

THE EVIL OF MODERN WARFARE: RUSSIA INVASION OF UKRAINE*

Abstract

Russia invasion of Ukraine in February 2022 in what its President called the ‘Special Military Operation’ – a needless war has had severe consequences on Ukraine, and adversely affected the economy of Russia – thanks to the West and the US. The war led to members of the Northern Atlantic Treaty Organization (NATO) coming out fully in support of Ukraine. The consequences of NATO involvement in the war, turned what the Russians thought would be a walk in the park and perhaps the annexation of Ukraine as a vassal State of Russia into a full-blown international war. It has lasted over two years. This article employs analytical methods and collates information journals, the internal text books. After a very comprehensive introduction, the article examines the United Nations Charter, with respect to the concept of sovereignty as it concerns Russia invasion of Ukraine, and the provisions of article 51 of the United Nations Charter which empowers a nation to defend itself as a self defence measure or rely on the concept of collective self defence. These provisions may have been the basis of NATO involvement. But there is a danger in this war becoming World War III. The consequences are better imagined as not just Russia and perhaps China on the one side are nuclear countries but over ten NATO members have nuclear weapons. This may have disastrous consequences on humanity and the entire earth.

Keywords: Modern Warfare, Russia, Ukraine, Invasion, Evil

1. Introduction

On 24 February 2022, Russia at the behest of its President, Vladimir Putin in what he tagged a ‘Special Military Operation’ declared war against Ukraine. Prior to the declaration, Russia had amassed over 100,000 soldiers, war tanks and other war assets around its borders with Ukraine. The declaration and invasion were coming on the heels of the United Nations, and world leaders (such as the Presidents of France, Germany and many others), attempts at diplomacy, by traveling to Russia and back to their countries, in order to prevent the war, to no avail. The United Nations Security Council also met for the purpose of preventing the war. But Putin could not be prevailed upon. In the events leading to the declaration of February 24, 2022, there has been confrontation in the Dnest and Lugansk¹ regions between Russian backed Separatists and Ukraine, for the self determination of Dnest and Lugansk. As this work will indicate, the regions were sponsored and militarily aided by Russia to fight for self-determination. Facts in prove of the above opinion saw the Russian Duma on the eve of Putin’s infamous declaration, passed a resolution, urging President Putin to recognize the two self-governing regions, as independent regions of Ukraine. In response² to the resolution of the Russian Duma, the government of Ukraine submitted an initiative to the United Nations Security Council, urging it to intervene and prevent Russia from infringing on its territorial integrity. According to the Government of Ukraine, the Duma’s declaration infringed on its territorial integrity and was a violation of the Minsk agreement.³ Ukraine like most governments in the west, was interest in seeking a diplomatic solution. The Minsk protocol or agreement was drawn up by the trilateral I contact group on Ukraine, which consisted of representatives from Ukraine, Russia and members of the organization of security council of Europe to prevent the crisis in Donbas and Lugansk regions from escalating. It was aimed at the amicable resolution of the conflict between Ukraine and its separatist regions.

The Duma’s resolution was a pretext for war. The truth is that; like China, Russia was not pleased with the unipolar order in which the US, the European Union and the United Kingdom dominated international matters. It also viewed Ukraine plan to Join NATO and the European Union as inimical to the strategic security interest of Russia. Putin’s strategic goal was aimed at limiting the expansion of NATO or allowing NATO to place its weapons close to its Russian border. Like his Chinese counterpart XI Jinping, the strategy envisioned by Putin, was in line with the Chinese general Sun Tzu (400 BC) who explained in the Art of wars that to defeat the enemy, one must resort to preventive strategies, which include, an actual fight or war, tricks, espionage and other dubious means, provided one is victorious at the end of it. One of Sun Tzu’s apostles was Niccolo Bernardo Machia Velli. He was a philosopher who was blessed enough to be part of the renaissance. His work on political society of his time was instructive, he believed in the art of deception as a tool for political leadership.⁴

