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**The (mis)use of the
Genocide Convention:
Russia's invasion to Ukraine**

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Abstract

Is it “legal,” or even an obligation, to intervene and make use of force in another country under the pretext that acts of genocide are being committed? In that case, is the ongoing war in Ukraine legitimate? These two questions are at the core of the dissertation. Russia appears to justify, at least in part, its invasion to Ukraine by claims that Ukraine was engaged in acts of genocide in Luhansk and Donetsk, the Donbas region. Such justification rests on Article 8 of the Genocide Convention, which states that: “Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in Article 3”. However, Ukraine strongly believes that Russia has misinterpreted or further misused the Genocide Convention, and consequently brought a case against Russia before the International Court of Justice on 26 February 2022 following the Russia’s invasion to Ukraine. This dissertation will focus on answering the two questions stated earlier to reveal whether Russia’s invasion has any legal foundation under the Genocide Convention.

Key words

Russia; Ukraine; Genocide Convention; International Court of Justice (ICJ); Territorial scope; Self-defense.

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1. Introduction

1.1. Introducing the topic

On 24 February 2022, Russia (officially, the Russian Federation) started military operations and entered the Ukraine cities of Donetsk and Luhansk, region of Donbas. The operations were ordered by the Russian President, Vladimir Putin, who declared the purposes of the special military operations to be: to stop a genocide of people from Luhansk and Donetsk, to protect the people who for eight years have been facing humiliation and genocide committed by the Kiev regime and to “denazify Ukraine,” bring to trial those who carried out bloody crimes against civilians (ICJ, 2022). Russia endorses its actions under the Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention), created by the United Nations (UN) as the first human rights treaty to prevent and punish the crime of genocide.

The military operations initiated by Russia in the Donbas region later expanded to other five cities of Ukraine, including Kyiv, the country’s capital. This resulted in a large-scale invasion (CNN, 2022) of the country causing catastrophic harm to Ukraine and its people. Russia’s attack to Ukraine is not an isolated one; in fact, this armed conflict has a long history behind, such as the referendums held in the Ukrainian cities of Donetsk and Luhansk in 2014 and the annexation of Crimea to Russia in 2014.

Two days after Russia started its military attack in the Donbas, on 26 February 2022, Ukraine filed an application to the International Court of Justice (ICJ) against Russia claiming the interpretation, application, and fulfilment of the Genocide Convention. The ICJ opened the case 182 under the name of: Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation) (ICJ, 2022).

The case between Ukraine and Russia is being processed by the ICJ because it involves a dispute regarding the international law. The ICJ is the highest judicial body of the UN responsible for solving legal disputes between states based on international law, and to provide legal advice on matters referred to it by authorized UN agencies and specialized organs (ICJ, 2023). Additionally, the UN Charter, which established the UN itself and finds all Member States of the UN, lays out the fundamental principles of international relations (UN, n.d.). Therefore, the case between Ukraine and Russia is being held by the ICJ with the support of the UN and under the UN Charter.

When Ukraine filed an application to the ICJ it formally began legal proceedings or a legal case against Russia. This could involve taking Russia to court for a specific violation of international law, such as a breach of a treaty or convention. In this case, Ukraine is blaming Russia for disregarding the Genocide Convention. More specifically, in the Application, Ukraine states that false claims were made and denies the accusations of Genocide acts taking place in Ukrainian territories. Moreover, they accuse Russia for planning and carrying genocide acts in Ukraine (ICJ, 2022). Together with the application, Ukraine also requested provisional measures to prevent the harm from escalating over the rights and people of Ukraine. For its part, on 1 March 2022, the ICJ accepted Ukraine's request and called upon Russia to take actions that will ensure complying the Court's orders regarding provisional measures (ICJ, 2022).

To establish and fulfill the request of provisional measures done by Ukraine, the ICJ scheduled an oral hearing for the states to develop their case and position. With the absence of Russia's participation on the oral hearings, the Russian Ambassador in the Netherlands communicated to the ICJ the position of Russia regarding the lack of jurisdiction of the Court in this case. The Ambassador requested to withhold indicating provisional measures and to remove the case (ICJ, 2022). However, the ICJ is deeply concerned about the extensive displacement, widespread damage, and loss of life and human suffering caused by the intense fighting on Ukrainian territory and they are aware it is their responsibility to maintain the international peace and security, as well as the purposes and principles outlined in the UN Charter (ICJ, 2022).

Lastly, 16 March 2022, the Court indicated the provisional measures deliberated. Firstly, it is noted that "The Russian Federation shall immediately suspend the military operations that it commenced on 24 February 2022 in the territory of Ukraine" (ICJ, 2022). Secondly, "The Russian Federation shall ensure that any military or irregular armed units which may be directed or supported by it, as well as any organizations and persons which may be subject to its control or direction, take no steps in furtherance of the military operations referred to in point (1)" (ICJ, 2022). And thirdly, "Both Parties shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve" (ICJ, 2022).

Unfortunately, the military operations did not cease and a year later, February 2023, there is still an ongoing conflict between Ukraine and Russia in Ukrainian territories. During this time,

the ICJ has received declarations of intervention from multiple states that have given their opinion and have taken a position in the conflict. States have filed a Declaration of Intervention in the proceedings under Article 63 of the Statute of the ICJ. Article 63 of the Statute of the ICJ states:

(1) Whenever the construction of a convention to which states other than those concerned in the case are parties is in question, the Registrar shall notify all such states forthwith.

(2) Every state so notified has the right to intervene in the proceedings; but if it uses this right, the construction given by the judgment will be equally binding upon it.

The ICJ has not rendered its judgement on the case yet. Due to the ongoing armed conflict, attention is predominantly directed towards the cessation of Russia's military operations and the resultant damage being inflicted. Not only in destruction and fatalities, but also other sectors, such as economy and politics, that are being very affected in the entire world. Many countries are collaborating and supporting Ukraine by giving human and economic aid in any way they can, but also severing all business relations with Russia.

Although the ICJ is yet to render its judgment, the damage of the military operations of Russia in Ukraine have overcome the limits of human rights, harm, and destruction. Therefore, 17 March 2023, the International Criminal Court (ICC) intervened and issued an arrest warrant for war crimes of Mr. Vladimir Vladimirovich Putin and Ms. Maria Alekseyevna Lvova-Belova. The ICC is the international organization responsible for conducting investigations and issuing warrants, it prosecutes individuals accused of the most serious offenses that affect the global community, including genocide, war crimes, crimes against humanity, and the crime of aggression (ICC, n.d.).

Putin, and Lvova-Belova, Commissioner for Children's Rights, were allegedly responsible for the war crime of "unlawful deportation of population (children) and that of unlawful transfer of population (children) from occupied areas of Ukraine to the Russian Federation (under Article 8(2)(a)(vii) and Article 8(2)(b)(viii) of the Rome Statute)" (ICC, 2023). The alleged crimes were said to have occurred in territory occupied by Ukraine, starting on or after February 24th, 2022.

It is uncertain what will happen in the near future between Ukraine and Russia, but the main objective of the international community regarding this conflict is to cease the military operations and have the ICJ to pronounce on the matter of the case to identify the guilty responsible for this war.

1.2. Aims and motives

The main aim of the study is to analyze and investigate to what extent the Russian military operations and invasion of Ukraine can be justified as a defense to the Ukrainian citizens from the Donbas region who have been victimized by acts of genocide. And whether Russia's actions have any legal foundation under the Genocide Convention. This dissertation aims to explore the legal implications of intervention and the use of force in another country based on alleged acts of genocide.

Furthermore, it is important to note that the ongoing conflict in Ukraine has been subject of significant international attention and debate. While some actors, such as the ICJ, argue that the use of force in response to acts of genocide is not only permissible but also necessary, others, such as judge Tomka, contend that such actions may violate international law and undermine the sovereignty of the countries affected. Therefore, the aim is to evaluate the facts and the different interpretations in order to develop a comprehensive understanding of the case.

As the matter remains unresolved, it is currently unknown whether the actions of Russia will be deemed justifiable by the ICJ, or if the purported acts of genocide on Ukrainian cities can be legally substantiated under the provisions of the Genocide Convention. The purpose of this dissertation is to analyze the documentation and information available at the time of writing and analyze it against the framework of international law. To this end, this dissertation also draws on relevant scholarship.

The conflict initiated by Russia's attack on Ukraine has led to a state of war in Europe, causing widespread uncertainty and fear throughout the world. Consequently, the primary motivation for undertaking this study is to gain a better understanding of whether this regrettable event can be justified on any grounds. Despite ongoing debates at the ICJ regarding the situation, a military war is currently underway, with the ICJ closely monitoring developments and responding to Ukraine's requests for provisional measures (ICJ, 2022). This paper aims to

investigate and analyze the origins of the war and its first attack, with the goal of formulating an argument with similarities to the final judgement of the ICJ once the war is over.

1.3. Methodology

To answer the questions posed in this study, it was used the qualitative method and more concretely the case study method. These methods require of research questions that will be identified later. This dissertation has been done by the qualitative method in the way that the analysis and interpretations are of data that is non-numeric, such as articles and reports. Moreover, the case study method was used in the detail analysis and description of the military conflict, including its origin and development, and of the case of the ICJ, including all related documents (Mohajan, 2018).

Due to the important role of the legal framework in this study, doctrinal research is involved in this dissertation, being the main source the Genocide Convention. To analyze the actions held both by Ukraine and Russia there will be an analysis and interpretation of the existing legal principles, rules, and regulations, as well as the opinions and decisions of courts and other legal authorities. The desk research or secondary research is also used in the study. It involves the review and analysis of sources such as books, journal articles, government reports, reports, and online databases, among others.

