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Cover Page Footnote

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CRISIS AND GENERAL INTERNATIONAL LAW: LESSONS FROM THE RUSSIA-UKRAINE CONFLICT

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Abstract

The ongoing Russian aggression in eastern Ukraine has instilled fear in humanity, with concerns of a possible third world war. Furthermore, international law has been criticized for its lackadaisical role in halting the Russian aggression. The United Nations Security Council (UNSC) has not been able to pass a resounding resolution condemning the attacks. Although the United Nations General Assembly (UNGA) overwhelmingly adopted a resolution demanding that Russia immediately cease military operations in Ukraine, the resolution is not binding, despite being persuasive. This brief article highlights the structural crisis in general international law to effectively combat the tragedy unfolding in Ukraine. Some of the structural shortcomings studied include consent, veto, lack of accountability and flimsy sanctions regime. This paper is divided into two main themes. Firstly, it maps the structural crisis in general international law in the context of the ongoing Russia-Ukraine conflict. Secondly, it provides a possible solution to address these issues. A structural crisis refers to a simultaneous crisis in many fields of international law, or what might be called a generalized crisis. It is concluded that although general international law provides several avenues to overcome these structural crises, it has failed to deliver due to a lack of will from the States.

Keywords: *Crisis, International Law, Russia, Sanctions, Ukraine*

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I. INTRODUCTION

The 24 February 2022 tops the agenda of international law, as it marked the Russian intervention in the eastern Ukrainian regions of Donetsk and Luhansk.¹ Several legal scholars have stated that Russian intervention and aggression constitute blatant violations of the foundational principles of international law.² Numerous avenues of international law are triggered to

¹ “Russian forces launch a full-scale invasion of Ukraine,” *Aljazeera*, 24 February 2022, accessed 2 June 2022, <https://www.aljazeera.com/news/2022/2/24/putin-orders-military-operations-in-eastern-ukraine-as-un-meets>.

² Atul Alexander, “Russia-Ukraine conflict: has international law failed?” *The Leaflet*, accessed 9 June 2022, <https://theleaflet.in/russia-ukraine-conflict-has-international-law-failed>. See also, James A. Green, Christian Henderson, 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): 5.

end the Russian march. For instance, the United Nations Security Council (UNSC), despite having the backing of eleven States, failed to adopt a draft resolution for ending the conflict courtesy of the Russian veto.³ According to Linda Thomas-Greenfield, a representative of the United States of America (USA), “the resolution can be vetoed, but not the Member States’ voices, the truth, principles, and the Charter or the principle of accountability”.⁴ States like India and China, which remained neutral have called for the immediate cessation of hostilities, therefore, the UNSC was divided in terms of votes.⁵ The deadlock in the UNSC prompted the United Nations General Assembly (UNGA) to adopt an overwhelming resolution on 2 March 2022, with the support of 141 against 5.⁶ The resolution “deplores in the strongest terms the aggression by Russia and affirms the international community’s commitment to the sovereignty, independence, unity and territorial integrity of Ukraine.”⁷ Similar with the UNSC resolution, some states select to remain neutral due to strategic and historic ties with Russia.⁸ Olof Skoog, the EU Ambassador to the United Nations in New York, stressed the historic significance of these votes. Despite the unparalleled support of the international community of states, the UNGA resolution lacks efficacy due to its non-binding nature.⁹ Ukraine also instituted proceedings in the International Court of Justice (ICJ) regarding Russian unfounded claims based on the ‘Genocide Convention’ of 1948.¹⁰

³ “Security Council Fails to Adopt Draft Resolution on Ending Ukraine Crisis, as Russian Federation Wields Veto,” Press UN, 25 February 2022, accessed 4 June 2022, <https://press.un.org/en/2022/sc14808.doc.htm>.

⁴ *Ibid.*

⁵ *Ibid.*

⁶ “General Assembly Overwhelmingly Adopts Resolution Demanding Russian Federation Immediately End Illegal Use of Force in Ukraine, Withdraw All Troops, Eleventh Emergency Special Session, 5th & 6th Meetings (AM & PM),” Press UN, 2 March 2022, accessed 6 June 2022, <https://press.un.org/en/2022/ga12407.doc.htm>.

⁷ “India abstains on the UNGA resolution that deplores Russia’s aggression against Ukraine,” *New Indian Express*, 2 March 2022, accessed 6 June 2022, <https://www.newindianexpress.com/nation/2022/mar/02/india-abstains-on-unga-resolution-that-deplores-russias-aggression-against-ukraine-2425561.html>.

⁸ Gareth Price, “Why is India staying neutral over the Ukraine invasion?” Chatham House, 9 May 2022, accessed 6 June 2022, <https://www.chathamhouse.org/2022/05/why-india-staying-neutral-over-ukraine-invasion>. Tom Gillespie, “Ukraine invasion: China abstains from voting on UN Security Council resolution condemning Russia,” *News Sky*, 26 February 2022, accessed 6 June 2022, <https://news.sky.com/story/ukraine-invasion-china-abstains-from-voting-on-un-security-council-resolution-condemning-russia-12551720>.

⁹ “UN General Assembly demands Russian Federation withdraw all military forces from the territory of Ukraine,” European Union External Action, 2 March 2022, accessed 6 June 2022, https://www.eeas.europa.eu/eeas/un-general-assembly-demands-russian-federation-withdraw-all-military-forces-territory-ukraine_en.

¹⁰ Allegations Of Genocide Under The Convention On The Prevention And Punishment Of The

The ICJ unanimously directed both parties to refrain from any action that can aggravate or extend the dispute before the Court or make it more difficult to resolve.¹¹ Despite these provisional measures, it is apparent from the media reports, articles, and blog posts that the Russian aggression is unending. The prosecutor of the International Criminal Court (ICC) had initiated an inquiry courtesy of the unprecedented referral by the states. Moreover, cases are being instituted against the Russian elites in the domestic courts under the garb of universal jurisdiction.¹²

In addition to opening up cases and conducting investigations through international institutions, unilateral sanctions have been imposed on Russia to cripple its economy under the auspice of the USA, backed by the west.¹³ Russia has also been suspended from the Human Rights Council (HRC) and the European Council due to gross and systematic human rights violations, thereby losing its status as a party to relevant conventions.¹⁴ Amidst these proactive measures by the international institutions and States, Russian President, Vladimir Putin, denies the commission of genocide and war crimes and seeks to be on the right side of the whole crisis.¹⁵ Despite all these efforts, general international law has failed to curb Russian aggression. This can be attributed to the existing structural crisis in international law.¹⁶ Therefore, this paper is divided as follows: the second section examines the contours of structural crisis in general international law and maps its relevance to

Crime Of Genocide (Ukraine V. Russian Federation), ICJ, Provisional Measures, 2022.

¹¹ *Ibid.*

¹² “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,” ICC, 2 March 2022, 8 June 2022, <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-qc-situation-ukraine-receipt-referrals-39-states>.

¹³ “EU sanctions against Russia explained,” Council of the European Union, accessed 12 August 2022, <https://www.consilium.europa.eu/en/policies/sanctions/restrictive-measures-against-russia-over-ukraine/sanctions-against-russia-explained/>. Deniz Baran, “What is the International Law on Unilateral Sanctions? Examining the Case of Unilateral Sanctions Imposed on Russia,” *Al Sharq*, 22 April 2022, accessed 8 June 2022, <https://research.sharqforum.org/2022/04/22/unilateral-sanctions/>.

