Efficacy of International Law and Diplomacy in the Regulation and Control of Inter-State Armed Aggression: A Study of Russia Invasion of Ukraine

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Abstract

Diplomacy and international law are integral in preserving the international political system. They play vital roles in preventing, regulating and controlling inter-state armed aggression. Apart from the outright disobedience to principles of International Law and a breach in diplomatic protocols, armed aggression threatens and violates human right. In light of the multifaceted precedence following the invasion of Ukraine by Russia, this paper seeks to evaluate the extent to which the application of diplomacy and fundamental principles of international law is efficient in the regulation and control of aggression in the Russia – Ukraine war. The diplomatic steps and responses of the international community towards Russia invasion of Ukraine are being discussed, as well as globally accepted measures that can be adopted to control and regulate the subsequent actions of such nature. Historical legal model was used as the research methodology, while data were gathered mainly through secondary sources. This paper concludes that setting up an

independent inquiry commission with the Human Rights Council, the ICC and ICJ will strengthen the existing human rights monitoring mechanism and collect evidence on human rights abuses and individual perpetrators. It will also strengthen international law and places states obligations on the more strict observation or compliance to the fundamental rules and principles of international law against the backdrop of violation by any state placing its internal political national interests against that of the global peace, security and development while the practice of Diplomacy is being utilized to negotiate an end to the invasion.

Key words: Armed Aggression, Diplomacy, International Law, Russia and Ukraine.

Introduction

The ongoing Russia – Ukraine armed aggression is agreeably one of the most controversial events with deep underlying causes and multifaceted precedence in world politics today. Although many believe that the Russian invasion of Ukraine on the 24th day of February 2022 was a Russian flex (the act of flaunting), some political observers see it as Russia's response to the North Atlantic Treaty Organization's provocation and Ukraine's unending ambitions to associate with it (NATO). The armed aggression has not only had severe effect and influence on Europe but also the security and foreign policies of the rest of the world.[1]

Ukraine has largely remained torn between the West and the East since it gained its independence in 1991 from the Soviet Union. This is evident in the civil unrest and internal crisis emanating from the fragmented attitude by the citizens towards the future cohesion of the country and had further left Ukraine's national identity questionable.[2] The Ukraine crisis is traceable to the period following the end of the cold war. Its upheaval was in 2013 when Viktor Yanukovych, the then Ukrainian President, failed to sign the "European Union–Ukraine Association Agreement" in November. The act was trajectory to a civil unrest in Ukraine known as the Euromaidan (A series of Pro-European Union demonstrations across Ukraine). In a bid to curtail Ukraine's European ambition, Russia wanted to delegitimize the pro-EU leadership to perpetuate its narrative that Ukraine naturally leans towards Russia. However, after a string of events, Yanukovuch was forced to let go of his

presidency in 2014. In the same year, the interim government that follows this Pro-Western revolution signed a trade agreement with the European Union which Russia sees as a step toward membership in the bloc and thus; annexes the Crimean Peninsula. Consequently, secessionists in eastern Ukraine, backed by Russia, declare themselves independent, as the Donetsk People's Republic and Luthansk People's Republic. The civil unrest in Ukraine was never fully settled despite attempts by the international community via a trilateral contact group including Ukraine, Russia and the Organization for Security and cooperation in Europe, resulting in the signing of the Minsk Agreements. The signing of these agreements was also facilitate by leaders of France and Germany, making up the Normandy Format. The continues internal crises in Ukraine coupled with Zelensky's push to join NATO for security reasons as well as Russia's interest to recognize the independence of the fragmented Ukraine culminated in the eventual outbreak of armed-aggression between Russia and Ukraine. The Ukrainian membership of NATO is perceived by Russia not just as a threat to its national security but also as a breach of NATO's agreement not to allow erstwhile Soviet Union countries to be a part of the pact.[3]

The war is indeed controversial as the underlying causes are multifaceted; however, the purpose of this paper is not to analyze the causes of the armed aggression between Russia and Ukraine. It rather attempts to examine the efficacy of International Law and Diplomacy in controlling inter-state armed aggression in the conduct of International Relations, to which the Russian invasion of Ukraine is not an exception. In the following chapters, the role of international law in curbing aggression and the extent to which it has been applicable in the Russo-Ukrainian war is been analyzed examined.

