law has to be considered as authoritative. Mentioning here Gorobets, authority it is understood as *"a special kind of relation between the law and its*

[703] Joseph M. Isanga, "Ukraine–Russia Armed Conflict: Holding the U.N. Security Council Veto-Wielding and Nuclear-Armed Russia Accountable and Upholding International Rule of Law," *Tulsa Law Review* 60, no. 3 (2025): 405.

[704] Kersten Lahl, "Western Weapons for Ukraine: Road to Escalation or End of the War?" in *Europe and the War in Ukraine: From Russian Aggression to a New Eastern Policy*, ed. László Andor and Uwe Optenhögel (Foundation for European Progressive Studies, 2023): 52.

[705] Pieter van Dijk, "Normative Force and Effectiveness of International Norms," *German Yearbook of International Law* 30 (1987): 9.

[706] Ibid., 22. He notes that international legal norms operate at different levels: as rules, principles, and policies; and their effectiveness in practice may therefore persist even where specific rules are violated.

addressees."[707] When speaking of normative effectiveness, we must first stop on distinguishing, *normative power* vs. *normative authority*, as they can be quite different in their analytical sense. Normative authority concerns *why* international law is accepted as binding, while the normative power concerns *what international law is able to do* once that authority is recognized. In this sense, the violations of the core principles of international law are a great test for power, but also to "make sure" again that their authority is untouched by this new conflict. A system can lose authority only when norms are rejected as irrelevant or illegitimate by everyone and cease to justify conduct in its terms. By contrast, normative power refers to the practical capacity of legal norms to influence conduct, and, as Raz notes, those subject to the law may reject or deny that claim, with outcomes instead shaped by material power rather than normative acceptance.[708]

Recognizing this difference, the Russia and Ukraine conflict has asserted the normative effectiveness of international law. First, because Russia all the way has offered *legal* narratives, based on self-defense, driven by NATO expansion, protection of populations in Donetsk and Luhansk, and allegations of genocide.[709] This is undoubtedly evidence that legal norms continue to function as authoritative reference points in practice, even for the violator. Although this is not uncommon, as states almost always seek to provide legal justification for their use of force rather than choosing to remain silently non-reacting.[710] It is still demonstrating that operating outside the language of international law carries a heavy legitimacy cost. Even historical cases involving limited or contested justifications, such as the protection of Kurds in northern Iraq in 1991 or Turkey's incursions into Iraq, confirm that complete abandonment of legal reasoning remains rare and exceptional.[711] This author acknowledges that, it would be pretty naive to treat invocation as a validation in itself, given that the persistence of legal language does not erase the material consequences of its violation, nor does it resolve the tension between norm "life and death". But, from the normative authority perspective, the need to argue legality it is self-

[707] Kostiantyn Gorobets, "The International Rule of Law and the Idea of Normative Authority," *Hague Journal on the Rule of Law* 12 (2020): 237.
[708] Joseph Raz, "Why the State?" in *In Pursuit of Pluralist Jurisprudence*, ed. Nicole Roughan and Andrew Halpin (Cambridge: Cambridge University Press, 2017): 146.
[709] Anne Peters, "The Russian Invasion of Ukraine: An Anti-Constitutional Moment in International Law?" *Ruch Prawniczy, Ekonomiczny i Socjologiczny* 86, no. 2 (2024): 10.
[710] James A. Green, Christian Henderson, and Tom Ruys, "Russia's Attack on Ukraine and the *Jus ad Bellum*," *Journal on the Use of Force and International Law* 9, no. 1 (2022): 29.
[711] Christine Gray, "International Law and the Use of Force", *(Oxford University Press, Second Edition 2004*): 27.

assuring for international law, because as Schmitt notes, its justifications show that the law is not *"irrelevant to them."*[712]

At the same time, the conflict exposes the limitations of international law's normative power, as long as the legal norms have not prevented the use of force against Ukraine, nor have they secured immediate, or even subsequent compliance by the violating state. However, international responses are another indicator to look into. Given this, what has showed a continued normative force is that regardless of the facts on the ground, no UN member state other than Russia has recognized the attempted annexation of Ukrainian territory, notwithstanding some isolated recognitions of separatist entities (e.g., Syria as a UN member). The *"anti-annexation"* rule remained quite strong, as UNGA *ES-11/4* condemned the attempted annexation of Donetsk, Kherson, Luhansk, and Zaporizhzhia and reaffirmed Ukraine's territorial integrity.[713] In accordance with the principle of *ex injuria jus non oritur*, unlawful acts do not generate lawful rights, and therefore Russia's use of force cannot create a new legal status for occupied territories.[714] States and international organizations continued to treat occupied territories as legally Ukrainian despite prolonged control by Russia. Indicating that norms continued to structure legal status even when enforcement failed.

Under Article *41(2)* of ARSIWA, states cannot recognize Russian annexation as lawful, without themselves committing an internationally wrongful act.[715] This may be also because in the case where the community of states allows Russia to take over Ukraine, it creates the environment to encourage the use force to contest the borders of other states, consequently bringing back the *"violent era"* of world war.[716] Thus, it is in the best interest of every state to give international

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[712] Michael N. Schmitt, "Year Ahead – Does international law still matter in Ukraine?" *Lieber Institute*, 3 January 2023. https://lieber.westpoint.edu/does-international-law-still-matter-in-ukraine/ Last accessed on 30 October 2025.

[713] Katie Hetherington, Sindija Beta, and Paul R. Williams, *The Legal Case for Ukraine's Territorial Reintegration* (February 13, 2025). https://www.publicinternationallawandpolicygroup.org/lawyering-justice-blog/2025/2/13/legal-basis-for-ukraines-territorial-reintegration Last accessed on 30 October 2025.

[714] Andrea Logan, *Ukraine Symposium – War Termination: Legal Implications for International Security* (July 21, 2025) https://lieber.westpoint.edu/war-termination-legal-implications-international-security/ Last accessed on 30 October 2025.

[715] *See* Jens Iverson, "Why Ukraine and the International Community Should Demand that Russia Renounce Territorial Expansion," *OpinioJuris* (2025). https://opiniojuris.org/2025/12/15/why-ukraine-and-the-international-community-should-demand-that-russia-renounce-territorial-expansion/ Last accessed on 16 December 2025.

[716] Frederick V. Perry, "The Russian Invasion of Ukraine and the Tottering Principles of International Law: Russia's Assault on World Norms," *Wisconsin International Law Journal* 40, no. 3 (2023): 333.

law its deserved authority, and to respect its principles, for their own recognized borders safety. *"Even in an era of rising authoritarianism,"* as Ginsburg notes, the prohibition on territorial conquest retains wide acceptance precisely because it serves both democratic and authoritarian states.[717] In the end, it does not matter as long as their preservation remains in the collective interest of states.

What needs to be emphasized is that from the first days of the conflict, the central legal characterization, as "violation of *Article 2(4)* of the UN Charter", became the frame of international debate. Starting with UNGA *ES-11/1*, everything became clearer, because such supermajority votes (of 141 states voting in favor, 5 against, 35 abstaining and 12 absent) even from a blockage because of veto power, can only be seen as signaling of normative consensus. Once again it illustrated how normative authority of international law can be reaffirmed rapidly. The speed and consistency with which Russia's arguments were rejected by states and institutions therefore matters, as international law did not fragment under such pressure from a state with great power. Simply put, Russia's legal justifications failed to generate normative ambiguity, as there was no sustained counter-narrative capable of competing with the "orthodox" reading of the law.

