



RUSSIA'S INVASION OF UKRAINE AND ARMS TRANSFERS IN THE FRAMEWORK OF INTERNATIONAL LAW

EDITORIAL

Russia's invasion of Ukraine and arms transfers in the framework of international law

Antwerp, April 2022

Front cover image: Street art collage "The Dove of Peace in the Sky of Ukraine" @industrie.tarte ,
"Les Marches de la Paix, Paris

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INTRODUCTION

The international crisis and threat to world peace presented by the massive Russian invasion of Ukraine in early 2022 has thrown up difficult questions, not least of which is how the international community can assist the Ukrainian armed forces defend the country's sovereignty and territorial integrity. In doing so, it is tempting to think of the situation only in military terms, leaving aside what is legally justified and morally right, yet that would be short sighted.

Russia's invasion is a massive escalation from its military intervention in south-east Ukraine which began in 2014 when it illegally annexed Crimea and seized control of areas around Donetsk and Luhansk using uniformed and irregular forces. Yet the undeniable fact is that Ukraine cannot be construed as a military threat to Russia. The [military balance](#) is strongly in favour of Russia.¹ For instance, at the start of the invasion on 24 February, Ukraine reportedly had 800+ main battle tanks, Russia had 2800+ main battle tanks. Following its independence from the U.S.S.R. in December 1991 Ukraine gave up all its nuclear weapons. In return Ukraine received security assurances from China, France, Russia, the US and the UK.² Ukraine has never invaded Russia or occupied its territory. On two occasions Putin has now issued veiled threats to use nuclear weapons against Ukraine and its allies thereby unleashing unimaginable suffering on the world.³

1. PUTIN'S WAR OF WORDS

The Russian president Vladimir Putin has claimed that Ukraine is being used by NATO to threaten Russia, yet Ukraine does not have NATO combat forces on its territory, nor does Ukraine meet the NATO membership criteria. According to NATO's 1999 *Membership Action Plan*, Ukraine could not become a NATO member as long as "ethnic disputes or external territorial disputes including irredentist claims or internal jurisdictional disputes" were not settled "by peaceful means in accordance with OSCE principles and to pursue good neighbourly relations".⁴

Attempting to justify his invasion, he has repeatedly denied Ukrainian statehood, with the following claim on the eve of his invasion... "So, I will start with the fact that modern Ukraine was entirely created by Russia or, to be more precise, by Bolshevik, Communist Russia. This process started practically right after the 1917 revolution, and Lenin and his associates did it in a way that was extremely harsh on Russia – by separating, severing what is historically Russian land..."⁵ On February 26, 2020 in an [interview with Vladislav Surkov](#), then the personal advisor of Putin, Surkov claimed that: "There is no Ukraine. There is only Ukrainian-ness. It is a specific disorder of the mind, a sudden passion for ethnography taken to extremes... I think it does not exist yet... What kind of Ukraine it will be, what its borders will be, and even how many 'Ukraines' there will be. These are open questions. One way or another, Russia will have to participate in resolving these issues."

In July 2021 Putin released an article entitled "On the historical unity of Russians and Ukrainians" in which he [denied the existence of historical arguments](#) to try and justify the claim that a separate Ukrainian nation

1 The Guardian "[How do the militaries compare?](#)", 7 April 2022. This source also provides ongoing reports of the conflict in Ukraine.

2 The Conversation (2022): "[Ukraine war: what is the Budapest Memorandum and why has Russia's invasion torn it up?](#)"; [Memorandum on security assurances](#) in connection with Ukraine's accession to the Treaty on the Non-Proliferation of Nuclear Weapons, 5 December 1994.

3 Wired "[Putin's Nuclear Threat Sets the West on Edge](#)" 24 February 2022; Financial Times "[West takes Putin's nuclear weapons threat seriously](#)" 27 February 2022

4 NATO (1999): "[Membership Action Plan \(MAP\)](#)" Brussels.

5 "[Address by the President of the Russian Federation](#)", 22 February 2022, Permanent Mission of the Russian Federation to the United Nations.

existed prior to the Soviet period. In his 24 February 2022 [declaration of war](#) on Ukraine, he noted "(T)he problem is that in territories adjacent to Russia, which I have to note is our historical land...". He thus lays claim to former Soviet Republics. Putin ignores the fact that 90% of Ukrainians voted for independence in the 1 December 1991 referendum⁶ following which Ukraine was accepted in the United Nations as a member state with its own separate right to vote. But Putin also ignored the vote of the Russian speaking Ukrainians. Fifty-five percent of ethnic Russians voted in favour of Ukrainian independence: "Even Crimea voted 54.2 per cent in favour. Although support sagged as expected in the south and east, it was as high as 85.4 per cent in Odessa and 83.9 per cent in Luhansk"⁷.

