

Legal Classification on the Armed Conflict Between Ukraine and Russia in Light of International Humanitarian Law

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Abstract: The conflict between Russia and Ukraine in February 2022 began with the intervention of the Russian army into the sovereign territory of Ukraine without a declaration of war. Therefore, this conflict must be categorized as whether it is included in a non-international armed conflict or an international armed conflict in order to be able to resolve it. As a result, the conflict between Russia and Ukraine is included in the category of International Armed Conflict because it fulfils the conditions carried out by the state and the intensity of attacks from combatants of the two countries.

Keywords: Legal Classification, Armed Conflict, Humanitarian Law

1 Introduction

The conflict between Russia and Ukraine, the conflict between Russia and Ukraine peaked again in early February 2022, with the launch of an attack from the Russian army on February 24, 2022, into Ukrainian territory.

This attack from Russia was due to the intention and desire of Ukraine to join the North Atlantic Treaty Organization (NATO). This Russian concern caused Vladimir Putin, as the President of Russia, to take aggressive steps in response to these problems.[1]. The conflict between Russia and Ukraine in 2022 is a continuation of the conflict that occurred in 2014, namely the annexation of the Crimea-Ukraine region by Russia[2]. This is violating *The United Nations General Assembly in its resolution 68/262 of 2014 expressed its commitment to the territorial integrity of Ukraine within its internationally recognized borders and underscored the invalidity of the 2014 Crimean referendum.*

Russian attack on February 24, 2022, began with Russia's recognition of the Donets and Luhansk regions which declared themselves independent from Ukraine. This declaration of recognition was signed on February 21, 2022[3]; besides that, Russia began placing its military forces in the Donets and Luhansk regions which border directly with Ukraine.

The recognition given by Russia to these two regions escalated the conflict in the Donets and Luhansk regions and the Donbas and Eastern Ukraine regions. Since the president of Petro Poroshenko, Northern Ukraine has indeed been more inclined toward Russia, which led to internal conflicts, resulting in President Poroshenko's overthrow and then replacement by Volodymyr

Zelenskyy to this day. Support from the eastern region of Ukraine to Russia makes it easy for Russia to enter Ukraine, which also means that Russia has violated several principles in international law related to the peaceful settlement of disputes contained in chapter 7 of the UN charter and Article 51 of the UN Charter where every member of the UN is obliged to prioritize the following: peaceful means in resolving violence/disputes/conflicts that occur between them.

Conflicts in international humanitarian law are divided into 2 (two) types, namely: (1). Non-International Armed Conflict and (2). International Armed Conflict. There are pretty fundamental differences between these two types of conflict, including:

1. Parties: in the IAC, the war parties are states. Both between two countries or more than two countries, while in NIAC, the parties involved can be between countries v. rebel groups or fellow rebel groups that exist in one country intending to overthrow/against the legitimate government of a nation.[4]
2. Applicable rules: in humanitarian law, there are two main rules in the occurrence of conflict between the parties, namely the Geneva law and the Hague law, which differ in their use in situations of armed conflict.[5]

Some of the differences in humanitarian law will also make a difference in conflict resolution and the rules used. After stating the facts, this paper concentrates on the legal classification on the Armed Conflict Between Ukraine and Russia in light of international humanitarian law? This paper analysis will be limited to international armed conflict and non international armed conflict as two types of conflict in international law.

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2 Research Methods

The method used in writing this article is normative legal research. This research focuses on the legal classification of the Armed Conflict Between Ukraine and Russia in light of international humanitarian law. In this case, the approach used is statutory, using the United Nations Charter, Additional Protocol 1 1977. The Hague IV Convention 1907 concerning the laws and customs of war. At the same time, the secondary legal materials are books and journals related to research written by researchers. Legal materials are collected using library studies, searching for sources/books containing related materials. Analysis of legal materials using Grammatical Analysis and extensive.

3 Results and Discussion

3.1 Legal Framework of Armed Conflict

The section will discuss the difference between the types of conflict in humanitarian law and the legal basis for each of these conflicts. Humanitarian law distinguishes conflict into 2 (two) types of conflict, namely (a). International Armed Conflict and (b). Non-International Armed Conflict.

This conflict distinction is also related to the existing legal rules, namely the Hague conventions of 1899 and 1907 and the 1949 Geneva conventions[6]. The term "armed conflict" is used in the Convention regarding humanitarian law. Under Art. 2 (1), common to the four Geneva Conventions, international armed conflict takes place when military hostilities between two or more parties to the Convention occurs[7]. According to article 2 the parties of hostilities are two or more states and declaration of war before start the hostilities between them. To determine which convention applies, one must look at the necessary facts to categorise it as an international armed conflict. [7].

