

CIHOL statement on Russian invasion of Ukraine



On 24 February 2022, Russian President Vladimir Putin authorised a “special military operation in Donbass.” This operation is clearly a full-scale invasion of Ukraine. The Centre for International Humanitarian and Operational Law at Palacký University condemns this act of aggression and flagrant violation of international law, noting that:

Act of aggression. The actions of the Russian Federation constitute an act of aggression as reflected in the *Rome Statute of the International Criminal Court*.

Violation of Article 2(3). The actions of the Russian Federation constitute a violation of Article 2(3) of the UN Charter on the peaceful settlement of disputes.

Violation of Article 2(4) and its peremptory nature. The actions of the Russian Federation constitute a violation of Article 2(4) of the UN Charter prohibiting both the threat and use of force against a State, as well as the prohibition as a peremptory norm of international law.

Violation of Article 2(7). The actions of the Russian Federation constitute a violation of Article 2(7) prohibiting interference in the domestic affairs of States.

The Centre for International Humanitarian and Operational Law notes that:

The claim and recognition of the independence of the Donetsk People’s Republic and Luhansk People’s Republic by the Russian Federation is unlawful and without legal effect. Consequently, these self-proclaimed territories have neither the authority nor legitimacy to request military assistance from the Russian Federation. The Russian Federation’s ‘response’ to their ‘request’ or ‘consent’ for military assistance is too unlawful.

The Centre for International Humanitarian and Operation Law notes further that:

In justifying the Russian Federation’s actions, President Putin has claimed that “in accordance with Article 51 of Part 7 of the UN Charter, with the approval of the Federation Council of Russia and in pursuance of the treaties of friendship and mutual assistance ratified by the Duma on February 22 with the Donetsk People’s Republic and the Luhansk People’s Republic, I decided to launch a special military operation.” President Putin continued that the goal of these actions was, in part, to “pursue the demilitarisation and denazification of Ukraine...”

The United Nations Charter in Article 2(4) prohibits States from waging war. It goes further in prohibiting States from threatening military conflict against each other. Two exceptions exist within the UN Charter. Either the United Nations Security Council may authorise military action by States, or States may rely on self-defence when attacked. Neither of these exceptions justify the Russian Federation's actions in Ukraine.

Justifications basing Russia's actions on self-defence are devoid of merit and constitute an illegitimate interpretation of self-defence. It is worth noting that the Russian Federation has in the past rejected illegitimate interpretations of self-defence by other States whereas now it relies on illegitimate interpretations which it has in the past condemned.

Self-defence within the framework of international law is dependent on several conditions. One of these requires is that an armed attack takes place before a State may resort to self-defence. There is nothing in Ukraine's recent or historical actions which could be considered an attack on the Russian Federation. At the same time, as a sovereign State, any ambitions Ukraine may have of joining a collective defence alliance such as the North Atlantic Treaty Organisation, or any other organisation, is both a right it reserves as a sovereign State and cannot be considered an imminent threat to the Russian Federation triggering Article 51 self-defence.

At the same time, legitimate self-defence under international law requires any actions undertaken to be both necessary and proportionate. In other words, a legitimate exercise of self-defence must be both a measure of necessity in that no other actions are available, and it must be only to the extent required to repel any ongoing attack. To this end, resort to self-defence cannot reasonably be undertaken to 'demilitarise' or 'denazify' a State.

In addition, President Putin's warning that States interfering in this invasion would bear consequences which they have "never before" experienced in their history is too an unambiguous violation of the prohibition of the threat of force. To both make such threats verbally or take actions such as placing the Russian Federation's deterrence forces (which include its nuclear forces), represents a clear violation of the prohibition of threats of force.

Given the fact that the Russian Federation is internationally responsible for breaches of fundamental rules of international with the so-called *erga omnes* character, the international community is entitled to invoke responsibility of the Russian Federation and impose counter-measures (sanctions) when relevant conditions are met.

Finally, given that the ongoing conflict represents an international armed conflict, all parties to the conflict must respect international humanitarian law and ensure that civilians and non-combatants are protected to the highest degree.