Is Vladimir Putin a Realist with Special Attention to the Concept of a Force Monopoly and Hans Kelsen’s Principle of Effectiveness of Laws and Joe Biden’s (President of the United States of America) Speech at the United Nations General Assembly Meeting of 20th September, 2023 That There Will Be Reprisal against Russia for Starting the War with Ukraine Coincide with the Concept of Force Monopoly

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Abstract

In this article I will take a critical analysis of realism especially political realism and linking it to Vladimir Putin (president of Russia) and then how the concept of force monopoly and Joe Biden’s (President of the United States of America) speech at the United Nations General Assembly meeting of 20th September, 2023 that there will be reprisal against Russia for starting the war with Ukraine coincide with the concept of force monopoly. Central to this discourse is the concept of force monopoly and the principle of effectiveness of law, these will be explored alongside entrenched norms of international law. Therefore, this article will examine the historical precedent set by the International Law; which unequivocally condemned acts of aggression and underscored the accountability of individuals for violating international law. Throughout World War II, it was widely believed that there is no justification for the hostilities initiated by Germany through Hitler therefore, Germany’s actions against states during the second world war constituted unlawful aggression (Sorensen 1968; Wright, 1947). This historical context serves as a backdrop for ensuring compliance with international legal norms and it emphasizes the imperative of holding states accountable to deter unlawful actions. Key topics addressed include the nuanced interpretation of force within international law, the parameters of self-defence, the principles of self-help and self-preservation, and the concept of necessity in justifying state actions. Through this multidimensional analysis, the study underscores the critical importance of upholding international legal frameworks to mitigate conflicts and foster a more stable and just global order.

Keywords: force monopoly, Hans Kelsen, international law, Israel Hamas war, Joe Biden, realism, Russian Ukraine war, use of force, Vladimir Putin

1. Introduction

1.1 Background of the Study

In the past history of the world for example, during the second world war in 1940s Hitler and Mussolini brought the world into their knees and same situation is applicable in 21st century world peace. Putin and his cronies Netanyahu and his cronies and Hamas leaders. One thinks, for example, of international human rights, where standards and norms are established in numerous international instruments (Sorenen, M; 1968) but compliance with and enforcement of these standards and norms are spotty, for example, on a global stages we have seen in the 21st century wars the constraints on violations of international law on the use of force and of arms control (South Africa v. Israel, 2024). These have presented major obstacles with regards to compliance and enforcement of


international law (Blaksley, C.I., Firmage, E. B., Scott, R. F. & William, S.A. (2001).\(^3\) This is because the international institutions responsible for the enforcement of international law are frustrated due to endless violations of international law by states and their prerogative powers with regards to threat to peace, breach of peace, and acts of aggression, (Bennett, A. (1995).\(^4\) The United Nations has the authority to enforce international law through the security council under Chapter VII of the Charter but they are frustrated too. Blaksley, C.I., Firmage, E. B., Scott, R. F. & William, S.A. (2001).\(^5\) The establishment of international criminal court though useful but it has been controversial because outside Chapter VII, the United Nations can only attempt to induce states to comply with their Charter obligations (Sorensen, M; 1968).\(^6\) One way to induce compliance with legal obligation is to bring an action in a court. But in international law, the statute of international Court of justice makes the competence of the Court dependent on its recognition by individual states for this reason, crimes committed by tyrants becomes difficult to prosecute (kelsen, 1945)\(^7\)

To this effect, there are considerable number of studies by theorists as exemplified by Leo Gross, Quincy Wright, Max Sorensen, Bernard Gilson, Hans Kelsen and Ian Brownlie on, crimes against humanity, prosecution of state's crimes, war crimes, reprisal, monopoly of force and effectiveness of law. However, their contributions are limited because they do not go far enough with regards to crimes of individuals who are agents of the state.

Against this backdrop, the general objective of this study is to examine the entrenched norms of international law. It will critically analyse the historical precedent, set by the International Law; which unequivocally condemned acts of aggression and underscored the accountability of individuals for violating international law. Therefore, the article calls for a clear and standard definition of aggression that should be applied where it is required. Because the united nations handling of threat to the peace, breaches of peace and acts of aggression in 21\(^{st}\) century has been filled with disappointment. There is no permanent international military force and the military staff committee is a body without substance even the compulsory economic sanctions as it is obvious, has failed to be an effective instrument to deter war and aggression between states and in world

Key topics addressed include the following: Interplay of law, politics, societal stability, uniformity and balance of power dynamics, essay: realist perspective on international politics, balance of power strategy and order in international politics, Kelsen's force monopoly, delict and international law, reprisal, State sovereignty and International law, the theory of Bellum justum and the challenges in preventing war in international law, Desuetudo (the negative legal effect of custom), Exceptions to the force monopoly principle, understanding the use of force under international law and regional security pacts, collective self-defence and evolution of neutrality in the modern world.

1.2 The Interplay of Law, Politics, Societal Stability, Uniformity and Balance of Power Dynamics

Law and politics enable both international and national communities to exist because no society can function effectively without them. (Wright, 1953; Weber,1954).\(^8\) According to Weber, an order will be called law if it is externally guaranteed by the probability that coercion physical or psychological, will be used to bring about conformity of behaviour or it will be used to avenge violations of the law. Therefore, the law will be applied by staff of people holding themselves spacially ready for that purpose. Moral norms and customs differ from law by the absence of a staff holding itself ready to use coercion. The legal system is the staff of people standing ready to avenge violations of norm-encompassing criminal actions in response to social disorder or crimes against persons and property, as well as civil actions between individuals in response to disputes that arise out of social interaction. When law is defined as an institution that enforces norms, it makes sense to speak of law and society because the institutional form of law can be isolated upon and examined in connection with its surrounding social context. Law encompasses the full gamut of actors whose conduct revolves around and gives rise to legal institutions including police and other members of the coercive apparatus (Patterson, 2010).\(^9\) This is due to the fact that for both nation


state and the international community to have stable and smooth functioning of its affairs depend on the positive interplay between law and politics in today's world order (Lipsky, 1953). The efficiency of law for both nation state and international community instils trust in social institutions, thereby facilitating individuals in both communities to effortlessly forecast numerous future scenarios for the stability of the society as a whole. (Kelsen, 1945; Wright, 1953). Law have the possibility to protect the entire society from the administration of justice, uncertainty and individual judgment. For example, politics gives flexibility to both nation state and international community as it enables them to adapt to drift in power dynamics, advancements in technology, and evolving ideas and aspirations of all people (Merriam, 1945; Wright, 1953; Heywood, 2019). That being said, if politics is left unchecked by legal frameworks, it instills anxiety in individuals, particularly those in positions of power (Kelsen, 1945; Wright, 1953). This anxiety can escalate into an unpredictable future, leading to warfare that is as destructive as it jeopardizes all that had been built through human generations and civilizations as we are witnessing in 21st century today's world order; as exemplified by Russian-Ukrainian and Israel-Hamas. Therefore, as we will see in this article, law represents the mechanism and skill through which a society mandates its members to observe those norms, principles which are considered and very much appreciated by both international and national communities and governments (Salmond, 1902; Kelsen, 1945; Wright, 1953). Therefore, the main aim of this article is to show that the purpose of law is to anticipate that there will be a harmonized presence of character, culture, and understanding within a community where the law operates.

In a community where law operates, the rule of law will align so closely with the prevalent customs and beliefs that the majority of its members will be willing to transform or conform voluntarily into its forms (Wright, 1953; Heywood, 2019). But if there is considerable polarization, variability of human personality both cultural and religious dichotomies which are prominent in the society at large, it makes it impossible for a homogeneous society to be formed (Kelsen, 1942; Wright, 1953). However, when polarization decreases and deviations from the law are minimized and remedied and legitimacy of the law is upheld, this will insures the stability and existence of a homogeneous society. In such circumstances, significant aspects of the society's future can be reasonably be predicted. Consequently, the law will serve as an accurate portrayal not only of the society's ideals and values but also of the actual conduct of its members just as morality which stipulate what norms are ideal and what is not in a society (Devlin, 1968; Patterson, 2019). This is because, in a state or society where a well-operating legal

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system exists, the concepts of "ought" and "is" are expected to align seamlessly (Kelsen, 1942; Wright, 1953).\textsuperscript{19} But between prerogative state, a normative state is what remains of the rule of law state where the legal order has deteriorated to the point where the executive can set aside any legal rule whenever this seems convenient. In that case, the prerogative State can claim jurisdiction and unlimited power over any matter as is the case in Russian-Ukraine and Srael-Hamas war (Dyzenhaus, 2006).\textsuperscript{20} Therefore, we are today and once again witnessing how the Nazi had abused the Weimar Constitution to create a prerogative state what is known as legal black hole (Dyzenhaus, 20).\textsuperscript{21}

Normally politics is supposed to be the process in a community or group where the government seeks to realize its aims against its oppositions (Wright, 1953).\textsuperscript{22} This is because as we have seen in the 21\textsuperscript{st} century world politics, political disputes often escalate into warfare, and conflicts become increasingly challenging as groups and factions become deeply committed to their objectives, resorting to any means necessary to achieving their aims. When opposing groups possess roughly equal power, the intensity of the conflict escalates, this often results in complete destruction of the enemy (South Africa v. Israel, 2024; Wright, 1953).\textsuperscript{23} Russian-Ukraine and Israel-Hamas wars are living examples today. Therefore, this article suggest that there should not be disregard of international law by some states and where a state disregards international law, the international community should eliminate the threat to peace worldwide either by physical necessity or through enforcement of international law. This stems from the fact that since the end of the Cold War, the international community has experienced a period of stability and Peace because of cessation of East-West rivalry which brought early optimistic expectation and declining concerns for the use of nuclear weapons (Sil & Katzenstein, 2003).\textsuperscript{24} However, in a world showing signs of re-dividing into multiple factions, each armed with nuclear weapons that enables greater offensive capabilities, it is challenging to envision how stability can be sustained with such a balance of power (Heywood, 2019).\textsuperscript{25} Throughout history, states with greater military power and capabilities as exemplified by Western great powers, they have frequently exercised disproportionate influence over rules and wars governing the international systems (Sil & Katzenstein, 2003).\textsuperscript{26} It is disappointing to note that again in the 21\textsuperscript{st} century strong states still have interests in altering the normative landscape on which value are attached to war for the sake of domination and less values attached to sovereign equality and humanitarian protection (South Africa v. Israel, 2024, Diakonia International Humanitarian Law Centre).\textsuperscript{27} In this situation, it becomes imperative for the international community to unite and address this threat to global peace in order to foster lasting stability in the world. As long as there are weak physical enforcement measures by the international community, this danger the world is facing in 21st century will never end. Although in twentieth century the international community became aware that an individual or individuals may be found guilty and can be prosecuted for international criminal acts against humanity and world peace (Blaksley, Firmage, Scott & William, 2001).\textsuperscript{28} But the current enforcement mechanisms available to central authorities to uphold the law often encounter opposition that cannot be addressed through conventional methods of law enforcement, such as army, police intervention, judicial processes and execution of court rulings. We have seen it in the case brought


