Disapproving and Yet Not Aligning: African Stances on the Aggression Against Ukraine

By

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I. Introduction

It is not a secret that the most vigorous opposition to Russia's invasion of Ukraine came from the West and not the rest. Outright opposition and sanctions have been scarce elsewhere in the world, especially in Africa. More than two years after the conflict's commencement, there have been few instances in which Global South countries have trenchantly shown excitement for Western-led initiatives related to the conflict, let alone endorsed Western views and approaches to its resolution. Such a lack of enthusiasm from the rest of the world transpires through little to no participation in various Western initiatives aiming at establishing a mechanism for punishing the perpetrators of the aggression against Ukraine (Traoré 2022a, 2022b).[2] For instance, the Group of Friends of Accountability Following the Aggression of Ukraine, counts no African country, two Latin American States and only one Asian State.[3] The Swiss-led Summit on Peace in Ukraine, held in June 2024, attracted more interest from the Global community, but this was only due to the very modest expected outcome.[4]

While such international cleavage manifests in various international fora, the United Nations General Assembly (UNGA) is a unique platform for capturing it. Since the outbreak of the war, the UNGA has adopted six resolutions on the war in Ukraine. The first resolution, "aggression against Ukraine", was adopted on March 2 2022. Despite the shock caused by Russia's invasion, out of the 193 UN members, only 141 voted in favour of the resolution. Half of the abstaining states were African, eight African countries did not even attend the voting, and one voted against

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[2] Parts of this paper draw from and update these previous reflections.

[3] Joint Statement of the Group of Friends of Accountability Following the Aggression Against Ukraine, March 19, 2024 (https://geneva.usmission.gov/2024/03/19/joint-statement-of-the-group-of-friends-of-accountability-following-the-aggression-against-ukraine/).

[4] Summit on Peace in Ukraine: Joint Communiqué on a Peace Framework, Bürgenstock, Switzerland June 16 2024 (https://www.eda.admin.ch/eda/en/fdfa/fdfa/aktuell/dossiers/konferenz-zum-frieden-ukraine/Summit-on-Peace-in-ukraine-joint-communique-on-a-peace-framework.html).

the Resolution.[5] This pattern was similar during the adoption of the UNGA's Resolution on "humanitarian assistance to Ukraine", adopted on March 24 2022.[6] Moreover, the Resolution on "Territorial integrity of Ukraine" was adopted on October 12, 2022, with 35 abstentions.[7] More strikingly, the April 2022 UNGA's Resolution "Suspending Russia's participation in the Human Rights Council"[8] and the November 2022 Resolution on "Furtherance of remedy and reparation for aggression against Ukraine"[9] were adopted, with more than half of the UN members not voting in favour. A massive number of opposing states were African.[10]

As it challenges the fundamental principles of the prohibition of the use of force and the respect of territorial integrity, Russia's military intervention in Ukraine poses existential concerns to the international (legal) order. The prohibition of the use of force in international relations is enshrined in the United Nations Charter (UNC) precisely under Article 2 paragraph 4. It is considered an essential norm governing international relations. Indeed, the ability to centralise the recourse to force is arguably the litmus test of any 'civilised' society where force is utilized as a collective or 'public' matter rather than a 'private' one. It is no surprise that as early as its adoption with the UNC, Kelsen perceived this rule as the *sine qua non*-condition for the existence of the international legal order in the sense that no meaningful legality is possible in a society where individual states can freely use force against each other (Kelsen 1946). As stressed by the International Court of Justice (ICJ), the non-use of force rule is "a cornerstone of the United Nations Charter" (ICJ 2005).[11]

Nonetheless, the non-use of force rule admits two undisputed exceptions: self-defence and the use of force authorised by the UN Security Council (UNSC). However, just like any legal norm the regime of the prohibition of the use of force – i.e. the rule and its exception – is not an uncontested terrain. Although once declared dead (Franck 1970), the prohibition of using force between states has shown resilience over decades, with some of its violations contributing paradoxically – as

[5] UNGA, fifth plenary meeting, Wednesday, March 2 2022, Official Records, A/ES-11/PV.5.

[6] UNGA, ninth plenary meeting Thursday, March 24 2022, Official Records, A/ES-11/PV.9.

[7] UNGA, 14th plenary meeting Wednesday, October 12 2022, Official Records, A/ES-11/PV.14.

[8] UNGA, 15th plenary meeting Monday, November 14 2022, Official Records, A/ES-11/PV.15.

[9] UNGA, 19th plenary meeting Thursday, February 23 2023, Official Records, A/ES-11/PV.19.

[10] For the text of these resolutions, see https://www.securitycouncilreport.org/un_documents_type/general-assembly-documents/?ctype=Ukraine&cbtype=ukraine.

[11] Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), para.148

pointed out by the ICJ – to its strengthening depending on the justification provided by its challengers (ICJ 1986; Wippman 2007). Norms theorists distinguish habitually between validity contestations of norms on the one hand and application contestations on the other (Deitelhoff and Zimmermann 2019; Sandholtz 2019). From this perspective, it is not disputed that despite its frequent violations, no serious contestation has so far targeted the validity of the non-use of force rule. However, powerful military states and some scholars have made claims alleging the widening of what is permissible under the non-use of force regime in international law. Despite these claims and even its repetitive violations by some states, the non-use of force rule has generally been interpreted strictly not only by the vast majority of states but also by the ICJ. Russia's invasion of Ukraine undoubtedly adds more challenging pressure to the rule. It is, therefore, legitimate to assess whether and, if so, the extent to which this new assault on the non-use of force rule contributes to its change or decay. Legal rules are always open to violations. These violations do not automatically lead to norm-change, norm erosion or norm decay. However, violations may entail change or decay under certain conditions, including when third parties and society at large approve of the new deviationist claims (Lesch and Marxsen, 2023).

From their admission as independent states in the UN, African countries have played a monumental role in the shaping and the continuous stabilisation of the non-use of force regime. Not only did they reaffirm the importance of the prohibition, but they also opposed systematically all claims aiming at broadening the scope of its exceptions. In that regard, African states have been norm-defenders in the legal space relating to the non-use of force. In such context, the reluctance of many of them to condemn unambiguously Russia's invasion of Ukraine raises significant questions. This is particularly critical in a context where, over the past two decades, the regime of the prohibition of the use of force has been under unprecedented contestations with claims to its permissiveness, primarily through a board interpretation of its exceptions (Corten 2021, Tladi 2022, Tzouvala 2015).

