

The restrictive measures addressed to Russia at Ukraine's conflict: an alternative way of applying the International Law.

Giovana Defina Sarje ^a

^a Law School, University of Ribeirão Preto, Ribeirão Preto, Brazil, giovana.sarje@sou.unaerp.edu.br

Abstract. Started in 2014 with the annexation of Crimea to Russian territory, the conflict between Russia and Ukraine reached its peak on February, 2022, when, upon recognizing the independence of the Ukrainian provinces Lugansk and Donetsk, Russia moved its troops across the Ukrainian border, entering its territory. Since then, several restrictive measures have been applied, seeking to discourage Russian actions in Ukraine through economic impacts. Such sanctions are the subject of discussion, from the perspective of International Law, since the restriction of the global interaction of a State was a way found by the European Union to prevent Russia from continuing the aggression. With that, those measures would instigate the restoration of harmonious relations between countries. In this paper, the effectiveness of the restrictive measures will be analyzed, considering the principled aspects of International law. The purpose is to verify how the International Law principles, such as peaceful settlement of disputes, are inserted in the European Union sanctions. As a preliminary conclusion, it is possible to observe: (i) the ability of the International Law shapeshifts according to the conflict, since the implementation of those sanctions assumes a transnational activism form to condemn Russian actions, and (ii) the power of building social realities of this Law field, always aiming cooperation between countries.

Keywords. Ukraine's invasion; Russia; Restrictive measures; EU sanctions; International Law.

1. Introduction

By analyzing the historical relations between Russia and Ukraine, it might seem that, since Ukraine's recent independence in 1991, there has been a movement of Western pressure on the Russian regional environment with the expansion of the North Atlantic Treaty Organization (an alliance formed in the Cold War under the leadership of the United States) and the European Union (economic and political union of several states of the European continent, that was created in 1992), leading to a rapprochement between Ukraine and the West.

Between 2013 and 2014, this tension was intensified due to some events such as Euromaidan [1], a wave of protests that happened in Ukraine, demanding integration with Europe. Furthermore, there was the annexation of Crimea by the Russian State, an important territory in historical and strategic terms, as access to the Black Sea allows the fleet to travel through the continent.

In the following years, the support and involvement of Western powers, especially the United States,

contributed to exacerbating Ukrainian nationalism, which provoked a reactionary stance from Russia when faced its neighbor country being encouraged to join NATO and also promoting a series of offensives attacks on the East of the country, aiming to reconquer the regions of Donetsk and Luhansk [1], the main centers of pro-Russian separatist rebellion. Due to this scenario, in February 2022, Russian President Vladimir Putin recognized the independence of those two provinces and ordered the invasion of eastern Ukraine.

It is in this context that the restrictive measures were implemented by the European Union and will be analyzed in this present study, from an internationalist perspective. The purpose is to verify how such measures, which aim to discourage Russian actions through economic impacts, are related to the principles of international norms and how their application brings countries closer a ceasefire. Although the causes of the conflict are tangentially mentioned, the focus of this study relies on the analysis of the sanctions and how they enable the application of International Law. This approach seeks to expand knowledge about alternative means

of international cooperation that aim a ceasefire, given that conciliatory attempts between Russia and Ukraine have not been completely successful.

2. Ukraine vs Russia: a brief contextualization of the conflict

Geographically, Russia and Ukraine are located in a region that shares a common past. That is because, since the Middle Age (12th and 16th centuries), the territory was divided into principalities and, doing so, Kiev occupied a hierarchically more important position than the others. Given these common roots, there has been a feeling of “assimilation” among the people. However, Russia and Ukraine built distinct identities for centuries, starting with the language and form of government, so that, while the first one became an empire, the second one had not managed to establish its own State [2].

Some time later, in the beginning of the Soviet Union, there was a process of “Russification” of Ukraine caused by the repopulation of the region, which intensified the feeling of “brotherhood” between people. Despite efforts to avoid Ukrainian nationalism, it was not possible to achieve cultural dominance due to the country's singularities. [1]

At the end of the Cold War in 1989, the disintegration of the Soviet State brought political, economic and security implications, leading the member countries to sign different types of agreements, which aimed a mutual recognition of sovereignty between the former socialist republics, as well as they made an external commitment to territorial integrity.

Some of those agreements are worth highlighting as they are related to the late events of 2014, such as the Partition Treaty on the Status and Conditions of the Black Sea Fleet (1997), which allowed the use of Russian military installations in Crimea in exchange for respect for Ukraine's sovereignty, and the Kharkiv Pact (2010), which extended Russia's military presence in Crimea in exchange for cheaper gas.

