

Russian military operation in Ukraine: analysis from the perspective of International Law

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ABSTRAK

Pemerintah Rusia dengan tegas menyatakan bahwa pihaknya memulai serangan resmi secara penuh di wilayah Ukraina pada 24 Februari 2022. Sementara itu Presiden Ukraina, Volodymyr Zelenskyy, menyatakan telah diberlakukannya darurat militer di seluruh wilayah negaranya setelah Rusia melakukan serangan penuh. Selain itu, beberapa negara di dunia menanggapi melalui pernyataan terbuka dari kepala negaranya masing-masing, dan ada pula yang disertai dengan pemberian sanksi. Terlepas dari alasan dan pembenaran suatu keputusan, masyarakat adalah pihak yang paling terkena dampak. Situasi perang ini tentunya perlu memperhatikan prinsip-prinsip hukum humaniter dan prinsip-prinsip kemanusiaan. Tulisan ini menjelaskan bagaimana perang antara Rusia dan Ukraina dilihat dari perspektif hukum internasional dan kewajiban para pihak di bawah hukum humaniter internasional. Jenis penelitian ini adalah penelitian yuridis normatif. Metode pengumpulan data yang digunakan adalah studi kepustakaan. Alat yang digunakan dalam penelitian ini adalah data sekunder berupa dokumen yang terdiri dari bahan hukum primer, bahan hukum sekunder, dan bahan non-hukum. Data tersebut dianalisis secara kualitatif kemudian disajikan secara deskriptif. Hasil penelitian ini menemukan bahwa justifikasi yang digunakan oleh pemerintah Rusia dalam melakukan operasi militer di Ukraina, yaitu pertahanan diri, pertahanan diri kolektif, dan intervensi kemanusiaan tidak dapat dibenarkan menurut hukum internasional. Konflik antara Rusia dan Ukraina termasuk dalam konflik bersenjata internasional sehingga untuk melindungi warga sipil serta subjek dan objek tertentu, para pihak yang berkonflik harus mematuhi ketentuan hukum humaniter internasional.

Kata Kunci: Rusia, Ukraina, Hukum Internasional, Hukum Humaniter Internasional

ABSTRACT

The Russian government emphatically stated that it started a full official attack on Ukrainian territory on February 24, 2022. While, the President of Ukraine, Volodymyr Zelenskyy, declared the imposition of martial law in all regions of his country after Russia carried out a full attack. In addition, several countries in the world responded through open statements of their respective heads of state, and some were accompanied by the imposition of sanctions. Regardless of the reasons and justifications for a decision, the community is the most affected party. This war situation, of course, needs to heed the principles of humanitarian law and humanitarian principles.

This paper describes how the war between Russia and Ukraine is seen from the perspective of international law and obligations of the parties under international humanitarian law. This type of research is normative juridical research. The data collecting method used is literature study. The tools used in this research are secondary data in the form of documents consisting of primary legal materials, secondary legal materials, and non-legal materials. These data were analyzed qualitatively and then presented descriptively. The results of this study found that the justifications used by the Russian government in carrying out military operations in Ukraine, namely self-defense, collective self-defense, and humanitarian intervention cannot be justified under international law. The conflict between Russia and Ukraine is included in an international armed conflict so that in order to protect civilians and certain subjects and objects, the parties to the conflict must comply with the provisions of international humanitarian law.

I. INTRODUCTION

During February 24, 2022, the Russian Government through its President Vladimir Putin explicitly declared that he had officially started a full-fledged attack on Ukrainian territory ([International Crisis Group, 2022](#)). The statement was followed by explosions in several areas of Ukraine as a result of Russian military missile attacks ([Dwyer, 2022](#); [Yale Law School, 2022](#)). The decision by Vladimir Putin marks Europe's first largest land war in decades and has far-reaching implications around the world. The attacks targeted military and other infrastructure throughout Ukraine, including those near Kyiv City and other major cities across Ukraine such as the Black Sea Port of Odessa, as well as industrial centers in the eastern region of Kharkiv City, Dnipro City and Mariupol City ([International Crisis Group, 2022](#)). The west part of Ukraine is also attacked, the areas of Lviv and Lutsk has bombed ([Kossov, 2022](#)). There were reports indicating that the attack has killed and injured civilians ([Amnesty International, 2022](#); [OCHA Ukraine, 2022](#)).

