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THE RUSSIAN AND UKRAINIAN CONFLICT IN PERSPECTIVE: INTERROGATING THE EFFICACY OF THE UNITED NATIONS IN SAFEGUARDING INTERNATIONAL PEACE AND SECURITY

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ABSTRACT

The 24th of February, 2022, will go down in the annals of history as a day of grim sobriety and palpable disruption of the hitherto international rules-based order. It was the day Russia invaded Ukraine in defiance of the provisions of paragraph 4 of article 2 of the United Nations Charter of 1945 which unequivocally prohibits the threat or use of force by Member States of the United Nations (UN) against the territorial integrity or political independence of another sovereign state. This article seeks to interrogate the efficacy of the United Nations in safeguarding international peace and security against the backdrop of the Russian invasion of Ukraine. Adopting the doctrinal and qualitative research methodologies, the article examines the measures taken by the Secretary General of the UN, the General

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Assembly, the Security Council, and the International Court of Justice (ICJ). The article finds that despite the various measures taken by the UN so far, the international armed conflict in Ukraine persists with impunity. The article also finds that the conflict has occasioned superfluous human suffering, wanton destruction of lives and infrastructure, and unbridled refugee crisis. Against this backdrop, the article vehemently makes a case for strategic legal and regulatory reforms so as to bolster the efficacy of the UN in realising its quintessential objective of promoting international peace and security for the benefit of mankind.

Key words: Efficacy, International Armed Conflict, International peace and security, Interrogation, Russia, United Nations, Ukraine, Reforms.

1. INTRODUCTION

The 24th of February, 2022, will go down in the annals of history as a day characterised by phenomenal disorientation of the erstwhile international rules-based order. It was a momentous day in which a putatively stronger nation attacked a weaker sovereign nation. It was the exact day the Russian Federation (Russia) commenced a military invasion of Ukraine. The former launched invidious attacks on several Ukrainian cities[1]which resulted in wanton destruction of thousands of lives and properties. According to Vladimir Vladimirovich Putin, the President of Russia, the rationale for his country's military incursion in Ukraine was to 'demilitarise and de-Nazify Ukraine.'[2] This hackneyed phrase literarily means to rid Ukraine of military powers and expunge the political and economic ideologies espoused by Nazis in Germany from 1933 to 1945 as well as the totalitarian doctrine of governance and the predominance of a particular group of people especially of German origin, who are putatively characterised as superior in comparison with others.[3]The Russian president purportedly intended to liberate the people of Ukraine from the so called repressive acts of their

[1] Government of Canada, 'Canada's Response to the Russian Invasion of Ukraine' <https://www.international.gc.ca/world-monde/issues_development-enjeux_development/response_conflict-response_conflict/crisis-crises/ukraine.aspx?Long=eng> accessed 11 October 2022

[2] Paul Kirby, 'Why Russia invaded Ukraine and What does Putin Want?' BBC 9 May 2022 https://bbc.comnews.world> accessed 10 October 2022

[3]Merriam Webster, 'Nazism' <https://www.merriam-webster.com/dictionary/Nazism> accessed 10 October 2022

own government and to ensure that the country upholds a neutral status[4]especially as it relates to its relationship with the west and the North Atlantic Treaty Organisation (NATO).

Following the Russian invasion of Ukraine, the President of Ukraine, Volodymyr Zelensky, accused the Russian military of perpetrating the most heinous crimes since World War Two. He informed the United Nations Security Council that several civilians had been annihilated and he buttressed his assertion by displaying graphic and egregious images of deceased citizens of Ukraine gruesomely murdered by Russian Military.[5]The Russian incursion in Ukraine has reportedly occasioned the largest humanitarian crisis Europe has experienced in many decades.[6] The Office of the United Nations High Commissioner for Refugees (UNHCR), the main United Nations (UN) Refugee Agency, has indicated that the escalation of armed conflict in Ukraine has resulted in the death and injury of civilians as well as the destruction of civilian infrastructure[7] contrary to well settled rules of international humanitarian law. The UN Refugee Agency disclosed that as of 13 September, 2022, over 7.2 million individual refugees from Ukraine had been recorded across Europe since the commencement of the Russian Invasion. It was also revealed that within the same period, an estimate of 6.9 million persons were internally displaced in the territory of Ukraine.[8]Against this backdrop, this article seeks to examine the efficacy or otherwise of the United Nations in safeguarding its constitutive objective of promoting and enhancing international peace and security around the world.