Research in norm theory, especially in international relations, has established various parameters against which the robustness of a norm can be tested. Deitelhoff and Zimmermann have identified at least two main dimensions in norm dynamics concerning their robustness: discourse-based on the one hand and practice-based on the other. While the latter comprises compliance and implementation, the former focuses on acceptance and third-party reactions to violations (Deitelhoff and Zimmermann 2019). Third-party reactions to any violation are also considered a critical dimension of what Brunnée and Toope call "practices of legality," which allow the

maintenance or the shift of legal norms (Brunnée and Toope 2019). As explained below, this theorisation of the role of third-party reactions echoes international law discourse on claims related to the (trans)mutation of the use of force regime. Strict interpretations of the non-use of force regime place emphasis on a rigorous analysis of state practice in accessing the validity of these claims (Corten 2021). Such third-party reactions are critical regarding the non-use of force rule due to its conventional and customary nature.

The purpose of this contribution is, therefore, strictly limited. This article aims to examine the potential impact of the reluctance of African states to strongly condemn Russia's use of force against Ukraine on the regime of the non-use of force in international relations. Its central preoccupation is not to speculate on the political meanings and the geopolitical intricacies explaining African votes. Rather, this contribution's central concern is to inquire whether by not condemning and 'practically' sanctioning Russia for its invasion of Ukraine, African countries are – explicitly or implicitly – approving Russia's legal claims on its alleged "right to intervene in Ukraine". If so, this would mean that they are abandoning their previous strict approach to interpreting the exceptions to the non-use of force rule. In answering this question, the contribution will mainly focus on the voting attitudes of African states at the UNGA, including the explanations provided by African countries before or after these votes. However, three caveats are in order. First, although this contribution mainly focuses on the UNGA voting records, this is not the unique locus for state practice on this matter. More investigation on state practice trough different materials may be needed to reinforce this paper's conclusion. Nonetheless, pending such systematic and exhaustive collection and analysis of African states' practice regarding the use of force against Ukraine, available preliminary data on state positions outside the UN organs – for instance statements on social media by state representatives, political statements by the executive branch in some domestic parliaments or media interviews of some state representatives – confirm rather than contradict the voting attitude and explanations provided at the UNGA. There is no reason why one should assume that such positions would differ from the stances adopted at the UNGA.

Second, various non-legal factors motivate state voting in international forums (Bailey et al., 2015). This contribution does not – conjecture or – delve into the political reasons behind the UNGA votes (Alden 2023; Panin 2023) but only considers their legal meaning regarding the non-use of force regime. Third, most often, states would provide very poor to no explanation for their voting. While the heuristic value of such votes must be assessed against that background, there is no doubt

that the UNGA voting outcomes and explanations may provide valuable discursive material capable of expressing a clear legal view of a state. It is so because unlike other sources, explanations provided in a forum such as the UNGA are specific enough to allow pertinent interpretations of States's attitudes vis-à-vis UN rules and principles.

This contribution therefore resorts *mainly* to a doctrinal analysis of the Official Records of the adoption of the six UNGA resolutions and drafts resolutions before the UNSC related to the war in Ukraine. The analysis material also includes other sources where state officials have expressed their views on the Russia's intervention in Ukraine such as interviews by state officials, statements in (social) media, in domestic parliaments or in other international fora. The contribution makes two interrelated claims: First, it argues that contrary to what it has suggested, African states' massive abstentions during the voting of UNGA resolutions on Ukraine do not implicate any meaningful shift in their traditionally strict interpretations of the non-use of force rule in international relations. Indeed, the "reserved attitude" of African states during the UNGA votes on Ukraine does not amount to approval or tacit endorsement of Russia's unlawful use of force. If anything, voting explanations suggest a firm rejection of Russia's positions and consider its action illegal. At the very least, the voting does not attest to any changing *opinio juris* on their part amounting to an acceptance of a more permissive interpretation of the prohibition of the use of force. Second, the voting attitude of African states is better explained by their refusal to align with Western narratives regarding the war in Ukraine and affirming their agency. In making these two arguments, the contribution seeks to underscore the continuous role of Africa and African states in the (re)drawing of the boundaries between what is acceptable behaviour and what is not in the international society. Amidst geopolitical turmoil and the need for strategic (re) alignment prompted by multiple considerations, African countries confirm their status as actors and even norm defenders *in lieu* of mere manipulable objects in the global order (Epstein 2014).

Part two of the contribution underscores the relevance of third states' reactions in instances of uses of force and the indicative role such reactions play in the assessment of state legal views regarding the admissibility of potential changes in the regime of the use of force. Part three traces the origin and continuous nature of Africa's attachment to the prohibition on the use of force and proves that this stance remains unchanged in the context of the Russian-Ukrainian war. Part four provides alternative explanations for the attitude of African states in this instance. Part five concludes by drawing critical reflections on the meaning of the Ukrainian moment and the future of the non-use of force rule.

II. Norm dynamics and the legal significance of state reactions to unlawful uses of force

The way in which third states react to an instance of the use of force is of the utmost importance. It is so for reasons that are conceptual or structural to the international society on the one hand and reasons more specific to the nature of the prohibition of the use of force in international relations. Firstly, it is a truism that the international society mainly revolves around the necessary legal fiction of equal and sovereign states. It lacks the classic characteristics associated with domestic societies. The international order has no global legislator, overarching executive authority, or compulsory judicial power (Abi-Saab 1987). In such a 'system', unlike in domestic law, that subject of law is also the immediate – and more than often the ultimate – "judge" of the lawfulness of a given conduct. Such appreciation occurs mainly through unilateral assessment followed by approval or disapproval of specific behaviour and, potentially, by material sanctions. Sanctions may be either material (counter-measures, as some international lawyers will put it, although the two concepts are not equivalent) or discursive (Deitelhooff and Zimmermann 2019), which may refer to the notion of "verbal reprobation" for international lawyers. Although it may carry the limit of any sociological jurisprudence, the concept of "interactional international law" coined by Brunée and Toope captures perfectly this structural nature of (customary) international law and the role of third-party – i.e. states –reactions in the norm contestation dynamics (Brunée and Toope 2019). These reactions also play an essential role in evaluating norms' strengthening, stabilisation or decay. As explained by Kratochvil and Ruggie, "whether or not violations also invalidate or refute a law (norm) will depend on a host of factors, not the least of which is how the community assesses the violation and responds to it" (Kratochvil and Ruggie 1986).

