

## Putin's Address of 24 February 2022 and the War in Ukraine: An Examination Through the Lens of International Law

*Gregorio Salatino*

*Salatino Law Firm; Institute of Space Law and Policy, University of Public Service, Budapest, Hungary*

*(Corresponding Author: [gregorio.salatino@gmail.com](mailto:gregorio.salatino@gmail.com))*

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### ABSTRACT

This article offers a comprehensive analysis of the arguments put forth by Mr. Putin during his address to the citizens of Russia on 24 February 2022, where he announced a “special military operation” in Ukraine. The author critically examines these arguments through the lens of international law, providing an in-depth analysis of their legal implications. In particular, the article begins with some key excerpts from Mr. Putin’s address on 24 February 2022. Afterwards, to clarify the framework surrounding the circumstances under examination, the article provides a general overview of the fundamental principles of International Law. The article then delves into the issues of NATO expansion to the East and the situation in the People’s Republics of Donetsk and Luhansk. Additionally, the article explores Mr. Putin’s use of the term “special military operation” (rather than “war”) and the concept of “denazification”, shedding light on these terms.

### Introduction

On 24 February 2022, at 6:00 a.m. (Moscow time), the President of the Russian Federation, Mr. Vladimir Putin, appeared on Russian State TV and delivered an address to the citizens of Russia. In his address, he

announced his decision to “conduct a special military operation” in Ukraine<sup>1</sup>. Just one hour later, the full-scale invasion of Ukraine by Russia commenced. During his

<sup>1</sup> See the “Address by the President of the Russian Federation” made on February 24, 2022. <http://en.kremlin.ru/events/president/news/67843>.

speech, Mr. Putin put forth certain arguments to justify the special military operation. The objective of this article is to examine these arguments from the perspective of international law.

Therefore, we will first present the key excerpts from Mr. Putin's speech. Subsequently, we will elucidate certain fundamental principles of the United Nations Charter, which will serve to provide a better framework for our analysis of the case. Finally, in each subsequent paragraph, we will assess the extent to which Mr. Putin's arguments comply with international law.

### **1. Putin's address to the citizens of Russia on 24 February 2022.**

The main arguments presented by Mr. Putin during this address to the citizens of Russia on 24 February 2022 revolve around two key issues: the NATO expansion to the East and the situation in the Donbas region of Ukraine. Additionally, he made references to other historical events involving Russia (and/or the Soviet Union), which, however, will not be examined in this article.

Regarding the NATO expansion to the East, Mr. Putin asserted that this expansion poses "fundamental threats" to Russia. He emphasized that "It is a fact that over the past 30 years we have been patiently trying to come to an agreement with the leading NATO countries regarding the principles of equal and indivisible security in Europe. In response to our proposals, we invariably faced either cynical deception and lies or attempts at pressure and blackmail, while the North Atlantic alliance continued to expand despite our protests and concerns. Its military machine is moving and, as I said, is approaching our very border". To support his arguments, Mr. Putin cited NATO's past "wrongdoings", such as the military

operation against Serbia, "without the UN Security Council's sanction"<sup>2</sup>, as well as the wars in Lybia<sup>3</sup>, and Syria<sup>4</sup> and Iraq<sup>5</sup>.

Regarding the situation in the Donbas region of Ukraine, Mr. Putin stated: "We can see that the forces that staged the coup in Ukraine in 2014 have seized power, are

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<sup>2</sup> Supra note 1: "First a bloody military operation was waged against Belgrade, without the UN Security Council's sanction but with combat aircraft and missiles used in the heart of Europe. The bombing of peaceful cities and vital infrastructure went on for several weeks. I have to recall these facts, because some Western colleagues prefer to forget them, and when we mentioned the event, they prefer to avoid speaking about international law, instead emphasising the circumstances which they interpret as they think necessary".

<sup>3</sup> Supra note 1: "The illegal use of military power against Libya and the distortion of all the UN Security Council decisions on Libya ruined the state, created a huge seat of international terrorism, and pushed the country towards a humanitarian catastrophe, into the vortex of a civil war, which has continued there for years. The tragedy, which was created for hundreds of thousands and even millions of people not only in Libya but in the whole region, has led to a large-scale exodus from the Middle East and North Africa to Europe".