The article has six subheads. It begins with a general introduction which presents its background and enunciates its fundamental objective. The second subhead presents an overview of the structure, composition, and dynamics of the United Nations system whilst the third subhead highlights the constitutive role of the United Nations particularly within the purview of maintenance of international peace and security. The fourth

[4] Kirby (n 2)
[5] BBC, 'Ukraine War: Zelensky Tells UN of Horrors of Russian Invasion' BBC News 5 April 2022 <https://www.bbc.com>news>world> accessed 10 April 2022
[6] Diana Roy, 'How Bad is Ukraine's Humanitarian Crisis?' Council on Foreign Relations 25 March 2022 <https://www.cfr.org/in-brief/ukraine-humanitarian-crisis-refugees-aid> accessed 11 October 2022
[7] Office of the United Nations High Commissioner for Refugees, 'Ukraine Emergency' <https://www.unhcr.org/ukraine-emergencyhtml> accessed 11 October 2022
[8] ibid

subhead interrogates the efficacy of the United Nations in the context of its mandate of safeguarding international peace and security taking into account the gruelling conflict between Russia and Ukraine. The subhead discusses the various efforts made by the UN Secretary-General and different organs of the UN such as General Assembly, International Court of Justice, and the Security Council. The fifth subhead highlights the imperative for reforms in the workings of the UN particularly in the light of the imminent threat of nuclear warfare and the lackluster performance of the UN in safeguarding peace and security in Ukraine and around the globe. The sixth and final subhead concludes the discourse.

2. An Overview of the United Nations System

The UN is the most important global organisation with a large membership of states from different regions and continents of the world.[9]The UN was established in 1945 after the end of the Second World War. It consists of 193 Member States. The nations meet periodically at designated fora to deliberate common challenges and explore various strategies and resolutions aimed at tackling them.[10]

The UN has six principal organs, these are: the Security Council, General Assembly, Economic and Social Council, Trusteeship Council, Secretariat, and International Court of Justice. Furthermore, the UN hosts several specialised agencies such as the International Labour Organisation (ILO), World Health Organisation (WHO), International Civil Aviation Organisation (ICAO), the Universal Postal Union (UPU), United Nations Educational, Scientific and Cultural Organisation (UNESCO), International Maritime Organisation (IMO), International Telecommunication Union (ITU), the World Intellectual Property Organisation (WIPO), the World Meteorological Organisation (WMO), and International Atomic Energy Agency (IAEA),[11]among others. These organs alongside other specialised agencies of the UN function within the purview of the constituent instruments establishing them to achieve the goals of the UN.

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[9] Peter Malanczuk, Akehurst's *Modern Introduction to International Law* (7th edn Routledge, 1997) 94

[10] United Nations, 'About Us' <https://www.un.org/en/about-us> accessed 12 October 2022

[11]Malanczuk (n9) 94

3. UNDERSTANDING THE CONSTITUTIVE ROLE OF THE UNITED NATIONS IN SAFEGUARDING INTERNATIONAL PEACE AND SECURITY

The UN is essentially an intergovernmental organisation vested with legal personality. It has well-articulated objectives. The purposes of the UN are set out in Article 1 of the UN Charter, 1945, as follows:

1. To maintain international peace and security, and to that end, to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;
2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to make other appropriate measures to strengthen universal peace;
3. To achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion; and
4. To be a centre for harmonizing the actions of nations in the attainment of these common ends.

The foregoing objectives of the UN as enshrined in the UN Charter, 1945, glaringly indicate that one of the cardinal aims of establishing the institution is to 'maintain international peace and security.'[12] In order to achieve the preceding objective, the UN is duty bound 'to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace.'[13] Given the series of conflicts around the world, particularly the extant Russian and Ukrainian conflict, which has lasted for several months

[12] United Nations Charter 1945(adopted 26 December 1933, entered into force 26 December 1936) 165 LNTS 19, art 1 (1)
[13] ibid

despite the actions of the UN, can it be said that the UN has efficaciously achieved its objective? The preceding question gives credence to the desideration of interrogating the efficacy of the UN in safeguarding international peace and security especially within the context of the Russian and Ukrainian armed conflict.

4. The Russian and Ukrainian Conflict: Is the United Nations Helpless?

Following the Russian incursion into the territory of Ukraine and the attendant hostilities, the UN took several actions under the aegis of the Office of the UN Secretary-General, the General Assembly, the International Court of Justice, and the Security Council. The steps taken by each organ or agency of the UN in response to the hostilities in Ukraine are highlighted and examined hereunder.

4.1 The Approach of United Nations Secretary-General

The Secretariat of the UN consists of various departments. Each department has a specific and distinct area of focus and responsibility. Departments and offices cooperate with one another to enhance cohesion as they carry out daily functions in offices and duty stations around the world. The office is headed by the Secretary-General of the UN.[14] The Secretary-General is appointed by the General Assembly upon the recommendation of the Security Council. He is the Chief administrative officer of the UN.[15]The Secretary-General is vested with the responsibility of serving in that capacity in all meetings of the General Assembly, the Security Council, the Economic and Social Council, and the Trusteeship Council. He is also required to carry on such other functions as are designated by the organs.[16] The current Secretary-General of the UN is António Guterres.

