

INVASION OF UKRAINE BY RUSSIA: THE LEGAL IMPLICATIONS*

Abstract

On the 24th February 2022, the whole world woke up to hear about the declaration of a special military operation in Ukraine by the Russian federation. Tension in Ukraine has gone up and the situation raised serious humanitarian concerns as the number of deaths among civilian population is on the increase. Similarly, many Ukrainians as well as foreign nationals from different countries including students as well as persons in public and private employments have been forced to leave their residences for their life. There is a growing discourse and concern whether dialogue should be adopted towards peace in Ukraine, others have thought otherwise and preferred sanctions against Russia and many have gone ahead to impose it. This paper is aimed at looking at the crisis in Ukraine to examine the best options toward resolving the quagmire within the shortest space of time. The paper compared dialogue and sanctions in a bid to ascertain which of the options will best produce result and get over the crisis. In addition, the paper also considered the place of humanitarian law in the crisis. The paper is aimed at reviewing the legal implications of the invasion of Ukraine by Russia and at the end made recommendations toward a way out to bring back peace in Ukraine.

Keywords: Invasion, Dialogue, Sanction and Humanitarian Law.

1. Introduction:

The crisis in Ukraine arising from Ukraine-Russian differences is not a thing of today. The crisis which is more or less code named recently as Russo-Ukrainian War is an ongoing war primarily involving Russia, pro-Russian forces and Belarus on one side, and Ukraine and its international Supporters on the other¹. Indeed, the conflict began as a process since 2014 following Russian build up against Ukraine². The conflict started with the Russian annexation of Crimea in 2014, the war in Donbas, naval incidents, cyber warfare and political tensions³. Internationally concealing its involvement, Russia gave military backing to separatists in the Donbas from 2014 onwards. With the large military build-up in the border from late 2021, Russia launched a full scale invasion of Ukraine on 24th February 2022. This invasion is ongoing and has not stopped till date⁴. There may be the need to ask some questions following the invasion of Ukraine by Russia in February 2022 as such questions are fundamental in understanding the genesis of the invasion and the war in Ukraine. The following questions come to the mind: How did the crisis in Ukraine start? What are some of the reasons and contentions of the two sides? Was any step or steps taken to ensure that there is peace? Was any agreement reached and if any, did any of the sides violate such agreement or renege in conditions earlier agreed. Who takes responsibility for the war going on?

2. Clarification of Key Terms

In order to understand the subject matter discussed in this article, it will be necessary to define some words:

Invasion

Invasion is an unlawful act. It is the entry of a place by a person or persons without the consent of the other person or persons in control of such place. The above is the ordinary meaning of the word invasion. The Oxford Advanced Learner's Dictionary defined the word Invasion to mean: 'the act of an army of a state entering another country by force in order to take control of it'¹³ From the above definition, the act of invasion includes an act: (i) By an army of a state (ii) The army of such a state enters another country (iii) The entry of such army into another country was done without permission or consent but by coercion and force (iv) The entry was done for purpose of taking control of the country that was entered. Invasion has a lot of consequences on the state invaded and possibly occupied and even on the invading country. Thus, invasion tells on the invading country and the country invaded. The effect may be colossal in all ramifications and devastating to the two countries involved. On the country invaded, it may lead to system collapse while on the part of the invading country, things will not be 'all uhuru' because such invasion may receive stiff opposition from within and outside the invading country. In the case of Russia, there are internal pressure from certain Russians contending that the president did not make consultations and did not carry majority of the citizen along before ordering the troops to move into Ukraine. This no doubt is an indictment on the government of Russia and affect the credibility or otherwise of the invasion within and outside Russia.

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¹ Wikipedia 'Russo-Ukrainian War' Part of the post-soviet conflicts

² Ibid

³ Ibid

⁴ Ibid

Dialogue

The word dialogue means a conversation or discussion between two or more persons. The Oxford Dictionary defined the term dialogue to mean: ‘a discussion between and involving two countries when they want to solve a problem and end a disagreement.’⁵ The purport of the above definition is that dialogue involves: (i) A discussion involving two different countries (ii) The two countries are having a problem (iii) The discussion between the two countries is aimed at ending the problem or a disagreement between them.

Sanctions

Sanction in our view simply means an official act or decision by a country or group of countries against a country so as to make it to observe a condition or to obey a particular rule or law. It is no doubt an order officially made to limit trade or contract with a particular country in order to make it to do something⁶. It is an order made against a country so as to make it obey an international law. Sanction is also an order imposed against a country to make the country to sign an agreement. The implication of the above definition by Oxford Dictionary is that Sanction(s) refers to: (i) An order made by a country or group of countries (ii) The order is official and is made to limit trade or contract with a country (iii) The sanction or the order is made so as to make the country against whom it is made to obey the international law or to make her sign an agreement. It is important to note that more often than not, sanctions range from one of the following or the other:

- i. Economic: In the form of trade restriction or limitation or embargo like United States and her allies placed on Russian Oil and Gas and the financial system ‘SWFT’ control and limitation.
- ii. Military: Cancelling of bilateral military co-operation and assistance.
- iii. Political: Withdrawal of diplomatic personnel and closing of foreign mission, embassies and consulates.
- iv. Trade: Withdrawal of trade relations and bilateral trade agreements.
- v. Denial of visa to nationals of the country sanctioned.
- vi. UN backed resolution for expulsion of the state from membership of the organization.

