



Legality of Russian-Ukrainian War Russian perspective

Abstract

The post-World War II arrangements generated several decisions that granted the victorious countries certain powers, most notably The Declaration of the Four Nations on General Security, the Four Power Declaration, and Articles 106 and 107 of the United Nations Charter. Questions have recently been raised about the possibility of exploiting these powers to legitimize Russian intervention in Ukraine. However, given the nature and background of these articles and decisions, it turns out that they were part of the arrangements for a transitional period, followed by the transfer of these powers and tasks to the United Nations, and the subsequent new arrangements, most notably the collapse of the Soviet Union and the emergence of the Russian Federation, which arranged for a new legal situation. This does not contradict the rule of inheriting international treaties as one of the principles of international law but takes into account the change in the new legal status of states. Therefore, the countries that were under the guise of the Soviet Union have become independent members in the United Nations General Assembly, and by reviewing the contents of the documented sessions of the United Nations since the outbreak of the Russian-Ukrainian crisis, it turns out that the defenses and arguments presented by the Russian delegate to legitimize the Russian intervention in Ukraine were based on two main arguments, which were repeated in most of the Russian President's speeches. For the Russian Federation, especially the speech of the declaration of invasion, which was based on Article 51 of the Charter of the United Nations, which guarantees the right of states to defend themselves against threats, and Article 1 of the International Covenant on Civil and Political Rights that all peoples have the right to self-determination, meaning that any Russian ethnic minority in Ukraine has the right to determine its political status and to pursue its economic, social and cultural development.

Since Putin announced his intention to invade Ukraine militarily, numerous analyses came up that the legal arguments Russia depend on to justify the invasion, and the talk about the arrangements made after World War II that gave the powers to the victorious nations that could be exploited by the Russian side has increased recently. There is even a rumor that claims that the Russian president talked to the secretary-general of the United Nations about the article contained in the United Nations charter and these arguments depended on two articles; 106 and 107 in the United Nations charter, that gives the right to the victorious countries and nations to take any needed decision against the countries that fought against them in World War II to avoid revising the results of World War II. In these decisions, it is specially allowed to utilize military power against these countries.

In fact, this information lacks accuracy. Looking at Chapter Seventeen of the Charter of the United Nations, which comes under the title “Deals with transitional security and arrangements related to World War II”, we find the two articles that are mentioned in the 17th chapter state the following:

Article 106:

“Pending the coming into force of such special agreements referred to in Article 43 as in the opinion of the Security Council enable it to begin the exercise of its responsibilities under article 42, the parties to the Four-Nation Declaration, signed at Moscow, October 30, 1943, and France, shall, in accordance with the provisions of paragraph 5 of that Declaration, consult with one another and as occasion requires with other Members of the United Nations with a view to such joint action on behalf of the Organization as may be necessary for the purpose of maintaining international peace and security.”

Article 107:

“Nothing in the present Charter shall invalidate or preclude action, in relation to any state which during the Second World War has been an enemy of any signatory to the present Charter, taken or authorized as a result of that war by the Governments having responsibility for such action.”

Article 43:

All Members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities, including the rights of passage, necessary for the purpose of maintaining international peace and security.

Such agreement or agreements shall govern the numbers and types of forces, their degree of readiness and the general location, and the nature of the facilities and assistance to be provided.

The agreement or agreements shall be negotiated as soon as possible on the initiative of the Security Council. They shall be concluded between the Security Council and Members or between the Security Council and groups of Members and shall be subject to ratification by the signatory states in accordance with their respective constitutional processes.

And in this content, we can also take into consideration the following:

- **Four-Nation deceleration on public security:**

The governments of the United States of America, the United Kingdom, the Soviet Union, and China;

United in their determination, in accordance with the declaration by the United Nations of January 1942, and subsequent declarations, to continue hostilities against those Axis powers with which they respectively are at war until such powers have laid down their arms on the basis of unconditional surrender; Conscious of their responsibility to secure the liberation of themselves and the peoples allied with them from the menace of aggression; Recognizing the necessity of insuring a rapid and orderly transition from war to peace and of establishing and maintaining international peace and security with the least diversion of the world's human and economic resources for armaments; Jointly declare:

1. That their united action, pledged for the prosecution of the war against their respective enemies, will be continued for the organization and maintenance of peace and security.
2. That those of them at war with a common enemy will act together in all matters relating to the surrender and disarmament of that enemy.
3. That they will take all measures deemed by them to be necessary to provide against any violation of the terms imposed upon the enemy.
4. That they recognize the necessity of establishing at the earliest practicable date a general international organization, based on the principle of the sovereign equality of all peace-loving states, and open to membership by all such states, large and small, for the maintenance of international peace and security.
5. That for the purpose of maintaining international peace and security pending the re-establishment of law and order and the inauguration of a system of general security they will consult with one another and as occasion requires with other members of the United Nations, with a view to joint action on behalf of the community of nations.
6. That after the termination of hostilities they will not employ their military forces within the territories of other states except for the purposes envisaged in this declaration and after joint consultation.
7. That they will confer and cooperate with one another and with other members of the United Nations to bring about a practicable general agreement with respect to the regulation of armaments in the post-war period.

- **Declaration regarding Italy:**

The ministers of foreign affairs of the United Kingdom, the United States, and the Soviet Union have established that their three governments are in complete agreement that Allied policy toward Italy must be based upon the fundamental principle that fascism shall be destroyed and its effect entirely, and the Italian people must take every chance to build governmental institutions and other institutions based on democratic ethics.

- **Declaration regarding Austria:**

The ministries of foreign affairs of the United Kingdom, United States, and the Soviet Union agreed that the annexation of Germany (anshelos) from Austria was null and void. Moreover, they called for the establishment of free Austria after defeating Nazi Germany.

The governments of the United States, United Kingdom, and the Soviet Union see that Austria was the first country to be attacked by Hitler's aggression, and it shall be freed from this German dominance. They consider that the annexation of Germany that was imposed on Austria on the 15th of March in 1938 was null and void. They consider themselves as having no responsibility for changes that happen in Austria from this date under any conditions. They declare that they wish to rebuild Austria as a free and independent country, that will open the freedom gates to the Austrian people and the neighborhood countries that will face similar problems, eventually, this will lead to stable economic and political conditions that are the only basis for lasting peace.

"Austria is reminded, however, that it has a responsibility, which it cannot evade, for participation in the war at the side of Hitlerite Germany, and that in the final settlement account will inevitably be taken of its own contribution to its liberation."

Given the abovementioned information, we can conclude the following:

- What was mentioned above was ordered transitions that are clearly shown under the headlines of Articles 106 and 107 that came with the title of Deals with transitional security and arrangements related to World War II. Regarding the Four-Nation deceleration on public security which was responsible to deal with the transition conditions and that is clearly obvious in Article 42 that constituted Article 106 by taking into consideration that it is a transitional article (Deals with transitional security and arrangements related to World War II). So, the international organization inherits all the transitional conditions and puts them under the action of the United Nations.
- The Four-Nation declaration on public security does not give Russia an independent role because it only holds the name of Moscow; the independent role was given only to (the Soviet Union, France, the United Kingdom, and the United States) in supervising the transitional condition and the arrangements of the special security of the defeated or surrendered countries of World War II, but these rights were extended until these countries' conditions that were in the war, are finished, especially, in the case of Austria and Germany. That is shown when these rights were reactivated after the cold war and uniting Germany (West and East), and the 4 countries announced and agreed that Germany became an independent country and became one of the members of the United Nations.
- The collapse of the Soviet Union, and the appearance of United Russia, made the path for a new rule condition that does not contradict the rule of inheritance of international agreements. Therefore, now the countries that were under the Soviet Union have independent membership in the United Nations General Assembly like Ukraine and Poland, etc. Poland undergoes a program of full transition under the supervision of the United Nations (Marshal project). The North Atlantic Treaty Organization (NATO) is a project that took 25 years to establish. Ukraine did not come into the priorities in any of these projects. The Budapest project ensures the strategy of "the open door" to invite more countries to membership in the United Nations that in the end led to this situation. However, this situation ensured that the rights of the four countries had ended.
- Returning to the Articles of the U.N Charter which are concerned with self-defense proposed by the Russian delegate to the United Nations, he did not mention the agreements which are mainly related to the post-WW2 order. However, he referred to two important arguments in which the Russian President spoke about the war, most notably in his speech on Friday, September 30, 2022, before the Russian Federal Assembly (Parliament), in which he announced the annexation of the Donetsk, Lugansk, Zaporizhzhia and Kherson regions

to Russia, and in the speech, he delivered on 24 February 2021, announcing a “special military operation” in Ukraine, claimed that Russian military intervention in Ukraine was necessary **“to protect people who have been subjected to abuse and genocide by the Ukrainian government and to “protect Russia and our people.”** Putin also said that the **Donetsk and Luhansk People’s Republics—which the Russian government had formally recognized only two days before—had requested assistance in their fight against the Ukrainian government.**