The Secretary General of the UN has a statutory role to play in situations of conflict capable of threatening international peace and security. Thus, article 99 of the Charter of the United Nations 1945 mandates the Secretary General of the UN to draw the attention of the Security Council regarding any matter which may threaten or undermine the maintenance of international peace and security. It is pertinent to

[14] United Nations, 'Secretariat' <https://www.un.org/en/sections/about-un/secretariat/> accessed 10 January 2020
[15] Charter of the UN 1945, art 97
[16] ibid art 96

note that the Secretary General of the UN categorically condemned the Russian invasion of Ukraine and the purported annexation of parts of the territories of Ukraine. In an address to the Security Council on the 24th of August, 2022, António Guterres, the Secretary General of the UN, informed the venerable organ of the UN of notable developments since the Russian invasion of Ukraine. He pointed out that thousands of civilians including children had been killed and injured. He asserted that the conflict occasioned violations of international human rights norms and well settled provisions of international humanitarian law. He pointed out that the consequence of the war is being felt beyond the territory of Ukraine. The Secretary General also expressed concern about the besieged Zaporizhzhia nuclear power plant in Ukraine and warned against actions that might endanger the physical integrity, security and safety of the facility which is reportedly under the control of Russia.[17]In another address to the Security Council on the 22nd September, 2022, the Secretary-General of the UN lamented that 'Russia's war in Ukraine shows no sign of letting up.'[18]He opined that the war has the proclivity of posing grave danger in Ukraine and around the globe. He called for an end to the war in Ukraine and appealed to Member States to take action in order to forestall further escalation and ensure the restoration of peace.[19]

Despite the entreaties of the Secretary-General for an end to the conflict in Ukraine, Russia remained unperturbed. The nuclear armed state continues to carry out its poignant acts of aggression and incursion on the territorial integrity of Ukraine with pertinacious impunity. In effect, despite the pomp, pageantry, and authority of the office of the UN secretary-General, the Russian-Ukrainian conflict continues to threaten and undermine international peace and security in defiance of the pristine objective of the UN which is predicated on ensuring maintenance of international peace and security around the world.

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[17] United Nations, 'Secretary-General's Remarks to the Security Council on Ukraine' 24 August 2022 <https://www.un.org/sg/en/content/sg/speeches/2022-08-24/secretary-generals-remarks-the-security-council-ukraine%c2/%AO> accessed 19 October 2022

[18] United Nations, 'Secretary-General's Remarks to the Security Council on Ukraine' 22 September 2022 <https://www.un.org/sg/en/content/sg/speeches/2022-09-22/secretary-generals-remarks-the-security-council-ukraine> accessed 19 October 2022

[19] ibid

4.2 The Approach of United Nations General Assembly

The General Assembly is an organ of the UN which operates in form of a parliament. It is made up of representatives of member states.[20]Membership of the UN is open to all peace-loving states which accept the obligations stipulated in the UN Charter and are willing and able to carry out such obligations. Admission of any state to membership of the UN is effected by a decision of the General Assembly upon the recommendation of the Security Council.[21]

Each member of the General Assembly is entitled to one vote.[22]Decisions of the General Assembly in respect of important questions are made by two-thirds majority of members present and voting.[23]The questions include recommendations on the maintenance of international peace and security, the election of non-permanent members of the Security Council, the election of members of the Economic and Social Council, the election of members of the Trusteeship Council, the suspension of rights and privileges of membership, the expulsion of members, questions relating to the operation of the Trusteeship system, and budgetary questions.[24]Decisions on other questions are made by a majority of members present and voting.[25]

The General Assembly is empowered to deliberate and make recommendations. Any member of the UN may bring any dispute or any situation which is likely to endanger international peace and security to the attention of the General Assembly or Security Council.[26] A non-member of the UN may also draw the attention of the General Assembly if it is a party to a dispute and accepts in advance the obligations of pacific settlement of dispute stated in the UN Charter.[27]The General Assembly may deliberate upon such dispute and make recommendations to the state concerned or to the Security Council or both.[28]Any such question on which action is necessary is to be referred

[20] Malcolm N. Shaw , International Law (Cambridge University Press 2017) 928
[21]UN Charter 1945, art 4 (1) (2)
[22]ibid art 18 (1) UN
[23] ibid art 18 (2)
[24] ibid art18 (2)
[25]ibid art15 (5)
[26] ibid art35 (1)
[27] ibid art 35 (2)
[28] ibid art11(2)

to the Security Council by the General Assembly either before or after the discussion. The General Assembly may make recommendations for peaceful adjustment of any situation which is likely to undermine welfare or friendly relations among nations including situations resulting in violation of the provisions of the UN Charter.[29]It is pertinent to note that the General Assembly lacks the powers to take enforcement action.[30]