The adoption of the Geneva convention 1949 in 1949 law of armed conflict regulated wars or international armed conflicts as they came to be known [8]. War before 1949 was between states A confronted and declared war on states B, other states who decided to join the hostilities, and the neutrality status of the other states. The conventions were negotiated and concluded before 1949, such as the 14 Hague Conventions adopted in 1907 (14 if one includes those not regulating LOAC questions) or the Geneva Gas Protocol[8].

Many armed conflicts today occur more often within the boundaries of a state. They involve confrontations between the government and the armed groups or among the armed groups that do not operate under state authority at all. Non-International Armed Conflicts, starting with civil war, have frequently happened throughout history. After the end of the second world war, the war model was not only an international war but also a non-international armed conflict. Initially, international law could not define this new war model. Finally, standard article 3 in the 1949 Geneva

Convention states that 'non-international armed conflicts are armed conflicts in which one or more non-State armed groups are involved. Depending on the situation, hostilities may occur between governmental armed forces and non-State armed groups or between such groups only[9]. As the four Geneva Conventions have been universally ratified, the requirement that the armed conflict occurs "in the territory of one of the High Contracting Parties" has lost its importance in practice. Indeed, any armed conflict between governmental armed forces and armed groups or between such groups cannot but take place on the territory of one of the Parties to the Convention.

There are 2 (two) essential requirements to categorize civil war so that it can be called a Non-International Armed Conflict, namely : (a). The hostilities must reach a minimum level of intensity. And the government is obligated to use military force against the insurgents. Level intensity of the conflict is determined in light of indicators such as the duration and gravity of the armed clashes, type of government forces involved, number of fighter and how many troops involved, type of weapon and number of casualties and the damage caused by the war. (B). Non-Government groups involved in the conflict must be considered as a parties of the conflict. This means that the Non Governmental Group have to be under certain command structure and have capacity to military operations. Exsamples of non-international armed conflict now is hostilities that broken out in syrian arab republic between armed groups and the Syrian armed groups.

An International Armed Conflict occurs when one or more States have recourse to armed force against another State, regardless of the confrontation's reasons or intensity. No formal declaration of war or recognition of the situation is required. The existence of an international armed conflict, and as a consequence, the possibility of applying International Humanitarian Law to this situation, depends on what happens on the ground. It is based on factual conditions. Apart from regular, inter-state armed conflicts, Additional Protocol I extends the definition of international armed conflicts to include armed conflicts in which peoples are fighting against colonial domination, alien occupation or racist regimes in exercising their right to self-determination.

Common article 2 to the Geneva Conventions of 1949 states that : Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them. The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance". According to Geneva Convention International Armed Conflict occurs when one or more states have recourse to armed force against other state armed force, regardless of the reason or the intensity of this war. Rules of International Humanitarian Law may be applicable even in the absence of war. Moreover no formal declaration of war or recognition of the situation is required. Implementation of International Humanitarian Law to

the war situation depends on what actually happens on the ground. According to definition of International Armed Conflict and Non-International Armed Conflict widely accepted since the former of criminal tribunal for the former Yugoslavia [10]. An armed conflict exists whenever there is a resort to armed force between states or protracted armed violence between governmental authorities and organized armed groups or between organized armed groups. In other words, there is an international armed conflict whenever there is a resort to armed force between states, regardless of the intensity of such force. In contrast, for a non-international armed conflict to exist, two cumulative criteria must be fulfilled [11].

Humanitarian Law perspective, armed conflict there is no other category because many contemporary armed conflicts appear to not fit well into either one or the other category. Usually the armed conflicts combine the elements of non traditional non international armed conflicts within a single state with international interventions to a varying degree and in various forms or spill over into other states' territories. Such challenges to contemporary conflict classification relate to the fragmentation of armed conflicts, the relevance of consent, the targeting of non-state armed actors abroad, the use of proxy forces and interventions by foreign forces, including multinational forces[11].

Distinguish between International Armed Conflict and Non-International Armed conflict matters for several reasons, First there is not the general category of armed conflict in International Humanitarian Law but there is discrete categories i.e. International Armed Conflict and Non-International Armed conflict. In International Humanitarian Law requires the distinction between 2 type of armed conflict to protect the civilian, unnecessary suffering, and protection of human right.

3.2 Legal evaluation of the conflict in Ukraine under International Humanitarian Law

The Russian invasion of Ukraine has triggered a humanitarian crisis and raises multiple legal question. Invasion of Ukraine by Russian forces on 24 February 2022 was a violation of International Law.

