



ANALYSIS

# RUSSIA'S LEGAL ARGUMENTS TO JUSTIFY ITS AGGRESSION AGAINST UKRAINE

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Cover page photo: Smoke rises from the territory of the Ukrainian Defence Ministry's unit, after Russian President Vladimir Putin authorized a military operation in eastern Ukraine, in Kyiv, Ukraine, 24 February 2022 (Valentyn Ogirenko / Reuters / Scanpix)

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## INTRODUCTION

Russia launched a renewed invasion of Ukraine on 24 February 2022 and was immediately criticised for violating the fundamental principles of international law – the prohibition of the use of armed force in international relations.<sup>1</sup> Within a week, the United Nations General Assembly held an Emergency Special Session where 141 states condemned, in the strongest terms, Russia’s aggression against Ukraine.<sup>2</sup> Furthermore, it demanded that Russia “immediately cease its use of force against Ukraine and to refrain from any further unlawful threat or use of force against any Member State” and “immediately, completely and unconditionally withdraw all of its military forces from the territory of Ukraine within its internationally recognized borders.”<sup>3</sup> The international community has subsequently and frequently reaffirmed these positions in various forums.

Nevertheless, Russia has maintained that it has legitimate causes to conduct a “special military operation” in Ukraine. While its legal arguments fail scrutiny, it is worthwhile to examine these arguments in order to understand how Russia develops useful narratives, builds its legal case, and exploits the ambiguities in international law. One may wonder why we should undertake such an analysis when it is clear that Russia’s actions are blatantly unlawful, whereas Ukraine is a victim of massive aggression not witnessed for decades. The answer is: there are still some people who favour Russia’s position and may themselves use similar legal arguments. Therefore, it is necessary to show that Russia’s justification for its aggression against Ukraine is erroneous, opportunistic, and dangerous.

<sup>1</sup> United Nations, “[Charter of the United Nations](#)”, 1 UNTS XVI, 24 October 1945, Chapter 1, Article 2(4).

<sup>2</sup> United Nations, General Assembly resolution 11/1, “[Aggression against Ukraine](#)”, A/RES/ES-11/1, 2 March 2022, paras 14–15.

<sup>3</sup> United Nations, General Assembly resolution 11/1, paras 3–4.

## 1. RECOGNITION OF DONETSK AND LUHANSK

In May 2014, the Ukrainian regions of Donetsk and Luhansk organised so-called “referendums” to determine their status – a development similar to what had happened two months earlier in Crimea). The organisers claimed that the overwhelming majority supported independence from Ukraine and declared Donetsk and Luhansk independent states. The international community dismissed those “referendums” as unconstitutional and non-compliant with international standards.<sup>4</sup>

Despite occasional calls to invite Russia to intervene militarily or to join Russia following the Crimean model, Donetsk and Luhansk remained separate entities. Although Russia did not officially recognise their independence, it supported the separatist regions in many ways, including in their fight against Ukraine. Over the years, Russia increased its influence and presence in Donetsk and Luhansk. Russia’s military support became so extensive that one could plausibly argue that the fighting in these regions was, in fact, an international armed conflict between Russia and Ukraine.

But on 21 February 2022, Russia decided to change its approach and officially recognised Donetsk and Luhansk as independent states.<sup>5</sup> President Putin gave a speech explaining his reasons for the recognition.<sup>6</sup> He signed the executive orders on recognition and concluded separate treaties of friendship, cooperation, and mutual assistance between Russia, Donetsk and Luhansk.<sup>7</sup> Numerous states and international organisations condemned the

<sup>4</sup> Ukraine, “[Конституція України](#) [The Constitution of Ukraine]”, 28 June 1996, Article 73; Council of Europe, Venice Commission, “[Revised guidelines on the holding of referendums](#)”, 8 October 2020.

<sup>5</sup> President of Russia, “[Signing of documents recognising Donetsk and Lugansk People’s Republics](#)”, 21 February 2022.

<sup>6</sup> President of Russia, “[Address by the President of the Russian Federation](#)”, 21 February 2022.