The General Assembly of the United Nations has taken some fundamental steps in response to the Russian invasion of Ukraine. Some of the resolutions passed by the General Assembly aimed at addressing the conflict are highlighted below:

i. United Nations General Assembly Resolution ES-11/1

The United Nations General Assembly Resolution ES-11/1 condemned the Russian invasion of Ukraine and demanded a complete withdrawal of Russian military as well as a review of Russian recognition of secessionist seeking the break away from Ukraine a region dubbed 'People's Republic of Donestsk and Luhansk (These areas are actually situated in the territory of Ukraine). [31]

ii. United Nations General Assembly Resolution ES-11/2

The United Nations General Assembly Resolution ES-11/2 vehemently deplored the acts of aggression by Russia against Ukraine in breach of article 2 (4) of the UN Charter of 1945. It demanded that Russia must immediately refrain from the use of force and to desist from further unlawful threat or use of force against any Member State of the UN. It also deplored the decision made by Russia regarding the status of Donetsk and Luhansk regions of Ukraine. The General Assembly declared the purported recognition of the self-declared Republics of Donetsk and Luhansk regions by Russia as a violation of the territorial

[29] ibid art11 (2)
[30]Gurdip Singh, International Law (2nd edn Macmillan) 412
[31] UN General Assembly Resolution of the 11th Emergency Special Session of the United Nations General Assembly adopted 2 March 2022)

integrity and sovereignty of Ukraine in contravention of the principles of the UN Charter.[32]

iii. United Nations General Assembly Resolution ES-11/3

The United Nations General Assembly Resolution ES-11/3 expressed grave concern at the human rights violation and humanitarian catastrophe in Ukraine. It noted the gross violation of human rights and international humanitarian law by the Russian Federation. The General Assembly accordingly resolved to suspend the rights of membership in the Human Rights Council of the Russian Federation.[33]

iv. United Nations General Assembly Resolution ES-11/4

The United Nations General Assembly Resolution ES-11/4 roundly refuted the Russian invasion of Ukraine. Out of the 193 Member States constituting the General Assembly, a total of 143 states adopted Resolution ES-11/4 demanding that Russia immediately terminates its military incursion of Ukraine. The resolution indicated that the purported referendums in Khersion, Donetsk, Zaporizhzhia Oblasts, and Luhansk as well as the attempted annexation of the regions are illegal, null, and void under international law. The resolution called upon all countries not to recognise the annexed territories as part of Russian Federation.[34]

Although the General Assembly has taken remarkable steps in response to the Russian invasion of Ukraine as indicated above, it is pertinent to note that, under international law, a General Assembly Resolution is not binding on member nations but generally recognised as having normative value in the international arena.[35]The prescriptive implication of this position of the law is that its resolutions are not

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[32] General Assembly Resolution A/RES/ES/2 being a resolution of the 11th Emergency Special Session of the UN General Assembly and adopted on the 2 March 2022

[33] United Nations General Assembly Resolution A/RES/ES-11/3 being a resolution of the 11th Emergency Special Session of the UN General Assembly and adopted on the 7 April 2022

[34] General Assembly Resolution A/RES/ES/4 being a resolution of the 11th Emergency Special Session of the UN General Assembly and adopted on the 12 October 2022.

[35]The Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons Case (ILM35 (1990) 809 at 826 paragraph 70 where the International Court of Justice observed *inter alia* that General Assembly Resolutions, even if they are not binding, may sometimes have normative value. They can in certain circumstances, provide evidence important for establishing the existence of a rule or the emergence of a rule or the emergence of an*opinio juris*.

enforceable. Thus, the resolutions of the General Assembly regarding the Russian and Ukrainian conflict as highlighted above are not binding and therefore enforceable as a rule of thumb. The intrinsic non -binding character of General Assembly resolutions patently undermine its ability to maintain and engender sustainable international peace and security as one would have envisaged taking into account the fact that such decisions emanate from a majority of Member States of the UN as a whole.

4.3. The Approach of the International Court of Justice

The International Court of Justice (ICJ) is another pivotal organ of the UN and the principal judicial institution of the Organisation. The International Court of Justice (ICJ) and its predecessor, the Permanent Court of International Justice (PCIJ) is often called the 'World Court.'[36] It is made up of 15 members who are 'elected regardless of their nationality, from among persons of high moral character, who possess qualifications required in their respective countries for appointment to the highest judicial offices or are juris consults of recognized competence in international law.[37]The justices of the Court are elected by the General Assembly and the Security Council from a list of qualified persons compiled by national groups of the Permanent Court of Arbitration or by specially appointed national groups in the case of UN members that are not represented in the Permanent Court of Arbitration.[38] In Court proceedings, all available judges are allowed to sit but a quorum of 9 judges shall suffice to constitute the Court.[39]

The ICJ has been approached sequel to the international armed conflict in Ukraine. For instance, on the 29th February, 2022 Ukraine approached the ICJ demanding for expeditious ruling on the allegations made by Russia to the effect that Ukrainian military were committing genocide in Luhansk and Donetsk regions which are situated in eastern Ukraine. Russia contended that its invasion of Ukraine was predicated on the purported acts of genocide perpetrated by Ukraine in the region. Russia was absent and had no legal representation at the commencement of the case on the 4th of March, 2022. Nonetheless, Russia sent a letter to the