Putin argued that his decision in line with "necessary measure" and as a warns the United States and other allies to applies the non- interferece in the conflict. On the other hand, the President of Ukraine, Volodymyr Zelenskyy, declared the implementation of martial law throughout his country after Russia carried out a full-fledged attack. Zelenskyy urges all his citizens who want to defend their country to come forward and be ready to provide weapons to everyone in need ([Isachenkov et al., 2022](#)).

In response to Russia's invasion of Ukraine, several countries in the world responded through open statements by their respective heads of state, and some were accompanied by the imposition of sanctions. The Joe Biden administration condemned the attack but said the US would not send troops to Ukraine. President Biden's remarks were followed by the imposition of heavy economic sanctions on Russia and a promise to take further steps to strengthen the NATO alliance, especially in the European region and provide humanitarian assistance to Ukraine. Some of the sanctions imposed by the US on Russia are restrictions on Russian business in dollars, euros, pounds, and yen. Dozens of Russian banks and financial institutions were blocked, 13 major Russian companies on the US

market were frozen, and the Russian elite and their families were blacklisted ([U.S Department of the Treasury, 2022](#)).

Meanwhile, Canadian Prime Minister Justin Trudeau stated that Canada condemns in the strongest possible terms Russia's horrific attack on Ukraine. Such action is considered an act without reason and is a violation of the sovereignty and territorial integrity of Ukraine. Trudeau also stressed that Russia had violated its obligations under international law and the United Nations Charter to maintain world peace. Canada called on Russia to immediately stop all hostile and provocative acts against Ukraine and withdraw all military forces and all proxies from the country. Trudeau called on Russia to respect Ukraine's sovereignty and territorial integrity, and the Ukrainian people should be given the freedom to determine their own future ([The Office of the Prime Minister of Canada, 2022](#)). Then, the European Union imposed sanctions in the form of restrictions on access to the European Union capital market, prohibiting the export of aircraft spare parts to Russia, revoking the privileged access of Russian diplomats in the European Union, and limiting the storage of Russian elite deposits in the European Union ([European Council, 2022](#)).

Apart from these three parties, there are many other subjects of international law who strongly condemn Russia's actions and have imposed economic sanctions, including Britain, France, Japan, South Korea, and others. But, on the other hand, some countries close to Russia such as China, Pakistan, India, Iran, North Korea tend not to blame one party and place more emphasis on a peaceful settlement. Regardless of the reasons and justifications for a war decision, the community is the party most affected by it. The war in Ukraine itself has been going on for the last eight years since 2014. The war took place between the legitimate government of Ukraine and pro-Russian groups who are trying to control several cities in Ukraine. This war left more than 850,000 people homeless and nearly 3 million people dependent on humanitarian aid ([International Rescue Committee, 2022](#)).

The invasion by Russia since February 24 into Ukraine has exacerbated security issues for the civilian population and the humanitarian needs in Ukraine are increasing. Many Ukrainians have been forced to flee, both within the country and to neighboring countries. More than 160,000 people are reported to be internal refugees in Ukraine and another 116,000 have fled across the border to Poland, Romania, Moldova, and other European countries. Neighboring countries have also been preparing to accept refugees. Poland estimates it can take in up to 1 million refugees forced to leave Ukraine. Other countries have also opened their borders to Ukrainian refugees. The United Nations estimates there are about 12 million people in Ukraine who will need assistance and protection, and more than 4 million Ukrainian refugees are expected to need protection and assistance in neighboring countries in the coming months ([UNHCR Ukraine, 2022](#)). This war situation, of course, needs to heed the principles of humanitarian law and humanitarian principles. This paper will describe how the war between Russia and Ukraine is seen from the perspective of international law and the obligations of the parties under international humanitarian law.