Then in a [February 15, 2022 article](#), Surkov, now Putin's former adviser, claimed that following the collapse of the Soviet Union, Russia was pushed back to the borders of 1918 creating a "wicked peace" ("похабного мира"). Forced to give up Belarus, Ukraine, and the Baltic states. "It is unthinkable for Russia to remain within the boundaries of that wicked peace", he said. Adding "There is a lot of geopolitics ahead. Practical and applied. And even, perhaps, contact."

Another attempt by Putin to justify the invasion was the fictitious story that Ukraine was trying to re-establish its own nuclear capabilities – this was called "" in the "Bulletin of the Atomic Scientists". Ukraine has not the capabilities to manufacture atomic weapons: "Ukraine does not have the needed nuclear material for a bomb or the facilities to produce it. All of the highly enriched uranium (HEU) that used to exist ... was removed cooperatively ... Ukraine has uranium deposits, but no conversion facility ... It also has no enrichment plants ... Building that set of facilities would take years and great expense ... Even if Ukraine had the needed nuclear material, it would not be easy to turn it into nuclear weapons ... Ukraine has no missiles or aircraft designed to deliver nuclear weapons ... Beyond all that, Ukraine is committed by treaty not to build nuclear weapons, and all its nuclear facilities are under international inspection."

Another more recent [disturbing development](#) was the accusation by Russia "that Ukraine ran biological weapons laboratories with U.S. Defense Department support". Russia did not provide evidence for that accusation during the 11 March meeting of the United Nations Security Council. The U.N. [High Representative for Disarmament Affairs](#) said "The United Nations is not aware of any biological weapons programmes".

Putin and his top advisors have also repeatedly claimed since 2013 that Ukraine needs to be "denazified" – a reference to followers of World War II Ukrainian Nazi collaborator and far right nationalist leader Stepan Bandera. Several ultra-right Ukrainian political parties and an armed militia claim Bandera's heritage while other much larger political forces in the country reject Bandera's pro-Nazi actions as treacherous. One such ultra-right political party is Svoboda which has apparently lost much of its support. While in the [2012 parliamentary elections](#) Svoboda obtained 10% of the national vote, in the [2019 parliamentary elections](#) Svoboda only obtained 2.15% of the vote. An [April 2021 national election poll](#) estimated an election result of 1 to 2% for Svoboda. Similarly, in the 2019 Presidential elections, Zelenskyy obtained 73% of the vote while the far-right candidate Koshulynskyi received only 1.6%. The Ukrainian armed militia commonly referred to is the [Azov Battalion](#), which has been active in the Donbas region. The former leader of Azov and an unknown number of its fighters held neo-Nazi views and it is hard to verify claims that the members and their views may have changed even though the unit is a very small part of the Ukrainian⁸ armed forces. On the secessionist side of the Donbas conflict there are similar organizations.

According to the head of the Association of Jewish Organizations and Communities of Ukraine following Russian neo-Nazi organizations were fighting in the Donbas region: Russian National Unity, Eurasian

6 T. Kuzio (2000, 2nd ed.): Ukraine: Perestroika to Independence, Palgrave: p. 200.

7 T. Kuzio (2000, 2nd ed.): *ibid* p. 199.

8 BBC Television News 27 March 2022, which claims that far-right political views in Ukraine have recently declined – available to view at <https://youtu.be/2gNp0Pfk0CI>

Youth Union, The Other Russia, Black Hundred, and others.⁹

Experts on the far-right have accused Putin of hypocrisy, referring to a neo-Nazi group operating in Russia called the Russian Imperial Movement (RIM): “Putin tolerates this group because it shows discord in Western countries and causes problems. And so as long as the Russian Imperial Movement doesn’t do anything to disrupt internal Russian politics, he appears to tolerate it”¹⁰. The U.S. Department of State [designated the RIM as a terrorist group](#) in 2020 after RIM members provided paramilitary training to European white supremacy groups who then carried out bombings.

Putin and his advisors have also accused the government of Ukraine of waging genocide against Russian speaking Ukrainians in the Donbas region, thereby requiring the Russian government to conduct a “special peacekeeping operation” in that region. However, the [OSCE Special Monitoring Mission to Ukraine](#) in its daily reports has not reported once on any acts of genocide and on 16 March 2022 the International Court of Justice rejected Russia’s claims and ordered Russia to immediately suspend its military operations that it commenced on 24 February 2022, including those of any military or irregular units directed or supported by Russia.¹¹