[36]Gurdip Singh, International Law (2ndedn McMillian, 2011) 369
[37]Statute of the ICJ 1945, art 2
[38] ibid art 4 and 5 cited in Shaw (n 20) 806
[39] ibid art 25 para 3

Court contending that the ICJ lacked jurisdiction to adjudicate the case as Russia had earlier justified the invasion of Ukraine in a formal letter to the UN Secretary-General on the grounds of self-defence. The ICJ ruled that the absence of the state concerned, cannot, *ipso facto*, preclude the court's provisional ruling. The ICJ also maintained that it had jurisdiction taking into account the fact that the Russian President and other senior Russian officials had relied on allegations of genocide as the rationale for their military incursion in Ukraine. The Court stated that it had jurisdiction over the matter in accordance with the provisions of Article IX of the Convention on the Prevention and Punishment of the Crime of Genocide 1948.[40] Thus, the ICJ in the case of *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v Russian Federation)*[41]Ukraine filed an application instituting proceedings against Russia relating to the interpretation, application, and implementation of the Convention on the Prevention and Punishment of the Crime of Genocide. Ukraine specifically sought the following reliefs: [42]

a. Adjudge and declare that, contrary to what the Russian Federation claims, no acts of genocide, as defined by Article III of the Genocide Convention, have been committed in the Luhansk and Donetsk oblasts of Ukraine.
b. Adjudge and declare that the Russian Federation cannot lawfully take any action under the Genocide Convention in or against Ukraine aimed at preventing or punishing an alleged genocide, on the basis of its false claims of genocide in the Luhansk and Donetsk oblast of Ukraine.
c. Adjudge and declare that the Russian Federation's recognition of the independence of the so-called 'Donetsk People's Republic' and 'Luhansk People's Republic' on 22 February, 2022 is based on a false claim of genocide and therefore has no basis in the Genocide Convention.
d. Adjudge and declare that the 'special military operation' declared and carried out by the Russian Federation on and after 24

[40] Julian Borger, 'UN International Court of Justice Orders Russia to Halt Invasion of Ukraine' The Guardian 16 March 2022<https://www.theguardian.commar> accessed 24 October 2022
[41] 16 March 2022, ICJ General List No 182
[42] ibid

February, 2022 is based on a false claim of genocide and therefore has no basis in the Genocide Convention.

e. Require that the Russian Federation provide assurances and guarantees of non-repetition that it will not take any unlawful measures in and against Ukraine, including the use of force, on the basis of its false claim of genocide.

f. Order full reparation for all damage caused by the Russian Federation as a consequence of any actions taken on the basis of Russia's false claim of genocide.

Ukraine in its application to the ICJ, placed reliance on Paragraph 1 of Article 36 of the Statute of the ICJ and article IX of the Genocide Convention. In addition to the application, Ukraine submitted a request for an indication of provisional measures (interim orders) with reference to Article 41 of the Statute of the ICJ and Articles 73, 74, and 75 of the Rules of the ICJ. Furthermore, Ukraine urged the ICJ to grant the following specific provisional measures: [43]

1. The Russian Federation shall immediately suspend the military operations commenced on 24 February, 2022 that have as their stated purpose and objective the prevention and punishment of the claimed genocide in the Luhansk and Donetsk oblasts of Ukraine.
2. The Russian Federation shall immediately ensure that any military or irregular armed units which may be directed or supported by it, as well as any organizations and persons which may be subjected to its control, directions or influence, take no steps in furtherance of military operations which may have their stated purpose and objective preventing or punishing Ukraine for committing genocide.
3. The Russian Federation shall refrain from any action and shall provide assurances that no action is taken that may aggravate or extend the dispute that is the subject of this application, or render this dispute more difficult to resolve.
4. The Russian Federation shall provide a report to the Court on measures taken to implement the Court's Order on Provisional Measures one week after such Order and then on a regular basis to be fixed by the Court.

[43] ibid

Ukraine urged the President of the ICJ in line with the provisions of Paragraph 4 of Article 74 of the Rules of the ICJ to call upon the Russian Federation to immediately stop all military operations in Ukraine pending the hearing and determination of the substantive suit so as to ensure any order the Court may make on the request for provisional measures to be effective.

After hearing Ukraine's application and arguments, the ICJ ordered the following provisional measures, that:[44]

i. The Russian Federation shall immediately suspend the military operations it commenced on the 24th February, 2022 in the territory of Ukraine;
ii. The Russian Federation shall ensure that any military or irregular armed units which may be directed or supported by it, as well as any organizations and persons which may be subject to its control or direction, take no steps in furtherance of the military operations; and
iii. Both parties shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve.

