

The Russia-Ukraine conflict: analysis of the international responsibility of the States, the principles of non-intervention, and prohibited use of force under the International Court of Justice jurisprudence

El conflicto entre Rusia y Ucrania: análisis de la responsabilidad internacional de los Estados, los principios de no intervención y uso prohibido de la fuerza bajo la jurisprudencia de la Corte Internacional de Justicia

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Abstract: *The International Court of Justice, to ensure friendly relationships between the international community, has recognized the importance of the principles of non-intervention and prohibited the use of force as a limit and guarantee of the sovereignty of nations. Nevertheless, during 2022 actions have been presented in the context of the Russia-Ukraine conflict that can be considered illegal inferences that involve the use of force. The present article aims to analyze the events of this conflict and contrast them with the international principles of non-intervention and prohibited use of force based on the ICJ jurisprudence and doctrinal approaches. In conclusion, the transgression of the analyzed principles by Russia against Ukraine led to the existence of international liability and the duty to repair and indemnify.*

Keywords: *International Responsibility, Non-intervention, Prohibited Use of Force, Russia-Ukraine Conflict, International Court of Justice, Reparations.*

Resumen: La Corte Internacional de Justicia, con el objetivo de asegurar relaciones amistosas entre la comunidad internacional, ha reconocido la importancia de los principios de no intervención y del uso prohibido de la fuerza como un límite y garantía de la soberanía de las naciones. No obstante, durante 2022 se presentaron acciones en el contexto del conflicto entre Rusia y Ucrania que pueden ser consideradas como interferencias ilegales que envuelven el uso de la fuerza. El presente artículo pretende analizar los eventos ocurridos durante el conflicto en cuestión y contrastarlos con los principios internacionales de no intervención y uso ilegítimo de la fuerza, basados en la jurisprudencia de la CIJ y planteamientos doctrinales. Como consecuencia, fue posible concluir la transgresión de los principios analizados por parte de Rusia contra Ucrania, lo cual conlleva a la existencia de responsabilidad internacional y el deber de reparar e indemnizar.

Palabras clave: Responsabilidad Internacional, No intervención, Uso prohibido de la fuerza, conflicto entre Rusia y Ucrania, Corte Internacional de Justicia, Reparaciones.

Introduction

Jean Bodin (1576) states, “sovereignty is the absolute and perpetual power of a Republic” (p. 24). This statement encompasses a fundamental value of international law; it implies the recognition of States as entities whose autonomy and all subjects of international law must respect independence.

Sovereignty is widely protected by International Courts, mainly in the judgments of the International Court of Justice (henceforth, ICJ) that resolve disputes peacefully about nations’ sovereignty.¹ In this way, the ICJ guarantees one of the State’s elements according to the Weverian theory, which allows its existence in the international framework (Maftei, 2015).

The analysis of the guarantees of sovereignty is of great relevance, mainly on the principles of non-intervention and the prohibited use of force, which the jurisprudence has known of the ICJ as relevant aspects of international law. According to Kolb (2013), this Court is the oldest and one of the most relevant Courts in the United Nations system, created to resolve conflicts in a jurisdictional way between the members of this organization.

In the present days, the most recent actions presented in the Russia-Ukraine conflict have questioned the application of the principles of non-intervention and prohibited use of force by possible use of illegitimate force applied by the Russian Federation and the violent military interventions justified in legitimate self-defense. This topic is relevant due to its impact on international harmony and the destabilization of the

1 For example, see the case “Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)” developed by the International Court of Justice.

global justice system. It reopens a discussion left aside by the modern modality of war.

According to that, this paper addresses the following question: Do the actions of Russia against Ukraine deployed in 2022 constitute the international responsibility of the States for violating the international principles of Non-Intervention and Prohibited Use of Force in light of the ICJ jurisprudence?

For this purpose, this document has three sections; the first one is going to develop the concept of the responsibility of States; the second one is going to study the principles of non-intervention and the prohibited use of force; and finally, the analysis of the possible violation of the principles caused by the action taken by Russia. These topics will be studied based on the jurisprudence of the ICJ.