¹⁴ “Russia Suspended From UN Human Rights Council For ‘Systematic Abuses,’” RFE/RL, 7 April 2022, accessed 8 June 2022, <https://www.rferl.org/a/united-nations-russia-rights-council-suspension/31791510.html>. See also, “Council of Europe suspends Russia’s rights of representation,” Council of Europe, 25 February 2022, accessed 9 June 2022, <https://www.coe.int/en/web/portal/-/council-of-europe-suspends-russia-s-rights-of-representation>.

¹⁵ Prabhas Ranjan, Achyuth Anil, “Debunking Russia’s international law justifications,” *The Hindu*, 1 March 2022, accessed 9 June 2022, <https://www.thehindu.com/opinion/lead/debunking-russias-international-law-justifications/article65094642.ece>. Sergey Sayapin, “Thou Shalt Not Distort the Language of International Law,” *Opinio Juris*, accessed 9 June 2022, <https://opiniojuris.org/2022/03/07/thou-shalt-not-distort-the-language-of-international-law/>.

¹⁶ Atul Alexander, “Russia-Ukraine conflict: has international law failed?”

the Russia-Ukraine conflict. The third section proposes possible solutions to address these crises, and the final section provides the conclusion and recommendations for the way forward.

II. STRUCTURAL CRISIS IN GENERAL INTERNATIONAL LAW

In simple terms, a structural crisis in general international law refers to a situation where the discipline is unable to effectively mitigate global crisis due to flaws in its internal function. This is exemplified by the Russia-Ukraine conflict in this study. The legal typology of structural crisis is elucidated by third-world scholar B.S Chimni, as follows, “The different perspectives on crisis are also at the root of an epistemic crisis, which has seen the emergence of several critical approaches to international law (CAIL).”¹⁷ Chimni further defined a crisis as a way of exposing the gaps and inadequacies in a specific sphere of international law, which could also be termed a generalized crisis.¹⁸ Climate change is an example of a structural crisis, as it has the potential to affect various branches of international law, such as trade, economic, and international human rights laws cutting across regimes.¹⁹ Crawford emphasized the absence of crisis can be caused by any constitutional order, other than that of the states.²⁰ Third-world scholars contended that the crisis surrounding international law was rooted in imperialism. Therefore, unless the deep structures and history were revisited, the notion of crisis would remain unaddressed.²¹ Hilary Charlesworth stated that the absence of women’s position in the context of international law reflected a crisis. As a result, the template of international law ensured that it steered clear of probing into the long-term structural crisis.²² The structural crisis in general international law was conspicuous in the recent Russia-Ukraine conflict.²³ To

¹⁷ Bhupinder S. Chimni, “Crisis and International Law: A Third World Approaches to International Law Perspective,” in *Crisis Narratives in International Law*, Makane Moïse Mbengue and Jean d’Aspremont, eds. (Leiden: Brill Nijhoff, 2021), 40.

¹⁸ *Ibid.*

¹⁹ *Ibid.*, 42.

²⁰ James Crawford, “Reflections on Crises and International Law,” in *How International Law Works in Times of Crisis*, George Ulrich, Ineta Ziemele, eds. (Oxford: Oxford University Press, 2019): 14.

²¹ On the issue of colonial and postcolonial realities of international law being obscured by the analytical frameworks that governed traditional scholarship on the subject. See Antony Anghie, “The Evolution of International Law: Colonial and Postcolonial Realities,” *Third World Quarterly* 27, no. 5 (2006):741.

²² Hilary Charlesworth, “International Law: A Discipline of Crisis,” *The Modern Law Review* 65, no. 3 (2002): 389.

²³ Atul Alexander, “Russia-Ukraine conflict: has international law failed?”

understand the depth of this crisis, it was crucial to first clarify the concept of general international law. The absence of cohesive legal unity in international law could be attributed to the involvement of myriad legal actors and the evolving subject matter over time.²⁴ The commonly accepted notion was that general international law was tied to Article 38 of the ICJ Statute, derived from treaties, customary international law, and general principles of law.²⁵ Regarding treaties, it was important to note that not all of them fell under the ambit of general international law as they were based on voluntarism, and did not have the ability to legally bind third States. However, a few treaties, such as the Charter of the United Nations, had attained universal or quasi-universal nature.²⁶

The Charter remains a crucial reference point in international law, with other treaties, such as the four Geneva Conventions on humanitarian law also playing a role. The number of treaties that have general international law features is limited due to disagreements among nation-states on international treaties.²⁷ Although customary law emerges from general practice accepted by law, it is dispositive and only applies when there is no answer in treaty law (self-contained regime). Otherwise, customary international law remains in the background.²⁸ Some rules of customary international law are considered peremptory norms of general international law or *jus cogens* and cannot be overridden.²⁹ However, the substantive content of *jus cogens* remains vague, with only the core principles such as the prohibition of torture and genocide³⁰ clearly defined.³¹ The general principles of law recognized by civilized countries play only a marginal role, mainly filling in gaps left by treaties and customary international law.³²

²⁴ Rosalyn Higgins, "International Law in A Changing International System," *Cambridge Law Journal* 58, no.1 (1999): 78.

²⁵ Statute of The International Court of Justice, (opened for signature 26 June 1945 entered into force 24 October 1945).

²⁶ Fassbender Bardo, "The United Nations Charter as Constitution of the International Community," *Columbia Journal of Transnational Law* 36, no. 3 (1998): 529.

²⁷ Christian Tomuschat, "General International Law: A New Source of International Law?" in *Global Justice. Human Rights and the Modernization of International Law*, Riccardo Pisillo Mazzeschi and Pasquale De Sena, eds. (Springer International Publishing, 2018), 189.

²⁸ *Ibid.*, 202.

²⁹ *Ibid.*, 198.

³⁰ Georg Schwarzenberger, "International Jus Cogens?" *Texas Law Review* 43, no. 455 (1964-65): 469. Dr. Markus Petsch, "Jus Cogens as a Vision of the International Legal Order," *Pennsylvania State International Law Review* 29, no. 2 (2010): 235.

³¹ Fourth Report on Peremptory Norms of General International Law (Jus Cogens) by Dire Tladi, Special Rapporteur, A/CN.4/727, 2019, 36, available at <https://digitallibrary.un.org/record/3798216?ln=en>.

³² Rudolf B. Schlesinger, "Research on the General Principles of Law Recognized by Civilized

One of the common features of general international law is that it should reflect the interest of the international community. Concepts such as those enshrined in the UN Charter, *jus cogens*, *erga omnes*, and rules of treaty interpretation would fall under the ambit of general international law.³³ Also, there is a lack of clarity on the precise source of general international law. While some consider it synonymous with customary international law, there seems to be a consensus that general international law is applicable to every subject, particularly States.³⁴ Although the recent fragmentation phenomenon has negatively impacted general international law, current treaty regimes are self-contained in the sense that the application of the law would be generally excluded.³⁵ Therefore, no regime in international law should be read in isolation from general international law, as shown by Articles 31 and 32 of VCLT, which applies unless superseded by other principles of treaty interpretation.³⁶

The Russia-Ukraine conflict has opened Pandora's box with respect to the crisis in international law *vis-à-vis* regime. This present study contends that structural crisis is apparent in general international law.

