

The University of San Francisco

USF Scholarship: a digital repository @ Gleeson Library | Geschke Center

Undergraduate Honors Theses

All Theses, Dissertations, Capstones and
Projects

Spring 5-19-2023

The Issue of Enforcement in International Law: A Case Study of the War in Ukraine

Luana M. Denegre

University of San Francisco, denegremay@yahoo.fr

Follow this and additional works at: <https://repository.usfca.edu/honors>



Part of the [International Humanitarian Law Commons](#), and the [International Law Commons](#)

Recommended Citation

Denegre, Luana M., "The Issue of Enforcement in International Law: A Case Study of the War in Ukraine" (2023). *Undergraduate Honors Theses*. 46.

<https://repository.usfca.edu/honors/46>

This Honors Thesis is brought to you for free and open access by the All Theses, Dissertations, Capstones and Projects at USF Scholarship: a digital repository @ Gleeson Library | Geschke Center. It has been accepted for inclusion in Undergraduate Honors Theses by an authorized administrator of USF Scholarship: a digital repository @ Gleeson Library | Geschke Center. For more information, please contact repository@usfca.edu.

University of San Francisco

The Issue of Enforcement in International Law: A Case Study of the War in Ukraine

An honors thesis submitted in partial satisfaction
of the requirements for the distinction of
Honors in the International Studies Department
in the College of Arts and Science

by

Luana Denegre

December 2022

TABLE OF CONTENT

Abstract, Acknowledgements, and Keywords.....	2
Introduction.....	4
Literature Review.....	6
I. International Legal Framework.....	6
History of International Law.....	6
Sources of International Law.....	7
Critiques of International Law.....	8
II. Enforcement Tools in International Law.....	9
III. International Law in the Case of the War in Ukraine.....	13
Methods and Limitations.....	16
Findings and Analysis.....	19
I. National Sovereignty.....	19
1. The Existing International Legal Framework.....	19
2. Threatened Recognition of Ukraine’s National Sovereignty.....	22
3. Consensus for a Reformed International Law.....	25
II. International Treaties.....	30
1. Different Rhetorics in the War in Ukraine.....	30
2. Toward a More Comprehensive Vision of International Law.....	34
3. Toward a More Effectively Enforced International Law.....	37
Conclusion.....	44
Work Cited.....	47

ABSTRACT

This thesis seeks to outline ways to enforce international law more effectively. Through the analysis of the current international legal framework and the different mechanisms created to enforce international law, it identifies why they are insufficient to enforce international law effectively, and it gives recommendations to ameliorate the way international law is currently enforced. This research focuses on the ongoing war in Ukraine as a case study, and provides specific examples of ways international law was grossly violated by Russia, a U.N. permanent Security Council member, in order to identify patterns in the non-enforcement of international law. To bridge the gap in the literature regarding the conflict in Ukraine, this thesis looks at information from social media, as well as testimonies from people in Ukraine. It identifies the impunity gap and the lack of corporate accountability as the two main areas of focus for the enforcement of international law. The research suggests the implementation of a shared governance model, the creation of more regional organizations, and more cooperation and transparency between national and international legal/judicial systems to strengthen the effective enforcement of international law. Moreover, it proposes to include corporations into the international legal framework to address corporate impunity.

KEYWORDS

International Law, Ukraine, Enforcement Mechanisms, Russia, Sovereignty, Corporate Accountability, Immunity Gap

ACKNOWLEDGMENTS

There are a number of people I would like to thank for supporting me during this challenging but extremely rewarding process of writing my thesis. First, I would like to thank Professor Zarobell for providing me with constructive feedback and supporting me throughout this process. Next, I would like to thank my parents, Chrystelle, Patrick, and Laurent, and my siblings, Joana and Rafael, for supporting me throughout my education and being there when the process became overwhelming. Finally, thank you to my best friend, Jenna Chapman, for being my sounding board, reading dozens of rewrites, and looking up thousands of synonyms with me.

INTRODUCTION

International law is the product of war and destruction, it offers a utopian hope of order and moral renewal. However, as much as international policy has helped develop relations between states, and aided progress by creating rules for international conduct, this system is not perfect and requires many reforms and improvements, particularly in how it is enforced. In 1919, the Treaty of Versailles marked the creation of the Covenant of the League of Nations, known as history's first attempt at an organization for global peace and security. It created a program for codifying international law, systematizing the rules of international conduct, and it established a permanent judicial tribunal. However, the league was unable to keep the peace (Zartner, 2020).

After World War II, the United Nations was created, an organizational architecture for the international community. It progressively created more complicated and supple legal and regulatory regimes for virtually all functional areas of international concern, and managed to place state concerns side by side with the principle of protecting and extending the dignity of individual human beings (Zartner, 2020).

Without an effectively enforced international law, and the framework it establishes, and without each state's legal responsibility clearly laid out, there would be no international order; only chaos. It is important to keep in mind that some of the most significant actors of international law, mainly permanent members of the U.N. Security Council, are violating international law, and other than enforcing economic sanctions, the other states have not been able to enforce international law to stop the conflict. The sanction coalition against Russia excludes many developing countries and key players such as China. The war in Ukraine divided

the world in teams, and each seems to have its own view of international law and the international order (Chachko, Linos, 2022).

Because of the way international law is designed with the concept of state sovereignty at its center, international law can only truly be enforced, at least in the case of permanent security council members, if the state agrees to it. For instance, under George W. Bush, the U.S. set a bad precedent when it ignored the International Court after the U.S. broke international laws in its invasion of Iraq. Western powers have violated international law in the past, and they weren't met with the economic ostracization we are witnessing with Russia. In the case of the invasion of Ukraine, Russia has violated many international laws. Russia also appears to believe that the courts have no bearing on them, which brings us to the double standard in international law. The ongoing conflict in Ukraine has engendered a lot of suffering. It is responsible for countless injuries, killings, and destruction. Moreover, it has displaced millions of people who are fleeing the war.

This is a significant project because a major violation of international law resulted in the war in Ukraine, which is still ongoing. In this conflict, Russia has violated criminal international law as well as humanitarian international law, and yet the conflict is still ongoing. Moreover, since the creation of international law, prominent international actors have been responsible for violations that have remained unpunished. This issue can affect any state, whether directly or indirectly. A conflict between two or more states often has repercussions on the entire world.

Consequently, this thesis aims to outline more effective ways to enforce international law. Being able to enforce international law more effectively would ensure less chaos, and more peace at the global level. It is going to change the way we understand this issue, because right

now most international legal actors see international law as a set of guidelines that is very difficult and takes a long time to enforce.

International law has failed a lot of states where atrocities are still ongoing. Finding new and more effective ways to enforce international law will ensure that international actors see it through a new lens. Adding corporate accountability to the international legal framework would ensure that all actors on the international scene are accountable. Although international law addresses relations between states, corporations are some of the most powerful entities on the planet. As of 2018, 69 of the 100 richest entities in the world are corporations, not governments, which begs the question: how do we control them? (Global Justice Now, 2018)

LITERATURE REVIEW

Although the issue of the enforcement of international law in the case of Ukraine has only recently been brought to attention, the debate around international law as an effective enforcement tool has been around since its creation. In this thesis, I will mainly focus on Ukraine; however, I will mention similar cases where international law was grossly violated and went unpunished.

I. International Legal Framework

History of International Law

International law was first introduced in 1648, at the Peace of Westphalia. This treaty ended the Thirty Years War and created the framework for modern international relations, it also introduced the concept of state sovereignty. The contemporary definition of international law states that it is a system of rules, principles, and concepts that govern relations among states and

increasingly international organizations, individuals, and other actors in the world of politics (Bederman, 2002).

After World War II, different states came together to create the United Nations, an organizational architecture for the international community. It has created progressively more complicated and rich legal and regulatory regimes for virtually all functional areas of international concern (Zartner, 2020). It managed to place state concerns side by side with the principle of protecting and extending the dignity of individual human beings. There is now a more neutral position in which the international community recognizes values separate from state sovereignty. Sovereignty is a state's ability to govern and rule itself within its own territory/ borders without outside interference. It is considered to be the prime rule in the international system, which makes it difficult to enforce international law because of international nuances, such as political and economic relationships between states, cultural variations, and the different judicial systems coexisting. There are limits to sovereignty, most of which are outlined in the U.N. Charter.

Sources of International Law

International law draws primarily from primary and secondary sources outlined in Art.38 (10) of the International Court of Justice Statute. The primary sources outlined are conventions/ treaties, customary international law, and general principles of law. The secondary sources include judicial decisions and highly qualified publicists/ experts. Secondary sources cannot be the only basis of an argument, but are there to support primary sources. Art. 38(2) of the ICJ statute indicates that if applying something would be unfair, then the court has the right not to if

the parties of a treaty agree to it. The justice and fairness clause is technically considered to be the sixth source of international law.

Critiques of International Law

Sanford, an American attorney, offers diverse, multinational perspectives on traditional and emergent issues in the practice and study of international law. He goes into the foundations of international law and international humanitarian law. He gives the example of the failed U.N. Intervention in Somalia to illustrate the shortcomings of humanitarian international law. He also delves into international political interaction, and the evolution of core legal principles (Sanford, 2011).