\textsuperscript{26} See SiI, R. & Katzenstein, P. J. (2010). Beyond paradigms: Analytic eclecticism in the study of world politics. Bloomsbury Publishing.72


by South African against Israel (ICJ Contentious case (Diakonia International Humanitarian Law, 2024)), but still Israel continued unacceptable actions in disregard of both the international criminal court, the international community, international law and the entire world view. Israel also, ignores the principle of the rule of law (Binham, 2010; Dyzenhaus, 2006). This is the situation what the international community is facing right now in 21st century. Nevertheless, there exists an international law that the vast majority of states have formally consented to regulate the conduct of all states, and this law ought to be upheld. But still, its powers are not respected to the extent its powers are so often in loggerhead with oppositions from some states. Under such conditions, law cannot effectively limit the political system and human behaviour in the world as it seems to be the case in the 21st century world order (South Africa v Israel, 2024) are examples (Diakonia International Humanitarian Law, 2024). At this juncture, it is pertinent to mention here that states have chosen balance of power and physical enforcement of international law which is just and enforced as the only effective and favourable way for international law and world peace; bearing in mind that liberals do not believe that peace and international order can simply arise entirely on their own; instead, that mechanisms are needed to constrain the ambitions of sovereign states especially rouge states. This should necessitates the establishment of international regimes or organizations, aligning with the principles of liberal institutionalism (Heywood, 2019). This can be achieved by examining the structures of domestic governance as it will contribute to a deeper understanding of international politics, with focus on social contract theory as expounded by Thomas and Locke (Thomas, 1651; Locke, 1690). They emphasized the notion that establishing a sovereign power is essential to effectively protect individuals from the disorder and brutality of an anarchic state of affair. Thus, just as order must be established through authoritative means in domestic governance, a similar approach is necessary in international politics to establish a framework of law and order, transforming the chaotic landscape of global politics of wars into a more organized and civilized system; referring to the effective implementation of international legal provisions that would bring states to their senses as to boost peace and prosperity in the world (Thomas, 1651; Heywood, 2019).

2. Essay

In this world even before first and second world wars, international security has always been of a concern for the international community. (Heywood, 2019; But in 21st century international security has taken more centre stage in the international community; therefore, the problem facing the world is on how to find solutions that will counter insecurity that is rooted in the international community. (Heywood, 2019). For example, the meeting between Donald Trump and Kim Jong-un in Singapore demonstrate how deep the problem is (Heywood, 2019). One of the dangers that drives the insecurity is the idea of state sovereignty (Kelsen, 1945). This is due to the fact that all states is assumed to possess equal status and is entitled to territorial integrity and political independence (Sorensen, 1968). Hence, within a state, no faction can dispute the state's authority, as it represents a politically organized community governed by a coercive order dictated by its laws (Kelsen, 1945). In accordance with these laws, the state holds a paramount position over all other associations and entities. Consequently, the state maintains a monopoly over the legitimate use of coercive force, as noted by Max Weber (Kelsen, 1945; Weber, 1946). Weber, M. (1948) Nevertheless, it is vitally important to recognize that the assertion of absolute sovereignty and

29 See Diakonia International Humanitarian Law Centre, (2024). ICJ Contentious case South Africa v. Israel. Diakonia International Humanitarian Law Centre, Jerusalem
31 See Diakonia International Humanitarian Law Centre, (2024). ICJ Contentious case South Africa v. Israel. Diakonia International Humanitarian Law Centre, Jerusalem
independence by any state, suggesting it can act without constraint, is untenable in 21st century. This is because, externally, no state’s supremacy extends to an unrestricted exercise of power, contrary to the beliefs of nations like Russia and Israel. Instead, inherent limitations circumscribe such claims (Sorensen, 1968). This is because no state is infinite as such states have necessary limits to their powers because the power of the state ends where its territory ends; outside the state territory, a particular writ runs. Where these writs run the power of the state is incapacitated or runs concurrently with other states because the dependence of each state presupposes that of the other. This underscores that the dissolution of the imperial state's governance do not result in chaos, but rather the emergence of a system where multiple states govern themselves (Gilson, 1984; Sorensen, 1968). As a result of this, a network of states, inseparable in their coexistence arose, laying the groundwork for the contemporary system of international law we see today (Sorensen, 1968). Based on this, the United Nations Charter delineates universal principles pertaining to the rights of both states and individuals (Shorts & de Than, 1998). It establishes procedures to advocate for and uphold these rights, with provisions for enforcement when necessary (Blaksley et al., 2001). No matter how inadequate these measures may be, there is no doubt that there is a universal law governing states behaviour in international law (Shorts & de Than, 1998).

Here, it is pertinent to mention that state security is very important for all states, for example, from a non-political standpoint, security entails the state's ability to offer protection for its population against external threats, particularly through its armed forces' ability or readiness to engage in warfare and deter potential aggressors (Heywood, 2019). This enhances the traditional notion that only states possess the capacity to engage on equal footing with another state. (Blaksley et al., 2001). While state sovereignty is crucial for maintaining internal security, it can also pose challenges when it comes to ensuring security beyond national borders (Heywood, 2019). This is because, sovereignty implies that within its borders, the state holds the highest authority, with no superior power (Kelsen, 1945; Gilson, 1984). But for the fact that we live in a world of international community, this implies disorder because of the idea that all states are equal as such no state can impose its will upon another sovereign state (Kelsen, 1945; Sorensen, 1968). In this context, security traditionally finds its foundation in the relationships among states, as exemplified by liberals contention that state relations are shaped not only by external elements such as the organizational dynamics of the global system but also by the internal constitutional structures of individual states (Heywood, 2019). This is very true because it is apparent that 21st century world order is based on divisions between totalitarian, autocrats and democrats. The democrats claim that democracy is the best way forward for international order and peace. This phenomenon known as the democratic peace thesis demonstrates that democratic states tend not to engage in warfare with each other (Heywood, 2019; Biancardi, 2003). That democracies prioritizes public opinion for peaceful conflict resolution instead of resorting to violence. Since United States aggressive war in Iraq, and now Israel Hamas war and South African case with Israel in the International Criminal Court has called into question the democratic peace thesis today, bearing in mind the divisions in the United Nation security Council, NATO, European Union and the rest of the international community. (Diakonia International Humanitarian Law, 2024). This has raised the spectre of global realignment that fractured unilaterism and strengthen multilateral co-operation more evidently today than ever.

2.1 Realist Perspective on International Politics

In the 21st century, discussions on international security has been propelled by realist perspectives as such, there has been a notable transition towards addressing the challenges posed by transnational terrorism, states aggression and the proliferation of catastrophic armaments worldwide, as exemplified by North Korea's and many other state’s possession of a hydrogen and nuclear bombs (Heywood, 2019). Based on this, political realism has taken centre stage in international community and their aim is simply to make sure that international politics is realistic
because they see it as businesslike (Waltz, 1997). Hence, according to realists such as Putin, international politics revolves around power dynamics rooted in self-interest (Waltz, 1997; Heywood, 2019). It is acknowledged that power politics encompasses multiple prepositions, but the fundamental premise is that human nature is selfish driven by competition which means that egoism is paramount for human beings (Sil & Katzenstein, 2003; Heywood, 2019). For realist like Putin who sees the state as sovereign and independent, this state egoism has led to the Russian- Ukraine war because of the pursuit of national interest. For example, according to Kenneth Waltz: “the behaviour of states on the basis of assumptions about the structure of the international system and in particular the fact that in the absence of world government, the international system is characterized by anarchy” (Waltz, 1997; Heywood, 2019). However, international systems suppose not to be characterised by anarchy because the United Nations and international community should be seen as social contract, a voluntary pact formed amongst individual states establishing an organised community of nations which is the United Nations and its legal order (Sørensen, 1968; Tuori, 2009). Because international law is the state itself bearing in mind that international order is the product of states without which international law cannot become a reality. International law became a reality because there was society of states that agreed to be self-conscious enough to be constituted in a reasonable way as a result, the United Nations was born (Bennett, 1995). Note that international law is built out of the most fundamental assumptions of constitutional law because the state is a constitutional idea. Bear in mind also that the principal constitutional characteristics of the state are (1) sovereignty (2) recognition (3) independence (4) continuity (5) integrity and control, all this provides the constitutive elements of the society of states that is governed by law, the United Nations law called international law (Patterson, 2010). This is because, this understanding or agreement reached between states in form of the United Nations signifies the importance of the United Nations and international law and the obligations of states to acknowledge, and promote peace and the importance and idea of a rationally universal law as exemplifies by Wolff’s theory of the civitas maxima postulating the legal unity of the world on the basis of a law positively decreed and assented to in conformity with the rational requirements of natural law just as nations were organized as cities, all nations in their legal form as states were united in civitas maxima (Gilson, 1984). Therefore, international community should not be the same as the state of nature survival of the fittest, characterised by anarchy as stated by Waltz (Waltz, 1997). International community is characterised by anarchy because international community allowed unrestricted actions to some states especially in case of Russia and Israel without remembering that unrestricted freedom damages the fabric of the society according to Patrick Devil in the enforcement of morals, here, Hart and Devlin's assertion was that a collective moral standard exists within society, of which the society has the authority to uphold through legal frameworks and enforcement mechanisms. He maintained that society should be unified by a common moral standard in defining what is considered morally right. He suggested extending Mill’s concept of harm (Mill, 1859) to include ‘offence especially those that provoke what Devlin called ‘real and genuine feeling of revulsion meaning the feeling of the international community of states and its entire population.’ (Devlin., 1968. Heywood, 2019). (Patterson, 2010).

