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THE INVASION OF UKRAINE: A GROSS VIOLATION OF INTERNATIONAL LAW

by *Claudio Grossman*^{*}

In recent weeks, humanity has witnessed a war in Europe as a result of Russia's unjustified invasion of Ukraine.¹ This war has already caused immense suffering and resulted in numerous victims, including more than four million refugees.² The terrible humanitarian cost of this war produces disbelief, horror, and, for people far from the conflict,

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¹ See *Ukraine: Russia Plans Biggest War in Europe since 1945* – Boris Johnson, BBC NEWS (Feb. 20, 2022), <https://www.bbc.com/news/uk-politics-60448162>; Marcus Walker, *Russia's War on Ukraine Transforms Europe, but Hard Decisions Lie Ahead*, WALL STREET J. (Mar. 16, 2022), <https://www.wsj.com/articles/russias-war-on-ukraine-transforms-europe-but-hard-decisions-lie-ahead-11647423003>.

² *Operational Data Portal: Ukraine Refugee Situation*, U.N. HIGH COMM'R HUM. RTS., <https://data2.unhcr.org/en/situations/ukraine> (last visited Apr. 14, 2022) (tracking the number of Ukrainian refugees); Volodymyr Verbyany, *Ukrainian Refugees Top 4 Million, Nearing 10% of the Population*, BLOOMBERG (Mar. 30, 2022), <https://www.bloomberg.com/news/articles/2022-03-30/ukrainian-refugees-top-4-million-nearing-10-of-population>.

frustration at their status as mere spectators in the face of a tragedy unfolding before their eyes.³ The victims and the immense damage that the world has observed are not, however, the only effects of this aggression. Russia's unjustified resort to the use of force has the potential to destroy the basic principles of international law that were born from the ashes of World War II. This Article proceeds with a summary of the international legal norms that regulate the use of force in international relations, it follows with the "justifications" presented by Russia, including a commentary on Putin's statements and writings. Finally, this Article concludes by reiterating the need to reestablish full compliance with the norms concerning the use of force in international law.

Russia's invasion of Ukraine violates the principles of the Charter of the United Nations, including the prohibition of the threat or use of force against a country's territorial integrity or political independence, as indicated in Article 2(4) of the Charter.⁴ The permitted exceptions to the prohibition of the use of force are: (i) action by the Security Council under Chapter VII of the Charter—which does not apply in this case because of Russia's right of veto; and (ii) the inherent right of individual and collective self-defense in the event of an armed attack while the Security Council intervenes.⁵

³ See John Psaropoulos, *Human Costs Mount in the Third Week of War in Ukraine*, ALJAZEERA (Mar. 16, 2022), <https://www.aljazeera.com/news/2022/3/16/human-costs-mount-in-the-third-week-of-war-in-ukraine>; Oleksandr Stashevskyy & Nebi Qena, *Russia Faces Global Outrage Over Bodies in Ukraine's Streets*, AP NEWS (Apr. 4, 2022), <https://apnews.com/article/russia-ukraine-zelenskyy-kyiv-business-moscow-3a40c029638ffddb289ceba89462c1aa>.

⁴ United Nations General Assembly, *Charter of the United Nations*, art. 2(4) (adopted Oct. 24, 1945) [hereinafter UN Charter]

⁵ *Id.* at arts. 42, 51.

Russia has invoked various justifications for its use of force in Ukraine.⁶ Its most flagrant argument is that it has used no force at all because it is merely performing a “peacekeeping operation.”⁷ However, Russia’s attempt to defend its actions by using misleading rhetoric does not evade its obligations under the aforementioned principles of the UN Charter. Russia’s systematic movement of troops and weapons, its crossing of Ukraine’s border without authorization, and its use of material to destroy military and civilian objectives demonstrate a clear violation of Article 2(4) of the UN Charter.⁸ Putin also attempted to justify the invasion by invoking treaties of assistance with two pro-Russia separatist provinces. Those treaties granted Russia the authority to resort to military force in the area.⁹ However, those “states” were only recognized by Russia

⁶ Marko Milanovic, *What Is Russia’s Legal Justification for Using Force Against Ukraine?*, EJIL: TALK! (Feb. 24, 2022), <https://www.ejiltalk.org/what-is-russias-legal-justification-for-using-force-against-ukraine/> (providing examples of statements made by Russian President, Vladimir Putin, attempting to justify Russia’s use of force in Ukraine).

