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The Armed Attack Against Ukraine and the Italian Reaction From a *Ius ad Bellum* Perspective

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Abstract

The Russian aggression against Ukraine provoked an unprecedented response from "Western" States, which promptly and increasingly transferred weapons to the latter State. The present article, looking in particular at the Italian domestic practice, argues that supplying weapons to Ukraine is legitimate under *ius ad bellum*, since Ukraine is lawfully exercising its right to self-defence. This conclusion will be reached through an analysis of the arguments advanced by Russia to justify the "special military operation" launched on the 24 February 2022.

Keywords

self-defence – aggression – Ukraine – Russian Federation – use of force

1 Introduction

The security assistance provided to Ukraine to defend itself from Russia's aggression is unprecedented. Although most of such assistance is provided by the United States (US), also European Union (EU) Member States are providing weapons and other military assets and facilities to Ukraine. As an EU Member State, Italy is currently participating to such efforts.

Providing weapons to a Party to an international armed conflict may amount to a use of armed force against the other Party. The International Court of Justice (ICJ) held that the US used armed force against Nicaragua by

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providing military assistance to the Contras.[1] Although that case concerned a non-international armed conflict, certain commentators argue that the same conclusion can in principle apply to classical inter-State conflicts.[2]

This means that, at least on paper, the provision of security assistance to Ukraine may breach the prohibition to use armed force in international law. The lawfulness of this conduct depends on the existence of a circumstance precluding wrongfulness.

The submission of this paper is that such a circumstance exists. In particular, supplying weapons to Ukraine is a measure aimed at allowing Ukraine to exercise its right to self-defence and that, accordingly, Article 21 of the Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA) prevents assisting States from being accountable for their conducts.

This conclusion will be mainly reached looking at the recent Italian practice on the supply of weapons to Ukraine (Section 2) and through an analysis of the international legal framework on the use of force, with a view to confirming the wrongful nature of Russian's invasion (Sections 3 and 4).

2 Italy's Military Assistance to Ukraine: an Overview

During the meeting of the Council of Ministers of 25 February 2022, the Italian Government approved Decree-law No. 14 which contained urgent provisions on the crisis in Ukraine. The Decree-law was then converted in the law No. 20 of 5 April 2022.

The Decree-law establishes different measures for helping Ukraine and for implementing decisions adopted at NATO and EU level, ranging from the participation of Italian military personnel in NATO initiatives for the use of the highly readiness force, called Very High Readiness Joint Task Force (VJTF) to the creation of the legal basis for facilitating the entry and the stay of Ukrainian citizens on the Italian territory.

1 *Military and Paramilitary Activities in and Against Nicaragua* (*Nicaragua v. United States of America*), Merits, Judgment of 27 June 1986, ICJ Reports 1986, p. 14 ff., p. 108 ff., para. 228.

2 SCHMITT, "Providing Arms and Materiel to Ukraine: Neutrality, Co-Belligerency, and the Use of Force", Articles of War, 7 March 2022, available at: <https://lieber.westpoint.edu/ukraine-neutrality-co-belligerency-use-of-force/>; HELLER and TRABUCCO, "The Legality of Weapons Transfers to Ukraine Under International Law", Journal of International Humanitarian Legal Studies, Advance articles, 29 September 2022, available at: <https://brill.com/view/journals/ihls/aop/article-10.1163-18781527-bja10053/article-10.1163-18781527-bja10053.xml>; but see *contra* CASTELLARIN, "La fourniture d'armes à l'Ukraine: quel cadre en droit international?", Le club des juristes, 5 March 2022, available at: <https://blog.leclubdesjuristes.com/la-fourniture-darmes-a-lukraine-quel-cadre-en-droit-international-par-emanuel-castellarin-professeur-a-luniversite-de-strasbourg/>.

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The most important measure and possibly the most debate one is the transfer of military assets, materials and equipment, including weapons, to the Government of Ukraine until 31 December 2022. Interestingly, the Council of Ministers firstly labelled the weapons as non-lethal, but in a later decree law changed it in lethal weapons.[3]

The Italian Government specifies that the provision is intended to correspond to requests for support addressed by Ukraine to the international community. On 2 December 2022 the Government approved Decree-Law No. 185, which extends the transfer of weapons until the end of December 2023.