III. BREACH OF UNITED NATIONS CHARTER PRINCIPLES

The United Nations Charter system echoes the aspiration of the international community and codifies some of the fundamental principles of international law which forms an integral part of general international law.³⁷ Some of these principles include the prohibition on the use of force, non-intervention, sovereign equality, right to self-determination, promotion of human rights, and peaceful settlement of international disputes, among others.³⁸ Legal scholars contend that Russia has breached some of these essential principles in its dispute with Ukraine, highlighting the current state of crisis in international law.

Nations,” *American Journal of International Law* 51, no. 4 (1957): 735.

³³ Tomuschat, “General International Law: A New Source of International Law?” 195.

³⁴ *Ibid.*

³⁵ Martti Koskenniemi, “Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law,” *Report of the Study Group of the International Law Commission*, 2006, 37.

³⁶ Michael Runersten, *Defining ‘Self-contained Regime’ - A Case Study of the International Covenant on Civil and Political Rights* (Lund: Lund University Publications, 2008), 21.

³⁷ Alfred Verdross, “General International Law and the United Nations Charter,” *International Affairs (Royal Institute of International Affairs)* 30, no. 3 (1954): 342

³⁸ Statute of The International Court of Justice, (opened for signature 26 June 1945 entered into force 24 October 1945).

A. PROHIBITION ON THE USE OF FORCE AND NON-INTERVENTION

The prohibition on the use of force, enshrined under Article 2(4) of the UN Charter, constitutes both customary international law and *jus cogens* norm.³⁹ In any modern-day dispute involving States, the norm of non-use of force takes precedence and is inevitably the first reference point.⁴⁰ The recent Russia-Ukraine conflict is no different, with Russia mounting a massive attack on 24 February 2022 by stationing 130.000 troops on the ground. The battle has been ongoing with Russia seeking to capture the southern regions of Ukraine.⁴¹ Unfortunately, there seems to be no end in sight. There is small doubt that the Russian invasion of Ukraine constitutes a blatant breach of Article 2(4) of the UN Charter *vis-à-vis* aggression.⁴² However, the Russian president has claimed that the military operation was justified under the ‘right of self-defense (this was confirmed through Putin’s speech and a letter sent to the UNSC, which is essentially the reporting mechanism under Article 51 of the UN Charter).’⁴³ Russia invoked both individual and collective self-defense.⁴⁴

In terms of individual self-defense, Putin considered NATO’s eastward expansion as an impending threat. According to Putin, “For the US and its allies, it is a policy of containing Russia, with obvious geopolitical dividends, while for our country, it is a matter of life and death, a matter of our historical future as a nation. This is not an exaggeration, this is a fact. It is not only a very real threat to our interests but to the very existence of our state and its sovereignty. It is the red line that we have spoken about on numerous occasions. They [NATO] have crossed it”.⁴⁵

³⁹ Sondre Torp Helmersen, “The Prohibition of the Use of Force as Jus Cogens: Explaining Apparent Derogations,” *Netherlands International Law Review* 61, no. 2 (2014): 167. Władysław Czapliński, “Customary International Law on the Use of Force,” *Wroclaw Review of Law* 8, no. 2 (2018): 98.

⁴⁰ Malcolm Langford, Geir Ulfstein, “Russia Has Violated the Fundamental Rules of International Law. What Are the Consequences?” PRIO, accessed 16 June 2022, <https://blogs.prio.org/2022/03/russia-has-violated-the-fundamental-rules-of-international-law-what-are-the-consequences/>.

⁴¹ Natalia Zinets, “Ukraine steps up drive to retake Russian-controlled south with air strikes,” *Reuters*, 29 July 2022, accessed 16 June 2023, <https://www.reuters.com/world/europe/russia-captures-power-station-redeploys-troops-toward-southern-ukraine-2022-07-27/>.

⁴² John B. Bellinger, “How Russia’s Invasion of Ukraine Violates International Law,” CFR, 28 February 2022, accessed 17 June 2022, <https://www.cfr.org/article/how-russias-invasion-ukraine-violates-international-law>.

⁴³ Green, Henderson, Ruys, “Russia’s attack on Ukraine,” 7.

⁴⁴ *Ibid.*, 8.

⁴⁵ “Full text of Vladimir Putin’s speech announcing ‘special military operation’ in Ukraine,” *The Print*, 24 February 2022, accessed 18 June 2022, <https://theprint.in/world/full-text-of-vlad->

To invoke self-defense, the existence of an armed attack is a prerequisite and it should be of a 'grave' nature.⁴⁶ It is evident that there has been no use of force against Russia to trigger Article 51. However, Putin may have perceived a 'future threat' against Russia and invoked 'anticipatory self-defense. According to Michael N. Schmitt, "there was no evidence to suggest that NATO would attack Russia before Russian offensive".⁴⁷ Similarly, James A. Green, Christian Henderson, and Tom Ruys emphasized "there was no credible basis for Russia to assert that it faced an imminent threat from NATO in February 2022. Interestingly, President Putin did not appear to view the threat as an imminent one".⁴⁸ The experts proceeded to add that the use of 'pre-emptive self-defense' was illegal in 2002 (USA had placed a similar argument in the aftermath of the American intervention in Iraq) and remained illegal in 2022.⁴⁹ It was pertinent to note that in the armed activities judgment, the ICJ observed, "security needs [that are] essentially preventative cannot sustain a self-defense claim".⁵⁰ Assuming that customary international law legitimized anticipatory self-defense, it would need to comply with the necessity and proportionality requirements.⁵¹ In addition to individual self-defense, Russian argument seems to focus on collective self-defense. Collective self-defense can be invoked only when the victim State requests aid in response to an armed attack.⁵² In the current situation, Russia has recognized the two regions of Donetsk and Luhansk as sovereign states. According to Putin, "the Donbas People's Republic requested help from Russia" and Russia responded "in the execution of the treaties of friendship and mutual assistance with the Donetsk People's Republic and the Lugansk People's Republic, which were ratified by the Federal Assembly on February 22".⁵³ Merely recognizing these regions as state does not automatically grant them statehood. According to Hersch

imir-putins-speech-announcing-special-military-operation-in-ukraine/845714/.

⁴⁶ Statute of The International Court of Justice, (opened for signature 26 June 1945 entered into force 24 October 1945).

⁴⁷ Michael N Schmitt, "Russia's "special military operation" and the (claimed) right of self-defense," Lieber Institute, 28 February 2022, accessed 20 June 2022, <https://lieber.westpoint.edu/russia-special-military-operation-claimed-right-self-defense/>.

⁴⁸ Green, Henderson, Ruys, "Russia's attack on Ukraine," 11.

⁴⁹ *Ibid.*

⁵⁰ Armed Activities on The Territory Of The Congo (Democratic Republic Of The Congo V. Uganda), ICJ Reports, Judgment, 19 December 2005.

⁵¹ David Kretzmer, "The Inherent Right to Self-Defence and Proportionality in Jus Ad Bellum," *European Journal of International Law* 24, no. 1 (2013): 235.

⁵² 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.

⁵³ The Statement of Russian Federation President regarding the Application on Dispute relating to Allegations of Genocide. The text available at <https://www.icj-cij.org/public/files/case-related/182/182-20220307-OTH-01-00-EN.pdf>, accessed on 21 June 2022.