⁷ Laurel Wamsley, *U.N. Leaders Condemn Putin After He Orders ‘Peacekeepers’ to Ukraine*, NPR (Feb. 21, 2022, 10:54 PM), <https://www.npr.org/2022/02/21/1082146367/putin-ukraine-donetsk-luhansk>; Andrew Roth & Julian Borger, *Putin Orders Troops into Eastern Ukraine on ‘Peacekeeping Duties’*, GUARDIAN (Feb. 21, 2022, 6:48 PM), <https://www.theguardian.com/world/2022/feb/21/ukraine-putin-decide-recognition-breakaway-states-today>.

⁸ UN Charter, art. 2(4); Nathan Hodge et al., *Russia Launches Military Attack on Ukraine with Reports of Explosions and Troops Crossing Border*, CNN (Feb. 24, 2022), <https://www.cnn.com/2022/02/23/europe/russia-ukraine-putin-military-operation-donbas-intl-hnk/index.html>.

⁹ See AFP, *Putin Recognizes Independence of Pro-Russia Separatists in Ukraine*, MOSCOW TIMES (Feb. 21, 2022), <https://www.themoscowtimes.com/2022/02/21/putin-to-recognize-ukraine-separatist-territories-as-independent-kremlin-a76498> (quoting Putin as asking Russia’s parliament to support his recognition of the separatist provinces since, in his words, “it is necessary to take a long overdue decision, to immediately recognize the sovereignty of the Donetsk People’s Republic and the Luhansk People’s Republic”); *Russia Now Has the Right to Build Military Bases in Eastern Ukraine – Treaties*, REUTERS (Feb. 21, 2022, 10:57 PM), <https://www.reuters.com/world/europe/russia-now-has-right-build-military-bases-eastern-ukraine-agreement-2022-02-21/> (explaining that, as a result of the concluded treaties, Russia has the right to build military bases in the provinces).

moments before its “special operation,” and are not members of the UN.¹⁰ Rather, these territories are part of Ukraine.¹¹ In any case, facts, such as Russia’s disproportionate use of force and massive military mobilization prior to the invasion reveal their status as mere pretexts.¹² Russia has used other arguments to justify the armed attack in Ukraine, including accusations of genocide, Nazism, and the invocation of historical rights,¹³ in addition to its security needs.¹⁴ Russia has failed to substantiate its assertion that its presence in Ukraine is an attempt to de-Nazify Ukraine.¹⁵ Ukraine is a democratic state, with free and fair elections, without prejudice to the fact

¹⁰ Charles Maynes & Frank Langfitt, *Russia Recognizes 2 Ukrainian Regions as Independent*, NPR (Feb. 21, 2022), <https://www.npr.org/2022/02/21/1082172502/russia-plans-to-recognize-2-ukrainian-regions-as-independent>; Secretary General Says Russian Federation’s Recognition of ‘Independent’ Donetsk, Luhansk Violate Ukraine’s Sovereignty, Territorial Integrity, UNITED NATIONS (Feb. 23, 2022), <https://www.un.org/press/en/2022/sgsm21153.doc.htm> (disclaiming the independence of the provinces).

¹¹ *Member States*, UNITED NATIONS, [HTTPS://WWW.UN.ORG/EN/ABOUT-US/MEMBER-STATES](https://www.un.org/en/about-us/member-states) (last visited Apr. 22, 2022) (listing current UN Member States); see Mansur Mirovalev, *Donetsk and Luhansk: What You Should Know About the ‘Republics’*, ALJAZEERA (Feb. 22, 2022), <https://www.aljazeera.com/news/2022/2/22/what-are-donetsk-and-luhansk-ukraines-separatist-statelets> (referencing that only Russia, Cuba, Venezuela, Nicaragua, and Syria have recognized the provinces).

¹² Robbie Gramer et al., *Putin Orders Russian Troops into Ukraine’s Breakaway Provinces*, FOREIGN POL’Y (Feb. 21, 2022), <https://foreignpolicy.com/2022/02/21/ukraine-russia-recognizes-breakaway-provinces/>.

¹³ See generally James D. Fry & Melissa H. Loja, *The Roots of Historic Title: Non-Western Pre-Colonial Normative Systems and Legal Resolution of Territorial Disputes*, 27 LEIDEN J. INT’L L. 727 (2014) (explaining the concept of historic title in the context of territorial disputes); see also *infra* notes 22–29 and accompanying text (explaining Putin’s comments regarding the application of historic title to justify a claim that Russia maintains rights over Ukrainian territory).

¹⁴ Michael N. Schmidt, *Russia’s ‘Special Military Operation’ and the (Claimed) Right of Self-Defense*, LIEBER INST. WEST POINT (Feb. 28, 2022), <https://lieber.westpoint.edu/russia-special-military-operation-claimed-right-self-defense/>.