By gradually increasing influence in this region, pro-Russian leaders began discussions about separating from Ukraine and, thus, a *referendum* was organized, which was invalidated by some Western powers such as the United States and the United Kingdom. Even so, with the majority of votes in favor of the separation, Russia made a bill, incorporating Crimea into its territory.

The reason presented by Moscow was that, due to the common past, the action was “historical justice” for reuniting Russian lands [3]. This argument was similar to the one used to increase separatist movements in the Donbass region. It is important to note that the annexation of Crimea combined with protests in Ukraine, aiming greater interaction with Europe (also known as Euromaidan) were responsible for raising tensions in Eastern and

Southern Ukraine.

Amid the agitation of the events of 2014, Russia, Ukraine and the Organization for Security and Cooperation in Europe (OSCE) elaborated the Minsk Agreement [4], which proposed, besides the end of Donbass war, the granting of greater autonomy to Donetsk and Luhansk, as well as the demilitarization of those regions.

A few years later, in 2022, the agreement failed, once Russia recognized the independence of the Donbass provinces, ordering its troops to advance into Ukrainian territory. The reason given by Putin was that a “denazification” of Ukraine would be necessary due to the growth of radical nationalist groups [5].

Besides, it is important to highlight that during this time, there was a resumption of negotiations for Ukraine to become part of NATO, a military alliance formed in the Cold War, under the leadership of the United States, to guarantee political or military security of its member countries. That was another point that had impact on the Russian decision.

3. The sanctions: an alternative way found to stop Russia

Right at the beginning of the Russian invasion of Ukrainian territory on February 2022, the International Court of Justice published a preliminary decision [6], ordering the suspension of Russian military operations in Ukraine. However, that decision was not effective as the conflict continued happening. Considering the ineffectiveness of the decision and seeking an alternative to discourage the Russian aggression, the European Union imposed several individual and economic sanctions and measures that affected the travel visas of certain people.

Among the individuals targeted by the sanctions are heads of state, such as President Vladimir Putin and former Ukrainian president Viktor Yanukovich; ministers; members of parliament and political bodies; military; businesspeople; pro-Russian oligarchs and propagandists. As for entities, the list includes banks; political parties; armed forces and paramilitary groups; companies related to aviation, shipbuilding and machine building sectors; political movements; media organisations including RIA FAN (Russian media organization) and, finally, the Wagner Group (Russian private military entity). In addition to these, the sanctions also impacts countries such as Belarus and Iran, which are directly or indirectly involved in the conflict.

When put into practice, it consists on freezing assets and banning travels. Within the restrictive measures package, there is a restriction on the export and import of certain products, with the exception of those related to health and food in order not to cause

any harm to the Russian population.

In this way, Russia's free trade was limited, since it will not be able to continue exporting its main products such as technology, goods and equipments from different industrial sectors, such as transport, aviation, maritime navigation, energy, oil refining, luxury goods and also the space industry. Furthermore, it will not be able to import its main raw materials, such as crude oil, coal, steel, gold, among others.

It is important to highlight that, given the unsuccessful attempts of conciliation between Russia and Ukraine, the implementation of such restrictive measures against Russia were an alternative found by the European Union to stop Russian aggression from continuing. The purpose is to impact the economic sector and individuals who support such actions, limiting the power of international interaction with other countries and making it difficult to purchase weapons for the conflict [7].

4. The insertion of International Law into the conflict and the restrictive measures

Before checking how International Law fits into restrictive measures, it is necessary to consider its principles: (i) sovereign equality; (ii) autonomy, non-interference in the internal affairs of other States; (iii) prohibition of the use of force and peaceful settlement of disputes; (iv) respect for human rights; (v) international cooperation [8].

According to Mazzuoli [9], current International Law is the result of evolutionary trends, such as universalization, which is guided by the self-determination of people due to the recognition of sovereignty; and humanization, due to the several treaties involving human rights, as well as the creation of international jurisdictional bodies. Today, the International Law, despite having new aspects, still develops its main task: establishing legal norms that regulate interactions between countries and assist in solving disputes.

The burden of neglecting the international norms is so significant for the country's reputation that it becomes a way of self-restraining governmental actions. Based on this, the States, observing International Law, tend to justify their national behavior, using it to legitimize their acts.