II. RESEARCH METHOD

This type of research is normative juridical research that aims to conduct studies and research related to the war that occurred between Russia and Ukraine from the perspective of international law and tries to describe the obligations of the parties to protect civilians and certain subjects and objects according to international humanitarian law. It is hoped that the results of this research will be able to contribute to understanding related issues that are currently happening in terms of international law. The data collection method used is literature study. The tools used in this study are secondary data in the form of documents consisting of primary legal materials, secondary legal materials, and non-legal materials. These data were analyzed qualitatively and then presented descriptively.

III. RESULT AND DISCUSSION

3.1. Brief Discussion on Russia and Ukraine Conflicts

The conflict between Russia and Ukraine dates back to 1917 when the Bolshevik Revolution took place (Grant, 2014; Holquist, 2017; Krementsov, 2017). But in the 21st century, relations between the two began to heat up in 2013, when Ukraine decided to withdraw from the EU Treaty (Gunawan et al., 2020; Kuzio et al., 2022). Many citizens are disappointed with the cancellation of the cooperation agreement with the European Union (Human Rights Council, 2014). As a result, hundreds of students took to the streets of the capital Kiev, demanding the resignation of then-Russian President Yanukovich. However, the demonstration did not run smoothly due to violence between the police and other security forces against the protesters, more than a hundred protesters were killed.

Ukraine's internal geopolitics are divided, people living in eastern and southern Ukraine share a direct border with Russia and have historical and linguistic backgrounds that are culturally very close to Russia (Rexhepi, 2017). Therefore, when demonstrations occur, they refuse to get involved and reject the claims of the demonstrators who are on behalf of the entire Ukrainian people. After President Yanukovich was successfully ousted, it was the turn of the people in the Crimean Peninsula, which is inhabited by a Russian-speaking majority, to protest against the new government and carry out a pro-Russian movement (Svarin, 2016). Crimea is an autonomous region that has its own parliament, but politically it is still under the sovereignty of Ukraine. The Ukrainian government then took action against the protestant, but Russia intervened by sending military forces to the region on the basis of protecting ethnic Russians (Rutland, 2016). The conflict eventually expanded and invited the involvement of other countries such as the US and its allies who supported Ukraine (Larrabee et al., 2017). Finally, the Crimean Parliament decided to hold a referendum on 14 March 2014 to decide whether Crimea was part of Russia or Ukraine (Christakis, 1988; Merezko, 2015). As a result, about 96.8% of Crimeans want to join Russia. This result was vehemently rejected by Ukraine as well as western countries and considered the referendum an illegal act (Kartini, 2016).

The referendum also triggered separatists in the two pro-Russian regions of Ukraine, Donetsk and Luhansk, to part with Ukraine. The insurgency lasted for months and briefly

stalled after the 2015 peace and ceasefire agreement, the Minsk Accord, was reached (Chaban et al., 2019; Hurak, 2018). Separatists in the Donetsk and Luhansk regions later proclaimed independence as Donetsk and Luhansk People's Republics (DNR and LNR) (Åtland, 2020). Finally on February 21, 2022 President Vladimir Putin canceled the 2015 peace agreement and declared recognition of the independence of Donetsk and Luhansk. This action was also carried out by Russia as a result of Ukraine's plan to join NATO which was considered to be a threat to Russia (Peng, 2017).