Article 60 of the Statute of the ICJ 1945[45]stipulates that the judgment of the ICJ is final and cannot be appealed. It is instructive to note that the decision of the ICJ is binding on the parties in respect of each specific case. However, its decision has no binding force on states that are not parties to a particular suit.[46]

Paragraph 1 of Article 94 of the UN Charter 1945 obligates each member of the UN to comply with the judgments or decisions of the ICJ in respect of any matter to which it is a party. Under paragraph 2 of article 94 of the UN Charter, where a party fails to perform its obligation as required in respect of a judgment delivered by the court, the other party has the discretion to refer the matter to the Security Council, which may in turn make recommendations or put in place measures to be taken in order to give effect to the decisions of the court.

However, it is pertinent to point out that unlike municipal courts, the judgment of the ICJ is difficult to enforce especially in situations where

[44] ibid
[45](adopted 26 June 1945, entered into force 24 October 1945) 15 UNCIO 355
[46] Statute of the ICJ 1945 art 59

sovereign states are unwilling to comply with the decisions of the court. It becomes even more complex and problematic where the party refusing to comply with the court's judgment is a permanent member of the Security Council with powers to veto any decision of the Security Council it takes exception to. For instance , in the case of Ukraine v Russian Federation (supra), although the ICJ had issued an order directing Russia to immediately suspend the military operation in the territory of Ukraine, its enforcement is frequently fraught with difficulties in the sense that if Ukraine decides to refer the case to the Security Council as required under Paragraph 2 of Article 94 of the UN Charter, Russia and other members of the Security Council may not be inclined to give effect to the measures that would engender its enforcement. It can be asserted with certitude that Russia would scuttle such measures through the exercise of veto powers. The conundrum of enforcement of the decisions of the ICJ glaringly explains why Russian military operation continues to go on with impunity and glaringly in defiance of the orders of the ICJ.

4.4 The Approach of the United Nations Security Council

The Security Council is primarily responsible for the maintenance of international peace and security.[47]The Security Council consists of 15 members. Five of them, USA, UK, Russia, China, and France, are permanent members. These members have the veto. In other words, each permanent member of the Security Council has the power to reject a proposal or resolution through the exercise of a negative vote or veto. This prevents the Security Council from taking further action in respect of the issue in question. Decisions of the Security Council must be made by affirmative vote of nine members including the concurring votes of all permanent members, on all matters except procedural matters. Under Article 27 of the UN Charter, the other ten members are elected for two-year terms by the General Assembly. Thus, a negative vote by any of the permanent members of the Security Council suffices to veto any resolution, except in respect of procedural matters, where nine affirmative votes are required.[48]

Any member of the UN has the latitude to draw the attention of the Security Council regarding any dispute or any situation which is likely to

[47]ibid arts 23, 24, 25 and 28 of the UN Charter cited in Shaw (n 20) 925-926
[48] ibid

endanger international peace and security.[49] A non-member may bring to the attention of the Security Council any dispute to which it is a party if it accepts in advance, for the purpose of the dispute, the obligation of pacific settlement contained in Paragraph 2 of Article 35 of the UN Charter. The Security Council may recommend appropriate procedures or methods of adjustment.[50]

The Security Council is empowered under Article 39 of the UN Charter to determine the existence of any threat to peace, breach of the peace, or any act of aggression, and to make recommendations or decide what measures shall be taken in accordance with Articles 41 and 42 of the UN Charter to maintain or restore international peace and Security.[51]Before making recommendations or taking decisions under Article 39 of the UN Charter, the Security Council may invoke Article 40 of the Charter which empowers the Security Council to take provisional measures to prevent a threat to peace from developing into an actual breach. The provisional measures might consist in Security Council calling for immediate cessation of hostilities, withdrawal of troops, refraining from actions which might aggravate the dispute and recommendation of appropriate procedures and methods of adjustment of dispute.[52]

Article 41 of the UN Charter empowers the Security Council to decide what measures, not involving the use of armed force, are to be employed to give effect to its decisions and it may request member states of the UN to apply such measures. The measures may include complete or partial interruption of economic relations and communications as well as severance of diplomatic relations.[53] These measures are often called sanctions. Article 42 of the UN Charter states that if the Security Council considers that the measures provided in Article 41 is inadequate, it may take action by air, sea or land as may be necessary to maintain or restore international peace and security.[54]

In response to the international armed conflict in Ukraine, the UN Security Council did attempt to take steps to halt the Russian invasion of Ukraine and the attendant hostilities but to no avail. For instance, on the

[49] Art 35 para 1 UN Charter
[50] Art 36 para 1
[51]Gurdip Singh, International Law (McMillan, 2011) 414
[52] Singh (n 51) 415
[53] ibid
[54] ibid.