<sup>4</sup> Supra note 1: "A similar fate was also prepared for Syria. The combat operations conducted by the Western coalition in that country without the Syrian government's approval or UN Security Council's sanction can only be defined as aggression and intervention".

<sup>5</sup> Supra note 1: "But the example that stands apart from the above events is, of course, the invasion of Iraq without any legal grounds. They used the pretext of allegedly reliable information available in the United States about the presence of weapons of mass destruction in Iraq. To prove that allegation, the US Secretary of State held up a vial with white powder, publicly, for the whole world to see, assuring the international community that it was a chemical warfare agent created in Iraq. It later turned out that all of that was a fake and a sham, and that Iraq did not have any chemical weapons. Incredible and shocking but true. We witnessed lies made at the highest state level and voiced from the high UN rostrum. As a result we see a tremendous loss in human life, damage, destruction, and a colossal upsurge of terrorism".

*keeping it with the help of ornamental election procedures and have abandoned the path of a peaceful conflict settlement. For eight years, for eight endless years we have been doing everything possible to settle the situation by peaceful political means. Everything was in vain*". He then concluded with the accusation of genocide, expressing: *"you cannot look without compassion at what is happening there. It became impossible to tolerate it. 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"*.

Mr. Putin's address continued, and he proceeded to announce the commencement of the "special military operation". He stated: *"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 22 February, I made a decision to carry out a special military operation"*. Mr. Putin emphasized that the objective of this operation was to protect the people of Donbas *"who, for eight years now, have been facing humiliation and genocide perpetrated by the Kiev regime"*. And, to this end, Mr. Putin stated his will *"to demilitarise and denazify Ukraine ..."*.

In conclusion of his address, Mr. Putin reiterated: *"we are acting to defend ourselves from the threats created for us and from a worse peril than what is happening now"*. He further emphasized that he would not allow *"anyone to interfere in our affairs and our relations"*.

## **2. A general overview of some principles of the United Nations Charter.**

Before delving into a detailed examination of the extent to which Mr. Putin's arguments align with international law, it is important to clarify certain fundamental principles that underpin the United Nations Charter.

First and foremost, there is no doubt that Russia's invasion of Ukraine constitutes a flagrant violation of Article 2, paragraph 4 of the United Nations Charter. This provision explicitly states that *"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, or in any other manner inconsistent with the Purposes of the United Nations"*.

Article 2, paragraph 4 specifically highlights two key "values" that must be "protected" against the use of force: the *"territorial integrity"* and the *"political independence"* of States. This means that a State can neither invade the territory of another State, nor interfere with the political independence of another State. Additionally, it is important to note that Article 2, paragraph 4 not only prohibits the use of force but also the mere "threat" of its use. Even the mere act of threatening to use force constitutes a violation of the United Nations Charter. In this regard, it is noteworthy that shortly after the invasion of Ukraine, senior representatives of the Russian Federation issued menacing statements directed at several States that had expressed support for Ukraine in the aftermath of the invasion<sup>6</sup>.

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<sup>6</sup> By way of example, we can quote the menaces to Finland and Sweden: <https://www.theguardian.com/world/2022/jun/29/russia-condemns-nato-invitation-finland-sweden>; the menaces to the United Kingdom: <https://www.bbc.com/news/uk-64397745>; the menaces to Poland and more in general to the eastern flank of NATO countries: <https://www.ft.com/content/689fcff0-ada2-47d2-a576-882cd1af33b4>.

Given the prohibition on the use force imposed on States, according to the framework of the United Nations Charter, there is a specific body that is competent to address any “*threat to the peace, breach of the peace, or act of aggression*”<sup>7</sup>, and that body is the Security Council. In particular, whenever there is any “*threat to the peace, breach of the peace, or act of aggression*”, it is the Security Council that must decide on the measures to be taken<sup>8</sup>.

However, in the case of the invasion of Ukraine, the Security Council was unable to pass any resolution on the matter due to Russia’s exercise of its veto power. Furthermore, Russia could also count on China, which abstained.