There have been a number of critiques surrounding international law. Firstly, the inequalities of ideas and inequalities of access, and application has been widely criticized. There has always been a universal approach to international law, that is seen as a singular, unequal, and dominated by the west approach. Law can be used for the powerful and the powerless, but it cannot just be the most powerful advocating for the most powerless. This is very much represented by who has a seat at the table, mainly the Security Council. The Security Council is one of the principal organs of the United Nations, it is tasked with maintaining international peace and security. It is for the Security Council to decide when and where a U.N. peace operation should take place (United Nations, 2022). The Security Council comprises 15 member states, five of which are permanent members. The non-permanent members are elected for a term of two years. The five permanent members of the Security Council are Russia, China, France, the United Kingdom, and the United States. Those five states have veto power over any “substantive” resolution. There is no mechanism to remove a permanent member of the Security

Council written into the U.N. Charter. The veto power contributes to the existence of the impunity gap, meaning that some international actors are exempt from punishment.

Moreover, because of its western approach, international law has been claimed to be racist. While some scholars agree, others believe all the great treaties about equal rights and discrimination prove otherwise (Bradley, 2019). However, there needs to be a way to implement them. Although international law provides a strong international legal framework, it doesn't bring forth effective mechanisms to enforce it.

Another remonstrance of international law has to do with its relationship with the economy, which many assume is too close. They claim that international law does not consider people's actual needs because it is too driven by economic conditions. Some scholars argue that international law contributes to global inequality, while others believe it makes it better. The former argue that law systems are often designed around people in power instead of minorities (Sumar, 2020). And while the law can be a tool to protect minorities, they are not seeing it. Secondly, since states are sovereign, it is up to them to join treaties, but when they violate those treaties, there is no real way to enforce them or impose any repercussions.

II. Enforcement Tools of International Law

The literature examines whether international law can be enforced, how it is currently enforced, and how it could be done differently. Scholars inspect the different enforcement tools of international law, such as tribunals, arbitration, dispute resolution, and regional and universal courts. The general consensus is that although it is a great set of guidelines for how states should behave, enforcement tools of international law are applied unevenly in some cases. When applied, they work slowly, if at all (Kirgis, 1996).

Some scholars, like Rafal Wonicki, are skeptical of international law and believe that the conflict between equality and freedom can only be resolved at a satisfactory executive level within the state. They argue how problematic this perspective is, especially considering the current conflict in Ukraine, which affects people's lives in different parts of the world. They believe that the tension in the theory of international anarchism is based on the lack of consequences related to the inability to maintain a standard based on accepted assumptions.

Fiona McKinnon examines and compares reprisals to other methods of redress. She investigates the limitation of using reprisals as laid down in humanitarian law treaties. Her goal is to find effective ways to enforce international law (McKinnon, 2009).

In an article, Guilia Lanza examines the most relevant decisions adopted at the international level and outlines potential solutions to prosecute and punish international crimes perpetrated in Ukraine. This article showcases the turning point that Russia's departure from the Council of Europe was for human rights in Russia. It also argues that international criminal law and cooperation between states and international organizations will play a crucial role in trying to get justice for the atrocities that were committed, and are still being committed against the Ukrainian population. The article outlined the several attempts that were conducted by the different committees and organizations in international law to stop Russia's actions against Ukraine and stated that several proposals were submitted on how to prosecute and punish the crime of aggression committed by Russia against Ukraine (Lanza, 2022).

Outi Korhonen, who obtained her doctorate from Harvard Law School and specializes in international law, wrote an article outlining how Russia denies its authority over various pro-Russian separatists and rejects any responsibility for the abuses by the unidentified "green

men”, both before and after the annexation of Crimea in 2014. The article also examines Ukraine’s situation before the conflict started, from a political, economic, and social standpoint.

Moreover, it also argues that a situated international legal approach may utilize different tools from different, even contradictory, legal regimes in order to deconstruct fixed legal positions that ignore the instability of the positions to which they are applied (Korhonen, 2015). This relates to the issue that international law does not apply to corporations, but only to states. This is an issue that needs to be addressed by international law because it means that unless the violations can be attributed directly to a state, it is a lot more complex to build a strong case using international law. Russia has been identified as using proxies, such as paramilitaries, to conduct violence during international conflict. The actions perpetrated by the Wagner group during the 2014 Russian annexation of Crimea are an example of how a state can use state proxies to get around international law. This gray area needs to be addressed as it would make it easier to enforce international law.

In a journal article titled ‘Methods of Enforcing International Law,’ Thomas Raeburn White addresses how the principles of the United Nations Charter, that all nations are members of one community and are bound by the rules and regulations of international law, only exist on paper. He insists that the real question is whether the Security Council is competent to carry out its functions not only in minor matters but under the stress and strain of conflicts of interest among the great powers. He concludes on the matter by writing that experience has shown that the Security Council is not competent under the terms of the U.N. Charter because of the fact that one of the five permanent members can veto action that it believes is inimical to its interests.

White also addresses the American rhetoric regarding the debate about the veto power of the permanent members of the Security Council. While several proposals have been made to

make changes to the U.N. Charter, two of them have been introduced to the United States Senate in the form of resolutions. The first one proposes that the United States should use its influence by voluntary agreement to remove the veto from all questions involving the settlement of international disputes and situations and from the admission of new members. The other, which is more drastic and was supported by sixteen senators, proposes that the United States Government should undertake a revision of the charter without delay so as to eliminate the veto in matters of aggression, armaments for aggression, or the admission of new members and that such revisions should be affected whether or not opposed by a permanent member of the Security Council (White, 1948).

Another limitation of the enforcement of international law is that it does not apply to corporations. The existing international legal system is structured so that corporations are governed only through states, which, in turn, are bound by their international legal obligations. The fast expansion of multinational corporations has led to a weakening of the supervision of corporate activities, which contributes to the challenge that is corporate liability under international criminal. Regulating corporations is difficult as parent companies are mostly separated from daily operations by an abundance of subsidiary companies.

Corporate liability is further complicated by the fact that some large corporations are among the richest entities in the world, which puts them in positions of power to impact regulatory processes (Weikinnis, 2018). The Rome Statute currently limits criminal liability to ‘natural persons’ and doesn’t provide a structure where corporations – considered ‘legal persons’ – can be held liable through international criminal law. Due to this structural limitation, a significant ‘accountability gap’ for corporations has emerged (Bordeleau-Cass, 2019).

International law has often been referred to as “primitive” or a “self-help system” in political and legal science. The lack of centralized means of enforcement has sparked pessimistic comments regarding the value and effectiveness of international law (Noortmann, 2005).

III. International Law in the Case of Ukraine

The available literature surrounding the war in Ukraine is very recent, but the information is still content-rich. The main barrier was the language barrier due to the fact that a lot of the scholarly articles were written by Ukrainian scholars and have not yet been translated into English. The ongoing invasion of Ukraine has fuelled a debate about the role of international law and global and regional institutions in maintaining international peace and security.

Scholars agree, more than ever before, that a reform of the Security Council is much needed if we expect international law to become a more effective enforcement tool. Sayapin, who holds a doctorate in criminal international law, specifies that the reform should focus, in particular, on the council’s membership, and the voting procedure (Sayapin, 2022).

Lewis Grossman, a lawyer, and law professor, wrote about the international legal norms that regulate the use of force in international relations. He delved into the “justifications” presented by Russia, which included a commentary on Putin’s statements and writings. For example, the claim from Russia that it hasn’t used force because it is merely a “peacekeeping operation.” It is crucial to see how Russia is trying to justify its actions against Ukraine using the U.N. Charter. This will help understand the shortcomings of the U.N. Charter. Additionally, this article restates the need to reestablish full compliance with the norms referring to the use of force in international law (Grossman, 2022).

International humanitarian law exists to restrict the suffering caused by warfare and to alleviate its effects. It is necessary because, while war is forbidden according to international law, the U.N. Charter does allow the use of force in some cases. States are allowed to defend themselves individually, or collectively, against an attack. Six major treaties, including more than 600 articles, as well as some customary law rules, outline the restrictions applying to the use of violence in wartime (Gasser, 1998). The Geneva Conventions are at the core of international humanitarian law. They are the body of international law that regulates the conduct of armed conflict and seeks to limit its effects. They specifically protect people who are not taking part in the hostilities and those who are no longer participating in the hostilities, such as wounded, sick, and shipwrecked soldiers and prisoners of war (Geneva Conventions, 1949). The first Geneva Convention applies and protects wounded and sick soldiers on land during war. The second Geneva Convention protects wounded, sick, and shipwrecked military personnel at sea during war. The third Geneva Convention applies to prisoners of war. And the fourth Geneva Convention affords protection to civilians, including in occupied territory (Zartner, 2020). Geneva Conventions apply to states party to the Geneva Conventions, which Russia is. Many states have internalized the Geneva Conventions into their domestic military laws, such as the U.S. It is one of the most widely ratified conventions in the world because states want to be protected during conflicts. In addition to violating the international legal articles regarding the right to go to war, Russia has also violated articles regarding the right conduct during war.

