The Law of War and the Russian Invasion of Ukraine

March 16, 2022

In the days after Russia’s invasion of Ukraine on February 24, 2022, many countries condemned the action as a violation of international law governing when countries may use force against one another. Since then, several observers, including the U.S. Secretary of State and other foreign government officials, have cited evidence that the Russian military has targeted civilians, struck protected sites, and taken other actions that violate international law regulating the conduct of war. This Legal Sidebar provides a brief introduction to the international legal framework governing the use of force in the invasion of Ukraine and concludes with a discussion of avenues for accountability and options for Congress.

Terminology

The law of war generally refers to the portion of international law that regulates the inception of use of force, the conduct of hostilities, and the protection of war victims, among other things. The term is often used interchangeably with the law of armed conflict and international humanitarian law. There are two major categories under the law of war umbrella: jus ad bellum (legal rules governing when a country can resort to use of force) and jus in bello (law governing conduct during the use of force). While they can be interrelated, jus ad bellum and jus in bello generally operate independently such that compliance with one category is required regardless of compliance with the other. For example, a state that is a victim of a jus ad bellum violation because it is attacked without a lawful basis must still comply with jus in bello when conducting military operations to defend itself.

Jus ad Bellum: Deconstructing the Justifications for War in Ukraine

The starting point to analyze most aspects of jus ad bellum is the U.N. Charter. Article 2(4) prohibits member-states from using or threatening to use force against one another, but there are exceptions. Article 51 preserves member-states’ right to act in either individual or collective self-defense when an armed attack occurs, and Chapter VII of the charter permits the U.N. Security Council to authorize military actions necessary to maintain or restore international peace and security. A state can also consent to the use of force in its territory.

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LSB10710
Customary international law (described in this CRS Report) also informs jus ad bellum. Customary international law requires that the use of force be proportionate to the justification for military action and necessary because no other reasonable means of redress are available.

Russia’s Jus ad Bellum Claims

The morning of the invasion in Ukraine, Russia’s permanent representative to the United Nations notified the U.N. Secretary-General of its military action. Appended to the notice was a speech by Russian President Vladimir Putin describing a host of grievances and justifications for the invasion. While it is not clear that international law has had any influence on President Putin’s decisionmaking, he nevertheless couched several justifications using international law and the U.N. Charter’s terminology. Russia’s legal theories centered on three arguments.

First, Russia claimed to be defending itself from a generalized threat posed predominantly by the United States and other NATO members but emanating from Ukraine. Article 51 of the U.N. Charter preserves states’ “inherent right” of self-defense when an “armed attack occurs,” but it does not define the right’s exact contours. While there are a range of views on how imminent the attack must be before use of force in self-defense is allowed, observers have generally concluded that the absence of military action in Ukraine threatening the Russian state means Russia’s self-defense argument is not viable under any standard.

Second, Russia claimed to be acting in collective self-defense of separatist areas in Ukraine’s Luhansk and Donetsk regions, which the Russian government recognized as independent states three days before its invasion. However, the two areas do not appear to satisfy international law’s traditional criteria for statehood. In particular, legal analysts assert that the areas cannot be considered states because their purported independence was established through the use of force; they do not exercise control over the whole of their claimed territory; and they depend upon Russia for economic, financial, political, and military support. Even if the regions could be considered states, observers note that jus ad bellum principles of necessity and proportionality would require Russia to limit its military intervention to actions that protect only these breakaway regions—not a full-scale invasion aimed at the “demilitarization” of all of Ukraine.

Third, Russia argued that its invasion is designed to prevent “genocide perpetrated by the Kiev regime” against Russians and Russian-speakers in Ukraine. As discussed in this Legal Sidebar, Ukraine “emphatically denies” the genocide allegation and has challenged Russia’s assertion before the International Court of Justice. Neither the United States nor international human rights monitors have reported evidence of such genocide in their assessments, and most observers view the claim as an entirely fabricated pretext for overthrowing Ukraine’s government.

Jus in Bello: What Rules Apply During the Conflict?

As the war in Ukraine proceeds beyond the initial invasion to sustained armed conflict, jus in bello principles become more prominent. Jus in bello is derived from a collection of treaties and customary international law. Two sets of international agreements, the Hague Conventions of 1899 and 1907 and the four Geneva Conventions of 1949, form the foundation of the treaty-based portions of jus ad bellum, although other treaties are also relevant. The Hague Conventions chiefly focus on regulating the means and methods of warfare, and the Geneva Conventions primarily provide protections for those who do not take part in the hostilities or can no longer fight. Ukraine and Russia are parties to both core sets of treaties but not to all of their related protocols. “Grave breaches” of the Geneva Conventions and other serious violations of jus in bello can constitute war crimes—an issue explored in this CRS Sidebar.

Key jus in bello principles include the following:
• **Military necessity**: States engaged in armed conflict may take measures necessary to accomplish legitimate military objectives, provided international law does not otherwise prohibit those measures.

• **Humanity**: Military measures cannot inflict suffering, injury, or destruction that is not necessary to accomplish a legitimate military objective.

• **Proportionality**: Parties to a conflict must refrain from attacks expected to cause incidental harm to civilians or damage to civilian property that is excessive in relation to the concrete and direct military advantage to be gained. Parties must take all feasible precautions to avoid or reduce incidental civilian harm.