Although Russian law and official discourses label the conflict as a *"special military operation,"* (as seen from the so-called *"wartime censorship law"*) Russia has undertaken actions that may be legally characteristic of an armed conflict, including the troop deployments, nationwide mobilization measures, territorial integrity violation, and not forgetting the use of heavy weapons.[718] If analyzed under international humanitarian law, the existence of an armed conflict is determined by factual conditions rather than the political *"labels"* that may be used by officials;[719] consequently meaning that the applicable legal framework is triggered by the facts of the conflict and organization of the parties, not by how a state chooses to "describe" them

[717] Tom Ginsburg, "Article 2(4) and Authoritarian International Law," *AJIL Unbound* 116 (2022): 134.
[718] *See for all this discussion* Dagmara Moskwa, "'For We Are One People': Russo–Ukrainian War in V. Putin's Russia's Official Discourse," *Studia Polityczne* 53, no. 3 (2025): 59-74.
[719] *See* Rene Värk, "Russia's Legal Arguments to Justify Its Aggression Against Ukraine," *International Centre for Defense and Security*, November 2022: 7-8. https://icds.ee/wp-content/uploads/dlm_uploads/2022/11/ICDS_Analysis_Russias_Legal_Arguments_to_Justify_its_Aggression_Against_Ukraine_Rene_Vark_November_2022.pdf

domestically.[720] Underscoring the continued importance that international law in regulating the use of force. Even Russia's own legal system has historically acknowledged the significance of international law, incorporating international legal norms into its constitutional framework and recognizing their relevance within domestic legal discourse.[721]

Against this background, these claims were to be considered as weak on their merits. As some scholars note, in a more background notice, maybe the point of these legal "justifications" was on a more "manipulative" specter, to introduce in a way *"uncertainty",* and maintain enough legal framing to limit any punitive Western responses.[722] Alternatively, as Polianskii adds, Russian decision-makers may have operated on the assumption that Western states would ultimately prioritize stability and self-interest over enforcement, believing that Ukraine was *not "sufficiently important"* to justify political and economic costs.[723] Indeed, as Ginsburg notes, it may also be a trend towards a more *"authoritarian international law.*"[724] Either way, the consequences are the ones that matter. The ICJ has made it clear in *Bosnia and Herzegovina v. Serbia and Montenegro Case*,[725] that states remain bound to act within the limits permitted by international law, even when invoking the prevention of serious international crimes.[726] Concluding that *a "state may not claim to enforce international law by violating international*

[720] *See all the work of Vite for more focus on international humanitarian law,* Sylvain Vité, "Typology of Armed Conflicts in International Humanitarian Law: Legal Concepts and Actual Situations," *International Review of the Red Cross* 91, no. 873 (March 2009): 72.

[721] Joseph M. Isanga, "Ukraine–Russia Armed Conflict: Holding the U.N. Security Council Veto-Wielding and Nuclear-Armed Russia Accountable and Upholding International Rule of Law," *Tulsa Law Review* 60, no. 3 (2025): 379.

[722] *See* Adnan Mahmutovic, "Did Russia Invade International Law in Ukraine," *Access to Justice in Eastern Europe*, Special Issue (2023): 33.; Vojtěch Bahenský, "Can 'Realists' and 'Hawks' Agree? Half-Measures and Compromises on the Road to Invasion of Ukraine," *Central European Journal of International and Security Studies* 16, no. 3 (2022): 62.

[723] Mikhail Polianskii, "Inside Vladimir Putin's Hall of Mirrors: How the Kremlin's Miscalculation of Western Resolve Emboldened Russia's Invasion of Ukraine," *Nationalities Papers*, published online by Cambridge University Press (2024): 11.

[724] Tom Ginsburg, "Article 2(4) and Authoritarian International Law," *AJIL Unbound* 116 (2022): 130; *See* also from the same author a later work of his with the same title, Tom Ginsburg, "Authoritarian International Law?" *American Journal of International Law* 114, no. 2 (2020): 221.

[725] *See* Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, I.C.J. Reports 2007, p. 221, para. 430.

[726] *Written Statement of Observations and Submissions on the Preliminary Objections of the Russian Federation*, *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, International Court of Justice (3 February 2023): 73, para. 130.

law."[727] Thus, Russia cannot claim to enforce international law by violating international law, as the normative structure is quite clear.

While on the ICJ analysis, in its March 2022 order on provisional measures, the Court directly addressed Russia's genocide justification and found it legally unsustainable, and although the order did not secure compliance, its normative significance lies elsewhere, given the fact that it prevented the emergence of a competing legal interpretation capable of weakening the prohibition on the use of force. The ICJ thus functioned as a stabilizing authority for the international law effectiveness, and as it has been clear from the case of *Nicaragua v. United States*, that while a violation of recognized rule may happen, it does not lead to an end of its authority.[728]

To conclude, normatively, international law, framed the violations as *unlawful* and resisted any attempt to see them as acceptable conduct (even if it did not prevent the violation). The conflict also exposed a deeper tension, that international law can have normatively authoritative and discursive dominance while still being ignored; as not necessarily "clear" norms translate into norm internalization. Normative effectiveness, therefore, emerges as a necessary but insufficient condition for the broader picture of effectiveness. Yet, Pantazopoulos notes, that as long as international legal actors operate within the accepted boundaries of legal argumentation, their conduct does not in itself constitute a systemic challenge to the international legal order.[729]

The law "knows" what has happened, says so clearly, and is widely believed, but the challenge lies in consequences. This author emphasizes the idea that the law did not fail because it was unclear, despite the many scholarly debate on the absence of a clear definition of what the prohibition of the threat and use of force is;[730] it failed because it confronted a political reality it

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[727] Ibid.

[728] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States),* Judgment, 1986 I.C.J. 14 (June 27). *See* Noah Jager, "A law without teeth? The limits and relevance of UN Article 2(4)" The *War Room*, 7 August 2025. https://warroom.armywarcollege.edu/articles/un-article-2-4/ Last accessed on 30 October 2025.

[729] Stavros Evdokimos Pantazopoulos, "Is International Law International? Exploring Its Normative Underpinnings," *Questions of International Law (QIL), Zoom-in* 54 (2018): 12.

[730] *See* Sebastian Heselhaus, "International Law and the Use of Force," in *Encyclopedia of Life Support Systems – Sample Chapters (*EOLSS Publishers), 7, https://www.eolss.net/sample-chapters/c14/E1-36-01-02.pdf; The military buildup along Ukraine's borders in late 2021 and early 2022 may be considered as a threat to use force, so its definition has the same importance as the use of force. Sava Janković and Volker Roeben, "The Threat of Russia's

was never designed to dominate. This conclusion aligns with Dijk's perspective mentioned at the start, on internal and external effectiveness. Applied to the conflict, seen from the perspective of international law principles, they proved to be externally ineffective in preventing and stopping the use of force or the violation of Ukraine's territorial integrity. Internally, however, those same principles showed significant effectiveness by continuing to structure legal argumentation. In this sense, condemnation played a central role in revealing the internal normative effectiveness, as Russia's actions were articulated explicitly through the language of international law.

5.2 Compliance Effectiveness

Compliance here must be understood into ***(****A)* Russia, *(B)* Ukraine, and *(C)* third states. While *Chapter 4* considered how international organizations engaged with issues of compliance in ways specific to their respective mandates, the focus here is on how states themselves aligned their conduct with international law.

