

## War in Ukraine

### Commentary

# Ukraine, international law and the security of small states

A close-up look at why Russia's attack on Ukraine is also an attack on cardinal principles of the international legal order and a culture of settling disputes by peaceful means.



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For The Straits Times

In the ancient world, there was no such thing as the rule of law. It was a world in which might was right. Small countries had no choice but to live under the mercy of bigger and more powerful countries.

There is a famous saying, in ancient Greece, that "the strong do what they can and the weak suffer what they must". In Chinese literature, we find a similar view about the fate of small countries. The ancient Chinese said that "small countries have no foreign policy".

#### THE 1945 REVOLUTION

The world changed in 1945, with the establishment of the United Nations. The Charter of the United Nations is a revolutionary document. It contains several cardinal principles of the post-war international legal order. I shall refer to three of them.

First, the Charter confers on all states, big and small, sovereign equality under international law. What this means is that, legally, all states are equal and are entitled to the same rights. An example of this norm is that, in the UN General Assembly, every member state has one vote.

Second, the Charter imposes a duty on all member states to settle their international disputes by peaceful means. In fact, force can only be used in self-defence to repel an armed attack on that state.

Third, the Charter imposes a duty on all member states to refrain from the threat or use of force against the territorial integrity or political independence of any state.

#### UKRAINE'S LEGITIMACY AND TERRITORIAL INTEGRITY

Does Russia have the right, under international law, to question the legitimacy of Ukraine? The answer must be no.

Ukraine was a constituent state of the Soviet Union, from 1945 to

1991. When the Soviet Union was dissolved in 1991, Ukraine became an independent state and was recognised by the Russian Federation.

The UN allowed the new state of Ukraine to occupy the seat which used to be occupied by the Ukrainian Soviet Socialist Republic. The Russian Federation did not object to the move.

Ukraine's legitimacy as a sovereign and independent state has therefore been recognised by the UN and by the world, including Russia, since Aug 26, 1991.

In 2014, Russia invaded and occupied Crimea, a part of Ukraine. Russia carried out a so-called "referendum" to determine the wishes of the people of Crimea. According to Russia, the people of Crimea voted in favour of integration with Russia. The legal question is whether Russia had the right to annex Crimea.

The answer should be no. Crimea is part of the sovereign territory of Ukraine. Russia had no right to invade and annex Crimea. Russia's conduct violated the UN Charter's obligation not to use force against the territorial integrity of Ukraine. Apart from the UN Charter, there is also a rule of customary international law against the acquisition of territory by military conquest.

The annexation of Crimea by Russia, was considered by the UN General Assembly. On March 27, 2014, the Assembly adopted a resolution (100 in favour, 24 against and 58 abstentions) affirming the UN General Assembly's commitment to the territorial integrity of Ukraine, within its internationally recognised borders. The resolution also rejected the 2014 Crimean referendum as invalid.

On Feb 21, 2022, the Russian Parliament enacted a law recognising the independence of the Donetsk People's Republic and the Luhansk People's Republic. Donetsk and Luhansk are two regions of eastern Ukraine with many Russian speakers. On the same day, President Vladimir Putin signed decrees recognising their independence.

The legal question is whether Donetsk and Luhansk continue to be part of the sovereign territory of Ukraine. The answer should be yes. What Russia has done is clearly a violation of the territorial integrity of Ukraine. The so-called



Ukraine's Deputy Foreign Minister Emine Ailarovna Dzhabarova speaking during the urgent debate of the UN Human Rights Council in Geneva on Thursday on the human rights situation stemming from the Russian invasion. PHOTO: EPA-EFE

independence of Donetsk and Luhansk has been recognised by only a handful of governments. As far as international law is concerned, Donetsk and Luhansk are not independent states.

#### UKRAINE AND NATO

In 2008, Ukraine applied to join the North Atlantic Treaty Organisation (Nato). Russia objected to the application on the ground that it posed a threat to its security.

The legal question is whether Russia has a right to oppose the wishes of Russia's neighbours to join either the European Union (EU) or Nato.