Lauterpacht, ‘a premature recognition of separatist regions as a new state during an ongoing internal armed conflict is a breach of international law’.⁵⁴ Moreover, the UNGA unequivocally rejected Russian recognition of the provision of Donetsk and Luhansk as breaches of international law.⁵⁵ Should Russia intend to espouse the ‘humanitarian intervention’ argument, it would fail because the legality of such intervention without UNSC authorization is still nascent and would violate the principles of non-use of force and non-intervention. It is evident from the above discussion that Russia attempted to use the language of international law to advance its security interest. However, most of these claims lack legal justification and violate general international law norms.⁵⁶ Despite Putin’s criticism of the west’s transgressions in the past, this does not justify the use of force by Russia.

B. RIGHTS OF SELF-DETERMINATION

Scholars contend that Russian aggression constitutes a clear breach of the Right to self-determination. It is worth to note that Lenin contributed to the development of the idea of self-determination during its emergence as a political discourse.

According to Lenin’s writings in 1916,

*“The dialectics of history are such that small nations, although powerless as an independent factor in the struggle against imperialism, play a part as one of the ferments and bacilli, aiding the real anti-imperialist force and socialist proletariat, to emerge on the scene”.*⁵⁷

The notion of self-determination was fully embraced in the post-world war era and subsequently codified in the UN Charter as one of the sacrosanct principles. In simple terms, the right of self-determination means the right of the people to determine their destiny, although the precise outcomes of exercising this right remain unclear.

In 2014, Russia abused the right of self-determination by annexing Crimea.

⁵⁴ Hersch Lauterpacht, “Recognition of States in International Law,” *The Yale Law Journal* 53, no. 385 (1944): 394.

⁵⁵ General Assembly Resolution ES-11/1, *Aggression against Ukraine*, A/RES/ES-11/1 (2 March 2022), available from <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/293/36/PDF/N2229336.pdf?OpenElement>.

⁵⁶ Christian Marxsen, “Putin is abusing international law,” Max Planck Gesellschaft, 18 March 2022, accessed 23 June 2022, <https://www.mpg.de/18442939/putin-is-abusing-international-law>.

⁵⁷ Vijay Prashad, “The Internationalist Lenin: Self-determination and Anti-colonialism,” MRonline, accessed 28 June 2022, <https://mronline.org/2020/08/10/the-internationalist-lenin-self-determination-and-anti-colonialism/>.

The legal justification provided at the time was that the ‘Ukraine situation’ had created an extreme situation, preventing the exercise of the right of self-determination within the constitutional framework of Ukraine. However, Johannes Socher emphasized this argument lacks a sound legal basis and also stated that

*“Crimea arguably marked a shift away from legal argumentation towards recourse to eclectic historical claims and restoration of hegemonic power. While the right of peoples to self-determination continues to function as a central legal argument, legal reasoning more generally loses its dominant position in the official justification of Russian state practice in the post-Soviet space”.*⁵⁸

In the recent Russia-Ukraine conflict, both USA and Russia have consistently relied on the right of self-determination to justify their support for the people of Donetsk and Luhansk. According to Russian argument, the inhabitant of Donetsk and Luhansk are distinct ‘peoples’ and entitled to an external right to self-determination due to the Ukrainian government’s policy discrimination towards the people of these regions. This approach is commonly referred to as the ‘remedial approach of peoples’. On 21 February 2022, Putin made a statement that “...the people of these regions were fighting for their elementary right to live on their land, speak their language, and to preserve their culture and traditions”. This statement was widely condemned, even by the UN Secretary-General, stating that ‘the decision of the Russian President was a violation of Ukraine’s territorial integrity and sovereignty, and inconsistent with the principles of the UN Charter.’⁵⁹

However, the irony is that Russia did not subscribe to this stance in the cases of Kurds under the Syrian regime.⁶⁰ There is still a reluctance to acknowledge that external self-determination does not entail the right to cede.

One notable exception to this was Kosovo’s unilateral declaration of independence, however, not all countries accept this position. According to Sofia Cavandoli and Gary Wilson,

⁵⁸ Johannes Socher, *Russia, The Right to Self-Determination and Annexation, Russia and the Right to Self-Determination in the Post-Soviet Space* (Oxford: Oxford University Press, 2021),59.

⁵⁹ Address by the President of the Russian Federation, 21 February 2022, accessed 5 January 2022, <http://en.kremlin.ru/events/president/news/67828>. Further condemnation came from the U.S, French President, and Australian Prime Minister.

⁶⁰ Loqman Radpey, “The Violations of Sovereignty and the Right to Self-Determination in Rojava and Ukraine,” *OpinioJuris*, 25 April 2022, accessed 23 June 2022, <https://opiniojuris.org/2022/04/25/the-violations-of-sovereignty-and-the-right-to-self-determination-in-rojava-and-ukraine/>

*“Although over 100 countries worldwide, including the US and most EU states, have recognized Kosovo’s independence, countries like China and Russia have refused to recognize it as a legitimate state, citing the importance of respect for the principle of territorial sovereignty as the primary reason for their stance”.*⁶¹

Historically, the people of both regions voted to cede in 2014 not because of any denial of their rights, but due to the ouster of President Viktor Yanukovich.⁶² Although the Ukrainian government has the right and has truly promoted its official language to strengthen national identity, this action does not justify the cession.⁶³ According to state practice, the right to cede for violation of the right to self-determination is rare in modern international law and remains a contentious issue. Assuming Putin’s claim of genocide committed by Ukraine was true, it was emphatically denied by the ICJ through its provision orders of 16 March 2022.

IV. CRISIS IN GENERAL INTERNATIONAL LAW

The incessant violation of international law principles is conspicuous in the Russia-Ukraine conflict.⁶⁴ This has raised questions about how general international law responds to such violations. Has general international law come to the rescue of the victim or remained a mere bystander in a state of crisis? The UN Charter, whose provisions are often disregarded, can respond through resolutions, military assistance, sanctions, and peaceful settlement of the dispute. However, the current conflict quintessentially reflects an apparent crisis.

A. CRISIS IN UNSC

Despite the UN’s commitment to sovereign equality, its effectiveness is often stymied by the coveted status of the permanent five States (P5).⁶⁵

⁶¹ Sofia 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, (2022): 391.

⁶² For a detailed reading on the Russia-Ukraine war, refer to the book, Paul D’Anieri, *Ukraine and Russia: From Civilized Divorce to Uncivil War* (2019). See also Daisy Sindelar, “Was Yanukovich’s Ouster Constitutional?” *RFERL*, 23 February 2022, accessed 23 June 2022, <https://www.rferl.org/a/was-yanukovychs-ouster-constitutional/25274346.html>.

⁶³ Cavandoli and Wilson, “The International Law Context of Russia’s Invasion of Ukraine,” 391.

⁶⁴ *Ibid.*

⁶⁵ Madeleine O. Hosli and Dörfler Thomas, “Why is Change So Slow? Assessing Prospects for United Nations Security Council Reform,” *Journal of Economic Policy Reform* 22, no. 1 (2019): 37.

The draft UNSC was blocked by Russia in the current conflict. According to the Russian Federation representative, Vassily A. Nebenzia, "...Western partners have issued Kyiv a carte blanche to attack the Russian language. The authorities have been accused of murdering political opponents and shuttering media outlets, making Ukraine a pawn in their game. The responsibility for these actions does not only lie with the Ukrainian Government, 'but also lies at your feet'".⁶⁶

The UN Charter, which was created in the aftermath of World War II, epitomizes the philosophy of victor's justice. In chapter VII, the victors were conferred unfettered power, which includes the authority to determine the question of 'threat to peace'.⁶⁷ It is widely believed that the US Congress would not ratify the UN charter without veto power.⁶⁸ Even though the Security Council undergoes reforms, such as expanding its membership or doing away with the veto, there may be small headway. This is because the west may still be reluctant to indulge in full-blown war as Ukraine is not a member of NATO.