Conceptual Clarification

Diplomacy

By virtue of the existence of the international system, the interaction between states is inevitable. These interactions are informed by the interest of nations, which could be economic, political, security, education and power etc. Amidst the interaction of states in the pursuance of interests that are bound to clash, Diplomacy suggests the pursuance of state's interests by peaceful means. Thus: Diplomacy can be defined as the conduct of international relations by negotiation

and dialog or by any other means to promote peaceful relations among states.[4] This implies the perception that where diplomacy fails, there is war or in this context, armed aggression. In the international community, no state is an island of its own. States must interact with one another due to the interconnectedness of the system. To this effect, the importance of diplomacy in international relations cannot be over emphasized. This is because the system is characterized by insatiable interests and limited resources. Diplomacy therefore implies that, all states must pursue their interests within the system using their resources such as economic advancement, technology, negotiating power etc, without having a recourse to aggression.

Aggression

The concept of aggression remains a highly contested one in the study of international relations with little agreements on its definition and scope. In the search for world peace and against the backdrop of cold war paralysis, several attempts are made to give the term a functional definition. The concept finds its roots in Article 2(4) of the United Nations Charter, which prohibits the threat or use of force against the territorial integrity or political independence of any state. As stated in the charter, "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations". Thus, Aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State. Aggression in its essence or put differently, aggression as applicable within this premises has been defined as state conduct that either initiates war against another state or brings about a situation in which the victim is (or may be) driven to war.

Inter-State Armed Aggression

On the other hand, armed aggression in itself is the absence of peace or the presence of war between two or more states. Armed aggression is synonymous to armed conflict. Inter-state armed aggression occurs whenever states have a recourse to the use of armed forces or military might in pursuance of their interests. Under International Humanitarian law (IHL) as provided in Article 2 of the Geneva conventions of 1949, International Armed conflict, acknowledged

as inter-state armed aggression in this premises are those, which oppose "High Contracting Parties", meaning States. Inter-state armed aggression occurs when one or more states have recourse to armed force against another state, regardless of the reasons or the intensity of this confrontation. Thus, any difference arising between two states and leading to the intervention of armed forces is regarded as armed aggression within the meaning of Article 2, even if one of the parties denies the existence of a state of war.[6] There had been series of interstate armed aggressions in the study of history notable among them are the first and second world wars, the Franco-Prussian war – 1870, Iran – Iraq war 1980, Israeli – Palestinian conflict 1948 as well as the ongoing Russia – Ukraine armed aggression.

International Law

As the name implies, international law is any set of rules that is binding among nations. They are rules all States must obey not just in the conduct of international relations but also within their territories. This is because international law will always override municipal law where they clash. Rules of international law are derived from Treaties, International Conventions, International Customs, Judicial Decisions in international tribunals and due process and recognition of foreign judgements etc.[7] **International law**, also called **public international law** or **law of nations**, is therefore define as the body of legal rules, norms, and standards that apply between sovereign states and other entities that are legally recognized as international actors (Shaw, 2023). Examples of such international laws include the prohibition of threat or use of force against the territorial integrity or political independence of any state as stated in the UN Charter under International Humanitarian Law.

Challenges of the Armed Invasion

Since the invasion, a myriad of challenges had confronted the international community as well as individual states. These challenges broadly include diplomatic challenges, legal challenges and economic challenges and are applicable to the belligerents and the stability of the international system as a whole in varying degrees. The failure of which to address will continuously remain an appeasement and an incentive to further erode the international system. From the proceedings, the aggression has proven to be a challenge to the rule of

international law and Diplomacy with respect to the role they ought to play in curbing inter-state armed aggression. More specifically, the aggression suggests to remain protracted until Ukraine is defeated and occupied or Russia is defeated and withdraws completely.[9] In the sphere of diplomacy, It suggests a diplomatic isolation of Russia by Ukrainian supporters while Russian Supporters may take advantage of the crisis as it may suit their interests. The situation may signal a return to highly destabilizing great power politics or shift in alliances, which had led to two world wars in time past.[10]