Finally, sanction is a veritable means of bringing and making a country constituting problem to another country to come to terms and embrace peace. Sanction is more or less a ‘cold war’ in the sense that those imposing the sanction merely make the declaration of sanctions without raising up arms but the country sanctioned faces serious difficult realities that may be more devastating than the option of war. It makes the country involved to have a rethink and decide whether to order its troops to put down their arms and go for peace or to choose the part of war and crisis and be ready to face the consequences of the sanction imposed against her.

Humanitarian Law

Like in peace time, there must be rules to guide and regulate those who participate in war⁷. These rules are intended and aimed at minimizing the effect of the war and check the excesses of those participating in the war⁸. International humanitarian law is a broad aspect of international law that regulate the method and means of warfare⁹. It is a body of law made to protect those who are not or are no longer participating in hostilities. In simple terms, humanitarian law is the law of war¹⁰. From the foregoing, humanitarian law means a body of rules that: (i) Is intended to limit the effect of war (ii) Is also aimed at protecting those who from the onset never participated in war and those that participated but are no longer participating on reasons of being captured by enemy forces and becomes prisoners of war under a detaining power (iii) Restricts the means and methods of warfare (iv) Body of rules governing relations of state and is based on agreements and treaties or convention entered freely by states which they make as customary rules and make them binding by state practice and legal principles¹¹. Looking at the definition given above, it means that humanitarian law gives protection to wide range of persons from the effect of war.

3. Russian Invasion of Ukraine and its Legal Implications

As fighting rages across Ukraine, it is imperative to observe that the attack on Ukraine by Russia is a systematic built up of military operation carefully designed by Russia. It is a long term plan that ended in the invasion sparking off the war. In reviewing the current situation in Russia, Ronald Sunny reasoned that two aspects should be considered namely¹²:

⁵ Vanguard ‘World News’ ‘Reps Ask Fed Govt to evacuate Nigerians from other parts of Ukraine’ March 9, 2022, pg. 22

⁶ Oxford Advanced Learner’s Dictionary, International Student Edition, New 8th Edition, pg. 791.

⁷ A.U Abonyi, *Handbook on International Humanitarian Law*, (Nnewi, 2019) pg. 1,2,3

⁸ Ibid.

⁹ AIT News clips ‘World News’ Russia continues attack on Ukraine Amidst Resistance from Ukraine AIT online.com (9/3/2022) Sanction on strict financial control of the Russian finance system where many ‘spaces’ and ‘technological structures and processes’ ensuring financial stability and system in Russia have been barred leading Russian residents scampering for money to provide their daily needs.

¹⁰ Oxford Advanced Learners Dictionary 8thEdn, pg. 1307 paragraph 15.

¹¹ Oxford Advanced Learners Dictionary 8thEdn, pg. 1307 paragraph 15.

¹² A.U. Abonyi, *International Humanitarian Law A Handbook* (Nnewi, Clemag Technologies Resources LTD, 2019) pg.2

- i. The rationale and justification of the invasion by Russia based on military and Security realities in her country or territory as a result of the presence of NATO and its allies in Ukraine.
- ii. The legal implications of the invasion under international law and other global standard principles.

Looking at the above considerations, it is a sound argument that there are two versions of reality that underlie the Ukraine conflict creating a deep divide with none conceding truth to the other¹³. The dominance is more wide spread view in the west on the issue and particularly held in the United States is that Russia is and has always been an expansionist State and the current president of the country Vladimir Putin has always been an embodiment of this essential Russian ambition to build a new Russian empire¹⁴. The same reasoning above was amplified in the speech of the president of United State to the country and to the world on 24th February 2022 in reaction to the Russian invasion of Ukraine. Joe Biden reacted and said: This was ...always about naked aggression about Putin's desire for empire by any means necessary'¹⁵ The combined view of Roland Sunny and that of Joe Biden of United States is suggestive of the fact that what is pushing Russia to invade Ukraine is her desire to create a strong empire for herself in Eastern Europe and in going about it, Russia is prepared to do anything within its powers to ensure the realization of such ambition and sees any country that stands against her realizing this ambition as her enemy and recognizes all allies of such her enemy as an enemy too. Thus, any country perceived to have a romance or good relationship with the enemy of Russia is an enemy no doubt. On the other hand, there is an opposing view which is inclined to the fact that Russian Security concerns are in fact genuine and that NATO expansion eastward is seen by Russia as directed against their country and this Putin has been clear for years that if continued will likely be met with serious resistance by Russians¹⁶. This resistance according to Putin will include military action. This view is not just held by Russians alone but also held by some influential American Foreign Policy experts. Among others, Biden's CIA director, William J. Burns has severally warned about the provocative effect of NATO expansion on Russia since 1995 when he was then a political officer in U S embassy in Moscow and reported to Washington that 'hostility to early NATO expansion is almost universally felt across the domestic political spectrum here'¹⁷. When Burns uses the word 'here' in his report, he referred to Moscow where he was acting as officer in 1995.