25th of February, 2022, Russia, in exercise of its veto powers, scuttled the draft resolution of the UN Security Council that would have stipulated an immediate termination of Russia's unilateral military incursion in Ukraine. Apart from Russia's denial of concurrent vote which immediately negated the draft resolution, eleven members of the Security Council voted in favour of the text while India, China, and United Arab Emirates abstained from the voting process.[55]After the UN Security Council's meeting on the 25th of February, 2022, António Guterres, the UN Secretary General, in a press conference held in New York, stated, among other things, that 'United Nations was born out of war to end war.'[56]However, he lamented that, 'Today that objective (referring to the scuttled United Nations' draft resolution of the Security Council of 25 February, 2022) was not achieved. He went further to state, 'But we must never give up. We must give peace a chance. Soldiers must return to the barracks. Leaders need to return to the best dialogue and peace.'[57]

Another notable effort of the UN Security Council aimed at responding to the Russian invasion of Ukraine was its draft resolution which stated that the purported referendums held by Russia in the Regions of Kherson, Donetsk, Luhansk, Zaporizhzhya which Russia attempts to unlawfully annex as its sovereign territory is illegal and alters Ukraine's internationally recognised boundaries. The draft resolution mandates all states, agencies and international organisations not to recognise the purported Russian annexation. It also declared that 'Russia must immediately, completely and unconditionally withdraw all its military forces'[58] from Ukraine. The Security Council Resolution which was considered on the 30th of September, 2022 was vetoed by Russia[59]thereby quashing another attempt to prevent Russian incursion of the territorial integrity and sovereignty of Ukraine.

Against the backdrop of the statements, resolutions and decisions of various UN organs or agencies such as the Secretary General and his good

[55] UN, 'Russia Blocks Security Council Action on Ukraine' UN News 26 February 2022 <https://news.un.org/en/story/2022/02/1112802> accessed 27 October 2022
[56] ibid
[57] ibid
[58]UN, 'Russia Vetoes Security Council Resolution Condemning Attempted Annexation of Ukraine Regions' UN News. Global Perspective Human Stories 30 September 2022 <https://news.org/en/story/2022/09/1129102> accessed 27 September 2022
[59] ibid

offices, the General Assembly, the ICJ, and the Security Council, it can be said that the UN has taken conscionable and compelling steps to engender the return to peace and security in Ukraine. However, a common denominator of the measures taken so far by the UN manifestly depicts its systematic challenges and inability to bring an end to the hostilities in Ukraine. Despite the provisional orders of the ICJ, the attempted efforts of the Security Council, and the resolutions of the General Assembly, the international armed conflict in Ukraine continues without abating and even festers with impunity leading to wanton destruction of civilian lives and infrastructure. Many leaders, states, and international organisations have expressed concern about the possibility of escalating the conflict amid the imminent threat of the use of nuclear weapons by Russia. The foregoing development is a pungent indictment on the very essence of establishing the UN and underscores the exigency of undertaking bold and proactive reforms if it must stand the test of time and achieve its cardinal objective of enhancing international peace and security.

5. THE UNITED NATIONS AMID OVERARCHING HOSTILITIES IN UKRAINE ALONGSIDE BELLIGERENT ALLIANCES AND THE IMMINENT THREAT OF NUCLEAR WARFARE: UNDERGIRDING THE IMPERATIVE OF A PARADIGM SHIFT

As earlier indicated, despite the efforts of various organs of the UN to upend the hostilities in Ukraine, the armed conflict persists with virtually daily reports of human casualties and destruction of civilian infrastructure. Undeterred by the economic sanctions imposed on Russia including prominent Russian oligarchs, the country has continued to build alliances in order to manoeuvre its way out of the anticipated effect of the sanctions. The *Independent Newspaper* has reported the egregious role Belarus has played in support of the Russian Invasion of Ukraine. The Newspaper indicated that Belarus had allowed about 30,000 Russian soldiers to participate in military drills prior to the invasion of 24th February, 2022 and that Russian aircrafts had been permitted to use the country's airports. The paper also stated that the Constitution of Belarus was amended to allow the movement and housing of Russian nuclear weapons in its territory.[60]

[60] Joe Sommerland, 'Why is Belarus Supporting Russia and how is it Involved in Ukraine?' Independent Thursday 30 June 2022

Whilst China, a prominent Russian ally, has reportedly sought to hold a neutral stance on the armed conflict in Ukraine, it has consistently canvassed a pacific resolution of the conflict but it refrained from categorically condemning the Russian incursion in the territory of Ukraine.[61] Iran has also been accused of supporting Russia with arms in its pursuit of conflict in Ukraine. In spite of Iran's refutation, the European Union placed economic sanctions on Iran on the ground that it is complicit in the aggression against Ukraine by supplying it with lethal drones.[62]

To the chagrin of Russia, Ukraine has built and continues to build strategic alliances with western nations and some intergovernmental organisations such as European Union (EU) and the North Atlantic Treaty Organisation (NATO). In the course of the invasion, it threatened the west and NATO of deploying nuclear weapons against any country that gets on its way. NATO, on its part, had asserted that it would defend 'every inch' of the territories of its member states in the event of an attack by Russia. The conflict has raised concerns among world leaders and the international community about the possibility of a nuclear catastrophe. No doubt, the UN has provided enormous humanitarian assistance and taken several steps to bring an end to the conflict.

