

THE UKRAINE WAR AND THE PROHIBITION OF THE USE OF FORCE IN INTERNATIONAL LAW¹

ABSTRACT

As from 24 February 2022, Russia has been escalating its unlawful use of force against Ukraine, which had begun as early as in 2014, to a comprehensive war of aggression. As the world has been witnessing since the beginning of this escalation, Russia's course of action constitutes an existential threat to Ukraine and its people. In addition to that, it implies the serious risk that the authority of the prohibition of the use of force may erode. This study, which has grown out of a speech delivered in Karlsruhe, where Germany's Federal Constitutional Court and Federal Court of Justice are seated, sets out the international legal framework for current and possible future reactions by Ukraine, third States and the international community as a whole in response to Russia's fundamental challenge to what the International Court of Justice has called a "cornerstone of the United Nations Charter".

In large parts, the study is of a doctrinal nature. But it also attempts to shed light on the historic dimension of the topic as well as on some aspects of legal principle. In conclusion, the study recalls previous calls for ringing the death knell for the prohibition of the use of force and the encouraging fact that the supposed patient has always survived. In that vein, this paper argues that if the support of Ukraine from within the international community will be sufficiently determined and steadfast, there is no reason to ring the death knell for Ukraine in its internationally recognized borders and for the universal prohibition of the use of force.

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