In brief, the UN Charter has been a victim of Russian aggression, and this is not a one-off scenario. For instance, in 2003, the US coalition intervened in Iraq, blatantly disregarding the provisions of the charter. It has been argued that the intervention implied implicit authorization from the UNSC.⁶⁹ Therefore, it can be misleading to attribute the entire crisis solely to the UN Charter's failure, as it is accentuated by the reckless political leaders and armament race.

⁶⁶ "Security Council Fails to Adopt Draft Resolution on Ending Ukraine Crisis, as Russian Federation Wields Veto, 8979th Meeting (PM)," Press UN, 25 February 2022, accessed 23 June 2022, <https://press.un.org/en/2022/sc14808.doc.htm>.

⁶⁷ Article 39 of the UN Charter reads as: The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

⁶⁸ Tarcisio Gazzini, "Can we Blame the United Nations for the Crisis in Ukraine?" Voelkerrechtsblog, 6 April 2022, accessed 27 June 2022, <https://voelkerrechtsblog.org/can-we-blame-the-united-nations-for-the-crisis-in-ukraine/>.

⁶⁹ The intervention of the United States was premised on UNSC resolutions 678, 660 and 1441 according to the Bush administration. These resolutions required Iraq to disarm and submit to the weapon inspection. The independent commission of inquiry established by the Netherlands notes that 'State cannot use force to compel Iraq to comply with the UNSC resolution.' In the aftermath of the United States intervention, the former prosecutor of the International Criminal Court (ICC) received 240 separate communications regarding the legality of war.

B. CRISIS IN UNGA

The failure of the UNSC prompted the UNGA to mitigate the crisis through a resounding resolution.⁷⁰ The UN charter stipulates that the UNGA has the authority to make recommendations to realise human rights. For instance, in 2012, the UNGA passed a resolution in response to the UNSC's failure to address the Syrian crisis.⁷¹ The UNGA urged "Syria to comply with its obligations under international law, and demanded that the Government immediately cease all violence and safeguard its citizens, as outlined in the League of Arab States' 2 November 2011, Action Plan, and its decisions of 22 January and 12 February 2012".⁷² Although the primary responsibility of maintenance of international peace and security vests with the UNSC, it is not an exclusive function.⁷³ The ICJ, in its advisory opinion on 'Certain Expenses of the United Nations', observed that "The responsibility granted is primary", but not exclusive. As stated in Article 24, this primary responsibility is conferred upon the Security Council, "to ensure prompt and effective action".⁷⁴ The UNSC and UNGA can simultaneously address the same issue. Moreover, the UNGA's functions are dictated by the doctrine of implied power, enabling it to make decisions within the purpose and principles of the UN, with the exception that such decisions should not disrupt the organization's functions.⁷⁵

In matters pertaining to peace and security, the Uniting for Peace Resolution (UPR) is a commonly used tool by the UNGA. Resolution 377A

⁷⁰ "General Assembly resolution demands end to Russian offensive in Ukraine," News UN, accessed 30 June 2022, <https://news.un.org/en/story/2022/03/1113152>.

⁷¹ "Security Council Fails to Adopt Draft Resolution on Syria That Would Have Threatened Sanctions, Due to Negative Votes of China, Russian Federation," Press UN, 19 July 2012, accessed 1 July 2022, <https://press.un.org/en/2012/sc10714.doc.htm>. On the resolution passed by UNGA in the context of the conflict in Syria by a recorded vote of 137 in favour to 12 against, with 17 abstentions, the Assembly expressed grave concern at the deteriorating situation in Syria and condemned the killing and persecution of protestors and journalists, and sexual violence and ill-treatment, including against children see, "General Assembly Adopts Resolution Strongly Condemning 'Widespread and Systematic' Human Rights Violations by Syrian Authorities," Press UN, 16 February 2012, accessed 2 July 2022, <https://press.un.org/en/2012/ga11207.doc.htm>.

⁷² "General Assembly Adopts Resolution Strongly Condemning 'Widespread and Systematic' Human Rights Violations by Syrian Authorities," UN Press, 16 February 2012, accessed July 2 2022, <https://press.un.org/en/2012/ga11207.doc.htm>.

⁷³ Certain Expenses of The United Nations (Article 17, Paragraph 2, Of The Charter), ICJ Advisory Opinion, 1962, at 163. The text is available at <https://www.icj-cij.org/public/files/case-related/49/049-19620720-ADV-01-00-EN.pdf>.

⁷⁴ *Ibid.*

⁷⁵ "The Powers of The UN General Assembly To Prevent And Respond To Atrocity Crimes: A Guidance Document," Asia Pacific Centre For The Responsibility To Protect, 29 April 2021, accessed 5 July 2022, <https://www.globalr2p.org/resources/the-powers-of-the-un-general-assembly-to-prevent-and-respond-to-atrocity-crimes-a-guidance-document/>.

was passed by the UNGA in the 1950s in response to the Korean war (1950-1953).⁷⁶ According to the resolution, “should the Security Council, due to a lack of unanimity among the permanent members, fail to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, breach of the peace, or act of aggression, the General Assembly should immediately consider the matter with a view to making appropriate recommendations to Members for collective measures. This includes the case of a breach of the peace or act of aggression and the use of armed force when necessary”.⁷⁷ Although some scholars viewed the UPR as an unnecessary encroachment on the powers of the UNSC, others believed it merely conferred the power that was already vested in the UNGA.⁷⁸ In the landmark Kosovo Advisory opinion, the ICJ emphasized that “it provided for the General Assembly to make recommendations for collective measures to restore international peace and security in any case where there appeared to be a threat to the peace, breach of the peace or act of aggression, and the Security Council was unable to act due to a lack of unanimity among the permanent members”.⁷⁹ In the ongoing conflict, the UNGA passed a resounding resolution during its 11th emergency special session, with the backing of 141 States, calling for the unconditional withdrawal of military troops from the territory of Ukraine. However, these were mere recommendations and their enforcement required the approval of all the Permanent five (P5) States. Since any such move would be vetoed by Russia, the resolution is unlikely to be enforced.

In an ideal scenario, Russia should be suspended from the UN. However, does the existing international law open up such possibilities?⁸⁰ The means to suspend a member State from the UN is codified under Article 5 of the UN Charter, stating that “a member of the UN who has faced preventive or

⁷⁶ Nico J. Schrijver, “The Future of the Charter of the United Nations,” *Max Planck Yearbook*, (2006): 14. For more on the Korean War refer Bruce Cumings, *The Korean War: A History* (New York: Modern Library Chronicles, 2011), 33.

⁷⁷ “Emergency special sessions,” UN, accessed 5 July 2022, <https://www.un.org/en/ga/sessions/emergency.shtml>.