The indication from the above is that whereas NATO and its allies are raising dust over Russia's ambition, Russia feels insecure with the expansionist tendencies of NATO and its allies Eastward as such act is a threat to her as a country. Two questions are yet to be answered in this conflict are: (i) Why is Russia afraid of NATO expansionism and (ii) Why are NATO and allies afraid of Russia becoming an empire within its domain? Our thinking is that each of the two divides is hiding something from the other and from the world and wants to maintain and hold such secret to itself and has fear that where they come close to each other or to the allies, the feeling of threat grow and escalate. In as much as expansionism by countries is not prohibited by international law because it encourages states to build international co-operation among others and also advance the right to free association among states, expansionism may well be prohibited and becomes unlawful and illegal in our considered view where it is deliberately done for advancement of an unlawful purpose. This indeed is the aspect that both international law and domestic statutes criminalise as detrimental to the overall survival and existence of a state and cannot be condoned. The North Atlantic Treaty Organization or NATO is a military alliance that was formed by United State, Canada and Several European nations in 1949 to contain the USSR and the spread of communism. NATO in the west is no longer an anti-Russian alliance but instead a kind of collective Security agreement aimed at protecting its members from outside aggression and promoting peaceful mediation of conflict within the alliance. From the foregoing, the importance of NATO as an Organization to its members is twofold two namely: (a) Having entered the association and alliance, a member is under the alliance agreement protected from outside aggression (b) Promotion of peaceful mediation of conflicts within the alliance.

Aggression is a crime known to international law and prohibited by international conventions and treaties. To the extent of the two reasons above, it is no doubt evident that NATO as an organization is established for purpose or purposes that are strictly legal and lawful unless the contrary is proved by any person or group of persons. Each state member of the United Nation and even non-members who are independent states enjoy what is popularly recognized in all democracies as sovereignty of states. By this, the municipal laws of states and even international law contained in conventions and treaties makes states to be sovereign entities that should and are respected by other states and such sovereignty cannot be compromised for whatever disguise or pretense. In recognition of the sovereignty of one state as well as others, no state can purport to move into the territory of another state without the consent and approval of such a state. This view is not only supported by the domestic laws of state but is also backed up by international law contained in several conventions including the Universal Declaration of Human

¹³ Ibid

¹⁴ Ibid

¹⁵ Ibid

¹⁶Roland Sunny 'Ukraine war follows Decades of warnings that NATO Expansion into Eastern Europe will provoke Russia' published Feb 28, 2022, Sunny is Prof. of History/Policies University of Michigan.

¹⁷ Ibid

Rights¹⁸. If the provisions of the principle of sovereignty of states are anything to go by, one may be tempted to ask the following questions: Is Ukraine an independent country? If Ukraine is an independent country, did Ukraine permit or consent to the movement of Russian Troops on the order of Putin on the 24th of February 2022 into its territory? If Ukraine did not permit or consent to the entry by Russia into her territory on 24th of February 2022, should such an entry not be recognized as unlawful being an attack on the sovereignty of the state of Ukraine? If Russian invasion violated the Sovereignty of Ukraine, is it not also a violation of international law? If the invasion which has caused deaths of many civilians, destruction of properties of state of Ukraine as well as properties of civilians is illegal, will Russia not be held responsible and accountable for all the grave crimes of international character perpetrated by her troops including war crimes, crimes against humanity, genocide and others? If NATO expansionism as argued by Russia is the reason for the Ukrainian invasion, does that claim of expansionism by NATO without any physical act of NATO and its allies including Ukraine a justification for the attack of Ukraine? Is Ukraine an enclave or a conquered territory of Russia?