2. RUSSIAN RESPONSIBILITY FOR MILITARY AGGRESSION

The vast majority of the international community has condemned Vladimir Putin’s order for the Russian armed forces to invade Ukraine and called it a clear violation of international law and an act of aggression. There is little doubt amongst legal experts that the order and its execution by Putin and his commanders constitute a crime of aggression.¹² On 2 March 2022, the UN General Assembly in a special emergency “Uniting for Peace” session mandated by the Security Council despite Russia’s veto, adopted a resolution by overwhelming majority of almost 80% of member states (141 in favour, 5 against and 35 abstentions) deploring “the aggression by the Russian Federation against Ukraine in violation of Article 2 (4) of the Charter”, and reaffirming “the sovereignty, independence, unity and territorial integrity of Ukraine within its internationally recognized borders”¹³. The resolution deplored the involvement of Belarus in unlawful use of force against Ukraine, condemned the Russian decision to increase the readiness of its nuclear forces and demanded that Russia “refrain from any further unlawful threat or use of force against any Member State”, and “immediately, completely and unconditionally withdraw all of its military forces from the territory of Ukraine within its internationally recognized borders,” which include Ukraine’s territorial waters. The General Assembly also condemned “all violations of international humanitarian law and violations and abuses of human rights” and expressed “grave concern at reports of attacks on civilian facilities such as residences, schools and hospitals, and of civilian casualties, including women, older persons, persons with disabilities, and children.” It called upon “all parties to respect strictly the relevant provisions of international humanitarian law.”

9 [Glavnoe.ua \(2014\): “Глава Ассоциации еврейских общин Украины: Россия заражена идеями реваншизма и это очень тесно связано с фашизмом”](#); V. Likhachev (2016): *Les radicaux de droite dans le conflit russo-ukrainien*. Russie.Nei. Visions, n° 95. Institut français des relations internationales ; J. Holzer, M. Laryš, M. Mareš (2019) : *Militant Right-Wing Extremism in Putin’s Russia: Legacies, Forms and Threats*. Routledge ; NBC News (2014) : [“Meet the Russian Orthodox Army. Ukrainian Separatists’ Shock Troops”](#); Baltinfo (2015): [“Нацбол ДНР не товаруш”](#); N. Yudina, A. Verkhovsky (2019): [“Russian Nationalist Veterans of the Donbas War”](#). Nationalities Papers, v47 n°5.

10 NPR [“The Russian-Ukraine conflict could strengthen neo-fascist groups in both countries”](#) 5 March 2022

11 International Court of Justice (Ukraine v, Russian Federation) Order, 16 March 2022.

12 R. Barber [“What can the UN General Assembly do about Russian Aggression in Ukraine?”](#), EJIL: Talk! 26 February 2022; R. Janik [“Putin’s War against Ukraine: Mocking International Law”](#), EJIL: Talk! 28 February 2022; F. Mégret & K.J. Heller [“A Russian invasion of Ukraine would be an international crime”](#), al Jazeera 17 February 2022.

13 United Nations General Assembly Resolution ES11/1, 2 March 2022. The five states that voted against the resolution were Belarus, Eritrea, North Korea, Russia and Syria. The General Assembly’s emergency session reconvened to adopt Resolution ES-11/2 on 24 March 2022, which addressed the humanitarian consequences of Russia’s aggression and reiterated the demand for Russia to fully withdraw its forces from Ukraine.



Residential building destroyed by shelling in Irpin, Ukraine, 2 March 2022 (Photo: Serhii Nuzhnenko, Reuters)



Moldova - People fleeing the military offensive in Ukraine (Photo: UN Women)

According to UN Charter Article 2(4) "Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations". This prohibition has become customary international law and applies to a number of aggressive scenarios. According to a foremost expert on UN Charter law, "There is no doubt that article 2(4) does not cover just armed attack, a particularly serious form of the use of force, nor just the outbreak of even limited confrontations between the armies of two or more States, but that it is applicable to any military operations conducted by one state against another".¹⁴

Moreover, the threat of force against states in international relations is prohibited, not only its actual use. Since Spring 2021 when the Russian government was amassing its forces near the Russian-Ukrainian and Belarus-Ukrainian borders to influence events in Ukraine, Russia was in breach of article 2(4) of the UN Charter: accepted legal opinion is that "when a State takes even limited military measures and admits that such measures are part of a policy conducted against one State, there is no doubt that article 2(4) is applicable".¹⁵

Another important part of this argument that is often forgotten is that UN Charter Article 2(4) refers not only to sovereignty and territorial integrity but also to the purposes of the Charter – and those include "promoting and encouraging respect for human rights and fundamental freedoms." The purposes of the Charter are set out in Article 1 and include "the principle of equal rights and self-determination of peoples" and "promoting and encouraging respect for human rights and fundamental freedoms." Common Article 1 of both the ICCPR and the ICESCR, the world's two main human rights treaties to which Russia is a party, state that "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development"¹⁶.

Russia was also in serious breach of international law prior to its full-scale military invasion because Putin's 2014 declaration of independence of Crimea, and subsequent annexation, was based on Russia's use or threat of force against Ukraine.¹⁷

14 O. Corten (2010): *The Law Against War: The Prohibition on the Use of Force in Contemporary International Law*, p.52. The UN General Assembly in resolution 3314 (XXIX) of 14 December 1974 defined an act of aggression as "the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter."

15 O. Corten (2010): *The Law Against War: The Prohibition on the Use of Force in Contemporary International Law*, p.78 and p.92-111.