In order to circumvent Russia’s veto power, on 2 March 2022, the General Assembly resorted to adopting a resolution known as “Uniting for Peace”<sup>9</sup>, which explicitly

condemned the Russian invasion, and demanded that Russia “*immediately, completely and unconditionally withdraw all of its military forces from the territory of Ukraine within its internationally recognized borders*”<sup>10</sup>.

As for the effectiveness of the “Uniting for Peace” resolution, it is important to note that it is not binding like a resolution of the Security Council would be. Instead, it has a purely recommendatory nature<sup>11</sup>. As one

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<sup>7</sup> Article 39 of the United Nations Charter.

<sup>8</sup> Consequently, the Security Council has the authority to “*make recommendations*” (Article 39) or decide on the “*complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations*” (Article 41). In the most severe cases, when these measures are insufficient, the Security Council “*may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockades, and other operations by air, sea, or land forces of United Nations members*” (Article 42).

<sup>9</sup> This type of resolution was first introduced in 1950 to overcome the Soviet Union’s veto concerning the Korean War. The resolution stated that: “*If the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, breach of the peace or act of aggression, the General Assembly shall consider the matter immediately with a view to making appropriate recommendations to Members for collective measures*”. The text of the “Uniting for Peace” resolution is available here:

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[https://www.un.org/en/sc/repertoire/otherdocs/GAres377A\(v\).pdf](https://www.un.org/en/sc/repertoire/otherdocs/GAres377A(v).pdf). In relation to this resolution, see also Barber, R. (2022). What can the UN General Assembly do about Russian Aggression in Ukraine?. *EJIL:Talk!*. <https://www.ejiltalk.org/what-can-the-un-general-assembly-do-about-russian-aggression-in-ukraine/>.

<sup>10</sup> The text of the resolution is available here: <https://www.aljazeera.com/news/2022/3/3/unga-resolution-against-ukraine-invasion-full-text>. It is worth reporting the following passages: “*Condemning the 24 February 2022 declaration by the Russian Federation of a “special military operation” in Ukraine, Reaffirming that no territorial acquisition resulting from the threat or use of force shall be recognized as legal, Expressing grave concern at reports of attacks on civilian facilities such as residences, schools and hospitals, and of civilian casualties, including women, older persons, persons with disabilities, and children, Recognizing that the military operations of the Russian Federation inside the sovereign territory of Ukraine are on a scale that the international community has not seen in Europe in decades and that urgent action is needed to save this generation from the scourge of war, Endorsing the Secretary-General’s statement of 24 February 2022 in which he recalled that the use of force by one country against another is the repudiation of the principles that every country has committed to uphold and that the present military offensive of the Russian Federation is against the Charter, Condemning the decision of the Russian Federation to increase the readiness of its nuclear forces, ...*”.

<sup>11</sup> According to Ambos, K. (2022). Will a state supplying weapons to Ukraine become a party to the conflict and thus be exposed to countermeasures?. *EJIL:Talk!*, <https://www.ejiltalk.org/will-a-state-supplying-weapons-to-ukraine-become-a-party-to-the-conflict-and-thus-be-exposed-to-countermeasures/>: “*Even if GA-resolutions are not*

author pointed out: *“This might not achieve much, but it would be a way for the Assembly to formally put on record the opinion of the international community that Russia’s invasion is, unequivocally, an illegal act of aggression”*<sup>12</sup>.

In summary, according to the framework of the United Nations Charter, there exists a prohibition on the use of force by States, and any threat to peace must be addressed by the Security Council, which, if necessary, can authorize the use of force along with other measures.

### **The exception to the rule: Article 51 of the United Nations Charter.**

There is, however, an exception to the rule. This exception has been included in Article 51 of the United Nations Charter, which states: *“Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense 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”*.

By sticking to the wording of the clause, the State under attack has the right to use force to defend itself against the ongoing attack. In addition, this right is time-limited. The

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*binding, they legitimize the taking of appropriate measures and thus also overcome possible neutrality objections”*.

<sup>12</sup> Barber, R. (2022). Supra note 9.