¹⁵ Audrius Rickus, *Baseless Claims of ‘Denazification’ Have Underscored Russian Aggression Since World War II*, WASH. POST (Mar. 9, 2022), <https://www.washingtonpost.com/outlook/2022/03/09/baseless-claims-denazification-have-underscored-russian-aggression-since-world-war-ii/>.

that, like all democratic states, it has the imperative to perfect its institutions.¹⁶ Democratically elected President Volodymyr Zelensky comes from a family with a legacy of fighting persecution, and some of his Jewish family perished in the Holocaust.¹⁷ Russia's arguments are unacceptable to justify the armed attack. Russia has offered no evidence to justify its claim that Ukraine has committed genocide,¹⁸ and, in law, whoever claims the occurrence of an event must prove it. Precisely the opposite has taken place.

Given the recent attacks, Ukraine has claimed Russian forces are committing genocide and has instituted processes to substantiate these claims. For instance, on February 26, 2022, Ukraine initiated a case before the International Court of Justice

¹⁶ Jason Stanley, *The Antisemitism Animating Putin's Claim to 'Denazify' Ukraine*, GUARDIAN (Feb. 26, 2022), <https://www.theguardian.com/world/2022/feb/25/vladimir-putin-ukraine-attack-antisemitism-denazify> ("Ukraine is a democratic country, whose popular president was elected in a free and fair election, with over 70% of the vote."); see Rachel Treisman, *Putin's Claim of Fighting Against Ukraine 'Neo-Nazis' Distorts History, Scholars Say*, NPR (Mar. 1, 2022, 3:02 PM), <https://www.npr.org/2022/03/01/1083677765/putin-denazify-ukraine-russia-history>; Jeffrey Veidlinger, *Putin's Claim to Rid Ukraine of Nazis Is Especially Absurd Given Its History*, CONVERSATION (Feb. 26, 2022), <https://theconversation.com/putins-claim-to-rid-ukraine-of-nazis-is-especially-absurd-given-its-history-177959> ("Ukraine today is a vibrant, pluralistic democracy.").

¹⁷ Gillian Brockell, *Putin Says He'll 'Denazify' Ukraine. Its Jewish President Lost Family in the Holocaust*, WASH. POST (Feb. 25, 2022, 5:28 PM), <https://www.washingtonpost.com/history/2022/02/25/zelensky-family-jewish-holocaust/>; see Stanley, *supra* note 16 ("By claiming that the aim of the invasion is to 'denazify' Ukraine, Putin appeals to the myths of contemporary eastern European antisemitism—that a global cabal of Jews were (and are the real agents of violence against Russian Christians and the real victims of the Nazis were not the Jews, but rather this group. Russian Christians are targets of a conspiracy by a global elite, who, using the vocabulary of liberal democracy and human rights, attack the Christian faith and the Russian nation.").

¹⁸ Max Fisher, *Putin's Baseless Claims of Genocide Hint at More than War*, N.Y. TIMES (Feb. 19, 2022), <https://www.nytimes.com/2022/02/19/world/europe/putin-ukraine-genocide.html>; "Smells of genocide: How Putin Justifies Russia's War in Ukraine", ALJAZEERA (Mar. 9, 2022), <https://www.aljazeera.com/news/2022/3/9/smells-of-genocide-how-putin-justifies-russias-war-in-ukraine>.

(ICJ) against Russia, challenging the country to present evidence to justify its accusations.¹⁹ Ukraine, moreover, argues in its Brief to the ICJ that Russia is committing acts constituting genocide in addition to making baseless accusations to justify the invasion.²⁰ On March 7, 2022, Russia did not appear at the hearing set by the ICJ, thereby missing an important opportunity to present to the

¹⁹ Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), INT'L CT. OF JUST. (Feb. 27, 2022), <https://www.icj-cij.org/public/files/case-related/182/182-20220227-APP-01-00-EN.pdf>. On March 16, 2022, the ICJ granted provisional measures, ordering Russia to immediately stop its military operations. Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), Order, INT'L CT. OF JUST. 19 (Mar. 16, 2022), <https://www.icj-cij.org/public/files/case-related/182/182-20220316-ORD-01-00-EN.pdf>. The ICJ concluded that:

[t]he 'special military operation' being conducted by the Russian Federation has resulted in numerous civilian deaths and injuries. It has also caused significant material damage, including the destruction of buildings and infrastructure. Attacks are ongoing and are creating increasingly difficult living conditions for the civilian population In light of these circumstances, the Court concludes that disregard of [Ukraine's right under the Genocide Convention] could cause irreparable prejudice to this right and that there is urgency.

Id.