I. The concept of international responsibility of States in light of the jurisprudence of the International Court of Justice

Doctrine, Courts, and other international subjects and institutions have reinforced and developed the concept of international responsibility of States in a specialized manner. Given the importance of this concept, it is necessary to analyze its development and the scope of its application through the International Court of Justice.

The ICJ alludes to the international responsibility of the State when it transgresses an international obligation, regardless of its customary origin; this notion is visible in one of the judgments made by the International Court of Justice (ICJ, 2010) regarding the pulp mills on the Uruguay River, which states that:

A party to the 1975 Statute will incur responsibility if it exhibits that it did not act diligently and therefore did not take all appropriate measures to enforce the relevant regulations on the public and private operators under its jurisdiction. (p. 66)

Despite the generality of the fragment, this statement leads to the understanding that when a State faces its international responsibility, it has a clear obligation to make reparations for its non-compliance or violation.²

On the other hand, it is valuable to determine that the international responsibility of a State is not directed to a single determination. According to Aizenstatd (2012), it is crucial to distinguish the State's responsibility between acts or omissions and the responsibility for brutal actions that violate norms of international law that are considered *Ius Cogens*. These barbaric acts alter the harmony and security of humankind, such as torture, genocide, and racial discrimination.

For Aizenstatd (2012), the so-called acts or omissions that constitute illegal acts are subject to the objective international responsibility of States, while in the case of severe wrongful acts attributable to States, international responsibility is aggravated and should be externalized with dissuasive penalties; likewise, the international responsibility in these scenarios may lead to the obligation to do internal legislative variations or even to alter absolutely its fundamental norm.

The ICJ (2007), in its judgment of February 26 referring to international responsibility for genocide, states with particular emphasis that the responsibility of a State or a member is a direct consequence of its actions. For this Court, "the conduct of any organ of a State is considered an act of the State in international law and thus gives rise to State responsibility if it constitutes a breach of an international obligation of the State". (p. 9)

Furthermore, the ICJ (2007), in the referenced judgment, defines the principle of the unity of the State, which implies that the acts or omissions of all the organs of a State must be observed for international responsibility purposes; furthermore, it is not possible to assure that there are organs of the State that are singularly denominated to carry out illegal acts, and therefore, any subject or organ belonging to the State may be the cause of that prohibited act or event.

2 As Daillier and Pellet (1999) suggest, "The action for breach of a rule of international law remains purely theoretical if the internationally wrongful act has not caused any injury." (p. 765)

Finally, the United Nations (2002), through resolution 56/83, disposes of State responsibility for advanced illegal acts, which lists various articles attributable to responsibility. However, article 4 of Conduct of Organs of a State tells that the behavior of any member of a State is considered an act of the State. Also, article 5 signals that it is also an act of the State when it gives a unique power to exercise elements of governmental authority. Those mentioned above are the central pillars for resolving an act or conflict on the part of a State.

To sum up, every State must repair the consequences of its actions or omissions, which is the meaning of international responsibility. This obligation arises when an imperative global law or obligation is violated. Overall, analyzing some principles whose violation could generate international responsibility is necessary. These principles are the non-intervention and prohibited use of force.

II. International Principles of Non-Intervention and Prohibited Use of Force, in light of International Court of Justice jurisprudence

The principles of non-intervention and prohibited use of force are elemental for studying the Ukraine-Russia case, so analyzing their development through the International Court is pertinent.

The ICJ (1986) has defined the principle of non-intervention as the one that “involves the right of every sovereign State to conduct its affairs without outside interference” (p. 96). Despite the simplicity of the given definition, three essential elements emerge from it. Firstly, this principle emanates a right that is proper to the States and enforceable towards others. Secondly, non-intervention has its bases on the sovereignty of the State, recognized by the ICJ (2019) as an essential foundation of international relations, which has the character of “general principles derived from existing rules of international law” (p. 7). Lastly, it proposes a prohibition of interference directed at other States, which must be complied with under penalty of sanctions imposed by the ICJ.

Referring to doctrinal approaches is essential to have a more expansive vision of the principle of non-intervention; like Hall (1890), there is intervention when a State interferes in the relationship of other States or when the interference lies in the domestic affairs of a single one. Still, this intervention does not have the consent of the State and has the purpose of maintaining or altering the political, economic, or social condition of a State.