State under attack can use force only until the Security Council has taken action to maintain peace and security. This further emphasizes the exceptional nature of this clause, as the Security Council retains the “monopoly” in deciding on measures when peace is threatened. The State under attack is also required to promptly report to the Security Council the actions taken in the exercise of the right to self-defense. There is, however, a second interpretation of the clause that allows a state to launch a pre-emptive strike if it has reason to believe it is about to be attacked<sup>13</sup>. We do not concur with this second interpretation of the clause, despite its prominent support from the George Bush administration of the United States<sup>14</sup>. According to some authors who support this interpretation, the State is permitted to act in “pre-emptive” self-defense, provided that the attack by the other State is at least “imminent”.

In his address to the citizens of Russia on 24 February 2022, Mr. Putin claimed Article 51 of the United Nations Charter as a legal justification for his military operation in Ukraine (Russia even fulfilled the notification requirement outlined in Article 51). Considering that there was no ongoing attack on Russian territory, Russia relied on the interpretation of Article 51 of the United Nations Charter, which allows for pre-emptive strikes. Nevertheless, some scholars have argued that Russia’s interpretation in this case has been excessively broad, because Russia acted to prevent a threat that could not be characterized as “imminent”; instead, the threat was “vague”, “non-

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<sup>13</sup> For an examination of the possible interpretation of Article 51 of the United Nations Charter, please refer to Picone, P. (2016). L’insostenibile leggerezza dell’art. 51 della Carta ONU. *Rivista di Diritto Internazionale*, 11.

<sup>14</sup> The document is available at <https://georgewbush-whitehouse.archives.gov/nsc/nss/2002/>.

*imminent*”, and “*may occur at some unspecified point in the future*”<sup>15</sup>.

On the contrary, Ukraine, being under attack by Russia, had the right to invoke Article 51 of the United Nations Charter.

Regarding Article 51 of the United Nations Charter, it is important to note that the right of self-defense can be exercised either “individually”, where the attacked State uses force to counter the attack, or “collectively”, where third States take measures to defend the attacked State.

In his address to the citizens of Russia on 24 February 2022, Mr. Putin invoked Article 51 of the United Nations Charter not only in relation to Russia’s individual right to self-defense, but also in relation to the collective right of self-defense of the people of Donbas (as we will see later).

Furthermore, he issued a veiled threat to third States, stating that he would not allow anyone to “*interfere in our affairs and our relations*”. A few days later, when the Western countries imposed economic sanctions on Russia and expressed their support for Ukraine, Mr. Putin further substantiated this threat by ordering the Russian nuclear forces to be put on alert status<sup>16</sup>.

As a result, the State that unlawfully attacked another State threatened to use nuclear weapons to prevent any exercise of

the right of collective self-defense in support of the attacked State. This threat appeared particularly reprehensible and condemnable.

Having provided the aforementioned general overview of the principles that underpin the United Nations Charter, we can now proceed to examine Mr. Putin’s arguments individually in the following paragraphs, analyzing them in light of international law.

### 3. The Expansion of NATO to the East.

Mr. Putin, in his address to the citizens of Russia on 24 February 2022, used as his first argument the expansion of NATO to the East. In particular, he argued that the expansion of NATO poses a “*fundamental threat*” to Russia.

The argument does not appear to be beyond doubt. Has there ever been a case where a state was forcibly compelled to join NATO after being invaded? Has there ever been a case where a state joined NATO because it was threatened in the event of non-adherence? Absolutely not.

Indeed, NATO “expands” through an international treaty where each State has the freedom to request membership, and the applicant must be accepted by the States that are already party to the treaty. For instance, in 2008, France and Germany opposed Ukraine’s request to join the organization. More recently, despite Sweden’s application to join NATO, Turkey is currently vetoing its accession.