In the report attached to the first Decree-law, the transfer of weapons is grounded on the "Agreement between the Ministry of Defense of the Italian Republic and the Ministry of Defense of Ukraine", signed on 17 March 1998 and ratified with law No. 12 of 27 January 2000 and on a subsequent new agreement reached in the sector of technical and military cooperation made in Kiev in 2007.[4]

However, both agreements are silent on the possibility of one of the Parties to transfer weapons to the other and cannot constitute the legal bases for the transfer of weapons to Ukraine.

Such legal bases can be found elsewhere in the Italian legal order. First of all, similar measures must be compatible with Article 11 of the Italian Constitution; secondly, law No. 185/1990 specifically regulates the transfer of weapons.

Article 11 of the Italian Constitution, as is well-known, prevents Italy to wage an offensive war and, accordingly, to assist States that use armed force for offensive purposes.[5] However, Article 11 does not prevent Italy to use armed force to protect itself and other States from an armed attack in accordance with the Charter of the United Nations (UN Charter) and with customary international law, which has constitutional nature in the Italian legal order as per Article 10 of the Italian Constitution. Consequently, the use of force for self-defence purposes within the meaning of Article 51 of the UN Charter – which also represents customary international law – is allowed under Article 11.[6]

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3 Decree law of 28 February 2022, No. 16.

4 Camera dei Deputati, Servizio studi, "Disposizioni urgenti sulla crisi in Ucraina D.L. 14/2022 / A.C. 3491-A", 1 June 2022, available at: <http://documenti.camera.it/leg18/dossier/pdf/D22014a.pdf?_1668983187762>, p. 8.

5 See *ex multis* CASSESE, "Art. 11", in BRANCA (ed.), *Commentario della Costituzione*, Bologna, 1975, p. 565 ff.

6 For an in depth discussion on this issue see ROSSI, "La compatibilità con la Costituzione italiana e il diritto internazionale dell'invio di armi all'Ucraina", SIDIBlog, 8 March 2022, available at: <http://www.sidiblog.org/2022/03/08/la-compatibilita-con-la-costituzione-italiana-e-il-diritto-internazionale-dellinvio-di-armi-allucraina/>; but see *contra* CATERINA, GIANNELLI and SICILIANO, "Il ripudio delle armi preso sul serio. Quattro tesi

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Law No. 185 of 1990 sets similar limits to the specific issue of the transfer of weapons. Article 1 of the law prohibits the transfer of weapons in any manner incompatible with the Constitution and, in any event, to States that are currently parties to an armed conflict in violation of Article 51 of the UN Charter. A literal interpretation of this rule candidly admits the possibility to transfer weapons to States that are exercising their right to self-defence.

Looking at the practice, it is interesting to note that up until now Italy transferred weapons only to States parties of non-international armed conflicts. For example, Italy transferred weapons to Iraq in 2014 in the context of the fighting against the so-called Islamic State. These weapons were specifically transferred to the Kurdish regional authorities, committed to countering the offensive of terrorists in the central-northern part of the Iraqi territory.[7]

This precedent does not relate with the transfer of weapons to a States that is exercising its right to self-defence,[8] which is on the contrary crucial to understand the legality of the supply of weapons to Ukraine. Indeed, both legal bases above mentioned – Article 11 of the Italian Constitution and law No. 185 of 1990 – require the respect of the UN Charter and more broadly of customary international law.

It is worth mentioning that, since the transfer of weapons to Ukraine must comply with customary international law, its legality can be also assessed in the light of the law of neutrality, which imposes a duty to abstain from intervening in international armed conflicts and to remain impartial. Italy did not ratify the V and XIII Hague Convention, but the rules elaborated therein can be considered as having a customary status.[9]

The scholars that are engaging in the debate on the potential violation of the law of neutrality are currently divided among those who opine that it can be accepted a sort of qualified neutrality when a State is victim of an act of aggression[10] and those who maintain that the law of neutrality, being part of

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sull'incostituzionalità dell'invio di armi all'Ucraina", SIDIBlog, 26 aprile 2022, available at: <http://www.sidiblog.org/2022/04/26/il-ripudio-della-guerra-preso-sul-serio-quattro-tesi-sullincostituzionalita-dellinvio-di-armi-allucraina/>.