This part should start with the hard truth, which is the continuing *non-compliance* (to stop the conflict) of the violator. International law's compliance effectiveness in affecting Russia's actions appears limited at the most direct level; given the fact that Russia did not comply with any of the legal signals in the 2022–2024 period, and continues to do so, as of late 2025. While this thesis rejects *obedience* by the primary violator as a sufficient measure of effectiveness, it does not treat compliance as irrelevant. To situate the analysis in relation to the conflict's territorial dimension, a visual overview of the internationally recognized borders and areas of factual control is provided in ***Appendix A***.

Force in Ukraine," *Journal on the Use of Force and International Law* 11, no. 1–2 (2024): 91.; To add, IO'S have confirmed that the threat of use of force is illegal when it violates the UN Charter or is used coercively against another state, and this may be sufficient for their legal importance. *See* International Court of Justice, *Legality of the Threat or Use of nuclear weapons*, Advisory Opinion, July 8, 1996: p. 44; United Nations General Assembly, *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations,* UNGA Res. 2625 (XXV), October 24, 1970: 123; United Nations Security Council, *Resolution 487 (1981),* June 19, 1981, S/RES/487: 10. *See also* for the threat of use of force, Oliver Corten, "The Law against War: The Prohibition on the Use of Force in Contemporary International Law" (2021):110. Given the fact that the ICJ has also pointed out in its *Advisory Opinion on the Legality of the threat or use of nuclear weapons,* that the notions of a "threat" and "use of force" are equivalent to each other, it becomes clear that even use of force is illegal the same as the threat. International Court of Justice, *Legality of the Threat or Use of nuclear weapons*, July 8, 1996. <https://www.icj-cij.org/case/95 Last accessed on 30 October 2025.

From a compliance perspective, this reflects the limits of international law's capacity to constrain a major power, which according to *Article 24* of the UN Charter, has the primary responsibility for the maintenance of international peace and security. Following the international condemnation, Russia's non-compliance was reinforced through domestic laws that criminalized referring to the conflict as a *"war"* or questioning its legality,[731] as reflected in hundreds of criminal cases for disseminating so-called "fake news" about the conflict.[732] Notably, this occurred despite the fact that Russia's domestic legal framework recognizes the primacy of international law over conflicting domestic norms.[733] As Slaughter and Burke-White have argued, contemporary international law increasingly operates through engagement with domestic legal and political systems, asserting not only a right but, in some contexts, an obligation to influence internal governance; which in the Russia case demonstrates both the relevance of this shift and its limits when international legal pressure fails to translate into meaningful domestic constraint within a powerful, non-compliant state.[734] Thus, the Russian case made stronger the idea that domestic incorporation alone cannot ensure compliance.

However, stopping the analysis here would be misleading. Compliance effectiveness does not require total behavioral accordance or reversal, and it also looks at whether law made any constraining pressure on state conduct. In this respect, although Russia did not change its operational behavior following the continued rejection of its legal justifications, it did not abandon legal argumentation altogether. As Kogan notes, states may feel *"compelled"* to violate an existing rule where they perceive violation as the only means of contesting or seeking to *"change that rule."*[735] This may not be the case here, as we already know that Russia did not abandon legal discourse, reflecting not compliance but still a form of discursive constraint, indicating that international law remained a relevant framework within which conduct had to be

[731] Dagmara Moskwa, "'For We Are One People': Russo–Ukrainian War in V. Putin's Russia's Official Discourse," *Studia Polityczne* 53, no. 3 (2025): 72.

[732] *See* Persecution of the anti-war movement report. January 2024. https://ovd.info/en/persecution-anti-war-movement-report-january-2024#5 Last accessed on 30 October 2025.

[733] Joseph M. Isanga, "Ukraine–Russia Armed Conflict: Holding the U.N. Security Council Veto-Wielding and Nuclear-Armed Russia Accountable and Upholding International Rule of Law," *Tulsa Law Review* 60, no. 3 (2025): 379.

[734] *See* Anne-Marie Slaughter and William Burke-White, "The Future of International Law Is Domestic (or, The European Way of Law)," *Harvard International Law Journal* 47, no. 2 (Summer 2006): 352.

[735] Jacob Katz Cogan, "Noncompliance and the International Rule of Law," *Yale Journal of International Law* 31 (2006): 197.

justified. Nevertheless, there is little evidence to prove that this legal pressure made a difference on operational decisions in a way that meaningfully reduced the scope or the intensity of violations.

In contrast, Ukraine's conduct reflects a different compliance dynamic. Ukraine consistently framed its military actions within the language of self-defense and engaged with international institutions throughout the conflict. This does not prove in itself that every act from Ukraine is to be considered as lawful, but for this research scope, it is a proof of the compliance-oriented narrative.

International law preserved Ukraine's legal position and conditioned the terms on which it could continue to act and receive support. Ukraine has made its unsurprising decision to defend its statehood and its territorial integrity, yet it remains surprising how strongly it has acted in the face of the violation. Of course, even in the event of not doing so, the violations would still be a subject of international actors focus. This is because international law is (and has proven to be) Ukraine's *"greatest weapon"* in defending itself against Russia.[736] This dynamic is reflected in the law of state responsibility, as articulated by the *International Law Commission*, which recognizes the right of an injured state (and in certain circumstances also other states) to resort to countermeasures in order to invoke responsibility, seek cessation of a breach, and reparation.[737] A legally recognized form of pressure within the law of state responsibility, which explains why international law translated Ukraine's victim status into lawful mechanisms of response and support.

International law demonstrated greater compliance effectiveness in shaping the behavior of third states, defined here as all the states non-party to the conflict. In the absence of coercive enforcement, any pro-Ukraine behavioral patterns regarding its territorial integrity are the best news for international law future. The main idea behind recognizing a legal obligation to support

[736] Oona A. Hathaway, "International Law Goes to War in Ukraine," *Emory International Law Review* 38, no. 3 (2024): 577.

[737] UN General Assembly, Responsibility of States for Internationally Wrongful Acts, *Res. 56/83* (28 January 2002): *Article 54.*

the enforcement of international law rests on the view that a state which assists, enables, or in any form facilitates a violation of international law *"is itself a violator of international law."*[738]

While all the measures taken by international organizations, especially, the UN resolutions did not influence the actions of Russia or prevented the escalation of the conflict, individual states had no option but to take their own measures in order to protect collective security.[739] Ukraine has received assistance from a range of NATO member states, including the United States, the United Kingdom, France, Canada, Poland, and the Czech Republic, with the United States providing the most extensive support in terms of military equipment and aid.[740] All these as Chachko and Linos also note, have not worked for the best from Russia's perspective.[741] The purpose itself of such reactions was to do damage Russia's economy.[742] These measures illustrate how international law has other forms of attempts to raise the costs of persistent non-compliance when direct enforcement is not possible. States have imposed and can continue to impose sanctions on Russia, until it reaches a point where Russia has to accept that a continuing conflict has huge costs and should stop at one point.[743] Nonetheless, Giumelli notes that sanctions have been used as a targeted tool, contributing more to the limitation of Russia's military capabilities without critically and importantly impairing the functioning of key global economic sectors.[744]

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[738] Lea Brilmayer, "Option or Obligation? Third-State Support for the Enforcement of International Law," *Yale Journal of International Law* 50, no. 1 (2025): 99.

[739] Simon Volkov, "Between Scylla and Charybdis: Sanctions Compliance for International Companies Divesting from Russia," *Virginia Journal of International Law* 64, no. 2 (2024): 450.

[740] Mariana Alexandre Queirós Matos Macedo de Oliveira, *International Responsibility of States and Jus Cogens Norms: The Conflict between Ukraine and the Russian Federation* (International Studies Programme, Porto, 2024): 26.