The methodological approach for this study was meticulous research on both, legal documents, and academic articles. The main sources consulted for this dissertation are, on one hand, the ICJ official site, to reach its database of documents on the case Ukraine and Russia, and on the other hand, Google scholar, Dialnet and Comillas Repository to find books and articles related with the study. Moreover, for this dissertation, it was necessary to gather all the legal documents that influence in some way the conflict, such as the Genocide Convention, the UN Charter, and the Statute of the ICJ. Due to its recentness and strong presence in our lives, continuously paying attention to any news and opinion reports published has been a regular activity. In this case, it has also been essential to read reflections and interpretations from different authors on the topic of the war, the actions of genocide and on the legal basis established on the case.

The main document relied on for the study is the Genocide Convention, forming the essential basis of the legal framework, as well as publications of interpretations of the Convention's

articles, such as the book of *The UN Genocide Convention: A Commentary*. Moreover, another essential document used, is the publications of the case in the ICJ, announcing any news and the chronology of how the case between Russia and Ukraine has been developed.

However, this methodology and materials used on the dissertation also present some limitations, such as time and resources. It exists the possibility of bias in the sources reviewed, and the inability to obtain information that has not already been published or recorded. This study focuses on the first attack of Russia to Ukraine in February 2022, but these two countries have had other conflicts in the past that might have influenced. While a historical analysis is conducted to comprehend the setting of the conflict, it is concise and focused inquiry, constrained by limitations of time and space within the dissertation. The principal facts and main observations relevant to the investigation are emphasized, while the entirety of the historical account could not be covered on this study. An additional limitation is the one related to the availability of resources. Despite the constant publication of new articles and documents on the topic, there probably exist numerous confidential documents that remain inaccessible due to sensitive information related to the damage and destruction that is happening, thus posing a challenge for researchers seeking to acquire comprehensive information.

By utilizing these resources and methodologies, a comprehensive analysis and discussion of the study has been conducted. Leveraging an extensive body of scholarship, it will be possible to build a well-supported argument that incorporates diverse perspectives while remaining grounded in legal frameworks. Ultimately, a sound conclusion that addresses the research questions from both a legal and academic perspective will be elaborated.

1.4. Setting the scene

1.4.1. Russia's statement regarding the military operations

Since 2014, various state organs, such as the Russian Investigative Committee, and high-ranking representatives of Russia have publicly claimed that Ukraine has committed acts of genocide against the Russian-speaking population in the Luhansk and Donetsk regions. They have been alleging since then Ukraine's violation of the Genocide Convention (ICJ, 2022).

Later in 2022, Putin described the situation in Donbas as "horror and genocide, which almost 4 million people are facing" (ICJ, 2022). Putin explained that he had decided to conduct a special military operation to protect people who have been subjected to abuse and genocide by

the Kiev regime for eight years. He added that Russia has to stop a genocide against millions of people and that it would seek the prosecution of those who had committed numerous bloody crimes against civilians, including Russian citizens (ICJ, 2022).

The Permanent Representative of Russia to the European Union (EU) stated that the operation was a "peace enforcement special military operation" carried out in an "effort aimed at de-Nazification". Russia has claimed that its special military operation is based on Article 51 of the UN Charter and customary international law (ICJ, 2022).

Article 51 of the UN Charter states:

Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

Therefore, it recognizes the inherent right of individual or collective self-defense of Member States of the UN against an armed attack, until the Security Council takes action to maintain international peace and security. Any measures taken by members in exercising this right of self-defense must be immediately reported to the UN Security Council and do not diminish the UN Security Council's authority and responsibility to take action to maintain or restore international peace and security (UN, n.d.).

1.4.2. Human rights in Ukraine

Ukraine is a republican country with a multi-party system. The President, Volodymyr Zelensky, is the head of state and the Prime Minister, Denís Shmihal, is the head of the government. Ukraine is located in the East of Europe, bordered by many countries but particularly by Russia to the east. The main decision-making character facing the conflict in the Ukrainian side is Zelensky (Amnesty International, 2022). He has been a relevant figure throughout the armed conflict due to its commitment and implication with his country and its people. This is especially noteworthy given that this war has resulted in widespread of human

rights violations upon both Russian and Ukrainian citizens alike. However, the blame for these violations goes sideways, while Russia accuses Ukraine for committing genocide, Ukraine accuses Russia for planning acts of genocide and a military attack against Ukrainian citizens (ICJ, 2022).

Initially, Ukraine is the one accused for violating its citizens human rights. Accordingly, it is important to analyze the country's background in this matter in order to ascertain the extent of such violations and to establish their veracity. The latest Amnesty International Report of 2021/2022 states that in Ukraine, mainly in the Donbas region, there has been reported arbitrary arrests, prolonged confined detentions, and unlawful imprisonment. Moreover, there were also allegations made of torture and other ill-treatments (Amnesty International, 2022). The statements gathered in this report are from the year before Russia started military operations on Ukraine.

Furthermore, the Annual Report 2022 of Humans Rights Watch also describes the volatile situation in the Donbas region prior to the Russian military attack. According to the report, the minor confrontations held in the Ukrainian region posed a threat to the safety of civilians who had no access to food, housing nor education. However, the report also refers to the Russian armed forces as being present in the Donbas region torturing, detaining, and making disappear civilians. Indicating up to 400 civilians arrested by Russian armed groups (Humans Rights Watch, 2022).

Amnesty International and Human Rights Watch are two international nongovernmental organizations (NGOs) dedicated to protect and promote human rights, who made the above accusations in the report published in 2022 regarding the analysis of the year before the military operations started. However, other accusations likewise have been done before. In 2014, the Kyiv government took away the citizens right to freedom of assembly and expression when they refused to dialoged and hear the proposals of the protesters that were being peaceful. Instead, the authorities banned the public assembly, which should only be done in extreme cases. (Amnesty International, 2014). Since the conflict in 2014 to the east of Ukraine, the violations of human rights have increased, specially related to women and domestic violence. Therefore, in 2018, as a suggestion of the Amnesty International, Ukraine ratified with the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Amnesty International, 2018).

This is not the first time that Ukraine is involved in a case with the ICJ or in an inter-state dispute with Russia. In 2004, Ukraine was an involve party in the case of “Maritime Delimitation in the Black Sea (Romania v. Ukraine)”. And in 2017, in the “Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation)”. In the second case, Ukraine reported Russia to the ICJ for committing acts related to the financing of terrorism and racial discrimination in Ukraine, presenting a violation of the human rights of the citizens. The case opened in 2017 is still pending its culmination (ICJ, 2017). Therefore, Ukraine is involved in two open cases with the ICJ, both related to the violations of human rights.

1.4.3. Genocide Convention

The case 182 between Ukraine and Russia builds its basis under the Genocide Convention. Russia claims Ukraine was committing acts of genocide on Ukraine citizens, while Ukraine later blames Russia of planning acts of genocide on Ukrainian citizens (ICJ, 2022). Genocide is defined in the Article 2 of the Genocide Convention as:

any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group.

The perpetration of acts of genocide is universally regarded as a transgression against fundamental human rights, regardless of the perpetrator's identity or the location where such actions have been carried out. In 1951, the Genocide Convention was signed and introduced in the international law for all the contracting parties. This official legislation gathers 19 articles. For this study, the analysis of Russia's and Ukraine's actions will rely heavily upon the examination of Article 8 and Article 9.

Article 8 of the Genocide Convention states:

Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate

for the prevention and suppression of acts of genocide or any of the other acts enumerated in Article 3.

Article 9 of the Genocide Convention states:

Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in Article 3, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.

On the Article 3 of the Genocide Convention, it states:

The following acts shall be punishable: (a) Genocide; (b) Conspiracy to commit genocide; (c) Direct and public incitement to commit genocide; (d) Attempt to commit genocide; (e) Complicity in genocide.

Moreover, Article 4 also emphasizes the punishment for committing any act related to genocide regardless their identity, either constitutionally responsible rulers, public officials, or private individuals. For this reason, violating the Convention of Genocide in any way will have consequences and a punishment.

1.4.4. Ukraine's Application request to the ICJ

26 February 2022, Ukraine filled an application to the ICJ with multiple statements and claims related to the interpretation, application, and fulfilment of the Genocide Convention. Ukraine looks for the “Court’s jurisdiction on Article 36(1), of the Statute of the ICJ and on Article 9 of the Genocide Convention, to which both States are parties” (ICJ, 2022).

Article 36(1) states: “the jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force” (ICJ, 1954). This Article declares the jurisdiction of the ICJ over cases that are referred to it by parties to a dispute, as well as cases that are provided for in the Charter of the UN or in international treaties and conventions. Moreover, Article 9 of the Genocide Convention expresses the obligation to submit any dispute between States related to the interpretation, application, or fulfillment of the Convention.

Upon the submission of Ukraine's Application, a dispute regarding the Court's jurisdiction arose. The Application was submitted under Article 9 of the Genocide Convention, which makes the Court's jurisdiction conditional on the existence of a dispute. In order to establish provisional measures, the Court has to determine whether the actions alleged by Ukraine could potentially fall within the limits of the Genocide Convention. Finally, the Court determined that the evidence in the present proceedings shows, on a *prima facie* (at first sight) basis, that statements made by both parties in relation to the subject matter of the Genocide Convention were sufficiently clear to allow Ukraine to invoke the compromising clause as a basis for the Court's jurisdiction (ICJ, 2022).