<sup>7</sup> Government of the Russian Federation, “[Договор о дружбе, сотрудничестве и взаимной помощи между Российской Федерацией и Донецкой Народной Республикой](#) [Treaty of Friendship, Cooperation and Mutual Assistance between the Russian Federation and the Donetsk People’s Republic]”, 28 February 2022, Government of the Russian Federation, “[Договор о дружбе, сотрудничестве и взаимной помощи между Российской Федерацией и Луганской Народной Республикой](#) [Treaty of Friendship, Cooperation and Mutual Assistance between the Russian Federation and the Luhansk People’s Republic]”, 28 February 2022.

recognition as a violation of international law and warned that it would deteriorate the situation in the Donbas region.<sup>8</sup>

Before the recognition, Russia had considered – at least legally speaking – Donetsk and Luhansk as parts of Ukraine. Any activity in these regions by Russia was – from the perspective of international law – a violation of the territorial integrity of Ukraine, as well as an interference in the internal affairs of Ukraine. This was one of the reasons why Russia officially maintained in 2014–2022 that it was not present in the Donbas region – although the reality on the ground was quite different.

Once Russia had recognised Donetsk and Luhansk, it was possible to establish inter-state relations with these entities. Under international law, municipal governments do not have the right to invite other states to intervene and assist – but states do. Just minutes after Russia had recognised Donetsk and Luhansk as independent states, they concluded treaties of friendship, cooperation, and mutual assistance (21 February). These treaties provided the basis to request and provide military assistance:<sup>9</sup>

- State parties work closely to protect their sovereignty, territorial integrity, and security, and engage in consultations with a view to ensuring their joint defence and upholding peace and mutual security (Article 3).
- State parties take jointly all measures within their power to remove threats to peace and breaches of the peace and to counter acts of aggression against them, and offer one another the necessary assistance, including military assistance, in the exercise of the right of individual or collective self-defence (Article 4).
- For the purpose of ensuring the security, peace and stability, state parties grant to

each other the right to employ its armed forces in the construction, use, and improvement of military facilities in its territory (Article 5).

Just in one day, on 22 February, the State Duma ratified both treaties, making it obvious that all documents had been prepared well in advance. Then, the heads of Donetsk and Luhansk People’s Republics sent their requests for “assistance in defence against the aggression of Ukraine” (22 February).<sup>10</sup> President Putin reacted favourably and requested approval from the Federation Council to use the Russian Armed Forces abroad without giving any details of the planned deployment (22 February).<sup>11</sup> Finally, the Federation Council gave its consent

*Russia’s move is not a new trick: it has used “peacekeeping” as a pretext for military interventions in the “near abroad” since the 1990s*

to use Russia’s troops outside Russia “on the basis of generally recognised principles and norms of international law”, leaving all the details, such as the number of formations, areas of operations, tasks, and timeframe, for the president to decide (22 February).<sup>12</sup> It is impressive how many tasks were completed in one day.

President Putin said that Russia’s armed forces will perform their “peacekeeping functions” in the Donbas region.<sup>13</sup> The United Nations has the longest and most extensive experience regarding the deployment of peace operations, so when Secretary-General Guterres commented on the development, he stated that the Russian troops “are not peacekeepers at all.”<sup>14</sup> Russia’s move is not

<sup>8</sup> Ministry of Foreign Affairs of the Republic of Estonia, “[Ministry of Foreign Affairs summons Russia’s chargé d’affaires](#)”, 22 February 2022; NATO, “[Statement by the NATO Secretary General on the recognition by Russia of the self-proclaimed Donetsk and Luhansk “People’s Republics”](#)”, 21 February 2022.

<sup>9</sup> United Nations, General Assembly, “[Letter dated 3 March 2022 from the Permanent Representative of the Russian Federation to the United Nations addressed to the Secretary-General](#)”, A/76/740-S/2022/179, 3 March 2022.

<sup>10</sup> United Nations, General Assembly, “[Letter dated 3 March 2022](#)”.

<sup>11</sup> President of Russia, “[Vladimir Putin submits proposal to Federation Council to approve resolution authorising use of Armed Forces abroad](#)”, 22 February 2022.

<sup>12</sup> Federation Council of the Russian Federation, “[Об использовании Вооруженных Сил Российской Федерации за пределами территории Российской Федерации \[Resolution authorising use of Armed Forces abroad\]](#)”, 22 February 2022.

