

Conflict Resolution between Russia and Ukraine Based on an International Law Perspective



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ABSTRACT: The conflict between Ukraine and Russia is not something new. The Russian invasion of Ukraine, which began on February 24, 2022, is one of the significant upheavals in the global order since World War II. The roots of the conflict between Ukraine and Russia can be traced back to Ukraine gaining independence in 1991 after the collapse of the Soviet Union. Since then, Ukraine has become one of Russia's most vital satellite states, influenced by Russian politicians, oligarchs, and businesses. The concentration of forces and military drills eventually led to the invasion conducted by Russia into the territory of Ukraine on February 24, 2022. This invasion then intensified, encouraging various efforts to resolve the conflict. This analysis aims to examine the resolution of the dispute between Russia and Ukraine from the perspective of International Law. The research employed a normative legal research approach. Several attempts to resolve the Ukraine-Russia conflict have been made, including through negotiations, efforts by Turkey, interventions by the United Nations Security Council, and mediations conducted by four countries, namely Turkey, Israel, China, and Indonesia. However, these efforts did not yield any results. Currently, the International Court of Justice (ICJ) is urgently trying to persuade Russia to cease its invasion of Ukraine, but Russia has declined to attend the hearings.

KEYWORDS: International Law, Dispute Resolution, Russia and Ukraine

INTRODUCTION

The conflict between Ukraine and Russia is not a recent development. The Russian invasion of Ukraine, which began on February 24, 2022, is one of the significant shocks to the global order since World War II. The roots of the Ukraine-Russia conflict can be traced back to Ukraine gaining its independence in 1991 after the collapse of the Soviet Union. Since then, Ukraine has become one of Russia's most vital satellite states, influenced by Russian politicians, oligarchs, and businesses. However, due to corruption within the Ukrainian government and inefficient fulfillment of constituents' needs.

The Ukrainian crisis began in November 2013 when Ukrainian President Viktor Yanukovich canceled agreements for trade cooperation with the European Union. Instead, Yanukovich opted to accept a \$15 billion debt loan from Russia. At that time, Russia provided it as compensation because Ukraine had abandoned a trade deal with the European Union. As a result, residents in western Ukraine continued to desire closer ties with Western Europe, and nationalist groups organized demonstrations (Aji Muhammad, 2021). Subsequently, Russia attempted to establish closer relations with Ukraine because Russia had plans to form an economic pact rivaling the European Union. Ukraine is the largest country in the Eurasian group and relies on gas supplies from Russia. Therefore, since November 2013, Russian President Vladimir Putin has deployed a military force of 16,000 soldiers to the Crimean Peninsula. Russia sent its forces because the region is predominantly inhabited by ethnic Russians, comprising about 58% of the population (Manurung H, 2017).

The annexation of the Crimean Peninsula by Russia in 2014 marked the onset of open conflict between the two countries. This conflict was further intensified by the confirmation of Russia's involvement in supporting separatism in Donetsk and Luhansk. Ukraine's response, seeking to join the North Atlantic Treaty Organization (NATO), was also considered unhelpful in the conflict resolution process. Ukraine's actions were instead viewed as a new source of tension in the conflict between Russia and Ukraine (Adib Izzuddin, 2022).

The tension between Ukraine and Russia is also rooted in ethnic, linguistic, and religious differences among the domestic population in Ukraine. One of the differences leading to the conflict is the ethnic distinction of the populations in the Donetsk, Luhansk, and Crimea provinces, who identify themselves as part of Russia. Ukraine responded to these cultural differences by initiating Ukrainianization efforts, where the residents in those regions were mandated to use the Ukrainian language. This Ukrainianization effort is undertaken due to the close affinity of the communities in those regions with Russia, which significantly

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impacts the increasing influence of Russia in Ukraine. Therefore, Ukrainization efforts are carried out to prevent Russian hegemony through cultural pathways, particularly in the use of language (Stephen, 1998).

A series of events directly leading to the annexation of the Crimean Peninsula began on February 27 and 28, 2014, when pro-Russian residents seized critical buildings in the Crimean capital, Simferopol, and organized a referendum in the following days (Sebastian, 2018). According to information from CBS News, the referendum produced a surprising voter turnout, with 83% of the Crimean population participating and 97% of them choosing integration into the Russian Federation. Russia's campaign succeeded as, within three weeks, without resorting to coercion but solely through diplomatic measures, they seized all Ukrainian military bases and undermined Ukrainian morale. At present, the legal status of Crimea remains unclear. Putin's concerns about the security of the Russian minority were then rejected by the majority of governments and intergovernmental organizations. Russia's claims regarding the legality of its military intervention and the call for a referendum cannot be considered a response to securing the Russian minority or acting upon Viktor Yanukovich's invitation. In this case, not much is known about the details of Yanukovich's invitation and the presence of Russian military forces in the Crimean Peninsula (Bartos, 2020).