The above questions pose a legal effect and consequences as well as implication. Ukraine is an independent state, it did not permit the entry by Russia into its territory on the 24th of February 2022, the act is therefore a violation of the sovereignty of Ukraine, the invasion has caused many deaths and also led to destruction of properties and Russia is responsible and must account for that. Ukraine is not a conquered territory and there is no law limiting Ukraine from joining NATO if it desires, NATO expansion in Eastern Europe without any physical act against Russia cannot be a justification for invasion of Ukraine as an ally to NATO, not at all. Even the Pontiff, Pope Francis has also criticized the Russian president, Vladimir Putin as the number of casualties in Ukraine continues to rise¹⁹. The Pope during his Angelus address at the Vatican with the Russian invasion of Ukraine as point of focus stated that Russian invasion is not a military operation 'a war sowing destruction, death, and misery'²⁰. The pope therefore in his address called for immediate return by Russia toward respecting international law²¹. The Russia/Ukraine war will no doubt impact on the global economy particularly among the Africans especially Nigeria. Already the war in Ukraine has forced sporadic increase in the prices of oil and gas as well as commodities, there is also the likely hood that the dollar will be scarce thereby shooting the exchange rate up and by this more devaluation of our country is inevitable, already there is gradual but steady removal of subsidy in the oil and power sector and this automatically will affect the revenue base of the country and will no doubt lead to excruciating hardship among the populace. This will not stop in a very short time²². In her response to the Russian invasion of Ukraine and the legality of the act of Russia, the UN General Assembly on the 8th day of March, 2022 voted and arrived at a resolution support by 141 states in favour of the motion condemning the Russian invasion of Ukraine, four countries including Belarus, Syria, North Korea and Eritrea stood with Russia, though Cuba spoke in defence of Moscow but it abstained during voting bringing the total abstentions to 35 countries²³. Though the resolutions of the UN General Assembly are not legally binding but reflect and influence world opinion.

The combined response by the pope at the Vatican as well as the UN Resolution and propositions above reiterates the fact that the Russian invasion is not only an infraction and violation of international law but is such that has led to colossal destruction of lives and properties and no doubt has created serious humanitarian issues which will do the entire globe no good at all. It is condemnable that notwithstanding the obligations of states are under Article 2 of the UN Charter in which states are under duty to refrain in their international relations from threat or use of force against the territorial integrity of other state, or her political independence or doing any act in any manner inconsistent with the purposes of United Nations, but to settle their disputes in peaceful means, Russia still closed its eyes and violated these provisions and invaded Ukraine. To the extent of the above considerations, our humble view is that legally speaking, Russia has no basis or justification for the invasion of Ukraine and cannot be left without accounting for the entire crimes committed by its troops in the Russian Ukraine war.

4. Dialogue and Sanction: Search for a Better Option

In every dispute, options abound and are available towards bringing the hostility to a halt. This is more so when the dispute has escalated to the level of war. At that stage many variables come to bear and hence it takes maturity among the parties in the dispute or other interested stakeholders to find out the best possible alternative to resolve the impasse. When on the 22nd of February, 2022, Russia struck Ukraine by damning all international principles, law and rules and moved into Ukraine with her troops, the act did not go well with many countries, organizations on the one hand while some others gave their support and voice to the ill-fated act and described the action of Russia as a step in the right direction intended for Russia to protect itself. It is noted that both dialogue and sanctions are available options towards resolving a dispute between countries. Whereas in dialogue, all processes and procedures leading to amicable and

¹⁸ Ibid

¹⁹ Pope Francis 'Putin sowing Destruction, Death in Ukraine' *The Christian Outlook*, (Nnewi, publication of the catholic Diocese of Nnewi, Vol 21 no.8 13/3/2022) pgs. 1,7

²⁰ Ibid

²¹ Ibid

²² Dele Sobo wale 'Special Report on Russian Ukraine war, how it will affect Nigeria and what should be done' *Vanguard Newspaper* (Lagos, 12th March, 2022) pgs. 10-11

²³ Aljazeera Live 'UN Resolution Against Russian invasion of Ukraine 8/3/2022.

peaceful settlement of the dispute is undertaken, in sanctions, the opposite is the case and instead of adopting peaceful procedure, one of the countries involved in the dispute is made to embrace strict economic and political restrictions by the other country and even its allies and majority of the member states of United Nations. Thus, in sanctions, the countries in dispute or the one perceived to be the cause of the crisis is subjected to restrictions and as it prolongs, the country will have no choice but to surrender and embrace peace. Following the invasion of Ukraine by Russia on the 24th of February 2022, concerns were raised for dialogue and peace to end the conflict. Similarly, condemnation trailed the invasion leading to widespread sanctions against Russia including economic sanction like boycotting of trade and bilateral relationship with Russia like the sanction imposed by US and its allies as it relates to banning of purchase of Russian oil and gas as well as the strict control of the financial system through the ban of 'SWIFT' money transfer from operation in Russia which no doubt affected easy flow of cash and has led to increased demand for cashing the Russian capital market with little or no reciprocal supply as against the soaring demand. The invasion was slammed by western countries led by the United States who united in a chorus of criticism against Russia's intrusion into Ukraine²⁴. The Moscow allies reacted with milder tones as they find themselves walking a tight rope between security concerns and economic interests²⁵. The Indian Prime Minister Narendra Modi did not mince words when he put a call to Russian president Vladimir Putin and stated that: 'his long standing conviction is that the differences between Russia and the NATO group can only be resolved through honest and sincere dialogue' and further expressed his concerns over the safety of about 20,000 Indian students currently stranded in Ukraine²⁶.