<sup>13</sup> Paul McLeary and Andrew Desiderio, “[As Putin sends troops into Donbas, White House avoids the ‘I’ word](#)”, *Politico*, 21 February 2022.

<sup>14</sup> United Nations, “[Department of Public Information, Secretary-General’s press encounter on Ukraine](#)”, 22 February 2022.

a new trick: it has used “peacekeeping” as a pretext for military interventions in the “near abroad” since the 1990s.

Russia’s formal recognition of Donetsk and Luhansk violated Ukraine’s sovereignty and territorial integrity and constituted interference in Ukraine’s internal affairs. Donetsk and Luhansk remain separatist regions, which unconstitutionally tried to break away from Ukraine. By recognition, Russia helps these regions to reinforce their claim and bolster their de facto self-governing status, as well as hampers the efforts of the Ukrainian government to regain control in the Donbas region. The United Nations General Assembly reaffirmed “the sovereignty, independence, unity and territorial integrity of Ukraine within its internationally recognised borders, extending to its territorial waters.”<sup>15</sup> Moreover, it considered Russia’s decision “related to the status of certain areas of the Donetsk and Luhansk regions of Ukraine as a violation of the territorial integrity and sovereignty of Ukraine and inconsistent with the principles of the [United Nations] Charter” and demanded that Russia “immediately and unconditionally reverse the decision related to the status of certain areas of the Donetsk and Luhansk regions of Ukraine.”<sup>16</sup> Effectively, the General Assembly contested Donetsk and Luhansk’s independence – these regions remain not states but integral parts of Ukraine. There is, indeed, no minimum “threshold of recognitions” required to consider a political entity a proper state, whereas a path to statehood starts with the first legal recognition. However, the acts of recognition that are in clear violation of international law do not count.

*There is, indeed, no minimum “threshold of recognitions” required to consider a political entity a proper state, whereas a path to statehood starts with the first legal recognition*

Moreover, the recognition of Donetsk and Luhansk was self-serving for Russia itself, which created the pre-conditions for these regions’ subsequent “independence.” At the time, Russia was the only state to recognise

<sup>15</sup> United Nations, General Assembly resolution 11/1, “Aggression against Ukraine”, para. 1.

<sup>16</sup> United Nations, General Assembly resolution 11/1, “Aggression against Ukraine”, paras 5–6.

Donetsk and Luhansk (with Syria and North Korea following suit).<sup>17</sup> Other states were not only passive but actively against both independence and recognition (option expressed via the General Assembly), which had a decisive counter-effect against Russia’s isolated recognition. To put it in perspective, if Russia claims that the independence of Donetsk and Luhansk is legitimate under international law, then it is illogical to dismiss the independence of Kosovo on similar legal grounds – one cannot have it both ways.

## 2. THE PEOPLE’S REPUBLICS

Since Russia occupied Kherson in March 2022, there have been reports that Russia wants to follow the Donetsk and Luhansk model and create another “people’s republic” in Kherson.<sup>18</sup> Remarkable is the proposed name of this new puppet state: not “a republic” but a “people’s republic.”

This puppet state’s full name may provide some information about its political regime but has no legal significance under international law. For example, the “Republic of Estonia” shows that Estonia is a republic; the “Kingdom of Denmark” proclaims that Denmark is a kingdom; the “Federal Republic of Germany” manifests that Germany is a republic and a federation. Yet, a full name may sometimes be misleading. For instance, the “Democratic People’s Republic of Korea” is not democratic by any standards. Historically, this word combination – “the people’s republic” – used to constitute the official name of several communist and left-wing states, such as China, Laos, Algeria, and Bangladesh, some of whom retained it.

Where does this fixation on the name come from? One possible logical explanation is that, in the case of Kherson, as well as Donetsk and Luhansk, it is meant to indicate the local population’s alleged desire

<sup>17</sup> Lilian Wagdy and Lina Najem, “[Syria recognizes independence, sovereignty of Donetsk, Luhansk -state news agency](#)”, *Reuters*, 29 June 2022; Ethan Jewell and Ifang Bremer, “[North Korea recognizes breakaway republics of Donetsk and Luhansk in Ukraine](#)”, *NKNews*, 14 July 2022.