In this way, according to the author, it is possible to identify two scenarios in which intervention is evident, the first in the context of a conflict between two States in which a third party carries out actions to favor or harm one of the parties and the second when a State intervenes in another for a specific purpose without consent.

The International Court of Justice has identified that the principle of non-intervention, beyond the regulation by international norms, is widely recognized by the subjects of international law since they consider its application mandatory and coercive. In the words of the ICJ (1986), this principle is a result of the principle of the sovereign equality of States, and it is backed by an established and substantial practice applied by the majority of the States.

From the previous, the principle of non-intervention is related to the equal sovereignty of the States since this requirement prevents abuses from being presented by the dominant position, whether military, economic, or market, of some States towards others. In this regard, the ICJ (1949) has stated that the intervention as a manifestation of a policy of force has given rise to severe abuses that cannot have a place in modern international law.

In this way, ensuring the prevalence of the principle of non-intervention must be a priority in international justice, which allows for achieving the objective of contributing to an environment of peace and security projected since the creation of international law. (Marks et al., 2013)

On the other hand, for the International Court of Justice (2005), the principle of non-intervention is directly related to the illegitimate use of

force. The acts that breach the principle of non-intervention and involve the use of force also constitute a breach of the prohibited use of force.

It must be understood that for there to be a violation of the principle of non-intervention and illegitimate use of force, there must be aggression that threatens the sovereignty of the State. Oppenheim (1912) mentions the requirement of arbitrary interference.³ That does not necessarily involve using weapons. In the author's words:

It must be emphasized that proper intervention is always dictatorial interference, not pure and simple. Therefore, an intervention must neither be confounded with good offices, mediation, intercession, or cooperation because none imply arbitrary interference. (p. 189)

By what Oppenheim proposed, it must be in which cases there is, or there is no intervention. In the first case, whether it takes place by right or without a request must be distinguished. As stated, there is an intervention only if there is arbitrary interference because if it is friendly, it does not violate the principle of non-intervention.

On the other hand, it must be differentiated if the intervention is done by right or without right. Oppenheim (1912) said intervention is made by right when there is a legal restriction of the supremacy of the State Concerned, so in this case, there is no violation of the principle of non-intervention.

The International Court of Justice (1986) has defined that there are interventions without rights when it uses coercion methods that limit the freedom of free choices and independence of States. According to the Court, coercion is the essence of prohibited intervention. It is evident in cases where a State makes illegal use of force, whether presented directly or indirectly, for example, supporting terrorist activities. There is a violation of the principle of non-intervention and the illegitimate

3 To understand Oppenheim's concept of "dictatorial intervention," it is necessary to analyze the definition of dictatorship. Outhwaite (2008), delimits the common understanding of the term dictatorship, as a highly oppressive and arbitrary system established by force or intimidation. Therefore, dictatorial intervention is understood as interference carried out arbitrarily and oppressively, which uses force to generate intimidation.

use of force when there is an arbitrary and dictatorial interference that threatens the sovereignty of a State using force and methods of coercion.

The ICJ (1999) has emphasized that despite a dispute over the legality of an action, the solution should always be framed by peaceful means, for which the parties must refrain from aggravating or extending the disagreement.⁴ So, the jurisdiction of the Court is a valuable way to resolve disputes about the transgression of international principles such as non-intervention and prohibited use of force.

However, some interventions are permissible or can be excused due to the justification proposed by the intervening State. Following the provisions of the International Court of Justice (1986), these justifications must be framed in international law. It is not an admissible statement of international policy, so a State cannot delegate topics like the country's domestic policies, the ideology, or the direction of its foreign policy. The only admissible arguments are those related to, for example, self-defense or the legitim use of force.

Accordingly to the ICJ, Hall (1890) points out some valid arguments that can excuse or become admissible an intervention, such as “the right of self-preservation⁵, to a right of opposing wrong-doing, to the duty of fulfilling engagements and friendship for one or two parties in a State” (p. 183).