There is therefore no doubt, that the invasion of Ukraine by Russia on February 24, 2022 was a pretext, aimed at preventing the US and the West from coming close to the Russian borders. The invasion for whatever reason is aimed at containing the advancement of NATO. In response to the Diplomatic shuttle by the United Nations (UN), and world leaders, Russia, demanded that Ukraine should amend its constitution to maintain its neutrality – by not joining the European Union (EU) and NATO, and to acknowledge Crimea, a Ukrainian territory annexed by Russia in 2014, as Russian territory.⁵ While the issues remained unresolved, on February 24, 2022, Russia declared war and invaded Ukraine

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¹ R. T. Com <<https://www.rt.com> Accessed 30/3/2024

²<https://www.republicworld.com/ame/world-news/russia-ukraine.crisis/russia-opnews-criminalcase-info.discoverymagnees.if.259>. Accessed 30/3/2024

³ <https://www.newsweek.com/putin> Accessed 30/3/2024

⁴https://curiosmos.com/machiavelli-and-use-his-10_most_controversial_statements_about_war/?fr=operanews Accessed 30/3/2024

⁵ <https://www.newsweek.com/putin> Accessed 30/3/2024

– first by moving in through the Donbas and Lugansk regions. Russia unleashed its 150,000 troops on Ukraine, by invading Kyiv, Kharkiv, Kherson and Zaporizhzhia regions. Zaporizhzhia is site to two nuclear plants. The war in this city nearly led to a nuclear disaster, but for the restraint of Ukraine. The city of Odessa, a Port City known for the export of agricultural products to most countries of the world, was also struck by Russia, thus cutting off access to the black sea.⁶ From several sources, the war was thought to be a walk through the park but as one writes, more than two years after, there has been a stalemate, leading to the death of tens of thousands on both sides. In the first month of the war, over two million people from Ukraine were displaced, as they fled to other European countries – Poland, Belarus, even Russian, Slovakia, Hungary, Romania, Moldova and other European countries had to take in refugees from Ukraine. Sadly, Russia not only targeted combatants, but the civilian population in Ukraine – schools, hospitals, markets, residential areas and amusement parks were targeted. Children were also forcefully evicted from Ukraine by Russian forces, all in breach of International Humanitarian Law, and the International Criminal Court (ICC) statute.⁷ An act that led to the issuance of warrant for the arrest of Vladimir Putin by the ICC judges.

Apart from the destruction of civilian infrastructure, in the cities mentioned above, the invasion of Mariupole, was likened to Armageddon as the worst humanitarian crisis, since World War II was witnessed there. In the face of the humanitarian crises, the international criminal court, issued a warrant for the arrest of Putin. Evacuation of civilians from Mariupole was made impossible by the blockage. The war also affected the world. It also led to global crisis in terms of food supplies – not seen since the great recession.⁸ Putin's crimes, was also in violation of the Rome Statute. Other treaties or International Law instruments regulating wars and prohibiting war crimes were violated by Russia under Putin.

As global outrage against Russia's onslaught grew, following the slaughter of civilians and destruction of protected infrastructure in Kyiv Suburb, Buchas, Mariupole, Kharkiv, and businesses started departing Russia, the US prohibited further America's investments in Russia. Over 600 multinational co-operations announced plans to voluntarily exit Russia, the other countries from the West, stepped up efforts to isolate Russia due to mounting evidence of war crimes in Ukraine. The United Nations Human Rights Commission voted to suspend Russia from the UN Human Rights Council. The US, Canada, the UK and members of the EU, supported the plan to phase out import of Russian oil and gas. The phase out or ban took effect from August 2022.⁹ Unfortunately for the West, Russia ruble has not only stabilized but has rallied over the past months. Russia also tried to put pressure on the west by insisting that payment for its energy should be in rubles. This was meant to lead to a rise in the value of the ruble, and therefore an increase in energy bills in the west. Russia with the aid of China has also continued to push for a new world order by strengthening the BRICS an organization made up of Brazil, Russia, India, China, Korea and South Africa (Bricks). The body has continued to expand. It was meant to be an economic block with diametrical opposed views to the G20 and anything represented by the west. The sanctions also affected the west, as it led to a surge in energy bills in the west.