Less straightforward is the answer to another question: has NATO ever interfered with the internal policies of States in order to establish a “puppet government” that would submit an application to join NATO? It is difficult to argue against the significant role played by the United States in the so-called “Maidan Revolution” of February 2014,

<sup>15</sup> Green, J. A., Henderson, C. & Ruys, T. (2022). Russia’s attack on Ukraine and the jus ad bellum. *Journal on the Use of Force and International Law*, Vol. 9, 1, 4.. <https://www.tandfonline.com/doi/full/10.1080/20531702.2022.2056803?src=>

<sup>16</sup> Bugos, S. (2022). Putin Orders Russian Nuclear Weapons on Higher Alert. *Arms Control Association*. <https://www.armscontrol.org/act/2022-03/news/putin-orders-russian-nuclear-weapons-higher-alert#:~:text=Amid%20a%20full%2Dscale%20military,and%20nuclear%20arms%20control%20and.>

which led to the downfall of Viktor Yanukovich. However, it must also be acknowledged that the Ukrainian government in place as of February 2022, when Russia invaded Ukraine, emerged from free elections held in April 2019, resulting in the victory of Mr. Zelensky's party "Servant of the People". Consequently, Ukraine's request to join NATO would come from a legitimate and duly elected government.

In any case, even if one were to argue that the expansion of NATO poses a threat to Russia, Russia should have invoked Article 51 of the United Nations Charter against NATO countries. However, instead of targeting NATO member States, Russia chose to attack Ukraine, a country that was not a member of the organization.

Another issue raised by Mr. Putin is the alleged "wrongdoings" of NATO, such as the wars in Kosovo, Libya, Syria, and Iraq. While these wars are widely regarded as questionable, and their legitimacy remains in doubt, it is essential to note that past wrongdoings committed by one State or organization cannot justify present wrongdoings by another State.

#### 4. Was there a genocide in Donbas?

A second argument raised by Mr. Putin in his address to the citizens of Russia on 24 February 2022 concerned the genocide that occurred in the Donbas region of Ukraine against the Russophile people residing in that area.

To challenge this accusation, Ukraine filed an application to the International Court of Justice on 26 February 2022 against the Russian Federation regarding "*a dispute . . . relating to the interpretation, application and fulfilment of the 1948 Convention on the*

*Prevention and Punishment of the Crime of Genocide*"<sup>17</sup>.

In essence, Ukraine claimed that Russia's accusation of genocide was false. Specifically, Ukraine argued that Russia, based on a false accusation of genocide, first recognized the independence of the People's Republics of Donetsk and Luhansk and then invaded Ukraine. On 5 March 2022, Russia informed the Court of its non-participation in the scheduled hearing, and on 7 March 2022, Russia presented a document expressing its position on the matter.

Russia contended that Ukraine's assertion of Russia initiating a "special military operation" based on allegations of genocide committed by Ukraine was unfounded. The Russian Federation "*asserts that, in reality, its "special military operation" on the territory of Ukraine is based on Article 51 of the United Nations Charter and customary international law and that the Convention cannot provide a legal basis for a military operation, which is beyond the scope of the Convention*"<sup>18</sup>. Russia reinforced its argument by noting that "*the legal basis for the "special military operation" was communicated on 24 February 2022 to the Secretary-General of the United Nations and the United Nations Security Council by the Permanent Representative of the Russian Federation to the United Nations in the form of a notification under Article 51 of the United Nations Charter*"<sup>19</sup>. Russia further contended that although President Putin, in his address to the citizens of Russia in February 2022, "*referred to genocide, this*

<sup>17</sup> Order of the International Court of Justice issued on March 16, 2022, *Ukraine vs. Russian Federation*, para. 1, <https://www.icj-cij.org/sites/default/files/case-related/182/182-20220316-ORD-01-00-EN.pdf>

<sup>18</sup> Order of the International Court of Justice. *Supra* note 17, para. 32.

<sup>19</sup> Order of the International Court of Justice. *Supra* note 17, para. 33.

*reference is not the same as the invocation of the Convention as a legal justification for its operation, nor does it indicate that the Russian Federation recognizes the existence of a dispute under the Convention”.*

In essence, Russia attempted to “change the cards on the table”. It argued that the legal basis for the invasion of Ukraine was Article 51 of the United Nations Charter, Russia had even complied with the procedural rule set forth in that article by carrying out the notification. Russia asserted that the alleged genocide in Donbas, mentioned in Putin’s address, should be considered irrelevant in establishing the legal basis for its actions. On 16 March 2022, the International Court of Justice issued a provisional order examining the opposing arguments.