²⁰ *Id.* at 7 ("Russia has turned the Genocide Convention on its head—making a false claim of genocide as a basis for actions on its part that constitute grave violations of the human rights of millions of people across Ukraine. Russia's lie is all the more offensive, and ironic, because it appears that it is Russia planning acts of Genocide in Ukraine.").

international community its supposed grounds for the use of force.²¹ In addition, pursuant to Ukraine's acceptance of the Court's jurisdiction, the Prosecutor of the International Criminal Court (ICC), Karim A.A. Khan, decided to open an investigation into alleged international crimes committed by Russia on Ukrainian territory.²² These proceedings are pending, but certainly, the fact that Ukraine has initiated and authorized the ICC's jurisdiction shows the country's willingness to submit the issues of international crimes to independent adjudicatory bodies.

In publications and public comments, Putin invokes historical factors as grounds for invading Ukraine; however, these factors only have relevance if they generate legal obligations and if they fit into the exception of self-defense. That is not the case here. On the contrary, in revealing the real causes of the invasion and its purposes, such reasoning may be an important legal element in demonstrating Russia's violation of its obligations under the UN Charter. Above all, if they are consistent and applied in practice, they are valuable evidence of the international responsibility of the state, as well as the individual responsibility of those involved in

planning, instigating, or committing international crimes. Verbally, in interviews and statements,²³ as well as in articles and books, such as in his essay *Russia at the Turn of the Millennium*,²⁴ the book *First Person*,²⁵ and the essay *On the Historical Unity of Russians and Ukrainians*,²⁶ Putin shows a coherent and consistent view of the motives present in the invasion of Ukraine. As far as Putin is concerned, modern Ukraine is an artificial state created by the Soviet communist regime. In his view, Ukrainians and Russians are one people, united by their language, traditions, and religion.²⁷ For Putin, accepting the creation of Ukraine as an independent state was a regrettable example of paralysis in the full exercise of power.²⁸ From the legal point of view, Putin does not refer to the international agreements between his country and Ukraine on the occasion of Ukraine's accession to the Treaty on the Non-Proliferation of Nuclear Weapons of 1994, in which Russia made specific commitments

²¹ Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), Request for the Indication of Provisional Measures, INT'L CT. OF JUST., Order, 5 (Mar. 16, 2022), <https://www.icj-cij.org/public/files/case-related/182/182-20220316-ORD-01-00-EN.pdf> (“[T]he Government of the Russian Federation did not appear at the oral proceedings . . .”); Frédéric Megret, *Russia's Non-Appearance Before the ICJ Against Ukraine: Of Not So Vanishing Vanishing Acts and Their Vanishingly Thin Justification*, EJIL: TALK! (Mar. 12, 2022), <https://www.ejiltalk.org/russias-non-appearance-before-the-icj-against-ukraine-of-not-so-vanishing-vanishing-acts-and-their-vanishingly-thin-justification/>.

²² Office of the Prosecutor, *Statement of ICC Prosecutor, Karim A.A. Khan QC, on the Situation in Ukraine: “I Have Decided to Proceed with Opening an Investigation”*, INT'L CRIM. CT. (Feb. 28, 2022), <https://www.icc-cpi.int/Pages/item.aspx?name=20220228-prosecutor-statement-ukraine>.

²³ See *Transcript: Vladimir Putin's Televised Address on Ukraine*, BLOOMBERG NEWS (Feb. 24, 2022, 7:07 AM), <https://www.bloomberg.com/news/articles/2022-02-24/full-transcript-vladimir-putin-s-televised-address-to-russia-on-ukraine-feb-24>; Timothy Bella, *Putin Likens Sanctions to a ‘Declaration of War’; Says Invasion Pushback Risks Future of Ukrainian Statehood*, WASH. POST (Mar. 5, 2022), <https://www.washingtonpost.com/world/2022/03/05/putin-russia-ukraine-statehood-sanctions/>.

²⁴ Carlos Lozada, *How to Read Vladimir Putin*, WASH. POST (Mar. 3, 2022), <https://www.washingtonpost.com/outlook/2022/03/03/putin-essays/>; see generally Vladimir Putin, *Russia at the Turn of the Millennium* (Dec. 30, 1999).

²⁵ Lozada, *supra* note 23; see generally Vladimir Putin et al., *FIRST PERSON: AN ASTONISHINGLY FRANK SELF-PORTRAIT BY RUSSIA'S PRESIDENT VLADIMIR PUTIN* (2000).

²⁶ See generally Article by Vladimir Putin “*On the Historical Unity of Russians and Ukrainians*”, BORIS YELTSIN PRESIDENTIAL LIBR. (July 12, 2021), <https://www.prlib.ru/en/article-vladimir-putin-historical-unity-russians-and-ukrainians> (memorializing Putin's essay).