China has been accused by the west for being responsible for the economic stability of Russia against the mounting sanctions. An allegation or accusation China denies. While China believes in the principles of sovereignty and territorial integrity, it has been careful not to alienate Russia, a country it has unlimited partnership. China has very strong incentives to ensure a peaceful resolution of this crisis. For quite apart from its belief in sovereignty of states, especially as a UN State, that country has close ties with Russia and Ukraine. It has a belief that together with Russia, it can contain the west. And it also has massive investments interest in Russia and Ukraine. However, the US president, Joe Biden has continued to insist that China is not aiding Russia.¹⁰ As the war continued, NATO and its allies have proven vital to holding back the tide of Russia's soldiers and military advancement in Ukraine. Contrary to Russia's objectives, the success of NATO has emboldened Finland and Sweden two Nations close to the Russian border to ask for NATO membership – a membership that is supported by NATO and most recently Turkey¹¹, a member of NATO previously opposed to their membership.

However, Ukraine membership was not considered viable due to the likelihood of an aggravated conflict that could lead to World War III. This is because under article 5 of NATO treaty, any attack on NATO members was an attack on all members. According to the founding documents any attack on a member state 'shall be considered an attack against all'.¹² The implication of granting Ukraine its membership will lead to an all out war between Russia and NATO. This would be catastrophic in view of the level of armament by both sides, and their nuclear status. This was why Biden said in the last NATO conference that the Russian/Ukraine war has to end before granting membership status to Ukraine. But NATO

⁶ <https://mail.gooak.com/mail/v/0/3 ikcc7cbc state 747 view=pt & search=all & permitted-threat%3A/172693477583 & simple-msq-%3A1726a> Accessed 30/3/2024

⁷ <https://www.theguardian.com/world/2023/mar/17/Vladimir-Putin-arrest-warrant-Ukraine-war-crimes> Accessed 30/3/2024

⁸ <http://mailgoogle.com/mail/u/0/zultetc 3c5ige 74 & view= pt&pemtlund-threat-f%3ft17269-228844409 & simple msq-10% 3A 1326979> Accessed 30/3/2024

⁹ <https://dailytrust.com/russias-news-world-order-is-bad-news> Accessed 30/3/2024

¹⁰ TASS – The Largest Russian News Agency and one of the largest news agencies worldwide. It is owned by the Russian Government and has continued to propagate Russian interest. Accessed 30/3/2024

¹¹ <https://ecfrieve/article/between-russia-sweden-NATO-finland & defence-of-sovereignty-equality/?> and Accessed 30/3/2024

¹² www.washington.post Accessed 30/3/2024

has continued to provide air defence systems and other arms to Ukraine. This has led to the push back by Ukraine. No one can say for certain when the war will come to an end.

In a nutshell, the focus of this work is to:

- a. examine the extent to which Russia has violated international law by invading Ukraine.
- b. review the impact of NATO involvement in the war
- c. impact of the war on United Nations Charter.

2. The Implication of the Russian Invasion on Ukraine

Article 2(ii) of the United Nations Charter prohibits members from settling disputes by threats or the use of force against the territorial integrity or political independence of another state or in any manner inconsistent with the purposes of the UN. Again, article 2(1) of the UN Charter provides that the membership of the UN is ‘...based on the principle of sovereignty of all its members’ it is in this regard that the Webster’s Encyclopedia Dictionary of English Language defines sovereignty as ‘having undisputed right to make decisions and accordingly, a sovereign states (unlimited) absolute sovereign power’. It is in the light of the foregoing that it has been stated that sovereignty is fundamental in the organization of contemporary interstate relations. It is based on the premise of mutual recognition of political independence among states, mutual coexistence, exercise of equality in mutual relations and the corresponding principles of non-existence in the domestic affairs of other states.

It has been suggested that the Charter regime presents some problems of interpretation, the first question the formulation against the territorial or political independence of any state. Some writers have relied on the language to produce substantial qualifications of the prohibition of the use of force, and the United Kingdom employed this type of argument to defend the mine-sweeping operations to collect evidence within Albanian waters in *Corfus Channel case*. However, the preparatory work of the Charter is sufficiently clear and this phrase was introduced precisely to provide guarantees to small states and was not intended to have restrictive effect.

3. Issues Arising from The Russian/Ukrainian War

The Russia/Ukraine war throws up a lot of issues of grave international concern. These issues are not only compelling, but they also task the intellectual mind. These issues are: the impact of the war on the United Nations Charter, the impact of the war on Ukrainian sovereignty. The justification of NATO involvement in the war, albeit through its proxy, and the place of the laws of war.