The Ukrainian Ambassador to India, Igor Polikha expressed deep appreciation with the above position of India in the crisis²⁷. He insisted that this is not the time for protocol bound statements²⁸. The position of India therefore is that notwithstanding her affiliation with any of the warring parties in Ukraine, dialogue should be embraced and honestly too. On the above consideration, we are tempted to view along India that dialogue will likely produce more viable and positive result towards resolving the Russia Ukraine war but all the parties must be honest in their desire for peace. The position of China in the crisis is yet uncertain. This view is strengthened in the sense that the invasion took place after Putin and his Chinese counterpart paraded in Beijing in a great display of unity ahead of the opening of the winter Olympics²⁹. This is amidst the good relationship enjoyed by China with Ukraine but finds Putin an ally because of her business interests in Europe. Indeed, the two countries China and Russia enjoy great business relations on top of what observers have called 'a personal Chemistry'³⁰. China reiterated that Russia's security concerns is legitimate but went ahead to state that it will not provide Moscow with military support but the same China is bolstering trade such as increasing imports of wheat from Russia, a move that critics called 'an economic lifeline for Putin'³¹. Reacting recently on the invasion, Chinese foreign minister stressed that each country's sovereignty should be respected and called on them to return to negotiating table³². A Beijing based political analyst, Einar Tangen told Aljazeera and insisted that Russia and China needs each other but for China, the invasion is not in line with the idea of their stable world trying to create more trades but rather that this is going to create more uncertainty³³. In the case of Israel, her foreign minister Yari Lapid condemned Russia's move in Ukraine as a 'serious violation of the international order'. He however stressed Israel's deep long lasting and good relations with Russia and Ukraine³⁴. Lapid viewed further that there are guards of Jews in both countries and maintaining their security and safety is at the top of their considerations. What can be understood from the above positions of India, China, Israel and positions of commentators in the ongoing war in Ukraine is that most countries except the core traditional allies of NATO on one side and Russia on the other are inclined to peace and dialogue than sanctions and their position is driven by one interest or the other ranging from economy and trade and the perceived safety and security of their nationals and citizens in the two countries.

The response by Turkish President Recep Tayyip Erdogan on the invasion that Moscow's military action in Ukraine amounts to a heavy blow to regional peace and stability and reiterated the stand of Turkey for the resolution of the problems between Russia and Ukraine³⁵. Turkey refrained from using the word condemnation and invasion as they try to maintain good ties with the two countries in the black sea. It is important to observe at this point that whereas Turkey is pressing for diplomatic solution to diffuse tension between its fellow NATO members and Moscow, the country insist that they will not give up on either of the countries as they have political, economic and military relations with both countries. To Turkey, her relations above with the two countries are of paramount considerations to them hence they may not be ready to support sanctions but would rather go for dialogue. Although the Central Asian neighbours including leaders of Kazakhstan, Uzbekistan, Kyrgyzstan and Tajikistan did not issue any official statement on the invasion, the meeting with Russian Prime Minister Mikhail Mishustin with Kazakh president Kassym Jomart Toquev to discuss how

²⁴Aljazeera Live Report on Russian Invasion of Ukraine 'where do Russian Allies stand as Western Power slam Moscow' Russian/Ukraine War News, <https://www.aljazeera.com/news/2022/2/25/russia-ukraine-war-2022>

²⁵Ibid

²⁶Ibid

²⁷Ibid

²⁸Aljazeera Analysis of the Issues Around Russia/Ukraine war [online.com.russia.ukraine.war.benefits.effects](https://www.aljazeera.com/news/2022/2/25/russia-ukraine-war-2022)

²⁹Turkish Position on Ukraine war [online.com](https://www.aljazeera.com/news/2022/2/25/russia-ukraine-war-2022)

³⁰Aljazeera live [online.com.ukraine.war.org](https://www.aljazeera.com/news/2022/2/25/russia-ukraine-war-2022)

³¹Ibid

³²Ibid

³³Ibid

³⁴Ibid

³⁵Turkish position on [ukrainerussiawar online.com](https://www.aljazeera.com/news/2022/2/25/russia-ukraine-war-2022).

to pressure economic ties and trade amidst the barrage of sanctions imposed by the west to us show that the Asian States are much more inclined to anything that would boost their trade and its stability and would both need and want peace and where it does not come, they would rather go for stable trade relationship with Russia even if the war continues. It seems evident that even though Pakistan is an ally to Russia mainly because of the countries rising need and demand of Russian gas and her energy needs, the Prime Minister of Pakistan Imran Khan believes and stressed that conflict was not in anyone's interest and that developing countries were always hit to harvest economically in case of conflict. For Myanmar, they cannot afford to lose Russia because of the countries potential military and technical co-operation with her people. In addition, though Venezuela and Cuba appear to have blamed NATO and the United State for manipulating the international community against Russia, Cuba however insisted and called on US that only diplomatic solution through constructive and respectful dialogue is the panacea for the Russian Ukraine war³⁶. On the side of Nicaragua, the country through its president Daniel Ortega accused United States and Europe of using Ukraine to provoke Russia and insisted that Russia is only demanding security and has right to self defence and to him sanction or no sanction, if a referendum is allowed, the people will support that the two separatist republics in Moscow becomes independent.