In the Application to the ICJ, Ukraine states that Russia “has falsely claimed that acts of genocide have occurred in the cities of Luhansk and Donetsk in Ukraine, and on that basis recognized the so-called ‘Donetsk People’s Republic’ and ‘Luhansk People’s Republic,’ and then declared and implemented a ‘special military operation’ against Ukraine” (ICJ, 2022). Ukraine denies “that such genocide has occurred” (ICJ, 2022) and “that Russia has no lawful basis to take action in and against Ukraine for the purpose of preventing and punishing any purported genocide” (ICJ, 2022). In the filed Application, Ukraine also accused Russia of “planning acts of genocide in Ukraine” and alleges Russia is “intentionally killing and inflicting serious injury on members of the Ukrainian nationality (ICJ, 2022).

At the same time, Ukraine filed a Request for the indication of provisional measures “in order to prevent irreparable prejudice to the rights of Ukraine and its people and to avoid aggravating or extending the dispute between the parties under the Genocide Convention” (ICJ, 2022).

On 16 March 2022, the ICJ issued provisional measures that required Russia to immediately cease its military operations in Ukraine, ensure that any armed units under its direction or control did not take any action to further the military operations, and instructed both parties to refrain from any action that might exacerbate or prolong the dispute (ICJ, 2022). However, the military conflict has been going for a year now and the provisional measures were never Fulfilled.

1.5. State of art and theoretical framework

This dissertation is based on a case taken by the ICJ that started on 26 February 2022 and has not conclude yet. As noted earlier, the case filled by Ukraine to the ICJ arose with the military attack and invasion from Russia to the Ukrainian cities of Donetsk and Luhansk with the intentions to protect the Russian-speakers suffering from genocide actions. The two nations are now confronted in an open case in the ICJ because Russia claims to have lawful basis to take military action under the Genocide Convention (ICJ, 2022). The most accurate definition of genocide on which we will base this analysis is the one presented above from the Genocide Convention.

The conflict between Ukraine and Russia goes back to 2014 when Russia intervened in the Ukrainian regions of Crimea and Donbas to gain its jurisdiction. At this moment, elections were held because these regions were claiming the independence from Ukraine and wanted to be part of Russia. Meanwhile, Russia was pressuring at the border to find an excuse to enter and take over the cities. The self-determination theory can explain the ongoing conflict and disapproval of the citizens in these regions. This theory allows us to determine our political status and follow our own economic, social, and cultural development (Cavandoli, 2016). It presents the three basic needs of a person: autonomy, competence, and relatedness, and establishes the two motivations a person can have: the intrinsic and the extrinsic motivation (Ryan & Deci, 2000).

Since 2014 the ongoing conflicts and riots have been present in the Donbas region. Most of these actions come from a violation of human rights of the citizens, such as the lack of freedom of speech and self-determination. These popular militias are looking for the independence and annexation to Russia. However, Ukraine has also participated in these conflicts by trying to stop the riots and in many occasions worsen the situation, to the point that Russia accused them of committing acts of genocide. The crime of genocide has two elements: physical and mental elements. It includes the acts committed and the intention to destroy a national, ethnic, racial, or religious group. To be able to consider specific acts as committing genocide there must exist a specific intention to physically destroy a group. Additionally, the victims must be deliberately targeted because of their membership in one of the protected groups (UN, 2018).

Russia is relying on Article 8 of the Genocide Convention, which, as noted in the preceding section, notes that if a state party to the Genocide Convention considers another member is committing acts of genocide in their territory they can intervene and take action to stop it under

the UN Charter. Consequently, Russia claims to be acting under this Article as a justification to its military operations. On the other hand, Ukraine is relying on Article 9 of the Genocide Convention, which gives the state the right to attend to the ICJ in case there is a discussion regarding the Convention.

The ICJ is already working on the case opened the 26 February 2022, apart from the preliminary decision ordering Russia to cease its military operations in Ukraine, the ICJ is yet to pronounce on the matter, the culmination of the case is pending. The Court's response to this conflict was fast and effective due to the immediate actions taken, such as the call to the parties involved to attend oral hearings and the establishment of provisional measures. Since the publication of the provisional measures on 16 March 2022 by the ICJ, the Court has not taken further actions but it has accepted the Declaration of Intervention from many states that will be crucial for the deliberation of the final judgement (ICJ, 2022).

One of the main concerns of the case studied is the territorial scope of the Genocide Convention, whether Russia could intervene and prevent a genocide happening in another state's territory, in this case Ukraine. Since the Convention does not clarify if the legislation applied is strictly limited to each state's territorial jurisdiction, the challenge is the interpretation and understanding of the territorial scope applied in the obligations of the state parties under the Genocide Convention and the actions held by both parties. The territorial scope of the Convention has been analyzed by different actors and each of them has created their own interpretations and theories. These three actors are the ICJ, Judge Tomka from the ICJ and other states.

For its part, the ICJ identifies the three main obligations from the Genocide Convention that states must follow and its limitations. The first is that states are obligated to refrain from committing genocide, the second is to prevent acts of genocide and the third to punish those who commit genocide. The only obligation with a clear territorial scope is the obligation to punish the acts of genocide established in Article 3 of the Genocide Convention. This obligation declares that it is states responsibility to bring to justice those who commit genocide specifically within their own borders (Gaeta, 2009; Milanovic, 2009). For the remaining obligations and articles of the Convention there is not a clear written territorial scope. Therefore, the theory and interpretation of the ICJ is that the obligations without a concrete territorial scope are not territorially limited, allowing states to act outside their borders.

Another relevant interpretation of the territorial scope of the Genocide Convention is the one done by Judge Tomka, a judge of the ICJ involved in many cases, including the ones regarding the Genocide Convention. In his academic works, he argues that the Genocide Convention should be territorially limited. According to Judge Tomka:

Under Article 1 of the Genocide Convention the state does have an obligation to prevent genocide outside its territory to the extent that it exercises jurisdiction outside its territory, or exercises control over certain persons in their activities abroad. This obligation exists in addition to the unequivocal duty to prevent genocide within its territory. (Gaeta, 2009, p. 480)

Judge Tomka theory regarding the territorial scope of the Genocide Convention is that the obligations of the states should be limited to the territories where they have jurisdiction. His theory can be supported by the Vienna Convention on the Law of Treaties. This Convention is a multilateral treaty adopted by the UN in 1969 and used as an instrument for the formation, interpretation, application, and termination of treaties between states. It sets out the legal framework and aims to promote greater certainty and stability in international relations by providing rules and principles for the interpretation and implementation of treaties (UN, 1969). In the Article 29 on the territorial scope of treaties, the Convention states: “unless a different intention appears from the treaty or is otherwise established, a treaty is binding upon each party in respect of its entire territory” (UN, 1969). Consequently, based on Article 1 of the Genocide Convention, it becomes the fundamental responsibility of every state to prevent the occurrence of genocide within the population of their territory and of the territories where they exercise *de facto* effective control (Ruvebana, 2022).

The third interpretation of the territorial scope in the Genocide Convention is the one done by the states on their declarations filed to the ICJ regarding the case between Russia and Ukraine. Article 63 of the Statute of the ICJ, declares the states the right to intervene and provide their own judgement when the interpretation of a convention is in doubt or being questioned (ICJ, 1945). The declarations of the states can be gathered in three main theories and arguments. The first is the *prima facie* establishment of the genocide allegations, meaning to describe legitimate evidence of the case for the Court to apply jurisdiction. The second one is the correct interpretation of genocide under Article 2 of the Genocide Convention to intervene and prevent if necessary. And the third is the states' concern about the measures taken to prevent genocide. (McIntyre, Pomson, & Wigard, 2022). Therefore, the states that filed declarations to the ICJ,

such as Spain, Ireland, and Portugal, agree on the argument that the scope of territorial application of the obligations under the Genocide Convention is unrestricted. However, they emphasize the imperative for each state to invariably act in good faith and in accordance with international law.

The case and actions presented in the dissertation can be explained by the self-defense theory, argued by Niguel White. Article 51 of the UN Charter establishes the right to individual and collective self-defense. The self-defense is a principle under the international law that gives the right to international legal persons, either individual persons, states, or international organizations, to defend themselves when their human rights are under threat. The right of self-defense is represented under the *jus ad bellum*, this principle of international law justifies the use of force in concrete cases, such as, self-defense, prohibition of force in the international relations and requirement of authorized use of force by the UN Security Council (White, 2018).

According to the international law, the right to self-defense is contingent on meeting certain fundamental criteria, regardless of whether any bilateral or multilateral defense agreements exist. These criteria include: (1) a demonstration of an armed attack that has been directed at a State with the right to individual self-defense (referred to as the victim State); (2) informing the UN Security Council, organ of the UN, of the measures taken and complying with the "until" clause as outlined in Article 51 of the UN Charter; and (3) upholding the principles of necessity and proportionality in the actions taken (Doubek, 2022).

The UN Security Council has the primary responsibility of maintaining international peace and security, which includes determining threats to peace, calling for peaceful solutions to disputes, recommending methods of settlement, and using measures like sanctions or force to restore peace and security when necessary. All member states are required to comply with the Council's decisions as per the Charter of the UN (UN, n.d.). Therefore, this organ of the UN has the authority to allow the use of force in determine situations.

The self-defense theory derives from the Responsibility to Protect (R2P), which is the responsibility of the state to protect its citizens from genocide, war crimes and crimes against humanity. This responsibility is not a binding legal principle, but rather a political commitment by states to protect populations. In case the state does not do so, then the international community will intervene to protect the citizens through the UN Security Council. When there is an intervention through the UN, the action group is known as the peacekeepers, who oversee looking for peace and protection (White, 2018). The intervention applying the Responsibility

to Protect is only justified when acting in self-defense, only if it is strictly necessary it is allowed the use of force (White, 2018).