4. The Impact of The War on the United Nations Charter

The Charter of the United Nations (UN) is the fundamental treaty of the UN. The UN Charter enjoins the UN and its member states to maintain international peace and security, uphold international law, while striving to achieve ‘higher standards of living’ for its citizen, address economic, social, health and related problems, promote universal respect for and observance of human rights and fundamental freedom for all without distinction as to race, sex, language or religion. As a Charter and constituent treaty, its rules and obligations are binding on all members and supersedes other treaties. It is worthy to note that the purposes of the UN are clearly wide ranging. They provide a useful guide to the comprehensiveness of members concerns. One very important treaty concluded by the UN, was the 1028 general treaty for the renunciation of war. This is contained in articles 1 and 2. This implies, the obligation not to resort to war for the resolution of international disputes. Secondly, the obligation to settle disputes exclusively of peaceful means, and thirdly, the reservation of the right of self defence and collective self defence.

The preamble of the UN Charter consists of two principle parts – the first contains the general call for the maintenance of peace and international security and respect for human rights. The second part of the preamble is a declaration in a contractual sense that the governments of the people of the UN have agreed to the Charter and it is the first international document regarding human rights. Article 2 (3) of the UN Charter provides that: ‘all members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice are not endangered’. Article 2(4) provides that ‘all members shall refrain in their international relations from threat or use of force against the territorial integrity or political independence of any state, and any other manner inconsistent with the purposes of the United Nations’. Article 2 (4) has been described as the cornerstone of the UN Charter. And article 51 gives members the right to individual or collective self-defence ‘if an armed attack occurs against a member of the UN’. This right is described as ‘the inherent right’.

Perhaps, it is in reliance of the right to collective self defence contained in article 51 of the UN Charter that provides the justification for NATO proxy war against Russia. It is important to note further that the UN is an intergovernmental organization with a framework that ensures its effective operations – there are six organs in all. These include the Secretariat, the General Assembly, the Security Council, the Economic and Social Council, the International Court of Justice, and the Trusteeship Council.¹³ Russia and Ukraine are members of the United Nations with Russia being a member of the Security Council. Prior to the invasion of Ukraine, Ukraine submitted an initiative to the UN Security

¹³ ICJ Report (1949), 4

Council, urging it to intervene and prevent Russia from invading it.¹⁴ Russia ignored the resolution for peace, and brushed aside all aspects of the UN Charter urging members to maintain international peace and security, and went ahead to invade Ukraine. A further and particularly difficult issue of interpretation relates to the phrase ‘armed attack in article 51. Brownlie¹⁵ takes the view that armed attack has a reasonable clear meaning which rules out anticipatory self-defence. The definition of ‘armed attack has obvious importance in the *Nicaragua case*¹⁶ where the complaint of Nicaragua was for the ICT to ascertain the United States alleged support to the state actors in Nicaragua.

Interestingly, Article 51 of the UN Charter provides that nothing in the present Charter shall impair the inherent right of individual or collective self-defence if armed attack occurs against a member of the UN, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by members in exercise of this right of self-defence shall be immediately reported to the security council and shall not in any way affect the authority and responsibility of the security council under the present charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security. There is a long-standing controversy as to whether the charter provisions definitely exclude the possibility of anticipating self-defence. Much of the literature advocating the legality of such action relies upon two related propositions. The first is that article 51 of the Charter reserves a right of self-defence which exist in customary law: this view is reasonable in its self. The reference to customary law is important because on its face the text of article 51 is incompatible with anticipating action.