⁷⁸ “The Powers of The Un General Assembly To Prevent And Respond To Atrocity Crimes: A Guidance Document, Asia Pacific Centre for the Responsibility to Protect,” Accessed 2 March 2022, <https://www.globalr2p.org/resources/the-powers-of-the-un-general-assembly-to-prevent-and-respond-to-atrocity-crimes-a-guidance-document/>. Harry Reicher, “The Uniting for Peace Resolution on the Thirtieth Anniversary of its Passage,” *Columbia Journal of Transnational Law*, Vol. 10, no. 1 (1981): 48.

⁷⁹ Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion ICJ Report 2010, 403, 421.

⁸⁰ Rebecca Barber, “Could Russia be Suspended from the United Nations?” EJILTalk, accessed 5 July 2022, <https://www.ejiltalk.org/could-russia-be-suspended-from-the-united-nations/>.

enforcement by the Security Council may be suspended from exercising their membership rights and privileges by the General Assembly upon the recommendation of the Security Council”.⁸¹ On a closer reading of the provision, it is apparent that preventive measures are to be taken against Russia. Even though Russia had not exercised its veto, it may certainly do. It is not possible to circumvent the veto by dubbing it a procedural question, since Article 18(2) of the UN Charter regards the suspension of membership rights and privileges as an ‘important question’.⁸²

C. CRISIS IN THE INTERNATIONAL COURT OF JUSTICE (ICJ)

The primary purpose of the ICJ is to secure international peace through the rule of law.⁸³ In its provisional measures involving the Russia-Ukraine conflict, the ICJ has called for both sides to respect international law.⁸⁴ Although other UN bodies have passed resolutions on the dispute, the order of the ICJ was confined to the genocide Convention.⁸⁵ Despite the provisional measures, the attacks on Ukraine are unabated with Russia mooting to capture the southern parts of Ukraine.⁸⁶ It is worth noting that states are also expected to comply with the provisional measures.⁸⁷ The binding nature of provisional measures was augmented by the ICJ in the *Lagrand Case*. It was observed that “according to the object and purpose of the Statute, as well as the terms of Article 41 when read in their context, the power to indicate provisional measures entails that such measures should be binding, in as much as the power in question is based on the necessity to safeguard and avoid prejudice to the rights of

⁸¹ Statute of The International Court of Justice, (opened for signature 26 June 1945 entered into force 24 October 1945).

⁸² Rebecca Barber, “Could Russia be Suspended from the United Nations?” accessed 5 July 2022, <https://www.ejiltalk.org/could-russia-be-suspended-from-the-united-nations/>.

⁸³ Hersch Lauterpacht, *The Development of International Law by the International Court* (Cambridge: Cambridge University Press, 1958), 3. Peter Tomka, “Inaugural Hilding Eek Memorial Lecture By H.E. Judge Peter Tomka, President Of The International Court Of Justice, At The Stockholm Centre For International Law And Justice: The Rule of Law and the Role of the International Court of Justice in World Affairs Monday,” accessed 6 July 2023, <https://www.icj-cij.org/public/files/press-releases/8/17848.pdf>.

⁸⁴ *Allegations of Genocide Under The Convention on The Prevention And Punishment of The Crime Of Genocide (Ukraine v. Russian Federation), Provisional Measures, ICJ 2022*. Available at <https://www.icj-cij.org/public/files/case-related/182/182-20220316-ORD-01-00-EN.pdf>.

⁸⁵ *Ibid.*

⁸⁶ Natalia Zinets, “Ukraine steps up drive to retake Russian-controlled south with air strikes,” *Reuters*, 27 July 2022, accessed 7 July 2023, <<https://www.reuters.com/world/europe/russia-captures-power-station-redeploys-troops-toward-southern-ukraine-2022-07-27/>.

⁸⁷ *Lagrand Case (Germany v. United States Of America), Judgement, ICJ Report 2011, 466*. Available at <https://www.icj-cij.org/public/files/case-related/104/104-20010627-JUD-01-00-EN.pdf>.

the parties as determined by the final judgment of the Court. In the words of Ukraine, the Russian Federation has turned the Genocide Convention on its head by making false claims of Genocide”.⁸⁸

One of the observations of the ICJ was “The Russian Federation shall immediately suspend the military operations that it commenced on 24 February 2022 in the territory of Ukraine”, with thirteen judges in favor and two against.⁸⁹ Despite this decision, there has been little achievement in terms of respecting the order. The Russian foreign minister even admitted to having targeted a military boat in the port of Odesa.⁹⁰ It is worth noting that the provisional measures were rendered without the participation of the Russian Federation.⁹¹ Although the ICJ did not delve into the merits by determining whether genocide had been committed,⁹² it did hold the view that the obligation to prevent genocide as contented by Russian Federation should be interpreted in good faith. This means that the country “may call upon the competent body of the United Nations to take such action, as they are deemed appropriate under the Charter of the United Nations, to prevent and suppress acts of genocide or any of the other acts listed in article III”.⁹³ Moreover, the obligation to prevent Genocide should be within the limits of international law. Interestingly, the ICJ abstained from determining whether Genocide had been committed or not.⁹⁴

Based on its previous decisions, it could take years for the ICJ to make a decision on the merits of case. Currently, there is a pending case before the ICJ on the Application of the International Convention for the Suppression of the Financing of Terrorism and the Elimination of All Forms of Racial Discrimination (2019).⁹⁵ The court has already decided on the provisional

⁸⁸ *Ibid.*

⁸⁹ ICJ, *Ukraine V. Russian Federation*, 19.

⁹⁰ “Russia struck military boat in Odesa with cruise missiles – foreign ministry says,” *Reuters*, 24 July 2022, accessed 10 July 2023, <https://www.reuters.com/world/europe/russia-says-it-hit-military-boat-odesa-port-ukraine-2022-07-24/>.

⁹¹ But as the ICJ observed in paragraph 22 of the provisional measures, “Though formally absent from the proceedings, non-appearing parties sometimes submit to the Court letters and documents in ways and by means not contemplated by its Rules”.

⁹² ICJ, *Ukraine V. Russian Federation*, 13.

⁹³ *Ibid.*

⁹⁴ ICJ, *Ukraine V. Russian Federation*, 11.

⁹⁵ 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*), Preliminary Objections Judgment, ICJ Reports 2019. Available at <https://www.icj-cij.org/public/files/case-related/166/166-20191108-JUD-01-00-EN.pdf>. For a nuanced understanding of the said case, see Atul Alexander, “Lack of ‘Will’ or ‘Options’: A Study on the International Court of Justice’s Tryst with Racial Discrimi-

measures and heard preliminary objections in the case, rejecting the claims of the Russian Federation. Since the case is still pending, it can take years before the ICJ renders its decision on merits. Although the decisions are considered final without appeal, there are limited ways to enforce the same.

The jurisdiction of the ICJ is premised on consent. Although there have been several calls for the State to submit to the compulsory jurisdiction under Art. 36(2),⁹⁶ the original framework for the enforcement of the judgment is outlined in Article 94 of the UN Charter. According to this article, “each member of the United Nations undertakes to comply with the decisions of the International Court in any case to which it is a party.” Since the decision of the ICJ is considered final, post-adjudicatory compliance is largely political.⁹⁷ Therefore, the compliance is rather a political act. According to Article 94(2), “should any party to a case fail to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, when it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment”.⁹⁸ It is worth to note that Russia being a permanent member of the UNSC has the power to block any such moves. Therefore, as Aloysius P. Llamzon eloquently sums up, “the enforcement of ICJ judgments involves quintessentially political acts by both parties and the Security Council, in which the Court has slight involvement and no power”.⁹⁹

V. OVERCOMING THE STRUCTURAL CRISIS

As already stated, general international law is under a state of structural crisis, as the UNGA, UNSC, and ICJ are unable to prevent Russian progress in Ukraine. There is a common view that the west’s involvement in the whole crisis remains unexplored, however, this is more a matter of international politics. According to John J. Mearsheimer, “...the US and its European allies share most of the responsibility for the crisis, while the NATO expansionist policy is considered the root cause of the trouble”.¹⁰⁰

nation,” *Indonesian Journal of International Law* 19, no. 2 (2022): 213.