²⁷ *Putin: Russians, Ukrainians Are ‘One People’*, AP NEWS (July 20, 2019), <https://apnews.com/article/entertainment-oliver-stone-europe-russia-ukraine-3fe3ff-2299994fae97825381765b831c>; Niko Vorobyov, *Putin Says Russia, Ukraine Share Historical ‘Unity’. Is He Right?*, ALJAZEERA (Feb. 25, 2022), <https://www.aljazeera.com/news/2022/2/25/history-of-ties-between-ukraine-and-russia>.

²⁸ See *supra* note 25.

to respect the security and independence of Ukraine.²⁹ Furthermore, Putin fails to reference the Minsk Agreements of 2014 and 2015, which were unanimously approved by the UN Security Council,³⁰ implying recognition of the real character of the state of Ukraine.

What emerges from this evidentiary material is a tsarist view of history.³¹ The Russian monarchy attempted to justify its domination and the identity

²⁹ Steven Pifer, *Why Care About Ukraine and the Budapest Memorandum*, BROOKINGS INST. (Dec. 5, 2019), <https://www.brookings.edu/blog/order-from-chaos/2019/12/05/why-care-about-ukraine-and-the-budapest-memorandum/> (highlighting how Russia's assurances to Ukraine in the 1994 Budapest Memorandum to protect its sovereignty against the threat of and use of force "played a key role in persuading the Ukrainian government to give up what amounted to the world's third largest nuclear arsenal, consisting of some 1,900 strategic nuclear warheads," under the Treaty on the Nonproliferation of Nuclear Weapons); see Daryl G. Kimball, *Putin's Assault on Ukraine and the Nonproliferation Regime*, ARMS CONTROL ASS'N (Mar. 2022), <https://www.armscontrol.org/act/2022-03/focus/putins-assault-ukraine-nonproliferation-regime> (referencing both the 1994 Budapest Memorandum and Ukraine's subsequent forfeiture of nuclear weapons pursuant to its accession to the Nonproliferation Treaty as a non-nuclear weapon state).

³⁰ Security Council, *Unanimously Adopting Resolution 2202 (2015), Security Council Calls on Parties to Implement Accords Aimed at Peaceful Settlement in Eastern Ukraine*, U.N. Doc. SC/11785 (Feb. 17, 2015), <https://www.un.org/press/en/2015/sc11785.doc.htm>; see Andrew E. Kramer, *What Are the Minsk Accords, and Could They Defuse the Ukraine Crisis*, N.Y. TIMES (Feb. 8, 2022), <https://www.nytimes.com/2022/02/08/world/russia-ukraine-minsk-accords.html>.

³¹ See Michael Schwirtz et al., *Putin Calls Ukrainian Statehood a Fiction. History Suggests Otherwise*, N.Y. TIMES (Feb. 21, 2022), <https://www.nytimes.com/2022/02/21/world/europe/putin-ukraine.html>. Putin even expresses his sympathy for the monarchy as a way to guarantee stability (a great historical hero for him is Tsar Peter the Great) and reiterates that four years are not enough to achieve his goals. See generally Max Fisher, *Putin's Case for War, Annotated*, N.Y. TIMES (Feb. 24, 2022), <https://www.theguardian.com/world/2022/mar/02/united-nations-russia-ukraine-vote> (referencing Putin's expressed intention to "demilitarize" Ukraine, "denazify" Ukraine, and "bring to trial those who perpetrated numerous bloody crimes," an endeavor that would foreseeably take longer than four years).

of the Slavic peoples based on a common origin, religion, and traditions.³² This unifying concept has great similarity to the typical motto of "blood and soil" of extremist white supremacist groups and fascist groups in the United States and other countries.³³ For Putin, the need for historical correction to the damage supposedly inflicted on Russia is a necessary tool to revert the consequences of paralysis created by the lack of will to exercise power.³⁴ This exercise of power is best described as the ability to crush those who oppose one's objectives and is contrary to human rights norms and the prohibition of the use of force.

It is not surprising that, currently, the most reactionary sectors in the West have embraced Putin's cause since they see in the actions of the Russian leader an example to be followed by their countries—including the generation of leadership of strong men who perpetuate themselves in the leadership of their nations and in the exercise of their strength without any limit.³⁵ They are united by the message of rejection of a multilateral order and the adherence to chauvinistic visions, and the rejection of value change in issues of discrimination of any kind. The chauvinistic conception of power-based superiority is contrary to the prohibition of discrimination in human rights law, another creation of humanity rising from the ashes of World War II.

Human rights law, including the prohibition of the use of force, originated as a reaction to the violations

³² See Vorobyov, *supra* note 27.