Considering the above issues and declarations, it is clear that whether dialogue is adopted for resolving the crisis in Ukraine or sanction is used, what is vital is that each country's position and disposition is largely depend on their individual interest and not necessarily how the world will benefit at the end. However, the dominant view and suggestion across many divides is that peaceful means be adopted to end the impasse in Ukraine. This position or view is also in accord with the provisions of Article 2 of the UN Charter which provides that states are under obligation not to do anything capable or likely to jeopardize the integrity and sovereignty of another state and their independence but to exploit means of settling disputes by peaceful means. Furthermore, Article (2) of the charter also provide an obligation that all members shall ensure that all the rights and benefits resulting from capable or likely to jeopardize the integrity and sovereignty of another state and their independence but to exploit means of settling disputes by peaceful means. Furthermore, Article (2) of the Charter also provides an obligation that all members shall ensure that all the rights and benefits resulting from membership are fulfilled in good faith. Part of these benefits is peace and security of states which if unstable can spread to other states and to the rest of the world. Security Council has a duty and even the UNGA and has demonstrated it in her Resolution 377AV of 3rd November 1950 entitled 'Uniting for Peace Resolution'. This show that in all situations of conflict in any part of the world, peace is paramount because where insecurity thrives in one country it spread to others. In Ukraine, evacuation routes are blocked while UN relief aid workers and missions are under pressure as wide spread displacement has left many homeless without food, water and other basic amenities. All the above has created the need to invoke the principles and rules of humanitarian law which is to the effect that war should be conducted in a manner to reduce to a minimal level the effects of war and not escalate it. Notwithstanding the condemnation of the invasion by many countries especially NATO allies and the call for peace by others, Russian president is holding on insisting and making more nuclear threat should the sanctions persist. In our view, international humanitarian law regulates the means and methods of warfare and prohibits the use of nuclear or chemical weapons that will lead to death of many civilians and lead to excruciating human suffering. Our firm view is that the Ukraine war has become more and more asymmetrical in the face of the strategy and method adopted and threatened by Russia vis a viz that of Ukraine, it may have bandwagon effect and gradually spread until the entire world becomes unstable. The use of Supersonic Missiles in Maiupol and Tviv has left many dead and displaced.

5. Russian Ukraine War and Intervention of United Nations, Humanitarian Law and Place of International Criminal Court

Our view is that the United Nations is committed towards ensuring the immediate end of Russia Ukraine war. This view is also amplified by the resolution of the United Nations General Assembly following the invasion of Ukraine by Russia on the 22nd of February 2022 which was supported by 141 member states with 35 abstentions. The UN reaffirmed the provisions of Article 2 of its charter on non-interference by a member state on the territorial integrity of another member state and the need to take all necessary steps toward ensuring peaceful settlement of the crisis. The UN also ordered immediate withdrawal of Russian troops and urged Russia to stop further carnage going on in Ukraine which has raised a lot of humanitarian concerns. Not only that civilian population is the target of Russian military objective, properties of civilian and cultural properties, hospitals as well as patients are not left out. We strongly view that with the media clips and footage by Aljazeera, Reuters and other international media networks including CNN, it cannot be doubted that serious human rights violations and commission heinous of international crimes have taken place in Ukraine all carried out by Russia and her troops. The stand and claim by Ukraine also confirm this proposition as the country has noted that Russian has committed war crimes during its invasion and insist that it is possible for the international criminal court to prosecute Putin³⁷. During a hearing in the international criminal court on Monday, 7th March 2022, Ukraine while requesting for provisional measures from the court, alleged that Russia was committing war crimes in the course of its invasion of Ukraine and violating core tenets of international humanitarian law³⁸. Counsel to Ukraine in addressing the court, pointed out that: 'it is equally obvious that this invasion has caused, is causing and will continue to cause huge human suffering including the wide spread commission of war crimes, displacement of millions of civilians and the deprivations of many more millions bombarded by Russian forced'³⁹

³⁶Declaration of Russian Ukraine war by Cuba <http://t.co/jdc5am4u4,orbrunoRogriguez> p at BrunoRguezp)

³⁷Vakasha Sachder 'What is International Humanitarian Law and is Russia violating it in Ukraine' published 8/3/2022 webquot