In other words, by acting as a tool to legitimize acts, the International Law is responsible for creating global awareness that its norms are legitimate and must be obeyed by the States. Thus, the pressure on governments to abstain from violations avoids criticism and possible impacts on their reputations.

Even though it has this new function, Yasuaki [10]

argues that it is necessary to consider the International Law's normative power:

'For example, policymakers could choose to resort to war without considering the general condemnation for violation of international law, in which war is prohibited. With the proscription of war, this freedom of action began to be seriously restricted. States now basically have to justify the use of force in self-defense, the only explicitly exceptional case of legal use of force' (p.99)

For him, since self-defense is the only legally permitted way of using force, politicians tend to resort to this argument, even though it is not suitable, to justify their actions, because they know the high political cost that a violation of an international norm would lead. And precisely in cases where there has been a perception of disparity between the real behavior and the self-defense argument, the State still would bears a certain political cost.

In the conflict in question, the imposition of restrictive measures was an example of a political cost to Russia, as it restricted its power of global interaction. This is happened because there was a perception of the illegitimacy of Russia's actions by Western powers, such as the European Union and the United States, in a way that Putin's argument regarding the use of force for self-defense was disconsidered [11].

This highlights another perspective of International Law, responsible for helping at the interpretation of certain reality. Through its concepts and structures, International Law helps in understanding and identifying a problematic action by a State and, consequently, in the search for a solution, whether through legal, political, administrative or economic means.

By implementing restrictive measures, a feeling of disapproval of Russian actions was externalized, leading to a search of trying to solve the conflict by repressing acts of aggression. It is also analyzed that the sanctions acted as a type of transnational activism, in which the European Union and allied countries assumed the position of judges on a given controversy and, when interpreting norms of international content, promoted punitive measures in order to contain a pathological action of that State.

There is also the issue of the conciliation difficulty between States. Although the United Nations Charter (art. 1, 1.) determinates the peaceful resolution of conflicts, the negotiation rounds were not successful, due to irreconcilable demands, considering the Ukrainian interest in joining NATO.

Due to this, the alternative found was the implementation of sanctions to try to contain the Russian advance into Ukrainian territory. In fact, it was expected to find Russia with a weakened economy, due to the impacts on the main economic sectors, also having issues to buy weapons for the conflict.

Despite attempts to overcome the situation, the instability caused by the sanctions opened the door for a financial crisis and a reputational collapse. Furthermore, there has been a Russia's isolation from the international environment and also the withdrawal of several multinational companies from Russian territory, which affected even more the economy [13].

Though the effectiveness of the restrictive measures is questioned, as the conflict has not yet ended, it is possible to analyze that it played an important role in the international community. After all, the sanctions were public way of disapproving the Russian actions and demonstrate that there will be a cost if international norms are violated.

It is worth pointing out that the effectiveness of sanctions was also debated on the episode of South Africa, for example, when it had been imposed by the UN, United States, United Kingdom and other international organizations to condemn the *apartheid* regime. In this case, a few decades later, the measures contributed to the end of the segregationist regime in that country.

However, it was not always possible to make a significant impact. As an example, the case of North Korea is worth mentioned, when the European Union and the UN Security Council applied sanctions due to the nuclear weapons program. Here, there had been a softening of North Korean policies during the 90's, but on 2003, North Korea withdrew from the Treaty on the Non-Proliferation of Nuclear Weapons and continued its nuclear program.

In other words, sanctions have been previously used, however their effects vary according to each case and can be observed in a short or long term. Generally speaking, as the conflict unfolds, its effects become more evident.

Therefore, it can be considered that the International Law has the ability to readapt itself to contemporary conflicts. This is because, since there was no complete success in the peaceful resolution of disputes, as guided by international principles, there was a search for alternative means. As a result, the restrictive measures were implemented against Russia over Ukraine, seeking a ceasefire through economic impacts.

5. Conclusions

In summary, it can be said the Russian-Ukrainian conflict has several singularities, starting with its beginning as a result of events linked to a common historical root.

Since the begining of the Russian invasion of Ukrainian territory, there has been encouragement from other countries in conciliation rounds, aiming to solve the conflict peacefully. However, after

several attempts, Russia and Ukraine have not effectively reached a ceasefire.

Due to the development of the conflict, it was necessary to seek an alternative measure to solve or discourage it. In this context, the elaboration of sanctions emerged as a possible solution to stop Russia's action, since it impacted, mainly, its supporters and the economic sector, isolating the country from the global environment.

Such restrictive measures aimed to weaken the economy, in such way that, while weakened, Russia could not acquire weapons to continue its actions, as well as, secondarily, cause a damage to its reputation.