7 Consiglio dei Ministri, Resolution of 29 August 2014, "Crisi nel Nord dell'Iraq. Approvazione delle linee di indirizzo e di azione circa il contributo dell'Italia alle iniziative internazionali", in Gazzetta Ufficiale of 6 September 2014, No. 207.

8 For a comment on that transfer see CIMIOTTA, "L'Italia arma le forze curde impegnate a contrastare il c.d. 'Stato islamico'. Brevi note di diritto internazionale", Osservatorio AIC, 2014, available at: <https://www.osservatorioaic.it/images/rivista/pdf/Cimiotta%20bis.pdf>, p. 1 ff.

9 UPCHER, *Neutrality in Contemporary International Law*, Oxford, 2020, pp. 70–73.

10 CLAPHAM, "On War", Articles of War, 5 March 2022, available at: <https://lieber.westpoint.edu/on-war/>; AMBOS, "Will a state supplying weapons to Ukraine become a party to the conflict and thus be exposed to countermeasures?", EJIL: Talk!, 2 March 2022, available at:

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the law applicable to armed conflicts, must be assessed without any reference to *ius ad bellum*.[11]

Although it is outside the scope of the paper an enquiry into this issue, it is worth noting that the qualification of the Ukrainian response as an act of self-defence is crucial also to (try to) argue the non-violation of the law of neutrality.

3 Assisting Ukraine as a Legitimate Measure Under Article 51 of the UN Charter

It is of paramount importance, from the viewpoint of both domestic law and international law, to assess whether supplying weapons to Ukraine is a measure aimed at helping that State to exercise its right to self-defence.

Before delving into an enquiry on the law of self-defence in the context of war in Ukraine it is useful to recall that supplying weapons to a State acting in self-defence is in principle compatible with Article 51 of the UN Charter. The ICJ affirmed that such a conduct can be considered as a form of collective self-defence.[12] However, as noted, no one among the States that are supplying weapons to Ukraine justifies its actions as a collective self-defence.[13] This notwithstanding, if weapons are supplied for defensive purposes, then assisting States are nothing but aiding and assisting Ukraine in the exercise a lawful conduct.

In the following paragraphs it will be demonstrated that there is no room to argue that Russia is lawfully conducting a "special military operation" in Ukraine, which, accordingly, can exercise its right to self-defence.

3.1 *The Justification Advanced by the Russian Federation*

On the 24 February 2022, the Russian Federation, after having prematurely recognized the self-proclaimed republics of Lugansk and Donetsk,[14] directed an

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<https://www.ejiltalk.org/will-a-state-supplying-weapons-to-ukraine-become-a-party-to-the-conflict-and-thus-be-exposed-to-countermeasures/>.

11 HELLER and TRABUCCO, *cit. supra* note 2, pp. 10–13.

12 *Military and Paramilitary Activities in and Against Nicaragua* case, *cit. supra* note 1, para. 229.

13 See again ROSSI, *cit. supra* note 6 and CASTELLARIN, *cit. supra* note 2.

14 President of Russia, "President signed Federal Law on Ratifying the Treaty of Friendship, Cooperation and Mutual Assistance Between the Russian Federation and the Lugansk People's Republic", 22 February 2022, available at: <http://en.kremlin.ru/events/president/news/67829>.

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armed attack against Ukraine, conducting military air, naval and land operations against several strategic locations in the country from a political and military point of view. Russia's conduct, which is still ongoing, represents a blatant violation of the prohibition sanctioned by Article 2(4) of the UN Charter. The General Assembly of the United Nations (UNGA), during a Special Emergency Session, convened on the basis of the well-known "Uniting for Peace" procedure,[15] qualified with a large majority the events as part of an act of aggression and called Russia to cease the armed attack against the territorial integrity of Ukraine.[16]

President Vladimir Putin however tried to justify what he called a "special military operation" addressing the world with an historical speech.[17] It is necessary to address each and every justification advanced by him to confute them in order to properly assess the unlawfulness of Russia's conduct.