In another article, Lawrence Gostin, a university professor at Georgetown, and Leonard Rubenstein, a lawyer, outlined the numerous attacks involving the use of heavy weapons against healthcare facilities, personnel, patients, and medical supplies. These circumstances create a pressing need for humanitarian health aid to Ukraine. International humanitarian law is a set of

rules for conduct in armed conflict. With its actions, Russia is violating those rules, which is considered a grave violation of International Humanitarian Law and a war crime. This article states that accountability for violence against health care has been exceedingly rare, and not just in the current ongoing conflict in Ukraine. With the use of international law, even commanders could be held accountable, even if they did not directly order the criminal act. Lastly, this article claims that the most powerful means of ensuring accountability would be to eliminate the veto power of permanent members of the Security Council in atrocity crimes (one of the permanent members is Russia). This article stresses the importance of accountability (Gostin, 2022).

The main obstacle to keeping Russia accountable for its actions in Ukraine, in this case, is its position as a permanent member of the U.N. Security Council with veto power. However, some suggested that Russia's position on the Security Council is not completely valid. Indeed, when the U.N. was created, and the Security Council was established, one of the five seats of permanent members was given to the USSR, the same seat that was later reassigned to Russia, which used to be the largest country of the USSR.

In an article for King's College London, Andrew MacLeod, a visiting professor in the department of war studies, goes over how Russia managed to get the USSR's seat following its dissolution. States can change forms, but it does have international legal ramifications. The whole legality of it depends on whether Russia was a "successor state" or a "continuing state" under international law (MacLeod, 2022). Succession is when one state takes over the territory of another state, and the original state ceases to exist. All the old privileges and treaties that the original state was a part of cease to be, and the new state has to go through the process of joining them again, should it want to. A secession is a breakup of states, but the original state still exists. In that case, the original country stays part of everything, but the new state has to go through the

processes again. Those two procedures are outlined in the Vienna Convention on Succession of States in Respect to Treaties.

The literature thus far has established that the veto power of U.N. permanent Security Council members is paralyzing the U.N. in the case of the war in Ukraine, Moreover, it was advanced that international law needs to focus on accountability of both states, and corporations. Working towards closing the impunity gap, and finding an international legal framework that pertains to corporations are crucial steps to make international law more effectively enforced.

METHODS AND LIMITATIONS

In order to find out how international law can go from being a list of guidelines to an effective enforcement tool, I chose to look at the ongoing war in Ukraine as a case study. The war in Ukraine has been ongoing since February 24th, 2022, when Russia invaded Ukraine, consequently violating international law and humanitarian laws. I chose Ukraine as a case study because it is one of the most recent cases of violations of international law, and it was and is still being documented to a great extent. I will look at the accusations brought against Russia, and the various reports regarding the current situation in Ukraine.

In the first section, I will look at the issue of national sovereignty. In order to understand how international law was meant to be enforced, I will look at the existing international legal framework and its limitations. I will explore how states collaborate in regard to international law, and the mechanisms they put in place to enforce it, more specifically, which states were the most involved in creating it, and which ones are now the most involved in enforcing it. I will examine the importance that different states believe international law should have, as well as the influence that the economy and politics have on international law. I will also address the limitations of

international law by looking specifically at the limitations of the Security Council, as well as the impunity gap, and corporate accountability. Moreover, I will explore the threatened recognition of Ukraine's national sovereignty. I will look at the violations committed by Russia that breached Ukraine's territorial sovereignty. Additionally, I will go into the consensus for reformed international law by exploring the problems with enforcement within the U.N.

In the second section, I will look at international treaties. I will discuss the different rhetorics in the war in Ukraine regarding international law. In order to understand the rhetoric, I will be looking at the stances adopted by different states regarding the enforcement of international law in specific cases, such as the invasion of Ukraine. I will be doing so by reading scholarly papers and finding patterns. This will allow me to pinpoint the shortcomings of international law. I will look closely at the phrasing of specific laws and how they could be manipulated to better serve one party or another. I will examine how some states, such as Russia, sometimes act in certain ways to later be able to use international law to defend their actions. I will also study other historical examples where international law wasn't enforced.

I will look at journal articles, blog posts, and any other form of media coming directly from Ukraine to try to address the gap in the literature. I aim to understand what the people living through this war, and this humanitarian crisis, believe that international law can do for them, and should be doing. I also want to understand how they feel about Russia wielding international law to justify their invasion, and whether they believe it is the only thing that could help them or if they put their trust in other mechanisms to get justice. Additionally, I will explore the role that economics and politics have on international law, and how it might influence its effectiveness.

I will provide a more comprehensive vision of international law by dissecting how international law is perceived in Ukraine, as well as the different narratives surrounding international law in Ukraine, to prove violations and point out problems with U.N. that may not have been previously mentioned.

To answer my research question, I will also analyze how international law has failed Ukraine. I will mainly focus on the lack of enforcement of international law, and the issue of the veto power that all five permanent members of the U.N. Security Council hold, one of which is Russia, which makes it impossible to enforce any sanctions against Russia. What is happening in Ukraine can help us understand the limitations of international law and the Security Council. I will also look into the humanitarian laws violated during the war in Ukraine, and how those could be amended. I also acknowledge that this is not the first time international law has been violated, especially by Russia, and I will look briefly at other cases, such as the invasion of Crimea in 2014. I am hoping to find alternatives for the enforcement of international law and to try to find out what they would look like.

I will examine the several reforms proposed by scholars for the U.N., and why they were never implemented. Then, I will try to identify ways to improve the effectiveness of international law. I will focus on practices that will likely improve transparency and accountability.

The limitations of my research include but are not limited to the language barrier, as most of the recent publications regarding the international law aspect of the war in Ukraine were published in Ukrainian and have not been translated yet. Another limitation of my study is that I will not be talking to anyone that has witnessed any of those events, I will only be reviewing the available literature. Moreover, due to time restraints, I have mainly focused my research on the case of Ukraine, and I will mostly only discuss the limitations of the Security Council, the

efficacy of the U.N. in general, and the potential reforms that could be implemented. I believe that it would be beneficial to look at more case studies where international law was ineffective and why. Furthermore, this thesis only focuses on the issue of national sovereignty in the context of international law, also looking at war crimes could have been useful. Future research could also address the war crimes committed by Russia, the history and effectiveness of the International Criminal Court, and the International Court of Justice.

FINDINGS

I. National Sovereignty

The Existing International Legal Framework and Limitations

International law refers to the rules of law relating to the functioning of international institutions or organizations, their relations with each other, and their relations with states and individuals (Oppenheim, 1992). The United Nations counts 193 member states, and upholding international law is one of the organization's primary concerns. Article 25 of the United Nations Charter states, "The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter." (U.N. Charter, art.25) The Security Council comprises 15 members, five of whom are permanent members, each possessing veto power. The five permanent members of the Security Council are the United States, Russia, France, the United Kingdom, and China. As a permanent member of the Security Council, Russia has the power to veto any action the United Nations would consider taking in this war. This demonstrates a fundamental problem in the structure of international law. The fact that there are no exceptions created for a situation where one of the Security Council members is identified

as the aggressor in a conflict shows a profound need to restructure the international legal framework.

Russia has played an important role in international security architecture. In addition to being a permanent member of the Security Council, Russia is a State Party to several U.N. conventions, such as the Genocide Convention on the Prevention and Punishment of the crime of genocide, as well as the 1949 Geneva Convention.

States have held international law to different standards throughout the years. While some countries have automatically adopted international human rights law into their national law, others, such as the United States, have been much more reluctant to do so. The second Bush administration saw international law as an unnecessary and unjustified limitation on exercising American power. Other American politicians view it as a worthless diversion, a real and serious threat to U.S. national interests. Bush said, “Our strength as a nation-state will continue to be challenged by those who employ a strategy of the weak using international fora, judicial processes, and terrorism.” (Bush, 2005) This illustrates one of the most dangerous visions of international law, especially from a permanent member of the U.N. Security Council.

Over the past decades, non-state actors—particularly industry representatives—have increasingly participated in international rule-making as providers of legitimacy, expertise, and funds. This trend towards inclusiveness is likely to increase, partly due to the endorsement of the Sustainable Development Goals to objectives such as “inclusive institutions at all levels,” “enhancing multi-stakeholder partnerships,” and promoting “public-private partnerships” (American Society of International Law, 2020). However, the potential negative consequences are often overlooked. Increased non-state actor participation can skew agenda-setting and, ultimately, international rule-making in a way that disproportionately reflects sectoral interests.

As a result, criticism has emerged in this regard in different areas of governance. U.N. climate change bodies have been criticized for being too close to corporate fossil fuel lobbies. Global financial governance institutions have been charged for leaning towards the interests of the large banking and financial industry they are meant to regulate. And the pharmaceutical industry has been accused of exerting outsized influence in health-related international standard-setting, sometimes in contradiction with public health objectives such as access to medicines. Moreover, philanthropic foundations earmark their contributions, thereby de facto steering the decision-making processes in international organizations that rely on these funds. Some organizations, such as the WHO's Framework of Engagement with Non-State Actors, have recently sought to address these concerns (World Health Organization).