3.2. Russia and Ukraine Wars Based on International Law Perspective

3.2.1. Russia and Ukraine Wars Based on International Law Perspective

Martial law is a temporary rule imposed by military authorities in designated areas in times of emergency and when civilian authorities are deemed unable to function (Dyzenhaus, 2009). Emergencies are very important from a human rights perspective because military operations often pave the way for systematic human rights violations. Article 4(3) of the International Covenant on Civil and Political Rights (ICCPR) has so far been the justification for suspending a country's international obligations and imposing martial law on its territory (Criddle & Fox-Decent, 2012). The arrangement and implementation of the declaration of martial law varies from country to country, but generally takes the form of suspension of civil rights and extension to the civilian population of military justice or military law (Relyea, 2001). While this is theoretically temporary, martial law can actually continue indefinitely. Experts have consistently agreed that compulsion is a mandatory prerequisite for enacting martial law. Frederick Bernays Wiener in his book entitled "A Practical Manual of Martial Law" asserts that martial law is a public law of necessity (Dennison, 1974). The need to implement it, the need to justify its implementation, and the need to measure to what extent and to what degree it can be used. The necessity in question is not a formal, artificial, legalistic concept, but actual and factual: the necessity to take action to protect the country from rebellion, riots, chaos, or public disaster. Thus, according to Wiener, what constitutes necessity is a question of fact in each case.

The declaration of martial law allows military authorities to "take all measures reasonably necessary for the purpose of restoring and maintaining public order" (ICRC, 2013). These powers include taking action on individuals to restrict their movement, imposing sentences through military tribunals, and the power to suspend other basic rights. It generally means that it is the military officer in charge of implementing the law and not the civilian or police leader. This generally applies to situations where the rule of law is considered difficult to enforce in such a way during a national emergency.

Ukraine has regulated this martial law through the Law of Ukraine on Legal Regime of the Martial Law which was established in April 2000 based on the Ukrainian Constitution. Article 1 of the regulation stipulates that the term 'martial law' should be understood as a special legal regime, which is introduced in Ukraine or in certain regions of Ukraine in the event of military aggression or threat of attack, a threat to Ukraine's national independence or its territorial integrity, and grants the necessary powers to relevant state authorities,

military commands, and local administrative bodies to counter threats and ensure national security, as well as temporary restrictions on the rights and freedoms of individuals and citizens, and the rights and freedoms of legal entities on the basis of threats with reference to the validity period of such restrictions.

Article 19 of the Law of Ukraine on the Legal Regime of the Martial Law stipulates that during the period of implementation of the martial law, it is prohibited to:

- a. Amending the Constitution of Ukraine
- b. Amending the Constitution of the Autonomous Republic of Crimea
- c. Hold elections for the President of Ukraine, the Supreme Council of Ukraine, the Supreme Council of the Autonomous Republic of Crimea and the autonomous bodies of local government
- d. Holding national and local referendums
- e. Attack

The enactment of martial law in Ukraine also causes restrictions on the constitutional rights and freedoms of individuals and citizens as regulated in Articles 30-34, 38-39, 41-44, 53 of the Constitution of Ukraine. But in other articles, some of the rights and freedoms provided for in Articles 24-25, 27-29, 40, 47, 51-52, 55-63 of the Constitution of Ukraine cannot be limited. The implementation of martial law in Ukraine was followed by the issuance of Presidential Decree No. 64 of 2022 which was valid from 24 February 2022 until 30 days later. One of the contents of the decree prohibits citizens aged 16-60 years from leaving the territory of Ukraine. This is generally done as an effort so that a country at war gets additional power from civilians in order to defend the country.

3.2.2. International Legal Analysis of Russian Military Operations in Ukraine

The need to implement it, the need to justify its implementation, and the need to measure to what extent and to what degree it can be used. The necessity in question is not a formal, artificial, legalistic concept, but actual and factual: the necessity to take action to protect the country from rebellion, riots, chaos, or public disaster. Thus, according to Wiener, what constitutes necessity is a question of fact in each case. This analysis is conducted to answer two big questions: first, is there any international legal justification for using force in this case (*jus ad bellum*)? Second, how to classify the situation in Ukraine under international law (*jus in bello*)? Before answering these two big questions, it is necessary to emphasize that the analysis is limited to the international legal aspects of the conflict.