The bone of contention here is that, what is unacceptable to the international community should not be left to individual state to decide, especially when the interest of the state conflicts with the international community’s interest for world peace. Because where there are no conflicts of interests, the international community system will not be in a precarious position with tensions, conflicts and wars, but unfortunately this is the case in 21st century (Diakonia International Humanitarian Law, 2024). States are only trying to survive due to lack of outside

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assistance. This leads to the establishment of a self-reliant system where states naturally prioritize the accumulation of military strength as the sole strategy to survive and deter would be aggressor. (Waltz, 1997; Heywood, 2019; Sil & Katzenstein, 2003).60 We have seen the military build-up by NATO countries around their borders with Russia after what Russia called special military operation in Ukraine. Here, according to Waltz, the realist perspective on international power dynamics holds significant implications for the security of the international community.61 (Waltz, 1997; Heywood, 2019; Sil & Katzenstein, 2003).62 Waltz presented international security as the highest problem facing the world in the 21st century. Therefore, for a realist, it is the responsibility of the state to maintain security, as evidenced by the concept of national security (Heywood, 2019).63 This is because the primary security threats faced by states date originates from other states. For this reason, the threat of violence and coercion is inherently linked to the probability of interstate warfare. Consequently, ensuring national security is intricately connected to preventing such conflicts (Waltz, 1997; Heywood, 2019; Sil & Katzenstein, 2003).64 Usually accomplished by enhancing military capacity and reinforcement to dissuade potential adversaries. We have seen this situation also with the United States in Hamas and Israeli war of 7th of October 2023; how the United States sent their war ships to the Middle East waters (Mediterranean Sea) to deter any would be aggressor from attacking Israel.

2.2 Balance of Power Strategy and Order in International Politics

Naturally states treats other states as enemies’ and this makes it possible for a military build-up for a balance of power strategy. (Waltz, 1997; Heywood, 2019; Sil & Katzenstein, 2003). Therefore, for a realist like Putin, conflict can be managed by maintaining a balance of power. In this view, Putin’s strategy is using balance of power which is a policy that uses diplomacy, and possibly war to prevent any state from achieving a predominant position in the international community (Heywood, 2019).65 Neorealist view balance of power not merely as a policy but as a systemic concept—a condition where no single state predominates over other states, because the theory of balance of power creates general equilibrium, as it is a deterrents for any state to pursue hegemonic ambition (Waltz, 1997; Heywood, 2019).66

Here, according to Aristotle, man is by nature a political animal meaning that, it is only within a political community can human beings live a good life (Kelsen, 1953, Heywood, 2019; Flinder 2012; Clarke et al., 2018). That being said, we must remember that politics is an ethical issue of which the main aim of politics is to establish a fair society, a concept Aristotle referred to as the "master science (Aristotle, 1948; Kelsen, 1945; Heywood, 2019).67 Nonetheless, the association between politics and state affairs also clarifies why negative or disparaging connotations are frequently associated with politics. For example, the Russian-Ukraine and Israel-Hamas war exemplify how politics often carries negative connotations due to its association with self sickness politicians (Diakonia International Humanitarian Law, 2024). In the eyes of the public, politicians are frequently seen as individuals driven by a thirst for power, concealing personal ambitions under the disguise of public service and ideological beliefs. Such perceptions are fuelled by notions of corruption, dishonesty, and self-serving self-interest. Donald Trump also characterised politics as polarization and danger (Flinder, 2012;Heywood2019).68 and also the Prussian general and military theorist Karl von Clausewitz (1780-1813 put it, War is merely a continuation of politics or policy by other means that is the reason why order in a society is a political principle signifying consistency and foreseeable behavioural patterns (Kelsen, 1945; Heywood, 2019). The key to order is reciprocity therefore, it has two sides first, it is a political principle because it aligns with authority, often perceived as attainable solely through top-down imposition via a framework of laws and regulations, effectively merging the concepts of law and order as a single fused concept. Therefore, to maintain order in a society, there has to be reciprocation, this means that for an order to be maintained or achieved, there has to be equality and social justice
(Rawls, 1971; Päivänsalo, 2007; Patterson, 2010). Because where there is social justices and rule of law, stability and security will flow naturally through cooperation and reciprocation (Kelsen, 1945; Wright, 1953; Rawls, 1971; Heywood, 2019). For this reason, certain critical theorist, notably constructivism and feminism, have emerged as prominent voices in addressing global order and security concerns (Heywood, 2019). Constructivism post-positivist stance, has garnered considerable attention in the 21st century (Sil & Katzenstein; 2003; Heywood, 2019). Here, constructivists contend that the interactions among states are influenced by their beliefs, values, and assumptions, shaping their self-perception and their interpretation and reaction to the frameworks in which they function (Sil & Katzenstein; 2003; Heywood, 2019). Consequently, it can also be posited that state conduct is not solely dictated by the inherent dynamics of global disorder, as neorealists assert, but instead influenced by their perceptions of that anarchy. For example, according to Wendt, anarchy is not a fixed condition but rather a product of state actions as exemplified in current world order (Wendt, 1992; Diakonia International Humanitarian Law, 2024). While some states perceive anarchy as a perilous, Putin for example regard it as a foundation for freedom and opportunity (Heywood, 2019), Diakonia International Humanitarian Law, 2024). Hence, anarchy characterized by amicable relations differs significantly from one marked by hostility (Wendt, 1992; Heywood, 2019). Here, constructivists suggest that this perspective allows room for states to move beyond a limited understanding of self-interest and instead adopt a more broader commitment to global justice, and perhaps even cosmopolitanism (Wendt, 1992; Sil & Katzenstein 2003; Heywood, 2019).

Feminist theory also criticize the realist view of security strategy apparatus because they see it as being too masculine due to its assumptions regarding rivalry, competition, and unavoidable conflict (Wendt, 1992; Sil & Katzenstein; 2003; Heywood, 2019). This perspective stems from the tendency to perceive global dynamics as interactions among power-seeking autonomous entities, exemplified by figures or leaders like Putin and Netanjahu, Israeli prime minister as I have stated before. Additionally, constructivists argue that the traditional notion of national security often leads to self-defeating outcomes due to the security paradox (Wendt, 1992). They feel that it creates what is called security of insecurity. Here, I agree, because it is true as we have seen it in Russian-Ukraine war and Israel and Hamas war, because now, it appears that Russia is even less secured with NATO troops surrounding all its borders and with Finland and Sweden joining the NATO alliance. Also this applies to Israel and Hamas war of October, 2023, because many Arabs and Muslim countries have renewed their anger and hatred for Israel (South Africa v. Israel. 2024).

2.3 Kelsen's Force Monopoly, Delict and International Law

For these reasons, from Russian-Ukraine and Israel -Hamas war, we are witnessing that the notion suggesting that there is only one definitive interpretation of a legal norm, which can accurately determine the correct interpretation, is simply a fiction. Which is adopted to sustain the illusions of legal certainty, leading the public to believe that there exists only a single correct response to legal questions in specific case (Lipsky, 1953; Gross, 1953). However, this belief does not hold the true reality for example, international law posits that in order for laws to be implemented and operate effectively, there needs to be a rational behind their application (Heywood, 1953). This means that there must be an interests that is protected by the law. In that case, if the delict breaks the interests that is protected by the law sanction is allowed against the delict as a reaction of the international community for his disregard of international law (Lipsky, 1953; Kelsen, 1945). The reaction of the international community against the delict is called a just war (Lipsky, 1943; Kelsen, 1945). Therefore, the concept of a force monopoly means
that all “forcible interference in the sphere of interests of one subject to the order must be regarded as either a delict or a sanction (Kelsen, 1945; Gross, 1953). But on the contrary to this view, English law for example recognizes the use of force in several ways that are neither delict nor sanction for example, in a dictatorial state like Russia, the sphere of extra-legal force is neither delict nor sanction is even greater (The British Year Book of International Law, 1945). Sanction is made a consequence of the behaviour which is considered detrimental to society and which, according to the intentions of the legal order, has to be avoided for example the Russian-Ukraine and Israel-Hamas war (Kelsen, 1945; Lipsky, 1953). This is because Putin’s behaviour is classified as a delict because the theory of bellum justum regards war in principle as delict because it is only allowed as a sanction although the term is interpreted in its widest context (Kelsen 1945; Lipsky, 1953). Therefore, it is pertinent to mention or to note here that, to define the concept of delict you need to consider the intentions of the legal order or the legislator's objectives as expressed in the materials generated during the law-creating procedure as reflected in the contents of the legal order; for example, in the law of the world community international law. Just as in deciding murder in criminal law, you need to first define means that is the intentions of the operator. Here, under international law, the use of armed force as an instrument of national policy is prohibited therefore Putin's behaviour with regards to the Russian-Ukraine war is delict and demands sanction. Israel's conduct in its war with Hamas also demands a sanctions. This is because, failure to impose sanction would undermine the legitimacy of the concept of delict (Kelsen, 1945; Lipsky, 1953). From this perspective, a delict refers to the circumstance to which a sanction is linked by the legal order. For instance, specific human actions or behaviours are considered delicts because the legal order, the law associates them with sanctions as consequences of such conduct (Bennett, 1995; Kelsen 1945). An action which will constitutes an unlawful act resulting in a criminal penalty, are actions that are associated with life, health, freedom and property (Kelsen 1945). And it warrants a civil penalty if it results in a civil sanction for example a forcible deprivation of property with the intention of getting reparation. At times, the common assumption that a particular type of human behaviour attracts a legal penalty solely because it is a delict is inaccurate (Kelsen, 1945). Rather, it is considered a delict because it elicits a reaction from the law in the form of a sanction. From the perspective of theory of jurisprudence based on positive law, the sole criterion for a delict is that the behaviour serves as the basis for a sanction (Bennett, 1998; Kelsen, 1953). For instance, in German law, a child or someone deemed mentally incompetent (lunatic) is deemed irresponsible and cannot be held responsible for a delict in a way a normal person will. Therefore, the assertion that a child or someone deemed mentally incompetent cannot be held accountable for a delict is misleading because their actions do not constitute a delict in any form. (Kelsen, 1945; Lipsky, 2023). Their behaviour would only be considered a delict if they would be adults or possessed mental competence. In this context, whether a particular action, such as murder, or armed attack is deemed a delict depends on whether the individual performing the action possesses specific characteristics outlined by the legal system as general prerequisites for imposing sanctions.

