

Legal Issues Arising out of the Conflict in Ukraine: Use of Force Issues

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Outline

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 - A. Threats
 - B. Use of force (and aggression)
 - C. Justifications
 - 1. Self defense
 - 2. Collective self defense
 - 3. Humanitarian intervention/genocide
- II. Restraints on Ukraine
 - A. Use of force within Ukraine (including Crimea and Donbas)
 - B. Use of force in Russia
- III. Restraints on the United States (and Other Third States)
 - A. Collective self defense
 - B. Neutrality
 - C. Economic and other measures
- IV. International Organizations and Ukraine
 - A. UN Security Council
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 - C. Other

Agreement Excerpts

UN Charter

Article 2(4)

All 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.

Article 39

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

Article 41

The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

Article 42

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.

Article 51

Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

Memorandum on security assurances in connection with Ukraine's accession to the Treaty on the Non-Proliferation of Nuclear Weapons. Budapest, 5 December 1994

1. The United States of America, the Russian Federation, and the United Kingdom of Great Britain and Northern Ireland, reaffirm their commitment to Ukraine, in accordance with the principles of the CSCE [Commission on Security and Cooperation in Europe] Final Act, to respect the Independence and Sovereignty and the existing borders of Ukraine.

2. The United States of America, the Russian Federation, and the United Kingdom of Great Britain and Northern Ireland, reaffirm their obligation to refrain from the threat or use of force against the territorial integrity or political independence of Ukraine, and that none of their weapons will ever be used against Ukraine except in self-defense or otherwise in accordance with the Charter of the United Nations.

North Atlantic Treaty

Article 5

The Parties agree that an armed attack against one or more of them in Europe or North America shall be considered an attack against them all and consequently they agree that, if such an armed attack occurs, each of them, in exercise of the right of individual or collective self-defence recognised by Article 51 of the Charter of the United Nations, will assist the Party or Parties so attacked by taking forthwith, individually and in concert with the other Parties, such action as it deems necessary, including the use of armed force, to restore and maintain the security of the North Atlantic area. . . .

Article 6

For the purpose of Article 5, an armed attack on one or more of the Parties is deemed to include an armed attack:

- *on the territory of any of the Parties in Europe or North America . . .;*
- *on the forces, vessels, or aircraft of any of the Parties, when in or over these territories or any other area in Europe in which occupation forces of any of the Parties were stationed on the date when the Treaty entered into force or the Mediterranean Sea or the North Atlantic area north of the Tropic of Cancer.*

Hague Convention (V) Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land

Article 7

A neutral Power is not called upon to prevent the export or transport, on behalf of one or other of the belligerents, of arms, munitions of war, or, in general, of anything which can be of use to an army or a fleet.

Article 9

Every measure of restriction or prohibition taken by a neutral Power in regard to the matters referred to in Articles 7 and 8 must be impartially applied by it to both belligerents.

Hague Convention (XIII) Respecting the Rights and Duties of Neutral Powers in Naval War

Article 6

The supply, in any manner, directly or indirectly, by a neutral Power to a belligerent Power, of war-ships, ammunition, or war material of any kind whatever, is forbidden.