First of all, the Court highlighted that *“since 2014, various State organs and senior representatives of the Russian Federation have referred, in official statements, to the commission of acts of genocide by Ukraine in the Luhansk and Donetsk regions”*<sup>20</sup>. In particular, in his address, Mr. Putin *“specified that the “purpose” of the special operation was “to protect people who have been subjected to abuse and genocide by the Kiev regime for eight years”. He stated that the Russian Federation had to stop “a genocide” against millions of people and that it would seek the prosecution of those who had committed numerous bloody crimes against civilians, including citizens of the Russian Federation”*<sup>21</sup>. The Court, in essence, contradicted Russia’s arguments by quoting President Putin’s own words. Consequently, the Court affirmed its jurisdiction and the applicability of the Genocide Convention.

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<sup>20</sup> Order of the International Court of Justice. Supra note 17, para. 37.

<sup>21</sup> Order of the International Court of Justice. Supra note 17, para. 39.

Then the Court reported on the measures that a contracting party to the Genocide Convention may adopt if it believes that genocide is taking place on the territory of another contracting party. The Court listed three possible actions:

1) the contracting party may call upon the competent organs of the United Nations to take action under the United Nations Charter that they deem appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in Article III (Article VIII of the Genocide Convention)<sup>22</sup>; 2) the contracting party may submit a dispute to the Court concerning the interpretation, application or fulfilment of the Genocide Convention (Article IX of the Genocide Convention)<sup>23</sup>; 3) in addition, the contracting party may resort to other means of fulfilling its obligation to prevent and punish genocide that it believes to have been committed by another contracting party, such as bilateral engagement or exchanges within a regional organization<sup>24</sup>.

In any case, the Court emphasizes that *“every State may only act within the limits permitted by international law”*<sup>25</sup>, particularly considering the purposes of the United Nations as expressed in Article 1 of the United Nations Charter, which is the maintenance of peace.

In other words, no State is permitted to use force, as it is prohibited by Article 2 of the United Nations Charter, against another State solely based on an allegation that a genocide is occurring within the territory of that State.

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<sup>22</sup> Order of the International Court of Justice. Supra note 17, para. 56.

<sup>23</sup> Order of the International Court of Justice. Supra note 17, para. 56.

<sup>24</sup> Order of the International Court of Justice. Supra note 17, para. 57.

<sup>25</sup> Order of the International Court of Justice. Supra note 17, para. 57.



To conclude, the Court stated that “*at the present stage of the proceedings*” it was “*not in possession of evidence substantiating the allegation of the Russian Federation that genocide has been committed on Ukrainian territory*”<sup>26</sup>. The Court further asserted that “*Under these circumstances, the Court considers that Ukraine has a plausible right not to be subjected to military operations by the Russian Federation for the purpose of preventing and punishing an alleged genocide in the territory of Ukraine*”<sup>27</sup>.

Therefore, pending the final decision, the Court ordered, among other things, that:

- 1) the Russian Federation had immediately to suspend the military operations initiated on 24 February, 2022, in the territory of Ukraine;
- 2) The Russian Federation had to ensure that any armed military or irregular unit, whether directed or supported by the Russian Federation, would refrain from taking actions in support of the military operations mentioned in point 1) above.<sup>28</sup>

### **5. The collective self-defense in support of the People’s Republics of Donbas.**

As we have seen in the previous paragraph, before the International Court of Justice, Russia argued that its “special military operation” on the territory of Ukraine had to be qualified as an exercise of the right of collective self-defense, pursuant to Article 51 of the United Nations Charter, in support of the People’s Republics of Donetsk and Luhansk.

Without prejudice to the arguments presented in paragraph 3.1, Russia’s claim appears inherently weak when considering that Article 51 of the United Nations Charter is applicable exclusively to state actors. On the contrary, supporting non-state armed groups is unlawful under international law as it would violate the principle of non-intervention<sup>29</sup>. The People’s Republics of Donetsk and Luhansk are not state actors but regions located within Ukraine. Therefore, combatants of the People’s Republics of Donetsk and Luhansk are classified as non-State armed groups.