To summarize, the principle of non-intervention is fundamental when it connects the prohibited use of force and is developed without any in-

4 The ICJ's judge Vereshchetin (1999) has insisted that the Court must express its concern about a violation of international law principles, which leads to the inherently empowered, the very least, “immediately to call upon the Parties neither to aggravate nor to extend the conflict and to act following their obligations under the Charter of the United Nations.” (p. 66)

5 The International Court of Justice has developed this right under self-defense, which the Charter of the United Nations recognizes as an inherent individual and collective right. For the ICJ (1996), this right can be used as a justification for intervention but understanding that:

The use of force that is proportionate under the law of self-defense must be lawful and meet the requirements of the law applicable in armed conflict, which comprises the principles and rules of humanitarian law. (p. 6)

ternational law argument. Then, it is essential to reflect on the principles applied in the case of the Russia-Ukraine conflict to determine a possible violation of international law.

III. Analysis of the conflict deployed in 2022 between Russia and Ukraine in light of the principles of Non-Intervention and Prohibited Use of Force

3.1 Factual description of the Russia-Ukraine conflict

The successive tension of the conflict and the international concern that currently exists between Ukraine and Russia requires a more exhaustive analysis of the behavior of the Russian Federation from the concepts issued by the International Court of Justice in repeated judgments and norms of public international law.

It is imperative to refer to the historical tension between the two States in the conflict. Puffer (2018) openly explains that the tension between these States dates back to the first decade of the twentieth century. Especially in 1991, when Ukraine was one of the three republics that consolidated the dissolution of the Soviet Union, along with Russia and Belarus.

The American news network CNN (2022) offered extensive coverage of the events in the conflict between Russia and Ukraine. According to the news chain, the first fissures in the relationship between Russia and Ukraine occurred in 2003. Under Vladimir Putin, Russia built a dam between the Ukrainian islet of Tuzla and the Kerch Strait. Since then, and for the last two decades, there has been what is known as “trench warfare,” a term used to refer to static lines of forts dug by the combatants.

Euronews reported the first material actions in the current conflict framework in February 2022, when Russian President Vladimir Putin accused NATO and the United States of trying to turn Ukraine into a military outpost to threaten Russia. Subsequently, tensions escalated by signing

decrees when Putin recognized the Donetsk People's Republic and the Lugansk People's Republic, located in southeastern Ukraine.

Subsequently, the BBC (2022, February 24) detailed how Vladimir Putin launched a military operation after stating numerous times that Russia was not planning an invasion of Ukrainian territory. It thus began to register the arrival of tanks, shelling, and air strikes in major Ukrainian cities such as Kyiv, Kharkiv, and Lviv.

According to Anadolu Agency (2022), the President of Ukraine, Volodymyr Zelensky, made a military move to ensure the State's defense by actively preparing troops to fight for Kyiv while the Ukrainian resistance solidified. Zelensky demands that the European Union admit Ukraine to the group as urgent and install a no-fly zone over his country; Putin makes it known that from his point of view, any country implementing this measure will be considered a party to the conflict. As has been sued by Human Rights Watch (2022), a massive evacuation of refugees leaves Ukraine, the number estimated by the UN at 1,200,000 since February 24. Russia attacks a civilian evacuation point on the outskirts of Kyiv, killing eight people trying to escape from their homes.

Despite an agreed ceasefire to allow civilians to flee through humanitarian corridors, Russian forces shelled a maternity and children's hospital in Mariupol on March 9, 2022 (BBC, 2022). Zelensky calls this legitimate action proof of genocide and reiterates his request to declare a no-fly zone over his country.

In the days following those events, Russia attacked with missiles at a Ukrainian military base near Lviv, resulting in the death of 35 civilians and the murder of American journalist Brent Renaud at the hands of Russian forces. In contrast, attacks continue in Kyiv, Kharkiv, Mykolaiv, Chernihiv, and Sumy, showing various damages in the residential areas of the cities. The shocking satellite images showing the widespread destruction in the Ukrainian country upset and worried the entire international community (Infobae, 2022).

Meanwhile, the European Union and the United States did not hesitate to announce several sanctions against Russia in the financial sector, visa

policies, and the energy sector, announced as a symbol of the international community's disapproval of the actions taken against Ukraine; and declared a joint working group to stop Europe's dependence on oil, gas, and other resources belonging to the Russians (El País, 2022).

