



Legality of the Action of use of Force in Russia-Ukraine Crisis-A Critical Analysis

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ABSTRACT

This research will revolve around the use of force by the Russia over the Ukraine crisis and how far the action of the Russia is justified. It will also investigate the situation with the lens of the 'use of force' is how far permitted in the international law. This work will also analyze the impact of this Russia-Ukraine conflict on the world peace and the role of the UN. My consideration in this work will be chiefly 'doctrinal'. I will try to look at the background of the conflict in a very brief way and the legal issue involved in the use of force.

KEY WORDS

Military Leadership, War, Conflict, International law.

INTRODUCTION

The invasion of Russia on Ukraine causes human right violations and committed war crime in Ukraine.¹ Use of force by one country against other country is the repudiation of the principle that every country has committed to uphold and that the present military offensive of the Russian federation is against the charter. Aggression by the Russian federation against Ukraine is in violation of article 2(4) of the UN Charter. It was demanded that Russian federation immediately cease to use force against Ukraine and to refrain from any further unlawful threat or use of force against any member state. Responsibility of Security Council² does not require to wait until aggression takes place to prevent any act from becoming aggression. And though it is the primary responsibility of Security Council³ to prevent international peace and security but is it not the sole

responsibility of Security Council even General Assembly is also responsible to prevent the breach of peace and discuss any matter involving breach of peace coming before it.⁴ By exercising the power under the charter, General Assembly can also convene extraordinary session even before the aggression taken place and also General Assembly need not to wait to act over situation until situation become irreversible. The General Assembly called an extraordinary emergency session and adopted a resolution march, 2022.

Background for the Crisis

The Russia and Ukraine problem started from 1991 when Ukraine separated from USSR and from then the conflict for sovereignty over reign started.⁵ A violation of principle of Use of force by Russia over Ukraine was started from February Crimea as well as Donetsk and Luhansk people's Republic. Russia is recognizing these reign as theirs since outset. In 2014, Russia used force against Crimea in violation of international law, since then Crimea is under military occupation.⁶ The fact that Russia used force against Ukraine also in 2014, this fact does not justify the action of Russia in the recent invasion. Since 1991, Ukraine is representing all the character of statehood and exercising full statehood under international law. After this there are few more instances when Russia violation continues.

How far use of force is permitted in international law

Firstly all members of UN are required to refrain from threat or use of force or any other manner using force is prohibited under international law⁷ and it is permitted under international law to use force only as exception as 'self-defense' or 'Collective self-defense'⁸ as to 'act of aggression' Security Council has the power to take action against the state under chapter VII of the charter.⁹

Actions to deals with situation

Ukraine filled a case in the ICJ against the Russia for the interpretation of the Convention on the Prevention and Punishment for the Crime Genocide (Genocide Convention).¹⁰ It was also allegation against the Russia that it breaches article 2, 3, 4 International Convention Concerning the Use of Broadcasting in the Cause of Peace, though Ukraine is not party to the convention, but Russia is.¹¹ Russia objected the jurisdiction of the court over the Genocide Convention, but the ICJ held that it has a jurisdiction as the Russia action falls under the principle of self-defense given under Article 51 of the UN charter.¹² Basically, from this case Ukraine got what he wanted at the very first instance is for provisional measure asking Russia to stop the military operation in the Ukraine.¹³ and the Russia by not obeying the decision causes harm to its reputation and also cause the impression of breaching the international law and Ukraine seen as the using the legal methods to settle the dispute through peaceful means.¹⁴ Before the ICJ number of State engage and make a declaration and seeks intervention¹⁵ before the ICJ. Finland, Estonia, Bulgaria, Australia, Austria, Portugal, Spain, Ireland, Denmark, Poland, Romania, France, Sweden, United States of America, Germany, United Kingdom, New Zealand, Lithuania, Latvia etc are the countries which seeks intervention before the ICJ for matters involving violations of principles of Charter.¹⁶ ICJ under the Charter have the two-fold role one, is to settle to settle the legal dispute in accordance with the international law which are submitted by the state parties by giving judgements, which will have a binding force over the parties.¹⁷ and the second is to give advisory opinions on legal questions referred UN organs and agencies.¹⁸

Resolution under the UN

Security Council resolution: In security council China, India, UAE abstained from voting, and the resolution failed in the security council because of the veto power of Russia.¹⁹ In the Security Council the resolution to take into account the aggression by Russia on Ukraine fails because of the Russia being a permanent member of the Security Council and due to this Security Council fails to fulfill the primary responsibility of maintaining peace and security under article 24 of the charter.²⁰ Finally, the Security Council decides to call upon an emergency special session of General Assembly to examine the validity of the aggression by Russia and other legal question involved in it.²¹

General Assembly resolution: The General Assembly passes two resolutions by calling Emergency Special Session on was on March 2, 2022 and other was on March 24, 2022.