The conflict between Russia and Ukraine is not a new problem in the international world. When Ukraine became independent from Russia in 1997. Russia's intervention in Ukraine for the first time occurred in 2013 when there was a demonstration in the capital Kyiv against then-president Viktor Yanukovich. In 2014 the Ukrainian legislature removed President Yanukovich on the grounds of not fulfilling his duties and carrying out his responsibilities as president[12]. The power of the Ukrainian government after that was led by President Volodymyr Zelenskyy to this day; during this government, Ukraine closer diplomatic relations and cooperation with countries in Europe and America and reduced the intensity of relations with Russia. This culminated with the intention of Ukraine to join NATO and the European Union, making relations between Russia and Ukraine increasingly tenuous. President

Zelensky assured Russia that there would be no anti-Russian action if Ukraine joined NATO, but this was seen as a significant change for Ukraine to become pro-Western and anti-Russian oriented.[3]. This is the cause of the conflict in February 2022.

Russia is worried about losing buffer zones that can support its security, especially in Ukraine. So the result is that Russia is demanding something it has long claimed. Of course, the crisis will be more complex if the US, the European Union and NATO continue to echo the "punish Russia" paradigm through strict sanctions to stimulate a change in Russia's attitude. But these efforts to punish Russia will not resolve the conflict if Russia's concerns about NATO expansion are not listened to. Besides the reasons for Ukraine wanting to become a member of NATO, another reason for Russia's special military operations relates to the crisis involving pro-Russian separatist groups therein.

Based on these problems and conflicts, Russia uses its right, namely self-defence. Self-defence in international law refers to the inherent right of a State to use force in response to an armed attack[13] The legal basis for exercising the right of self-defence is contained in Article 51 of the UN Charter. Although the United Nations was formed to ensure international peace and security, it made the Use of force legally permissible under (a) the exercise of the right to self-defence and (b) the Security Council's authorization. After the adoption of the UN Charter, the right to self-defence became the subject of legal literature and scholarly writings. Although the concept of self-defence is often used in criminal law as a defence to justify a necessary and proportionate use of force against an unlawful attack, such conduct by civilians does not constitute direct participation in hostilities. Right to self-defence has a limitation. Some conditions are associated with it: The Use of force must be in response to an armed attack; the State needs to fulfil elements like necessity, proportionality, and immediacy; Reporting must be done to the Security Council.

The armed conflict between Russia and Ukraine that has occurred since February 2022 has caused problems not only in diplomatic relations between the two countries but also has become a matter of international concern. Russia, as the parties that invaded in February 2022 under international humanitarian law, is said to be a violation. Several forms of Russian violations during the invasion of Ukraine, namely :

- a) Violation of the sovereignty of Ukraine by Russia, article 2 (1) of the UN Charter states that "The organization is based on the principle of sovereign equality of all members"[14]. This article explains that all countries that are members of and become members of the United Nations are sovereign states, and no other nation may intervene in the territory of another country. International law states that every country must respect the sovereignty of other countries. Therefore, the Russian invasion that started from Russia's disappointment with Ukraine, which would join NATO, could not be justified because, as a sovereign country Ukraine has the

right to conduct international relations with any government or international organization under Ukraine's national balance. The invasion by Russia is not under the legitimacy of the United Nations. Art. 2 of the UN 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". This article emphasises that every country must be able to refrain in international relations from using violence against other countries because it would violate the principle of Non-Intervention and violate the sovereignty of other countries.[15].

- b) Violation of the Principles of War, this conflict is categorized as International Armed Conflict (IAC) because it fulfils several elements, including: (i). The parties involved in the competition are the state and violate the sovereignty of other countries. [16]. The conflict between Russia and Ukraine involved the two countries actively in conflict that began in February 2022, beginning with the issuance of a Special Mission by Russia to attack Ukraine starting in northern Ukraine until the entry of Russian combatants (national soldiers) into Ukrainian sovereignty. (ii). The intensity of attacks between the two countries continues to this day and causes casualties from both sides, both combatants and civilians[7]. (iii). Declaration of war [16], This is one of the main things if a country decides to go to war with another country; there must be a declaration of war. However, in the conflict between Russia and Ukraine, there was no declaration of war declared by Russia, only an order to carry out a special mission to the territory of Ukraine, starting with placing troops and war tanks in the Donbas, Luhansk and Crimea border areas and several other sites which then began on February 24, 2022. initial attack. The law of war is divided into two (2) main categories, namely *Ius in Bello*, which regulates the laws that apply during the war, and *Ius ad Bello* governs the validity of the war; from this, it appears that Russia violated the two main principles in the law of war, namely not making a declaration. War as one of the conditions for the validity of war and committing offences in combat by attacking civilians, civilian property objects such as residents' houses, kindergartens that violate the distinction principle in the laws of war[17].

4 Conclusion

Corroborated the elaboration in the previous section it can be conclude that the conflict between Ukraine and Russian can be categorize as International armed

conflict accordance to Geneva convention 4 1949 and additional protocol I 1977.

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