



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—those 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.

Author Information

Stephen P. Mulligan
Legislative Attorney

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