⁹⁶ “Basis of The Court’s Jurisdiction,” International Court of Justice, accessed 2 March 2022, <https://www.icj-cij.org/basis-of-jurisdiction>.

⁹⁷ Shabtai Rosenne, *The Law and Practice of the International Court 1920 – 1996* (BRILL Publishers, 1997), 249.

⁹⁸ Statute of The International Court of Justice, (opened for signature 26 June 1945 entered into force 24 October 1945).

⁹⁹ Aloysius P. Llamzon, “Jurisdiction and Compliance in Recent Decisions of the International Court of Justice,” *European Journal of International Law* 18, no. 5 (2008): 821.

¹⁰⁰ John J. Mearsheimer, “Why the Ukraine Crisis Is the West’s Fault: The Liberal Delusions

International law proscribed the ‘use of force’ as early as 1928 with the Kellogg-Briand pact. On the aspect of the UNSC, the option of invoking Art. 51 of the UN Charter is open to Ukraine, and backed by the coalition upon its request. Kuwait made a similar request to the international community when it was invaded by Iraq in 1990.¹⁰¹ Stripping Russia of its permanent membership in the UNSC is not an option, as the approval of the Permanent five States (P5) is required. During an informal meeting of the UNSC under the Arria formula, which included a range of participants from civil rights societies, and human rights watch, several suggestions were made to overcome the Russia-Ukraine conflict.¹⁰² However, there was no attempt to change the formal structure of the Veto. The deployment of Veto power can also hinder UNSC referrals to the ICC.¹⁰³

Another option could be to take a chapter VI route, where Russia would be precluded from exercising its Veto courtesy of Article 27(3) of the UN Charter. According to the Article, “Decisions of the Security Council on all other matters shall be made by an affirmative vote of nine members including the concurring votes of the permanent members, provided that, in decisions under Chapter VI, and paragraph 3 of Article 52, a party to a dispute shall abstain from voting”.¹⁰⁴ Although there are several suggestions for reforming the UNSC, very slight progress has been made on these proposals. One of the key proposals from the Report of the High-level Panel on Threats, Challenges, and Change (2004) was for the UNSC to function democratically and increase its accountability.¹⁰⁵ It was also suggested to enhance its membership. According to a previous report, ‘even outside the use of a formal veto, the ability of the five permanent members to keep critical issues of peace and security off the Security Council’s agenda has further undermined confidence in the body’s work’.¹⁰⁶

That Provoked Putin,” *Foreign Affairs* 93, no. 5 (2014): 83.

¹⁰¹ Christine Gray, “The US National Security Strategy and the New “Bush Doctrine” on Pre-Emptive Self-Defence,” *Chinese Journal of International Law* 1, no. 2 (2002): 437.

¹⁰² “United Nations Security Council Arria-Formula Meeting Ensuring Accountability for Atrocities Committed in Ukraine,” Human Rights Watch, accessed 17 July 2022, <https://www.hrw.org/news/2022/04/27/united-nations-security-council-arria-formula-meeting>.

¹⁰³ See generally, “UN Security Council: Vetoes Betray Syrian Victims In Face of Mounting Pressure, Russia, China Block ICC Referral,” Human Rights Watch, accessed 18 July 2022, <https://www.hrw.org/news/2014/05/22/un-security-council-vetoes-betray-syrian-victims>.

¹⁰⁴ Charter Of The United Nations And Statute Of The International Court Of Justice. [online]. Available at <<https://treaties.un.org/doc/publication/ctc/uncharter.pdf>> Accessed: 18.07.2022.

¹⁰⁵ “The Secretary-General’s High-level Panel Report on Threats, Challenges and Change, A more secure world: our shared responsibility,” UN, 19 July 2022, https://www.un.org/ruleoflaw/files/gaA.59.565_En.pdf, 67.

¹⁰⁶ “The Secretary-General’s High-level Panel Report on Threats, Challenges and Change, A more secure world: our shared responsibility,” 2 March 2022, <https://www.un.org/ruleoflaw/>

It has also been proposed to implement a mechanism of ‘indicative voting’, where ‘no’ votes would not have the effect of veto.¹⁰⁷ In the aftermath of Russian intervention in Ukraine, the UN adopted a resolution requiring the permanent members of the UN to justify their use of veto. The UNGA resolution did not eliminate the possibility of exercising veto power, but only requires the General Assembly “to hold a debate on the situation” that led to a veto in the Security Council within ten working days. In addition, they are required to give precedence on the list of speakers to the permanent member who cast the veto.¹⁰⁸ The UNGA and some of the permanent members of the UNSC have echoed similar reforms to democratize the decision-making in the UNSC. In the draft decision titled, ‘Question of Equitable Representation on and Increase in the Membership of the Security Council and Other Matters Related to the Security Council’, the President of the UNGA in 2020 identified the veto as one of the key issues with regard to the UNSC.¹⁰⁹ Moreover, there was a proposal to enhance the membership of non-permanent members to twenty without eliminating the veto.¹¹⁰

The nature of the UNGA is non-binding and is recommendatory. With the current logjam in UNSC, it is unlikely that much will result from its resolution, but the UNGA can still persuade relevant stakeholders to negotiate. For instance, in the 1980s, the UNGA requested the United Nations Secretary-General (UNSG) to appoint a special rapporteur in order to engage in the diplomatic process and enable a political solution.¹¹¹ This could send a strong signal to the international community about the commission of aggression. On the contrary, it could recommend the States to impose unilateral sanctions.¹¹²

files/gaA.59.565_En.pdf, 66.

¹⁰⁷ “The Secretary-General’s High-level Panel Report on Threats, Challenges and Change, A more secure world: our shared responsibility,” 19 July 2022, https://www.un.org/ruleoflaw/files/gaA.59.565_En.pdf, 68.

¹⁰⁸ “UN adopts resolution requiring UNSC permanent members to justify veto use,” accessed 20 July 2022, <https://www.trtworld.com/americas/un-adopts-resolution-requiring-unsc-permanent-members-to-justify-veto-use-56658>.

¹⁰⁹ “Question of equitable representation on and increase in the membership of the Security Council and other matters related to the Security Council,” United Nations, 21 July 2022, <https://www.un.org/pga/74/2020/08/26/pga-letter-on-the-draft-decision-entitled-question-of-equitable-representation-on-and-increase-in-the-membership-of-the-security-council-and-other-matters-related-to-the-security-council/>.

¹¹⁰ Nadia Sarwar, “Expansion of the United Nations Security Council” *Strategic Studies* 31, no. 3 (2011): 260.

¹¹¹ “The Powers of The UN General Assembly to Prevent And Respond To Atrocity Crimes: A Guidance Document,” Asia Pacific Centre for The Responsibility to Protect, 21 April 2021, 24. Available at <https://www.globalr2p.org/resources/the-powers-of-the-un-general-assembly-to-prevent-and-respond-to-atrocity-crimes-a-guidance-document/>.