The case between Russia and Ukraine is a particular one due to the background they share, the secondary interests involved and the damage provoked. However, this case shares some similarities with the case of Bosnia and Herzegovina (Bosnia) v. Serbia and Montenegro (Serbia), also known as Bosnian Genocide case. In the latter case, since Serbia was blamed for not preventing genocide outside its territory, the interpretation of the territorial scope was crucial to its final judgement. The final theory and interpretation done by the ICJ, and therefore the conditions applied to the final judgements and orders of the Bosnian Genocide case, is that the Genocide Convention is not territorially limited to the obligation of prevention and refrainment of committing genocide, but territorially limited to the obligation of punishment (ICJ, 2007).

All things considered, it remains crucial to bear in mind that even though the case is still deliberating by the ICJ, the fact that Russia is invading Ukraine and starting a military conflict, makes Russia the enemy. The ICJ has established measures with a view to stopping the ongoing military interventions by Russia in Ukraine, but they have not ceased. States and International Organizations are supporting Ukraine as much as they can, with weapons, money, support and welcoming of refugees. Moreover, this conflict is bringing uncertainty and crisis to the world, the economy and politics are being compromised in many ways.

1.6. Goals and research questions

The main goal of this dissertation is to examine whether the intervention of Russia in Ukraine is considered legitimate or even mandatory under the international law and the UN framework, as well as to analyze the Genocide Convention and study its possible interpretations to address the research questions. To do so, it is essential to evaluate recent scholarship on the topic.

This dissertation is guided by the following questions: Is it “legal,” or even an obligation, to intervene and make use of force in another country under the pretext that acts of genocide are being committed? In that case, is the war in Ukraine legitimate?

As a result of the ongoing unresolved conflict and the absence of a definitive judgement from the ICJ, the only viable means of comprehending the situation and determining the veracity of

the claims is via legal frameworks and legislative processes. Therefore, the actions of both states and the conflict itself will be analyzed and shaped to the law. To achieve the main goal, it is necessary to establish more specific goals: Understand the beginnings and reasons for Russia's attack, study the conflicts and acts in Ukraine accused to be genocide, argue the theories and interpretations of the Genocide Convention, analyze other theories regarding Russia's and Ukraine's actions and make a comparison to a latter case of genocide.

2. Analysis and discussion

2.1. Historical context

The military attack on 24 February 2022 to the Ukrainian cities of Donetsk and Luhansk was ordered by Putin. The specific reasons why Russia chose to target these cities may not be clear or definitive, but what is certain is that the cities in the Donbas region have a shared history with Russia and this history may be related to the current conflict.

In 2014, Ukraine suffered a political crisis that led to various referendums, defined as elections held to decide the political future of a region. These first started in Crimea and were later held in the region of the Donbas. At that moment, Ukraine was divided between the east and the west regions. To the east there were the cities of Donetsk and Luhansk where the "People's Republics" was very influential and the predominant ethnic was Russian. The west included the cities of Kharkiv and Dnipropetrovsk, which never gave any problems regarding its independence (Cavandoli, 2016; Portnov, 2016).

The Donbas citizens tend to say they had a specific identity, described as Soviet, and they named themselves as "Novorossiya" (New Russia). Although they did not feel Ukrainians, the physical conflict started due to Donbas citizens dissatisfaction with the language, economics and policies established from Kyiv. It was an ongoing conflict, but two key events to it were, first when protesters in Donetsk took control of the regional administration building and second when protesters in Luhansk entered the Ukraine's Security Service (SBU) building. It was on 6 April 2014 when Ukraine lost control over the Donbas region (Cavandoli, 2016; Portnov, 2016).

Ukraine forces never intervened in these attacks. It was in Russia's best interests for the Ukraine government to stop the occupation and disruption because Russia would have had the permission to enter legally the region with its peace-keeping forces to stop the conflict and

protect the citizens. For that reason, the riots intentionally started the conflictive actions to provoke the Ukrainian forces to make them intervene and allow Russia to enter the territory. Exactly how it happened in Crimea, where Ukraine ended losing it to the Russians (Cavandoli, 2016; Portnov, 2016).

However, there is a debate whether Russia could intervene in the region with its peace-keeping forces. Under the Article 2(4) of the UN Charter, it expresses the prohibition to the use of force in international relations, including military aggression and intervention, except in situations where such actions are authorized by the UN Security Council or in self-defense against an armed attack (UN, n.d.). Russia did not only provoke the riots to start a conflict inside Ukraine but also wanted to intervene acting against the international law, which it did in Crimea. Russia had no jurisdiction in neither of these regions and still wanted to intervene as a peace-maker. Therefore, it seems something similar happened in February 2022, Russia is still looking for a strategy to take the Donbas region, but this time they are acting under the Genocide Convention.

The war in the Donbas region in 2014 started due to multiple reasons. In the 20th century the developing of coal industry created a new cultural identity in the region. Mix of freedom and force, respect for labor, physical power, rejection of ethnic exclusivity, prison tolerance and pensioners. This identity was not ideal and the Donbas formed their own pride and loyalty to their beliefs. The dissent with the Kyiv government increased and ended up blowing up. Moreover, at this moment Ukraine's government was not going through their best moment, the ruling class was very weak and represented a neutral position, there was a passive behavior of law enforcement, the state lost control over the border and there was a lot of indecisiveness (Cavandoli, 2016; Portnov, 2016).

Ukraine's loss control of the region of Donbas was the continuation of the loss of Crimea due to the incrementation of the pro-Russian protests. In Crimea the predominant ethnic was also Russian and the entrance of pro-Russian forces in Crimea on February 2014 were justified as a response to previous agreements to protect its fleet in the Black Sea. Russian's Parliament had approved Putin's intervention in Crimea and Donbas region to protect the Russian speaking population. In Crimea, referendum elections were held, either join Russia or reestablish Crimea's Constitution of 1992. Finally, the result of the elections was to join Russia, officially designating the annexation of Crimea. The consequence for Russia for the illegal referendum

was the expel from the G-8, for violating Ukraine's Constitution and acting against the International Law (Cavandoli, 2016; Portnov, 2016).

The regions of Crimea and Donbas were at first declared independent from Ukraine through the referendum. This action is explained by the theory and the right of Self-determination granted to citizens by the UN Charter. Therefore, if citizens of Crimea, Donetsk and Luhansk determined themselves as Russians, the actions and pressure in 2014 by Russia can be seen as a defense to the people fighting to become what they want (Cavandoli, 2016). With this theory the revolutionary and conflictive actions could be justified because these people were fighting to determine their politic, economic, social, and cultural status, they wanted to be Russians. So, under this theory, the operations held by Russia in 2014 in the Donbas region and Crimea could be justified as a defense of the rights of the citizens but at the same time a threat for violating the basis of the UN Charter and for acting without the UN Security Council.

Both referendums were declared illegal and out of the international norms and principles. However, Crimea's annexation was officially recognized by Russia using as pretext the acceptance of the Republic of Kosovo in 2008. On the other hand, the referendum in Donetsk and Luhansk was not officialized, even if Russia claimed the referendum to be respected (Cavandoli, 2016; Portnov, 2016). Therefore, since Russia did not take over the region of Donbas in 2014, it seems they have now, in 2022, found a way of finishing what they started and achieve their goal by justifying its interventions accusing Ukraine of committing acts of genocide against its citizens. Nevertheless, Russia's invasion seems to be due to an accumulation of different factors.

2.2. Analysis of the accusation for committing acts of genocide

Since 2014 the region of Donbas has suffered of continuous inside conflicts and human rights violations. Most of these actions come from the lack of freedom of speech and self-determination. In the Donbas, the continuous uprisings are due to the independence and annexation to Russia that some citizens desire. However, this region is under Ukraine's jurisdiction and therefore subject to its governance, which implies that Ukraine does not accept ongoing conflicts and malevolent conducts in the Donbas. Therefore, it gives no other option to Ukraine but to intervene and potentially exacerbate the conflict.

Although this situation has been going on for many years now, the issue arose again in 2021 when the Ukrainian army and the popular militias of Donetsk and Luhansk were increasing the level of violence from the usual fighting, with artillery bombardments being recorded across the entire contact line (Scotton & Álvarez Guzmán, 2022). The reports from NGOs, such as Amnesty International and Human Rights Watch, reflect how the year before Russia started the military operations there were registered arbitrary arrests, prolonged confined detentions, unlawful imprisonment, and there were made allegations of torture and other ill-treatments in the Donbas region (Amnesty International, 2022).

Analyzing these actions, two perspectives can be identified. On one hand, these groups were provoking harm and damage in the region and Ukrainian forces had to intervene, seen this as an attack to the people. On the other hand, the members of the popular militias did not only desire to become part of Russia but they were also tired of how the Ukrainian government was treating them, violating their human rights, and acting violently against them.

Even though there are ongoing conflicts, people are suffering and human rights are being violated in this region. However, this situation does not differ from any other where popular militias struggle to acquire the independence, but Russia's accusation to Ukraine for committing acts of genocide has a prominent and significant background. In early February, Russia recognized the Donetsk and Luhansk People's Republics amidst popular militia revolts. Additionally, Russia criticized NATO (political and military alliance of countries from Europe and North America) for failing to uphold its promises and accused them of approaching Russian borders. Furthermore, Ukraine had expressed interest in developing nuclear weapons, prompting Russia to demand that Ukraine not be allowed to join NATO (Scotton & Álvarez Guzmán, 2022).

Ukraine is considered a very strategic zone for Russia, NATO and the EU for its fundamental position concerning the transportations of gas and oil. Therefore, it can become a threat in case of aligning with organizations like NATO (Scotton & Álvarez Guzmán, 2022). Given the various factors present at the outset of February 2022, Russia experienced the loss of Ukraine and perceived the need to intervene in order to prevent Ukraine from aligning with other international organizations and to finally gain control of the Donbas region. Russia could only act in accordance with international law by establishing the foundation of its actions through a convention. And due to the ongoing conflict in the Donbas region and the lack of freedom of speech and lack of self-determination citizens were experiencing, Russia found the opportunity

to accuse Ukraine of committing acts of genocide and operate under a legal framework, the Genocide Convention.