It is worth mentioning that the strategy of imposing sanctions has already been used previously in countries such as South Africa and North Korea. However, the effects of those sanctions, in both cases, were different, since, in the first one, it were decisive in ending the *apartheid* regime and, in the second one, it only lasted a short period of time, not being enough to stop the nuclear weapon program. Back to the Russian-Ukrainian war, as the conflict is still happening, it is estimated that the effects of the sanctions may be observed in the long term period.

Thus, when analyzing the implementation of restrictive measures, the constructive function of International Law was highlighted, whose applicability consists in identifying a problematic action by a country, based on the concepts and structures created by international norms, and the search for a solution in order to preserve or restore harmonious relations between countries.

It shall also be added that the International Law was able to readapt, due to the need of searching an alternative way, as it was not possible to peacefully solve a certain dispute. Also, it is worth noting that the European Union and other allied states, involved in a sort of transnational activism, saw the sanctions as a way of punishing Russia for not accomplishing a international norm, in this case, the prohibition of the use of force.

To conclude, the conflict between Russia and Ukraine, due to its singularities, revealed two important aspects of International Law: (i) the ability to readapt to contemporary conflicts, maintaining its main guidelines and (ii) the ability to assist in a interpretation of social reality. Both aspects always aiming to maintain peace.

6. References

- [1] P. R. B. Ramos, D. D. Lima e J. M. M. Neto, "Breves considerações sobre as causas e consequências da invasão russa na Ucrânia," CJSIURJ, vol. 15, pp. 106-131, June 15th, 2022.

- [2] CNN, "Relação entre Rússia e Ucrânia tem histórico de tensão; relembre os fatos," 22 02 2022. [Online]. Available: <https://www.cnnbrasil.com.br/internacional/re-lacao-entre-russia-e-ucrania-tem-historico-de-tensao-relembre-os-fatos/>. [Accessed on July 09th, 2023].
- [3] R. Tronenko, "Ucrânia: luta pelo direito de escolher seu destino, pela sua soberania e integridade territorial," *Universitas: Relações Internacionais*, pp. 103-115, 2016.
- [4] R. Dellagnezze, "O conflito Rússia e a Ucrânia," *Rease*, pp. 12-79, Apr 20th, 2022.
- [5] P. Kirby, "Has Putin's war failed and what does Russia want from Ukraine?", *BBC News*, 24 02 2023. [Online]. Available: <https://www.bbc.com/news/world-europe-56720589>. [Accessed on September 7th, 2023].
- [6] European Parliament, "International Court of Justice preliminary decision in Ukraine v Russia", Think Tank European Parliament, 2023. Available: [onsilium.europa.eu/en/policies/sanctions/restrictive-measures-against-russia-over-ukraine/sanctions-against-russia-explained/](https://www.consilium.europa.eu/en/policies/sanctions/restrictive-measures-against-russia-over-ukraine/sanctions-against-russia-explained/)
- [7] European Council, "EU sanctions against Russia Explained," Council of the European Union, 2023. [Online]. Available: <https://www.consilium.europa.eu/en/policies/sanctions/restrictive-measures-against-russia-over-ukraine/sanctions-against-russia-explained/>. [Accessed on September 7th, 2023].
- [8] M. D. Varella, *Direito Internacional Público*, São Paulo: Saraiva Educação, 2019.
- [9] V. d. O. Mazuolli, *Curso de Direito Internacional Público*, Rio de Janeiro: Forense, 2020.
- [10] O. Yasuaki, *Direito Internacional em Perspectiva Internacional*, Belo Horizonte: Arraes, 2017.
- [11] C. F. Doebble, "Russia's use of force against Ukraine: an international law perspective," *JURIST - Academic Commentary*, 2022. [Online]. Available: <https://www.jurist.org/commentary/2022/03/curtis-doebbler-russia-use-of-force-against-ukraine/>. [Accessed on September 9th, 2023].
- [12] United Nations Charter (full text) [Internet]. United States; 1945 [cited 2023 Jul 24]. Available from: <https://www.un.org/en/about-us/un-charter/full-text>
- [13] Sonnenfeld J, Tian S, Sokolowski F, Wyrebkowski M, Kasprowicz M. Business Retreats and Sanctions Are Crippling the Russian

Economy (July 19th, 2022). Available at SSRN: <https://ssrn.com/abstract=4167193> or <http://dx.doi.org/10.2139/ssrn.4167193>