• **Distinction**: Parties to a conflict must distinguish between civilians and combatants and between protected and unprotected objects. Parties cannot direct attacks at civilians or protected objects.

In addition to these general principles, *jus in bello* provides special protection to certain groups, such as civilians, children, certain medical and religious personnel, and voluntary aid workers. It also protects groups that no longer take part in hostilities, such as the wounded, sick, or shipwrecked or prisoners of war. Common Article 3 of the four Geneva Conventions adds a “minimum yardstick” of safeguards for those who do not otherwise have protected status. It prohibits, among other things, torture; cruel treatment; biological experiments; rape; sexual assault; hostage-taking; and murder, mutilation, or maiming of those not taking part in hostilities. Certain properties also receive special protection, including historic monuments; hospitals; buildings dedicated to religion, art, science, or charitable purposes; and places where the sick and wounded are collected, provided they are not being used for military purposes.

_Jus in bello_ limits the weapons states can use during armed conflict. It prohibits two general categories of weapons—that by nature cause superfluous injury or are inherently indiscriminate—and certain specific weapons, such as poisonous weapons and gases, chemical weapons, and biological weapons. _Jus in bello_ also regulates the conduct and methods of warfare by prohibiting pillaging, limiting destruction and seizure of non-military property, requiring free passage of some humanitarian relief, and regulating the white flag of surrender, among other things.

**Jus in Bello in Ukraine**

U.S. and foreign government officials and observers have asserted that some of Russia’s alleged actions, including the following, could constitute violations of the law of war:

• Use of ballistic missiles and other explosive weapons in an indiscriminate manner in densely populated areas;

• Airstrikes that damaged a Holocaust memorial;

• Artillery, airstrikes, and other attacks on civilians;

• Targeting and seizing nuclear power plants;

• Airstrikes and other attacks on hospitals;

• Attacking and mining agreed-upon humanitarian corridors designed to allow civilians to evacuate from and humanitarian goods to be brought into areas of active conflict; and

• Use of cluster munitions damaging a civilian hospital, residential neighborhoods, and a preschool. (While neither Ukraine nor Russia are parties to the Convention on Cluster Munitions, the munitions’ use could implicate other _jus in bello_ prohibitions.)

Some observers have noted that elements of Ukraine’s conduct are also potentially unlawful. In particular, the public display of captured Russian soldiers during news conferences could implicate the Third Geneva Convention’s requirement to treat soldiers humanely and protect them from “insults and public curiosity.”
Identifying, gathering evidence of, and proving *jus in bello* violations is a highly fact-specific enterprise that requires information of on-the-ground circumstances and decisionmaking. It can be especially challenging to evaluate whether civilian casualties and strikes on civilian infrastructure were intentional (and therefore unlawful) or incidental and not excessive (and therefore potentially permitted under the principle of proportionately). The International Criminal Court is collecting evidence of possible war crimes and other violations of international law in Ukraine. Media outlets, private citizens, and other non-government groups have amassed user-generated videos of Russian military action that could serve as evidence of war crimes. Many hurdles to international accountability remain, however, and Russia denies targeting civilians or violating international law.

**Methods for Accountability and Legislative Options**

Identifying avenues of accountability for law of war violations raises complex practical, legal, and jurisdictional questions. As discussed in this Legal Sidebar, Ukraine is pursuing cases against Russia in the International Court of Justice and other international tribunals, but constraints on jurisdiction and enforcement may limit the cases’ practical impact. Some observers have called for the creation of a new international tribunal with broader jurisdiction to address Russia’s actions. Germany and Poland have reportedly opened investigations into whether the invasion is leading to crimes that can be prosecuted under their respective domestic laws. The United States has a war crimes statute (18 U.S.C. §2441), but it does not provide universal jurisdiction, and the Department of Justice has not prosecuted or convicted anyone for a war crimes offense under this statute. Some commentators have called for Congress to amend this statute to provide broader jurisdiction. Others have proposed amending the Foreign Sovereign Immunities Act to allow civil lawsuits against Russia and attachment of Russian assets.

At the U.N., 141 countries voted for General Assembly Resolution ES-11/L.1, which “deplores” the invasion as an unlawful use of force, but this resolution is nonbinding. Russia vetoed a different resolution at the U.N. Security Council that would have contained a binding “decision” that Russia must immediately cease using force and unconditionally withdraw from Ukraine. As examined in this CRS Insight, U.N. bodies may continue to address aspects of the Russian invasion, and Congress and the executive branch have avenues to influence (but not control) U.N. action.

Congress could consider legislation directing the United States’ Foreign Claims Settlement Commission to permit claims arising from Russia’s invasion and its possible nationalization of American-owned property in Russia. Discussed in this CRS In Focus, the Foreign Claims Settlement Commission is a quasi-judicial, independent agency within the Department of Justice that adjudicates claims of U.S. nationals harmed by foreign governments. Its authority is limited to country-specific programs created through legislation or by referral from the U.S. Department of State.

U.S., European Union, and allied countries have imposed sanctions on Russia in an effort to hold it accountable for the invasion. Some Members of Congress have advocated for expanding those sanctions. Members have also introduced legislation that would authorize the President to seize and liquidate Russian oligarchs’ assets in the United States. The International Emergency Economic Powers Act (IEEPPA) allows the President to block transactions and “freeze” assets, but the President’s authority to vest (i.e., take title to) those assets is limited to circumstances when the United States has been attacked or is engaged in hostilities.
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