Secondly, the criticalness of third-states' reactions concerning the non-use of force rule is justified by its dual nature: a conventional rule enshrined in Article 2 § 2 of the UNC and a customary international law (CIL) rule. In reality, the horizontal character of the international legal order – as opposed to the more vertical nature of domestic laws – entails another singular consequence: barely any hierarchy exists between the sources of law. Thus, the primary sources of international law, i.e. treaties and CIL, are equal. States, being both legislators of and subjects to international legal norms, can adopt treaties that modify CIL. CIL, formed through state practice (*consuetudo*) and a conviction of observing a legal obligation (*opinio juris*), can change a treaty norm. Put differently, the conventional norm of non-use of force can change through a customary process assuming the

change results in a new practice accompanied by a new opinio juris. Similarly, the (trans)formation of CIL rules, such as the prohibition of the use of force, inherently imply a collective process in which what counts is the acts or omissions by third states regarding a given conduct. These actions, reactions, or lack thereof, are necessary to evaluate if a specific norm is undergoing some change anytime new practices are consolidated by a new *opinio juris* (legal conviction/opinion) accepting such change. Under this condition, third-party reactions may serve as evidence of such a (new) *opinio juris*. Brunée and Toope consider them as part of "practices of legality" (Brunnée and Toope 2019, see also Guzman 2005).

If generally accepted, what appears at first a violation may be transformed into a new CIL norm depending, inter alia, on how third states respond to it. This is because custom is nothing more than a fact (certain conduct or practice) which turns into law under certain condition. Put simply, a violation of the non-use of force rule could lay the ground for the formation of a new modificatory practice and a new CIL rule. Suppose a claim of a more permissive scope of self-defence made in a specific instance contradicts the previous legal understanding of self-defence, but third states do not oppose it. This may offer grounds for widening the scope of self-defense, especially when the practice is repeated over time with the same acceptance by third-states. The ICJ expressed this reality clearly in the Nicaragua Case. The court contended that "reliance by a State on a novel right or an unprecedented exception to the principle might, if shared in principle by other States, tend towards a modification of customary international law" (ICJ, 1986). Norm theorists have since explained that the strict requirement for norm change regarding the non-use of force rule resides in its legal nature and 'normative strength' which has served to constrain expansive forms of applicatory contestations (Brunée and Toope 2019).

This is not an overly academic speculation. The past two decades has seen numerous claims that the scope of the exceptions to the non-use of force is changing (Gray 2018, Corten 2021, Ruys 2010). Several claims, made mainly by some Western states and some academics, have supported expansive interpretations. These claims are usually related to four specific issues. First is the scope of self-defence, which, according to some, has shifted and would have included some form of preventive or anticipative self-defence. This approach postulates that a state can exercise a right to self-defence even when there is no actual use of force against it but a vague assumption of its possibility. President G. Bush's self-defence claims before the invasion of Iraq are an emblematic instance of such an expansive approach. Another dimension of this debate on self-defence relates to the claim that the right to self-defence exists vis-à-vis armed attacks by non-state actors. As a

result, the claim goes, a state may exercise its right to self-defence against a non-state actor using force in violation of another state's territorial integrity without having to obtain the consent of this state. This claim has been articulated around the "unwilling or unable" doctrine, which allegedly would trump the victim state's consent and allow the use of force on its territory. Since the 9/11 terrorist attacks, this view has been put into practice by the USA and its allies with its paroxysmic expression in Syria. All these claims contradict the strict understanding of self-defence adopted by the overwhelming majority of states and the ICJ.[12] So far, in addition to this strict understanding by the ICJ, research has shown that detailed scrutiny of states' reactions to these claims reveals that they are not generally accepted. (Gray 2018, Brunnée and Toope 2019, Corten 2021).

The second central claim relates to the so-called humanitarian intervention. According to some states and scholars, states may use force to respond to extreme humanitarian catastrophes without a UNSC authorisation (Cassese 1999). This argument was strongly made during NATO's intervention in Serbia (Kosovo) in 1999 and reappeared somewhat in the context of the so-called 'responsibility to protect'. While crafted in noble humanitarian discourse, humanitarian intervention without a UNSC authorisation is problematic as it allows decentralisation of collective security and leaves the appreciation of what triggers such right to intervene to the subjective will of powerful states. As such, the majority of states have dismissed it. They insist on collective decisions and actions under the UN collective security mechanism. Thus, from a legal perspective, humanitarian intervention – or whatever it may be called – is only lawful when carried out under the auspices of the UNSC (Corten 2021, Gray 2018). Lastly, expansive claims related to the regime of the use of force have also been made in recent years through problematic interpretations of UNSC Resolutions. In some instances, such as the invasion of Iraq, the USA and its allies invoked UNSCR as a basis for using force, while the UNSC gave no express authorisation. They alleged the possibility of *presuming* UNSC authorisations. These claims have no legal ground and have been overwhelmingly rejected (Traoré 2020, Corten 2021).

[12] On several occasions, the ICJ dealt with the use of force, and its interpretation of the regime remains strict. See ICJ, Case concerning military and paramilitary activities in and against Nicaragua (Nicaragua v. United States of America) (Merits), Judgment of November 26, 1984, (1984) ICJ Rep 392.; ICJ, Legal consequences of the construction of a wall in the Occupied Palestinian Territory, Advisory Opinion of July 9, 2004, (2004) ICJ Rep 163; ICJ, Oil Platforms (Islamic Republic of Iran v. United States of America) Judgment of, November 6, 2003, Rep 161; ICJ, Case concerning armed activities on the territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment of December 19, 2005, (2005) ICJ Rep 116; ICJ, Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment of February 26, 2007, (2007) ICJ Rep 43.