- The day Russia launched its operations, its Permanent Representative to the United Nations notified the UN Secretary-General that the military action was “taken in accordance **with Article 51 of the UN Charter in the exercise of the right of self-defence.**” In explanation, he simply appended a speech Putin had made to the Russian population earlier in the day announcing the commencement of the campaign. The Russian Representative then transmitted the notification to the Security Council (UN Doc. S/2022/154). In turn, the Council voted 11-1 to condemn the Russian action, with China, India, and United Arab Emirates abstaining. The single vote from Russia, one of five permanent members of the council, killed the proposed resolution.

Russian Claims

According to the abovementioned, with respect to the Russian invasion of Ukraine, the Russian President relied on two main legal arguments that he reiterated throughout his speeches:

The first claim: The anticipatory self-defense principle, which Putin used in his speech on Monday, February 21, 2022, when he said that Ukraine wants to obtain the atomic bomb, adding: “The only thing missing is the uranium enrichment system. But this is a technical question, and for Ukraine, it is not an intractable problem.” It even wanted to develop missiles that could fall on Moscow, which he used as a justification to intervene militarily in Ukraine.

Countries’ sovereignty, political independence, and territorial integrity are widely recognized principles, enshrined in the United Nations Charter. There is a clear prohibition on the threat or use of force between states, other than as authorized by the Security Council or for purposes of the right of self-defense **“if an armed attack occurs”** (quoting the charter).

There is A narrow understanding of **anticipatory self-defense against an imminent armed attack** has also been accepted by some international lawyers and policymakers as falling within the self-defense justification, as has a concept of protection of nationals abroad (for instance, in cases of hostage-taking).

Whether Article 51 of the UN Charter permits recourse to self-defence against armed attacks that are yet to occur has been a perennial question of the jus ad bellum. The doctrine has discussed preventive, pre-emptive, anticipatory, and interceptive self-defence endlessly. It has done so in conventional interstate contexts, in those involving attacks by (terrorist) non-state actors, and regarding novel challenges posed by cyber. While the views of scholars (and states) on these issues are varied, on one end of the spectrum is the “restrictivist” position: the text of Article 51 is clear and speaks of the right to self-defense arising only if an armed attack ‘occurs’; there can be no self-defense against a future attack. On the other end (in every sense extreme) of the spectrum, there are broad conceptions of preventive self-defense against future threats, especially those involving terrorism and weapons of mass destruction.

This is a position most associated with the George W. Bush administration in the United States, but its main problem is simply that the idea that ‘defensive’ force can be used to prevent highly speculative future threats cannot be made compatible with a legal system that comprehensively prohibits the unilateral use of force in international relations.

The second Claim: To protect people who have been subjected to abuse and genocide by the Ukrainian government.

The right of people to self-determination is a fundamental right under international law. That means that any Russian ethnic minority in Ukraine has a right to determine its political status and pursue its economic, social, and cultural development. Yet, there is no right to unilaterally secede from a state and form a separate state. In recognition of states’ right to preserve their territorial integrity, secession is allowed only in extreme cases of repeated oppression or subjugation of the minority, leaving it with no other option to exercise “internal self-determination” in a meaningful way. International lawyers call this “remedial secession.” Putin seems to have alluded to this when he claimed that “... was necessary to immediately stop this nightmare: the genocide against the millions of people living there, who rely only on Russia, hope only on us” — a claim that Ukraine emphatically denies.

Conclusions:

- What was mentioned about the post-World War II arrangements was ordered transitions that are clearly shown under the headlines of Articles 106 and 107 that came with the title of Deals with transitional security and arrangements related to World War II.
- Regarding the Four-Nation deceleration on public security which was responsible to deal with the transition conditions and that is clearly obvious in Article 42 that constituted Article 106 by taking into consideration that it is a transitional article (Deals with transitional security and arrangements related to World War II). So, the international organization inherits all the transitional conditions and puts them under the action of the United Nations.
- The collapse of the Soviet Union, and the appearance of United Russia, made the path for a new rule condition.
- the countries that were under the Soviet Union have independent membership in the United Nations General Assembly like Ukraine and Poland, etc. Poland undergoes a program of full transition under the supervision of the United Nations (Marshal project).
- Returning to the Articles of the U.N Charter which are concerned with self-defense proposed by the Russian delegate to the United Nations, he did not mention the agreements which are mainly related to the post-WW2 order.
- **The Russian President relied on two main legal arguments that he reiterated throughout his speeches:**
 - The first claim: The anticipatory self-defense principle, which Putin used in his speech on Monday, February 21, 2022, when he said that Ukraine wants to obtain the atomic bomb.
 - The second Claim: To protect people who have been subjected to abuse and genocide by the Ukrainian government.