Putin first of all stated that the operation complies with Article 51 of the UN Charter, qualifying it as an implementation of the treaties of friendship and mutual assistance signed with the self-proclaimed Republics of Lugansk and Donetsk on 22 February:

> "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 February 22, I made a decision to carry out a special military operation".[18]

According to the information available, it appears that those treaties "reaffirm[s] the policy of the Russian Federation to develop comprehensive, forward-looking cooperation with the Donetsk People's Republic. The Treaty provides for broad cooperation in the political, economic, social, military and humanitarian areas".[19]

Although the texts of the two treaties signed by Russia with the two separatist republics are not yet available and serious doubts remain about their legality from the viewpoint of international law, it seems that President Putin refers to them as military alliances, from which he derives the legal authority to act in the form of a collective self-defence.

15 Uniting for Peace, UN Doc. 377 V. (1950).
16 Aggression against Ukraine, UN Doc. A/ES-11/L.1 (2022), paras 2 and 3.
17 President of Russia, "Address by the President of the Russian Federation", 24 February 2022, available at: <http://en.kremlin.ru/events/president/news/67843>.
18 *Ibid.*
19 President of Russia, *cit. supra* note 10.

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The self-defence argument does not stop at its collective nature. In President Putin's speech it is possible to identify a justification grounded on the exercise of the right of individual self-defense by the Russian Federation itself. The President, in fact, emphasized the need to defend Russia from the growing threat of a NATO presence in Ukraine:

> "Even now, with NATO's eastward expansion the situation for Russia has been becoming worse and more dangerous by the year. Moreover, these past days NATO leadership has been blunt in its statements that they need to accelerate and step up efforts to bring the alliance's infrastructure closer to Russia's borders. In other words, they have been toughening their position. We cannot stay idle and passively observe these developments. This would be an absolutely irresponsible thing to do for us".[20]

On a closer inspection, it is possible to glimpse a third and even a fourth justification for the armed attack against Ukraine that can be scrutinized from the viewpoint of international law.

The third justification appears in the passage in which President Putin evokes a sort of humanitarian intervention for the protection of the Russian speaking civilian population in the Donbass: "The purpose of this operation is to protect people who, for eight years now, have been facing humiliation and genocide perpetrated by the Kiev regime".[21]

The fourth justification seems to be grounded on general international law as relates to the alleged recognition of a right to external self-determination of the republics of Donetsk and Lugansk and to the alleged right of Russia to intervene to ensure compliance by Ukraine with this right towards the peoples (sic!) of the two republics.

> The outcomes of World War II and the sacrifices our people had to make to defeat Nazism are sacred. This does not contradict the high values of human rights and freedoms in the reality that emerged over the postwar decades. This does not mean that nations cannot enjoy the right to self-determination, which is enshrined in Article 1 of the UN Charter.
> Let me remind you that the people living in territories which are part of today's Ukraine were not asked how they want to build their lives when the USSR was created or after World War II. Freedom guides our policy,

20 President of Russia, *cit. supra* note 13.
21 *Ibid.*

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the freedom to choose independently our future and the future of our children. We believe that all the peoples living in today's Ukraine, anyone who want to do this, must be able to enjoy this right to make a free choice.[22]

3.2 *A Critique of the Russian Justifications*

It is now possible to scrutinize the justifications advanced by the Russian Federation to offer a critical appraisal.

First, Russian Federation argues that its conduct amount to a legitimate exercise of the right of collective self-defence with respect to the alleged armed attacks suffered by the self-proclaimed republics in the Donbass.

It must be recalled that according to Article 51 of UN Charter only States are the holders of the right to self-defense, both individually and collectively.

It is therefore necessary to ascertain that the two regions can be defined as States as only States can validly request assistance from other States.[23]

There are serious reasons to believe that the self-proclaimed republics of Donetsk and Lugansk do not meet the requirement of statehood. Although they proclaimed independence, their borders are not at all defined, as they are two regions located within the territory of a sovereign State, Ukraine.[24] As for the effectiveness and independence of government action, from the limited data available it seems that the two entities have some governing bodies, but there are serious concerns regarding their independence. The influence of the Russian Federation in the actions of the two self-proclaimed entities is so evident that it prevents them from affirming themselves as autonomous subjects.