The referendum on the status of Crimea triggered demonstrations from other pro-Russian factions in the Eastern Ukrainian provinces of Donetsk and Luhansk, which border the Russian Federation. Both provinces have the largest percentage of Russian ethnicity, with 39% Russians in Luhansk and 38.2% in Donetsk. Moreover, these provinces have the highest population percentage, with as much as 92.7% using the Russian language (Bartos, 2020).

In 2019, Volodymyr Zelensky was elected as the President of Ukraine. During his campaign, Zelensky declared that he would end all tensions and push Ukraine towards Europe rather than Russia. Zelensky subsequently implemented a series of policies that contradicted Russia's interests. In addition to urging Ukraine to join the European economic community, Zelensky also registered Ukraine as a member of NATO to enhance Ukraine's military strength, thus preventing Russian aggression against Ukraine and withdrawing from Russian influence. Ukraine and NATO have been cooperating since 1992, and in 1997, the Ukraine-NATO Commission was established as a forum for security discussions without a formal membership agreement (Habib, 2022).

In 2021, Russia deployed troops on the border with Ukraine under the pretext of planned military exercises, denying any intention to attack Ukraine. Subsequently, Putin issued an ultimatum to NATO, demanding that they stop interfering in Ukrainian affairs, citing it as a military threat to Russia. Currently, Ukrainian President Volodymyr Zelenskyy is implementing plans to join NATO and the European Union, citing reasons of sovereignty, national interests, and the will of the people (Marc Miles, 2022).

The accumulation of troops and military exercises then led to the invasion by Russia into the territory of Ukraine on February 24, 2022. This invasion escalated and encouraged various efforts to resolve the conflict. One of them is the mediation efforts by Turkey and Israel. However, both Turkey and Israel must be cautious in mediating the conflict between Russia and Ukraine to avoid isolating themselves from the international community or the West. While no one agrees with Russia's actions against Ukraine, the two positions of Israel and Turkey, operating as negotiating powers, become more challenging to navigate and sustain. Israel faces pressure from Ukraine and the international community to join sanctions and condemn Russia for the attacks during the Babyn Yar Holocaust memorial, while Turkey is under pressure from NATO to condemn Russia's actions. However, this mediation process failed, raising questions about why the attempted mediation process was unsuccessful (Adib, 2022).

PROBLEM FORMULATION

1. How Conflict Resolution between Russia and Ukraine Based on an International Law Perspective?

RESEARCH METHODOLOGY

Research is a systematic process, a framework of steps conducted, planned, and systematically to obtain solutions to specific problems or respond to particular statements. Research is fundamentally an effort to search, not just an observation carried out casually on an easily accessible object. To achieve the best results, the research method used was normative juridical, consisting of regulations in the UN charter.

DISCUSSION

1. Conflict Resolution Efforts between Russia and Ukraine

The resolution of the conflict between Ukraine and Russia has been attempted in various ways but has proven unsuccessful. The United Nations (UN) has advocated that diplomacy and dialogue are the best methods for resolving the conflict. Article 2, Paragraph 3 of the UN Charter states, "All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered."

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According to Huala Adolf, methods or ways of peacefully resolving international disputes include diplomatic dispute resolution and dispute resolution through international judicial institutions, arbitration, and other international organizations. These methods encompass negotiation, inquiry, good offices, mediation, conciliation, arbitration, and international courts. Additionally, other methods involve submitting the dispute to regional bodies (organizations) and arrangements and other peaceful options chosen by the parties in dispute (Huala Adolf, 2008).

Several conflict resolution efforts between Ukraine and Russia have been attempted, including negotiations, good offices, international organizations, and mediation.

1. Negotiation

The effort to resolve the conflict through negotiation is currently widely open as President Volodymyr Zelensky of Ukraine, as reported by Tass, expressed readiness to do anything to settle the conflict peacefully, namely through negotiations (Mikrefin, 2022).