<sup>18</sup> Grzegorz Kuczyński, “[Will Russia Create New “People’s Republic” In Kherson?](#)”, *Warsaw Institute*, 25 April 2022.

to establish a new separate state and, thus, to challenge the central government in Kyiv. It is part of a political narrative to gain attention and sympathy for the idea. However, the word combination itself does not legitimise a “new state” or cure its “original sin”: foreign interference and armed aggression.

*The word combination itself does not legitimise a “new state” or cure its “original sin”: foreign interference and armed aggression*

The International Court of Justice notes that the declaration of independence is illegal provided there was “unlawful use of force or other egregious violations of norms of general international law, in particular those of a peremptory character (jus cogens).”<sup>19</sup> As long as Russia’s military occupation in Kherson Oblast continues, a referendum or subsequent declaration of independence is illegitimate. The local population cannot be expected to express free will whilst under occupation. Therefore, a “people’s republic” is founded solely in the interest of the occupying power.

To sum up, the “people’s republic” is smoke and mirrors and Russia’s tactic of choice.

Such state-like entities give some advantages to their creator. First, annexation is a flagrant violation of international law and is bound to generate plenty of negative responses. So, why annex if you can assert enough control over a territory by other means? Instead,

*Many states in the international community brush over such crucial details, while simple formalities may satisfy them*

Russia either incites or manipulates the local population to exercise their alleged right to self-determination and to establish a separatist state. Second, Russia itself maintains plausible deniability. It, nevertheless, proclaims the new reality on the ground, swiftly recognises the new state, and assumes control via expeditious bilateral agreements. To a distant observer, this legal model – already tested in Donetsk

and Luhansk – may even appear legitimate, especially when compared to an annexation. Unfortunately, many states in the international community brush over such crucial details, while simple formalities may satisfy them.

### 3. PUTIN’S SPEECH

When Russia invaded Ukraine on 24 February, President Putin addressed the nation and explained the reasons behind his “special military operation.”<sup>20</sup> He blamed the West for its military interventions and “NATO expansion” to the east. He accused Ukraine of nationalism and discrimination against the Russian-speaking population. He provided both direct and indirect legal arguments for Russia’s invasion. Putin’s speech exemplifies Russia’s favorite legal trick – “You have done it before, so we can do it now” – regardless of whether the circumstances are comparable.

#### 3.1. THE COLLECTIVE SELF-DEFENCE

The most direct legal argument is the claim that Russia is participating in collective self-defence on the side of Donetsk and Luhansk. Having painted a bleak picture of Ukraine, Putin’s speech concluded, “In this context, in accordance with Article 51 (Chapter VII) of the UN Charter, with permission of Russia’s Federation Council, and in execution of the treaties of friendship and mutual assistance with the Donetsk People’s Republic and the Lugansk People’s Republic, ratified by the Federal Assembly on February 22, I made a decision to carry out a special military operation.”

Without being an outright lie, Putin’s assertion about the United Nations Charter was, nevertheless, misleading. Self-defence is, indeed, a fundamental right enshrined in Article 51 of the founding document:<sup>21</sup>

Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a

<sup>19</sup> International Court of Justice, “[Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo](#)”, Advisory Opinion, I.C.J. Reports, 22 July 2010, 437–8, para. 81.

<sup>20</sup> President of Russia, “[Address by the President of the Russian Federation](#)”, 24 February 2022.

<sup>21</sup> United Nations, “[Charter of the United Nations](#)”, Chapter 1, Article 1.

Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

Russia sent a letter to the Security Council explaining that Russia exercises self-defence.<sup>22</sup> The letter, however, did not contain any further explanation and simply referred to Putin's speech attached to it. Russia ticked one more compulsory box in case of collective self-defence: the victim state needs to request assistance.<sup>23</sup> This condition is meant to prevent states from acting unilaterally and for ulterior motives, so Putin mentioned that the "people's republics of Donbass [Donetsk and Luhansk] have asked Russia for help."