As discussed below, Russia's arguments related to its intervention in Ukraine echo many of these deviationist claims. In that sense, state reactions are even more critical. The issue of when a deviationist claim has reached a tipping point and becomes the basis of a new norm highly depends on its repetition and the type of opposition or acceptance it receives. It is argued that, like previous similar claims, the claims by Russia have been met with the same type of rejection. Despite the ambivalent perception that might stem from their voting outcomes at the UNGA, this rejection is perceptible from the voting explanations provided by African states, which have constantly shown their attachment to a strict conception of the prohibition of using force in international relations.

III. Understanding African stances on the Ukrainian conflict in the context of Africa's consistent attachment to the non-use of force rule

1. Historical evolution of Africa's attachment to the prohibition of the use of force

Although there were only four African countries – Egypt, Ethiopia, The Union of South Africa and Liberia – among the 51 founders of the UN, African states enthusiastically embraced the UN Charter and its principles when acceding to independence. Chief among these principles cherished by Africans was the non-use of force rule. The reason for such sanctification is simple. Africa was historically subject to overt colonial domination, which was only possible through military force imposed by colonial powers. Newly independent states therefore abhorred the use of force as a means of foreign international politics and domination over other peoples (Abi Saab 1977, Yusuf 2014). Moreover, national liberation movements strongly articulated their resistance against colonialism around delegitimising the use of force by colonial states and the affirmation of sovereignty and territorial integrity. In addition to these considerations, African states' military and economic inferiority and the persisting imperial appetite of former colonial powers warranted this strong attachment to a peaceful international society.

While Africa's abhorrence for aggression can be traced back to the enduring resistance of its peoples to colonial powers, in the interwar period, it was Italy's barbaric 1935 aggression against Ethiopia that gave the first opportunity to an African head of state to express the unacceptability of aggression in the most important international forum at the time, the League of Nations. Under the League of Nations, the prohibition of the use of force was not as absolute and universal as it is now under the UN Charter. Nevertheless, the League prohibited aggressive war among its members. Violators of these prohibitions were supposed to face collective sanctions. (Clapham

2021, Corten and Lagerwall). After the Italian invasion, in June 1936, Emperor Selassie addressed the Leagues' Assembly in Geneva to denounce the aggression.

In the post-Second World War and post-colonial era, African countries put even more emphasis on the inadmissibility of the use of force in international relations. As early as during the Afro-Asian Bandung Conference in April 1955, with their Asian counterparts, African leaders at this Conference expressed strong views on the importance of prohibiting the use of force and aggression in international relations. In the Declaration on the promotion of world peace and co-operation, the conference reaffirmed that (1) all states must refrain from acts or threats of aggression or the use of force against the territorial integrity or political independence of any country, and (2) they must settle all international disputes by peaceful means.

At their formal independence, African countries unanimously endorsed this initial approach to a strict understanding of the prohibition of the non-use of use of force principle. This is attested not only by their accession to the UN Charter with no reservations on such principles but also through the reiteration of the importance of the non-use of force principle in their continental organisations. The Charter of the Organization of African Unity adopted in May 1963 endorsed the UN Charter's principles as providing a solid foundation for "peaceful and positive cooperation among States". The founding Charter of the OAU, therefore, declared their attachment to the principles of sovereign equality of all Member States as well as the principle of non-interference in the internal affairs of States and the principle of respect for the sovereignty and territorial integrity of each state and its inalienable right to independent existence. This has never changed in the conventional practice of African countries since. It was recalled in the Constitutive Act of the African Union in 2000. Not only were African states at the forefront of the adoption of some fundamental instruments aiming at reaffirming the prohibition of the use of force, but they also advocated for a strict interpretation of its exceptions. In that regard, African states played a central role in the adoption of the UN Declaration on Friendly Relations and the Resolution of the Definition of Aggression (Moyn and Özsu 2020). African countries have consistently expressed their views individually or collectively in groupings such as the African Group at the UN, the Group of 77 or the Non-Aligned Movement, in response to permissive claims by some Western states over the past two decades (NAM, 2005, 2016).

2. *Reaffirmations of Africa's strict attachment to the prohibition of the use in light of Russia's claims*

Russia has offered and continues to offer a series of 'justifications' for its use of force against Ukraine. President Putin first articulated these legal claims in a speech before the military intervention[13]. These claims have since appeared more clearly in many public positions of Russian officials. They echo the most expansionist interpretations of the regime of the use of force advanced in recent times by some Western military powers. First, Russia justifies its intervention by invoking self-defence. President Putin explained that the intervention aimed to prevent the country from "an even greater disaster than what was already ongoing". Russia provided no evidence of an actual or imminent armed attack against it. It is, therefore, the Bush-style preventive self-defence doctrine that most African countries have constantly rejected.

The other side of Russia's self-defence argument is the reliance on the concept of collective self-defence. Under international law, collective self-defence refers to the right that a state can claim to use military force against an aggressor state in support of another state undergoing an act of aggression. In this case, Russia claims that the two self-proclaimed republics of Donetsk and Luhansk are victims of aggression by Ukraine. The right to collective self-defence is recognised under CIL and acknowledged in Article 51 of the UNC. However, the validity of an argument based on collective self-defence is conditioned upon both procedural and substantive requirements. According to the ICJ, collective self-defence is exercised at the request of the victim state (ICJ, 1986). Whether Donetsk and Luhansk enjoyed the status of state when Russia intervened and whether they were victims of an act of aggression by Ukraine is undoubtedly tricky to prove legally. Assuming this was arguable, the scale of Russia's intervention would no doubt violate the necessity and proportionality requirements attached to exercising the right to self-defence under international law. In that sense, the unlawfulness of the intervention is not seriously disputable. (Brunk and Hakimi 2022, Cavandoli and Willson 2022, Corten and Hajjami 2022, Peters 2024).