I believe the correct answer is that Russia has no such right. I would also point out that, in 1999, Russia had signed the Istanbul Document of the Organisation for Security and Cooperation in Europe (OSCE). Under Article 8 of that document, Russia acknowledged the right of Ukraine to choose or change its security arrangements.

It is the sovereign right of Russia's neighbours to join any organisation they wish to do.

In 1993, I was the UN Secretary-General's Special Envoy

to Russia, Estonia, Latvia and Lithuania. I succeeded in brokering compromises between Russia, and its three Baltic neighbours, on the timing of the withdrawal of Russian troops from Estonia and Latvia and the closure of Russian bases.

I took the opportunity to recommend to the leaders of Estonia, Latvia and Lithuania, to apply to join the EU, for their economic well-being, and to join Nato, for their security. Today, all three countries are members of EU and Nato.

#### ATTACK ON UKRAINE

In the run-up to the present crisis in Ukraine, Russia issued its neighbour an ultimatum: If Ukraine refused to give Russia a guarantee that it would never join Nato, Russia would launch a "special military operation" against it. Ukraine refused to yield to Russia's demand. On Feb 24, Russia launched an armed attack against Ukraine, deploying its army, navy and air force.

Is there any justification, under international law, for Russia's action?

The answer is again no. Russia has no legal justification for its

armed attack against Ukraine. Russia has violated several principles of the UN Charter and of international law, including the principle of the non-use of force to settle international disputes and the principle of respect for the territorial integrity and political independence of states.

Russia has tried to justify its action on the ground of self-defence. This is an absurd argument since Ukraine has not attacked Russia or threatened to do so. Ukraine is not even a candidate to Nato.

Russia's action is particularly reprehensible because it is a signatory of the 1994 Budapest Memorandum on Security Assurance. Under that memorandum, Ukraine, Belarus and Kazakhstan agreed to give up their nuclear weapons. In return, Russia, the US and the United Kingdom assured the three countries that they would protect them from any threats to their territorial integrity. It is totally unacceptable that a guarantor of Ukraine's territorial integrity should itself be the violator.

The conflict has been considered by the UN Security Council and the General Assembly.

At the Security Council, Russia

vetoed a draft resolution sponsored by 87 states. The council convened a special emergency session under the United for Peace resolution of the General Assembly, the first since 1982.

On March 2, the General Assembly adopted a resolution, with 141 in favour, five against and 35 abstentions. The resolution deplored Russia's invasion of Ukraine and called on Russia to withdraw all its forces from Ukraine.

UN Secretary-General Antonio Guterres has stated that Russia's actions against Ukraine are a violation of Ukraine's territorial integrity and sovereignty and are inconsistent with the principles of the UN Charter.

#### IMPLICATIONS FOR SMALL STATES

Russia's armed attack against Ukraine has serious implications for the small countries of the world. In his powerful speech in Parliament on Feb 28, Foreign Minister Vivian Balakrishnan said: "The sovereignty, the political independence and the territorial integrity of all countries, big and small, must be respected. Singapore must take any violation of these core principles seriously, wherever and whenever they occur. This is why Singapore has strongly condemned Russia's unprovoked attack on Ukraine."

At the UN General Assembly, Singapore's Ambassador Burhan Gafur declared: "It is important that all countries, especially the small states, send a clear signal that we are united for peace, we are united to defend the principles of the UN Charter, and we are united to uphold international law."

I shall conclude by making two points. First, for the past 77 years, since the founding of the UN, we have been strengthening the rule of law in the world. We have been able to convince most countries, most of the time, including big and powerful countries, that it is in their long-term national interests to comply with the rule of the law. If Russia were to succeed, it will set a very bad precedent for the world. It will undermine the rule of law and may encourage other powerful countries to emulate its example.

Second, Russia's action undermines another very important achievement of the international community. We have progressively strengthened the legal culture of settling international disputes by peaceful means. We have been able to reduce the tendency by powerful states to resort to force to settle their international disputes. Russia has a dispute with Ukraine. The dispute should be settled by peaceful means.

Instead, Russia is seeking to settle the dispute by waging war against Ukraine. Russia should listen to the voices of the world; 141 member states of the UN have called upon Russia to stop the war and to withdraw its forces from Ukraine.

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