The question then is, is Russian-Ukrainian war a delict as to warrant a sanction, a reaction of the international community and international law? It is mentioned here that while classical international law acknowledges the legitimacy of intervention in certain cases (such as within the subordinate nation, pursuant to treaty authorization, or on grounds of humanitarian necessity), modern law firmly upholds the principle of non-intervention without

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98 See British Year Book (1945). The British Year Book of International Law. London: Oxford University Press. pp.146-157
100 See American Journal of international law rights and duties of state in the case of aggression xxxiii (1939). 858.
any exemptions (Sorensen, 1968; Bennet, 1995) The stringent limitation or interpretation arises from the protection of states’ independence as stipulated in international law and the prohibition of the use of force under the United Nations Charter; in resolution (2131) (XX) dated 21st December, 1965, which encompasses the Declaration on the Unacceptability of intervention in the Internal Affairs of States and the Safeguarding of Their Independence and Sovereignty. The General Assembly articulated the law as follows (paragraph 1):

“No state has the right to intervene, directly or indirectly, for any reason whatsoever, in the internal or external affairs of any other State.” Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political independence, economic and culture are condemned (Sorensen, 1968; He; (Sorensen, 1968; Bennet, 1995). This law of the United nations Charter, has been accepted as the law by all the states, the people and governments, based on the authority of the United Nations and the entire world opinion is strongly supporting and behind the law, because war has been outlawed and the world has avoided major wars since the second world war. The world has reached its decision that war is not acceptable conduct. This opinion is held by the world view and it holds, because states understand that their security and national interests does not require the use of force for the sake of world peace; therefore, where force is used it is illegal in international law (Sorensen, 1968; Brownlie, 1998), breach of peace, any state that wage wars, an aggressive war or otherwise commits an aggression, or resort to armed attack, is guilty of a breach of the peace (Brownlie, 1998; Sorensen, 1968). This confirms that Putin’s actions in Russian-Ukrainian war is a delict.

While the term “imputation” suggests attributing an event, like the Russian-Ukrainian war to Putin, the imputation linking the legal penalty and the action of the individual personally (Kelsen, 1945). That is conduct which is evil in itself and conduct which is evil because it is prohibited only by a specific law (Kelsen, 1945). That which cannot be attributed to a legally incompetent person is the sanction, rather than the act itself, which would be deemed a delict if perpetrated by another individual. The concept of imputation elucidates the specific relationship between delict and sanction. This is because normally there is no delict in itself. For example in the traditional theory of criminal law, a distinction is made between (mala in se and mala prohibit) (Kelsen 1945; Hall, 1941). That is conduct which is evil in itself and conduct which is evil because it is prohibited only by a positive law for example, the Russian-Ukraine war and Israel-Hamas war. Putin’s behaviour qualifies for both. In a theory of positive law, the difference can also be upheld because it forms the central aspect of a natural law doctrine. According to Aristotle's perspective, a society structured around positive norms closely mirrors the differentiation he outlined in his Ethics Nichomachea (1134b) between the natural and the legal. Aristotle defines the natural as that which possesses universal validity, unaffected by individual perspectives, while the legal is initially diverse but becomes fixed once established (Aristotle, 1274b, Hall, 1937; Kelsen, 1945). This elucidates why Putin's actions in the Russian-Ukraine war, and Israel-Hamas war constitute delicts and warrant punishment. Because international law requires that sanctions be organized and punishment imposed on those who violate the established order which typically involves “deprivation of, or possessions of- life, health, freedom and property (Hall, 1937; Kelsen, 1945). For example, in 1923, in the Nuremberg Trial, the tribunal stated: “when a state violates international law that the state must have known that they were acting in defiance of all international law when in complete deliberation they carried out their design of invasion and aggression against another states: That the solemn renunciation of war as an instrument of national policy necessarily involves the proposition that such a war is illegal in international law; and that those who plan wage such a war, with its inevitable and terrible
consequences are committing a crime in so doing. For many years, past military tribunals have tried and punish
individuals guilty of violating the rules of land warfare laid down by the Hague Convention now the United Nations
Charter. Therefore, those who wage aggressive war are doing that which is equally illegal, and of much greater
moment than a breach of one of the rules of the United Nations Charter and international law. Crimes against
international law are committed by men, not by abstract entities and only by pushing individuals who commit such
crimes can the provisions of international law be enforced. The principle of international law which under certain
circumstances, protect the representatives of a state cannot be applied to acts which are condemned as criminal by
the international law. Therefore, he who violates the laws of war cannot obtain immunity while acting in pursuance
of the authority of the state, if the state in authorising the actions moves outside its competence under international
law (Sorensen, 1968).”

2.4 Reprisal, State Sovereignty and International Law

At this juncture, my question and the main bone of contention here is, when a state resorts to war against an
aggressor state which has carried out an armed attack against another state, is it acting as an organ of the
international community? Or on behalf of the international community? This brings us to the question whether it is
possible to regard reprisal or war as reaction of the international community against the aggressor state with
regards to Joe Biden’s speech at the United Nations General Assembly meeting of 20th September 2023; that there
will be reprisal against Russia for starting the war with Ukraine. To answer this question I will first define war and
reprisal in international law. What is war? “War is the traditional name for a contention between two or more states
in which their armed forces are engaged in mutual acts of violence and the purpose of the war is to defeat the other
state as to impose on it such terms of peace as the victor is prepared to grant (Sorensen, 1968)” Reprisals refers
to actions taken by one state against another in order to compel it to settle a dispute arising from the latter's
international delict (Lipsky, 1953; Sorensen, 1968). Unlike retortion, reprisals involve measure that when
considered independently, would be unlawful. However, they may be undertaken under exceptional circumstances
where one state violates the rights of another solely to enforce adherence to the law. For reprisals to be considered
lawful, it must be pursued after a demand for restitution has been made, and the delinquent state has failed to
comply; they must be proportionate to the harm suffered, avoiding disproportionate actions (Kelsen,
1945;Sorensen, 1968). Reprisal has the technique of self-help because it is the state violated in its right, that is
authorized to react against the violator by resorting to war or reprisal. Any state that is authorized by the
international law to apply force acts as an organ of the international community. Because it is the international
legal community itself that react against the violator of the law through the medium of the state resorting reprisal
or waging a just war.

The answer to the question, when a state resort to war or reprisals is it acting as an organ of the international
community may be sought on the normal logical plane or on the plane of positive international law, because as the
pure theory of law is also a theory of positive law and in this context of positive international law; the latter
approach seems to commend itself because, what is considered as constituting international law scarcely support
the contention that war, reprisal or retaliation constitute a reaction of the international community against an
aggressor like Putin (Hall, 1937; Kelsen, 1945)). This is because in order for law to prevail there must be an
interests protected by law, in that case, if force is used it is used because of the violation against the law therefore,
the force used is permitted as a sanction against a delict for the violation of the law therefore, the force is seen as
a reaction of the international community against a delict, Kosovo war is an example (Kelsen, 1945; Bennitt,
1995). Although, Putin’s action is a delict but any state acting unilaterally against Putin’s actions in Russia-
Ukraine war is not acting as an organ of the international community. This is due to the fact that, traditionally
international law does not support that one state can fight a war or reprisal for the international community against
a delict except the international community authorises the state to that effect (Kelsen 1945; Sorensen, 1968). Except
otherwise, action of a single state furnishes no basis for the imputation of the sanction to the international
community. Similarly although, this was personal opinion, Lord Park on march 1918 proposed in the House of

Gilson, 1984). Thus, as correctly noted by Biden, the sanction will not directly target Putin, because the state is Kelsen, 1945). But on the contrary, in a dispute between two states as is the case between Russia and Ukrainian extends to their family and the broader social community to which the accused belong (Radcliffe-Brown, 1933; this context for example, retaliation, such as in cases of homicide, is not solely aimed at the murderer, but also Therefore, the principle remains consistent in primitive legal systems regarding socially organized sanctions In the use of force by one nation towards another is a matter in which only two nations concerned are primarily represented in Article 11 of the Covenant. (Lipsky, 1953; Sorensen, 1968). Here, the view generally applied is that the operator, like President Putin in Ukrainian war. Consequently, if international law has to be enforced whether through reprisals or war, it will be directed to the state as a whole, encompassing all its members (Kelsen, 1945; Gilson, 1984). Thus, as correctly noted by Biden, the sanction will not directly target Putin, because the state is viewed as a legal entity where the perpetrator of the delict and the recipient of the sanction are viewed as the same (Kelsen, 1945; Gilson, 1984). It may be pertinent to mention here that the transcendental sanction emanating from some supper-human power civilised societies also relates to the beliefs of primitive man. Here, when delict occurs, in a primitive society, the sanction is often directed, not only against the accused, but also against other people who neither took part in the delict nor were in anyway able to prevent it (Radcliffe-Brown, 1933). Therefore, the principle remains consistent in primitive legal systems regarding socially organized sanctions In this context for example, retaliation, such as in cases of homicide, is not solely aimed at the murderer, but also extends to their family and the broader social community to which the accused belong (Radcliffe-Brown, 1933; Kelsen, 1945). But on the contrary, in a dispute between two states as is the case between Russia and Ukrainian war, Russia is the aggressor and Ukraine is alleged to be the injured state, states that are not involved directly in the dispute for example NATO member states are considered as strangers to the dispute; because, there is no obligation on the states at variance to consult with, or seek the agreement of third states before resorting to war. Nor have, for that matter, strangers to the dispute normally the right to interfere or intervene in the dispute (Kelsen, 1945; Sorensen, 1968). This is the reason why Article 2, 3, Article 27 and 48, respectively of the Hague Conventions of 1899 and 1907 were considered as important improvement in international law (Kelsen, 1945; Sorensen, 1968). For example, under this provisions, a modest measure of community interest in avoiding recourse to arms was affirmed. An important further step in developing community interests in preventing war is represented in Article 11 of the Covenant. (Lipsky, 1953; Sorensen, 1968). Here, the view generally applied is that the use of force by one nation towards another is a matter in which only two nations concerned are primarily interested, and if any other nation or group for example NATO member states claims a right to be heard on for example the Russian -Ukraine war or Israel and Hamas war, they must show specific interest of their own in the controversy. And the burden of proof rests upon any other nation which seeks to take part if it will relieve itself of the charge of impertinent interference and avoid the resentment which always meets impertinent interference in the affairs of an independent sovereign State (Sorensen, 1968). Also Article 2(4) of the United Nations Charter states: “All members shall refrain in their international relations