16 Article 1 of the International Covenant of Civil and Political Rights, and Article 1 of the International Covenant of Economic, Social and Cultural Rights. Russia and Ukraine became parties to both treaties in 1973. For summary explanation of the right to self-determination, see M Dixon, R McCorquodale and S. Williams (2011) *Cases and Materials on International Law*, pp. 217-229; and M.D. Evans (2014) 'International Law' OUP, pp.295-296

Similarly, Putin's February 2022 recognition of the "people's republics" of Luhansk and Donetsk is unlawful under international law, because, amongst other things, it was done during an ongoing armed conflict which constitutes a violation of the non-intervention principle.¹⁸ Moreover, the military support of non-state armed separatists in Luhansk and Donetsk by Russia is unlawful under international law.¹⁹ This is important because of previous Russian attempts to deny its military involvement in the Donbas region. The 12-point Minsk II Agreement signed on 12 February 2015 by representatives of Ukraine, Russia, the separatists and the OSCE, obligated the parties to the conflict to implement Article 10 and withdraw 'all foreign armed formations, military equipment and also mercenaries' from Ukraine, and to disarm 'all illegal groups'. However, Russia then claimed it was not a party to the conflict and denied having any forces there, despite increasing its control over the separatist forces in the Donbas region and strengthening the military capacity of those forces.²⁰

3. RUSSIA'S MILITARY SUPPORT OF UKRAINIAN SEPARATISTS

The Russian government's decision²¹ in 2014 to supply of arms to non-state armed groups in Donbas region violates the sovereign right of Ukraine to regulate and control conventional arms exclusively within its territory, pursuant to its own legal or constitutional system.²² In addition, any Russian arms transfers to separatist forces in Crimea and Donbas region are also prohibited by existing obligations under international law, in particular constituting a breach of Article 2(4) the UN Charter.

Evidence of Russia's illegal arms supplies to insurgent forces in Ukraine is clear. A November 2021 [report by Conflict Armament Research](#) has revealed that Russian separatist forces in Luhansk and Donetsk have received weapons from Russia since declaring the breaking away from Ukraine in 2014 despite denials by the Russian government. The OSCE Special Monitoring Mission to Ukraine reported on movements of military equipment crossing the border between Russia and the "non-government-controlled area" during 2014, and suspicious truck convoys at night during 2018, as well as the presence of the latest Russian electronic warfare systems (during February 2020, March 2020, and January 2022).²³ Since 2014 the Ukrainian volunteer initiative, [Inform Napalm](#), has identified the presence of numerous items of Russian military equipment in the Donbas region.²⁴ Several of the above observations by OSCE Special Monitoring Mission to Ukraine were corroborated by Inform Napalm.

Russia has also deployed Russian mercenaries in Ukraine. Units of the Russian private military company Wagner Group were involved in the 2014 seizure of Crimea, and combat in the Donetsk and Luhansk "people's

17 D. Wisheart (2014): "*The Crisis in Ukraine and the Prohibition of the Use of Force: A Legal Basis for Russia's Intervention?*", EJIL:Talk!; N. Krisch (2014): "*Crimea and the Limits of International Law*", EJIL:Talk!; A. Sari (2014): "*Ukraine Insta-Symposium: When does the Breach of a Status of Forces Agreement amount to an Act of Aggression? The Case of Ukraine and the Black Sea Fleet SOFA*", *Opinio Juris*; J. Vidmar (2014): "*Crimea's Referendum and Secession: Why it Resembles Northern Cyprus More than Kosovo*", EJIL: Talk!.

18 R. Janik (2022): "*Putin's War against Ukraine: Mocking International Law*", EJIL: Talk!.

19 *Nicaragua vs USA* International Court of Justice, Judgement, 27 June 1986 para. 246.

20 D. Allan (2020) *The Minsk Conundrum; Western Policy and Russia's War in eastern Ukraine*, Chatham House Research Paper. p.7 and 14

21 Reuters (2014): "*Where Ukraine's separatists get their weapons*"; Conflict Armament Research (2021): *Weapons of the war in Ukraine. A three year investigation of weapon supplies into Donetsk and Luhansk*; International Crisis Group (2016): *Russia and the Separatists in Eastern Ukraine*. Crisis Group Europe and Central Asia Briefing N°79.

22 This sovereign right was reaffirmed in the Arms Trade Treaty adopted by the UN General Assembly on 2 April 2013.

23 See for example: <https://www.osce.org/special-monitoring-mission-to-ukraine/390179> (truck convoys); <https://www.osce.org/ukraine-smm/121255> (unverified movement military hardware); https://www.osce.org/files/2020-11-14_SMM_Daily_Report.pdf (Navodchik-2); <https://www.osce.org/files/2020-03-12%20SMM%20Daily%20Report.pdf> (electronic warfare systems); <https://www.osce.org/files/2020-02-18%20SMM%20Daily%20Report.pdf> (electronic warfare systems, radars); <https://www.osce.org/files/2022-01-14%2520Daily%2520Report.pdf?itok=83487> (2B26 Grad-K).