Swissinfo (2022) remarks that the Russian invasion of Ukraine has brought all maritime trade in Ukrainian ports to a colossal halt, according to recently declassified US intelligence documents, cutting off a critical commodity for Ukraine and risking a global food crisis.

It is of great relevance to point out that one of the most significant limitations that the United Nations Security Council has had in fulfilling its function to maintain international peace and security and dictate whether there is a threat to the peace or an act of aggression is the veto of Russia of adopting a resolution. When the organization is resolving "procedural matters," there must be at least nine affirmative votes, including the concurring votes of the permanent members; only those five permanent members can exercise the right of veto, which can prevent the Council from adopting any draft resolutions on substantial affairs. As one of the five permanent members, Russia has prevented the security council from issuing a resolution on the Russia-Ukraine issue with its veto right. Therefore, Russia could veto a resolution condemning its offensive on the invasion of Ukraine (United Nations, 2022, February 25).

At the same time, the pro-Russian territories in Ukraine are holding referendums in which they will "decide" whether they will join Russia, starting in Donetsk, Luhansk, Kherson, and Zaporizhia between September 23 and 27 of this year. Regardless of the outcome, the West did not recognize these votes and has been branded as a "farce" by Ukraine.

After over seven months since Russia's invasion of Ukraine, Moscow has not entirely defeated the Ukrainian resistance, mainly in Donetsk, where it has only taken control of 55% of the territory. The Russian army controls most of the Luhansk and Kherson republics and a little more than half of the region of Donetsk and Zaporizhia. After announcing the referendums, Putin decreed a military mobilization to recruit and incorporate 300,000 reservists into his campaign.

At the end of the voting day, Russian officials announced the victory of the referendums to annex the pro-Russian republics on Ukrainian territory promoted by the Kremlin. Moscow labeled these voting days as “a historical claim,” while the West called it a “farce.” However, the United Nations assured that it would not recognize such results.

Finally, it is essential to note that the Russian invasion of Ukraine has brought all maritime trade in Ukrainian ports to a colossal halt, according to recently declassified US intelligence documents, cutting off a critical commodity for Ukraine and risking a global food crisis. Accordingly, the conflict between Russia and Ukraine remains active. Despite all the efforts of the international community, achieving a final peaceful solution to the existing disputes has not been possible.

3.2 Analysis of the conflict in light of the principles of non-intervention and prohibited use of force.

The analysis of the conflict must observe that the international principles of equal sovereignty and the principle of non-intervention consigned in the United Nations Charter, according to Vargas (2003), these two are intimately connected. Therefore, when a State breaks the non-intervention principle, it no longer recognizes the sovereignty of the other State. In those terms, it could be established that Russia could not transgress one without breaking the other one as well since, according to the author, sovereign equality would be worthless if Russia could intervene in the affairs of Ukraine.

Applying the concepts developed by Oppenheim (1912), it is necessary to analyze whether the actions carried out in the context of the conflict constitute an interference that violates the international principle of non-intervention. In this regard, Russia’s arbitrary and oppressive actions⁶ Involve using force to intimidate Ukraine and the international community. Therefore, this intervention is not classified as pure and

6 Specifically, these arbitrary actions are evident in the attack on civil evacuation points in Kyiv that caused human losses on February 24, 2022, in missile launches against a Ukrainian military base near Lviv on March 13, 2022; in the bombing against a ma-

straightforward but as an arbitrary interference proposed by Oppenheim, assimilating to the forcible or coercive intervention developed by the international doctrine (Lieblich, 2011).

Russia's intervention must be analyzed according to the concept of legitimate intervention to classify whether the invasion of Russia was legitimate or not. Following classic international authors such as Hugo Grotius (1720) and Emer de Vattel (1756), an intervention is entirely legitimate if it is based on humanitarian conditions. An intervention would be legitimate to Russia if there were a responsibility to protect, but limited to the fulfillment of some demands, as (i) a reasonable cause, such as imminent damage; (ii) the right intentions (like avoiding or ending human suffering linked to violations to the human rights of the civilians), (iii) last resource and (iv) proportional means (ONU, 2009).