[741] Elena Chachko and Katerina Linos, "International Law after Ukraine: Introduction to the Symposium," *AJIL Unbound* 116 (2022): 125.

[742] ViciniWorks, Compliance and the Russian Invasion of Ukraine: Challenges and Lessons in Sanctions Compliance One Year on from the War (2023): 15. https://vinciworks.com/resources-files/sanctions/compliance-russian-invasion-ukraine.pdf

[743] Joseph M. Isanga, "Ukraine - Russia Armed Conflict: Holding the U.N. Security Council Veto-Wielding and Nuclear-Armed Russia Accountable and Upholding International Rule of Law," *Tulsa Law Review* 60, no. 3 (2025): 419.

[744] Francesco Giumelli, "A Comprehensive Approach to Sanctions Effectiveness: Lessons Learned from Sanctions on Russia," *European Journal on Criminal Policy and Research* (2024): 225.

It should be noted that President Putin has described Western trade restrictions as interference in Russia's internal affairs.[745] But, as Milanovic analyzes, under international law such measures cannot amount to unlawful intervention even if these *"measures crossed the threshold of coercion"* (emphasizing that they probably have) because they respond to Russia's unlawful conduct in its external affairs and do not interfere with any lawful exercise of sovereign choice.[746]

Despite the measures that have been taken against Russia, especially in relation to asset freezes, the other side of the coin is about the "help" it has also gained. Mentioning here China and India, as they have increased their imports of Russian oil, which has brought significant gains to Russia; in this way making up for some of the losses it would have had to deal with.[747] Undermining in a form the power of sanctions having any coercive effect.[748] Iran and North Korea have helped Russia with defense technology, especially for ballistic missiles which make it easier for Russia (despite its own capabilities) to continue its attacks against Ukraine's territory.[749] There have been also the BRICS foreign ministers who have declared that the unilateral sanctions against Russia are *"incompatible"* with the UN Charter.[750] Nonetheless, it would be unrealistic to not expect such cases, as these gaps are well-known in *"all aspects of the international system."*[751]

In 2025, third-state responses had a huge focus because of the diplomatic engagement between the US and Russia, with Trump and Putin talks on possible ceasefire, and Putin not getting in

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[745] Cao Yang, "Putin Slams Western Countries' Interference in Russia's Internal Affairs," *Xinhua*, March 1, 2024. https://english.news.cn/europe/20240301/3c95e397a3fd4b469384f8a97311da87/c.html Last accessed on 30 October 2025.

[746] Marko Milanovic, "Revisiting Coercion as an Element of Prohibited Intervention in International Law," *American Journal of International Law* 117, no. 4 (2023): 625. Further analyzing that it does not constitute intervention into Russia's internal or external affairs.

[747] Oona A. Hathaway, "International Law Goes to War in Ukraine," *Emory International Law Review* 38, no. 3 (2024): 579.

[748] Anne Peters, "The Russian Invasion of Ukraine: An Anti-Constitutional Moment in International Law?" *Ruch Prawniczy, Ekonomiczny i Socjologiczny* 86, no. 2 (2024): 13.

[749] Christopher S. Chivvis and Jack Keating, *Cooperation Between China, Iran, North Korea, and Russia: Current and Potential Future Threats to America* (Carnegie Endowment for International Peace, 2024): 3, 6.

[750] Noah Jager, "A law without teeth? The limits and relevance of UN Article 2(4)" The War Room, 7 August 2025. https://warroom.armywarcollege.edu/articles/un-article-2-4/ Last accessed on 30 October 2025.

[751] Jacob Katz Cogan, "Noncompliance and the International Rule of Law," *Yale Journal of International Law* 31 (2006): 195.

line with the continued request (May-November 2025).[752] While such engagement reflected a willingness to influence Russia's conduct through negotiation, it stopped short of measures capable of getting compliance with international law.

To pass at the institutional perspective, the broad UNGA voting patterns (e.g., *ES-11/1; ES-11/6*) and continued condemnation suggest a widespread third-state adherence to the rule that "territorial acquisition" by force should not be recognized as lawful. An unusually high number of states intervened in proceedings before the ICJ following its Order of 16 March 2022, including here also states traditionally cautious in accepting the Court's jurisdiction, such as the US.[753] Similarly, referrals by multiple States Parties to the ICC enabled the opening of an investigation without additional authorization, illustrating institutional support for individual criminal accountability.[754] At the regional level, coordinated measures adopted by the EU further showed legal condemnation translated into institutional practice, which can continue to guide and constrain state actions over time.

At the same time, variation among third states, as manifested in abstentions, neutrality claims, or limited participation in collective measures, reveal the conditional nature of legal influence. This is often called by scholars as *"double standard,"* but it does not change anything regarding Russia's aggression.[755] The unevenness itself does not speak about compliance ineffectiveness but helps explain its limits, given that international law was more effective in influencing collective behavior where the reputational and institutional incentives were strong, and less effective where material interests may have dominated.

International law does not stop being relevant simply because states do not intend, at any point, to comply with it. As Meyer highlights, states often accept legal obligations as a form of *"strategy"* while knowing they may not fully meet them, because participation itself brings

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[752] *See* The Guardian, "Trump and Putin hold phone call but Kremlin refuses Ukraine ceasefire," May 2025. https://www.theguardian.com/world/2025/may/19/trump-and-putin-hold-phone-call-but-kremlin-refuses-ukraine-ceasefire; On 27 November 2025, Putin states that a US-Russia plan to end the war in Ukraine *could "form the basis for future agreements." See,* Answers to media questions, http://en.kremlin.ru/events/president/news/78571.

[753] Even though the US made a reservation regarding Article IX of the Convention, as, before any dispute "the specific consent" of the US is required. *See* Ana Rita Gil, *Judicial Relief in War Times? Ukraine v. Russia (2022): 17.*

[754] *See* the letter, https://www.icc-cpi.int/sites/default/files/2022-04/Article-14-letter.pdf

[755] Takao Suami, "Dead or Alive? Global Constitutionalism and International Law after the Start of the War in Ukraine," *Global Constitutionalism* 13, no. 2 (2024): 348.

advantages (legitimacy, cooperation, or external pressure to change over time).[756] In this sense, non-compliance does not necessarily signal failure, as it may instead form part of a longer process through which law gradually influences how states act. It is also quite clear between scholars that non-compliance, is a normal fact of legal life and should be looked at as such.[757]

In the end, states should pause and ask whether letting the prohibition on the use of force weaken is really worth the long-term damage it could cause. Which, as Brunk and Hakimi emphasize, not doing the effort to sustain it, might lead to real *"catastrophic consequences for the world."*[758] If these violations are met with *"ambiguity or de facto acceptance",* they may signal to Russia and any other state that, using force not in accordance with international norms, remains a way of getting the territorial gains they aspire.[759]

The scale of the response to Russia's invasion also raises an uncomfortable question about the international legal order as a whole. The mobilization of political attention, resources, and legal condemnation in the Ukraine context stands in noticeable contrast to the more limited responses to serious conflicts that the world has seen. As Chachko and Linos observe, this makes it difficult to avoid the impression that international law is applied *"selectively",* depending on whose interests are at stake.[760] Consequently, when these responses appear to be selective, the credibility of a *rule-based* order becomes harder to sustain over time.

The theories of international relations for decades have worked on detecting factors which may be *"determinative for compliance*."[761] Turning back at *Chapter 3* about the *theoretical frameworks on state behavior compliance*, we understand that no single framework fully

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[756] Timothy Meyer, "How Compliance Understates Effectiveness," *Proceedings of the Annual Meeting (American Society of International Law)* 108 (2014): 169.