24 For example: <https://informnapalm.org/en/informnapalm-osint-is-used-at-high-diplomatic-levels-photos/>; <https://informnapalm.org/en/advanced-russian-ew-system-navodchik-2-spotted-in-donbas-for-the-first-time/>; <https://informnapalm.org/en/modern-russian-electronic-warfare-systems-spotted-in-donbas-again-photo/>;

republics”.²⁵ News reports in March 2022 allege that Russian mercenaries linked to a unit in the Wagner Group and to the far-right RIM group are supporting the separatists in the Donbas region.²⁶ Russian press agency TASS reported the presence of Chechen units in Ukraine fighting alongside Russian and separatist forces in south eastern Ukraine.²⁷ In early March, Defence Minister Sergei Shoigu claimed that 16,000 volunteers from the Middle East were willing to fight alongside the separatist forces in Donbas region.²⁸

4. ARMS DELIVERIES TO UKRAINE AND THE UN CHARTER OBLIGATIONS

Following the Russian invasion of Ukraine, arms supplies by NATO and EU countries to Ukraine were suddenly increased to assist Ukraine’s urgent need to repel the heavily armed invading forces. The supplies of defensive military equipment to Ukraine were regarded as being in conformity with international law.

Article 51 of the UN Charter gives all Member States, including Ukraine, the inherent right of individual self-defence in the face of imminent armed attack. “Armed attack” is considered by scholars to be a wide concept.²⁹ To exercise its right to self-defence in the face of an armed attack, Ukraine has the right to acquire arms in order to repel the attack. The procurement of arms by Ukraine and the provision of arms to Ukraine by third parties has been widely considered by states as a necessary and proportional measure to counter the threat posed to Ukraine’s sovereignty. According to a highly respected legal expert on the UN Charter, under Article 41(2) of the law of State responsibility, States “are entitled, if not even obliged, to take countermeasures with a view to re-establish a lawful state of affairs”, because States “should not recognize or in any way contribut(e) to the violation of peremptory norms of international law (such as the principle of territorial integrity and the prohibition of violence within the meaning of Article 2(4) Charter by the Russian war of aggression)”. Any measures, short of “direct participation in hostilities within the meaning of Art. 51(3) AP I and Art. 13(3) AP II”, will not violate the law of neutrality.³⁰

However, after Putin ordered the invasion and had *threatened*³¹ to take drastic action against the possible presence of EU or US military personnel in Ukraine, there was very limited opportunity to establish mitigation measures in Ukraine or even to help train Ukrainian officials and troops in safe locations outside Ukraine.

The majority of the NATO and EU countries are States Parties to the Arms Trade Treaty (ATT) and thus are required to comply with all its provisions, while Ukraine signed the ATT in September 2014 and so must not do anything to undermine the object and purpose of the ATT. Article 6 requires the ATT states to identify those situations in which the authorization of a transfer is prohibited because they have knowledge that the arms would be used in the commission of listed international crimes. Article 7 requires exporting States to assess the potential that the conventional weapons would contribute to or undermine peace and security; or could be used to commit or facilitate a serious violation of international humanitarian law (IHL) or international human rights law (IHRL), or an act constituting an offence under international treaties relating to terrorism or transnational organized crime. If, after considering all the relevant factors, including available mitigation measures, there is an overriding risk of any of these negative consequences,

25 Foreign Policy Research Institute (2019): “*Diplomacy and dividends: who really controls the Wagner Group?*”; The Economist “What is the Wagner Group, Russia’s mercenary organisation?” 7 March 2022

26 BBC “*War in Ukraine: How Russia is recruiting mercenaries*” 12 March 2022; The Guardian “*Russian mercenaries in Ukraine linked to far-right extremists*” 20 March 2022.

27 TASS “*Chechen fighters launch assault on Mariupol plant — Chechnya’s head*” 2 April 2022; TASS “*DPR and Chechnya heads meet in Mariupol, discuss plans for further liberation of city*” 28 March 2022.