From the different definitions of genocide in the Genocide Convention, the supposed events taken part in Ukraine could be expressed as “causing serious bodily or mental harm to members of the group,” specifically, against a national group. The harm being experienced by the region and its inhabitants should have been taken into account and addressed through intervention, as well as, the consideration of the desires of the people. However, the actions do not correspond to the definition of genocide. To constitute genocide, it requires proven intent to physically destroy a group based on national, ethnic, racial, or religious grounds. Cultural destruction or dispersing a group is not enough. For actions to be considered as genocide there has to be a targeting of the groups (UN, 2018). In the Donbas regions there was no intention to destroy a national group but to stop the riots and uprisings that the popular militias were provoking.

Therefore, although the situation in the Donbas region was far from ideal and marked by ongoing uprisings and conflicts, it is evident that the documented acts of violence and aggression do not meet the criteria for genocide as defined by the Genocide Convention. Furthermore, considering the various contextual factors at play, it could be argued that Russia's purported justification for intervention in Ukraine was merely a pretext and a strategic move on its part.

2.3. Interpretation of the territorial scope in the Genocide Convention

Part of the strategy that Russia followed was to justify its military operations under the Genocide Convention mainly relying on Article 8. This Article allows contracting parties to intervene and prevent any acts of genocide, without mentioning any territorial restrictions and limits. This implies that in the event that Russia has reasons to believe that acts of genocide have been perpetrated in Ukraine, it is both legally permitted and obligated to take measures to prevent and eradicate such a crime. Conversely, Ukraine contests the legal basis of Russia's actions and has brought the matter before the ICJ under Article 9 of the Convention, seeking an interpretation, application, and fulfillment of the Convention.

Regarding Article 9 and the rest of articles in the Genocide Convention, there is a dispute of the territorial scope under the Convention. This has left no other choice but to leave it to free interpretation, even allowing Russia to make its own interpretations and making it harder to

oppose and challenge Russia's actions. There are three main interpretations and theories of the territorial scope of the Genocide Convention that will influence the analysis and elaboration of the conclusion. These interpretations, as briefly discussed in Section 1.5. above, draw from the ICJ, Judge Tomke from the ICJ and a set of states. This section now turns to analyze them in more detail.

2.3.1. Interpretation of the ICJ

The first theory is elaborated from the interpretation of the ICJ, which was first brought up due to the uncertainty and debates of the Bosnian Genocide case (case 91). According to the ICJ in its last analysis of the Convention on the Bosnian Genocide case, there are three main obligations in the Genocide Convention that all state parties must follow. First, states are obligated to refrain from committing genocide, whether through their own agents or individuals; this obligation comes without limitations to territory or any other factor. The second is the obligation to prevent genocide, shaped by the state's capacity to influence genocidal actors and is limited by international law, specifically the *jus ad bellum*, which justifies the use of force. However, this obligation is not territorially limited. The third obligation of states is to punish genocide, this obligation is limited to their own territory. States are not required to prosecute those who commit genocide outside of their territory, but if the crime is committed elsewhere but the prosecutor is found within their borders, they have a duty to cooperate with the corresponding tribunal (Gaeta, 2009, p. 480).

The analysis of the interpretation of the Genocide Convention by the ICJ demonstrates that it is impossible to discuss the territorial scope of the Convention as a whole, but rather it is necessary to scrutinize the specific obligations of the State under the treaty, which vary in their territorial scope (Gaeta, 2009, p. 479).

The obligation to abstain from committing genocide is enshrined in Article 1 and Article 3 of the Genocide Convention. These articles state the definition of what genocide is and the acts that will be punished, they do not include a specific and written territorial scope on the Convention. Therefore, the ICJ interprets this obligation as territorially unlimited, meaning that the definition of genocide and the acts considered punishable are the same for everyone regardless of the location.

The obligation to prevent genocide is the most relevant and the one related to this dissertation. The entire military operations organized by Russia against Ukraine relied on this obligation, presented in Article 8 of the Genocide Convention. Again, the lack of specification in the Convention allows the ICJ to interpret this Article as not territorially limited. With this interpretation, Russia has a legal framework to justify its operations in Ukraine, arguing that they were trying to prevent genocide in the Ukrainian region of Donbas.

The third main obligation, to apply punishment is identified as different regarding the territorial scope. The contracting states obligations under Article 6 are subject to an express territorial limit. Article 6 states:

Persons charged with genocide or any of the other acts enumerated in Article 3 shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction.

Therefore, states are only obliged to pursue and prosecute perpetrators of genocide who commit the crime within their own territory. However, this does not preclude states from conferring jurisdiction to their criminal courts based on other criteria, as long as they are compatible with international law (Gaeta, 2009, p. 478). In Russia's case this is not an inconvenience, yet the accusation is for the entire state of Ukraine. Despite the fact Russia blames the Ukrainian government for committing acts of genocide, there is not a concrete perpetrator or perpetrators to blame nor to punish. Besides, the genocide is taking place in Ukraine, so in case there was to be a perpetrator he should be prosecuted in Ukraine.

Nevertheless, unlike Article 6, Article 1 and 3 of the Convention are not territorially limited and apply to a state rather than individuals. The obligation to prevent genocide is an obligation of conduct, not of result. It is an obligation of states to exercise due diligence and employ all means reasonably available to them, to prevent genocide as far as possible (Gaeta, 2009, p. 479; Milanovik, 2008).

It is in Article 9 of the Genocide Convention where these obligations are imposed to the states, this Article declares that any disputes regarding the Genocide Convention have to be taken to the ICJ without excluding any form of state responsibility. Meaning that each party of the Genocide Convention must fulfill its obligations, including to prevent and punish genocide (Gaeta, 2009). Therefore, due to the lack of a territorial limitation on the obligation to prevent

genocide, Russia had a responsibility and its actions are identified under the legal basis of the Genocide Convention.

The obligation to punish genocide is not only limited territorially but also in Article 12 it allows states to extent its commitment with the Genocide Convention to any territories whose international relations are their responsibility. Moreover, while Article 12 permits states parties to change the territorial scope of the requirement to punish genocide, the obligations to prevent genocide and to refrain from committing genocide are not territorially limited and are applicable in all situations. In other words, the ICJ argues that it is the responsibility of every state in the world to stop genocide whenever there is a significant chance that it will occur and wherever it may occur (Milanovic, 2008). Regarding this argument, Russia's actions comply with the Genocide Convention. Russia accused and believed Ukraine was committing acts of genocide on the region on Donbas and it was then when Russia started a military operation to prevent this genocide for happening, which is its obligation regarding the Genocide Convention.

The Genocide Convention does not provide a clear indication of whether it applies to acts of genocide committed within a state's own territory or outside of it. Milanovic's analysis argues that based on the text, context, object, and purpose of the Convention, the Convention supports the view that it applies to both situations (2008), same as the ICJ's interpretation.

In the end, the aim of the Genocide Convention is to prevent an outrageous crime, as it is the genocide. The fewer obstacles there are to achieve this, the easier is going to be to prevent it. For this reason, not establishing a territorial limit in the obligations of the Convention gives more freedom and capacity for states to cooperate towards preventing genocide acts. However, as we have seen in this dissertation, some states sometimes take advantage of this conditions and interpret them their way to act according to their own interests, even in some occasions provoking a bigger damage, as it is the case with Russia.

A collection of proposed articles on the prevention and punishment of crimes against humanity were adopted in 2019 by the International Law Commission (ILC), a UN subsidiary body dedicated to the creation of international law. It recommended these draft articles to the UN General Assembly and recommended the adoption of an international convention on the subject. In addition to the Genocide Convention, this Convention would broaden the definition of international duties to cover all crimes against humanity. The ILC's draft articles replicate and expand upon the Genocide Convention's provisions for extraterritorial prevention as

interpreted by the ICJ (Glanville, 2021). This new proposition will count with a clear territorial scope but it will not be much different from the interpretations of the ICJ.

2.3.2. Interpretation of Judge Tomka

Another relevant interpretation concerning the territorial scope of the Genocide Convention is the one done by Judge Peter Tomka, a Slovak diplomat and international lawyer who serves as a judge of the ICJ since 2003. He was vice-president of the ICJ from 2009 to 2012 and was president from 2012 to 2015. During his term at the ICJ, he participated in high-profile cases such as the case concerning the application of the Genocide Convention between Bosnia and Herzegovina v. Serbia and Montenegro (ICJ, n.d.). Due to his experience and influence in the cases of genocide taken by the Court, his interpretation of the Genocide has been essential for the deliberation of such cases. And therefore, taking into consideration his interpretation on the territorial scope of the Convention is important for our case at hand.

The main argument of Judge Tomka regarding the territorial scope of the Genocide Convention is that it should be territorially limited (Gaeta, 2009). According to the judge, in Article 1 of the Convention, states do have the obligation to prevent genocide outside their territory if they have authority or influence over any of the parties involved in the crisis (Milanovic, 2008). He argued in favor of establishing a criterion on the duty of the states to prevent genocide, based on the state's control of a region, which is already present in the state's responsibilities under most human rights treaties. His theory holds that for a state's commitment to prevent genocide to exist, it would need to effectively control a territory where there is a significant possibility that genocide will be committed by another actor (Gaeta, 2009; Milanovic, 2008).