Answering the first question, it should be underlined that international law generally prohibits the use of weapons in accordance with Article 2 point 4 of the United Nations Charter (UN Charter). However, there are some exceptions to this, although very limited. So, it is necessary to analyze whether the reasons for the Russian military operation to Ukraine meet one of these exceptions? To answer this, we cannot assume without foundation, therefore, we need to pay close attention to the arguments presented by the President of Russia, Vladimir Putin, which were conveyed in general and widely through various electronic mass media when starting a full-fledged military attack on Ukraine on

24 February 2022 ([The Spectator, 2022](#)). Putin's justification for attacking Ukraine is based on three things: first, (pre-emptive) individual self-defense which is based on Article 51 of the UN Charter, where Russia attacks Ukraine to prevent possible attacks from Ukraine in the future. The terminology used in the statement is very important, for reasons of self-defense can only be used for situations where there is an ongoing armed attack, where the form of the attack must be real, so there is a need for immediacy elements as the basis for using military operations. However, if one looks at the case of the Russian attack on Ukraine, no immediacy of these elements is found. Pre-emptive self-defense cannot be used as a reason for the exception of Article 2 point 4 of the UN Charter.

The second justification is collective self-defense for the Donetsk and Luhansk Republics, in which Russia bases its operations at the request of the Donetsk and Luhansk Republic state authorities who declared in the Ukraine attack. This argument is basically unjustified, because the fact that President Putin has signed a decree recognizing the independence of the Donetsk and Luhansk Republics which Ukraine considers a separatist act in the region does not necessarily make the Donetsk and Luhansk Republics independent states. The third justification, in the argument presented by Putin, he also based the military operation on the basis of humanitarian intervention, although he did not explicitly use the terminology. Putin stated that there was a need to intervene in Ukraine to protect Ukrainian people from acts of genocide. However, international law stipulates that humanitarian intervention cannot be carried out without the approval of the United Nations Security Council. So, based on the analysis of the three justifications, it can be said that Russia's military operation to Ukraine is unjustifiable and contrary to international law.

The second question is related to the classification of the situation in Ukraine based on international law, it is necessary to emphasize that the situation is an armed conflict between Russia and Ukraine, so it is included in an international conflict because it involves two countries. However, keep in mind that there have been previous armed conflicts between Ukraine and the Donetsk and Luhansk separatist groups since 2014. Currently, this conflict can also be categorized as an international conflict because the facts on the ground show that Russia has complete control over the authority of the Donetsk and Luhansk separatist groups.

3.2.3. Obligations of the Parties under International Humanitarian Law

International humanitarian law establishes various forms of obligations that aim to provide for restrictions on the use of force during armed conflict. In general, international humanitarian law emphasizes the obligations of belligerent parties to refrain from attacks and the protection of civilians or combatants who have surrendered, been injured or have been captured. Regarding these parties, several important provisions in international humanitarian law stipulate that the parties to a conflict are obliged to:

- a. Do not target them as an object of attack;
- b. Not starving them (and providing assistance to them or allowing the International Red Cross, United Nations, or NGOs to provide assistance);

- c. Treat them humanely at all times;
- d. Avoid moving them unless absolutely necessary;
- e. Release prisoners of war after the conflict is over

Under the framework of the armed conflict between Russia and Ukraine, the Ukrainian authorities provide or arm civilians to defend themselves or directly engage in war. Thus, it should be emphasized that civilians can only be protected as non-combatants as long as they act like civilians, as long as they are not involved in war. However, if they are involved, then their protection status is automatically lost and they can be legitimately considered as targets of attack, and they can be prosecuted by Russia on the basis of the fact that they carried and/or used weapons against Russia. In international humanitarian law the term *levée en masse* is also known, this term is used for residents of an unoccupied territory who, when the enemy approaches, spontaneously take up arms to fight the invading forces without having time to organize themselves into armed forces as in general (Crawford, 2017). They should be considered combatants if they carry arms openly and respect the laws and customs of armed conflict. If captured they are entitled to be treated as prisoners of war (Crawford, 2011).