2. Good Offices

Good offices, or good offices, is a method of dispute resolution with the assistance of a third party aiming to facilitate a meeting between conflicting parties, enabling them to come together, sit down, and negotiate with the goal of resolving the conflict. One country willing to facilitate a meeting between the two nations is Turkey. Turkey has offered itself as the venue for a meeting between the two parties on Thursday, March 10, 2022. The good offices conducted by Turkey can be seen as a follow-up to the resolution issued by the United Nations General Assembly, where a country can offer its role to become a mediator without intending to intervene in the conflict parties' affairs, as mandated in Article 33, Paragraph 1, and Article 35, Paragraph 1 of the UN Charter (Mikrefin, 2022).

3. International Organization

The UN Security Council conducted a vote in an emergency session of the UN General Assembly held on March 2, 2022, to approve a Draft Resolution condemning Russia's military attack on Ukraine and calling on Russia to cease military actions and withdraw its troops from Ukraine. Out of the 193 voting members, 141 countries, including Indonesia, supported the resolution. This mechanism is carried out in accordance with the UN Charter. It appears that the UN Security Council cannot achieve maximum results in the UN General Assembly session because Russia is one of the permanent members, thus preventing all countries from creating a powerful draft resolution to stop this conflict. As a conflicting party, Russia has the right to veto in the General Assembly held in New York.

4. Mediation

Mediation is a dispute resolution effort through a third party known as a mediator. It can be a country, an international organization, or a neutral individual with the capacity to reconcile the parties by providing suggestions for dispute resolution. There are four countries that the author sees as potential mediators in resolving this conflict.

1. Turkey, as we have explained in the negotiation alternative, Turkey has bilateral closeness with both countries, making the author consider Turkey suitable as a mediator in resolving the Russia-Ukraine conflict.
2. Israel, Israel is one of the few countries that have a good working relationship with both Russia and Ukraine. Israel, through its Prime Minister, has spoken three times with Ukrainian President Volodymyr Zelensky. Naftali Bennett has also engaged in a dialogue with Putin, and although the chances of mediation are not significant, Israel will continue to extend any requested assistance.
3. China, China is a country that has a very close relationship with Russia. In addition to the shared ideology between the two countries, bilateral cooperation between China and Russia has been thriving year by year. Apart from its ties with Russia, China invests in Ukraine, particularly in infrastructure, agriculture, and military technology. China has maintained a neutral position in the emergency UN voting regarding the Russia-Ukraine conflict.
4. Indonesia, Indonesia is a founding member of the Non-Aligned Movement and a leader in ASEAN that has successfully mediated several conflicts within the region. In addition to its relatively good historical ties with Moscow, both countries consider Indonesia a future economic partner. The growing Muslim population in both nations is a significant factor, as Indonesia is regarded as a leader among Muslim-majority countries due to having the largest Muslim population in a single country. Therefore, it is not implausible that Indonesia's diplomatic and strategic position could serve as a mediator to facilitate peace agreements.

2. Conflict Resolution from the Perspective of International Law

Questions about "international law" as law have been present and heavily influenced by John Austin's theory, which conceptualizes law as sovereign commands. Sovereignty is something obeyed by most of society and does not comply with any other superior authority. This proposition becomes the basis for the statement that "international law" is not law. This theory has

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significantly influenced attitudes toward international law. Even if not outright rejected, it at least diminishes the role of international law in the reality of international politics. H.L.A. Hart then acknowledged international law as a set of legal rules, although not a legal system. This subsequently gave rise to the view that the positivist legal tradition has consequences for a voluntarist approach to international law, although not always the case (Mehrdad, 2011).

International Law is often said to be nothing more than morality. However, this view is not acceptable because there are parts that indicate specific cases conflicting with morality, such as a country's actions to fulfill its own interests. International law is often made to meet the interests of each country and common interests, not on moral considerations. In international law, Hart argues that in the process of law formation, which is in morality, the establishment, modification, or elimination cannot be done based on the deliberate will of the law authority (legislative). In international law, the establishment, modification, or elimination is done in a manner similar to a state's legislative process with its units. From this, it can be seen that formal international law does not share the same fundamental characteristics as morality (Hart, 1979).

Referring to Hart's opinion, international law cannot be used as a tool to resolve the conflict between Russia and Ukraine. This is based on Hart's view of the formal structure of international law, which lacks a legislative body, a court with definite jurisdiction, and officially organized sanctions, making it different from national law. However, these conditions share similarities with a simple primary or customary law *regime*.