This theory does not have any legal basis nor is supported in written in the Genocide Convention, for this reason, it becomes just a mere interpretation of the Convention. Moreover, there is a clear uncertainty on the territorial scope of the Convention, which as the ICJ and Tomka have done, it gives states the freedom to interpret the limits and act by their interest under a legal framework. This argument is supported by Professor Schabas in his statement: “while the final convention has much to say about punishment of genocide, there is little to suggest what prevention of genocide really means. Certainly, nothing in the debates about Article 1 provides the slightest clue as to the scope of the obligation to prevent” (2009, p.107).

The majority of the ICJ found that every state in the world has a responsibility to stop any act of genocide regardless of where it takes place, but Judge Tomka's approach is unquestionably more focused on a smaller range of issues. As states have not demonstrated a strong propensity to interpret Article 1 of the Convention as widely as the Court did, one may argue that his approach is more in line with their actual actions (Milanovic, 2008). However, this argument is not entirely true, as for now all the cases filed to the ICJ related to the Genocide Convention are due to accusations of a state blaming another state for committing acts of genocide in their own territory. In the case studied in this dissertation, Russia is accusing Ukraine for committing acts of genocide. They are not only limiting the Genocide Convention to the territories where they have jurisdiction, moreover they are using this Convention to intervene strategically in other countries.

The theory presented by Tomka is consistent with Article 29 of the Vienna Convention on the Law of Treaties. This Article, which deals with the territorial scope of treaties, states that obligations and commitments outlined in a treaty or convention apply to the entire territory of each state party (Ruvebana, 2022). Although the territorial limitation theory argued by Tomka is supported by the Vienna Convention on the Law of Treaties, the Genocide Convention does not clarify any territorial scope on its articles. Therefore, the clarification on the territorial scope in Article 29 of the Vienna Convention can be interpreted as the minimum requirement expected from states, that is, to apply the obligations of treaties and conventions within the territories where they have jurisdiction. This means that every state that ratifies a treaty, takes responsibility to fulfill its obligations at least within its territories. As stated in Article 8 of the Genocide Convention, states could participate and intervene in the global cooperation and safeguard the international peace and security, by preventing acts of genocide.

2.3.3. Interpretation of other states

The third interpretation of the territorial scope of the Genocide Convention and regarding the case between Russia and Ukraine, was done by multiple states through a Declaration of Intervention filed to the ICJ. These declarations interpret not only the acts committed by both parties involved but the legislation on the Convention, states have the right to intervene in the proceedings under Article 63 of the Statute of the ICJ due to the existing confusion of the Convention.

The declarations have different perspectives and approaches; however, the main theme is concentrated in supporting Ukraine and interpreting Article 9 of the Genocide Convention. Nevertheless, there is always a space left for the Court to create its own conclusions. The arguments and interpretations gathered from the declarations of the states can be organized in three main arguments:

The first one is related to the assessment and definition of genocide. Some states argue the necessity of establishing the *prima facie* of allegations of genocide for the Court to decide on jurisdiction. In other words, if the Court is not fulfilled with Ukraine's or Russia's arguments and evidences, then the Court could decline its supremacy on the case (McIntyre, Pomson, & Wigard, 2022). The main argument of Ukraine is subject to Article 9 of the Genocide Convention, by which Ukraine seeks the Court's interpretation, application, or fulfillment of the Convention, in addition to requesting provisional measures. From Ukraine's standpoint, the Court should exercise jurisdiction over the case as Russia accuses Ukraine of violating the Convention and Ukraine is requesting its interpretation to be reviewed. However, from Russia's perspective, its arguments are based on an accusation against Ukraine for committing acts of genocide that need to be proven, and as previously analyzed, the alleged acts of genocide carried out by Ukraine lack veracity and evidence. In the case under consideration, Russia argues that the Court lacks jurisdiction over the matter. Nevertheless, the Court has already determined its jurisdiction, and based on the *prima facie* establishment on the arguments presented by the states, it is evident that the Court has jurisdiction on the case between Russia and Ukraine.

The accurate understanding of genocide, as defined in Article 2 of the Convention, is the second interpretation that allows for intervention and prevention, if required. There are different perspectives on arguments about the consequences of an incorrect assessment or failure to identify the risk of genocide prior to the implementation of preventative measures. While states, such as UK and France, argue the acceptance of not considering any alleged act of prevention as an act of prevention of genocide, Ireland or Portugal are of the opinion that an abusive use of the Convention is considered a violation of itself (McIntyre, Pomson, & Wigard, 2022). Regarding the case studied, on the one hand Russia's actions to prevent genocide will not even be considered as a prevention of genocide, while on the other hand Russia has abused of the Convention to endorse its actions. Both perspectives are right when analyzing Russia's actions. Even if at first sight Russia's military operations did not seem to be to prevent genocide, states are supporting this argument and perspective. At the same time, other states believe Russia

used the Genocide Convention as a legal framework to justify its violent actions, but this has been considered as an abuse of the Convention. Moreover, states interpret that there exists an obligation to prevent genocide with a certainty that the actions taking place correspond to the definition of genocide from Article 2 of the Genocide Convention.

Lastly, the third argument expresses the concern of the states towards the actions accepted to prevent genocide. Leaving aside the territorial scope of the Convention, if a state finds the obligation and the need to intervene to prevent genocide it is important to make sure to act in good faith and with due diligence (McIntyre, Pomson, & Wigard, 2022). Based on this argument, it can be interpreted that states comprehend that the obligation of prevention is not limited to a specific territory. Furthermore, it can be deduced that the states are not asserting whether Ukraine committed acts of genocide, but rather that Russia did not act in a manner that upholds the principles of honesty and integrity. Although they have a different point of view, they all agree that the prevention measures taken by Russia were excessive and not accepted by the Genocide Convention.

All things considered, states' interpretation with respect to the territorial scope of the Genocide Convention is that it is not limited by territorial boundaries. States have the obligation to prevent genocide in any part of the world, as long as, there exists certainty that genocide is being committed. Some of the states argue that the intervention to prevent genocide should be under the limits of the international law, while others discuss the justification of the violation of the international law, in specific situations, such as under an act of prevention of genocide. Nevertheless, they all emphasize "that acts of preventing genocide cannot preclude responsibility for aggression, crimes against humanity or violations of international humanitarian law" (McIntyre, Pomson, & Wigard, 2022). Regarding this argument and analyzing Russia's behavior it is correct to say that its actions have not only overcome the limits of the international law without a solid justification but also its actions have violated the international humanitarian law, committing crimes of war in another country for which the head of the operations is now prosecuted by the ICC.

2.4. Self-defense theory

In this chapter, there will be exposed a new theory related to the case and it will be analyzed the actions of the parties involved from a different perspective. While the previous analysis was focused on the territorial scope of the Genocide Convention, this theory considers the intentions and rights behind the actions taken by the both parties involved.

It has already been analyzed how the populism militias in the Donbas region were in discontent with the ruling of the Ukrainian government and started riots and uprisings. Due to this conflict and danger supposed to the Donbas region, Ukraine had no other option but to intervene, provoking even more damage. In this situation there are two main factors involved, the first is the lack of freedom of speech and self-determination the people from the 'Donetsk People's Republic' and the 'Luhansk People's Republic' were suffering, considered as a violation of their human rights. On the other hand, Ukraine as a government has to make sure to maintain the peace and security of its citizens and the continuous conflicts were provoking damage on both the citizens and the region. None of these actions are justified nor are they correct. However, the riots organized by the militia's groups and the intervention of Russia to save these people can be understood and justified under the self-defense theory.

The self-defense theory, stated in Article 51 of the UN Charter, allows different entities to use the force to defend themselves in case of confronting a threat to their human rights (White, 2018). This theory has two different aspects, it is not the same the right of personal self-defense in domestic legal systems than the right of the state to defend itself. The concept of personal self-defense is recognized as a fundamental principle under international law and allows individuals to protect themselves. However, it is important to note that personal self-defense is not considered a human right, as the right of self-defense originated before the formation of society and the state. On the other hand, state self-defense is a different matter and falls under the purview of public violence between states. The incorporation of the right to self-defense into the UN Charter played a significant role in shaping the international legal order (White, 2018).

Regarding the case studied between Russia and Ukraine the self-defense theory can be applied from different perspectives but always presented as the right states have to defend themselves. The self-defense theory can be related to the military operations started by Russia in Ukraine due to the accusation of committing acts of genocide, Russia has invoked the self-defense as one of the reasons for its intervention. However, this claim has been widely criticized by the

international community, as it is seen as a violation of Ukraine's sovereignty and territorial integrity.

Russia has argued that its actions were necessary to protect ethnic Russians and Russian speakers living in Ukraine, citing concerns of possible genocide. Aside from the fact that the popular militias acted in self-defense while feeling threatened by the Ukrainian government, the fact that these were pro-Russian groups and considered themselves Russian, was a reason enough for Russia to take it as a personal offense and intervened to defend itself, as well as its own people regardless of the territory where they were located. However, this justification can be seen as a pretext for Russian expansionism, as the actions taken by Russia go beyond what is necessary to protect its citizens, which were Ukrainian citizens, and involve the past interests of Russia, such as the annexation of Crimea and military intervention in eastern Ukraine.

The right to self-defense is presented in the international law, specifically in Article 51 of the UN Charter. This Article outlines two key prerequisites for a state to exercise this right. The first one is that a state may only use force in self-defense if it is the target of an “armed attack” and the use of force is both necessary and appropriate to stop the attack (UN, n.d.). Given that Ukraine did not launch an armed attack on Russia and that Russia's use of force was regarded to be excessive and disproportionate, it is believed that Russia's actions in Ukraine violate this criterion. As a result, while the self-defense theory may be used to defend aggressive military actions that violate international law, under certain circumstances where a state or its citizens are legitimately under threat, the principles of sovereignty and territorial integrity cannot be invoked to take action. This analysis is supported by the professor Giselle Borrell, who called the invasion “not only the greatest violation of international law but also a violation of the basic principles of human coexistence” (2022).