De jure, Russia did fulfil its procedural obligation to inform the UN Security Council and received formal assistance requests from Donetsk and Luhansk. Neither token, however, would automatically authorise lawful self-defence.

Both the right to request military assistance and participation in collective self-defence apply exclusively to states. Insurgent or separatist groups do not have such authority, whereas aiding and abetting them, especially with military assistance, would violate the principle of non-intervention and constitute interference in internal affairs.<sup>24</sup> The International Court of Justice noted that the "principle of non-intervention derives from customary international law" and emphasised that the principle "would certainly lose its effectiveness as a principle of law if intervention were to be justified by a mere request for assistance made by an opposition group in another State".<sup>25</sup> As

stated earlier, neither Donetsk nor Luhansk are state entities. Thus, Russia cannot intervene on their behalf claiming collective self-defence as a rationale.

For the sake of argument, let us suppose that Donetsk and Luhansk were state entities, so Russia would have had the right to provide them with military assistance. Even then, Russia's "collective self-defence" claim would, nonetheless, fail to satisfy two customary conditions – necessity and proportionality, neither of which is mentioned in Article 51.<sup>26</sup>

*Russia's "collective self-defence" claim would fail to satisfy two customary conditions – necessity and proportionality*

**First**, all parties to the conflict, as well as the international community, had been looking for peaceful resolutions and ways to de-escalate. Negotiations and consultations were held in various forums. The Security Council was in session at the very time when Russia launched its military aggression against Ukraine. The alleged threat to Donetsk and Luhansk or Russia had not increased, and Russian "peacekeepers" were already in the Donbas region to provide security, allegedly. Why was it necessary to invade? Moreover, why was it necessary to attack Kyiv and other regions provided that the sole purpose of "collective self-defence" was to defend Donetsk and Luhansk?

**Second**, self-defence is meant to repel or avert an armed attack. Instead, Russia wanted to conquer and overthrow the government of Ukraine. Russia's wanton aggression and indiscriminate violence by its armed forces leave no other option but to conclude that this "collective self-defence" is not proportionate either.

### 3.2. PREVENTING A GENOCIDE

For months before the invasion, Russia had been talking about a genocide happening in the Donbas region, or elsewhere in Ukraine. President Putin explained that Russia "had to stop that atrocity, that genocide of the millions

<sup>22</sup> United Nations, General Assembly, "[Letter dated 24 February 2022 from the Permanent Representative of the Russian Federation to the United Nations addressed to the Secretary-General](#)", S/2022/154, 24 February 2022.

<sup>23</sup> International Court of Justice, "[Military and Paramilitary Activities in and against Nicaragua \(Nicaragua v. United States of America\), Merits](#)", Judgement, I.C.J. Reports, 27 June 1986, 14, para. 199.

<sup>24</sup> International Court of Justice, "Military and Paramilitary Activities", paras 202–205, 251.

<sup>25</sup> International Court of Justice, "Military and Paramilitary Activities", para. 246.

<sup>26</sup> International Court of Justice, "[Oil Platforms \(Islamic Republic of Iran v. United States of America\)](#)", Judgment, I.C.J. Reports, 6 November 2003, 161, paras 43, 73–74, 76.



of people who live there and who pinned their hopes on Russia, on all of us” and added that “[i]t is their aspirations, the feelings and pain of these people that were the main motivating force behind our decision to recognise the independence of the Donbass people’s republics”. He continued that the “purpose of this [special military] operation is to protect people who, for eight years now, have been facing humiliation and genocide perpetrated by the Kiev regime.” Three days earlier, when justifying the recognition of Donetsk and Luhansk, Putin claimed that “almost 4 million people are facing” genocide in the Donbas region.

There has been no credible evidence suggesting that Ukraine committed or planned to commit genocide against the Russian-speaking population anywhere in Ukraine. Nevertheless, the accusations of genocide, as well as the urgency to stop genocide, contribute to the Russian narrative and rhyme with the case of Kosovo, which Russia has frequently exploited.