The second concept around which Russia's argumentation revolves is 'humanitarian intervention'. Russia affirms that it aims to prevent the commission of a 'genocide' against Russians and other communities in Eastern Ukraine, especially Donetsk and Luhansk. President Putin explained that the intervention is justified by "continuing attacks against these communities, the killing of civilians, the blockade, the abuse of people, including children, women and the elderly". It is worth mentioning in passing that Russia's accusation of genocide by Ukraine is the basis of the ongoing case brought by Ukraine against Russia before the ICJ. The 1948 Genocide Convention, to which

[13] Address by the President of the Russian Federation, Annex to the letter dated February 24 2022, from the Permanent Representative of the Russian Federation to the United Nations addressed to the Secretary-General, UNSC, S/2022/154.

both are parties, offers a basis for the Court jurisdiction in this case, as confirmed by the Court despite Russia's objections. However, coming back to the legal soundness of the humanitarian intervention argument, the fundamental issue is that it has been overwhelmingly rejected in the past, including by African countries and Russia itself in the Kosovo precedent.

Be it as it may, the reluctance of African states to firmly condemn the Russian invasion cannot be interpreted as an acceptance of the legal validity of Russia's claims. Firstly, many African countries did not vote to sanction Russia for obvious political reasons. In that sense, "the toleration of a use of force" for whatever political reason "is not the same as the acceptance of its legality" (Orakhelashvili 2015). Second, many countries did not provide elaborated explanation for their votes and some did not even attend important sessions. However, as pointed out by some scholars, silence does not automatically equate to acquiescence (Starski 2017) in this matter. Moreover, some voting explanations may conflate political and legal considerations. Notwithstanding this fact, most voting explanations provided by African countries are articulated enough to provide helpful grounds to assess a state's legal opinion.

Secondly, when analysing precisely these voting explanations provided by several African countries, it appears that none of them has expressly endorsed Russia's claims as legally acceptable. This is particularly perceptible during the adoption of the first UNGA Resolution after the Russian invasion. What transpires from the voting explanations given by many African countries is the reiteration and not the modification of their previous views on the critical character of the non-use of force rule. African states who voted in favour of the resolution justified their vote mainly by stressing the unacceptable violation by Russia of the non-use of force principle, the principle of non-intervention and the principle of peaceful settlement of disputes. For instance, Djibouti unequivocally condemns what, in its view, constitutes "an egregious breach of international law and the most fundamental principles of the Charter of the United Nations, in particular, the obligation of all States under Article 2 to refrain in their international relations from the use or threat of use of force against the territorial integrity or political independence of any State" (UNGA, Official Records, March 2 2022). Later, during the adoption of other resolutions, Djibouti indicated that it is "shocked and puzzled as to the reasons that provoked the war" and that it "reject the use of armed force under any pretext in an aggression against a sovereign country' and 'support of the sanctity of borders". (UNGA, Official Records, February 23 2023). The same tone transpires in the voting explanations of countries such as Egypt, Tunisia, Rwanda, and Sierra Leonne, which all voted for the resolution, stressing their "firm belief in international law and the purposes and

principles of the Charter of the United Nations". The voting explanations by Côte d'Ivoire, Lesotho (UNGA, Official Records, March 24 2022), Senegal (UNGA, Official Records, April 7 2022) or Angola (UNGA, Official Records, October 12) also deplore the violation of the same principles. Although taken in the UNSC and not the UNGA, Kenya's stance on the blatant unlawfulness of Russia intervention is also worth mentioning. Kenya's articulated position reflects the traditional views defended by African countries based on their historical experiences (Traoré 2022a). The same transpires from the positions adopted by Gabon and Ghana, the two other African UNSC members at the time of the Russian invasion.[14]

The explanations for voting from abstaining African countries are even more revealing. At scrutiny, these countries abstained for reasons obviously distant from endorsing Russia's claims. These reasons will appear more clearly in the section below; it is enough to mention here that countries like South Africa, Algeria, Uganda, and Senegal condemned any violation of the prohibition of the use of force. Despite its continuous abstentions during the voting of all the resolutions, South Africa consistently indicated that war is not permissible in settling international disputes. Endorsing a traditional "African view" on the issue of the use of force in international relations, South Africa went further "underscoring the point that many countries and their peoples suffer the consequences of wars that are not of their own doing"; that "the vast majority of countries in the Assembly have never invaded or colonised other countries" and yet "have suffered the consequences of those invasions and colonisation"; and that there are "a few powerful countries that have been party to most of those conflicts" (UNGA, Official Records, March 24 2022).

Moreover, as paradoxical as it may appear, even a country such as Eritrea, which overtly supported Russia and voted against all the UNGA Resolutions, recalled the utmost importance of the non-use of force rule in unambiguous terms. Eritrea explained that it "firmly believes that respect for the sovereignty, territorial integrity and political independence of States, as enshrined in the Charter of the United Nations, is a sacrosanct principle that should be respected by everyone at all times in order to achieve sustainable world peace" (UNGA, Official Records, March 2 2022).

Lastly, it is worth mentioning that some African international organisations also characterised Russia's military intervention as a blatant violation of the prohibition of the use of force. As soon as the start of the Russian intervention in Ukraine, the African Union – of which all African states

[14] S/PV.8979, 25 February 2022. Kenya, Ghana and Gabon all voted for the draft resolution that was vetoed by Russia.

are party – released a Communiqué in which the Chair of the African Union and President of Senegal, President Macky Sall, and the Chairperson of the African Union Commission, Moussa Faki Mahamat, "expressed their extreme concern at the very serious and dangerous situation created in Ukraine and called on the Russian Federation and any other regional or international actor to imperatively respect international law, the territorial integrity and national sovereignty of Ukraine". Similarly, on February 27, the Economic Community of West African States (ECOWAS) – which counted fifteen states at the time – released a Communiqué in which it strongly condemns the "military invasion" of Ukraine by Russia and called to solve their differences in the interest of peace in this region.

IV. Explaining African stances in the Russo-Ukrainian conflict

1. Betting on peace through 'non-alignment'

Besides the unknown reasons that only give rise to speculations, one must look at what the voting states have said officially. The first explanation of the reserved stances lies in the desire of African countries to avoid more polarisation and to reach a cease-fire as well as a peaceful solution to the war. Here, the divergence between many African countries and the West is twofold. While the first aspect relates to the diagnostic – a difference in perceptions around what is happening in Ukraine – the second dimension regards the prognostic, i.e. the best approach to end the conflict. After failing to mobilise the UNSC effectively due to the Russian veto, Western countries sought to utilise the UNGA to create an international united front against Russia. The Western narrative frames the Russo-Ukrainian conflict as an 'unprovoked' aggression. This reading is contested – at best controversial – in other parts of the world, especially in Africa. Voting at the UNGA, African states have expressed a diverging understanding of the situation in Ukraine by stressing its incredible complexity and the fact that it has not been so "unprovoked" as it is portrayed. Many have suggested that NATO's containment policy is part of the root causes of the war in Ukraine. This resonates with what some have described as the (re)-raising of global imperial rivalries as a central explanatory factor in the war in Ukraine (Katova and Tzouvala 2022).