Secondly, according to Article 51 of the UN Charter, there exists the obligation to inform the UN Security Council when applying the right to self-defense, which Russia never did. Moreover, Russia started the military operations without previous notice. This was not only harmful for Ukraine, whose territories and citizens suffered unexpectedly, but also for the international community, who did not know how to react and intervene. If Russia had turned to the UN Security Council, then the harm would have been much smaller and things could have been done correctly.

When acting under the self-defense theory, states are not only required to comply the conditions stated in Article 51 of the UN Charter, but they also have satisfied the conditions of necessity,

proportionality, and immediacy to lawfully exercise the right of self-defense. This argument is also supported by the international customary law, which includes unwritten rules and practices that are widely accepted by the international community as legally binding. (Upeniece, 2018). As analyzed before, the situation in Ukraine was not critical nor necessary and there was no need for an external state to intervene in internal riots. Moreover, the Russia's military operations were not intentioned to stop the conflict in Ukraine but to create destruction and harm in the entire country, they were not proportionally similar.

Therefore, Russia fails to satisfy any of the prerequisite of the self-defense theory put forth in Article 51 of the UN Charter, as well as those principles argued in the theory and supported by the international customary law. Moreover, the self-defense theory has been at the center of this conflict, and it is not only Russia who sought its support, but also Ukraine. Under the self-defense theory, the Russian attack to Ukraine could be seen and analyzed as an action of self-defense to protect who they considered they were its own citizens, the pro-Russian and Russian speakers of the popular militias. However, as a result of these military actions and assaults by Russia on Ukraine, Ukraine felt under the obligation to defend itself and its people from foreign invasion, acting in self-defense with the use of force. Ukraine was truly the target of an armed attack started by Russia, making its self-defense reaction as an act under the international law. Both states have used the doctrine of self-defense to support their activities, but while Russia disregards the concepts of sovereignty and territorial integrity, Ukraine, as a victim, is forced to use the self-defend itself in order to uphold its jurisdiction and safeguard its people and territory.

Moving forward, along with the self-defense theory there is the concept of responsibility to protect (R2P), which identifies three main situations: the personal Self-defense, the state self-defense, and the personal self-defense from the state. This last one is not recognized in the legal framework but is the one Russia is relying on to justify its actions. The application of the responsibility to protect principle is only deemed justifiable when it is in self-defense and the use of force is permitted strictly when it is considered as an immediate conduct, necessary and proportional to protect from and attack (White 2018). As for Russia, it only fulfilled the immediate conduct. Russia's military operations were not necessary nor proportional to what was happening in the Donbas region. The fact that it was not necessary has been explain above and considering that de genocide actions were only happening in the Donbas region and Russia's attack was expanded to the entire territory of Ukraine, it cannot be considered as proportional either.

Russia's invasion and forward military operations in the entire territory of Ukraine, ended up being identified as crimes against humanity. Due to this situation the European Union (EU) found itself with the responsibility to protect Ukraine and Ukrainian civilians from the atrocity crimes, war crimes and crimes against humanity they were suffering. Moreover, Ukraine for its part, has been not only asking for help but presenting its rights based on the moral obligation and responsibility of the EU to help and protect Ukraine. Zelensky, the Ukrainian president even compromised the entire EU by saying: "all the people who die, will die because of you" (Bosse, 2022). Analyzing this situation, it is clear there exists a responsibility from the EU to protect Ukraine and its citizens. Zelensky words could be seen as a threat and accusation to make states feel guilty for what was happening, but we also have to consider the situation Ukraine was living and the desperation for help.

The responsibility to protect has played an important role in this case study, first Russia attacked Ukraine under this principle to protect the pro-Russians and Russian speakers that were suffering genocide by the Ukrainian government in the Donbas region. Thereafter, Russia started a military invasion on Ukraine creating now a responsibility from Ukrainian forces and government to protect its citizens and territory, but also there is a responsibility to protect from the UE, who being so close to the conflict and being on the obligation to act under the international law they have to intervene and help Ukraine. Therefore, the responsibility to protect is present in different ways but it is applied with free interpretation, given that Russia had no truly responsibility to intervene in Ukraine.

The responsibility to protect citizens and the territory of Ukraine by the Ukrainian government is more than a responsibility, is an issue of sovereignty and obligation to protect what is theirs. However, the responsibility of the EU can also be seen as a threat to the existing international equilibrium since it may result in additional harm to civilians and escalate the conflict. Therefore, the international community should consider additional countermeasures, such as economic sanctions, to pressure Russia to negotiate a peaceful resolution of the conflict with Ukraine. To avert a potential Third World War in the upcoming months, the prospective application of responsibility to protect should be carefully evaluated and employed as a last resort. Avoiding any actions that can result in additional casualties should be the first goal, along with making sure that a diplomatic solution is found to end the conflict (Choi, 2022).

All things considered, Russia's used of the self-defense theory and the principle of responsibility to protect is not a justification for its invasion to Ukraine. Russia's have been

viewed as a violation of Ukraine's territorial sovereignty. While the application of the responsibility to protect from Ukraine to protect its citizens and territory is a legitimate and justifiable action in accordance with the international law. Ukraine's response was seen as a legitimate effort to protect its citizens and preserve its territorial integrity, keeping its actions under the self-defense theory.

2.5. Comparison with another genocide case

For better understanding and analysis of the case between Russia and Ukraine it is going to be compared to the case of Bosnia and Herzegovina (Bosnia) v. Serbia and Montenegro (Serbia), also correspondent to the Genocide Convention. In 1993, Bosnia filed an application against Serbia regarding alleged violations of the Genocide Convention. When Yugoslavia was divided, the city of Srebrenica became a strategically important location for the Serbs, who did not want to allow a Bosnian Muslim presence and initiated ethnic cleansing. However, the area had previously been designated as a "safe zone" by the UN and was under the protection of 400 UN peacekeepers (Mera Alarcón, 2018). Despite being aware of the large-scale displacement, war crimes, and crimes against humanity committed, the UN did not intervene or seek assistance from other bodies, leading Bosnia to be the first to appeal to the ICJ.

The application filed by Bosnia invoked Article 9 of the Genocide Convention, for the interpretation, application, or fulfilment of the present Convention, as the basis for the Court's jurisdiction. After submitting its application, Bosnia requested provisional measures and were later granted. Serbia and Montenegro for its part, raised preliminary objections to the admissibility of the application and the jurisdiction of the court to hear the case, but these were rejected by the court (ICJ, 1993). This exact sequence of events happened in the case between Russia and Ukraine, which gives them the same approach and therefore a similar analysis regarding the open-ended approaches studied in this dissertation.

The case was open for long, it was not until 2007, after public hearings and extensive findings of fact, the ICJ affirmed that Bosnia had jurisdiction based on Article 9 of the Genocide Convention, and determined that massive killings and other atrocities were perpetrated during the conflict, although not all of these could be characterized as genocide. The ICJ eventually deliberated that Serbia violated its obligation under the Genocide Convention by failing to prevent genocide and by failing to cooperate and punish the responsible (ICJ, 2007).

The ICJ examined whether Serbia was responsible for the July 1995 genocide in Srebrenica, Bosnia. They found that Bosnia was unable to provide sufficient evidence to attribute the genocide to Serbia or persons acting on its behalf. However, the Court determined that the fact that the genocide occurred outside of Serbia's territory was irrelevant in assessing its responsibility under the Genocide Convention. The Court found that Serbian authorities were aware of the risk of genocide in Srebrenica, yet did nothing to prevent it. As a result, Serbia was found to be in breach of Article 1 of the Convention, regardless of the location of the genocide (Milanovic, 2008). This case differs with the one between Russia and Ukrainian in the fact that Serbia was committing genocide outside its territory, in Bosnia. The territorial scope has proven to be a crucial factor in this case, as the extent of the obligations of states in a determined territorial scope under the Genocide Convention is of utmost significance. It follows that if these obligations are restricted to a certain territory, then it can be argued that Serbia acted in accordance with the law by not taking any measures to prevent the genocide, given that the genocide acts were committed within the jurisdiction of another state.

A state has an obligation to stop genocide from happening outside of its territory if it has power or influence over some of the parties involved in the problem. Serbia was not held responsible for failing to put an end to the Srebrenica genocide in Bosnia because it could not be proven that it had jurisdiction over the area or control over the perpetrators. This suggests that Serbia was not to blame for the slaughter at Srebrenica (Milanovic, 2008). This is another perspective of the case, to limit the obligations of the states to the territories where they have jurisdiction or responsibilities, this is also the theory that judge Tomka argues. Based on this theory and perspective Serbia would not have any obligation to try to prevent the genocide that was held outside its territory, moreover if it would have intervened there it could have been considered as a violation of territorial integrity. This is exactly what happened with Russia, who intervened to prevent genocide outside its territory.

There exists a conflict between the territorial scope and the comparison between both cases. On one hand, if there is a territorial limitation concerning the obligations of the states under the Genocide Convention, as judge Tomka argues, then Serbia could not have been blamed for its actions and Russia will have violated the Genocide Convention by trespassing these limitations. On the other hand, if the obligations of the states are not territorially limited, as the ICJ and other states discuss, then Serbia should have intervened to prevent genocide even if it was committed in Bosnia and Russia for this reason has acted correctly and under the Genocide Convention. However, none of these theories are explicitly written in the Genocide Convention

so they are exposed to free interpretation. Moreover, if in its moment the ICJ concluded the case blaming Serbia for not intervening to prevent genocide outside its territories then according to the same theory Russia's attack has to be accepted and justified at least under the territorial scope of the Genocide Convention.