In order to circumvent this legal “obstacle”, Mr. Putin, on 21 February 2022, prior to invading Ukraine, recognized the People’s Republics of Donetsk and Luhansk as States under international law. Consequently, Article 51 of the United Nations Charter could have been invoked in their support. However, recognizing entities during ongoing armed conflicts itself constitutes a violation of the non-intervention principle. According to Hersch Lauterpacht, “[r]ecognition is unlawful if granted *durante bello*, when the outcome of the struggle is altogether uncertain. Such recognition is a denial of the sovereignty of the parent State ... Premature recognition is a wrong not only because, in denying the sovereignty of the parent State actively engaged in asserting its authority, it amounts to unlawful intervention. It is wrong because it constitutes an abuse of the power of recognition. It acknowledges as an independent State a community which is not, in law, independent and which does not,

<sup>26</sup> Order of the International Court of Justice. Supra note 17, para. 59.

<sup>27</sup> Order of the International Court of Justice. Supra note 17, para. 60.

<sup>28</sup> Order of the International Court of Justice. Supra note 17, para. 86.

<sup>29</sup> Janik, R. (2022). Putin’s War against Ukraine: Mocking International Law. *EJIL:Talk!*. <https://www.ejiltalk.org/putins-war-against-ukraine-mocking-international-law/>

therefore, fulfill the essential conditions of statehood”<sup>30</sup>.

Furthermore, Russia’s strategy of recognition is not only legally contentious but contradicts the interests of other nations, such as China. In fact, if applied in a broader context, the practice of recognition could set a precedent that may undermine China’s stance on regions like Tibet, Hong Kong, or Taiwan.

Consequently, the legality (as well as the political convenience) of actions carried out by Russia based on the aforementioned arguments must be unequivocally dismissed.

## 6. Why refer to it as “special military operations”?

Interestingly, Mr. Putin consistently referred to Russia’s invasion of Ukraine as a “special military operation” rather than a “war”. This deliberate avoidance of the term “war” is a useful tool for internal propaganda. Additionally, it is worth noting that the use of the expression “special military operation” may also carry legal implications.

According to the “protection of nationals doctrine”, a State has the authority, as a last resort, to undertake minimally intrusive “special military operations” aimed at safeguarding their citizens from imminent perils in foreign territories<sup>31</sup>.

In essence, the use of the expression “special military operation” can be seen as an additional attempt to justify the invasion of Ukraine under the pretext of rescuing the Russophile population in the Donbas region.

However, the lawfulness of rescue missions has not been widely accepted in the

international community. In particular, weaker States are concerned about potential abuse, as countries with significant minority populations connected to powerful States would constantly live under the threat of intervention based on mere speculation regarding the safety of their citizens.

In any case, even if the protection of nationals doctrine were generally accepted, Russia’s response would need to be proportionate. Mass atrocities, invasions, and other large-scale attacks, as in the case at stake, are excessive and go beyond what would be considered a proportional response<sup>32</sup>.

## 7. What does “denazification” mean?

In the concluding part of his address to the citizens of Russia, President Putin emphasized his objective of “denazifying” Ukraine as part of his efforts to protect the people of Donbas. The use of this expression has been met with confusion and skepticism. The majority of politicians and journalists in Western countries interpreted it as a mere *propagandistic tactic*. To counter the argument of “denazification”, it has been highlighted that the current President of Ukraine, Zelensky, has Jewish heritage, which contradicts the notion of Ukraine being associated with Nazism.

However, as we have witnessed with the utilization of the expression “special military operation”, even the use of the term “denazification” carries legal implications<sup>33</sup>.

<sup>30</sup> Lauterpacht, H. (1944). Recognition of States in International Law. *The Yale Law Journal*, 385.

<sup>31</sup> Janik, R. (2022), Supra note 29.

<sup>32</sup> Janik, R. (2022). Supra note 29.

<sup>33</sup> The rhetoric of “denazification” has been masterfully explained by Lombardo, M. (2022). The Rhetoric of ‘Denazification’ of Ukraine from the Perspective of the Law of Occupation. *EJIL:Talk!*. <https://www.ejiltalk.org/the-rhetoric-of-denazification-of-ukraine-from-the-perspective-of-the-law-of-occupation/>

The starting point is certain articles of the so-called International Humanitarian Law, which outline the conduct that occupying States must adhere to in relation to occupied territories. According to Article 43 of the 1907 Hague Regulations, the occupying State must respect the laws in force in the occupied country, “*unless absolutely prevented*”.