Appendix

Related Articles, treaties and agreements

UN Charter Articles	
Article 106	Pending the coming into force of such special agreements referred to in article 43 as in the opinion of the Security Council enable it to begin the exercise of its responsibilities under Article 42, the parties to the four-Nation Declaration, signed at Moscow, 30 October 1943, and France, shall in accordance with the provisions of paragraph 5 of that Declaration, consult with one another and as occasion requires with other Members of the United Nations with a view to such joint action on behalf of the Organization as may be necessary for the purpose of maintaining international peace and security.
Article 104	The Organization shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfillment of its purposes.
Article 107	Nothing in the present Charter shall invade or preclude action, in relation to any state which during the Second World War has been an enemy of any signatory to the present Charter, taken or authorized as a result of that war by the Governments having responsibility for such action.
Article 43	<ul style="list-style-type: none"> • All Members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security. • Such agreement or agreements shall govern the numbers and types of forces, their degree of readiness and general location, and the nature of the facilities and assistance to be provided. • The agreement or agreements shall be negotiated as soon as possible on the initiative of the Security Council. They shall be concluded between the Security Council and Members or between the Security Council and groups of Members and shall be subject to ratification by the signatory states in accordance with their respective constitutional processes.
Article 51	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 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.

Article 2(4)	All members of the UN “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 purpose of the United Nations.”
Article 2(3)	All member states to settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.”

Anticipatory Self-Defense principal

The principle of anticipatory Self-Defense has been present in the world of politics since the Middle Ages. However, with the establishment of the League of Nations, the covenant inaugurated a breakthrough with the announcement that the “resort to war”, will be under international supervision and rendered it unlawful in certain situations (1)- when made without prior submission of the dispute to arbitration or judicial settlement or to inquiry by the Council of the League. (2)- When begun before the expiration of three months after the arbitral award or judicial decision or Council report. (3)- When commenced against a member which had complied with such award or decision or recommendation of a unanimously adopted Council report; and, (4)- under certain circumstances, when initiated by a non-member state against a member state. The major breakthrough came with Articles 2(4) of the U.N Charter which condemned the recourse to war for the solution of international controversy. The term itself became critical and the U.N presented the notion of anticipatory self-defense, which is the use of force by a state to repel an attacker before an actual attack has taken place, before the army of the enemy has crossed its borders. Accordingly, it is the ability to foresee consequences of future action. This was stipulated in Article 51 “mentioned above”.