from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations". Therefore Article 2(4) is currently understood as establishing a universally applicable law for all states, not just those within the organization. Moreover, it explicitly includes the use of armed force below the threshold of war. Notably, it refers to the threat or actual use of force, avoiding the complications connected with defining ‘war’ in prior treaties. This shows that the United Nations principles of law which are contained in these articles, have become customary rule of international law(Kelsen, 1945, Lipsky,1953; Sorensen, 1968). Therefore, Joe Biden’s reprisal against Russia would be an interference under international law and more importantly because there is no armed attack against the United States nor NATO States by Russia. The exceptions to the principles outlined in Article 2(4) can be found in other provisions on the use of force (Patterson, 2010; Sorensen, 1968). These include provisions for the deployment of force by the organisation (Articles 24, 39, 59, and 106), regional institutions and arrangements (Article 53), and individual nations acting in self-defence (Article 51), as well as the seldom utilised Article 107 (Sorensen, 1968; Patterson, 2010). It is worth noting here that, even in those exceptional cases where the Charter does not explicitly restrict individual states from using force, such acts are nonetheless overseen by the United Nations and, on occasion by regional organisations (Sorensen 1968; Patterson, 2010). The United Nations Charter does not ban the use of force or threat of force but it also prohibit an attempt to centralize the competence to employ force in international relations (Kelsen, 1945; Sorensen, 1968). Therefore, as it stands today states cannot as Joe Biden thought apply forcible measures even if the claim raised and the interest protected or the aim sought are perfectly lawful (Kelsen, 1945, Sorensen, 1968; Patterson, 2010). This is to say that what appeared to be a right of making a unilateral decision regarding the applicability of the inherent right of self-defence was found by the international Military Tribunal to be no more than the right of auto-interpretation subject to objective investigation (Sorensen, 1968; Kelsen, 1945, Lipsky, 2023). Here, it is interesting to mention that Sir Hartley Shawcross, chief prosecutor for the United Kingdom before the international Military Tribunal, held that, when discussing the question of self-defence in connection with the Kellogg-Brand pact, stated: “Yes, though state has the right of self-defence, but this does not mean that States thus acting is the ultimate judge of the property and of the legality of its conduct. It acts at its own peril. Just as the individual is answerable for the exercise of his common law right of self-defence, so the State is answerable if it abused its discretion, if it transforms self-defence into an instrument of conquest and lawlessness, if it twists the natural right of self-defence to a weapon of predatory aggrandizement and lust. The ultimate decision as to the lawfulness of his action claimed to be taken in self-defence does not lie with the state concerned, and for that reason, the right of self-defence, whether expressly reserved or implied, does not impair the capacity of a treaty to create legal obligations against war”(Lipsky, 1953; p. 20). Kelsen 1945; Sorensen 1968). Also Professor Lauterpacht stated that although recourse to self-defence must in the first instance be a matter for the judgment of the state concerned but that recourse to war in self-defence is in itself capable of judicial decision (Kelsen, 1945, Sorensen, 1968; Lipsky, 2023). Another reason why there should be no reprisal by Joe Biden or NATO against Russia is because, if force is used to prevent the employment of force for example, in Russia-Ukraine war it will be an antinomy and the effort to avoid this antinomy leads to the doctrine of absolute anarchism which proscribe force even as a sanction (Kelsen, 1945). Here, according to Kelsen: “Among the paradoxes of the social technique characterised as a coercive order is the fact that its specific instrument, the coercive act of the sanction, is of exactly the same sort as the act which it seeks to prevent in relations of individuals, the delict; that the sanction against socially injurious behaviour is itself such behaviour. For that which is to be accomplished by the threat of forcible deprivation of life, health, freedom, or

property is precisely that men in their mutual conduct shall refrain from forcibly depriving another of life, health, freedom, and property. Force is employed to prevent the employment of force in society seems to be an antinomy; and the effort to avoid this social antinomy leads to the doctrine of absolute anarchism which proscribes force even as sanction (Kelsen, 1945).\(^{127}\)

Here we see that even anarchism tends to establish the social order solely upon voluntary obedience of the individuals. This is the reason why it rejects coercive order just like the international community and international law. Anarchism also deny the law as a form of organisation because the law presents an inherent paradox (Kelsen, 1945, Heywood, 2019; Lipsky, 2023).\(^{128}\) This is true because as we are all aware, Putin is ready to deploy nuclear weapon and eventually this will lead to third world war and it will become total anarchism as has been predicted by the world view. The antinomy is evident as the law presents an inherent paradox because the law for instance, serves as a mechanism for promoting peace by prohibiting the use of force in individual and state relations (Sorensen 1968; Patterson, 2010). However, it also permits the use of force solely through the international community. Only the organ of the community, is authorized to employ force and hence one may say that law makes the use of force a monopoly of the state and international community; therefore, law pacifies the community. While the law contributes to relative peace by prohibiting individual states from using force, it does not ensure absolute peace, as the authority to employ force is reserved for the international community. This limitation means that the peace enforced by law is not absolute, as the potential for force always exists in specific circumstances. Considering that a state of anarchy necessitates a monopoly of force, this authority is centralized within the state and international community. This is one of the reasons why NATO should not attack Russia because peace is a state where force is absent. Through this way, genuine global peace can be attained if every nation abstains from forcefully intruding into the spheres and interests of other nations.

The social technique that we call law consists in inducing the individual and states to refrain from forcible interference in the sphere and interests of other states by specific means as I have stated before. In case of such interference, the international community should itself react or take action to quench such interference. This is because in as much as forcible interference in the sphere of interests of a state is permitted only as a reaction of the international community against the prohibited aggressive conduct of a state, international community has the monopoly of the force and not an individual state or NATO members as President Biden thought.

It is widely accepted that reprisals are typically prohibited by international law. This prohibition stems from the perception that reprisals constitute authoritarian meddling by one or more states in the internal affairs of another state. Such interference, involving the use or threat of force, is explicitly forbidden by Article 2(4) of the United Nations Charter (Sorensen 1968; Lipsky, 1953).\(^{129}\) Furthermore, the obligation to refrain from intervening in the internal and external affairs of another state is the principle that international law safeguards the internal and external independence of all states (Kelsen, 1945; Sorensen, 1968).\(^{130}\) In addition, the principle of non-intervention will clash with the law which states that a state, by virtue of its sovereignty, cannot wage war against any other state for any reason, without contravening fundamental principles of international law. This consideration arises from the understanding that war constitutes an unrestricted intrusion into the affairs of another state. It will also be pertinent to mention that, war or reprisal is an intervention which has the potential to completely destroy another State’s external and internal political independence as such it is prohibited by international law(Kelsen 1945; Sorensen 1968)\(^{131}\)

2.5 The Theory of Bellum Justum and the Challenges in Preventing War in International Law

According to Bellum justum theory, there are two schools of thought when it comes to the deep interpretation of war. According to the first school of thought, any state not explicitly obligated by a specific treaty of international law to abstain from declaring war on another state, can initiate warfare against any state if it has a good reason to do so without breaching international law (Kelsen, 1945).\(^{132}\) Based on this view, declaring war against another


declared declarations of war and treaties between states, these sources reveal that various states, represented by their
approaches, analysing historical documents indicates that state intentions through diplomatic records, particularly
must be assumed as a form of punishment to interpret war as a wrongdoing. However, there are alternative
the State which resorted to war like Putin in disregard of international law. This implies that war, or retaliation,
response that general international law can offer against an illegal war is war itself. A kind of counter war against
statesmen, view war as generally prohibited by international law, and permissible only in response to a violation
of international law (Kelsen, 1945; Sorensen,1968). This proves the existence of a legal conviction, evident in the
consistent efforts of governments of states engaging war to justify their actions to their citizens and the
international community.

Throughout recorded history, scarcely any instance exists where a state has refrained from proclaiming its good
justifications for going to war. Never has a state openly declared war solely because it felt entitled to do so or
because it deemed it advantageous. A state's rationale for engaging in war against another state always hinges on
portraying the other state to have committed unjustified act of aggression, or at the very least preparing or
harbouring aggressive intentions (Kelsen, 1945). It is evident that both domestic and international public
opinion generally frowns upon war and views it as a last resort, as previously mentioned. (Biancardi, 2003).
Only the most extreme advocates of war and the staunchest proponents of imperialism glorify war to vilify pacifism,
avocating for war solely as a means to achieving a positive outcome. Under the Bellum justum doctrine,
analysis of the circumstances under which according to theorists a state, exceptionally, has the right of
intervention or reprisal is only when the violation consist in non-compliance with rules of general international
law, for example, (1) under the principle of the freedom of the open sea, or navigation. We have seen such
intervention against the Yemen Houthi in 2024 by the United States of America and the United Kingdom because
of Houthi’s demand that Israel should end the war with Hamas (2) the rule obliging the State to treat foreigners in
a certain way. (3) for the interest of self-preservation (Sorensen, 1968). Here bear in mind that self-preservation
serves merely as a moral and political pretext for disregarding international law, as states neither possess the right
nor the obligation to prioritize self-preservation over adherence to international legal norms. (4) intervention in the
interest of balance of power, here too, is political rather than a legal principle (Lipsky, G. A. (2023). 140 1945;
Heywood, 2019). At this juncture it is pertinent to mention that intervention is illegal and only allowed if it is carried out as a reaction

University Press. p.331
University Press. p.331
University Press. pp.331-334
Macmillan:163
138 See Oppenhiem: International Law p.251
University Press. p.331
international law. Univ of California Press. p.67

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against a violation of international law because this confirms to the principles of the bellum justum doctrine of three theories (a) the Kellogg Brand Pact (b) the treaty of Versailles (Bennet, 1995; Henkin, 1970) and (c) The Covenant of the League of Nations (The Covenant of the League of Nations Article 15, paragraph 6).

In support of these theories you have to bear in mind that this prohibition of war, intervention or reprisal by bellum justum is not an achievement of modern civilization because, it is found also under most primitive conditions. For example, war between primitive tribes are essentially perceived as a vendetta—an act of retaliation in response to a perceived wrong or violation of certain interests, an abomination, a delict which requires a sanction (Radcliffe-Brown, 1933) Kelsen, 1945). Therefore, vendetta serves as the original form of socially organized reaction against perceived wrongs in the earlier form of sanctioned behaviour within a primitive community (Radcliffe-Brown, 1933; Kelsen, 1945). Therefore, if law can be understood as a social organization of sanctions, the earliest manifestation of law must have been inter-tribal in nature; hence one of the origins of international law (Kelsen, 1945; Bennet, 1995).