African countries have used various expressions to translate this fact in their explanations of voting. Some have stressed the need to look into what they call the "root causes of the crisis", suggesting that they are eluded in Western accounts or to take into consideration "Russia's legitimate

concerns", Russia's "understandable concerns", or even "security guarantees for Russia". South Africa went as far as suggesting that the war in Ukraine is a "proxy war". Later, President Ramaphosa publicly declared that the war "could have been avoided if NATO had heeded the warnings from amongst its own leaders and officials over the years that its eastward expansion would lead to greater, not less, instability in the region" (Reuters March 18 2022). South Africa's Department of International Relations and Cooperation (DIRCO)made this position clear in various statements including before the South African parliaments (Mail & Guardian 2022). These diverging narratives on the Ukrainian war at the UNGA were far from new. They were already apparent on the issue of Crimea in 2014, especially during the adoption of the UNGA resolution on "the referendum adopted in the Autonomous Republic of Crimea". One may recall that the resolution aimed, in particular, to reaffirm the principle of the territorial integrity of Ukraine and to declare "invalid" the self-determination referendum that led to the annexation of Crimea to Russia. In retrospect, the resolution was adopted with only 100 votes in favour out of 193 UN member states. Several states explained their abstentions in considering that the text did not "reflect the complexity of the situation in Ukraine" or that it "also does not take into account the origins of the crisis and therefore cannot be a sufficient basis for resolving disputes between states" (UNGA, Official Records, March 27 2014).

The second dimension of the divergences observed at the UNGA – the dissensus on the prognostic – is a direct consequence of the first one. While they reject the Western oversimplification of the causes of the Russo-Ukrainian war, many African states disagree with the Western favoured modalities of its treatment. They consider that the politics of opprobrium, military solutions such as massive support to Ukraine in equipment and other military resources, and economic sanctions can only lead to more escalation. On the contrary, they explained their preference for de-escalation and advocated for negotiation and dialogue. At a close look, many abstentions during the UNGA votes were motivated by such a need not to "throw oil on the fire". Outside the UNGA voting proceedings, states such as Zimbabwe or Uganda have officially expressed such views (Traoré 2022a). In that sense, the opposition at the UNGA also turned into a "lexical battle" with rejection of a certain language and counter-proposals against Western-sponsored drafts made especially by South Africa. African countries also denounced the non-transparent procedures that led to the preparation of some of these resolutions and indicated that they should be treated as equal members of the UNGA during negotiations on draft resolutions. This suggests their frustrations regarding what they perceived as persisting Western condescendence (UNGA, Official Records, March 2 2022; UNGA, Official Records, March 24 2022).

Moreover, despite voting generally in favour of the Western-sponsored draft resolutions, some African states still felt the need to emphasise their preference for de-escalation and diplomatic solutions. After voting in favour of the resolution of March 2, 2022, Rwanda nonetheless contended that a lasting solution to the war "can be achieved only through dialogue between both parties, taking into account the concerns on both sides". Nigeria's stance during the adoption of the resolution on "comprehensive, just and lasting peace for Ukraine" is striking. While voting in favour of the resolution, Nigeria still registered a reservation to one of its paragraphs, declaring that the country is not entirely sure that this specific part of the resolution "is really helpful in stopping the war. It may harden positions and make getting to a solution more difficult". Angola invoked the same reason to abstain, explaining that paragraph 9 of the said Resolution does not create "an environment conducive to the start of peaceful negotiations" (UNGA, Official Records, March 2 2023). The June 2023 African mediation initiative corroborate these stances and the preeminent role African states wanted to accord to a peaceful settlement.

2. *Exposing Western double-standard and hypocrisy around the prohibition of the use of force*

The fact that Western countries seemed so outraged by the use of force against Ukraine has been somewhat perceived as selective indignation. The idea that the West has never believed that peace, as an international value, should benefit all states and all regions is not new. It was indeed one of the most important criticisms addressed to the concept of "democratic peace" theorized by international relations' authors such as Doyle (Doyle 1996). Critics showed that the hidden face of democratic peace is the "democratic violence" exercised through military intervention and imperial wars against countries and people conveniently put outside the democratic circle (Geis and Wagner 2010; Anghie 2006). The unique nature of the mobilisation of the West behind Ukraine left the impression that only violence against "white" Europeans is deemed unacceptable enough to trigger Western outrage. This prompted accusations of hypocrisy and even racism. As shown by Knox, hypocrisy is perhaps one of the most structural traits of the liberal international order (Knox 2022). Based on this feeling, many African countries did not see the need to act with the exact sentiment of outrage as Western countries. They have in mind the many unlawful violations of the prohibition of the use of force, be it in the Kosovo war, the Iraq invasion, the bypassing of the UN mandate in situations such as in Libya in 2011, or unlawful military interventions without state consent in the context of the so-called 'global war on terrorism' including in Syria. The catastrophic situation in Palestine only added to that sentiment.

The discussions at the UNGA reflected such resentment. For instance, South Africa made this position very clear within and outside the UNGA when explaining its abstentions. According to South Africa's representative: "over the past few decades, the world has continued to experience debilitating conflicts. Many of those wars have contravened the provisions of the Charter and international law". He referenced the war in Iraq while warning that "making this point should not be taken as a form of whataboutism" (UNGA, Official Records, March 27 2022). Many other African interventions echo the same sentiments. Rwanda expressed concerns about "racial segregation" against African refugees fleeing from Ukraine in European countries. Egypt stressed "the need to stop using double standards and cherry-picking among interests and principles in addressing international issues". Mauritius emphasised that international responses to violations "must be taken in an indiscriminate manner, just as much as international law must apply indiscriminately". DRC deplored "the fact that the international community places so much emphasis on the crisis taking place in Europe while basically ignoring the crisis taking place in Africa".