[757] Anne Peters, "The Russian Invasion of Ukraine: An Anti-Constitutional Moment in International Law?" *Ruch Prawniczy, Ekonomiczny i Socjologiczny* 86, no. 2 (2024): 10.

[758] Ingrid Brunk and Monica Hakimi, "The Prohibition of Annexations and the Foundations of Modern International Law," *American Journal of International Law* 118 (2024): 467.

[759] Andrea Logan, Ukraine Symposium – War Termination: Legal Implications for International Security (July 21, 2025) https://lieber.westpoint.edu/war-termination-legal-implications-international-security/ Last accessed on 30 October 2025.

[760] Elena Chachko and Katerina Linos, "International Law after Ukraine: Introduction to the Symposium," *AJIL Unbound* 116 (2022): 126.

[761] Christian Tomuschat, "Effectiveness and Legitimacy in International Law," *Heidelberg Journal of International Law* 77 (2017): 315.

explains state behavior, and from that we get a perspective on not only *why* Russia did not comply, but possibly also *why others largely did* or *why they did not*.

From a rationalist perspective, Russia's actions fit the logic of a possible "strategic calculation". The decision to not "listen" to the legal condemnation of its acts, suggests that Russian decision-makers may have calculated that the benefits (territorial control, geopolitical influence) outweighed the expected legal and economic costs.[762] In this sense, compliance effectiveness *vis-a-vis* the primary violator was low, but the theory helps explain why this outcome was predictable rather than to be looked as anomalous. As Rusu explains, Russia maybe concluded that Ukraine was a *"weak type,"* and the conflict could only cause minor costs in a short period of time; meaning that the benefits would outweigh the costs.[763] On the other hand Ukraine's "interest" was quite clear, and does not need any discussion.

At the same time, a purely rationalist account struggles to explain the behavior of third states, as in the specific conflict, many states that supported condemnation, sanctions, and non-recognition had economic and political costs by doing so, without clear form of "material gain".[764] This is where constructivist insights become necessary. As explained in the normative effectiveness, the legal justifications used by states (even Russia) appeared motivated also by the desire to be seen as acting consistently with international norms. This means that supporting the law meant protecting a system from which they themselves benefit, together with the desire to be seen as legitimate members of the international community); which does not fall far from the tree.[765] As the rationalist perspective on the "cost-benefit" reasoning helps us, compliance therefore worked (for many states, and Russia and Ukraine too) in a normative form of expectations.

Scholars have also pointed out the importance of *reputation* as a compliance mechanism grounded in rationalist logic. From this perspective, states comply with international law

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[762] *See* the explanation on the rationalist perspective at, Louis Henkin, "How Nations Behave: Law and Foreign Policy", 2nd ed. (New York: Columbia University Press, 1979): 69-74; and its reviewed work 2nd ed.: "How Nations Behave by Louis Henkin", Michigan Law Review 78, no. 5 (1980): 826.

[763] Sabina Rusu, "How Russia Decided to Start the War against Ukraine," *Europolity: Continuity and Change in European Governance* 16, no. 2 (2022): 192.

[764] *See* Bryan Frederick et al., "Consequences of the Russia-Ukraine War and the Changing Face of Conflict," May 2025. https://www.rand.org/pubs/research_briefs/RBA3141-1.html Last accessed on 30 October 2025.

[765] *See* the explanation on the constructivist perspective at, Jutta Brunnée and Stephen J. Toope, "Constructivism and International Law," in *Interdisciplinary Perspectives on International Law and International Relations: The State of the Art*, ed. Jeffrey L. Dunoff and Mark A. Pollack (Cambridge University Press, 2012): 28.

because, as van Aaken and Simsek write, they *"want to be able to make credible commitments in the future."*[766] Thereby, they increase their *"ability to have cooperative benefits in the future."*[767] Reputation theory further predicts that international law it is predisposed to have its weakest effect in areas of highest strategic importance, such as the use of force or territorial integrity, where states are most willing to bear reputational costs to protect their biggest interests.[768] Which Russia's case confirms, as Ukraine's territorial integrity violation was framed as a matter of vital security and regime interest, making reputational damage an acceptable cost.

Managerial theory, by contrast, offers little explanatory value for Russia's conduct, as here, non-compliance is usually considered to be "not intentional," and for Russia - it is not the case.[769] In this author's conclusion, the prohibition of the use of force and respect for territorial integrity are quite clear in international law. Furthermore, the scale and even more the persistence of the violations from Russia make it impossible to look at it as something not done with a purpose. Finally, liberal theory helps explain why compliance among many states proved to be quite stable over time. This may be because domestic political structures and commitments as, once sanctions, military assistance, and legal positions were adopted, "reversing" them carries political costs.[770]

[766] Anne van Aaken and Betül Simsek, "Rewarding in International Law," American Journal of International Law 115, no. 2 (2021): 201.
[767] Ibid.
[768] Liaquat A. Siddiqui, "Compliance with International Law: Theoretical Perspectives," *Dhaka University Law Journal* 31 (2020): 25.; *See* also, Andrew T. Guzman, "International Law: A Compliance Based Theory," UC Berkeley School of Law Public Law and Legal Theory Working Paper no. 47 (2001): 68–71.
[769] *See* the explanation on the managerial theory at, Jonas Tallberg, "Paths to Compliance: Enforcement, Management and the European Union," *International Organization* 56, no. 3 (Summer 2002): 613; Anne van Aaken and Betül Simsek, "Rewarding in International Law," *American Journal of International Law* 115, no. 2 (2021): 202.
[770] *See* the explanation on the liberal theory at, Kal Raustiala, "Domestic Institutions and International Regulatory Cooperation: Comparative Responses to the Convention on Biological Diversity," *World Politics* 49, no. 4 (1997): 507; and its later article, Kal Raustiala, "Compliance and Effectiveness in International Regulatory Cooperation," *Case Western Reserve Journal of International Law* 32, no. 3 (2000): 411.

5.3 Enforcement and Institutional Effectiveness

In different times in the history of the world, conflict has often acted as a catalyst for change, and *"great wars yield great reordering."*[771] Looking back, the devastation of the two world wars prompted a collective realization that maintaining international peace and security required more than states acting alone, leading to the creation of the United Nations and, more broadly, to the creation of international and regional organizations designed to uphold legal order.[772]

Assessing international law's effectiveness via international organizations requires in a way separating the law's operation from the performance of the institutions that carry it. The effectiveness of international law varies by function when seen from an institutional perspective because of each organization's mandate, decision-making structure, and the distance they have from being direct enforcement authority. It is to be acknowledged that while some parts of international law do rely on the institutional structures, they do not *"exhaust the entirety of norms of international law"*.[773] In the sense that, important to this thesis, if institutions fail or are paralyzed, international law as a normative system does not just disappear.

Enforcement under the United Nations framework is formally centered on the Security Council. While the use of veto power by Russia has been a known practice since the founding of the UN, being a direct party changes the observation that it should have. The fact that Russia, as per *Article 24* of the UN Charter has the primary responsibility for the maintenance of international peace and security, and cannot be expelled from the UN, makes the Security Council position at high risk.[774] This is also because it is not new that his reputation has been followed by previous unlawful uses of force by other permanent members of the Council.[775]

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[771] Kal Raustiala, "Institutional Proliferation and the International Legal Order," in *Interdisciplinary Perspectives on International Law and International Relations: The State of the Art*, ed. Jeffrey L. Dunoff and Mark A. Pollack (Cambridge University Press, 2012): 293.