There are also legal challenges of the war. The aggression is proven to be a test on the efficacy of international legal order. The initiation of aggressive war by Russia is a violation of the prohibition on the use of force embodied in Article 2(4) of the united nations charter, a principal that is more or less the fundamental underlying international legal principle of the modern era.[11] It violates the 1994 Budapest Memorandum, in which the Russian Federation reaffirmed Ukrainian independence, sovereignty and border integrity.[12] In terms of Russia's crimes while conduction the war, the International Criminal Court and the U.N.'s Independent International Commission of Inquiry on Ukraine have documented evidence of acts that appear to constitute war crimes, such as indiscriminate killings and sexual and gender-based violence against civilians. Finally, more than one dozen states have submitted documentation to the International Court of Justice with allegations of genocide committed by Russia in Ukraine. The crime of aggression remains a threat to the very fabric of international laws that enable all states to exist without constant threats to their borders. Upholding international law makes peace possible.

While in the economic sphere, the aggression has triggered turmoil in the financial markets, and drastically increased uncertainty about the recovery of the global economy. Russia is one of the world's largest producer of oil and natural gas, steel, nickel and aluminum. On the other hand, Ukraine is a key producer of corn, wheat, sunflowers and is amongst the top ten producers for sugar beet, barley, soya and rapeseed. Since the day of aggression, financial markets around the world fell sharply, and the prices of oil, natural gas, metals and food commodities surged. While high commodity prices were one of the risks already identified as potentially disruptive to the recovery, the escalation of the conflict increases the

likelihood that commodity prices will remain higher for much longer. In turn, it intensifies the threat of long-lasting high inflation, thereby increasing the risks of stagflation and social unrest in both advanced and emerging countries. European economies are the most at risk because of its dependence on Russian oil and natural gas. Europe appears to be the region most exposed to the consequences of this conflict.[13]

Other challenges of the war include Refugee crisis, Humanitarian impacts (such as shortage of food, rights violation and loss of properties). Environmental implications as well as long term demographic effects – Loss of lives in civilians and military personnel.

Globally Acceptable Measures for Containing Inter-State Armed Aggression International Relations

In the conduct of international relations, conflict is inevitable because interests are bound to clash. Despite this, there are a plethora of ways acceptable under international law to nip the issue of armed aggression in the bud. Several internationally acknowledged procedures are used to first; prevent aggression and second; control inter-state armed aggression as they are discussed below;

Diplomacy and Negotiation: Diplomatic means such as negotiations are crucial and are recognized under international law in resolving conflicts in the international arena. First, they incorporate mediation as the key to resolving the strategic problems that the conflicting parties face. Second, they account for the decaying effect of interventions over time. Diplomacy is critical for understanding the duration of aggression between states. Furthermore, mediation has a dramatic effect on the expected duration of a civil/external war and when controlling for diplomatic efforts, economic interventions can also reduce the expected duration.[14]

International Law and Treaties: Treaties are legally binding documents that outline certain conditions states must abide by, they are also written agreements that make sure states do not go against the conditions that have been outlined in such documents, going against which will incur punishments such as sanctions and embargos etc. The United Nations Charter forbids the use of force against other states, except necessary for self-defense or when approved by the UN Security

Council. Respect for international law and treaties serves as a deterrent to aggression.

International organizations: International organizations play a very crucial role in controlling inter-state armed aggression in international relations. In most situations, these organizations possess a certain presence that is crucial to diminishing armed inter-state aggression. Conflict prevention and resolution are crucially dependent on institutions like the United Nations. The Security Council has the authority to sanction group initiatives, such as missions of peacekeeping to deter aggression.