³³ See generally *Origins of Neo-Nazi and White Supremacist Terms and Symbols: A Glossary*, U.S. HOLOCAUST MEM'L MUSEUM, <https://www.ushmm.org/antisemitism/what-is-antisemitism/origins-of-neo-nazi-and-white-supremacist-terms-and-symbols> (last visited Apr. 22, 2022).

³⁴ See *supra* notes 24–25.

³⁵ Anthony Faiola, *Putin's Praisers in the West Have Suffered Less Than You Might Think*, WASH. POST (Mar. 17, 2022, 12:01 AM), <https://www.washingtonpost.com/world/2022/03/17/putin-supporters-west-war-ukraine-russia/> (including Donald Trump and Brazilian President, Jair Bolsonaro, as supporters of Putin and his recent actions).

that occurred in World War II, postulating the inherent dignity and humanity of all.³⁶ Each article of the Universal Declaration of Human Rights and of the universal and regional treaties states that they apply to every human being without discrimination.³⁷ No one may be subjected to summary executions, disappearances, or excluded from exercising his or her civil and political rights or internationally recognized economic, social, and cultural rights.³⁸ The recognition of collective political rights can be

found in the principles of sovereign equality of states, self-determination, and intervention prohibition.³⁹

Alain Pellet, one of the world's foremost jurists and President of the Institute of International Law, resigned on February 23, 2022, from Russia's legal team and no longer represents Russia before the ICJ or any other forums.⁴⁰ By his authority, it is worth pointing out what he said in his resignation letter after denouncing Russia's aggression.⁴¹ Pellet wrote:

Your country, (Russia) so endearing in many ways, is calling into question those principles that we wanted to believe were recognized by all 'civilized nations,' that is, by the international community of states as a whole. And I am even sadder about this, because Russia has played an important role in the tremendous movement that led to this achievement. It was Russia that convened the two major Peace Conferences of 1899 and 1907 that gave a decisive impetus to the process of drafting the humanitarian law of war. It was the USSR that paid the highest price for the capitulation of Nazi barbarism, in Leningrad, Stalingrad or Kursk. It was also the USSR that led the struggle for the effective recognition of the right of peoples to self-determination in the United Nations, and in other fields. And now, Russia is trampling on these principles, which have been so difficult to impose on positive law, which we would like to see really in force. But what we have observed is enough. Lawyers can defend more

³⁶ See International Law Commission, *Principles of International Law Recognized in the Charter of the Nürnberg Tribunal and in the Judgement of the Tribunal*, YEARBOOK OF THE INT'L L. COMM'N, Vol. II (1950), https://legal.un.org/ilc/texts/instruments/english/draft_articles/7_1_1950.pdf; *Universal Declaration of Human Rights: History of the Declaration*, UNITED NATIONS, <https://www.un.org/en/about-us/udhr/history-of-the-declaration> (last visited Apr. 4, 2022) ("With the end of [World War II], and the creation of the United Nations, the international community vowed to never again allow atrocities like those of that conflict to happen again. World leaders decided to complement the UN Charter with a road map to guarantee the rights of every individual everywhere.").

³⁷ See, e.g., United Nations General Assembly, *Universal Declaration of Human Rights*, U.N. Doc. A/RES/217A, art. 2 (adopted Dec. 10, 1948), [https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/217\(III\)](https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/217(III)); Organization of American States, *American Declaration of the Rights and Duties of Man*, art. II (adopted 1948), <https://www.cidh.oas.org/basicos/english/basic2.american%20declaration.htm>; Organization of American States, *American Convention on Human Rights*, art. 1 (adopted Nov. 22, 1969), <https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm>; Council of Europe & European Court of Human Rights, *European Convention on Human Rights*, art. 14 (adopted Aug. 1, 2021), https://www.echr.coe.int/documents/convention_eng.pdf; African Commission on Human and People's Rights, *African (Banjul) Charter on Human and Peoples' Rights*, art. 2 (adopted June 1, 1981), https://www.achpr.org/public/Document/file/English/banjul_charter.pdf.

³⁸ See, e.g., United Nations General Assembly, *International Covenant on Civil and Political Rights*, Res. 2200A (XXI), art. 1(1) (adopted Dec. 16, 1966), <https://www.ohchr.org/sites/default/files/ccpr.pdf>; United Nations General Assembly, *International Covenant on Economic, Social and Cultural Rights*, U.N. Doc. A/RES/2200A (XXI), art. 1(1) (adopted Dec. 16, 1966), <https://www.ohchr.org/sites/default/files/cescr.pdf>.

³⁹ International Covenant on Civil and Political Rights, *supra* note 36, art. 1(1) (right to self-determination); International Covenant on Economic, Social and Cultural Rights, *supra* note 36, art. 1(1) (same); UN Charter, arts. 2(1), 2(4) (adopted Oct. 24, 1945) (sovereign equality of states and the principle of non-intervention of states).