As discussed in the literature review, the accountability gap needs to be addressed more thoroughly by international law, and corporations need to be held liable for international crimes. Moreover, this relates to the impunity gap, meaning that some international actors are exempt from punishment because of the way international law is designed with an inherent imbalance of power. There is a contradiction between the values that international law strives to uphold including, "measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law", as stated by the U.N. Secretary-General (Arajärvi, 2021), and the actual biased application of international law.

Globalization was achieved by drafting basic codes of protection and by monitoring and promoting compliance when possible, given we live in a decentralized world. However, those practices inevitably conflicted with notions of state sovereignty (Franck, 2001). International law is unique because it exists within anarchy, as there is no central global order, the U.N. being the

closest thing to it, but the overall consensus is that international law is effective on those who can stand on their own, to begin with.

Threatened Recognition of Ukraine's National Sovereignty

Sovereignty and Self Determination as core principles in International Law

Sovereignty is a state's ability to govern and rule itself within its own territory without outside interference. It refers to the idea that states are independent, autonomous, and accountable only to their rulers or to the popular will of the people. It is a prime rule in the international system (Bederman, 2001). Self-determination is the principle on which the legitimacy of a state system is based on sovereignty. It is a principle related to the rights of people and distinct national aspirations and was developed in the early 1900s. The customary international law norm of self-determination is seen as an implicit qualification of statehood and sovereignty. The right to self-determination and permanent sovereignty are core principles in international law.

Russia's actions constitute a serious breach of the U.N. Charter, which states: Art.2(4) "All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state." (U.N. Charter, art.2, par.4) Russia also violated Article 1(1) of the United Charter stating "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;" (U.N. Charter, art.1, par.1) Its actions go against the purpose of

the United Nations, and the fact that it is a founding member of the organization undermines everything that the United Nations stands for.

In addition, Russia violated several articles of the Budapest Memorandum. It is a treaty on security assurances in connection with Ukraine's accession to the treaty on the non-proliferation of nuclear weapons signed in 1994.

1. "The Russian Federation, the United Kingdom of Great Britain and Northern Ireland, and the United States of America reaffirm their commitment to Ukraine, in accordance with the principles of the CSCE Final Act, to respect the independence and sovereignty and the existing borders of Ukraine."
2. "The Russian Federation, the United Kingdom of Great Britain and Northern Ireland, and the United States of America reaffirm their obligation to refrain from the threat or use of force against the territorial integrity or political independence of Ukraine, and that none of their weapons will ever be used against Ukraine except in self-defense or otherwise in accordance with the Charter of the United Nations.
3. "The Russian Federation, the United Kingdom of Great Britain and Northern Ireland, and the United States of America reaffirm their commitment to Ukraine, in accordance with the Principles of the CSCE Final Act, to refrain from economic coercion designed to subordinate to their own interest the exercise by Ukraine of the rights inherent in its sovereignty and thus to secure advantages of any kind." (Budapest Memorandum, 1994).

Russia cannot and is not going to guarantee the territorial integrity of Ukraine since it has never taken on such obligations, Prime Minister Dmitry Medvedev said in an interview with Bloomberg. "We do not have to guarantee anything to anyone, because we have never assumed

any obligations on this subject, but we proceed from the fact that the most important task is to calm the situation on the territory of Ukraine, not to guarantee something to someone, but to calm this situation” (Medvedev, 2022). Russia seemed to have forgotten that they had signed the Budapest Memorandum.

Since the start of the war, the world has witnessed the killing of innocent civilians—including children—the bombing and destruction of buildings and infrastructure, and the widespread violation of human rights. Nevertheless, in the current context, it appears to be difficult to secure fair trials in Ukraine for different reasons.

1. Once the war ends, the priority will be reconstructing the country, including the justice system.
2. Ukrainians’ hatred against Russia is growing. This sentiment could have a double effect: on one side, there would be the risk that only crimes committed by Russians would be prosecuted and punished; on the other, the risk of conducting an unfair trial is very high.
3. Considering whether Russia would prosecute and punish those responsible for the alleged crimes appears quite improbable.

Such crimes would undoubtedly be officially justified, denied, or condoned. This holds true, particularly at the governing level.

Putin is using international law to justify his actions in the war in Ukraine and to undermine Ukraine’s sovereignty. Furthermore, Russia’s position as a permanent member of the U.N. Security Council prevents the U.N. from being able to take action. Although Putin’s actions are clear violations of criminal and humanitarian international law, the enforcement mechanisms put in place seem to be working in Russia’s favor in the context of the war in Ukraine.

Putin's language demonstrates an evident disregard for international law. He gives justifications for his invasion that are widely contested. In doing so, he is abusing international law. Furthermore, the enforcement mechanisms put in place for international law are working in Russia's favor in this case because of the position of power that Russia holds within the international legal framework. The main organ in charge of imposing sanctions in international law is the U.N. Security Council, but because of its veto power, Russia has rendered this mechanism useful.

International human rights law can be manipulated to promote and legitimize neoliberal aspirations, demonstrating the inconsistency between the contradictory languages that international law takes on in its different subject streams. For example, supporting the promotion of human rights while, at the same time, disregarding when the practice of international trade and economic law consistently violates human rights (Badaru, 2020). This is what Russia is doing by supporting international human rights by being a party to several treaties that promote international human rights, such as the Geneva Conventions, but also violating those conventions, not agreeing to subject themselves to punishment, and perpetually using international law to justify their actions.

Consensus for a Reformed International Law

Regarding the issue of the veto power awarded to the five permanent Security Council members, there is no mechanism to remove a permanent member of the Security Council written into the U.N. Charter. While there is a process to remove a state from the United Nations as stated in article 6 of the U.N. Charter, "A Member of the United Nations which has persistently violated the Principles contained in the present Charter may be expelled from the Organization

by the General Assembly upon the recommendation of the Security Council.” (U.N. Charter, art.6) It would require a vote of the U.N. General Assembly based on the recommendation of the Security Council. Since Russia has veto power, the Council cannot recommend Russia’s removal without Russia’s agreement. Therefore, this is not a realistic solution.

The need to get rid of the veto power is not merely an issue of common sense, but a question of credibility for international criminal law: which will remain diminished while some states, through their use of the veto power, have been enabled to violate international law without punishment. This structural limitation of the U.N. creates a disparity between the powerful actors, and the rest of the U.N. members. Additionally, it establishes an informal exception to the article on prohibiting the use of force.

Introducing the text titled “Territorial integrity of Ukraine: defending the principles of the Charter of the United Nations” (U.N. 11th emergency special session, 2022), Ukraine’s representative said that, since September 23rd, “the Russian Federation has again violated international law and the sham referenda in four Ukrainian areas pose an existential threat to the United Nations and its Charter”. He urged the Assembly to “defend the Charter principles and reconfirm they remain a strong shield to protect all nations. We are now at a tipping point where the U.N. will either restore its credibility or ultimately fall in failure,” he said (U.N. General Assembly, 2022).

The representative of Latvia, that spoke on behalf of the Nordic and Baltic countries, said, “there is no such thing as a legitimate referendum amid human rights abuses and systematic violations of international humanitarian law, nor is there any such thing as a legal annexation of a State’s territory by another State after threats or direct use of force” (U.N. General Assembly, 2022).

There is a global consensus that while international law provides great guidelines for international conduct, it almost always fails to be effectively enforced. It is important to see how the U.N. system may become weak when those who violate the U.N. Charter coincide with those who have the power to exercise the veto, thus paralyzing the Security Council—which is designed to maintain international peace and security. For this purpose, on April 26th, 2022, the General Assembly held an assembly to discuss the issue of accountability regarding the veto power. The representative of Guyana said, “To build a culture of accountability and transparency around the use of the veto, the proposal to organize a debate in the most representative organ of the United Nations — the General Assembly — is both appropriate and necessary” (U.N. 76th Session, 2022).

According to the Russian Federation's representative, without the veto, the Council would approve and try to implement every questionable decision that obtained a nominal majority of the votes. Russia does not believe that the veto is the problem, but rather the Council members' unwillingness to listen to others and achieve a compromise, which compels the use of the veto. Russia defends the use of the veto power, claiming that an exhaustive explanation is always provided when a veto is cast, and that it is used as a last resort. The Russian representative at the U.N. rejected the General Assembly's attempt to create an instrument to exert pressure on the Council; claiming that the way the General Assembly and the Security Council are structured has allowed the United Nations to function effectively for more than 75 years (U.N. 76th Session, 2022).

