

Focus: The Role of International Law in the Russia-Ukraine Conflict (Summary)

Essay: Does “A Hundred Volumes of International Law are No Match for a Few Cannon” Still Apply Today?

Masaharu Yanagihara (Specially Appointed Honorary Professor, College of Liberal Arts, The Open University of Japan)

Russia’s military invasion of Ukraine, launched on February 24, 2022, is considered a crisis for the international legal order. However, suspicions that the principle “might makes law” applies to the international community have existed since the beginning of the 19th century, with Yukichi Fukuzawa stating in 1878 that “A hundred volumes of international law are no match for a few cannon, and a case of ammunition is of more use than innumerable treaties of friendship”.

In his January 1942 article, Ryoichi Taoka, faced with the outrage that was the Greater East Asia War, presented a method of deeply analyzing the existing system from its roots and seeking the ideal form for the system, based on an assessment of the current state of international society at the time without conforming to the times, in order to keep alight “the lamp of international law”. Eighty years after Taoka’s paper, we are witnessing the tragedy of the Russian invasion of Ukraine, and it is just as difficult today as it was then - or even more so - to creatively pursue what we can and should do to protect the “lamp of international law” but it is an urgent task that we must tackle seriously.

1 Unilateral Secession and “Annexation” under International Law: The Legal Status of the Four Eastern and Southern Provinces of Ukraine

Tetsuya Yamada (Professor, Faculty of Policy Studies, Nanzan University)

In this paper, the author examines the international legal status of the Luhansk People’s Republic and the Donetsk People’s Republic, which Russian President Vladimir Putin claimed their independent statehoods. Putin supposedly relied on the right of collective self-defense as the legal basis for his “special military operation” against Ukraine but, for this to be the case, the legal independence of the two republics would have to be established. For unilateral secession to be legal under international law, the right of the inhabitants to internal self-determination must have been violated and a remedial secession must be granted in response. This paper shows that Putin’s claim is contrary to international law, using the Supreme Court of Canada’s decision over Quebec and the International Court of Justice’s advisory opinion over Kosovo’s independence as clues. Furthermore, Putin declared the annexation of the Zaporizhzhia and Kherson regions by Russia as well. The author points out that these, too, cannot be justified under international law and that they are all illegal acts undermining Ukraine’s territorial integrity. In doing so, he refers in detail to the actions taken at the United Nations, including the draft Security Council resolution that was scrapped due to Russia’s veto.

2 The Legality of Russia’s Military Invasion of Ukraine and the International Community’s Response

Kentaro Wani (Professor, Graduate School of International Public Policy, Osaka University)

This paper examines the Russian military invasion of Ukraine launched on February 24, 2022 and

the international community's response to it from the perspective of international law. First, it examines Russia's military invasion from the perspective of international law regarding the regulation on the use of force, and makes it clear that Russia's military invasion cannot be justified under international law by any of the justifiable grounds for the use of force that Russia may have relied upon, namely, the right of individual self-defense, humanitarian intervention, and protection of nationals abroad. Second, regarding the military assistance given to Ukraine by other States, military assistance to a belligerent State can be justified by the right of collective self-defense if that belligerent State is lawfully using force but, in situations where the use of force has not been officially determined as lawful or unlawful by the UN Security Council, there may be a risk that the assistance to a belligerent state may be regarded as an illegal use of force or an armed attack by the other belligerent. This paper also explores the functions that the law of neutrality may perform in such a situation.

3 Economic Sanctions against Russia and International Law

Kazuyori Ito (Professor, University of Tokyo Graduate Schools for Law and Politics)

In response to Russia's aggression against Ukraine, Japan and other countries have imposed economic sanctions in various areas such as trade, investment and finance. It is important to examine whether these sanctions violate treaties in each area and customary international law in order to ensure stable implementation of sanctions against Russia. Trade sanctions may conflict with various provisions of the GATT, but violations may be justified by the public morality clause in GATT Article 20(a) and the security clause in GATT Article 21. Investment and financial sanctions could also constitute violations of investment agreements that individual countries have with Russia, but whether they can be justified depends on the exceptions stipulated in the respective investment agreements. In addition, consistency with customary international law regarding state immunity and the exercise of state jurisdiction is also an issue. Even if sanctions cannot be justified under these treaties and customary international law, the wrongfulness may be precluded by characterizing those sanctions as countermeasures under general international law. In such a case, whether countermeasures by third states other than the injured state are permissible will become an issue.

4 Ongoing Armed Conflicts and the International Court of Justice: The Role and Limits of the International in the Russia-Ukraine Conflict

Hironobu Sakai (Dean, Kyoto University Law School, Professor of International Law, Graduate School of Law, Kyoto University)

When the International Court of Justice (ICJ) deals with cases related to armed conflict, it renders its decision on the relevant international law issues on the basis of the existence of its jurisdiction, the rejection of the political question doctrine, and the full exercise of its judicial function. Furthermore, the ICJ can use the opportunity to not only resolve the dispute between the litigants but also to present its own interpretations and decisions to the international community even before the existence of jurisdiction is established, where it emerges as a global governance actor responsible for the maintenance of international peace and security. In this conflict, Ukraine brought Russia to the ICJ and requested it to order provisional measures because Ukraine expected the ICJ to exercise the global governance function in addition to resolving the dispute. While there are constraints on the ICJ's functions, such as jurisdiction based on the consent of the parties and judicial propriety inherent in the judicial function to settle the dispute, the ICJ also has the role of providing certain guidelines to the international community through provisional measures orders, such as ordering the suspension of military activities and affirming the principles of international law, so that the conflict as a whole can be resolved in the international community's political processes.

5 Possible Punishment of Core Crimes in Ukraine

Kuniko Ozaki (Specially Appointed Professor, Faculty of Law, Chuo University)

Russia's invasion of Ukraine in February 2022 has posed many fundamental challenges to the post-WWII international legal order. One of them relates to the law of armed conflict, international humanitarian law, and the international criminal law governing the pursuit of individual criminal responsibility. In particular, the investigation and prosecution of war crimes and other crimes under international law committed during the invasion have raised multiple legal issues such as the role of International Criminal Court and of the judicial institutions of third countries. The legal status of the so-called Luhansk and Donetsk People's Republics further complicates the issue. In addition, a series of reported violations of humanitarian law seem to suggest that the division of values in the international community in the post-post-Cold War era and the accompanying challenges to the international legal order have extended to the law of armed conflict and humanitarian legal order, which, so far, has been considered neutral. This paper provides an overview of the prosecution of "core crimes" in the current conflict, and discusses future prospects and challenges for the prosecution of these crimes.