That being said, Joe Biden or NATO still has the right to use force against Russia because what has changed now for example, in the world view is an abandonment of this view, and a universal formal and irrevocable acceptance and declaration of the view that an international breach of the peace is a matter which concerns every member of the international Community of Nations therefore, it is a matter in which every nation has a direct interest, and to which every nation has a right to object (Macmillan, 1939; Sorensen, 1968). This is very true as we have seen the catastrophic effect of the Russia-Ukraine and Israel-Hamas wars even the Iraqi war with regards to human suffering, property losses and damage, rising cost of living and food shortages in several parts of the world. It is the gradual growth and substitution of this idea of community interest in preventing and punishing breaches of peace which has done away with private wars syndrome among civilized community of nations. (The democratic peace thesis for example) (Biancardi, 2003). This could well be a reasonable argument for Joe Biden and NATO States although, this remains controversial because NATO, do not have any obligation to go to war with Russia.

Upon examining all materials classified as international law, we discern two distinct forms of coercive intervention within the domain of a state's protected interests. This differentiation hinges on the extent of the intervention: whether it is fundamentally constrained or boundless. This is the reason why in Russian-Ukraine war, the Russians call it special military operation, meaning that it is limited (Sorensen, 1968). However, the focus lies not on whether a state's actions target the breach of specific interests or seek complete domination or annihilation, but rather on how interference in one state's interests by another is characterized (Sorensen, 1968; Heywood, 2019). It is worth noting that a widely accepted view prevails, categorizing such interference either as a wrongdoing or as retaliation within the framework of international law. Note also that it is permitted as a reprisal only insofar as it takes place as reaction against a delict. The idea that a reprisal is a limited interference in the normally protected sphere of interests of another state is only admissible as a reaction against a wrong committed by a state and this wrong is universally accepted and forms an undisputed part of positive international law (Kelsen, 1945; Sorensen, 1968; Lipsky, 1953). However, it is important to note that interference in a state's interests, even when carried out as reprisal, does not necessarily require the use of force. However, employing force for reprisal is permissible, especially when resistance makes it necessary (Kelsen, 1945).

Now the question is, is there resistance on the part of Russia with his war with Ukraine that justifies a reprisal by NATO member states as stated by Joe Biden at the United Nations General Assembly meeting of 20th September 2023? It is widely recognized that one of the defining features of law as a normative system is the ability to regulate behavior and establish standard of conduct within a society (Kelsen, 1945; Partterson, 2010) According to Hans Kelsen, the justification for the legitimacy of a legal regulation can only be traced back to another regulation under

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which the former was established (Kelsen, 1945). Kelsen asserts that law is its own source; typically, the rationale for the legitimacy of law resides within the law itself (Kelsen, 1945; Partterson, 2010). This is because it is undeniable that the quest for why the regulations of the United Nations Charter hold validity, ultimately reaches a critical juncture where its validity cannot solely be explained by positive law alone. It is clear that the legitimacy of the first historical constitution of a state cannot be explained solely through positive law, but rather by the rationale and concept behind why the creators of that positive law deemed it fit to establish it as law. Even if it is acknowledged that the latter question could potentially be addressed within the framework of international law, we still face the challenge of determining the fundamental basis for the legitimacy of the international legal framework. It is evident that the inquiry into why customary international law, of the United Nations Charter hold validity cannot be adequately be answered solely through positive law. This is because, if we were to provide an answer to this question regarding the ultimate rationale for the legitimacy of the international legal framework, it must offer a meaningful explanation that accounts for the foundation upon which legal statements about rules are possible. This explanation must enable a normative understanding of certain facts, particularly those facts that underpin the establishment and application of valid legal regulations.

However, this implies that the content of the legal conjecture, or hypothesis, which serves as the basis for the normative interpretation of certain facts, is not arbitrarily determined, contrary to what Joe Binding suggests, but rather through a consideration of reality. For instance, when we inquire about the circumstances under which a legal framework for example, the United Nations Charter can be deemed legitimate, it seems to be presuppose or implied as a belief made either, consciously or unconsciously, by legal experts or the creators of the United Nations Charter, that this framework is generally effective (Kelsen, 1945; Barnett, 2000). This is because a legal framework ceases to be valid only when it ceases to be by and large effective (Kelsen, 1945; Barnett, 2000).

Law will remain valid as long as they have not be invalidated in any way which is contrary to the constitution, therefore, the law remains legitimate. This is the reason why law has two sides meaning that the efficacy of law can be subdivided into primary and secondary rules (Austin, 1832,1954; Kelsen, 1945; Barnett, 2000). For example, the primary efficacy of law refers to (1) the application of the law by the organs that executes the law. (2) The secondary efficacy refers to the subject’s obedience to the law (Austin, 1832,1954; Kelsen, 1945). Here, law is efficacious only if it is applied by the organs that execute the law for example, the police, courts and judges they only should execute the law where somebody has disobeyed the law. This is because the law will stop to be efficacious if it is disobeyed and it is not applied. Bear in mind that the basic unit of law is the legal rule or norm which Kelsen defines as a hypothetical judgment meaning “if a is b ought to be” or more specifically if someone breaks the law he has to be punished (Kelsen, 1945).

A legal order will no longer be valid when that legal order is no longer effective. Therefore, when mentioning the "principle of effectiveness of law" in this context, it should be understood as a juristic presupposition rather than a rule of positive law. This is because the principle of effectiveness of law serves only to elucidate the nature of the connection between what typically seem like two distinct realms of understanding or logic. For example, that of normative as distinguished from that of empirical realities (Austin, 1832,1954; Kelsen, 1945). Here, it is pertinent to mention that the exceptional difficulty lies in the fact that although a clear separation must normally be made between law and fact, validity and effectiveness or efficacy, there is nevertheless an unavoidable relationship. Yes we can see, that the relationship between validity and effectiveness of law or efficacy of law consists in the recognition that the effectiveness, validity and efficacy of a legal system and the survival of law depend upon certain correspondence between its normality prescription and the actual behaviour of men. As we can see, the validity of a legal system is contingent upon its overall effectiveness, as mentioned before, because it is a characteristic of every prescribed order for example law that there will be conflicts between its normative prescription and social order, for example, certain tension exists as we have seen in the 21st century wars more
are established constitutionally. However, their validity is contingent upon the effectiveness of the entire legal framework; they lose validity not only when constitutionally nullified, but also when the overall effectiveness of the entire legal framework diminishes when the entire legal framework to which it pertains loses its effectiveness overall. This is because the effectiveness of the entire legal order is indispensable for the validity of each individual norm within the order. The effectiveness of the entire legal framework is a prerequisite, not the justification, for the validity of its norms. These norms are deemed valid not because the entire framework is effective, but because they contribute to an overall effectiveness of a legal system. Here, according to Hans Kelsen's perspective, when we seek to articulate the underlying assumption behind these legal considerations, we discover that the norms of the previous system are seen as lacking validity due to the outdated constitution. Consequently, the norms derived from this constitution, representing the entire old legal framework, have become ineffective, as people's actions no longer adhere to this outdated legal system. Here, Kelsen asserted that the validity of every legal order diminishes when the entire legal framework to which it pertains loses its effectiveness overall. This is because the effectiveness of the entire legal order is indispensable for the validity of each individual norm within the order. The effectiveness of the entire legal framework is a prerequisite, not the justification, for the validity of its individual norms. These norms are deemed valid not because the entire framework is effective, but because they are established constitutionally. However, their validity is contingent upon the effectiveness of the entire framework; they lose validity not only when constitutionally nullified, but also when the overall effectiveness of the framework diminishes (Kelsen, 1945; Barnett, 2000).

Legally individuals are not obligated to adhere to a specific norm if the total legal framework, of which that norm is a part, has lost its effectiveness. This is because the principle of legitimacy is constrained by the principle of effectiveness. This completely relates to Israel Hamas war and to Putin’s behaviour because both Israel and Putin makes international law appear to be ineffective because of their constant violation of international law. Although this will be more so if these two states recognise international law because the state in its capacity as legal authority must be identical with the national legal order. Sovereignty denotes that the national legal framework stands as the highest authority, with no superior order above it except international law. The potential authority surpassing the national legal order is the international legal framework. Consequently, determining a state's sovereignty aligns with assessing whether international law holds supremacy over national law. Therefore, the question whether the state is sovereign or not thus coincides with the question whether or not international law is an order superior to national law. Here, according to Kelsen, the notion of one legal order being superior to another is metaphorical expression. This implies that the inferior order derives its justification and fundamental norm from the superior order, in this case, the national law bears an intrinsic relation to international law because it derives its justification from international law. Also all the elements of the state is determined by international law. International law presupposes the national legal orders; therefore, international law regulates the mutual behaviour of states; however, this does not mean that international law imposes duties and confers rights only upon states, not upon individuals.

The traditional assertion that subjects of international law are only states, not individuals, that international law is by its very nature incapable of obligating and authorising individuals is erroneous and illogical. Because almost all law regulates human behaviour. This is because, the only social reality to which legal norms can refer are the relations between human beings. For this reason, obligation as well as legal rights cannot have for its contents anything but the behaviour of human individuals. If, then, international law should not obligate and authorise individuals, the obligations and rights stipulated by international law would have no contents at all and international law would not obligate or authorise anybody to do anything. One major purpose of law is to regulate the behaviour of human individuals (Kelsen, 1945). The issue of state sovereignty is not akin to determining a natural object's properties, such as its specific weight, through observation or analysis of laws. The analysis reveals that through its effectiveness doctrine, international law defines the extent and foundation of validity for national law. Therefore, the inherent superiority of international law over national law becomes evident within the legal

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framework itself.\textsuperscript{157} For this reason, sovereignty is not an excuse for either Putin nor Israel because international law over rides national law (Kelsen, 1945; Brownlie, 1966).\textsuperscript{158}

2.6 Desuetudo (The Negative Legal Effect of Custom)

According to the principle of Desuetudo, Desuetudo is the negative legal effect of custom (Kelsen, 1945).\textsuperscript{159} This must not be understood to mean that a single legal norm loses its validity, if that norm itself and only that norm is rendered ineffective. This is because, within a legal order which as a whole is efficacious there may occur isolated norms which are valid and which yet are not efficacious, that is, are not obeyed and not applied even when the conditions which they themselves lay down for their application are fulfilled. (Hula, 1953; Diakonia International Humanitarian Law, 2024). If the norm remains permanently inefficacious, the norm is deprived of its validity by desuetude (Kelsen, 1945).\textsuperscript{160} The principle that the national legal order has exclusive validity for a certain territory, the territory of the state in a narrower sense, and that within this territory all individuals are subjected only and exclusively to this national legal order or to the coercive power of this state, is usually expressed by saying that only one state can exist on the same territory, or what is called in physics impenetrable (Kelsen, 1945).\textsuperscript{161} While this principle generally holds, there are exceptions. For instance, a state may be granted specific rights, such as the ability to carry out coercive actions on another state's territory, through international treaties. These actions might not align with general international law, as seen in the case of the Iraqi war. For example, in war time general international law does not permit occupier power or country to undertake coercive actions on foreign territory that it occupies militarily; we have seen in Iraq Abu grave prison, Russian-Ukraine war and Israel - Hamas war for example, the bombing of the hospital by Israel forces in gaze (Diakonia International Humanitarian Law, 2024; Hula, 1953).