The second proposition is that the customary law concerns was formed in the nineteenth century and in particular as a result of the corresponding exchanged between the United States and Britain in the period between 1838 and 1842.¹⁷ The cause of the exchange was the seizure and destruction (in 1837) in American territory by British armed forces of a vessel (the *Caroline*) used by persons assisting an armed rebellion in Canada. In protesting the incident of the Secretary of State, Daniel Webster required the British government to show the existence or necessity of self-defence. The right to collective self-defence is one arm of article 51 of the UN Charter that calls for a review. The right to collective self-defence was accepted in general international law prior to the appearance of the United Nations Charter, but it is now given express recognition in the United Nation’s Charter.¹⁸ It may be recalled that in response to the Iraqi attack and invasion of Kuwait, Security Council Resolution 661 (1990) made express reference in the preamble to the inherent right of states to individual or collective self-defence.. In the *Nicaragua case (Merits)* the International Court of Justice stated two conditions for the lawful exercise of collective self-defence. The first of such conditions is that the victim state should declare its status as victim and request assistance.¹⁹ The second condition is that the wrongful act complained of must constitute an arm attack.²⁰

One queries why, the Security Council was mute in the case of Russia attack or aggression on Ukraine. Perhaps, the Power of Veto that would have been exercise by Russia and China would have prevented the Security Council of the UN from reaching any resolution. Shaw²¹ after noting the various UNSC resolutions against Iraq in its attack on Kuwait stated that, it remains to be seen whether such a transformation on a long-term basis would continue.²² He opined further that the failure of the Security Council as a primary responsibility to preserve world peace stimulated a number of other developments. He concluded that it also encouraged in some measures the establishment of military alliance, such as NATO and the Warsaw pact, which led to the reinforcement of regional bodies that by-passes UNSC. As stated by Shaw, the Security Council is constrained by the provision of the Charter itself. It must follow the procedure laid down by the Act, which confines its constitutional authority as detailed particularly of Chapter V to VII. Its composition and voting process. The UNSC has 15 members, 5 of them permanent members – USA, UK, Russia, China and France. These permanent members, were on the basis of power politics in 1945, have the right of veto. Under article 27 of the Charter, on all but procedural matters, decisions of the Council must be made by an affirmative vote of nine members, including the concurring votes of the permanent members. A negative vote by any of the permanent members was sufficient to veto any resolution of the Council, safe with regards to procedural issue, where nine affirmative votes is all that is required. The veto was written into the Charter in view of the exigencies of power, the USSR, in particular, would not have been willing to accept the UN as it was envisaged without the establishment of the veto to protect it from the western bias of

¹⁴ Brownlie, op. cit. 265-8

¹⁵ Brownlie, p.732

¹⁶ Brownlie, op.cit 278-9, 361

¹⁷ For the document, see Jennings, at 32 (A) (1938), 82-99. The problem presented by the activities of insurgent groups on the territory of a neighbouring state formed a major element in the *case concerning activities in the territory of Congo*, (DRC V Uganda), ICJ Report, 2005. See further Okowa, 77, BT (2006), 203-55. And Ian Brownlie, p. 733.

¹⁸ See generally: Bowett, *self defence in international law* (1958), 200-45 Dinstein, *War, aggression and self-defence* (3rd edn., 2001), 272-45, Gray, *International Law and the use of force* (2000), 120-43; Simma (ed.) *the Charter of the United Nations* (2nd edn., 2002), i802-3

¹⁹ ICJ Report (1986) 14, 103-5

²⁰ Rovine, *Digest of United States Practice in International Law*, 1974 Dept of Stat. 698-8

²¹ See *The Kuwait Crisis: Basic Documents* (eds. E. Lauterpachi, C. Greenwood, M. Weller, D. Bethlehem), Cambridge, 1991

²² See e.g. H. G. Nicholas, *the UN as a Political Institution*, Oxford, 1975 pp.10-13 and M. N. Shaw p. 826

the council in the General Assembly at the time.²³ The distinction between procedural and non-procedural matters has been a highly controversial one. In the statement of the sponsoring powers at San Francisco, it was declared that the issue of whether or not a matter was precedent was itself subject to the veto.²⁴ This 'double veto' constitutes a formidable barrier, but it is under the Rules of Procedure for the President of the UNSC to rule that a matter is procedural and if the ruling is supported by 9 members, the issue is deemed resolved.²⁵ Subsequent ruling, has interpacked the phrase concurring votes of the permanent members in article 27 in such a way as to permit abstentions. Accordingly, permanent members may abstain with regard to a resolution of the Security Council without being deemed to have exercised their veto against it.²⁶ The complicated mechanism for the amendment of the Charter,²⁷ coupled with the existence of the veto, makes any change in the membership of the permanent members, highly unlikely.²⁸