28 RBC “*Путин поручил отправить 16 тыс. добровольцев с Ближнего Востока в Донбасс*” 11 March 2022

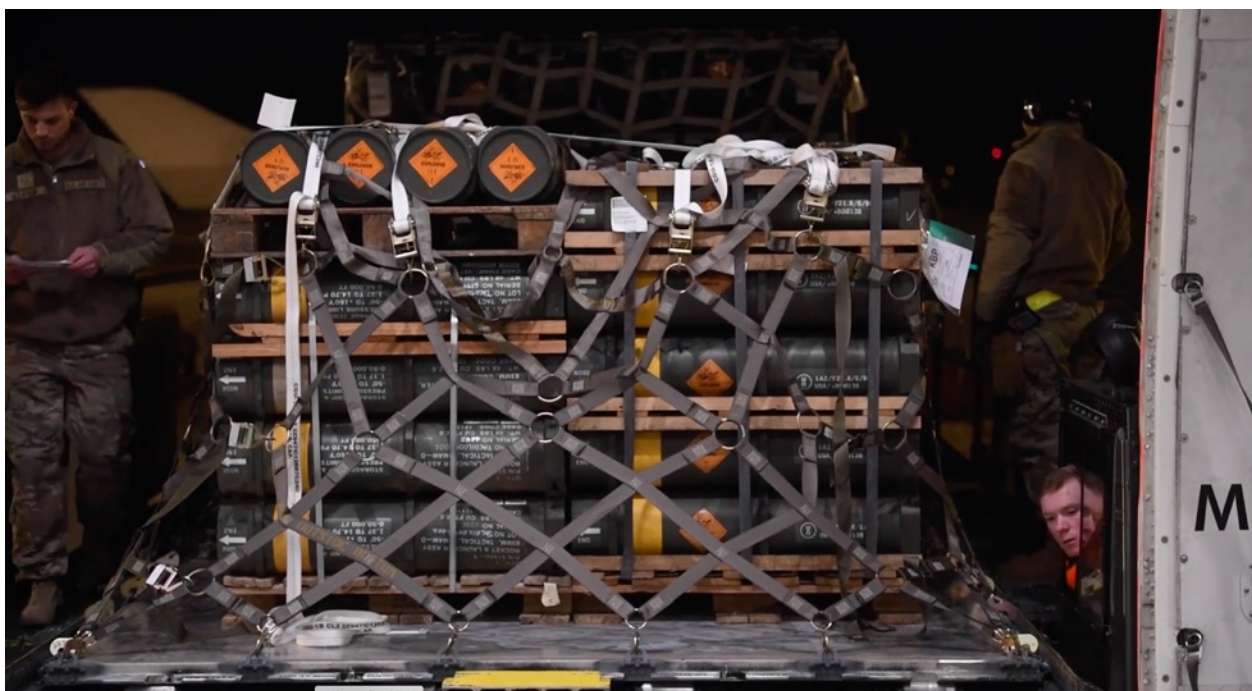
29 I. Detter (2000): *The Law of War*, p. 85.

30 K. Ambos “*Will a state supplying weapons to Ukraine become a party to the conflict and thus be exposed to countermeasures?*”, EJIL: Talk!, 2 March 2022. The acronyms AP I and AP II refer to 1977 Additional Protocols I and II of the four 1949 Geneva Conventions.

31 DW “*What next as Russia-West talks over Ukraine fail to ease tensions?*” 13 January 2022; CNBC “*Pentagon orders departure of U.S. troops in Ukraine as Russia crisis escalates*” 12 February 2022

the export must not be authorized. Furthermore, Article 11 of the ATT obligates the States Parties to prevent diversion and thereby to take certain preventive and risk mitigation measures.

NATO and EU governments, all of whom are parties to the ATT except the United States which is only a signatory³², decided to transfer certain defensive military equipment and platforms to the Ukrainian armed forces³³ “in the face of the severe threat to Ukraine’s security, territorial integrity and civilian population” posed by Russia’s aggression.³⁴ At the time of writing, the arms have included small arms and light weapons, ammunition and air defence and anti-missile systems. In 2021, the EU financed the delivery of equipment to strengthen the UAF military medical, engineering, mobility and logistics units, as well as cyber defence units. Since its independence Ukraine has received US security assistance to undergo defence reforms. After the 2014 invasion by Russia, the US train, equip, and advise efforts were significantly increased. From 2014 through February 2022 Ukraine received \$3 billion in US security assistance, at first predominantly non-lethal equipment and training.³⁵ Since the 2022 invasion, the Biden administration has boosted the aid program with \$1.7 billion.³⁶ The EU and US claim to have weighed up the risks of misuse and diversion of the specific supplies as opposed to the risks to the population of inaction and denial of the supplies. In an attempt to avoid escalating the conflict, NATO and the EU have been reluctant to deliver weapons and platforms to the Ukraine armed forces that would enable them to launch offensive operations inside Russia. However, some governments have been in favour of delivering offensive weapons, such as jet fighters and tanks, to force Russian troops to withdraw from occupied territory in Ukraine.³⁷



Airmen from the 436th Aerial Port Squadron loaded palletized ammunition, weapons and other equipment bound for Ukraine during a foreign military sales mission at Dover Air Force Base, Delaware, Jan. 24, 2022. (Photo: U.S. Air Force by Tech. Sgt. J.D. Strong II)

32 Signatories of a treaty are obliged to avoid measures that would undermine of the object and purpose of that treaty.

33 The following States are reported to have transferred military equipment to the Ukraine armed forces: Australia, Belgium, Canada, Czech Republic, Estonia, EU, Finland, Germany, Latvia, Lithuania, Luxemburg, Netherlands, Norway, Poland, Portugal, Sweden, Turkey, United Kingdom, and USA.