2.7 Exceptions to the Force Monopoly Principle

Another exception is what is called “condominium.” This is a process where more than one state exercises power in the same territory for example Russia-Ukraine war and Israel-Hamas war. This is one of the reasons why Han Kelsen’s theory of international law is based on the question whether international law is law with regards to or if compared to either state law or municipal law, which are usually regarded as the prototype of all laws. The issue is that the basic unit of law is the legal rule or norm which any law sick to address and which Hans Kelsen himself defines as a hypothetical judgment. According to Hans Kelsen, if (A is, B ought to be). In a legal sense, this means that “if for example, someone disobeys the law he has to be punished or ought to be punished (Kelsen, 1945).\textsuperscript{162} So does it also mean that if a government of state disregards the United Nations Charter as Putin has done with the Russian- Ukraine War and Israel and Hamas war that there should be reprisal or punishment for Russia as stated by Joe Biding in United Nations meeting on September 2023. This is because law’s order is coercive, meaning that it has to do with punishment if somebody disobeys the law (Patterson, 2010).\textsuperscript{163} The law operates as a deterrent because it comes into effect and is enforced only when it is violated or disobeyed. Essentially, the law outlines the consequences that will befall an individual if they fail to adhere to what is mandated by legal agreements. When a legislator enacts norms with sanctions attached these laws become ingrained in people's consciousness, they can serve as motivators for behaviour, preventing individuals from engaging in illegal activities. Legislators create norms with the belief that these norms will influence individuals' behaviour according to their intentions. This concept is exemplified in the jurisprudential theories of O.W. Holmes and B.N. Cardozo as prophecy (Cardozo, 1924).\textsuperscript{164} Here, Holmes suggests that, jurisprudence should forecast the actions of societal organs, particularly the courts, in response to law violations (Holmes, 1920). In his article, “The Path of the Law,” he explained: “people want to know under what circumstances and how far they will run the risk of coming against


\textsuperscript{158} See Brownlie, Ian (1966), Principles of Public International Law (Oxford: Clarendon Press. p. 5


what is so much stronger than themselves, and hence it becomes a business to find out when this danger is to be feared; the object of our study, then, is prediction, the prediction of the incidence of the public force through the instrumentality of the courts.” (Bertea & Pavlakos, 2011)

Law dictates for courts the consequences of its violation and "Law defines the consequences of its violation (Holmes, 1920). In line with this viewpoint, he defines the notions of duty and right as predictive. “The fundamental rights and duties with which jurisprudence concerns itself are essentially prophetic. Hence, a legal duty, as termed, forecasts the consequences a person may face if they perform or neglect certain actions, subjected to judgment by the court; similarly, a legal right operates in a similar predictive manner” (Holmes, 1920; Kelsen, 1945). “The duty for example, to keep a contract at common law means a prediction that you must pay damages if you do not keep it and nothing else. Therefore, this perfectly relates to both Israel and Putin’s behaviour for getting away with law.

Furthermore, Justice B.N. Cardozo advocates the same view, for example, he says, “what permits us to say that the principles are law is the force or persuasiveness of the prediction that they will or ought to be applied” (Cardozo, 1924; Kelsen, 1945). He added we shall unite in viewing as law that body of principle and dogma which with a reasonable measure of probability may be predicted as the basis for judgment in pending or in future controversies. When the prediction reaches a high degree of certainty or assurance, we speak of the law as settled, though, no matter how great the apparent settlement, the possibility of error in the prediction is always present. When prediction does not reach a high standard, we speak of law as doubtful or uncertain. He agrees with Wu’s statement that psychologically law is a science of prediction par excellence. To the question “why do we declare that a certain rule is a rule of law? Cardozo answers: “we do so because the observation of recorded instances induces a belief which has the certainty of conviction that the rule will be acted on as law by the agencies of government. And he adds: “As in the process of nature, we give the name of law to uniformity of succession.” the rule of law is portrayed as a manifestation of natural law (Cardozo, 1924). This shows that the disobedience to law is the fundamental condition for the application of the law, the execution of the sanction established by the law. It goes to say that it is only by the fact that a sanction is attached to human conduct does this conduct becomes an offence in the point of law (Kelsen, 1945; Patterson, 2010). This is because, disobedience of the law and chastisement to disobedience of the law are correlative ideas and this is the reason why positive law is distinguished from natural laws (Kelsen, 1945). it is the function of the hypothetical basic norm to shape the empirical legal material into meaningful, that is, as a non-contradictory order; the result of legal positivism seems to approach rather closely that of the doctrine of natural law. It is not decisive that they both provide basis for positive law; because positivism is directly and consciously, while natural law doctrine is indirect and unconscious (Kelsen, 1945). Therefore the decisive point is that all the endeavours of natural law doctrine to determine an absolute value measurement for positive law, to define justice as its archetype, ultimately converge in the idea of a formal order, in the idea of a non-contradictory system, in a formula which is reconcilable with any positive law. The ideal of justice has ultimately no other meaning than the hypothetical basic norm of critical positivism with its function of constituting the empirical legal material as an order. The question whether in a given case, A and B are equal and what difference actually exists are irrelevant because the answer cannot be given by natural law doctrine, because the answer is given by positive law alone. Therefore, the principle of equality as the principle of justice implies that if A is to be treated in a certain way and if B equals A, in that case B must be treated in the same way as A, otherwise there would be a logical contradistinction and the principle of identity will be violated leading to the destruction of the idea of the unity of the system of justice (Diakonia International Humanitarian Law, 2024). That is the same situation the world is facing in twenty first century world peace and order; for example Russia-Ukraine war and Israel-Hamas war. Therefore, to reduce the idea of justice to the idea of equality or unity of order

means more and no less than the replacement of the ethical by the logical idea. It further means the rationalisation of the originally irrational idea of justice, therefore, a logification of an idea originally alien to the logos.

As it becomes the inevitable result of an attempt to transmute justice, a value of volition and action, into a problem of cognition which by necessity is subject to the value of truth, that is to the idea of a non-contradictory unity. Therefore, since natural law doctrine in the end will come to the same conclusion as critical positivism, the latter might be induced to assume an affirmative attitude with reference to the problem of justice. The natural law doctrine affirms with all conceivable emphasis, that there is an absolute justice above positive law; yet it cannot produce more than the formal idea of order or equality. Because under these circumstances, critical positivism, which need not be more papal than the pope, may claim that it too, has grasped the essence of justice in its basic norm which constitutes the positive law as a non-contradictory order especially if it comprehends the positive law by means of this basic norm as an order of peace (Diakonia International Humanitarian Law, 2024).

Here, law distinguishes between primary and secondary norms172 therefore, the meaning of the statement “one shall not steal” from the Old Testament (Exodus Chapter 20 verse 15).173 If someone steals he shall be punished can be separated into primary norm: if somebody steals, he shall be punished; and the secondary norm: one shall not steal. Here we can see that the secondary norm is contained in the primary norm, “which is the only genuine legal norm”.174 While the secondary norm addresses itself to the subject and is “valid” for them, the primary norm also addresses itself to the organ of law which ought to execute the sentence if somebody disobey the law. Invariably, “only the organ that executes the order is in the position to either obey or disobey the legal norm, by either executing the order or not executing the stipulated sanction which the law stipulated. This is the reason why it seems that law has two sides meaning that the efficacy of law can be subdivided into primary and secondary rules. Here, law is efficacious only if it is applied by the organs that executes the law for example, the police, courts and judges and they should only execute the law where somebody has disobeyed the law and the punishment should be that which is recommended by the state constitution nothing else and nothing more. Bearing this in mind, NATO does not have the obligation for unilateral reprisal against Russia because all NATO can do under normal circumstances is to refer Russia’s aggression against Ukraine to the international court of Justice because as I have stated before, it is only the Court that has the power and obligation either to punish Russia and Israel for example, by giving the green light for NATO to attack Russia and make Russia pay for its aggression against Ukraine. This is what connects the law with factual obedience and factual application of law because, if a legal norm is permanently disobeyed by somebody for example, Putin or groups or states in the case of Russia, or Israel-Hamas war, it is probably no longer applied by the organ either (Patterson, 2010).175 Therefore, though the efficacy of the law is primarily it being applied by the proper organs, secondarily laws efficacy means that the law is being obeyed by the subjects. So, if Russia and Israel disregard international law as entities governed by it, does that imply that international law ceases to exist? The issue here rests with the United Nations, as it symbolizes the shared hopes of humanity through the establishment of a legal framework aimed at fostering peace and justice in the world in which we all coexist.