3. *Covert contestations of the unfair Western-led world order*

Reasons for disagreement more remote to the causes and solutions to the conflict have also played a critical role at the UNGA. The war in Ukraine has provided an unprecedented opportunity for recriminations against Western hegemony and what appears as an unfair liberal order. Not that such (com)plaints are new; the Global South, for decades, sought to achieve a fairer international system through various initiatives, especially in groups such as the Non-Aligned Movement or the Group of 77. Their actions within institutional frameworks such as the UNCTAD, their desire to institute a New International Economic Order (NIEO), and their struggles for the right to development are only a few illustrations (Bedjaoui 1979). The end of the Cold War and the consensus around a new order that would guarantee welfare to all through liberal norms and ethics had obliterated these demands over the last three decades without being able to meet them.

Such consensus has shown considerable cracks in more recent years with deepening contestation of the liberal hegemonic order. It shaped what some labelled as a "multiplex" world order with various poles opposing the West (Acharya 2017). What is striking in the international dissensus regarding the war in Ukraine is how it offered the perfect 'alibi' for expressing such resentment in an official, massive and geographically widespread manner through states and public opinions in non-Western countries. The war in Ukraine represents a tipping point where the rest of the world

took the Western call for unity against Russia as rather an opportunity to establish a new consensus on the global order. In that sense, the war in Ukraine has unexpectedly decupled deep frustrations around the structural humiliation (Baddie 2017) and the asymmetrical nature of the international order. The fresh memory of the humiliating management of the coronavirus crisis has also undoubtedly played out in this context. The discussions on the war in Ukraine quickly became a catalyst for such reclamations. While numerous grievances are raised, it appears that they all revolve around the imbalances in the global economic and financial order, the call for more inclusion in the world governance, including the UNSC as well as the end of persistent (neo) colonial ties, especially in Western Africa (Traoré 2022).

Strikingly, even though most of this resentment only played out tacitly in the background of the UNGA discussions on Ukraine, it transpired more overtly in the positions expressed by some African countries during the voting. For instance, South Africa explained that "Africa's calls for reparations for slavery, colonialism, apartheid and many other contemporary conflicts have always been opposed by many of the states co-sponsoring – from the West – today's draft resolution on reparation for Ukraine". Similarly, Eritrea, speaking on behalf of many abstaining countries, lamented that "we should not forget that colonial Powers caused enormous damage and suffering to the peoples of present-day developing States". These positions illustrate the overall (under) development frustrations that have mounted over decades of unsatisfied promises. They also echo other initiatives proclaiming the need to rebalance the world order, such as BRICS, of which some African countries are part and most Africans are enthusiastic.

V. Conclusion

Based on their voting attitudes at the UNGA, it does not appear that African stances related to Russia's use of force express any new *opinio juris* contributing to validate claims contending an incremental change and a more permissive interpretation of the regime of the non-use of force. If anything, the reactions of most African states reveal a disapproval of Russia's claims and a unilateral use of force. This is not surprising as the overwhelming majority of countries in the world strongly adhere to the non-use of force and territorial integrity. Far from accepting Russia's view on the legality of its use of force, African states have reaffirmed their attachment to a strict interpretation of the non-use of force rule in international relations confirming their traditional approach to this matter. The contribution further explores the actual motives of African stances and shows that they reside in disagreements with the Western diagnostic and prognostic of the war as well the

dissatisfaction with Western hegemony and the Western-led liberal order. Be that as it may, scholars have argued that one critical norm robustness indicator is the reactions to its violations by previous violators (Price 2006). Can the strong opposition of the USA and other usual violators be interpreted as a strengthening factor? Time – and perhaps more research – will tell. Meanwhile, in a context of restructuring with persistent calls for a reform of world governance, it is the present author's view that it is in the utmost interest of African countries to enter any global discussion with the strong view that the prohibition to use force in international relations is Sacro-saint. There is nothing more dangerous for Africa than a global (dis)order without strict limits to the use of force.

References

Abi-Saab, G. 1987 Cours général de droit international public, Dordrecht ; Boston Recueil des cours / Académie de droit international.

Acharya, A. 2017. "After Liberal Hegemony: The Advent of a Multiplex World Order", Ethics & International Affairs 1 (Issue 3): 271–85.

Alden, C. 2023. "The Global South and Russia's Invasion of Ukraine", LSE Public Policy Review 3(Issue1):1-8.

Anghie, A. 2005, Imperialism, Sovereignty and the Making of International Law, Cambridge: Cambridge University Press.

Baddie, B. 2017. Humiliation in international relations: a pathology of contemporary international systems, Portland, Oregon: Hart Publishing.

Bailey, A. and al., 2015. "Estimating Dynamic State Preferences from United Nations Voting Data, journal of conflict resolution 61 (Issue 2):430-456.

Bedjaoui, M. 1979. Pour un nouvel ordre économique international, Paris : UNESCO.

Brunk, W. I and Hakimi, M 2022. "Russia, Ukraine, and the Future World Order", American Journal of International Law 116 (Issue 4):687-697.

Brunnée, J. and Toope, J. 2019, "Norm Robustness and Contestation International Law: Self Defense against, Non-state", Actors Journal of Global Security Studies, 4(Issue 1):73-87.

Cassese, A. 1999. "Ex iniuria ius oritur: we are moving towards international legitimization of forcible humanitarian countermeasures in the world community?" European Journal of International Law 10 (1): 23-30.

Cavandoli, S. and Willson, G. 2022, "Distorting Fundamental Norms of International Law to Resurrect the Soviet Union: The International Law Context of Russia's Invasion of Ukraine", Netherlands International Law Review 69 (issue): 383-410.

Clapham, A. 2021. War, Oxford: Oxford University Press.

Corten, O. 2021. The Law Against War: The Prohibition on the Use of Force in Contemporary International Law, Oxford: Hart Publishing.

Corten, O. and Hajjami, N. (2022). L'intervention militaire russe en Ukraine : quelles répercussions sur le droit de légitime défense et sur le « droit de la neutralité » ? Revue québécoise de droit international / Quebec Journal of International Law 35(1) : 1–25

Corten, O. and Lagerwall, A. « Article 16 », in Commentaire sur le pacte de la Société des Nations, edited by Kolb, R., Bruxelles : Bruylant.