³⁸Ibid

³⁹Ibid

The claim by Ukraine through its counsel of violations of international humanitarian law comes at a time when 39 countries referred the situation in Ukraine to the office of the prosecutor of the ICC Court. On the strength of the above allegation, the ICC prosecutor announced on the 2nd of March that its office opened an investigation into allegations of war crimes, crimes against humanity and genocide on the territory of Ukraine and has since begun the collection of evidence for its investigation⁴⁰. The Court also gave an interim order directing Russia to withdraw from Ukraine. The action of the ICC prosecutor in opening an investigation over the commission of grave offences in Ukraine by Russia is in line with the position of international humanitarian law that perpetrators of crimes of international character cannot go unpunished. The crimes of international concern are in such a nature that if unchecked, their commission in one state can spread to other states and gradually affect international peace and security. The commission of these crimes including war crimes against humanity, genocide have been criminalized in many instruments including the Model Criminal Code which its provision have been replicated under Article 5 of the Rome Statute, other instruments making provisions against these heinous crimes include: UN Declaration on Human Rights, Model Criminal procedure Act, The Crimes Against Humanity Act, The Genocide Act as well as Genocide Convention. It is important that the International Tribunals like the Nuremberg Tribunals and even the Tribunals of the former Yugoslavia and former Rwanda have played Key role in enforcing international humanitarian law rules to prosecute perpetrators of these heinous crime. Of recent, the ICC established by the Rome Statute have also played significant role in this direction and has assumed universal jurisdiction in dealing with such cases in all parts of the world especially where domestic criminal codes does not make provisions for crimes related to these species of offence or where domestic legislations made sufficient provisions but the state or states concerned is or are either (i) not willing to prosecute the perpetrators or (ii) the perpetrators of such crimes are the leaders in such states and are not and may not be willing to prosecute themselves. A good example of this scenario were the cases of Pinochet in Chile, Charles Taylor in Liberia and Omar El Bashir of Sudan and the Python dance in Nigeria..

The crimes of international character above include war crimes which by Article 1 (5) of the Rome Statute refers to acts which is devastating and excruciating to the victims including serious human rights violations, detention and extra judicial killings, sexual related offences like rape, deliberate attack on civilian targets and properties. On the crime of genocide, a person commits the offence or a group including armed forces when he or she or they do any act in the code or statute with intent to destroy whole or part (a) national, ethnical (c) or religious group including killing them, causing serious bodily harm, deliberate affliction on a group intended to destroy them physically, putting up measures to prevent birth within the group and forcibly transferring children of the group to another group⁴¹. The above definitions of these crimes have been incorporated into many international instruments as a progressive way of holding the perpetrators accountable and have been consolidated in the judgments of ICTY and ICTR tribunals as is observed in some of the land mark cases of *Prosecutor v Broanin*⁴² and *Prosecutor v Krstic*⁴³ as well as *Prosecutor v Kayishema*⁴⁴. In all the cases above, the court found that the crime of genocide was committed.

As for crimes against Humanity, it is an offence committed when a person or persons does an act or acts as part of a widespread or systematic attack directed against any civilian population including murder, enslavement imprisonment or other severe deprivations, deportation or torture etc⁴⁵. It is noted that the concept of crime against humanity was developed and conceived during the trials of major war criminals in Nuremberg in 1945, the jurisprudence of this crime has been expanded to the effect that the act can be committed both in armed conflict and even in peace time. The commission of the above crimes reviewed amounts to violation of international humanitarian law on one side by individual and on the other by state against another state as was seen in 2007 by Bosnia's case against Serbia⁴⁶. The implication from the above review is that Russia as a state and Putin or any of the members of the Russian military can be prosecuted respectively under international humanitarian law for violation of international law by the commission of any of the crimes of international concern in Ukraine. Russia began its special operation in Ukraine on 24/2/2022 which Russian Putin contend is to prevent a genocide of Russian speaking people in Donbas region of eastern Ukraine. How did Russian come about the threat to genocide of Russian speaking people of Donbas, does it mean that all the people who speak Russian in Donbas are Russians, this is no doubt, no. Shortly following the invasion, Ukraine filed its case at the international court insisting that Russia's claim about genocide was false and fabricated and an abuse of the Genocide Convention and during the hearing for an interim order, Ukraine listed may war crimes perpetrated by Russia to include: Willful Killing of civilian filming a Russia column's advance; An attack on civilian bus; Bombings of non-military targets such as the Kharkiv Regional Children's Hospital No 1; The shelling of ambulance carrying injured Ukraine soldiers; Russian violation of humanitarian corridor for evacuation of civilian from the city of Maripol Ukraine; and Use of indiscriminate weapons by Russian forces including GRAD missiles and the TOS thermobaric rockets⁴⁷.

It is not in doubt and very plausible too that from the above indexes, Russia indeed has violated and is still violating international humanitarian law and all hands must be on deck to get the people of Ukraine out of this situation they find

⁴⁰Ibid

⁴¹Article 86 (1) of Model Criminal Code.

⁴²IT 99 Judgement delivered Sept 1,2004

⁴³IT 98 Judgement delivered August, 2001

⁴⁴ICTR Judgement and sentence delivered May 21st, 1999.

⁴⁵Article 87(1) Of Model Criminal Code.

⁴⁶Vakasha (supra)

⁴⁷UN Migration Agency Report (UNMAR) on 'Russia Ukraine war and violation of IHL'

themselves. Is either the world acts now, or the world will allow Russia to drag Ukraine to extinction and if this occurs, who knows the next state, it might be in the west, Europe, Africa, Ashia or God knows which continent it might be.