[772] Matúš Štulajter, "Problem of Enforcement of International Law: Analysis of Law Enforcement Mechanisms of the United Nations and the World Trade Organization," *Journal of Modern Science* 2, no. 33 (2017): 334.

[773] Kostiantyn Gorobets, "The International Rule of Law and the Idea of Normative Authority," *Hague Journal on the Rule of Law* 12 (2020): 240.

[774] *See* Joris van de Riet, "No, Russia cannot be removed from the UN Security Council," March 2022. https://www.leidenlawblog.nl/articles/no-russia-cannot-be-removed-from-the-un-security-council Last accessed on 30 October 2025.

[775] Criticism on the Council's inability to prevent or respond effectively to violations of international law is not seen only on academic literature but has been openly expressed also by the UN Member States, who have described the

In response to this deadlock, enforcement activities shifted to the UN General Assembly. While it adopted multiple resolutions condemning Russia's conduct, these instruments lack binding force. This shift became salient following Russia's use of the veto. Against this background, the adoption of the *Veto Initiative,* with the requirement to be justified under UNGA Resolution *76/262,* marked an important step. The opportunity for debate on each and every veto in the Assembly re-centered deliberation; and its formalization with the draft resolution *S/2022/431* by Russia and China (who used their veto power) made it as a historical turning point for the UNGA.[776] As Peters observes, the importance of this mechanism lies in its deterrent potential through exposure and accountability, as it causes *"the shaming effect,"*[777] in which veto users have no escape from the *"spotlight"* of other states; based on the specific reason that their claims should be for the general interest of all UN states, and not self-centered.[778] Introducing in this way, a reputational cost for every P5 and a modest form of accountability. Even though, for the time being, with no specific effect in practice for the conflict.

The UNGA resolutions have treated Russia as the aggressor and Ukraine as the victim. The early period of the invasion is useful to look at because time pressure forces actors to choose a frame quickly. It then becomes a coordination device, as states line up positions on sanctions, assistance, and later on accountability steps, even when those steps may be uneven. Consequently, international law operated through the UN as a coordinative framework by repeatedly condemning the invasion matters, because a prolonged inaction can contribute to the gradual acceptance of unlawful situations itself. The continued articulation of the "illegality" limits that risk.

Council as having *"failed miserably,"* thereby tarnishing its legitimacy and authority. *See* UNSC, *Security Council Must Rectify Failure to Prohibit Use of Force, Maintain International Peace, Speakers Stress in Day-long Debate*, 8262nd mtg., UN Doc. SC/13344 (17 May 2018). https://press.un.org/en/2018/sc13344.doc.htm Last accessed on 30 October 2025.

[776] Different states emphasized the importance of such opportunity for debate. General Assembly discussions under agenda item 124 were conducted during the 77th plenary meeting on 8 June 2022 UN Doc. A/76/PV.77; the 78th plenary meeting later the same day UN Doc. A/76/PV.78; and the 81st plenary meeting on 10 June 2022 UN Doc. A/76/PV.81. Specifically, Australia (PV.77, 24); Chile (UN Doc. A/76/PV.81, 13); Denmark (PV.77, 9); Ecuador (PV.77, 13); Germany (PV.78, 16); Indonesia (PV.77, 23); Ireland (PV.77, 17); Kuwait (PV.78, 14); Liechtenstein (PV.77, 11); Mexico (PV.77, 18–19); Peru (PV.78, 23) etc.

[777] *See* also, Anne van Aaken and Betül Simsek, "Rewarding in International Law," *American Journal of International Law* 115, no. 2 (2021): 214.

[778] Anne Peters, "The Russian Invasion of Ukraine: An Anti-Constitutional Moment in International Law?" *Ruch Prawniczy, Ekonomiczny i Socjologiczny* 86, no. 2 (2024): 17.

As a matter of fact, international law demonstrates even in this conflict that the normative clarity is there, even if debate will always be part of "its life". Yet, enforcement incapacity when violations are committed by veto-holding powers creates the idea that the P5 will have a lifetime form of "immunity" for their unlawful actions. Highlighting the tension and speculations on concerns about unequal application of international law, and even more on the use of force effectiveness.[779]

In response to the invasion, states and international institutions adopted a range of measures against Russia, including suspension from various international bodies; and as Brunk and Hakimi write, also the imposition of one of the largest set of sanctions that *"the world has seen outside of Security Council-ordered sanctions."*[780] By these sanctions we mean the restrictive measures adopted by the EU, which unlike the UNSC, do not depend on consensus with Russia.

The EU does not have the power to force compliance with international law or to bring the conflict to an end, but what it can do is work on generating consequences for the violator of international law. It has translated legal condemnation for Russia's illegal use of force into material measures through its sanction packages, which are often seen as a *"tool"* for the enforcement of international law.[781] While these measures do not constitute enforcement in the strict legal sense, they are one of the best instruments of pressure that we have available within the international system. By these measures, the EU has ensured that territorial acquisition by force remains legally and economically costly over time. This has been consistent with positions expressed within the Council of Europe, particularly in relation to frozen Russian state assets. The CoE has framed them within the law of *"countermeasures,"* emphasizing that international law permits injured states to adopt proportionate responses to serious breaches with the aim of inducing compliance and bringing unlawful conduct to an end.[782]

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[779] Christine Gray, "International Law and the Use of Force", *(Oxford University Press, Second Edition 2004*): 3.
[780] Ingrid Brunk and Monica Hakimi, "The Prohibition of Annexations and the Foundations of Modern International Law," *American Journal of International Law* 118 (2024): 457.
[781] James Gerard Devaney, "On Sanctions and the Enforcement of International Law: A Rule of Law Analysis," *Nordic Journal of International Law* (2025): 1.
[782] Parliamentary Assembly of the Council of Europe, *Support for the Reconstruction of Ukraine*, Resolution 2539 (2024), adopted 16 April 2024, para 6. https://pace.coe.int/en/files/33494/html Last accessed on 30 October 2025.

The situation of the EU, may bring to our mind Mark Leonard's book *"Why Europe Will Run the 21st Century."*[783] In this respect, the EU response illustrates what Slaughter and Burke-White describe as, *"a way of law"* influence that does not operate on direct enforcement, but by shaping incentives and constraints that affect how states are able and willing to act, a dynamic that helps explain the EU's role in reinforcing international law where centralized enforcement is unavailable.[784]

Despite differences among member states, or even scholars, regarding the scope or intensity of particular measures, the EU actions guided by *Article 21* TEU, have remained anchored in the characterization of Russia's conduct as a violation of international law, rather than shifting to political preference and the duration of EU measures has signaled the persistence of legal consequences. As Mahato notes, EU's *"rhetoric has become more aggressive,"* and while this does not produce immediate compliance, it can contribute to a more long-term effectiveness of international law.[785]

From a judicial perspective, Montesquieu in *De l'esprit des lois*, portrayed judges as actors confined to the mechanical application of law, who work on implementing the will of the legislator and functioning merely as *"la bouche qui prononce les paroles de la loi."*[786] This conception, however, does not reflect the reality of international law, as in the absence of a central legislator and an enforcement authority, international courts perform a more complex role. Extending beyond mere application to include interpretation and the development of legal meaning.

As Jeremy Bentham famously described the courtroom as a *"theatre of justice,"* the role of international courts in the context of the Russia and Ukraine conflict lies, at least in part, in making legality more visible, articulating violations and framing the conflict in legal terms for a global audience; even as the broader impact of their role will unfold as events continue to

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[783] *See* Mark Leonard, *Why Europe Will Run the 21st Century* (HarperCollins Publishers, 2005).