On the other hand, international humanitarian law also tries to minimize the use of force that is needed to defeat the enemy, and refrain from using weapons or tactics that are indiscriminate or inhumane and inhuman. The point of minimizing in this case is that the Russian and Ukrainian sides:

- a. Making everything worthy of being identified as a military object, so that the parties are clear in targeting the attack. This is mainly done on objects that can usually be used for two functions, namely for the benefit of civilians and for military purposes. However, buildings that are usually used for the benefit of civilians but are later converted for military purposes, then the building will lose its protection and is legitimate to become a target for attacks by the opposing party.
- b. Avoid damaging civilians and their property when planning or carrying out attacks. This is especially important when the operation is carried out in a densely populated civilian area. Therefore, the parties must avoid the use of weapons that with a single attack can affect a large area because there will be a high risk of damaging buildings and killing civilians.
- c. Use of weapons that are less likely to cause additional damage. This provision is widely understood as a justification for the permissibility of killing a number of innocent civilians if one of the parties considers that an attack on a certain military object will provide a significant military advantage when it is impossible to avoid the casualties of civilians in the vicinity of the object. This action must be calculated proportionally between the benefits obtained and the number of civilians who will become victims.
- d. Provide warnings regarding specific attacks to be carried out if possible. For example, in the case of the Russian airstrike on Ukraine, the Russian side should

give a warning so that residents in the target area have the opportunity to leave the area before the attack is carried out.

- e. Avoid using weapons that are inaccurate, indiscriminate, or causing excessive suffering.

3.2.4. Third State Obligations Under International Law

Third State obligations when there is an armed conflict between Russia and Ukraine is also inseparable from international legal arrangements. During the conflict, the Third State has several obligations, including:

- a. Do not provide support in any form to the aggressor country in this case Russia. What is meant by support in this case is direct support (military assistance, weapons assistance, financial assistance, etc.) and indirect support (statement of support, etc.). In this case, Belarus was proven to have allowed its territory bordering Ukraine to be used by Russia in attacking Ukraine (Reetz, 2022). Belarus' actions have met the criteria set out in Article 16 of the International Law Commission's (ILC) Articles on the Responsibility of States for Internationally Wrongful Acts. Thus, the actions of Belarus, under international law, are considered to be involved in war and can be targeted for Ukrainian attacks.
- b. Not giving recognition to illegal occupations during the aggression.
- c. To bring to justice any person accused of an international crime currently on their territory. It should be remembered that for cases of international crimes there is no forgiveness, and the principle of immunity does not apply.

To implement decisions, such as sanctions, which have been decided by the UN Security Council (in this case it is almost certain that no decision to impose sanctions on Russia can be taken by the UN Security Council because of Russia's veto power), or decisions of the UN General Assembly.

IV. CONCLUSION

Based on the results of the study and analysis in the previous description, it can be concluded that Putin's justification for attacking Ukraine is based on three things: first, (pre-emptive) individual self-defense which is based on Article 51 of the UN Charter, where Russia carried out an attack on Ukraine to prevent possible attacks from Ukraine in the future. However, if one looks at the case of the Russian attack on Ukraine, no immediacy of these elements is found. The second justification, namely collective self-defense for the Donetsk and Luhansk Republics, where Russia bases its operations at the request of the state authorities of the Donetsk and Luhansk Republics cannot be justified, due to the fact that President Putin has signed a decree recognizing the independence of the Donetsk and Luhansk Republics which is considered an act. separatism by Ukraine in the region does not necessarily make the Donetsk and Luhansk Republics independent states. The third justification is humanitarian intervention; however, international law stipulates that humanitarian intervention cannot be carried out without the approval of the

United Nations Security Council. So, based on the analysis of the three justifications, it can be said that Russia's military operation to Ukraine is unjustifiable and contrary to international law.

International humanitarian law establishes various forms of obligations that aim to provide for restrictions on the use of force during armed conflict. International humanitarian law emphasizes the obligations of belligerent parties to refrain from attacks and the protection of civilians or combatants who have surrendered, been injured or have been captured. International humanitarian law also tries to minimize the use of force and refrain from the indiscriminate or inhumane use of weapons or tactics.

Author Declaration

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