“Condemning the 24 February 2022 declaration by the Russian Federation of a “special military operation” in Ukraine, reaffirming that no territorial acquisition resulting from the threat or use of force shall be recognized as legal”²²

1. This GA resolution reaffirms the sovereign right of Ukraine within the territorial borders of Ukraine.²³
2. Deplores the aggression as violation of Article 2(4) of UN charter.²⁴
3. Deplores that decision of Russia as to Donetsk and Luhansk is in violation of the ‘principle’ of charter. And demand Russian federation to immediately and unconditionally reverse the decision of Feb. 21, 2022.²⁵
4. Calls upon Russia to abide by the principles of UN and declaration of friendly relation with states.²⁶
5. Urge peaceful resolutions of conflict between Russia and Ukraine through political dialogue, mediation, negotiation and other means.²⁷

Impact of Russia-Ukraine Crisis on other state- The war in Russia-Ukraine Crisis need to be restricted or controlled otherwise it will spread all over the world and disturb the world peace.²⁸ This conflict also affects the economic and the financial condition of the countries, especially those in the European Union.²⁹ This war has caused an increase in the number of refugees in the European Union.³⁰ The long-term effect of the Russia-Ukraine Crisis is still unknown and it is affecting the long term post-cold war peace and economic order.³¹

Reaction towards the Russia: Ukraine Crisis: Many western countries have reacted towards this crisis and objected to the attack of Russia on the Ukraine. Many governments have publicly condemned the Russia invasions and imposed the sanctions like the US, EU, UK, France, New Zealand, Japan etc.³²

1. US has prohibited the supply of war technology to Russia limiting its military and aerospace capacity of Russia.³³
2. New Zealand prohibits the shipping of goods to Russian military and security personnel after the Ukraine invasion by Russia.³⁴
3. EU imposed financial sanction on the Russia after invasion over Ukraine.³⁵
4. German halted Russian Nord Stream 2 gas pipelines from Russia to Europe.³⁶
5. Australia imposes travel restrictions,³⁷ Japan suspended visa for citizens,³⁸ Canada revokes license for exports,³⁹ UK imposed financial penalties on banks,⁴⁰ and various other countries also puts flying restrictions on Russian flights.⁴¹

Why is action not taken against Russia?

1. Action has never happened against any permanent member.
2. Such action never happened against such nuclear power /militarily powerful country as Russia.
3. If such action is taken it might lead to a third world war and nuclear attack which affects the world at large.

Suggestion

There should be amendment or ratification in the UN Charter that if such matter of violation of principle of ‘use of force’ by a permanent member they should be allowed to use this veto power. Though this provision is the defective one favoring of giving all the power in the powerful state and amending will also be difficult because of involvement of international politics but this may help in future in taking action against the state which breaches international law even against the permanent members.

CONCLUSION

Russia and Ukraine crisis which comes in news from Feb. 24,2022 is actually years old crisis which starts from 1991 after the Ukraine disassociate from the USSR. There were in past also few attacks are done by the Russia over the Ukraine but now a new one is done in the Feb. 2022, which creates a fear in the mind of the world population that third world war may be going to take place. Resolution in the Security Council fails because of the Russia having a veto power in the Security Council and also it fails to perform the primary responsibility of maintaining peace and security. Then the General Assembly comes to perform its function and saves the UN from becoming a mockery organization. The General Assembly passes two resolutions condemning the acts of Russia and calls for taking the military forces out of Ukraine and calls for providing the humanitarian intervention and safe evacuation of civilians. Though the General Assembly passes resolutions but still the question remains as to efficiency of Security Council when the breach is done by the permanent member it becomes ineffective in a way and it also looks like permanent member are the one who are controlling the functions of Security Council. So, they are the one having a veto power can justify even their own wrong act making it unable to take any action against themselves by using veto power. And also, in the cases when other states are involved then also according to their own politics, they can use their veto right as we have seen them using at various instances.

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