[784] Anne-Marie Slaughter and William Burke-White, "The Future of International Law Is Domestic (or, The European Way of Law)," *Harvard International Law Journal* 47, no. 2 (Summer 2006): 332, 346.

[785] Arun Mahato, "EU Sanctions Policy Vis-à-Vis Russia – A Case of Normative Power?" *Global Europe – Basel Papers on Europe in a Global Perspective,* no. 124 (2020): 36.

[786] Translated as *"the mouth that speaks the words of the law." See* Christian J. Tams, *The Development of International Law by the International Court of Justice*, Gaetano Morelli Lectures Series, vol. 2 (2018): 99.

develop.[787] The belief in the capacity of international courts to contribute to the development of international law has long carried an element of optimism, as reflected in Jennings and Watts 1992 work observation, where they state that international tribunals were expected to fulfil much of this *"task"* quietly and, yet efficiently.[788]

Understanding the structural design of the ICJ (as the organ who adjudicates disputes between states and has the authoritative interpretation of international law) we conclude that it is normatively and institutionally relevant. Yet, the ICJ's provisional measures which ordered Russia to suspend the military operations in Ukraine, through compliance showed a great challenge.[789] When the ICJ is faced with powerful states as those of P5, it has limitations on enforcement, given the fact that its effectiveness depends on voluntary compliance by states and political and institutional support from UNSC. *Article 94(2)* of the UN Charter allows recourse to the Council if a state fails to comply which Russia's veto, which makes it again as a "mission-impossible". Revealing a structural enforcement gap rooted in its institutional design as part of the entire life of the UN. On the other hand, for weaker states in the international arena, as Goldenziel, Blochberger and Granholm note, the ICJ may be a great venue *"to assert themselves against more powerful states."*[790] The delegitimization of Russia's narrative by the Court, makes international law a powerful tool in the hands of Ukraine, which significantly strengthened Ukraine's legal and diplomatic position.

During the early stages of the United Nations Diplomatic Conference of Plenipotentiaries on the establishment of an International Criminal Court, delegations accepted that the effectiveness of the Court would depend on the enforcement of its sentences.[791] Meaning that the ICC would rely on imprisonment to achieve its purposes of accountability. The execution of arrest warrants, by contrast, did not receive comparable attention, as they were understood as pre-trial procedural measures whose execution would depend on state cooperation (*Article 86*) rather than through a

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[787] *See* for e.g., *The Works of Jeremy Bentham*, vol. 5, *Scotch Reform, Real Property, Codification Petitions*, ed. John Bowring, 45.

[788] *Oppenheim's International Law*, vol. I/1, ed. Robert Y. Jennings and Arthur Watts (London: Longman, 1992):41.

[789] Yogendra Kumar Verma, "The Russia–Ukraine Conflict: Violations of International Law and the Future of Global Order," *International Journal of Civil Law and Legal Research* 4, no. 1 (2024): 210.

[790] Jill I. Goldenziel, Sean Michael Blochberger, and Tyler Granholm, "Weapon of the Weak: Lawfare and State Power in the International Court of Justice," *Harvard International Law Journal* vol. 66 no. 2 (2025): 625.

[791] Hirad Abtahi and Steven Arrigg Koh, "The Emerging Enforcement Practice of the International Criminal Court," *Cornell International Law Journal* 45, no. 1 (2012): 2.

dedicated enforcement mechanism. This is where the obstacle starts, as the limits of arrest warrant enforcement are illustrated by recent state practice. In international law, the effectiveness of justice mechanisms ultimately rests on state consent and cooperation, as despite legal authority, they lack independent means of enforcement.[792] Thus, their real-world impact remains inseparable from the willingness of states to give effect to their decisions.

Must be noted that, once the Court issues an arrest warrant, the legal decision are not to be questioned in any way about their *"legality or validity, as confirmed by the travaux préparatoires."*[793] Following the issuance of arrest warrants, Putin travelled to Mongolia, an ICC State Party, without being arrested, highlighting the failure on cooperation, even in the face of clear legal obligations.[794]

From the perspective of effectiveness, the experience of the ICC reveals an asymmetric form of international law operation, as it can give enduring legal consequences to individuals and restrict freedom of movement and increase isolation, even with no arrest.[795] However, this effectiveness is inherently partial. At the same time, these cases expose the failure of enforcement capacity which has long been the nail in the ICC foot. The Court has no independent means to force state cooperation, no effective mechanism to respond to non-compliance, and no capacity to "shield" states that may face political or security risks when executing arrest warrants against officials of powerful states.[796] As a result, this *"out of reach"* position that Russian officials have from the

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[792] Adnan Mahmutovic, "Did Russia Invade International Law in Ukraine," *Access to Justice in Eastern Europe*, Special Issue (2023): 34.

[793] Keiichiro Kawai, "Who Enforces an Arrest Warrant of the International Criminal Court? An Assessment of the ICC Appeals Chamber's Surrogation of Jurisdiction Theory from the Perspective of International Organizations Law," *Journal of International Criminal Justice* (2021): 561.; *See* also, Draft Statute for the International Criminal Court, art. 87(5), UN Doc. A/CONF.183/2/Add.1, at 135; The Draft Statute initially had a more flexible enforcement model. Specifically, *Article 87(5)* of the Draft would have allowed a requested state to apply to the Court to set aside a request for arrest, effectively giving states a limited procedural avenue to contest.

[794] ICC, "Ukraine situation: ICC Pre-Trial Chamber II finds that Mongolia failed to cooperate in the arrest and surrender of Vladimir Vladimirovich Putin and refers the matter to the Assembly of States Parties," 24 September 2024.https://www.icc-cpi.int/news/ukraine-situation-icc-pre-trial-chamber-ii-finds-mongolia-failed-cooperate-arrest-and Last accessed on 30 October 2025.

[795] *See* Ovo Imoedemhe and Walter Imoedemhe, "Dealing with the Most Responsible for International Crimes: An Evaluation of the International Criminal Court (ICC) Warrant of Arrest for Vladimir Putin,"in *International Relations: Emerging Debates, Enduring Questions, and Contending Voices*, ed. Carmela Lutmar (2025). https://www.intechopen.com/chapters/1194845 Last accessed on 30 October 2025.

[796] Mikyoung Park, "ICC Arrest Warrants for Heads of State and Others: Implications for the Republic of Korea," *Korean Journal of International and Comparative Law* 13 (2025): 130.

prosecution authorities, makes it hard to achieve a factual arrest.[797] What it can still achieve on the other hand, for the state being "victim" from the violations, is for them to *"have a voice in the justice system."*[798]

Whether the individuals will ever stand trial before the ICC it is left to the future.[799] Realistically, the time it takes the ICC to reach a judicial decision makes it doubtful that such rulings will coincide with the period of an active conflict.[800] Limiting in this form their immediate practical relevance. Either way, any meaningful enforcement would still depend on the UNSC, where Russia's veto power makes coercive measures unrealistic. International law nonetheless achieved a significant form of effectiveness by piercing the veil of Russia as a state, since it touched the individual criminal responsibility of the state leader. Importantly, these warrants extend accountability beyond the conflict's duration, as they do not have an *"expiry date."*[801]

Regarding the judicial part of the conflict, Labuda observes the situation as a case of *"unprecedented demand for accountability."*[802] Even though there is strong demand to hold Russia or even Putin as the head of state accountable, what the parallel proceedings collectively reveal is their structural fragmentation. The institutional perspective confirms Helfer and Slaughter's observation that the effectiveness of legal norms is closely linked to their institutional context and perceived legitimacy that those institutions have, and may not tell much about international law.[803] International institutions remain operational and norm-generating, but

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[797] Adnan Mahmutovic, "Did Russia Invade International Law in Ukraine," *Access to Justice in Eastern Europe*, Special Issue (2023): 38.