In managing inter-state conflict, the Security Council has a number of tools that it can use. Chapters VI, VII, and VIII of the Charter outline several options to choose from. First, the Council can "call upon the parties involved" or recommend that they settle their disputes using Pacific means such as Negotiation, Mediation, Arbitration, and Judicial Settlements. The International Court of Justice is the UN's principal judicial body. This "World Court" primarily deals with inter-state conflict. During the Cold War, it adjudicated an average of two cases per year.[15]

It is argued that aside the prevention of aggression, International Organizations decrease the duration of international armed aggression by mitigating commitment problems and encouraging combatants to cease hostilities more quickly. Empirical analyses of militarized interstate dispute duration (1950-2000) reveal that increasing shared international organization's participation reduces the length of disputes, even after accounting for selection into international conflict. It is also revealed that international organizations designed to mitigate commitment problems decrease dispute duration, while international organizations capable of reducing information asymmetries do not influence dispute length.[16]

Sanctions: Aggressor states might be subject to economic and diplomatic penalties to force them to abide by international law and end all conflicts. Targeted sanctions remain one of the instruments more widely used by the United Nations Security Council (UNSC) to address threats to interstate/international peace and security. The increasing use of this policy instrument has been noted by a several scholars.[17]
Regional Organizations: Regional organizations like the Association of South East Asian Nations (ASEAN), frequently participate in conflict resolution within their

own regions. ASEAN adopted a set of principles and norms to form the ground rules within the ASEAN community. Issues related to Sovereignty, Autonomy, and Regime Survival were deemed the most pressing and subsequently transformed into accepted norms for interstate relations and state behavior, including peaceful means for settling disputes, non-interference in domestic affairs and regional autonomy.[18] In the same vein, there are other regional organizations as the African Union, European Union, ECOWAS etc. All of these organizations have rules that are binding on member states aimed at preventing inter-state armed aggression, or to control it as the case maybe.

Other ways of controlling inter-state armed aggression includes;

- Peacekeeping Operations: International peacekeeping forces can be stationed in war areas to calm the situation, safeguard people, and establish a conducive environment for negotiations.
- Humanitarian Assistance: Giving affected population humanitarian help or relief can lessen sufferings during wars and encourage stability.
- Public Opinions/diplomacy and international pressure: Media, campaigning, and diplomatic efforts can exert pressure on other countries and sway the behavior of aggressor states.
- Bilateral Diplomacy: Direct negotiations and diplomatic channels between the participating states might be useful in finding peaceful solutions to conflicts.
- Early Detection: Armed aggression can be avoided by taking proactive steps to detect and resolve potential sources of conflict, such as early warning systems.

Diplomatic Steps Taken by the International Community on Russian Invasion of UUkraine

In reaction, the international community has condemned the aggression by Russia while taking actions in a bid to contain the armed aggression. Reactions to the invasion have varied considerably across a broad spectrum of concerns including public response, media responses, peace efforts, and the examination of the legal implications of the invasion.

In the resolution adopted by the Human rights Council on 4th March 2022 titled "Situation of Human Rights in Ukraine Stemming from the Russian Aggression", the Human Right violations and violations of International Humanitarian Law

resulting from the aggression against Ukraine by the Russian Federation was condemned. The resolution called upon the Russian Federation to end with immediate effect its violations of International Humanitarian Law in Ukraine. Furthermore, the resolution called for the swift and verifiable withdrawal of Russian troops and Russian-backed armed groups from the entire territory of Ukraine, within its internationally recognized borders and its territorial waters while stressing the urgent need for the immediate cessation of military hostilities against Ukraine.[19]

The European Union also imposed economic sanctions on Russia including a ban on Russian aircraft using EU airspace. As stated in a source

> "EU member states will **deny permission to land in, take off from or overfly** their territories to **any aircraft operated by Russian air carriers**, including as a marketing carrier, or to any Russian registered aircraft, or to non-Russian registered aircraft which are owned or chartered, or otherwise controlled by a Russian legal or natural person".
>
> "Moreover, it will be prohibited to make transactions with the **Russian Central Bank** or any legal person, entity or body acting on behalf or at the direction of the Russian Central Bank. The Council adopted two **assistances measures under the European Peace Facility** (EPF) that will contribute to strengthening the capabilities and resilience of the Ukrainian Armed Forces to defend the territorial integrity and sovereignty of the country, and protect the civilian population against the ongoing military aggression".[20]