To conclude, although recognition is not a legal requirement of the subjectivity of the State, it cannot be ignored that only three member States of the UN have up until now recognized the republics of Lugansk and Donetsk[25] and

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22 Ibid.

23 See again *Military and Paramilitary Activities in and Against Nicaragua* case, *cit. supra* note 1, para. 235; GREENWOOD, "Self defence", Max Planck Encyclopedia of Public International Law, 2011, para. 36.

24 Interestingly, the borders were not even defined in the Russian domestic law that approved the results of the four referenda held in the Ukrainian regions of Donetsk, Lugansk, Kherson and Zaporizhzhia and confirmed their annexation to the Russian Federation. Not even the Russian Constitutional Court, which approved the law, made clear this point. See Boggero, "Neanche la Corte costituzionale russa sa definire i nuovi confini russi dopo i referendum", Il Foglio, 3 October 2022, available at: <https://www.ilfoglio.it/esteri/2022/10/04/news/neanche-la-corte-costituzionale-russa-sa-definire-i-nuovi-confini-russi-dopo-i-referendum-4505468/?fbclid=IwAR2KGIXnTusHOV_LWGcl84xnM5LpHn_6_1LrHBJnZQMsr1PEA319eMa6FOc>.

25 Russian Federation, Syria, North Korea.

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that five other States have simply supported the recognition from the Russian Federation.[26]

Collective self-defense, therefore, could not be invoked by the self-proclaimed entities in the Ukrainian Donbass and, consequently, the Russian Federation was not entitled to intervene with the use of armed force. Therefore, it cannot legitimately argue that this is a cause for exclusion of the unlawfulness of the act of aggression.

Russia also affirmed that it could legitimately invoke the right to individual self-defence, in light of the threat posed by NATO to its own national security.

There are at least two levels of criticism regarding this justification. One concerns the possibility to interpret the right to act in self-defense as including an anticipatory dimension, since no NATO member States have ever directly attacked the territory of the Russian Federation. The other level of criticism regards the hypothetical content of such a justification.

As for the invocation of self-defence, it should be recalled that most States and commentators believe that the correct interpretation to be given to this cause of justification excludes its anticipatory nature. Indeed, an armed attack must have occurred against a State.[27]

This notwithstanding, the preventive nature of self-defense was invoked by the United States in 2003 to justify the armed attack against Iraq. As is well known, that intervention was presented as a necessary measure to prevent an imminent attack from Iraq with weapons of mass destruction.

Most importantly, the armed attack against Iraq had already been condemned internationally by various States. Curiously, Russia was among those States that fiercely opposed that operation:

> "If we allow international law to be replaced by 'the law of the fist' whereby the strong is always right and has the right to do anything and in choosing methods to achieve his goals is not constrained by anything, then one of the basic principles of international law will be put into question, and that is the principle of immutable sovereignty of a state".[28]

26 Belarus, Central African Republic, Sudan, Nicaragua, Venezuela.

27 See GRAY, *International Law and the Use of Force*, Oxford, 4th ed., 2018, pp. 170–175; WELLER, "The problem of imminence in an uncertain world", in WELLER (ed.), *The Oxford Handbook on the Use of Force in International Law*, Oxford, 2015, p. 657 ff.; but see *contra* WILMSHURST, "The Chatham House Principles of International Law on the Use of Force in Self-Defence", International and Comparative Law Quarterly, 2008, p. 963 ff.

28 Statement by President Putin on Iraq at a Kremlin meeting, 20 March 2003, available at: <https://reliefweb.int/report/iraq/statement-president-putin-iraq-kremlin-meeting>.

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Any use of force aimed at countering a threat that is only potential and not imminent is therefore not grounded in international law.

In any event, there are also serious substantial issues with such a justification. In his speech, President Putin refers to NATO's eastward enlargement as a legitimate ground for invoking the right to self-defence. Two comments can be made in this regard.