**First**, it helps to explain why Donetsk and Luhansk must exist as independent states and why Russia needed to recognise them. This phenomenon is known as “remedial secession” and suggests that people have a right to separate from their parent state in case of extreme danger to their existence and create their own state as the ultimate remedy to guarantee their survival. When the International Court of Justice debated Kosovo’s declaration of independence, Russia stated that “outside the colonial context, international law allows for secession of a part of a State against the latter’s will only as a matter of self-determination of peoples, and only in extreme circumstances, when the people concerned is continuously subjected to most severe forms of oppression that endangers the very existence of the people.”<sup>27</sup> Now, by claiming that millions of people are facing genocide, it has justified both the “remedial secession” in the Donbas region and Russia’s military intervention. Once again, Russia has reminded the Western states “what you did in Kosovo, we can do elsewhere.”

<sup>27</sup> International Court of Justice, “[Written Statement by the Russian Federation](#)”, 16 April 2009, 39–40.

**Second**, Russia misrepresents the concepts of humanitarian intervention and responsibility to protect, unfortunately, finding sympathy from many politicians and academics, as well as from some states. In simple terms, both concepts purport that states may or need to intervene – militarily if need be – to stop large-scale atrocities, such as genocide, crimes against humanity, ethnic cleansing, and war crimes.<sup>28</sup> From the legal perspective, however,

### *Russia misrepresents the concepts of humanitarian intervention and responsibility to protect*

humanitarian intervention is controversial and certainly not widely accepted. The responsibility to protect has, in fact, been endorsed by the United Nations, but it does not authorise individual states to use force.<sup>29</sup> Instead, it warrants a forceful action taken within a collective security system that would be administrated by the Security Council.

In conclusion, it bears repeating that Russia’s claims of genocide in Ukraine have not been substantiated. And even if they were, they would not give Russia a unilateral right to use force.

### 3.3. PROTECTING THE COMPATRIOTS

Putin’s speech has a subtle reference to the protection of compatriots – Russian nationals or citizens – abroad. He said that Russia “will seek to demilitarise and denazify Ukraine, as well as bring to trial those who perpetrated numerous bloody crimes against civilians, including against citizens of the Russian Federation.” Russia has repeatedly stated over the years that it is willing to use force in order to protect Russian citizens and compatriots outside the territory of the Russian state.

Russia’s Foreign Policy Concept speaks generally about the protection of “rights and legitimate interests of Russian nationals

<sup>28</sup> United Nations, Office of the Genocide Prevention and Responsibility to Protect, “[Responsibility to Protect](#)”, (Accessed 4 October 2022).

<sup>29</sup> United Nations, General Assembly, “[2005 World Summit Outcome](#)”, A/60/L.1, 20 September 2005, paras 138–140.

abroad” and “rights and legitimate interests of compatriots living abroad” that are subject to international law and international treaties concluded by Russia.<sup>30</sup> Its Military Doctrine states specifically that one main task of the Russian Armed Forces is “to protect citizens of the Russian Federation abroad from armed attack on them”.<sup>31</sup>

Protection of one country’s nationals abroad had been an established legal concept even before the Second World War. It was then seen as a form of self-defence: an attack against one country’s national constitutes an indirect attack against the state. When self-defence was codified in the United Nations Charter in 1945, the concept lost its legal grounds. First, triggering Article 51 requires an armed attack against a state. Second, this rationale has been exploited to hide the true reasons for military aggression. Some states have, nevertheless, continued to use force to protect their nationals abroad, with the Israeli operation in Uganda in July 1976 being one prominent example.

Three conditions are to be met to qualify for the protection of a country’s nationals abroad:<sup>32</sup>

- Imminent threat of injury to nationals;
- Failure or inability on the part of the territorial sovereign to protect them;
- Measures of protection strictly confined to the object of protecting them against injury.

Hence, there are several apparent discrepancies in Russia’s claims of protecting its compatriots abroad. First, the situation in Ukraine – including in the Donbas region –

*Russia fabricated a precondition to claim the protection of its compatriots abroad by handing out Russian passports*

did not satisfy the above-mentioned criteria. Second, Russia fabricated a precondition to

<sup>30</sup> Russian Federation, “[Foreign Policy Concept of the Russian Federation](#)”, 30 November 2016, Section 45(d)–(e).

<sup>31</sup> Russian Federation, “[Military Doctrine of the Russian Federation](#)”, 25 December 2014, Section 32(j).