Richard M. Mills J.R. (United States) said that when a permanent Council member concludes that a particular resolution will not advance international peace and security, it may use the veto. However, such power comes with responsibility. Whoever casts a veto needs to be

prepared to explain why that resolution would not have aided the maintenance of international peace and security. The U.S. representative supported automatically convening a General Assembly meeting when someone uses their veto power, specifying that the United States would be willing to participate regarding any veto they made. The Russian Federation vetoed resolutions seeking accountability in Syria; a resolution establishing a criminal tribunal on the downing of flight MH-17 over Ukraine; and a resolution when it attempted to annex Crimea illegally. Recently, the Russian Federation vetoed a resolution regarding its aggression against Ukraine. Russia violated the Charter and then blocked the council from addressing the situation. “The veto was not intended as a carte blanche for impunity for the five permanent members, nor was it meant to confer automatic protection from accountability in perpetuity,” he said (U.N. 76th Session, 2022).

Serhii Dvornyk (Ukraine) said that the mechanism adopted today is transparent and neither politicized nor selective. The Charter grants extraordinary power to permanent Council members. The veto is not a privilege; instead, it is a responsibility. The Ukrainian representative stressed that the veto power had been used to prevent the condemnation, investigation, and prosecution of serious crimes. He reminded the Assembly that there was no indication in the Charter’s drafting history that the power was intended to be used in this fashion. Almost every draft resolution in the Council concerning Ukraine has been blocked by “the country occupying the Soviet seat” — the Russian Federation — and he questioned whether such obstruction demonstrates responsibility. Expressing support for today’s resolution and other initiatives to limit the use of the veto, he pointed out that permanent Council members who are responsible for carrying out their duty to maintain international peace and security should have no problem committing themselves to such initiatives (Dvornyk, U.N. 76th Session, 2022). Overall, U.N.

member states seem to agree that this resolution is a step in the right direction and will “guarantee constructive debate” (U.N. 76th Session, 2022).

On February 25th, Tymofiy Mylovanov and Nataliia Shapoval, both from the University of Kiev, gave their take on the events unfolding in Ukraine (Mylovanov, Shapoval, 2022). Mylovanov said that in addition to being attacked from the north, they were being attacked from the east too, which he said came as a surprise. An airbase was attacked by 34 helicopters from Russia from Belarus. He believes that this is key information missing from the narrative because although Russia is the attacker, Belarus still authorized the attack and is part of the invasion, too, unless it isn't a sovereign country anymore, which also needs to be spelled out.

This blind spot in the international law framework allows some to act without accountability. If private and nongovernmental organizations are to be part of the solutions, some changes will need to be made. A limitation of international law is that international law does not apply to corporations, which means that violations of international law perpetrated by corporations cannot be punished. During the 2008 Russian invasion of Georgia, Amnesty International and Human Rights Watch accused both sides of committing abuses against the civilian population (Amnesty International, 2008). Specifically, these organizations have questioned the role of Russian and Georgian-backed armed militia groups in the conflict (Markovic, 2008). Similarly, during the 2014 Russian annexation of Crimea, many gunmen, known as “little green men,” began to take control of government buildings in Crimea. The Wagner group looked like regular Russian military forces, but according to Putin, they were local members of “self-defense groups.” These groups’ conduct could be attributed to Russia under Article 2 of the Draft Articles. “Elements of an internationally wrongful act of a State There is an internationally wrongful act of a State when conduct consisting of an action or omission: (a) is

attributable to the State under international law; and (b) constitutes a breach of an international obligation of the State.” (Draft Articles, 2001). There is an existing consensus about the binding nature of the Draft Articles on State responsibility. The Draft Articles were adopted by the International Law Commission in August 2001. States frequently use the drafts in their domestic system and refer to it as binding international law. This demonstrates respect for the principles of the Draft Articles on State Responsibility is both consistent and widespread. Therefore, as customary international law, the Draft Articles are considered binding international law.

The ongoing war in Ukraine is not an isolated event, but part of a pattern of behaviors. However, it is one of the most extreme examples within this pattern, and it is important that states recognize what is happening and act accordingly.

II. International Treaties

Different Rhetorics in the War in Ukraine Regarding International Law

The ongoing war in Ukraine has generated several different narratives. Putin uses a primarily contested historical account of a conniving west forcing its will on eastern Europe to promote a nationalist narrative of lost imperial glory, and he insisted on the fact that “The collapse of the Soviet Union led to a redivision of the world. ... This array includes promises not to expand NATO eastward even by an inch. To reiterate: They have deceived us, or, to put it simply, they have played us.” (Putin, 2022) He adds, “They sought to destroy our traditional values and force on us their false values that would erode us, our people from within, the attitudes they have been aggressively imposing on their countries, attitudes that are directly leading to degradation and degeneration because they are contrary to human nature. This is not going to happen.” (Putin, 2022) He presents this war as the West trying to undermine his right to

exercise Russian sovereignty across its own territory as he claims that Ukraine and Russia are ‘one people’. He describes Ukraine as “historically Russian land” that was stolen and that doesn’t exist in its own right (Putin, 2022). The Russian Commander Surovikin told Russian TV, “We and Ukrainians are one people. We want Ukraine to be independent of the West and NATO” (Surovikin, 2022). Although this statement has some historical truth, Putin has no authority to speak for Ukraine or make decisions for them.

There is an inherent problem that extends further than the war in Ukraine. Putin firmly believes the world is separated into two teams, and he won’t collaborate with ‘the other side’ and come to an agreement regarding laws that everyone should respect. Putin addressed Russia regarding his opinion on the ‘west’, he said, “You don’t have to look far for examples. First, without approval from the U.N. Security Council, they carried out a bloody military operation against Belgrade, using aircraft and missiles right in the very center of Europe. [They carried out] several weeks of the continuous bombing of cities and critical infrastructure. We have to remember these facts, as some Western colleagues do not like to remember those events, and when we talk about it, they prefer to point not to the norms of international law, but to the circumstances that they interpret as they see fit.” (Putin, 2022)

As discussed in the literature review, some of the critiques regarding international law include that international law is western, and that it can never work for anybody else because it does not take anybody else’s opinion into account; that international law is biased. However, in the context of the critique, what would be considered western values? And who would get to decide? For instance, would the right to be free from torture be considered a western value? And then, what would non-western values be?

There are different rhetorics regarding the war in Ukraine. While most states agree that Russia has violated international law by invading Ukraine, Russia maintains that it has done nothing wrong. Russia violated a wide array of Articles from the U.N. Charter, the Intermediate-Range Nuclear Forces Treaty, the New Strategic Arms Reduction Treaty, the Open Skies Treaty, the Incidents at Sea Agreement, the Treaty on Friendship, cooperation and partnership between Ukraine and the Russian Federation.

On February 21st, 2022, President Putin announced in a speech, “This brings me to the situation in Donbass. We can see that the forces that staged the coup in Ukraine in 2014 have seized power, are keeping it with the help of ornamental election procedures, and have abandoned the path of a peaceful conflict settlement. We had to stop that atrocity, that genocide of the millions of people who live there and who pinned their hopes on Russia, on all of us” (Putin, 2022). He recognized the independence of the Donetsk People’s republic and the Luhansk People’s Republic. Russia held a referendum in regions of Ukraine to ask whether the people wanted to be part of Russia. In the event of a majority of yeses, Putin could have argued his way from an aggressive war to a defensive war. Putin used self-determination as a justification for Russia’s intervention in February 2022. Putin references the events of 2014, when Russia annexed Crimea, which was part of Ukraine. He is referencing the Maiden uprising, in which Russia preferred leader of Ukraine was removed by the commitment of the people to protest against Yanukovich’s administration.

On the other hand, Volodymyr Zelenskyy, the president of Ukraine, is firmly condemning Russia, and believes that this invasion needs to be taken as an opportunity “to show all other potential war criminals in the world that they will inevitably be punished as well. If the biggest is

punished, everyone will be punished.” Moreover, he thinks this should act as a wake-up call to the international community. In an address to the U.N., he said,

“The main thing is that today is the time to transform the system, the core of which is the United Nations. To do this, we propose to convene a global conference. And we ask to do it already in peaceful Kyiv - in order to decide. How we will reform the world security system. How we will really guarantee the inviolability of universally recognized borders and the integrity of states. How we will ensure the rule of international law. It is now clear that the goals set in San Francisco in 1945 during the creation of a global international security organization have not been achieved. And it is impossible to achieve them without reforms. Therefore, we must do everything in our power to pass on to the next generations an effective UN with the ability to respond preventively to security challenges and thus guarantee peace.” (Zelenskyy, 2022)

Moreover, he stressed the importance of addressing the impunity gap: “There can be no more exceptions, privileges. Everyone must be equal. All participants in international relations. Regardless of economic strength, geographical area, and individual ambitions.” (Zelenskyy, 2022). His statement reflects the general consensus regarding international law, and yet none of this has happened yet.

On September 30th, 2022, the U.N. General Assembly failed to adopt a resolution intended to condemn the Russian Federation referenda that preceded Moscow’s proclamation of its annexation of Luhansk, Donetsk, Kherson, and Zaporizhzhia (U.N. General Assembly, 2022). In the same speech, Putin added that Ukraine was subjecting Russian speakers to genocide. Putin used a similar strategy in 2008 when, following the NATO Bucharest Summit regarding the addition of Ukraine and Georgia to the NATO alliance, Russia sent troops to Georgia’s northern border, claiming to support two contested regions. Russia invaded the sovereign state of Georgia, referring to it as a “peace enforcement operation” (Putin, 2008). International law and the way it is used as justification need to be more regulated.