First of all, it must be acknowledged that an obligation on NATO and its Member States not to expand eastward does not exist. The famous sentence of the US Secretary of State Baker "Not one inch eastward", allegedly pronounced in a bilateral meeting with the then Russian President Mikhail Gorbachev has no legal significance, since it has not been consecrated in any official document of the nature of source of international law.[29] Indeed, in the Treaty of 1997 on cooperation between NATO and Russia, there is no obligation relating to the non-expansion of the Alliance towards the East.[30] It follows that, even if it were to consider recourse to such a justification plausible, NATO would not have violated any obligation by inviting States close to the Russian Federation to participate.

The second comment concerns Ukraine's right to freely choose whether to join NATO and/or other military alliances. In international law, such a freedom is inherent in the principle of formal equality of States, the necessary corollary of which is respect for the sovereignty of other states. In the Helsinki Final Act of 1975 this was expressly stated: "[States] also have the right to belong or not to belong to international organizations, to be or not to be a party to bilateral or multilateral treaties including the right to be or not to be a party to treaties of alliance; they also have the right to neutrality".[31]

From the point of view of international law, therefore, no narrative can consider as illicit the eastward enlargement of NATO and the decision of Ukraine to apply to join NATO itself.

The last two justifications advanced by Russia are addressed jointly.

First of all, it must be noted that a non-international armed conflict has been ongoing in the Eastern part of Ukraine (Donbass) since 2014 between the central government and the two separatist entities and that numerous

29 SAROTTE, "Not One Inch Eastward? Bush, Baker, Kohl, Genscher, Gorbachev, and the Origin of Russian Resentment toward NATO Enlargement in February 1990", Diplomatic History, 2010, p. 119 ff.

30 Founding Act on Mutual Relations, Cooperation and Security between NATO and the Russian Federation signed in Paris, France, available at: <https://www.nato.int/cps/su/natohq/official_texts_25468.htm >.

31 Conference on Security and Co-Operation in Europe Final Act, Helsinki, 1975, available at: <https://www.osce.org/files/f/documents/5/c/39501.pdf>, Art. I.

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international reports indicate that both Parties have reached a significant level of violence in the armed clashes.[32] However, this does not seem to support the thesis of those who believe that genocide or any crimes against humanity against the Russian-speaking population are committed in the Donbass. As is well known, the crime of genocide requires the existence of a specific intention, which consists in the clear and manifest will to eliminate an ethnic, racial or religious group.[33] The standard of proof is very high also for demonstrating that crimes against humanity have been committed: suffices here to say that a widespread attack against the civilian population shall be demonstrated. This is not appear to be the case.

Even if we want to admit that there are even faint indications of the commission of those crimes, it is necessary to consider that international law currently does not allow one or more States to unilaterally resort to armed force to prevent or put an end to the commission of serious international crimes on the territory of another State in the absence of an authorization from the UN Security Council (UNSC).

The precedent of the NATO armed attack against Serbia in 1999, justified on similar grounds, has been widely condemned. The Russian Federation itself, rightly, harshly criticized that intervention, qualifying it as illegal, like the great majority of commentators, to the point of presenting a resolution to the UNSC, demanding for its conclusion.[34]

Furthermore, the well-known doctrine of "responsibility to protect", theorized in 2001 as an attempt to build a sort of right of intervention when serious international crimes are committed, has never reached the rank of a norm of customary international law.[35]

At present, the only possibility to intervene lawfully against the sovereign will of the territorial State to protect the civilian population is represented by an action authorized by the UNSC. This is demonstrated by the 2011 NATO intervention in Libya to stop the crimes committed against the civilian population,

32 Geneva Academy, RULAC, "Past Conflicts: Non-International Armed Conflicts in Ukraine", available at: <https://www.rulac.org/browse/conflicts/non-international-armed-conflicts-in-ukraine#collapse1accord>.

33 Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948, entered into force 12 January 1951, Art. II.

34 United Nations, "Security Council Rejects Demand for Cessation of Use of Force Against Federal Republic of Yugoslavia", Press release SC/6659, available at: <https://press.un.org/en/1999/19990326.sc6659.html>.

35 See accordingly FOCARELLI, "La dottrina della 'responsabilità di proteggere' e l'intervento umanitario", Rivista di diritto internazionale, 2008, p. 317 ff., pp. 341–346.