In the concerning case, it can be established that, firstly, there is not a reasonable cause for the lack of serious and irreparable damage; secondly, there are no right intentions because there was not an attempt to prevent or put an end to human suffering as a result of severe violations of the rights of Ukrainian citizens; thirdly, there are less coercive measures that can have an effect, like diplomacy; and finally, the means used are not proportionate to the magnitude of the provocations made by Ukraine.

According to the above, it can be affirmed that Russia's intervention in Ukraine could not be seen, by any understanding, as an exception to the non-intervention principle. In this case, Russia's illegitimate use of force is configured as seeking to force Ukraine's sovereignty.

While studying the actions developed by Russia during the last two decades, the concept of "hybrid warfare" can be applied, which involves military and non-military means to achieve political or economic objectives. These strategies aim to infuse instability and oppression in the Ukrainian government, so they make concessions. This intervention violates Ukraine's territorial integrity, using financial penalties, cyber-attac-

ternity and childhood hospital in Mariupol on March 9, 2022, and in all the military operations carried out by Russia against Ukraine.

ks, propaganda, intimidation, and military support from the pro-Russian separatist groups.

The intervention realized by Russia can also be classified mainly as material because, as Pastor (2006) revealed, most of the actions involve palpable aggressions as military attacks. However, it does not put aside immaterial interventions with actions that do not include a tangible use of force.

As well, from Gómez's postulates (2020), the interventions realized by Russia can also be considered illegal interventions because the established requirements by the international community were not fulfilled to carry out said actions due to the absence of circumstances that empower the State to violate the principle of non-intervention.

Summarizing, in the concerning conflict, there is an arbitrary and illegal interference of a mainly material nature developed by Russia against Ukraine, which cannot be considered legitimate as it does not comply with the essential requirements demanded by law. Therefore, it does not constitute an exception to the principle of non-intervention.

Regarding legitimate defense as the justification alleged by the parties of the conflict, it is necessary to study the report issued by the United Nations Security Council (1997) that defines the concept as a situation configuring the legitimate use of force in international law. It should be analyzed whether the requirements for exercising the right to practice legitimate defense are fulfilled. According to Regueiro (2012), there must be a previous armed attack, it must be provisional and subsidiary to the action of the Security Council, and it must comply with customer requirements of proportionality and necessity.

As regards Russia, the lack of the requirement of a previous armed attack by the counterpart is evident. Even though there was diplomatic tension with Ukraine, it did not constitute a measure that justified the armed attack perpetrated by the Federation. In this sense, legitimate defense is not a measure that can explain Russia's actions.

On the other hand, Ukraine did suffer a previous armed attack carried out by Russia that affected its sovereignty as a nation. Therefore, the actions developed sought to prevent and confront an imminent threat. However, the Security Council must be informed of the measures taken immediately to be considered a legitimate defense. In addition, it is not possible to affirm that the actions carried out by Ukraine are disproportionate since in no case, the measures taken were more burdensome than the attack received.

However, in the concerning case, Ukraine's actions demonstrate that the President was always open to pacific negotiation and that the Ukrainian military forces were always responding to the aggressions and never attacking by initiative. Therefore, the legitimate defense can only be claimed to justify the actions that Ukraine carried out in response to the attacks delivered by Russia. Still, it must comply with the Security Council's pertinent information and follow the principles of proportionality and necessity.

To analyze the competence of the ICJ in this case, it is necessary to be precise that Russia cannot claim sovereign immunity⁷. The Court (2012) has an unequivocal position recognizing it as one of the bases of its jurisdiction that no State is exempt except in the cases expressly provided in Article 36 of its Statute. Therefore, sovereign immunity is not a rule of international law but an exception to the jurisdiction of the Court. So then, when the ICJ sets up that sovereign immunity is not a rule of international law but an exception to the jurisdiction of the Court. Since there is no sovereign immunity in the case presented, it can be established that the Court has the authority to hear the case.

On the other hand, there must be an intervention from NATO to fulfill its duty to prevent and evaluate all international crimes to react to them subsequently, so then, NATO must be the one to assess the real intentions and actions committed by Russia and respond accordingly, taking into consideration that several public figures have cataloged those actions as genocide, crimes against humanity and even a Russian soldier who plead guilty of war crimes. Also, suppose these terms are used to describe the

7 Sovereign immunity has been defined as each State's right not to be subdued by the jurisdictional power of another State or an International Court (Casella, 2013).

situation. In that case, it is only logical to assume that the non-intervention and equal sovereignty have been broken by the State responsible.