5. Conclusion

As the war between Russia and Ukraine continues, no one really knows how it would end. As this war has offered Russia and NATO the opportunity to express their long-standing malice toward each other which malice was rather postponed after the cold war. The war too has exposed the irrelevance of the UN and its principal organ, the UN Security Council (UNSC). For so long as the super powers are concerned, the UNSC is as powerful as they members with veto powers would want it to be. The war has no doubt, reinforced the pillars of the divide, between the US and its western allies on the one hand, and Russia, China, North Korea and Iran on the other side. This divide has also made nonsense of sanctions imposed. These are all nuclear powers, except for Iran which is a few years to the realization of its nuclear weapons. Talking about nuclear weapon and its devastating consequences is better imagine. For any attempts to use nuclear weapons, will no doubt lead to Armageddon – the end of humanity.

At the moment, the war had done so much harm to Ukraine. For apart from the devastation on its infrastructure, and the senseless bombing of its cities and indiscriminate killings of civilians including children, the war has led to the mass exodus of Ukrainians, especially women, children and the aged men above 60, to other European countries. In terms of members of the armed forces, the war has claimed tens of thousands from both sides.²⁹ It is estimated that the 2014 annexation of Crimea, led to the death of 14,200 – 14,400 military and civilians. And during the 2022 war in Donbass up to the invasion of Ukraine, 500,000.³⁰ So far, of the 360,000 troops that made up Russia's pre-invasion ground force, including conscript personnel, Russia has lost 315,000 on the battle field, according to the assessment, that is about 87% of the its troops it had prior to the start of Ukraine war. While Ukraine may have lost over 500,000 service men, 200,000 of which are active military personnel.⁴⁴ This figure does not include Naval and Airforce personnel, and the loss of war ships, planes, and other weapons.

As the war rages on, the possibilities of a direct confrontation between Russia and NATO is perhaps in its preparatory stage. This is evidenced by NATO drills, admission of Finland and Sweden into NATO while on the other hand, Russia has continued to move its nuclear weapons to its allies like Belarus, which shares a boarder with Poland, a NATO member. At the moment, there is no indication of the war abating or ending soon, as the attack and counter attack of Ukraine continues, with its devastating consequences and Ukraine as Russia continues to rain missiles and other weapons of mass destruction on Ukraine. The situation is made-worst by the fact that diplomacy and all forms of mediation or arbitration have vanished. As the rest of the world looks on, one hopes that our worst fear – the use of nuclear weapons by all sides does not come true.

²³ Repertory of Practice of UN organs, Vol. II, P 104 see also Bowett, *Laws*, p. 30

²⁴ Shaw, M. N., *International Law*, 4th edn Cambridge University Press 1977 p. 826

²⁵ A stauropoulos, 'The Practice of Voluntary Abstentions by Permanent members of the Security Council under article 27 (3) of the Charter, 61 AJIL, 1967, p.737 see also Namibia Cases ICJ Report, 1971, pp. 16, 22; 49 ILR, pp2, 12, recognizing this practice as lawful.

²⁶ See articles 108 & 109 of the Charter which require interact the consent of all permanent members to any amendment to or alteration of the Charter. It may indeed be suggested that the speed with which Russia was accepted as the continuance of the former USSR with regards to the permit sent on the SC partly arise out of the desire by the council to avoid opening up the question of membership for general debate. See F. Kurgis *International Organizations in their legal setting*, 2nd edn, St. Paul, 1993. Pp. 188 et seq.

²⁷ See e.g. the NATO *Handbook* Brussels, 1955, Archer, *Organizing Europe*, London 1994, Chapter 9, Bowett, *Law*, PP. 180 et seq; K. Myers, NATO, *The Next Thirty Years* Boulder, 1980 & V. S. Kaplan and R. W. Clawson, *NATO after thirty year* Wilmington, 1981.

²⁸ <https://www.com/topics/cold-war/formation-of-nato-and-warsaw-pact> 43AJIL, 1949, Suppl. p.59 Accessed 30/3/2024

⁴² <en.m.wikipedia.org/wiki/casualties.org> Accessed 30/3/2024

⁴³ <en.m.wikipedia.org> Accessed 30/3/2024