These efforts were aimed at balancing the power relation between the two countries and further deter the Russian federation to continue the aggression.
In further attempts to contain the war, the International Criminal Court (ICC) having opened an investigation into possible crimes against humanity, war crimes, and genocide during the invasion, issued a warrant for Putin's arrest, alleging that Putin held criminal responsibility in the illegal deportation and transfer of children from Ukraine to Russia during the Russian invasion of Ukraine. It was the first time that the ICC had issued an arrest warrant tor the head

of state of one of the five Permanent Members of the United Nation's Security Council.[21]

Discussion of Findings

Truly, diplomacy connotes the set of rules, principles, procedures and ethics presiding over the interaction of states within the system. It ought to first; prevent the emergence of conflict and second; resolve disputes and conflicts then they occur. In the same vein, international law is a legal aspect on the conduct of international relation to check the behavior of states among themselves. However, upon assessing the reality of the Russian invasion of Ukraine against the backdrop of the above hypothesis, one can easily conclude that diplomacy and international law has yet, failed once again in the role of regulating and controlling interstate-armed aggression with respect to the war in Ukraine. The findings allows for one to deduce that international law and diplomacy are more of a theoretical and ideological character as it concerns the war in Ukraine.

Upon investigation, it could be said that the war in Ukraine is an escalation from a handful deeply rooted and underlying factors. To mention a few, the Russian opposition to a democratic or pro western Ukraine occasion on the threats it poses to Russian security, or the unending Ukrainian ambition to associate with NATO which is also perceived as a threat to Russian Security. It can even be said that the invasion was a part of Putin's interest to counter Western influence in its western neighborhood. The fact remains that in any case, all of the above were/are areas in which diplomacy or international law had little or no impact in regulating.

Further, the efficacy of diplomacy and international law in regulating interstate-armed aggression is obscure in this case because up until now, it is still unable to look for a credible path to a cessation of hostilities, or to identify the conditions for an agreement between the aggressor and the aggressed. As at the time of writing, the news still reports recent attacks, the impacts of which are not only felt not by officials of the states but by residents and the global community at large.

It is clear that the military campaign will not end any time soon and that the potential terms of a successful resolution to the conflict are murky. Neither side appears willing, or indeed able, to agree to terms less than victory. Diplomacy and

rules of international law only did little to regulate the aggression at the beginning in which case prisoners of war where exchanged on mutual grounds and allowing ships carrying food products to leave Ukrainian ports in the Black sea to their final destinations.

Conclusion

The Russian invasion of Ukraine is accompanied with multifaceted precedence that has raised questions among observers regarding the extent to which international law and diplomacy has been efficient in regulating the aggression. In my contribution, I conclude that diplomacy and international law had not proven to be and ultimate means to an end. The war has been protractive since inception while international law and its mechanism for implementation has not been able to maintain order. Diplomatic steps like the economic sanctions imposed on Russia has proven to be more or less a mere palliative approach which side effect was a global concern. Thus; in the Russia Ukraine war, diplomacy and international law did not have the ability to enforce order in the midst of aggression. Rather the efficacy of diplomacy and international law in the regulation and control of inter-state armed aggression had been much more effective in prolonging the eventual escalation of an aggression, which had been on sight for long.

Recommendations

- Setting up an independent inquiry commission with the Human Rights Council, the ICC and ICJ will strengthen the existing human rights monitoring mechanism and collect evidence on human rights abuses and individual perpetrators. It will also strengthen international law and places states obligations on the more strict observation or compliance to the fundamental rules and principles of international law against the backdrop of violation by any state placing its internal political national interests against that of the global peace, security and development while the practice of Diplomacy is being utilized to negotiate an end to the invasion.
- Rather than imposing unilateral sanctions on Russia, the international community should be more concerned about negotiating ceasefire and encourage all efforts conducive to the peaceful settled of the conflict.
- All countries connected directly or indirectly to the war should refrain from promoting war either by military aid while the United Nations should set up

a committee to mediate between Russia and Ukraine, drafting the terms for settlement and bringing both parties to a dialogue table for bargaining.

- Obviously, the war is indirectly against NATO in reaction to its expansion to the east, which is a threat to Russian security. I strongly recommend that the international community should take into consideration, the possible implications of a successful NATO expansion to the east.
- Lastly, all contributors to the war should be held accountable for any principle of international law that may have been broken during the war to serve as a deterrence to any future breach of international law.

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