The international response to the conflict in Ukraine demonstrated a great unified effort, but it also further highlighted the issue of selectivity at the global level. Western powers are responsible for a double standard ingrained in political interests by deciding which international legal violations to ignore and which to punish severely, which threatens the legitimacy of the internal legal framework (Chachko, Linos, 2022). The ongoing war in Ukraine is not the first time a U.N. Security Council member violated international law. But it is one of the most internationally debated. Under some administrations, the U.S. has ignored the authority of the U.N. Now that Russia is the subject of the U.N.'s attention, they could easily prove that other security members have violated the principles of international law in the past, and no consequences have resulted. Russia's justification for its actions highlighted the hypocrisy of western powers who condemn Russia despite engaging in similar actions themselves (Chachko, Linos, 2022). There is an evident inconsistency in the manner that international legal actors respond to different international law violations.

Toward a More Comprehensive Vision of International Law

U.S. President Joe Biden' strongly condemned' Putin's decision 'to purportedly recognize the "independence" of the eastern regions of Ukraine' (Biden, 2022). In addition, French President Emmanuel Macron tweeted: 'By recognising the separatist regions in eastern Ukraine, Russia is violating its commitments and undermining Ukraine's sovereignty' (Macron, 2022). Then Australian Prime Minister Scott Morrison declared Putin's claims that the troops being sent into eastern Ukraine were peacekeepers as 'nonsense'. He further stated, 'we cannot have threats of violence being used to seek to advantage nation's positions over others' (Cavandoli, Wilson, 2022).

On August 31st, 2022, President Biden announced,

“Today, the United States, with the G7 and the European Union, will continue to impose severe and immediate economic costs on the Putin regime for its atrocities in Ukraine, including in Bucha. We will document and share information on these atrocities and use all appropriate mechanisms to hold accountable those responsible. As one part of this effort, the United States is announcing devastating economic measures to ban new investment in Russia and impose the most severe financial sanctions on Russia’s largest bank and several of its most critical state-owned enterprises and on Russian government officials and their family members. These sweeping financial sanctions follow our action earlier this week to cut off Russia’s frozen funds in the United States to make debt payments. Importantly, these measures are designed to reinforce each other to generate intensifying impact over time. The United States and more than 30 allies and partners across the world have levied the most impactful, coordinated, and wide-ranging economic restrictions in history” (White House Fact Sheet, 2022).

The economic sanctions taken against Russia demonstrate the stance of the international community.

Moreover, since its invasion of Ukraine, Russia’s membership in the U.N. Human Rights Council was suspended, and Russia was expelled from the Council of Europe (U.N. General Assembly, 2022). This marks the second time in the Council’s 16-year history that a member has been suspended under GA resolution 60/251 paragraph 8 for committing ‘gross and systematic violations of human rights’. Although it does not seem like an appropriate sanction given the circumstances, Council members have committed grave international law violations in the past without any consequences. Russia’s suspension sends a strong and clear signal that the United Nations condemns the actions perpetrated by Russia in Ukraine.

Although some countries don’t particularly care about diplomatic relations, most are concerned with the way they are viewed on by the international community. Evidence shows that Russia is one of those states. Indeed, Russia took the time to send warning letters to some states to the U.N. in New York before the vote regarding its Human Rights Council membership to try

to dissuade them to vote against Russia. This is because of the image that a clear international public condemnation of Russia's actions would project to the world (Freedman, 2022).

The United States, the United Kingdom of Great Britain, and Northern Ireland are also signatories of the Budapest Memorandum. Article 4 of the Memorandum states, "The Russian Federation, the United Kingdom of Great Britain and Northern Ireland, and the United States of America reaffirm their commitment to seek immediate United Nations Security Council action to provide assistance to Ukraine, as a non-nuclear weapon state party to the Treaty on the Non-Proliferation of Nuclear Weapons, if Ukraine should become a victim to an act of aggression or an object of a threat of aggression in which nuclear weapons are used." (Budapest Memorandum, art.4) Although no nuclear weapons have been used in the conflict between Russia and Ukraine so far, Putin said, "In its aggressive anti-Russian policy, the West has crossed every line," Putin said. "This is not a bluff. And those who try to blackmail us with nuclear weapons should know that the weathervane can turn and point towards them" (Putin, 2022). Once again, Putin employs anti-west rhetoric. The USA, U.K., and Russia entered a treaty to defend Ukraine against hostile invasion if it gave up its nuclear arsenal. Ukraine gave up its arsenal, but then one treaty party (Russia) actually did the invading, whilst the other two (USA and U.K.) implemented economic sanctions against Russia, and exported significant armament to Ukraine to help them fight the Russian. However, the war is still ongoing and they do not appear to be prepared to do more. The war in Ukraine stirred the longstanding debate over the legality, effectiveness, and collateral costs of economic sanctions (Chachko, Linos, 2022).

Russia's actions were heavily and readily condemned by the international community. However, those states have also been criticized for their inaction. While they publicly claim their support, they are taking no direct action to prevent further atrocities. The role that economics,

and politics, have on international law is the reason why some states aren't doing anything even if some are bound by treaties. In addition to Russian disinformation and propaganda both inside Russia, and Ukraine aiming to scare the population, using terror as a tool in the war; Russia is putting pressure on other states, so they don't help Ukraine.

Another concerning effect of the Russian invasion is the credibility of the United Nations system and of its commitment to peace, security, and human rights protection. Only U.N.-imposed sanctions, diplomatic, economic, or military, can create a legal obligation on all countries to cooperate and refrain from further supporting Russia (Sipulová, 2022).

Furthermore, the stalling of the international community does not follow from the lack of a legal framework, but from the inherent limits of the structure of the international order. The fact that the Security Council is paralyzed due to the veto power held by permanent members (including Russia) and, the worrying threats of mutually assured destruction and a potential nuclear war tremendously limit the scope of action in the conflict. The international legal framework is not equipped to handle such issues involving a permanent security council member as the aggressor (Sipulová, 2022).

The Russian invasion of Ukraine is not the first example of a Russian invasion of a neighboring country. In 2008, Russia invaded Georgia, and in 2014, Russia invaded Crimea. Neither incident triggered grave sanctions, and once again, international law proved to be ineffective.

Toward a More Effectively Enforced International Law

The different rhetorics surrounding international law in the case of the war in Ukraine demonstrated that the general consensus from international actors is just as important if not more

so than the international legal framework in place. The invasion in Ukraine is demonstrating that it is possible to discipline a great power, as long as there is a reasonable amount of consensus across the world, and a willingness to use all the legal institutions in place. Looking at the early resolutions introduced by the General Assembly from early in March 2022, there were 140 states condemning Russia's aggressive behavior, agreeing that they had violated a fundamental rule of international law - the non-use of force. Ukraine has utilized a great strategy: understanding that the law is completely on their side, they used that to encourage states to come to its aid. Moreover, Ukraine is fighting a legal war (as self-defense), against a manifestly illegal invasion. This has allowed other states to provide them with significant, unprecedented military, and humanitarian assistance to defend themselves. More than just building a consensus around the world, it is important to work to keep it over time.

However, it also highlights that international law is too dependent on whichever consensus the world comes to, which is too unreliable of a mechanism. Hence, it is important to work toward a more equitable, less selective application of international law and to address the shortcomings that have long hindered the international system across different areas.

It is working in Russia's favor because although Russia has grossly violated international criminal and humanitarian law, it took other states coming to a consensus that Russia's actions were illegal, and deciding as a group to apply heavy sanctions and to help Ukraine financially and legally to gain so hope, and yet the conflict is still ongoing.

One of the proposals regarding the veto power of the U.N. Security Council is to render vetoing actions related to the violation of *ius cogens* norms (fundamental principles of international law) illegal. Vetoing in the context of a violation of core principles of international law, such as illegal use of force or the commission of war crimes, not only by the perpetrator but

by any Security Council, permanent member, would be considered illegal (Jalloh, 2020).

Although the Security Council is awarded the most power in the international legal framework, because of its structural limitations, it has not been the main way to enforce international law in the modern era. Instead, states have been punishing states who violate international through a more decentralized mechanism, which includes the use of economic sanctions, trade sanctions, and diplomatic measures. International law creates a set of benefits awarded to members of a global institution who engage in global cooperation. This enables the international community to exclude some states from those benefits when they stop cooperating. So even if a state is unwilling to enforce international law itself, it gets enforced by other states.

Moreover, there is a need for law enforcement agencies with international jurisdiction. Article 52(1) of the United Charter states, “Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations.” (U.N. Charter, art.52, par.1) This article authorizes the existence of regional agencies, such as NATO. NATO is widely considered as the most powerful alliance in history (Vergun, 2020). It aims to keep the peace in a changing world. In addition to building up economic pressure, NATO allies worked to provide Ukraine with aid, weapons, and intelligence that has proved crucial in complicating Russia's invasion plans (Chachko, Linos, 2022). Jens Stoltenberg, NATO's secretary general, said, "NATO is the most successful alliance in history because we have been able to change when the world is changing" (Stoltenberg, 2020). Creating more agencies with a similar structure and an international jurisdiction would greatly increase the effectiveness of international law enforcement.