¹¹² *Ibid.*, 38.

The UNGA has recommended such measures in the past, as in the 1970s and 80s, when it called on States to inter-alia sever economic and other relations concerning Southern Rhodesia's minority regime.¹¹³ This was also witnessed in the context of South Africa's apartheid regime, where the UNGA called States to break off diplomatic relations. Its authority to recommend sanctions is a step in the right direction. The hurdle is that since 1996, the UNGA has adopted annual resolutions, asserting 'unilateral sanctions' breach international law.¹¹⁴

It is worth noting that although the UNGA has rendered a negative connotation to unilateral sanctions, it has not generalized unilateral sanctions as the same. Unilateral sanctions are considered coercive when they a) apply extra-territorially, b) fail to respect human rights and due process, and c) encroach on the *domaine réservé* (reserved domain) of the State.¹¹⁵ The Draft General Assembly Declaration on Unilateral Coercive Measures and the Rule of Law (2019), prepared by the Special Rapporteur on the Negative Impact of Unilateral Coercive Measures on the Enjoyment of Human Rights, lays specific criteria that unilateral sanctions should comply with.¹¹⁶ Besides, in accordance with the International Law Commission (ILC), States are obliged to cooperate with the UN body to end any serious breaches of a peremptory norm of international law.¹¹⁷ In the current scenario, Russia has violated the peremptory norm of force use (aggression), therefore, should the UNGA pass a resolution on this matter and impose sanctions on Russia, the States would be obligated to comply with the same.¹¹⁸ Does this mean that States are obligated to comply with the western sanctions imposed on Russia? According to Article 41(1), "States shall cooperate to end, any serious breach through lawful means...".¹¹⁹ However, such cooperation should take place within the framework of the UN and not through unilateral sanctions imposed by States

¹¹³ *Ibid.*, 41.

¹¹⁴ *Ibid.*, 42.

¹¹⁵ For the report recommendation that unilateral coercive measures should be phased out as early as possible starting with those found to have the most egregious effects in terms of denials of human rights. See *Elements for a draft General Assembly declaration on unilateral coercive measures and the rule of law (updated)*, Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights. Available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/257/21/PDF/G1925721.pdf?OpenElement>, 23 July 2022.

¹¹⁶ *Ibid.*

¹¹⁷ *Ibid.*

¹¹⁸ Rana Moustafa Essawy, "Is There a Legal Duty to Cooperate in Implementing Western Sanctions on Russia?" accessed 25 July 2022, <https://www.ejiltalk.org/is-there-a-legal-duty-to-cooperate-in-implementing-western-sanctions-on-russia/>.

¹¹⁹ Draft Articles Responsibility of States for Internationally Wrongful Acts 2001.

without the endorsement of the UN. According to Rana Moustafa Essawy, "... when states are concerned that article 41 (1) may trigger unilateral measures, it is difficult to claim they have accepted a legal duty to cooperate in the adoption and implementation of those measures".¹²⁰ This essentially means that a UNGA resolution could ensure the cooperation of states.

During the operation of the ICJ, several scholars suggested various reforms. In 2021, a number of scholars commented on the missed opportunities to clarify the aspect of 'law'.¹²¹ The ICJ's use of jurisdiction to decline cases means that its role in maintaining peace and security is not fully realized.¹²² The call for reform is not unique to the ICJ but also extends to all bodies of the UN.¹²³ As far as the ICJ is concerned, the reforms need to stem from its Statute, while for others, a more progressive interpretation by the court may be required to accommodate the needs of the international society. The state-centric nature of the ICJ is considered the core of the crisis, which is perhaps exemplified by the lack of compulsory jurisdiction in cases of gross human rights violations. Changing the entire structure of international law may require an overhaul, which is unlikely.¹²⁴ According to late ICJ Judge Cancado Trindade, "... a considerable part of the legal profession has continued to emphasize the overall importance of individual State consent, regrettably placing it well above the imperatives of achieving justice at the international level". It was further pointed out that "The Court cannot remain a hostage of State consent or keep displaying an instinctive and continuous search for consent, as it ostensibly did in its decisions".¹²⁵

Jeremy Sarkin and Eryn Sarkin suggested "...there are several other aspects of the ICJ that require reform. These include the appointment process of judges, its jurisdiction, as well as issues of compliance and enforcement.

¹²⁰ Essawy, "Is There a Legal Duty."

¹²¹ Alejandro Chehtman, "The Use of Force," in *The Cambridge Companion to the International Court of Justice*, Carlos Espósito and Kate Parlett, eds. (New York: Cambridge University Press, 2023), 449.

¹²² Jeremy Sarkin, Eryn Sarkin, "Reforming the International Court of Justice to Deal with State Responsibility for Conflict and Non-Conflict Related Human Rights Violations," accessed 26 July 2022, 19 <https://ssrn.com/abstract=4147837>.

¹²³ See for instance, "A more secure world: Our shared responsibility, Report of the High-level Panel on Threats, Challenges and Change," United Nations, 16 July 2022, https://www.un.org/peacebuilding/sites/www.un.org.peacebuilding/files/documents/hlp_more_secure_world.pdf

¹²⁴ Shigeru ODA, "The Compulsory Jurisdiction of the International Court of Justice: A Myth?" *International & Comparative Law Quarterly* 49, no. 251 (2000): 254.

¹²⁵ Dissenting opinion of Judge Cancado Trindade in Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), 257. Available at <https://www.icj-cij.org/public/files/case-related/140/140-20110401-JUD-01-08-EN.pdf>, accessed 2 August 2022.

To address this issue, both the UN Charter and the Court's Statute need to be revised. The Court also needs to revise the way it functions and be more willing to take cases and rule more forcefully in order to play a more meaningful role in the world".¹²⁶ In the context of the Russia-Ukraine conflict, the ICJ could play a decisive role, although reforms in its Statute and UN Charter are necessary to achieve this goal.

VI. CONCLUSION

Despite international law providing several avenues for settling international disputes, its effectiveness has been hindered by the reluctance of states. Various bodies within international law have their inherent challenges to overcome. While some of these are structural, others can be attributed to the lack of will. As previously mentioned, there are available reform options to overcome these challenges, which could positively impact the ongoing Russia-Ukraine conflict. In the overall scheme of this discussion, general international law can serve two important functions. Firstly, it acts as a regulator and a tool for damage control, although resolving the larger conflict requires political will. Secondly, it offers a 'common language' for States to engage in dialogue. According to Onuma Yasuaki, a veteran Japanese scholar, 'International law provides common language and framework for the exchange of claims in the argumentative process between States.'¹²⁷ In the case of the Russia-Ukraine conflict, general international law can offer a common platform for negotiation through bodies, such as ICJ, UNGA, or UNSC. In addition, international law can play an active strategic role by reminding the aggressors of the illegality of their actions, which will isolate the perpetrator and fix accountability.

¹²⁶ Jeremy Julian Sarkin and Eryn Sarkin, "Reforming the International Court of Justice to Deal with State Responsibility for Conflict and Non-Conflict Related Human Rights Violations," *International Human Rights Law Review* 11, no 1 (2022): 17.

¹²⁷ Onuma Yasuaki, "International Law in and with International Politics: The Functions of International Law in International Society," *European Journal of International Law* 14, no. 1 (2003): 130.

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