For its implications for international peace and security, the international community reacted swiftly to this use of force and reflected it in implementing sanctions. However, the international community is against Russia's refusal to abide by international law, evidenced by not having accepted Security Council resolutions using its right to veto and not recognizing the legitimacy of Ukraine as a State.

Taking into account that there are a variety of special regimes in the international community and that each one has its organizations, which have intervened in a contiguous manner, such as the International Court of Justice, the European Court of Human Rights, and the International Criminal Court where the participation of different jurisdictions analyzing and applying different secondary norms in the same conflict. According to Luterstein (2022), it could set up an assumption of dual responsibilities, that is, the existence of an internationally wrongful act (attributable to a State) and an international crime (attributable to an individual) arising from the same events.

The International Court of Justice (2007) develop the same concept in the judgment relating to the case concerning the application of the convention on the prevention and punishment of the crime of genocide where this Court is emphatic saying that the individual criminal responsibility shall not affect the obligation of States under international law. Therefore, it is relevant to differentiate between the liability of the State and the liability of individuals for their criminal conduct. In the Russia-Ukraine case, it should be made clear that there may be criminal responsibility of the person directing or ordering the use of force in crimes against humanity, which is a separate responsibility from that of the State for violating its obligations to the international community.

As a result of the previous analysis, it is clear to say that since Russia does not count with sovereign immunity, meaning that it is subject to international responsibility for the acts carried through all of 2022, therefore, the international organizations and Courts must fit the actions

deployed by Russia in the relevant regulations contemplated in international law. Considering this has to be NATO, the one to evaluate the real intentions and acts committed by Russia and react according to the severity of the activities. That does not exclude the duty of the respective authorities to attribute individual responsibility to those who direct or use force in humanitarian crimes.

3.3 Applicable Reparations and Indemnifications in a contemporary geopolitical environment

The international community is tied to protect the sovereignty of all States, in use of its collective security system, is bound to use political or economic sanctions against every State that is in serious breach of its international obligations, meaning the international community and its organizations are the ones who must reproach the acts committed by Russia to protect and restore the sovereignty of Ukraine.

These sanctions that seek to repair can be divided into three sections, firstly, conceiving Ukraine as a political organization. Secondly, taking the State as a human community, and finally, in favor of the affected citizens in the conflict. It allows for an integral reparation that has a fundament in the ICJ (1928) jurisprudence, where it recognizes the necessity to mend up all of the consequences of the illegal act. It is essential to recognize the precedent of the judgment of July of 1927 concerning the dispute about the Factory at Chorzow, which realized that the duty to repair must leave all things as they were before the conflict, so all the consequences of illegal acts must be eliminated, and the situation must be restored.

Initially, Russia must repair the State of Ukraine as a political organization since it was affected in its principal elements, mainly in its sovereignty, legitimacy, and international reputation in the international community.

In this matter, no material action can return the political situation of Ukraine to how it was before the war. Still, Russia must take measures in favor of the good name of the affected nation. These actions are focused on four aspects: (i) a public and complete statement in which it retracts the

accusations that have affected Ukraine's international reputation; (ii) a public and truthful pronouncement where Russia Recognizes the war facts, the breach of international liabilities that lead to International responsibility, the promise of non-repetition⁸, and a concert pact of peace; (iii) an institutional effort to maintain commercial relationships that strengthen the economy of both nations⁹; (iv) and to incentivize the dialogue to conciliate an agreement about the territorial limits of the countries.

It is necessary to consider Ukraine as a human community whose collective rights have been violated and who have suffered damages that affect a specific individual and a group of human beings. In this point, Russia must take actions like (i) finance and execute the repairs to the infrastructure affected by the bombardment carried out, so it can restore the integrity of the public space; (ii) create a collective war memory based on the testimonies of the victims and their families that allows obtaining the truth for the victims.¹⁰ Moreover, it can be taken as a precedent to ensure non-repetition.