⁴⁰ Alain Pellet, *Open Letter to My Russian Friends: Ukraine Is Not Crimea*, EJIL: TALK! (Mar. 3, 2022), <https://www.ejiltalk.org/open-letter-to-my-russian-friends-ukraine-is-not-crimea/>.

⁴¹ *Id.*

or less questionable causes. But it has become impossible to represent in forums dedicated to the application of the law a country that so cynically despises it.⁴²

It is worth noting that the UN Charter explicitly recognizes the principle of self-determination in the prohibition of non-intervention, established in Article 1(2) and Article 2(7) of the UN Charter.⁴³ Both provisions do not permit the invocation of political considerations in order to limit the exercise of state sovereignty.

These principles are not just aspirations disconnected from reality, as revealed in the global reaction against Russia's aggression. First, on the part of the Ukrainian people who, in their massive rejection of the invasion, embody their right as a state to self-determination in a strict application of international law.⁴⁴ Second, people from all over the world, including in Russia, have unambiguously expressed their support and solidarity with the government and people of Ukraine.⁴⁵ In these demonstrations and rejections

of the atrocities suffered by Ukraine, the presence of young people stands out.⁴⁶ It has been said that wars are declared by the old, and the combatants and dead are put by the young.⁴⁷ But to this justified traditional criticism is added that of a generation for which technical developments, the internet, and globalization, have contributed to paradigmatic changes in the existence and redefinition of borders, in possibilities of access and communication, and in the prohibition of discrimination, mobilizing younger generations to reject any attempt to deny the common humanity of all.⁴⁸

In an extraordinary emergency special session that took place on March 2, 2022, the UN General Assembly passed a resolution condemning Russia's invasion of Ukraine, demanding the immediate withdrawal of Russian troops from Ukraine.⁴⁹ One hundred forty-one states voted in favor, thirty-five abstained, and only five voted against (Russia, Syria, Belarus, Eritrea, and North Korea).⁵⁰ The resolution is of a recommendatory nature, since only the Security Council can take binding decisions. However, the rejection by only five states, including Russia, reveals a significant adherence to

⁴² *Id.*

⁴³ UN Charter, arts. 1(2), 2(7) (adopted Oct. 24, 1945).

⁴⁴ See Daniel Estrin & Olena Lysenko, *For Ukrainian Musicians, Rejecting Russia Is a Matter of National Pride*, NPR (Feb. 22, 2022), <https://www.npr.org/2022/02/22/1082276162/for-ukrainian-musicians-rejecting-russia-is-a-matter-of-national-pride>.

⁴⁵ Office of the Prosecutor, *Statement of ICC Prosecutor, Karim A.A. Khan QC, on the Situation in Ukraine: Receipt of Referrals from 39 State Parties and the Opening of an Investigation*, UNITED NATIONS (Mar. 2, 2022), <https://www.icc-cpi.int/Pages/item.aspx?name=2022-prosecutor-statement-referrals-ukraine> (confirming that 39 state parties to the Rome Statute of the International Criminal Court have submitted referrals of the Situation in the Ukraine to the ICC's Office of the Prosecutor, thereby enabling the OTP to proceed with its investigation). *But see* Anton Torianovski, Ivan Nechepurenko, & Valeriya Safronova, *Shaken at First, Many Russians Now Rally Behind Putin's Invasion*, N.Y. TIMES (Apr. 1, 2022), <https://www.nytimes.com/2022/04/01/world/europe/russia-putin-support-ukraine.html> (citing a recently conducted poll, which showed that Putin's approval rating is now eighty-three percent, a fourteen percent increase from January 2022).

⁴⁶ See, e.g., *Global Support for Ukraine Continues – in Pictures*, GUARDIAN (Feb. 27, 2022, 12:00 PM), <https://www.theguardian.com/artanddesign/gallery/2022/feb/27/global-support-for-ukraine-continues-in-pictures> (compiling pictures of protests occurring around the world); Olivia Kestin & Tess Lowery, *How Our Generation is Protesting Ukraine's Invasion in Pictures*, GLOBAL CITIZEN (Mar. 10, 2022), <https://www.globalcitizen.org/en/content/ukraine-invasion-war-protests-around-the-world/>.

⁴⁷ See *Herbert Hoover: Quotes*, BRITANNICA, <https://www.britannica.com/quotes/Herbert-Hoover> (last visited Apr. 22, 2022) (“Older men declare war. But it is youth that must fight and die. And it is youth who must inherit the tribulation, the sorrow, and the triumphs that are the aftermath of war.”).