34 Council of the European Union, General Secretariat to Delegations, Concept Note for an assistance measure under the European Peace Facility for the supply to the Ukrainian Armed Forces of military equipment, and platforms, designed to deliver lethal force, Brussels, 27 February 2022.

35 Congressional Research Service (2022): U.S. Security Assistance to Ukraine.

36 U.S. Department of State (2022) “[\\$100 Million in Additional U.S. Security Assistance for Ukraine](#)”.

37 European Council on Foreign Relations (2022): “[How Western offensive weapons can help Ukraine defeat Russia](#)”

Risk mitigation measures announced by the EU include: a commitment of Ukraine to not transfer the arms to any other body, or to re-export the arms without prior EU agreement; prior agreement of Ukraine to possible EU on-site verification “on request”; active monitoring by the EU of Ukrainian armed units receiving military equipment to ensure that those units fully comply with IHL and IHRL; investigation and prosecution of any such IHL and IHRL violations; and termination of the supplies “in case the Ukrainian authorities are in breach of their obligations under international law, in particular IHRL/IHL”³⁸.

The response of the United Kingdom, United States, Canada, France and others to the crisis in Ukraine is in stark contrast to their actions in the Yemen conflict. The UN Human Rights Council’s Group of Eminent International and Regional Experts on Yemen have repeatedly called for a cessation of arms transfers to the conflicting parties given that third States, including Canada, France, Iran, the UK and the US, have kept “transferring arms to parties to the conflict in Yemen in blatant disregard of the documented patterns of serious violations of international humanitarian law and human rights law in the conflict to date.” The UN Group “...believes that they are failing in their responsibilities to ensure respect for international humanitarian law, and that some States may be violating their obligations under the Arms Trade Treaty. Furthermore, such support may amount to aiding and assisting internationally wrongful acts in contravention of international law”³⁹.

Meanwhile, demands for justice and reparations from Russia are being raised by victims and by the Ukraine authorities. Allegations of war crimes by Russian forces, especially in areas north of Kyiv and in the seaport of Mariupol, are increasing. On 28 February the prosecutor of the [International Criminal Court announced](#) that “there was a reasonable basis to believe that both war crimes and crimes against humanity have been committed” so he had opened an investigation into the situation in Ukraine and encouraged international efforts being made to gather reliable evidence. A preliminary examination by the Prosecutor’s Office covering events since 2013 concluded that “armed conflict, involving the persistent use of heavy military weaponry by both sides, including in built-up areas, has since persisted in eastern Ukraine for more than six years, killing at least 3,000 civilians and wounding thousands more. The highest numbers of casualties were recorded in the first year of the conflict, prior to the implementation of the February 2015 Minsk II ceasefire agreement, though casualties, including of civilians, have continued to occur as a result of both shelling and light-arms fire.”⁴⁰ By April mounting evidence had emerged of alleged war crimes, including summary executions and rape by Russian soldiers in the northern suburbs of the capital, Kyiv, and the town of Bucha where hundreds of civilian bodies were found in the streets and in mass graves following Russia’s withdrawal from the area,⁴¹ as well as reports of indiscriminate bombing in Mariupol and Kharkiv including with cluster munitions.⁴² On 7 April the UN General Assembly adopted a resolution, with 93 states voting in favour and 24 against, calling for Russia to be suspended from the Human Rights Council on grounds that Russia commits gross and systematic violations of human rights.⁴³ On 4 March a group of prominent international legal experts [launched a declaration](#) seeking to create a special criminal tribunal to try and punish Putin and others responsible for Russia’s acts of aggression in Ukraine. A major obstacle is that Russia is not a state party to the International Criminal Court (ICC) and can use its veto in the UN Security Council to block a referral of the crime of aggression to the ICC.

38 Council of the European Union, General Secretariat to Delegations, ‘Concept Note for an assistance measure under the European Peace Facility for the supply to the Ukrainian Armed Forces of military equipment, and platforms, designed to deliver lethal force’, Brussels, 27 February 2022, pp. 5-6

39 Report of the Group of Eminent International and Regional Experts on Yemen (2020): Situation of human rights in Yemen, including violations and abuses since September 2014. A/HRC/45/6.

40 Office of the Prosecutor, International Criminal Court ‘Report on Preliminary Examination Activities 2020’, Hague, p.69

41 The Guardian [‘Rape as a weapon: huge scale of sexual violence inflicted in Ukraine emerges’](#) 4 April 2022; Human Rights Watch [‘Apparent War Crimes in Russia Controlled Areas’](#) 3 April 2022.

42 Amnesty International [‘Ukraine: Russia’s cruel siege warfare tactics unlawfully killing civilians – new testimony and investigation’](#) 1 April 2022; The Guardian [‘Mariupol bombing: before and after satellite images show destruction in Ukraine city’](#) 10 March 2022. United Nations Office of the High Commissioner for Human Rights [‘Ukraine: civilian casualty update 2 April 2022’](#).