Deitelhoff N. and Zimmermann L. 2019. «Norms under Challenge: Unpacking the Dynamics of Norm Robustness", Journal of Global Security Studies 4 (1): 2–17.

Doyle, M. 1996 "Kant, Liberal Legacies and Foreign Affairs (1983)", in Brown, M. and al. (eds), 3-57 Debating the Democratic Peace, Cambridge: MIT Press.

Epstein, C. 2014. "The postcolonial perspective: an introduction. International Theory" 6 (Issue 2): 294-311.

Franck, M. T. 1970. "Who Killed Article 2(4)? or: Changing Norms Governing the Use of Force by States", American Journal of International Law 64 (Issue 5): 809-837.

Geis, A. and Wagner W. 2010. "How far is it from Königsberg to Kandahar? Democratic peace and democratic violence in International Relations, Review of international studies 37, (Issue 4):1555 – 1577.

Gray, Ch. 2018. International Law and the Use of Force, Oxford: Oxford University Press.

Katova A. and Tzouvala, N. 2022. "In defense of comparisons: Russia and the transmutations of imperialism in international law », American Journal of International Law 116 (Issue 4):710-719;

Kelsen, H. 1946. General Theory of Law and the State, Cambridge: Harward University Press.

Kratochvil, F. and Ruggie, J. G. 1986. "International Organization: A State of the Art on an Art of the State." International Organization 40 (Issue 4): 753–75.

Lesch, M., and Marxsen, C. 2023. Norm contestation in the law against war: Towards an inter-disciplinary analytical framework. Heidelberg Journal of International Law, 83(1), 11–38.

Mail & Guardian 2022, South Africans should not 'take sides' in Ukraine invasion, DIRCO tells parliament, 16 March 2022, here https://mg.co.za/top-six/2022-03-16-south-africans-should-not-take-sides-in-ukraine-invasion-dirco-tells-parliament/

Moyn S. and Özsu U. 2020. "The Historical Origins and Setting of the Friendly Relations Declaration" in The UN Friendly Relations Declaration at 50. An Assessment of the Fundamental Principles of International Law, edited by Vinuales, J. 23-48, Cambridge: Cambridge University Press.

Non – Aligned Movement (2016), 17th Summit of Heads of State or Government of the Non-Aligned Movement" 2016/CoB/DOC.1. Corr.1, September 17–18, 2016. http://cns.miis.edu/nam/documents/Official_Document/XVIINAM- Summit-Final-Outcome Document-ENG.pdf

Non-Aligned Movement, (2005), Statement by Rastan Mohd Isa, Permanent representative of Malaysia to the U.N., in its capacity as Chairman of the Coordinating Bureau of the NAM, on behalf of the NAM, at the 4th Informal Meeting of the Plenary of the 59th Session of the General Assembly, 27 Janvier 2005.

Orakhelashvili, A. 2015. 'Changing Jus Cogens through State Practice? The Case of the Prohibition of the Use of Force and its Exceptions' in The Oxford Handbook on the Use of force edited by Marc Weller (eds), 158-179, Oxford: Oxford University Press.

Panin, N. 2023 Voting Practices of Sub-Saharan States of Africa at the UN General Assembly: Latest Trends and Underlying Strategies, Russian International Affairs Council, Working paper 74: 1-82.

Peters, A. 2024, "The Russian Invasion of Ukraine: An Anti-Constitutional Moment in International Law?" Ruch Prawniczy, Ekonomiczny I Socjologicznyrok 86 (Issue 2):5-36.

Price, R. 2006 "Detecting Ideas and Their Effects." In The Oxford Handbook of Contextual Political Analysis, edited by Robert E. Goodin and Charles Tilly, 252–65. Oxford: Oxford University Press.

Ruys, T. 2010. Armed Attack' and Article 51 of the UN Charter Evolutions in Customary Law and Practice, Cambridge: Cambridge University Press.

Sandholtz, W (2029) Norm contestation, Robustness, and Replacement, Journal of Global Security Studies 4 (Issue 1):139-146.

Starski, P. 2017. "Silence Within the Process of Normative Change and Evolution of the Prohibition on the Use of Force: Normative Volatility and Legislative Responsibility" (2017) Journal of the Use of Force in International Law 4 (Issue 1): 11-54.

Tladi, D. 2022. Extraterritorial Use of Force against Non-State Actors Series, The Hague: The Hague Academy of International Law.

Traoré, S.B. (2022a) « Observations cursives sur la légitimité de la création d'un mécanisme de poursuite du crime d'agression contre l'Ukraine », Révue Belge de droit international (Issue 1-2):285-308.

- (2022b) "Making sense of Africa's massive abstentions during the adoption of the UNGA resolution on the Aggression Against Ukraine" (https://africlaw.com/2022/04/21/making-sense-of-africas-massive-abstentions-during-the-adoption-of-the-unga-resolution-on-the-aggression-against-ukraine/).

- L'interprétation des résolutions du Conseil de sécurité. Contribution à la théorie de l'interprétation dans la société internationale, Bâle : Helbing Lichtenhahn.

Tzouvala, N. 2015. "TWAIL and the "Unwilling or Unable" Doctrine: Continuities and Ruptures." American Journal of International Law 109: 266–70.

UNGA, 5th plenary meeting, Wednesday, 2 March 2022, Official Records, A/ES-11/PV.5.

UNGA, 9th plenary meeting Thursday, 24 March 2022, Official Records, A/ES-11/PV.9.

UNGA, 10th plenary meeting Thursday, 7 April 2022, Official Records, A/ES-11/PV.10.

UNGA, 14th plenary meeting Wednesday, 12 October 2022, Official Records, A/ES-11/PV.14.

UNGA, 15th plenary meeting Monday, 14 November 2022, Official Records, A/ES-11/PV.15.

UNGA, 19th plenary meeting Thursday, 23 February 2023, Official Records, A/ES-11/PV.19.

Wippman, D. 2007. "The Nine Lives of Article 2(4)" Minnesota Journal of International Law 16: 387-406.