The resolution of a conflict such as war through a treaty is essentially considered a legislative act by some theorists. However, in reality, the International Court cannot adjudicate a case without the consent of the disputing states.

However, Mehrdad Payandeh has a different opinion on this. Payandeh argues that Hart's views cannot be separated from the context of the time when the book "The Concept of Law" was written, namely in 1961. At that time, the conditions of international law, in Hart's understanding, were still heavily influenced by the aftermath of World War II, the failure of the League of Nations to prevent war, and the establishment of the United Nations (UN), which had not provided a bright prospect for collective security, and the Cold War had already begun. At that time, Hart had not seen the development of international law in the second half of the 20th century. Therefore, Hart only positioned international law as an additional aspect.

Payandeh further states that in the 21st century, international law has institutions that perform legislative, judicial, and executive functions, thus addressing issues of uncertainty, stagnation, and inefficiency. One of Hart's doubts about international law in terms of conflict resolution is the lack of a court to address violations of international law. In today's international law, there is the International Court of Justice (ICJ), whose jurisdiction is limited to disputes between states and requires the consent of the involved parties.

In the conflict between Ukraine and Russia, the ICJ has urged Russia to halt its invasion of Ukraine. This decision marks the first ruling issued by an international court since the war began. Kyiv is seeking immediate action to stop the fighting, which the UN human rights body reported has claimed the lives of 1,834 civilian casualties. In this case, Ukraine has requested legal intervention and argued that Russia was falsely accused of genocide in the Donetsk and Luhansk regions to justify its attack. The wording of the ICJ decision is "*The Russian Federation must immediately suspend the military operations that began on February 24, 2022, in the territory of Ukraine*" while awaiting the final decision in the case, said ICJ President Joan Donoghue. However, Russia refused to attend the hearings on March 7 and 8, 2022, stating in a written submission that the ICJ "lacks jurisdiction" because Ukraine's request falls outside the scope of the 1948 Genocide Convention, which forms the basis of the case. However, the ICJ determined that it has jurisdiction in the case. Furthermore, in international law, an absolute prohibition is using armed force, as stated in Article 2(4) of the UN Charter, recognized as customary international law and even *jus cogens*.

H.L.A. Hart rejected the idea that international law has rules of recognition. *Pacta Sunt Servanda* cannot be placed as a rule of recognition because not all international obligations arise from an agreement. Payandeh then stated that the primary function of the rules of recognition is to determine the validity of primary rules, as stated in Article 38(1) of the ICJ Statute, which mentions that generally recognized sources of international law include international agreements, customary international law, and principles of general law. Hart also argued that international law does not have a written constitution. In its development, there is currently an approach to the constitutionalization of international law as developed by Hermann Mosler. Namely, developing rules for the formation of law as the constitution of the international community.

CONCLUSION

The conflict between Ukraine and Russia has been ongoing since 1991, when Ukraine gained independence. The Russian invasion of Ukrainian territory, which began on February 24, is a major shock to the global order since World War II. One of the roots of this invasion is the previous Russian annexation of the Crimean region and its proven support for separatist movements in Donbas, Ukraine.

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Several efforts have been made to resolve the conflict between Ukraine and Russia, including negotiations, good offices by Turkey, the involvement of the United Nations Security Council, and mediation by four countries, namely Turkey, Israel, China, and Indonesia. However, these efforts have not yielded positive results.

According to H.L.A. Hart's Concept of Law, there are two concepts of law: primary rules and secondary rules. In primary rules, the emphasis is on human obligations to act or refrain from acting as follows:

1. There are provisions of behavior in society and social pressure for those who deviate;
2. Perceived as an obligation by most members of society.

Secondary Rules consist of rules about rules, including:

1. Rules that determine the validity of a rule (rules of recognition);
2. How and by whom the rules can be changed (rules of change);
3. How and by whom the rules can be enforced (rules of adjudication)

Referring to Hart's opinion on international law, the case of the conflict between Russia and Ukraine cannot be resolved through an international legal approach. Hart argues that international law can not be considered as law due to the absence of sanctions. In international law, sanctions are less effective as a deterrent than they are in national law.

However, Payandeh argues that Hart's views on international law cannot be separated from the context of the time when "The Concept of Law" was written in 1961 when international law had not yet developed as it has in the 21st century. To date, the ICJ is trying to urge Russia to stop the invasion of Ukraine, but Russia refuses to attend the hearing.

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