[798] Marcus Vinicius de Freitas, *The Role of the International Criminal Court in Preventing Crimes against Humanity and in the Rebuilding of Nations*, Policy Center for the New South, Policy Paper No. 26/25 (April 2025): 9.

[799] Park, "ICC Arrest Warrants for Heads of State and Others" (2025): 117.

[800] Katy Malloy, "Ukraine v. Russia: A Case for Change in International Enforcement," *William & Mary Law Review* 65, no. 5 (2024): 1249.

[801] Regina Weiss, "Avenues for Accountability – Breaches of International Law in Ukraine," *The Law Society of Tasmania,* 1 June 2022. https://www.lst.org.au/avenues-for-accountability-breaches-of-international-law-in-ukraine/ Last accessed on 30 October 2025.

[802] Patryk I. Labuda, "Beyond Rhetoric: Interrogating the Eurocentric Critique of International Criminal Law's Selectivity in the Wake of the 2022 Ukraine Invasion," *Leiden Journal of International Law* 36, no. 4 (2023): 1113.

[803] Laurence R. Helfer and Anne-Marie Slaughter, "Why States Create International Tribunals: A Response to Professors Posner and Yoo," *California Law Review* 93, no. 3 (2005): 918. Helfer and Slaughter analyze in their work on judicial decisions, that the compliance of states with court decisions often depends as much on how workable and convincing those decisions are as on the authority of the court itself.

cannot overcome structural power asymmetries embedded in their design; and we do not expect that either.[804]

Clearly, Ukraine's recourse to judicial tools shows that international law offers a legal pathway; yet none that can strongly operate on their own. Yes, international courts depend on cooperation. That is a well-known fact. But, how much they can still do without it? From the conflict it showed that the Courts could still determine what happened legally and reject false legal narratives. Thus, even if Russia can ignore them, it cannot in any way erase, or work against their legal importance. Even though not coercive, they still are waiting to "catch" the violator.

What matters in such researches is that even flawed effectiveness studies are essential if we want to understand whether international law has any real role in shaping a rule-based international order. As van Dijk also notes, such focused observations are *"indispensable if any good insight is to be gained."*[805] As long as scholars, practitioners and institutions continue to engage with these questions and we are still writing, analyzing and researching these kinds of topics, international law continues to hold relevance not only as a normative framework but also as a subject of critical engagement that surely evolves alongside global developments.

[804] Other international organizations are mentioned throughout the thesis but are not examined in detail. NATO appears primarily in connection with Russia's self-defense narrative, illustrating the continued role of legal justification rather than functioning as a mechanism of international law enforcement. References to the OSCE, including the Minsk framework, illustrate the dependence of the management of a conflict mechanism on sustained political consent and their inability to operate once that consent was withdrawn. The Council of Europe is noted mainly in relation to Russia's suspension and withdrawal, underscoring the limited capacity of regional human-rights regimes to influence state conduct during an active armed conflict.

[805] Pieter van Dijk, "Normative Force and Effectiveness of International Norms," *German Yearbook of International Law* 30 (1987): 35.

CONCLUSIONS

"The powerful do what they want and the weak suffer what they must."

- Thucydides in his History of the Peloponnesian War.[806]

The Russia and Ukraine conflict shows how close this quotation still sits to reality. Power moved without a "permission," across the recognized borders of another state, and law could not end it. Yet stopping at this observation would be too easy. If power alone explained the conflict, there would have been little need for legal argument. The fact that law could not prevent the initial use of force does not mean that it was irrelevant, or in any form defeated. This reasoning is no more persuasive than dismissing fire safety regulations because: fires continue to occur.

To respond directly to the research question of this thesis, international law has remained *partially* and *unevenly* effective in response to the conflict. It has continued to operate meaningfully across normative, compliance-based, and institutional dimensions.

At the *normative level,* international law has remained effective by providing clear and widely accepted standards of legality. Russia's conduct has been characterized as unlawful by states and international institutions. The persistence of legal consensus, despite ongoing violations, demonstrates that these norms still have their unchanged authoritative status.

At the level of state behavior and *compliance*, as many scholars have noted, international law to be "effective" must be obeyed.[807] But what we have understood from this study is that, this idea creates confusion, because *one* violator does not equal *the hundreds* who still respect the rules. Meaning that obedience should be looked from the perspective of the wider community of states whose conduct and responses are in line with international law principles. Consequently, international law has showed to be quite important seen from the reactions of Ukraine and third states.

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[806] *See* Rudibert Kilian, "Analysis of the Conflict Between Russia and Ukraine: What Have We Learned So Far?" *Marine Corps Gazette*, October 2022. https://www.mca-marines.org/web-articles/ Last accessed on 30 October 2025.

[807] *See* Mortimer N. S. Sellers, "The Effectiveness of International Law," in *Republican Principles in International Law* (Palgrave Macmillan, 2006): 52; Scott, Shirley. "Comment on Tacsan's The Effectiveness of International Law: An Alternative Approach." International Legal Theory, vol. 2, no. 1,

At *institutional* level, international law has activated mechanisms of accountability and consequence. Proceedings before international courts, investigations by international bodies, and the invocation of universal jurisdiction reflect the continued capacity of legal institutions to respond to violations, even in the absence of enforcement. The system could not close the gap between law and power, but at the same time it refused to pretend that the gap did not exist.

Measured through enforcement, international law showed low effectiveness because coercive outcomes depended on state cooperation, and cooperation was absent or blocked in the key institutions. In itself, international law is frequently criticized for lacking a centralized enforcement authority, often framed as the absence of a global "police force." The specific case invites a more cautious reflection on what can realistically be expected of law. Even within domestic legal orders, where enforcement institutions are formalized, rules are still violated and compliance is never absolute. It is therefore worth questioning whether the perceived weakness of international law lies in its structure, or in the expectations that we have placed upon it. From its inception, international law has operated in a decentralized environment. Enforcement has never been a constitutive element of international law. Many core rules such as the prohibition on the use of force and the respect for territorial integrity are legally binding irrespective of whether they can be enforced coercively in every case. Meaning that this Russia and Ukraine conflict does not expose a new gap (even in this case) between law and enforcement.

International law has taken decades to develop it to its current state and it will survive, despite the forms that it takes, as long that states have a common interest to interact. It is like the image of a carousel, that while going up and down in time, it is still a "carousel" and it will go again for the same ride. Whether balance can be recalibrated in the future remains an open question. One that extends beyond this conflict, but which this conflict has made impossible to ignore.

As the author, I position myself as believing and working in the spirit of *ut res magis valeat quam pereat*, meaning that international law should be understood in a way that allows it to work, not in a way that makes it fail. So, to focus on what the law can still achieve, rather than dismissing it for its shortcomings. In Antonio Cassese's terms, this corresponds to the *"principle of effectiveness",* suggesting that the law should be read so that it can still function.[808]

[808] Antonio Cassese, *The Human Dimension of International Law* (Oxford University Press, 2008): 212.

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Appendix A: Territorial Control in Ukraine (November 2025)

- This map illustrates the areas of Ukraine subject to Russian military control at different stages of the conflict. It is included for contextual purposes only and does not imply legal recognition of territorial acquisition or sovereignty.[809]

[809] The maps are always updated and can be accessed on *The Institute for the Study of War*: https://understandingwar.org/analysis/map-room/ Last accessed on 24 November 2025.