The question that arises is when the occupying power may be considered “absolutely prevented”. History can provide an answer. During World War II, the Allies occupied Germany and Italy, where Nazi and fascist laws were in force. Respecting the laws applicable in those areas would have meant applying racial laws against Jewish people, for example. Consequently, the Allies were “*absolutely prevented*” from respecting the law of the occupied countries and could change that law.

In 1949, the Geneva Convention came into effect, supplementing Article 43 of the Hague Regulations. Article 64, paragraph 2, states that the occupying power may “*subject the population of the occupied territory to provisions which are essential to enable the Occupying Power to fulfil its obligations under the present Convention*”.

Given the above legal framework, it becomes clear that Russia’s reference to “denazification” serves as an “excuse” for changing the applicable legislation in the occupied territories. Ukraine had experienced what it means to be under Russia’s occupation since 2014, when Russia occupied Crimea. The United Nations General Assembly has passed resolutions condemning the lack of compliance by the Russian Federation with the law of occupation<sup>34</sup>. These resolutions

<sup>34</sup> Resolution adopted by the General Assembly on 19 December 2016, A/RES/71/205, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/455/74/PDF/N1645574.pdf?OpenElement>;

highlight that Russia applied its own national law to the occupied area, resulting in human rights violations, abuses, killings, torture, political persecution, denial of religious and expression freedoms, and discrimination against minorities such as the Tatars, Ukrainians, and other ethnic groups. Essentially, Russia not only changed the national law by applying its own but also did so to perpetrate human rights violations rather than implementing the provisions of the Geneva Convention. It is worth noting that on 30 September 2022, Russia unilaterally declared its annexation of areas in the oblasts of Donetsk, Luhansk, Kherson, and Zaporizhzhia<sup>35</sup>. With these annexations, Russia no longer needs the “excuse” of “denazification” to justify the application of Russian laws in those areas.

## Conclusion

Based on the examination carried out in this paper, we can confidently conclude that Putin’s arguments, as outlined in his address to the citizens of the Russian Federation on 24 February 2022, are highly questionable. The war has been ongoing for over a year, with Western countries increasing their support for Ukraine. At the same time, Russia continues to issue menacing threats,

[ny.un.org/doc/UNDOC/GEN/N16/455/74/PDF/N1645574.pdf?OpenElement](https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/455/74/PDF/N1645574.pdf?OpenElement); Resolution adopted by the General Assembly on 19 December 2017, A/RES/72/190, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N17/462/64/PDF/N1746264.pdf?OpenElement>; Resolution adopted by the General Assembly on 22 December 2018, A/RES/73/263, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N18/464/75/PDF/N1846475.pdf?OpenElement>.

<sup>35</sup> See in this respect, Reuters. (2022). Russia's Federation Council ratifies annexation of four Ukrainian regions. <https://www.reuters.com/world/europe/russias-federation-council-ratifies-annexation-four-ukrainian-regions-2022-10-04/>

including the possibility of using nuclear weapons. Amid it all, there is a staggering number of deaths and injuries, destruction of cities, and far-reaching economic consequences impacting the world. The prospects for peace seem nothing more than an elusive mirage at this point. Despite Pope Francis's recent announcement of a peace mission<sup>36</sup>, both Ukraine and Russia have shown disregard for it. It is our hope that the international community will heed the lessons of the past century to avoid repeating the same mistakes.

### **CONFLICT OF INTEREST**

The author (s) declares that there is no conflict of interest regarding the publication of this manuscript. In addition, the ethical issues, including plagiarism, informed consent, misconduct, data fabrication and/or falsification, double publication and/or submission, and redundancy, have been completely observed by the authors.

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<sup>36</sup> Reuters. (2023). Pope says Vatican involved in secret Ukraine peace mission. <https://www.reuters.com/world/europe/pope-says-vatican-involved-ukraine-peace-mission-2023-04-30/>

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