⁴⁸ See *supra* note 46.

⁴⁹ *General Assembly Overwhelmingly Adopts Resolution Demanding Russian Federation Immediately End Illegal Use of Force in Ukraine, Withdraw All Troops*, UNITED NATIONS (Mar. 2, 2022), <https://www.un.org/press/en/2022/ga12407.doc.htm>.

⁵⁰ Julian Borger, *UN Votes to Condemn Russia's Invasion of Ukraine and Calls for Withdrawal*, GUARDIAN (Mar. 2, 2022, 1:10 PM), <https://www.theguardian.com/world/2022/mar/02/united-nations-russia-ukraine-vote>.

the norms prohibiting the use of force in international relations and the value of legal principles, such as sovereign equality, self-determination, and human rights. Although these principles are not guaranteed to be complied with, it seems essential to assume an individual and collective responsibility to ensure that they are implemented. As the body dedicated to ensuring peace, President Zelenskyy has argued that the UN bears a particular responsibility for enforcing compliance with these principles.⁵¹ On April 3, 2022, President Zelenskyy appeared before the UN Security Council, highlighting grave human rights and humanitarian violations committed by Russian forces in Ukraine and demanding action by the UN in response.⁵² Given the Security Council's failure to take action in this case, due largely to Russia's veto power as a permanent member, President Zelenskyy said the following: "[d]o you think the time of international law is gone? If your answer is no, then you need to act immediately."⁵³

The UN General Assembly took up this call to action on April 7, 2022, voting to remove Russia from the Human Rights Council.⁵⁴ This suspension comes in the wake of photos that emerged from the city of Bucha, documenting the hundreds of civilian bodies

⁵¹ See Karen DeYoung & John Hudson, *A Weary Zelensky Challenges U.N. to Act with Graphic Video*, WASH. POST (Apr. 5, 2022), <https://www.washingtonpost.com/national-security/2022/04/05/zelensky-united-nations-ukraine-russia/>; Edith M. Lederer, *Ukraine Leader to UN Security Council: No More Russia Veto*, WASH. POST (Apr. 5, 2022), https://www.washingtonpost.com/world/ukraines-president-to-tell-un-security-council-about-war/2022/04/05/227a9496-b495-11ec-8358-20aa16355fb4_story.html.

⁵² DeYoung & Hudson, *supra* note 51.

⁵³ *Id.*

⁵⁴ Edith M. Lederer & Jennifer Peltz, *UN Assembly Suspends Russia from Top Human Rights Body*, WASH. POST (Apr. 7, 2022, 7:43 PM), https://www.washingtonpost.com/politics/ukraine-urges-un-to-suspend-russia-from-top-rights-body/2022/04/07/99a55a00-b685-11ec-8358-20aa16355fb4_story.html (quoting the U.S. Ambassador stating that, as a result of the vote, the members of the U.N. General Assembly "have collectively sent a strong message that the suffering of victims and survivors will not be ignored").

that were found in mass graves and on the city's streets.⁵⁵ The removal of Russia from the Council is an important step in showing the isolation of that country, but the world has witnessed the continuation of the aggression against Ukraine. Accordingly, the international community needs to consider additional steps, for example, increasing support to Ukraine, and the adoption of sanctions against those responsible for the aggression.

Without prejudice to the importance of other conflicts in the world, the significance of this war cannot be exaggerated. It should not be forgotten that the two world wars of the twentieth century originated in Europe, perhaps because of the greater political, economic, and military weight of that region—a region that, at present, has thousands of nuclear weapons and where there is a danger of superpower confrontation.⁵⁶

In the case of armed conflicts, only their beginnings are clear. Russia has violated the international legal order established by the UN Charter. Countless individuals within and outside of Ukraine have suffered irreparable damage from the continuous violence. Peace is at stake, and only the achievement of an international order based on law can guarantee it.

⁵⁵ *UN General Assembly Votes to Suspend Russia from the Human Rights Council*, UN NEWS (Apr. 7, 2022), <https://news.un.org/en/story/2022/04/1115782>. The photos are available online. Individuals should be warned that they are graphic in nature. See also Heidi Levine & Kenneth Dickerman, *Photos: The Scene Inside Bucha, as Seen by a Post Photographer*, WASH. POST (Apr. 7, 2022), <https://www.washingtonpost.com/photography/interactive/2022/photos-of-bucha-ukraine/>.

⁵⁶ See generally Max Fisher, *As Russia Digs In, What's the Risk of Nuclear War? It's Not Zero.*, N.Y. TIMES (Mar. 16, 2022), <https://www.nytimes.com/2022/03/16/world/europe/ukraine-russia-nuclear-war.html>.