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which was performed in the framework of the UNSC resolution No. 1973 of 2011.[36]

Lastly, the justification according to which armed intervention would be legitimate as it is suitable for allowing the self-proclaimed republics of the Donbass to freely exercise their right to self-determination also seems weak.

This right must be assessed rigorously and carefully. To date, it is not at all granted that international law allows sub-statal entities to legitimately exercise a right to secession.[37] It is of course possible that the statute of autonomous regions is discussed and may even evolve, but this must be done in compliance with the internal constitutional rules of each state and without external interferences.[38]

Interestingly, both the separatist entities did not consider it necessary to present the declaration referred to in Article 96 of the First Protocol Additional to the 1949 Geneva Conventions, which allows national liberation movements to accept the application of the First Protocol, thus qualifying the conflict as international.

4 Conclusions

It has been argued, in the foregoing Sections, that third States' support to Ukraine – through the supply of weapons – cannot be considered as an international wrongful act. This is because Ukraine's actions can be qualified as self-defence, as there is no justification for Russia's armed attack under international law. Italy's recent practice is an emblematic example in this respect.

The reflections made up to now, perhaps, can be considered obvious. Except for rare interventions, there are no States or commentators who deem Russia's invasion of Ukraine lawful from the point of view of international law. This should be sufficient to consider as lawful the reaction of those States – Italy included – that are supplying weapons to Ukraine.

One may even add a further argument.

A key to understanding Russia's action can be found in the joint Russian-Chinese declaration of 4 February 2022, made at the end of the official visit

36 UN Doc. S/RES/1973 (2011).

37 TANCREDI, "Crisi in Crimea, referendum ed autodeterminazione dei popoli", Diritti umani e diritto internazionale, 2014, p. 480 ff., p. 481.

38 Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, UN Doc. A/RES/25/2625 (1970), Principle No. 5.

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of the Russian President to China, before the inauguration of the Beijing Winter Olympic Games. This declaration is very interesting from many points of view, because it allows us to understand the real intentions of the Russian Federation, and perhaps also of China, which move towards the establishment of an international order based on rules that are partly different from the current ones, especially on security issues.

In a crucial passage of the declaration, the two sides state that

> Russia and China stand against attempts by external forces to undermine security and stability in their common adjacent regions, intend to counter interference by outside forces in the internal affairs of sovereign countries under any pretext, oppose color revolutions, and will increase cooperation in the aforementioned areas.[39]

The security aspects are therefore presented not only in relation to their respective States, but also with reference to the neighboring regions – bordering – which must be preserved from external interference.

It is difficult not to see in the passage just presented an anticipation of the armed attack of 24 February 2022, especially in the reference to the "color revolutions". That passage echoes the theory of the spheres of influence, according to which the great powers, during the cold-war, control the States close to them, influencing their political, economic and military policies.

It must be premised that the spheres of influence theory is an eminently political theory that has no foundation in international law.[40]

However, during the Cold War, the Soviet Union attempted to justify the use of military force in what it considered to be their exclusive spheres of influence by resorting to a generous interpretation of the rules of international law. The Soviet Union claimed it enjoyed the right to prevent the defection of a "fraternal country" from the socialist area, if necessary, using armed force.[41] This approach, known as the *Brezhnev Doctrine*, was applied to suppress popular uprisings in East Germany in 1953 and Hungary in 1956, as well as in Prague in 1968.

39 Joint Statement of the Russian Federation and the People's Republic of China on the International Relations Entering a New Era and the Global Sustainable Development, 4 February 2022, available at: <http://en.kremlin.ru/supplement/5770 >, Part III.

40 NEUHOLD, "Spheres of Influence", Max Planck Encyclopedia of Public International Law, 2009, para. 1.

41 *Ibid.*, para. 14.

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Nowadays, the current state of international law prevents us from considering the theory of spheres of influence legally valid, starting with the right to self-determination of peoples and concluding with the actual interpretation of the rules on the use of force and on self-defence. This means that it is not possible to accommodate the plea of Russia and China for new rules.

As the "older" ones are still valid, then Ukraine can lawfully enjoy its right to self-defence and States can legitimately aid and assist this State to defend itself.

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