Furthermore, similar to the shared governance model practiced by some states, a new model for the U.N. could help address some of the structural and institutional barriers that are preventing the current model from giving voice and agency to those who are the most affected by the current ineffectiveness of international law enforcement. That kind of transformative change would ensure that international law is no longer about the most powerful advocating for the most powerless (Sumar, 2010).

In order to participate in this restructuring, organizations could help governments achieve what they would like to see done by several means, such as making experts available and providing training on different issues; agencies could also help states with their own capacity building (Gibson, 2010). Only through a robust engagement with international law can the states promote their national interests in the modern, globalized world. The biggest changes have to happen on a small scale. The United Nations can work towards incorporating corporate responsibility into international law in order to ensure all international actors are held accountable for their violations. Corporations are very powerful international actors, but they are not subject to international law. International law only looks at state agents, but some exceptions need to be made for civil agents such as corporations. Some corporations have been complicit in human rights violations, and there needs to be criminal liability for those corporations.

International criminal law and the International Criminal Court should need to put in place greater measures to respond to corporate crimes. There are different ways they could achieve that. The first would be to broaden and refine the definition of individual criminal liability and the meaning of a 'person' under the Rome Statute in order to include corporations. Another approach would include creating an international forum powerful enough to recognize corporate criminal liability, this forum would need to work in close cooperation with

governments and national and regional organizations. Lastly, corporate liability for international crimes could be expanded within domestic law, where it is the most developed (Bordeleau-Cass, 2019). The aim is to tackle corporate impunity by creating a more robust international legal framework that pertains to corporate entities, as well as individuals behind the crime, which would benefit international justice as a whole.

Furthermore, something similar to the ‘Malabo Protocol,’ which was implemented by the African Union, could be applied elsewhere to hold corporations accountable. The African Union’s ‘Malabo Protocol,’ which was adopted to implement the African Court of Justice and Human Rights, has put forth an innovative expansion of criminal liability to corporations. Article 46(c) of the ‘Malabo Protocol’ states, “For the purpose of this Statute, the Court shall have jurisdiction over legal persons, with the exception of States.” This article pertains to cases when corporate intentions to carry out an offense can be established by proving that the corporation’s policy allowed the offending act to occur, or that “actual or constructive knowledge” of the relevant information about the offense was present within the corporation (Malabo Protocol, 2014). This represents the first time that corporate criminal liability is included in an international criminal court, aside from prosecutions of corporations in domestic courts or regional human rights tribunals such as the European Court of Human Rights (Open Society Justice Initiative, 2018).

Despite being limited to the crimes committed within the territories of state parties, the Malabo Protocol is groundbreaking when it comes to corporate accountability (Open Society Justice Initiative, 2018). This protocol could potentially trigger similar efforts in other places, or even provoke changes at the International Criminal Court level to improve the culture of corporate accountability. However, some have critiqued the Malabo Protocol for having such a

large jurisdiction, concerned with the capacity of the court to resolve cases. The International Criminal Court as well as other international tribunals, often take many years to resolve.

Furthermore, regulating how international law is used as justification for clear violations is a key step toward closing the impunity gap. The way this could be done is by making sure there is more clarity in treaties and less room for interpretation. International law needs to go from a declaration of rules of conduct to a credible threat, and part of this process is making sure that every single international actor is addressed and included in international law.

As for the case of the war in Ukraine, the crime of aggression committed by Russia, there have been several proposals regarding how to prosecute and punish the crime of aggression. Some proposed establishing an international or hybrid tribunal, with the scope of only prosecuting and punishing the crime of aggression, addressing the present International Criminal Court impunity gap. The existence of this impunity gap means that some international actors are exempt from punishment. Fatou Bensouda, the Prosecutor of the International Criminal Court gave a statement regarding the immunity gap in 2018. She said, “My office has always emphasized the importance of cooperation and complementarity; it is, therefore, crucial to develop strong linkages between national judicial systems and the ICC.” (Bensouda, 2018). Furthermore, she added, “we also recognize that collaboration is key to closing the impunity gap” (Bensouda, 2018). Collaboration of different state actors and agencies will increase the likelihood of enforcement of international law. Developing a stronger link between national and international legal systems would ensure that international law would be better enforced. In the same way, some states incorporated the Geneva Conventions into their domestic law, the same could be done with every treaty ratified by a state. This process is called internalization, and it refers to the vehicle through which states incorporate international law into domestic practice

(Cleveland, 2001). However, relying entirely on domestic courts isn't advised. In the case of the war in Ukraine, Ukrainian domestic legal most likely will not be structurally and financially ready to organize such a high-profile trial (Komarov, Hathaway, 2022).

In 2016, the Ukrainian parliament amended the Constitution in order to allow for ratification of the Rome Statute by adding a provision to Article 124 stating that "Ukraine may recognise the jurisdiction of the International Criminal Court subject to the conditions determined by the Rome Statute of the International Criminal Court." Additionally, the same amendment deleted paragraph 3 of Article 124, one of the two provisions that the CCU had cited as an impediment to ratification of the Rome Statute.

Tymofiy Mylovanov and Nataliia Shapoval, both from the University of Kiev do not believe that sanctions will be effective at stopping the invasion, nor will they reverse what has already happened. According to them, the sanction approach does not work, and there needs to be a different approach. Strengthening the military and the economy, pouring more resources into the financial system, and securing trade routes are the areas that need attention and support. Although their argument is justifiable, as economic sanctions are not producing quick results, they are important because it is a clear sign of where the international community stands on the matter. In the absence of more effective mechanisms, powerful international actors need to lead by example. International law can be helpful by setting a clear and compelling precedent demonstrating that the international community will not tolerate an aggressive war (Sipulová, 2022).

Scholars have explored potential reforms, from using domestic law to impose restrictions on sanctioning in the main sanctions-imposing jurisdictions, to even more ambitious and fundamental reforms, such as pushing for more global financial transparency and moving toward

energy self-sufficiency to diminish dependence on powers that violate international law (Chachko, Linos, 2022). As witnessed in the case of the war in Ukraine, the fact that many states depended on Russia for oil and gas greatly diminished their range of action.

CONCLUSION

The analysis of the findings suggests that there is a real need to reform international law and the way it is enforced. Law, may it be a national or international system, is constantly evolving and adapting to new societal changes. It is important to ensure that the structures and mechanisms put in place to enforce it are being updated along with the law. As many scholars have suggested, the challenge international law is facing is not so much agreeing to a shared international framework but rather enforcing it when one party violates it.

International law is a unique legal system separate from domestic legal systems, with its own goals. While this thesis set out to find ways to enforce international law more effectively, the U.N. Security Council and its structural limitations prevent fundamental challenges to the order on which it has been founded.

Furthermore, the crisis in Ukraine highlights the shortcomings of the existing legal framework regarding migration and refugees. Another avenue of potential reforms would include expanding the definition of an international refugee to cover situations of armed conflict and generalized violence, addressing problems of racism and equity, and institutionalizing mechanisms for facilitating responsibly sharing mechanisms when mass displacements occur. The Ukraine war is an important milestone toward a more systematic consideration of concrete responsibility-sharing mechanisms.

With more time and resources, one could also explore how the application of international law varies from state to state, and the deeply ingrained double standard witnessed in the behavior of U.N. member states. Additionally, it would be helpful to conduct more extensive research, including case studies of more states, and examine the way they violated international law, if international law was enforced, and if not, why not.

Additionally, transitional justice and the role of truth commissions should be explored further as a way to uphold the truth and the memory of traumatic events. This would also include compensating the victims financially or morally. Moral reparations could include public apologies.

It is important to recognize how much progress international law, and international alliances, in general, are responsible for. And although the United Nations, as the center of international law, is not perfect, nor in its structure or conduct, it has established a global order that promoted and strengthened democratic institutions around the world. Additionally, the architecture of the international system is committed to the values of peace and human rights protection. There has never been more commitment to human rights protection than today, when countries, both democratic and non-democratic, are bound by a myriad of international treaties and conventions.

The war in Ukraine has raised core challenges for international law, and has stirred the debate around the effectiveness, equality, and enforcement of international law. I came to the conclusion that the root of the problem is the existence of the impunity gap, as well as corporate immunity. International law needs to adapt its framework, to include corporations. Additionally, the immunity gap needs to be addressed either by reforming the Security Council and the powers

it holds or by instituting organizations that wouldn't be under the Security Council's direct jurisdiction in order to keep those members accountable.

Finally, one of the most underexplored dimensions of Russia's invasion of Ukraine is the failure of the West to prevent it. However, comprehending Russia's reasoning behind this invasion is very important. The West's perceptions and actions towards Russia seem to rely on faulty assumptions that might be partly responsible for that failure of deterrence. The failed deterrence of Russia's invasion suggests a need to formulate new, more effective preventative measures (Minzarari, 2022).