<sup>32</sup> Humphrey Waldock C.M.G. O.B.E. Q.C., C., “The Regulation of the Use of Force by Individual States in International Law (Volume 81)”, in *Collected Courses of the Hague Academy of International Law*, 1952, 467.

claim the protection of its compatriots abroad by handing out Russian passports in Donetsk and Luhansk to the local population – originally, Ukrainian nationals. The more Russian nationals in the Donbas region, the stronger Russia’s reason to intervene. Third, the amount of military force employed by Russia is not proportionate to the alleged threat to Russian nationals and compatriots. And finally, Russia has extended the concept also to compatriots.

*While nationality may give a state some rights vis-à-vis its nationals under international law, ethnicity and language certainly confer no such rights*

The latter is a vague term that usually refers to either ethnic Russians or Russian-speaking persons who are nationals of another state. While nationality may give a state some rights vis-à-vis its nationals under international law, ethnicity and language certainly confer no such rights.

Therefore, Russia’s claims that it can interfere or invade a foreign country to protect its nationals and compatriots are sustainable neither legally nor factually.

## 4. NOT A WAR BUT A SPECIAL MILITARY OPERATION

Russia insists that what it has been conducting in Ukraine is not a “war” but a “special military operation.” It has even criminalised using the word “war” with regard to the armed conflict in Ukraine within the country. Leaving aside all the political and symbolic reasons, does the terminology make any difference from the perspective of international law? No, it does not. Contemporary international law is designed in such a way that states cannot disregard their legal obligations by putting false and misleading labels on their actions.

The United Nations Charter prohibits the use of “force.” The latter refers to the reality on the ground. When one state launches military aggression against another state, it is a clear violation of international law, regardless of

the words the aggressor state may use to rationalise its actions. Neither does make a difference whether the aggressor state has formally declared war. Russia's "special military operation" qualifies as a "use of force" and a violation of the fundamental principle of the United Nations Charter.

*International law is designed in such a way that states cannot disregard their legal obligations by putting false and misleading labels on their actions.*

The term "force" was chosen deliberately in 1945. Before the Second World War, it was the term "war" that had dominated international law. The word "war" is still widely used in both the political vocabulary and everyday language for historical reasons. As a legal term, however, it specifically refers to a period from the declaration of war, or the rejection of an ultimatum, to the conclusion of peace.<sup>33</sup> In the 1930s, states started to avoid their international obligations by not declaring war. Absent an official declaration of war, they claimed, the war-related rules would not apply either. Therefore, when states were drafting the United Nations Charter, they removed this loophole so that the new rules were dependent on factual circumstances.

The same was the case with the rules of warfare, law of armed conflict, and international humanitarian law where the term "war" was replaced by the term "armed conflict." Facts are as follows: Russia's and Ukraine's militaries have engaged in combat actions; it constitutes an "armed conflict"; the rules of warfare apply automatically, regardless of how the actors decide to call their military actions, or whether they have formally declared war.

In conclusion, Russia may – for political and domestic – reasons avoid the word "war" and opt for a "special military operation" instead. It neither releases Russia of its international obligations nor legitimises its aggression against Ukraine.

## CONCLUSION

Russia has made efforts to substantiate the legitimacy of its reasons to launch a military intervention in Donetsk and Luhansk. Over the years, Russia has practiced and perfected this model. First, it relies on the frameworks of international rules and concepts in the hope of persuading at least the domestic audience and friendly states. Second, Russia takes time to build narratives that later advance its legal arguments such as an alleged genocide in Ukraine that required immediate action. Third, Russia fabricates facts that enable further legal options such as the recognition of Donetsk and Luhansk as independent states to trigger collective self-defence. Fourth, Russia employs language that diverts public attention away from the essence – "people's republic" or "special military operation." Finally, Russia exploits international law as a means to further its interests and has become a master at legal manipulations. Therefore, it is necessary to deconstruct Russia's legal arguments and show that, in the end, they do not hold.

<sup>33</sup> International Committee of the Red Cross, "[Hague Convention \(III\) relative to the Opening of Hostilities](#)", The Hague, 18 October 1907, Article 1.

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