43 UN News [‘UN General Assembly votes to suspend Russia from the Human Rights Council’](#) 7 April 2022. Russia, China, Cuba, North Korea, Iran, Syria, Vietnam, were among those who voted against.



Satellite image of the bombed Mariupol theatre (Photo: ©2022 Maxar Technologies, AFP)

5. A NEW PHASE OF THE WAR?

At the time of writing, the Ukrainian armed forces have reportedly halted the Russian advance. On 25 March the Russian General Staff announced a troop withdrawal from Kyiv, and a refocus of the Russian forces on the “liberation of Donbas”.⁴⁴ Although U.S. military intelligence analysts recently claimed that the Russian armed forces have been ordered to hold back using all their available firepower in most of Ukraine⁴⁵, nevertheless Putin appears to want to establish Russian control of Ukraine’s seaports. Thus, the conflict looks set to escalate.

At the second International Defence Donor Conference for Ukraine, held by the United Kingdom, on 31 March, the 35 international partners agreed to widen their package of military support for Ukraine “including the provision of increasingly capable air and coastal defence systems”, and more lethal offensive weaponry like “artillery and counter battery capabilities, armoured vehicles and protected mobility, as well as wider training and logistical support”.⁴⁶ On 7 April the NATO Secretary-General announced that NATO Allies are ready to provide more equipment, stating: “rest assured Allies are providing a wide range of different weapons systems, both Soviet era systems but also modern equipment and I think that this distinction between offensive and defensive is a bit strange, because we speak about providing weapons to a country which is defending itself and self-defence is a right.”⁴⁷

It is unlikely that the Ukrainian forces will be able to push the Russian forces completely out of Ukraine but with the supply of more powerful weapons to Ukraine, and the strengthening of international sanctions on Russia, the Ukraine government might achieve a better negotiating position to reach a

44 Interfax “*Main objectives of first stage of special operation in Ukraine generally accomplished - Russian General Staff*” 25 March 2022

45 Newsweek “*Putin’s Bombers Could Devastate Ukraine But He’s Holding Back. Here’s Why*” 22 March 2022

46 UK Ministry of Defence “*UK convenes international conference to secure military aid for Ukraine*” 31 March 2022

47 NATO “*Press conference by NATO Secretary General Jens Stoltenberg following the meetings of NATO Ministers of Foreign Affairs*” Brussels 7 April 2022.

peace agreement with Russia and ensure it is backed up by the international community.

On 20 March, Zelenskyy signalled that the Ukraine government is willing to discuss a peace deal which includes Ukraine adopting a neutral status: "Security guarantees and neutrality, non-nuclear status of our state. We are ready to go for it. This is the most important point", said Zelenskyy.⁴⁸ During the peace talks in Turkey the Ukrainian negotiators specified that Ukraine would not join military alliances or host military bases, in return for security guarantees along the lines of NATO's collective defence clause.⁴⁹ One of Ukraine's lead negotiators in the peace talks said "the key requirement is clear legally binding guarantees to Ukraine, which in their content and form should be similar to Article 5 of the NATO Charter... If Ukraine is the object of any aggression, any military attack or operation, we have the right to demand international consultations within three days, and if these consultations do not lead to any result within three days, the guarantor countries must provide us with military assistance, weapons, or even close the airspace. If we manage to consolidate these key provisions, Ukraine will be in a position to fix its status as a de facto non-bloc and non-nuclear state in the form of permanent neutrality".⁵⁰ For Putin such a neutrality clause would at least require an agreement by the Ukraine government to recognise Crimea as part of Russia, and the Donetsk and the Luhansk oblasts as independent "peoples republics" with wide quasi state powers of autonomy, which was the essence of Russia's extra demands, published on 13 May 2015 under the name of the separatists, as a precondition to implement the Minsk II agreement.⁵¹

A just and peaceful solution depends on whether the international community will be sufficiently united and determined to take actions to stand up and defend the principles and key provisions of the UN Charter and fundamental human rights, established after the Second World War to create lasting peace; or whether they will allow a permanent member of the Security Council to seize foreign territory by force while threatening a nuclear weapons attack in order to create buffer states which it can control.

48 Reuters "[Ukraine ready to discuss adopting neutral status in Russia peace deal, Zelenskiy says](#)" 28 March 2022

49 Reuters "[Ukraine offers neutrality in exchange for NATO-style security guarantees at Russia talks](#)" 29 March 2022

50 Interfax (Ukraine) "[Security guarantees to allow Ukraine fixing status of permanent neutrality – Oleksandr Chaly](#)" 29 March 2022

51 D. Allan (2020) 'The Minsk Conundrum; Western Policy and Russia's War in eastern Ukraine' Chatham House Research Paper. Pp.12-13

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