Although I use the war in Ukraine as a case study for my investigation of the effectiveness of international law, my propositions to make international law more effective are applicable to any violation pertaining to international law.

WORK CITED

Amnesty Organisation. (2008, August 14). Georgia, Russia: Suffering of civilians must stop and abuses must be investigated. Amnesty International. Retrieved November 18, 2022, from <https://www.amnesty.org/en/documents/EUR56/007/2008/en/>

Arajarvi, N. (2021, March 24). The core requirements of the International Rule of law in the practice of States - Hague Journal on the rule of law. SpringerLink. Retrieved December 6, 2022, from <https://link.springer.com/article/10.1007/s40803-021-00152-8>

Bordeleau-Cass, J. (2019). Analysis: Towards greater accountability for corporate involvement in International Crimes. Analysis: Towards Greater Accountability for Corporate Involvement in International Crimes | Global Justice Journal. Retrieved December 3, 2022, from <https://globaljustice.queenslaw.ca/news/analysis-towards-greater-accountability-for-corporate-involvement-in-international-crimes>

Bordeleau-Cass, J. (2019). The 'accountability gap': Holding Corporations liable for International Crimes. The 'Accountability Gap': Holding Corporations Liable for International Crimes | Global Justice Journal. Retrieved December 1, 2022, from <https://globaljustice.queenslaw.ca/news/the-accountability-gap-holding-corporations-liable-for-international-crimes>

Bradley, A. S. (2019, September 4). International law's racism problem. *Opinio Juris*. Retrieved November 18, 2022, from <http://opiniojuris.org/2019/09/04/international-laws-racism-problem/>

Cavandoli, S., & Wilson, G. (2022, July 26). Distorting fundamental norms of international law to resurrect the Soviet Union: The International Law Context of Russia's invasion of Ukraine - Netherlands International Law Review. SpringerLink. Retrieved December 1, 2022, from <https://link.springer.com/article/10.1007/s40802-022-00219-9>

Chachko, E., & Linos, K. (2022, May 23). International law after Ukraine: Introduction to the symposium: American Journal of International law. Cambridge Core. Retrieved December 1, 2022, from <https://www.cambridge.org/core/journals/american-journal-of-international-law/article/international-law-after-ukraine-introduction-to-the-symposium/71EF9DF1080B63279D684104BB213791>

Charter of the United Nations and Statute of the International Court of Justice. 1945.

Cleveland, S. (n.d.). Norm Internalization and U.S. Economic Sanctions. Yale Law School Legal Scholarship Repository. Retrieved December 1, 2022, from https://openyls.law.yale.edu/bitstream/handle/20.500.13051/6420/05_26YaleJIntlL1_2001_.pdf?sequence=2

Freedman, W. by R., Freedman, R. (2022, April 7). Russia and the UN Human Rights Council: A step in the right direction. EJIL. Retrieved December 3, 2022, from <https://www.ejiltalk.org/russia-and-the-un-human-rights-council-a-step-in-the-right-direction/>

Gasser, H.-P. (1998, November 30). International humanitarian law and the Protection of War Victims. ICRC. Retrieved November 18, 2022, from <https://www.icrc.org/en/doc/resources/documents/misc/57jm93.htm#:~:text=The%20objective%20of%20international%20humanitarian,of%20humanity%20on%20the%20other.>

Global Justice Now. (2018, October 17). 69 of the richest 100 entities on the planet are corporations, not ... Retrieved December 1, 2022, from <https://www.globaljustice.org.uk/news/69-richest-100-entities-planet-are-corporations-not-governments-figures-show/>

Gostin, Lawrence, and Leonard S. Rubenstein. Attacks on health care in the war in Ukraine: International law and the need for accountability. JAMA. Retrieved August 18, 2022, from <https://pubmed.ncbi.nlm.nih.gov/35363248/>

Kierulf, J. (2017). Disarmament under international law: McGill-Queen's University Press. Disarmament under International Law | McGill-Queen's University Press. Retrieved August 18, 2022, from <https://www.mqup.ca/disarmament-under-international-law-products-9780773548237.php>

Kirgis, F. (1996, January 22). Enforcing international law. ASIL. Retrieved November 18, 2022, from <https://www.asil.org/insights/volume/1/issue/1/enforcing-international-law>

Komarov, A., & Hathaway, O. (2022, April 5). Ukraine's constitutional constraints: How to achieve accountability for the crime of aggression. Just Security. Retrieved December 3, 2022, from <https://www.justsecurity.org/80958/ukraines-constitutional-constraints-how-to-achieve-accountability-for-the-crime-of-aggression/>

Korhonen, O. (2019, March 6). Deconstructing the conflict in Ukraine: The Relevance of International Law to hybrid states and wars: German Law Journal. Cambridge Core. Retrieved

September 22, 2022, from

<https://www.cambridge.org/core/journals/german-law-journal/article/deconstructing-the-conflict-in-ukraine-the-relevance-of-international-law-to-hybrid-states-and-wars/641F51E8F498AE16A206B629C9BE592D>

Lanza, G. (2022, July 3). The fundamental role of international (criminal) law in the war in Ukraine. Foreign Policy Research Institute. Retrieved August 18, 2022, from <https://www.fpri.org/article/2022/07/the-fundamental-role-of-international-criminal-law-in-the-war-in-ukraine/>

Mckinnon, F. (2009, July 21). Reprisals as a method of enforcing international law: Leiden Journal of International Law. Cambridge Core. Retrieved August 18, 2022, from <https://www.cambridge.org/core/journals/leiden-journal-of-international-law/article/reprisals-as-a-method-of-enforcing-international-law/E2728CA38C241AEECAB8CF303D6E8869>

Minzarari, D. (2022, April 29). Failing to deter Russia's war against Ukraine: The role of misperceptions. Stiftung Wissenschaft und Politik (SWP). Retrieved December 7, 2022, from <https://www.swp-berlin.org/en/publication/failing-to-deter-russias-war-against-ukraine-the-role-of-misperceptions>

NATO's success depends on ability to change as needed. U.S. Department of Defense. (n.d.). Retrieved December 1, 2022, from <https://www.defense.gov/News/News-Stories/Article/Article/2443415/natos-success-depends-on-ability-to-change-as-needed/>

Open Society Foundations. (2018, August). A Handbook for Designing Accountability Mechanisms for Grave Crimes. Justice Initiatives. Retrieved December 3, 2022, from <https://justiceinitiatives.org/>

Protocol on amendments to the Protocol on the statute of the African Court of Justice and Human Rights. Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights | African Union. (2014, June 27). Retrieved December 5, 2022, from <https://au.int/en/treaties/protocol-amendments-protocol-statute-african-court-justice-and-human-rights>

Press, B. E. (2022, March). The Invasion of Ukraine: A Gross Violation of International Law. Human Rights Brief, vol. 25, no. 2, Mar. 2022, pp. 74–81. "The invasion of Ukraine: A

gross violation of international law" by Claudio Grossman. Retrieved August 18, 2022, from https://works.bepress.com/claudio_grossman/177/

Ramina, L. (1970, January 1). Twail - "third world approaches to international law" and human rights: Some considerations*. *Revista de Investigações Constitucionais*. Retrieved December 1, 2022, from <https://www.redalyc.org/jatsRepo/5340/534057837013/html/index.html>

Reinisch, A. (2016, November 3). *International law and...: Select proceedings of the European Society of International Law, vol 5, 2014*. Google Books. Retrieved November 18, 2022, from https://books.google.com/books/about/International_Law_and.html?id=ENehDQAAQBAJ

Sayapin, S. (2022, June 13). Russia's invasion of Ukraine: A test for international law. *Nature News*. Retrieved August 18, 2022, from <https://www.nature.com/articles/s41562-022-01402-x>

Silverburg, S. (2011). *International law: Contemporary issues and future developments*. Routledge & CRC Press. Retrieved August 18, 2022, from <https://www.routledge.com/International-Law-Contemporary-Issues-and-Future-Developments/Silverburg/p/book/9780813344713>

Šipulová, K. (2022, June 5). *International law after the war in Ukraine: The crumbling cascade*. Oxford Global Society. Retrieved December 3, 2022, from <https://oxgs.org/2022/05/19/international-law-after-the-war-in-ukraine-the-crumbling-cascade/>

United Nations. *Universal Declaration of Human Rights*. 1948.

Wonicki, R. (2022). *Is Order in International Relations Justified? An Online Journal of Philosophy*, vol. 16, no. 1. Retrieved August 19, 2022, from https://www.kritike.org/journal/issue_30/wonicki_june2022.pdf

World Health Organization. (2022). *Who's engagement with non-state actors*. World Health Organization. Retrieved December 1, 2022, from <https://www.who.int/about/collaboration/non-state-actors>

World Organisation Against Torture (OMCT). (2022, May 12). *Crimes in Ukraine must not go unpunished*. OMCT. Retrieved November 18, 2022, from <https://www.omct.org/en/resources/statements/crimes-in-ukraine-must-not-go-unpunished>

Zartner, D. (2020, August- December). *International Law and Mechanisms Lecture*. University of San Francisco