The four powers agreement (Berlin 1971)	This agreement was finalized during the period of Détente. It was signed by the Soviet Union, Great Britain, and France. This agreement reestablished travel and communications between East and West Berlin and contributed to easing the tensions between the Western and Eastern Blocks. The Four Nation Agreement “also known as the Quadripartite Agreement” was signed in the context of the Cold War. Although difficult, a resetting of relations was necessary after the Soviet attack on Czechoslovakia. The agreement resulted in (1) “General Provisions”; the four governments will work to ease tensions, the four governments agree that there shall be no use or threat of force and that disputes shall be settled solely by peaceful means, they will respect their individual and joint rights and responsibilities, they agreed that irrespective of the differences in legal views the situation which has developed from the agreement shall not be changed unilaterally. In addition to “provisions relating to the Western Sectors of Berlin” concerning transit and communication between the Western sectors of Berlin and the Federal republic of Germany.
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<p>The Treaty of Moscow (1970)</p>	<p>The Treaty of Moscow was signed on 12 August 1970 between the Soviet Union and West Germany. It was signed by Willy Brandt and Walter Scheel for West Germany's side and by Alexei Kosygin and Andrei Gromyko for the Soviet Union. Both sides expressed their ambition to strive for a normalization of the relations between the European states while they kept international peace and to follow the guidelines of the Article 2 of the UN Charter.</p> <p>The signees renounced the use of force and recognized the postwar borders, specifically, the Oder–Neisse line, which hived off a large portion of historical eastern Germany to Poland and the Soviet Union. It also enshrined the division between East Germany and West Germany, thus contributing a valuable element of stability into the relationship between the two countries.</p>
<p>The Treaty of Zgorzelec (1950)</p>	<p>The agreement was signed under Soviet pressure by Otto Grotewohl, prime minister of the provisional government of the GDR (East Germany) and Polish premier Józef Cyrankiewicz. It recognized the Oder-Neisse line implemented by the 1945 Potsdam Agreement as the border between the two states. The treaty was worded as a declaration and was, initially, not recognised as a legitimate international treaty by West Germany insisting on its exclusive mandate and the member states of NATO. Four years later when the Soviet Union granted East Germany independence, the Soviet Union reserved rights over East Germany (similar to the rights reserved by the Western Allies over West Germany under the Bonn–Paris conventions) pending a final peace treaty with Germany - the 1990 Treaty on the Final Settlement with Respect to Germany. So, although the treaty was binding on Poland and East Germany, for several decades it was not seen by many western members of the international community as such.</p>
<p>The Basic Treaty (1972)</p>	<p>The Federal Republic of Germany and German Democratic Republic (GDR) recognized each other as sovereign states for the first time.</p> <p>The treaty was signed on 21 December 1972 in East Berlin. The treaty was ratified the following year by West Germany and came into effect in June 1973. The signing of the treaty in December 1972^[1] paved the way for both German states to be recognized by the international community. Diplomatic relations were opened between the German Democratic Republic and:</p> <ul style="list-style-type: none"> • Australia (December 1972), • the United Kingdom, France, and the Netherlands (February 1973), • the United States (December 1974). • Both German nations were also admitted to the United Nations on 18 September 1973.
<p>Italy Declaration (1942)</p>	<p>After the Italian invasion to France, President Roosevelt, Prime minister Churchill, Maxim Litvinov of the USSR, and T.V. Soong of China signed a short document that later as the United Nations' declaration.</p>

<p>The Potsdam Agreement (1945)</p>	<p>The Potsdam Agreement was the agreement between three of the Allies of World War II: the United Kingdom, the United States, and the Soviet Union on 1 August 1945. A product of the Potsdam Conference, it concerned the military occupation and reconstruction of Germany, its borders, and the entire European Theatre of War territory. It also addressed Germany's demilitarization, reparations, the prosecution of war criminals and the mass expulsion of ethnic Germans from various parts of Europe.</p> <p>Executed as a communiqué, the agreement was not a peace treaty according to international law, although it created accomplished facts. It was superseded by the Treaty on the Final Settlement with Respect to Germany signed on 12 September 1990.</p>
<p>World Conference on Human Rights, Vienna, (1993)</p>	<p>The conference's main outcome was the Vienna Declaration and Programme of Action, which is a common plan for the strengthening of human rights work around the world. It also made recommendations for strengthening and harmonizing the monitoring system of the U.N which resulted in establishing the post of the High Commissioner for Human Rights in the same year. In addition to this, the conference took steps to promote the rights of women, children and indigenous peoples.</p>
<p>Treaty on Friendship, Cooperation and Partnership between Ukraine and the Russian Federation (1997)</p>	<p>was an agreement between Ukraine and Russia, signed in 1997, which fixed the principle of strategic partnership, the recognition of the inviolability of existing borders, and respect for territorial integrity and mutual commitment not to use its territory to harm the security of each other. The treaty prevents Ukraine and Russia from invading one another's country respectively, and declaring war, Ukraine announced its intention not to renew the treaty in September 2018, by doing so the treaty did expire on 31 March 2019, the treaty was also known as the "Big Treaty".</p>
<p>The Partition Treaty on the Status and Conditions of the Black Sea Fleet (1997)</p>	<p>The Partition Treaty on the Status and Conditions of the Black Sea Fleet consists of three bilateral agreements, between Russia and Ukraine signed on 28 May 1997 whereby the two countries established two independent national fleets, divided armaments, and bases between them, and set forth conditions for basing of the Russian Black Sea Fleet in Crimea. The treaty was supplemented by provisions in the Russian-Ukrainian Friendship Treaty, which was signed three days later. Russia unilaterally terminated the Partition Treaty in 2014 after it annexed Crimea.</p>

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