In the case between Bosnia and Serbia, the ICJ stated that every state may only act to prevent genocide within the limits permitted by international law. However, some states, such as the US and the UK, and civil society organizations, have indicated support for humanitarian intervention in extremis (Lerch & Zamfir, 2022). In these interpretations there is not a limitation in territory imposed but a limitation to act in good faith. This is one of the arguments analyzed in the case of Russia and Ukraine, even though the obligations of the Genocide Convention were territorially unlimited, states must always intervene within the limits presented in the international law, but Russia violated all the laws by threatening Ukraine's territorial integrity, sovereignty, and independence. Serbia for its part, regarding the urgency of the moment should have intervened automatically to prevent such atrocities but always under the international laws. Taking this case as a comparison, it could be said that Russia did well taking action to prevent the genocide in Ukraine, however for its part Russia violated the international laws and another state's sovereignty by committing crimes of war and violating human rights.

The territorial scope of the Genocide Convention was questioned as a result of the dispute involving Bosnia and Serbia, and it was left up for interpretation in terms of how obligations should be applied. Since this case, many theories and interpretations have arisen and now there is a new case concerning the territorial scope, the ICJ's interpretation will be the most important one to render its judgement. Let us not forget that behind Russia's actions there are many more elements to analyze than just the territorial scope and for now Russia is seen as the enemy.

3. Conclusion

Russia and Ukraine both agreed and signed to the Budapest Memorandum in 1994. In particular, Russia pledged to "respect the independence and sovereignty and the existing borders of Ukraine" by signing the Budapest Memorandum, as well as to "refrain from the threat or use of force" against Ukraine punishments (Choi, 2022). Starting with the first military attack to the Donbas region on 24 February 2022, Russia has perpetrated war crimes, crimes

against humanity, and acts of genocide. Therefore, Russia should be subject to both international criticism and suitable punishment.

The reasons behind Russia's military operations in Ukraine are not limited to preventing genocide in the Donbas region, as there are other interests at play for Russia. Furthermore, this conflict was not a coincidence, as their shared history has had a significant influence. Ukraine has always been a strategic country due to its location and involvement in trade with Europe. Therefore, Russia has always had a particular interest in having some form of control over this country. In 2014, Russia attempted to annex the Ukrainian regions of Crimea and Donbas, relying on pro-Russian groups and Russian speakers who demanded independence from Ukraine. At last, Russia was able to annex Crimea during this time but was unsuccessful with the Donbas region, which could be described as leaving unfinished business for Russia.

Years later, in 2022, Russia finally found a way to re-engage with the Donbas region and has taken advantage of the uprisings that were taking place with the popular militias to justify its actions as a preventative measure against genocide. Therefore, it is not a coincidence that Russia has specifically accused this region of committing acts of genocide, and it could be said that it has been searching for the right moment and strategy to finish what it started.

Russia initiated the military operations in a specific moment, when the popular militias in Ukraine were provoking conflict, Ukraine was developing nuclear weapons and NATO troops were approaching towards Russian territory, all these reasons heightened Russia's interest and need to intervene in Ukraine. With the background both states share and considering other matters taking place that affected Russia, it could be a reason to question if there were actually acts of genocide committed in the Donbas region. It can be argued that Russia's justification for genocide is based on an abusive interpretation of the concept of humanitarian intervention. After the analysis of the ongoing conflicts in the Donbas region, it can be suggested that these conflicts were mainly provoked by popular militias claiming independence from Ukraine and that it was when the Ukrainian government intervened to stop the riots that aggravated the damage.

Moreover, it could be interpreted that the pro-Russian revolutionary groups lacked freedom of expression and self-determination. After all, it is a human right for each person to identify with the identity and culture they desire, as well as endow with the freedom to express. Regarding this perspective, Ukraine did not listen to these groups and prevented them from achieving the independence they were requiring. This can be seen as a contradiction to the fulfillment of

human rights against the citizens of the Donbas region. However, it is not that easy, the militias groups want Ukraine to sacrifice part of its territory to give it away to Russia, but is Ukraine who owns and has jurisdiction of that territory. This violation of human rights against the citizens of Donbas can be interpreted in different ways but for sure it cannot be considered as genocide, which is what Russia claims. There is no proven intent to physically destroy the popular militias, nor were these groups targeted for elimination. Therefore, the actions that Russia claims to be genocide are exaggerated and do not meet the criteria for genocide. As a result, Russia had no obligation under the Genocide Convention to intervene and enter another state's territory to prevent a genocide.

Regardless of whether the alleged acts are genocidal or not, Russia supported its operations and intervention under Article 8 of the Genocide Convention, which creates the obligation of all states parties to prevent genocide. However, the Convention lacks of a specific territorial scope, for this reason it cannot be determined with certainty whether Russia had to prevent genocide committed outside its territory and in a state where it has no jurisdiction or responsibility. After analyzing different theories and interpretations of the territorial scope, it can be concluded that the most relevant theory and the one that should be used to analyze Russia's intervention is the ICJ theory.

The ICJ recognizes three obligations that states parties have under the Convention, including the obligation to refrain from committing genocide, to prevent any act of genocide and to punish perpetrators. The two first obligations are not applied to a specific territory, so the ICJ interprets them as being imposed without any territorial limits. Therefore, if there was a change of acts of genocide being committed in Ukraine, Russia had the obligation to intervene and prevent it. Regarding the ICJ theory and interpretations Russia's acts can be justified under the Genocide Convention.

Additionally, the theories and interpretations presented by Judge Tomka and other states hold less relevance in this case for various reasons. Firstly, the ultimate decision regarding the case's judgement lies with the ICJ, rendering its interpretation the most significant. Secondly, the Convention does not specify a territorial scope, thus while Judge Tomka's theory is supported by the Vienna Convention on the Law of Treaties, no such restriction has been written into the Convention, leading to free interpretation by states. Thirdly, the declarations made by the states are subjective and lack objectivity due to their limited knowledge, with all their theories tending to favor Ukraine as they view Russia as the adversary.

So far, it seems that Russia had the obligation to act to prevent genocide in Ukraine. However, the analysis conducted provides different reasons to doubt whether genocide was actually being committed in the Donbas region. Another theory that could justify Russia's actions is the theory of self-defense, which argues that states have the right to protect themselves using force if their human rights or security are being threaten. Regarding this theory in the case between Russia and Ukraine, it is concluded that even if Russia claimed that revolutionary groups in Ukraine needed help to defend themselves, Ukraine ultimately had no choice but to resort to self-defense to protect itself from Russia's attacks.

Together with the theory of self-defense, the responsibility to protect emerges, referring to a principle to protect its citizens. In this case, Russia's actions can be seen as a way of protecting the inhabitants of another state, however, this protection model is not recognized. On the other hand, due to the damage that Russia has caused in Ukraine, not only has the responsibility of the Ukrainian government to protect its territories and its inhabitants arisen, but also the responsibility of the EU to defend Ukraine against Russia. Consequently, a very delicate breach has been opened and the international community can be compromised. If all states had the responsibility to support and defend either Ukraine or Russia, it could escalate into a larger conflict.

Finally, a relevant factor for the analysis of this case has been to compare it with the case between Bosnia and Serbia, which also fell under the Genocide Convention. In this case, there was much debate regarding the territorial scope of the Convention, and it was at last concluded that states had the obligation to prevent genocide without any territorial limit. Due to this conclusion, Russia would be acting correctly under the Genocide Convention, since attempting to prevent genocide in a territory outside their own would be their obligation.

All things considered, it can be said that the uprisings in Ukraine were causing a lot of damage and that some form of intervention was necessary to stop them, but if Russia had acted diplomatically and had referred to UN bodies regarding its allegations, everything would have been different. However, it cannot be considered a violation of human rights because of all the facts that were already analyzed and because if it had been, the UN Security Council would have intervened long ago.

Therefore, Russia did not only misuse the Genocide Convention but also its actions cannot be supported by the self-defense theory. The problem with Russia was not that it violated the territorial scope of the Genocide Convention, but that it misinterpreted from the Convention

the definition of genocide and the approach applied in Ukraine, threatening Ukraine's territorial integrity, sovereignty, and independence with the use of force. Russia justified its actions by referring to its "unprovoked and unjustified military aggression," which constituted a "gross violation of international law and the UN Charter" (Bosse, 2022). Identifying this war as non-legitimate.

Some of the limitations found in this dissertation are: the limited availability of primary sources as the case is ongoing and legal and ethical considerations that limit the scope of the investigation. The recentness of the topic is also an obstacle in this analysis, the events have only occurred a year ago and news come out every day that we learn through the media, therefore there is still a lot of investigation and there are no specific analysis or theories on the topic. Additionally, as the case is ongoing in the ICJ, there are many confidential official documents, strategies, and analyses that are not accessible, at least while the conflict is unresolved. With this document it would have been possible to improve the sources of research to enhance the study and increase its level of detail.

Moreover, regarding future ongoing investigations, as new information and studies come out it is easier to come to more concise and concrete conclusion. The conflict between Russia and Ukraine has yet to conclude and the case remains open in the ICJ, new debates and perspectives continue to arise every day. For this reason, as time passes, a greater amount of data will be collected to study if there is a justification to Russia's actions under the Convention on Genocide. For now, based on analysis and the utilization of theories, it can be concluded that Russia did not have adequate nor sufficient legal basis to start military operations in Ukraine. Moreover, Russia's actions have violated the international law, with an assault on sovereignty, independence, and territorial integrity, and the international humanitarian law, by committing crimes of war and violating human rights.

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