8 It is necessary to emphasize the importance of the promise of non-repetition, which according to Amezcua (2011), is, without doubt, the most far-reaching form of reparation. This promise is not specified only in verbal expressions, so Schonsteiner (2011) says that the guarantees of non-repetition usually are materialized by legislative measures that "identify and attempt to remedy a structural wrong" (p. 149). International Courts recognize the importance of this measure as the Inter-American Court has ordered many States to amend, annul or adopt new domestic law in around 37 cases (Galvan, 2009).

9 In this regard, strengthening trade relations between two countries generates nations' political and social development (Beltran, 2017). In this way, the maintenance of a commercial relationship can be considered a reparation measure since it benefits the State as a political institution and the citizens due to the market benefits they generate.

10 International law recognizes the truth as a right, which aims to restore peace, facilitate reconciliation processes, record historical facts, and rebuild the identity of nations by promoting dialogue on common history (Naqvi, 2006). This right is mainly relevant when it comes to repairing the community, and according to the report given by Joinet to the UN (1997):

Every person has the inalienable right to know the truth about past events and the circumstances and reasons which led, through systematic, gross human rights violations, to the perpetration of heinous crimes. (...) A people's knowledge of the history of its oppression is part of its heritage and, as such, must be preserved by appropriate measures. (p.13)

Additionally, it is required to make up for the individuals affected by the illegal conduct in its inheritance, integrity, or physical condition. In this part, it is necessary to understand that the damage is individual, so general reparation cannot be estimated for all the affected people. So, it is pertinent to create a temporary jurisdictional institute,¹¹ with the principal function of analyzing the concrete cases and determining the compensation for every affected considering the loss of profit and consequential loss.

Finally, it is vital that once the conflict comes to an end, Russia allows the intervention of the United Nations Security Council in such a way that it is allowed to enter the European Union, according to what Ukraine considers pertinent under its sovereignty.

IV. Conclusions

According to the analysis, the actions or omissions that constitute unlawful acts carried out by the States, organs, and institutions belonging to them, will be legitimately subject to international responsibility and, therefore, will be seriously imputed and committed to compensating the subsequent effects of their normative transgression by dissuasive sanctions.

In the frame of international responsibility, the ICJ has recognized the principle of non-intervention as a guarantee for every State to conduct its affairs without outside interference. This concept is related to the prohibited use of force, whether military or not. It also prevents any State from interfering with the sovereignty of another when it does not

11 It is essential to point out that the competence to carry out these trials could rest on the European Court of Human Rights exercising their duty concerning the equitable satisfaction immersed in article 41 of the European Convention of Human Rights. Under this, this Court has so far recognized pecuniary compensation for material damages, moral damages, as well as the payment of the costs of the process and the expenses of lawyers to the people affected by the breach of international obligations (Cruz, 2010). However, as of September 16, 2022, the Russian Federation ceases to be a party to the European Convention on Human Rights after six months of its exclusion from the Council of Europe; therefore, only the events that occurred prior to their dismissal can be judged in this Court (Council of Europe, 2022).

have an international law justification related to self-preservation, the right of opposing wrong-doing, and the duty of fulfilling engagements.

So then, applying this to the concerning conflict, it can be observed that an arbitrary and illegal interference is carried out by Russia against Ukraine with mainly material nature, same that cannot be considered legitimate since it does not comply with the essential requirements demanded by law, therefore, does not constitute an exception to the principle of non-intervention. In addition, the legitimate defense can only be claimed to justify the actions that Ukraine carried out in response to the attacks delivered by Russia, which must comply with the duty of information to the Security Council. It must follow the principles of proportionality and necessity. So there, it cannot justify the actions taken by Russia since there is a lack of the requirement of suffering a previous armed attack and a lack of proportionality.

The international community is tied to protect the sovereignty of all States, in use of its collective security system, is bound to use political or economic sanctions against every State that is in serious breach of its international obligations, meaning the international community and its organizations are the ones who must reproach the acts committed by Russia to protect and restore the sovereignty of Ukraine. As previously established, the reparations in this conflict must be integral, so it must recognize the damage caused in all three of the exposed aspects, these being on political, community, and individual levels. As of great relevance, it is imminent to seek an agreement between the two States that allows the war to end and to return things to the way they were before the conflict.

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