6. Conclusion and Recommendations

It is imperative to observe that after the above review and highlights, the following findings were made: The invasion of Ukraine by Russia on the 22nd of February 2022 is unprovoked by Ukraine. Ukraine is an independent state and is entitled to respect and integrity as a sovereign state with recognized territory and borders and the invasion by Russia was and remains an infraction on the integrity and sovereignty of Ukraine as an independent state with laws and constituted authority. The Russian invasion of Ukraine is clearly and manifestly a violation of international humanitarian law and Mr. Putin and all his co-conspirators in the ill-fated saga should be held accountable for all the war crimes and other heinous crimes of concern to international community committed in the war in Ukraine including genocide, crime against humanity and grave human rights violations. There is no legal justification by Russia for the invasion and the purported defence of threat to its people in Donbas and perceived security threat and breach as a result of NATO expansionism is not only misguided but is ill-conceived without any weight or truth conceivable in law. The response of many countries that in their official statement is founded on one interest or the other which such country must protect while the war goes on and hence whether the matter should be settled by peaceful means or sanctions is largely dependent on which option that benefits the country concerned, some countries are on the fence because of their affiliation with Russia and Ukraine and would not want to be seen as siding one against the other. The war in Ukraine since the Russian invasion has led to deaths of many civilians who have been made targets of military objective by Russia, their properties are also destroyed while hospitals and patients in such hospitals have been fiercely attacked by Russian troops and this has been done in a systematic manner starting from a particular point and gradually spreading to other areas, this indeed is causing excruciating suffering among the civilian population. The United Nations in the face of the invasion has through its organ the United Nations General Assembly (UNGA) shortly after the invasion adopted a resolution where 141 member countries kicked against the invasion while 39 countries abstained. Countries in the west including United States, Britain, Germany and all the NATO allies and Europe have from the day of invasion stood against Russia and described the action of Russia as a gross violation of international law and have all maintained that the perceived NATO expansionism toward eastern Ukraine as claimed by Russia cannot be a legitimate argument and excuse to invade the territory of Ukraine, these countries have at the wake of the invasion responded with heavy sanctions against Russia including economic, political and diplomatic sanctions, the Russia allies do not seem agree to this part. Many countries as well prominent personalities including the papacy, Pope Francis had in Vatican during his Angelus address condemned Russian invasion as violation of international law which has caused many deaths and called for peaceful settlement of the crisis. By the resolution of UN above, majority of the member state of the organization supports immediate withdrawal of Russian troops and for Russian to embrace peace with Ukraine in line with Article 2(4) 33-38 and 51 of the UN Charter which abrogates the use of such force and directs all states to settle their differences and dispute by peaceful means⁴⁸

The invasion of Ukraine by Russia has placed humanity at stake and at serious risk and we cannot afford a world war III⁴⁹. Indeed, war is bad but to people like Putin, it is a good tool or weapon in his hands to expand his might and power whether in utter disregard of humanity principles or whatever the case may be. The efforts of UN and its organs including the General Assembly of heads of state of member countries is well noted and highly appreciated and this is irrespective of the fact that the resolutions of the UN General Assembly are not legally binding on member states but no doubt they have influencing powers and implications and help shape international position or opinion on matters. Resolving the crisis in Ukraine should be seen as a global emergency that ought to be addressed urgently. To this end, the following recommendations are made: The Ukraine war is a serious threat to global and security and as a result the UN should mobilize its members and organs especially the security council to take urgent and drastic action to ensure quick and speedy resolution of the conflict in Ukraine. The petition filed at the international court of justice by Ukraine should be pursued without looking back and the international criminal prosecutor in the court should ensure that everything that ought to be done to hold Russia and all perpetrators of war crimes and other heinous crime in Ukraine accountable for the crime. Though sanction is a good weapon in war, dialogue is the preferable option in this respect and must be embraced by the parties in the conflict and UN diplomats with every sense of maturity, integrity and security so that each will have trust and confidence on the other than suspect every step or more taken by them. Aid agencies and workers must work in synergy so that the distribution of relief materials is evenly done so that there will not be instances where some areas get excess while others are in lack. Russia is called upon to observe the rules and principle of international solidarity and goodwill founded on *Pacta Sunt Servanda* to respect international law and sovereignty and independence of Ukraine and withdraw her troops from Ukraine and embrace settlement of the crisis by peaceful means. While efforts toward bringing permanent peace is being made, there is serious need for the UN to press on Russia to open windows for evacuation of displaced persons and persons in need to leave Ukraine owing to the carnage being carried out by Russia. The UN and her collaborating aid organizations should step up the supply of relief materials to address the humanitarian needs of civilian population, the injured, the sick in Ukraine passing through excruciating suffering in war torn country. Ukraine on its part should stop discriminate against nationals from other countries in the process of evacuation, the cases of some non-Ukrainians being subjected to trekking as they leave Ukraine while Ukraine citizens are taken out in train is no doubt unacceptable.

⁴⁸Idorenyin Eyo, 'An Exposition on the Russian Ukraine war: Implications in international law' <https://barristerng.com.idorenyin.eyo>

⁴⁹ Ibid