Taking cognisance of the botched resolutions and decisions of the various organs of the UN, it has become expedient for legal and structural reforms in the UN. To this end, this Article recommends that the UN Charter of 1945 should be amended. To this end, the provision of Article 108 of the UN Charter which stipulates that amendment to the Charter shall come to force when such amendments have been adopted by a vote of two-thirds of Members of the General Assembly and ratified by two thirds of the same members including permanent members of the Security Council should be amended to exclude any of the permanent members of the Security involved in a conflict to be deliberated upon by the Council in order to avoid the stalemate that may be occasioned by the use of veto powers by such permanent member of the Security Council. In other words, the

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<https://www.google.com/amp/s/www.independent.co.uk/news/world/europe/belarus-support-russia-why-ukraine-b2070413.htm/%3famp> accessed 30 October 2022

[61] Kai Wang and Wanyuan Song, 'Ukraine War: What Support is China Offering Russia?' BBC News 4 March 2022 <https://www.google.com/amp/s/www.bbc.com/news/60571253.amp> accessed 30 October 2022

[62] Andrew Rettman, 'Iran Has Joined Russia Axis on Ukraine War, EU Says' EU Observer 20 October 2022

exercise of veto power should be inapplicable where the issue at stake directly involves a particular permanent member of the Security Council actually involved in the conflict to be considered by the Security Council. Also, the composition of the Security Council as enshrined in Article 23 of the UN Charter should be expanded to include developing countries or third world nations as permanent members. In addition to that, where a permanent member is a party to an on-going conflict or identified as an aggressor, such a member may participate in voting but is precluded from the exercise of veto in such special circumstances.

The entire peace-loving Member States of the UN should impress upon the various states in the international community to assist in protecting Ukraine from the armed attacks and wanton destruction of civilian lives and civilian infrastructure by providing them with much more humanitarian aid and military support. If absolutely necessary, a ban in flights across the Ukrainian airspace as requested by President of Ukraine, Volodymyr Zelensky, should be reconsidered in order to safeguard Ukraine from total destruction taking into account the war often characterised as a war of attrition being waged by Russia against Ukraine regardless of the view being held by some pundits that a 'no fly zone' or ban in the movement of belligerent aircraft in the airspace of Ukraine may escalate the conflict.

It has become expedient for the international community especially under the auspices of the UN to rise up against the pungent aggression and crime against humanity perpetrated by Russian leadership which has patently undermined international peace and security. The war in Ukraine has caused untold hardship, displaced millions of Ukrainian citizens and residents as internally displaced persons (IDPs) or refugees, separated families and friends, brutally annihilated thousands of lives including those of both Russian and Ukrainian soldiers, and patently undermined international peace and security. The internal dissent in Russia manifestly indicates that some Russians are against the war being perpetrated against their Ukrainian neighbours and their own soldiers who have also recorded significant casualties. The armed conflict in Ukraine and the attendant bellicose rhetoric and nuclear sabre rattling has threatened the very existence of humanity.

6. CONCLUSION

One of the quintessential objectives of the UN is the promotion of international peace and security. After the Russian invasion of Ukraine, the UN Secretary-General condemned the invasion and unequivocally called for an end to the international armed conflict but to no avail. The effort of the Security Council of the UN toward passing a resolution to resolve the quagmire was botched owing to Russian's veto against the resolution. In the same vein, the General Assembly of the UN passed critical resolutions which manifestly condemned the Russian invasion of Ukraine and demanded a complete withdrawal of Russian military. The General Assembly also passed a resolution which indicated that the purported referendums in Kherson, Donetsk, Zaporizhzhia and Luhansk as well as the attempted annexation of the regions were void under international law. The preceding resolutions are patently undermined and attenuated by the fact that Russia has continued to violate the well- articulated General Assembly resolutions with impunity. Worse still, international law is trite that General Assembly resolutions are, in principle, not binding and therefore unenforceable. Furthermore, Ukraine approached the ICJ for pacific settlement of the dispute in the case of *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v Russian Federation) (supra),* where the Court ordered provisional measures, *inter alia*, to the effect that the Russian Federation must immediately suspend military operations commenced on the 24th of February, 2022 in the territory of Ukraine. However, contrary to the orders of the ICJ, Russia has continued its military operations in Ukraine which has resulted in the gruesome annihilation of thousands of civilians, displacement of civilians, and the wanton destruction of both military and civilian infrastructure. In the light of the foregoing drawbacks, this article vehemently asserts the exigency of carrying on far reaching legal and regulatory reforms especially within the purview of the UN in order to bolster the efficacy of the Organisation in achieving its fundamental objective of promoting international peace and security.