But it may be pertinent to wait for a minute and enigma whether the architect of the United Nations envisaged its laws as paramount on the planet and whether the states who are the subjects of the United Nation’s laws must have proper respect for laws of the United Nations. It may be pertinent to mention here that in the minds of the architects of the United Nations Charter, their ultimate idea was to provide security for the world thereby establishing laws against war. Consider, for instance, the Kellogg-Brian d Pact, a comprehensive agreement aimed at renouncing war, where signatories agreed not to resort to armed and aggression as they pledged to forgo the use of war as an instrument of national policy and instead commit to peaceful dispute resolution. Furthermore, the historical narratives of both the League of Nations and the United Nations Charter highlight the global resolve to uphold peace and security through the principle of collective security. For example, Article 11(1) of the Covenant of the League of Nations states: “Any conflict or threat of war regardless of its immediate impact on the members of the League the members would regarded it as a matter of concern to the entire League. Therefore, the League will be empowered to take any necessary action to uphold peace globally (Sorensen, 1968; Barnett, 2000).176 Under

173 See Bible the Ten commandment especially the book of exodus Chapter 20 vice 15.
Article 16(1) of the Covenant of the League of Nations, members were obligated to impose economic sanctions against any aggressive state that violated its commitments outlined in the Covenant (Sorensen, 1968; Barnett, 2000). However, there was no requirement for member states to offer military aid to the victim of aggression, as the League lacked the authority to enforce armed intervention under Article 16(2), therefore, all that the League could do is to issue recommendations (Sorensen, 1968). 177 Furthermore, under the provisions of the United Nations Charter, the Security Council and its members assign primary responsibility for upholding international peace and security. For instance the Council is tasked with identifying any threats to peace, breaches of peace, or acts of aggression, and subsequently recommending or deciding on appropriate measures to address them under Chapter VII of the Charter (Schart, 2013). 178 In Article 39, this responsibility is distinctly different from the collective security system, here, the United Nations has the power to collectively respond against any aggressive state that does not respect international law (Sorensen, 1968). 179 However, the United Nations security council has its limits; this is as a result of its five permanent members veto powers because before any military action can be taken, the Security Council must vote on the matter as collective security measures cannot be implemented against the five permanent members of the Security Council—namely, the US, UK, France, China, and Russia. These five states have veto powers therefore, if any of this five members with veto powers backed any state they can veto any decision against them (Diakonia International Humanitarian Law, 2024). We have seen this with United States support for Israel, in Israel- Hamas war and China support for Russia- Ukraine war etc (Sorensen, 1968). 180 While the United Nations Charter did not impose any legal obligations on member states regarding legal matters, Article 36, paragraph 3 stipulated that the Security Council can only encourage disputes between states to be settled through judicial means in the International Court of Justice. It is also noteworthy that no legislative authority was granted to any organ. Under Article 13, the General Assembly's sole capability was to conduct studies and offer recommendations in cases of disputes between states. It is worth noting that the recommendation from the General Assembly under Article 13 serves solely to promote the progressive development and codification of international law. Also, bear in mind that the only sanctions outlined in the law pertain to aggression and are detailed in Article 94, contingent upon the voluntary submission of the dispute (Sorensen, 1968; Brownlie, 1966). 181 For an armed attack as it is in Russian-Ukrainian war and Israel Hamas war, in determining whether a state has engaged in an armed attack or aggression against another state, various factors must be considered to different extents: Initially, the nature of the military action, secondly, the motives of the aggressor, thirdly, the level of force employed and the resu gravity and impact of the attack. In conclusion, a military incursion takes place when the military forces of a state, comprising its regular, irregular, or privately controlled armed entities, commence hostilities against the territory of another state, its naval forces, or its forces located in foreign territory either by agreement or lawful military occupation. However, meeting these criteria does not necessarily guarantee classification as a military assault. Therefore, the description is not comprehensive, implying that incidents not explicitly covered in this definition may still be considered as an armed attack. If strictly interpreted, the definition might encompass nearly any border altercation warranting self-defence (Sorensen, 1968; Brownlie, 1966). 182

2.8 Understanding the Use of Force under International Law

Exploring the concept of use of force within the framework of international law prompts an examination of its various forms, including self-defense, self-help, self-preservation, and necessity. In the realm of international law, a state engages in the use of force when it directs its armed forces to undertake military operations against another state under its authority (Patterson 2010). 183 Such actions involve coercive measures directed at the territory of another state, including the use of weapons or unauthorized entry into sovereign territory, as evidenced by the conflict between Russia and Ukraine and Israel-Hamas war (Sorensen, 1968; Brownlie, 1966). 184 Moreover, a state engages in forceful actions against another state when it targets the latter's military personnel, vessels, or aircraft whether through lawful occupation or with the consent of the sovereign, or on the high seas or in airspace above them. In the context of international law, the designation of the armed unit or its organizational structure

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within the government is not crucial; what matters is that the armed group or unit is either an instrument of the state or operates under the control or with the active support of the aggressor state, as illustrated by the conflict between Russia-Ukraine and Israel-Hamas war. Based on this analysis, a state engages in the use of force not only through the deployment of its regular land, naval, or air forces (Sorensen, 1968; Brownlie, 1966).185

2.9 Regional Security Pacts, Collective Self-Defence and Evolution of Neutrality in the Modern World

When we talk about regional security in international law we are talking about the security pacts. Following World War II, many regional security pacts were made among which was the North Atlantic Security Pact signed in Washington in April, 1949. Regional security pacts are primarily based on the collective self-defence provisions under Article 51 of the United Nations Charter. It provides that collective self-defence measures may be taken against armed attack until the Security Council has taken See Gilson, B. (1984). The Conceptual System of Sovereign Equality, Leven: Peters, pn the measures necessary to maintain international peace and security. The North Atlantic Security Pact under Article 5 states that any armed attack against which the Parties collective defend themselves, “and all measures taken as a result thereof” (i.e., not prior thereto) shall be immediately reported to the Security Council, and it adds in Article 7 that the treaty is not to affect the rights and obligations under the United Nations Charter of states parties which are members of the United Nations or the primary responsibility of the Security Council for maintaining peace and security. We have seen the built up of NATO presence in all NATO members because of Russian and Ukraine war. The number and importance of the existing regional security pacts, when taken in conjunction with the collective security system of the United Nations, must have a certain impact on the law of neutrality. This is because they have limited the occasions and circumstances in which the most important states in the world and the more important middle and smaller powers can profess neutrality. Where an armed attack on one state member of the security pact is considered an armed attack on all members as in NATO, under Article (5) where there are obligations of mutual consultation, it becomes more difficult to envisage the possible situations in which any such state can remain neutral with the current situation in the 21st century world order today. This is because as we have seen, the traditional historical background which favoured neutrality as an institution of international law in the nineteenth century had already been slipping away in 21st century example being Finland and also Sweden.

The question them is whether recent regional developments will leave much more scope for this institution in the modern world or will there be still room for states to still be neutral with regards to the Russian- Ukraine, Israel-Hamas war, since the traditional historical background which favoured neutrality as an institution of international law in the 21st century have already been slipped away bearing in mind Finland and Sweden. Can regional associations of states involve in a life-and death situation respect as traditional the alleged neutral rights of a no belligerent? We must not forget that such states would be hardly likely to remain neutral and press their neutrality rights. In such a situation will there be strong inducements to isolate and insulate themselves from all contacts which could possibly draw them into the conflict, should there be such a realistic situation in the 21st century. We are all aware that in the 21st century Russian-Ukraine war has brought a decline for absolute neutrality and we hope that qualified neutrality which need be should be provided by the United Nations Charter should not follow suit as we pray.

3. Conclusion

According to the American Declaration of Independence, it asserted that certain truths are self-evident: that all individuals are inherently equal, and that they are endowed by their creator with specific unalienable rights, including existence, freedom, and the pursuit of well-being. It further stated that governments are established among people to secure these rights, deriving their legitimate authority from the consent of the governed. Moreover, it is affirmed that if any form of government undermines these objectives, the populace has the right to alter or replace it with a new government, one founded upon principles deemed most conducive to ensuring their safety and happiness (Shorts & de Than, 1994).186

The United Nations was established on December 10th, 1948 (Shorts & de Than, 1994),187 with the primary objective of safeguarding human rights globally. Its formation was prompted by the need to address governmental abuses of power and atrocities witnessed during second World War. Consequently, it set forth a universal framework of standards intended for adoption by all states and governments worldwide, aimed at ensuring the protection of human rights. This initiative stemmed from the understanding among the architects of the United

Nations, that the inherent dignity of every individual, along with their equal and inalienable rights, serves as the cornerstone for the realization of freedom, justice, and peace globally. Hence, the United Nations advocates for collective action to condemn barbaric acts that have outraged the conscience of humanity also now in the 21st century world peace. Therefore the article call upon states to uphold human rights, promote peace and the rule of law, and foster friendly relations between nations, thereby fulfilling the core purpose for the establishment of United Nations. In pursuit of these objectives, it is imperative for humanity to unite and collaborate towards the fulfillment of the United Nations' goals. Also, the conclusion underscores the foundational role of states as the principal subjects of international law, owing to their capacity to enter into legal relations with one another. It delves into the contemporary landscape of international law, particularly in the 21st century, where conflicts such as the Russian-Ukrainian and Israel-Hamas wars demands for challenges to international legal order. Despite this demand, there exists a paradox wherein certain world leaders, Putin and Netanyahu, simultaneously downplay and exploit international legal frameworks as exemplified in the case South Africa v. Israel (2024). (ICJ Contentious case Diakonia International Humanitarian Law Centre, Jerusalem). It reflects increasing concern interdependence among states and peoples; bearing in mind the dichotomy between the aspiration for a more robust international legal system and the reluctance of states to cede national sovereignty and egoism, as evidenced by the reluctance to fully commit to legal norms in conflicts in 21st century.

The discourse then shifts to a critical examination of the United Nations Charter, highlighting its pivotal yet flawed role in shaping international legal norms. While the Charter states essential principles and limitations aimed at maintaining peace and security, its effectiveness is hindered by inherent ambiguities and conflicting interpretations. This divergence in interpretation is exemplified by contrasting schools of thought: one advocating for strict adherence to legal norms, while the other views the Charter as a dynamic instrument adaptable to changing circumstances in the world. The narrative concludes with a reflection on the approach advocated by legal scholar for example, Hans Kelsen, who emphasizes the importance of critical analysis in interpreting legal norms with regards to the effectiveness of law Kelsen's perspective challenges the notion of a singular, dogmatic interpretation of the Charter, recognizing the potential for multiple valid interpretations based on political or legal considerations. Ultimately, the article underscores the complex and multifaceted nature of international law, shaped by evolving geopolitical dynamics and varying interpretations of legal norms which regrettably leads to war.

In contemporary law the prohibition against intervention by force of arms must be stated as a principle without exception. The rigid restriction follows both from the protection afforded to state independence by international law and also from the outlawry of force under the United Nations Charter. For example, in resolution 2131 (XX) of 21 December 1965, this resolution embodies the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of States Independence and Sovereignty. The General Assembly stated the law in the following terms for example, paragraph 1 states: No state has the right to intervene directly or indirectly for any reason whatsoever in the internal or external affairs of any other state. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements are condemned (Sorensen, 1968).\(^\text{188}\) The prohibition of armed intervention applies equally to humanitarian intervention (Security Council Resolutions of 14, 22 July and 9th of August 1960, United Nations Documents S/4387, S/4405 and S/4426).\(^\text{189}\)

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