



What You Need to Know: Unpacking the Law in Russia's War Against Ukraine

What International Law Has to Say About Assistance to Russia's War Against Ukraine

Catherine Amirfar | May 2, 2023



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Given Russia's aggression against Ukraine is such a clear and egregious violation of Article 2(4) of the United Nations Charter, legal scholars have explained since the outset of the full-scale invasion in February 2022 that states who support Russia's actions in Ukraine could themselves face legal consequences. Nevertheless, in the months since then, a number of states have provided assistance to Russia. As a general matter, when is it unlawful under international law to support a party to an armed conflict?

As your question implies, the U.N. Charter is of paramount importance when evaluating the lawfulness of supporting a party to an armed conflict. Article 2(4) of the Charter prohibits the "use of force against the territorial integrity or political independence of any state." There are very few exceptions to this rule: individual or collective self-defense under Article 51 of the Charter; authorization by the United Nations Security Council acting under Chapter VII; and potentially also state "consent" to the use of force on its territory.

Looking at Russia's war in Ukraine, it is well-established that Ukraine may lawfully call on other states to aid in its collective self-defense against Russia under Article 51. Russia, on the other hand, is not entitled to invite other states to use force to assist it as it has no valid claim to self-defense against Ukraine. Accordingly, any state that uses force in support of Russia would violate Article 2(4) of the Charter, given that no other exception applies.

More debated is whether the supply of weapons to a party to an armed conflict *itself* amounts to a use of force under Article 2(4), where otherwise not justified under Article 51. While the International Court of Justice ("ICJ") has so far held only that the provision of weapons amounts to a violation of the customary international law prohibition on the use of force in the context of non-international armed conflicts, commentators have suggested that the same rule may apply to the supply of weapons in international conflicts, such as Russia's war in Ukraine.

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Liability for supporting a party to an armed conflict may be incurred in three main circumstances.

First, under the law of state responsibility, States may be responsible where they “aid or assist” another state that commits violations of international law, including violations of Article 2(4), as well as breaches of international humanitarian law (“IHL”) and human rights law. Article 16 of the International Law Commission’s (“ILC”) [Articles on State Responsibility](#), which the ICJ [recognized](#) as customary international law, sets out a standard for what is effectively state “complicity” in international law. Under this rule, states are responsible where they “aid or assist” another state with “knowledge of the circumstances of” the other state’s violation of international law. Article 41(2) of the [Articles](#) reinforces this provision in the context of violations of peremptory norms of international law by providing that States shall neither “recognize as lawful a situation created by [such] a serious breach” nor “render aid or assistance in maintaining that situation.” The ICJ has previously applied these duties of non-recognition and non-assistance in relation to illegal occupations in both the [Consequences for States of the Continued Presence of South Africa in Namibia](#) Advisory Opinion and in the [Construction of a Wall](#) Advisory Opinion. In the *Namibia* opinion, the ICJ held that states were under an obligation “to recognize the illegality and invalidity of South Africa’s continued presence in Namibia ... [and] to refrain from lending any support or any form of assistance to South Africa with reference to its occupation of Namibia,” and in the *Wall* opinion, the ICJ found that states were under an obligation not to render aid and assistance in maintaining the illegal situation resulting from Israel’s construction of a wall in the occupied Palestinian territory.

Second, under IHL, Common Article 1 to the 1949 Geneva Conventions provides that parties have a “duty to ensure respect” for the Conventions. According to the 2020 [Commentary](#) to Geneva Convention III, this includes both a “negative” obligation—i.e., an obligation not to “aid or assist in violations of the Conventions by Parties to a conflict”—as well as a “positive” obligation—i.e., an obligation to “do everything reasonabl[e] ... to prevent and bring such violations to an end.” The ICJ recognized the “negative” limb of Common Article 1 in its [Nicaragua](#) judgment, where it held that states are under an obligation “not to encourage” violations of the Geneva Conventions. In the context of lending assistance, Common Article 1 therefore means that states may not provide support to parties to an armed conflict engaged in known or foreseeable IHL violations. The [Arms Trade Treaty](#) effectively [mirrors](#) this obligation by prohibiting states from supplying weapons to other parties knowing that they will be used in the commission of serious IHL violations and other offenses.

Finally, states (and any involved individuals) may also incur international criminal liability for supporting another party to an armed conflict where they “aid or abet” certain crimes, including war crimes and crimes against humanity, as detailed in the statutes of various international criminal tribunals.

Let’s take a closer look at the actions by a handful of states in Russia’s war in Ukraine. First, [Belarus](#) has reportedly provided support to Russia in the form of [hosting Russian troops, weapons, and other equipment](#); [providing tanks](#); [mobilizing drivers and mechanics to repair Russian military equipment](#); [permitting the use of its territory for Russian supply lines](#); [providing medical care to Russian troops](#); and [enabling Russia to use Belarusian territory as a launching ground for its missiles and armed forces](#). In January, the two countries engaged in [joint military drills](#), although the [Belarusian Defense Ministry](#) [claimed](#) the “joint military grouping” and drills were “solely in the interests of strengthening the protection and defense” of Belarus. Does this support make Belarus a co-belligerent of Russia’s in the conflict and, in turn, an aggressor in the eyes of international law?

Before diving into this question, it is worth noting that Belarus may well be liable in relation to these actions under the various sources of international law I've just mentioned. "Co-belligerency," by contrast, is a concept specific to IHL which is not directly connected to the issue of illegality, but which instead refers to joint participation in hostilities. Because co-belligerents are, [factually speaking](#), "parties" to the conflict, IHL applies to them. This application of IHL in turn renders the co-belligerent's military forces and objects susceptible to targeting.

The issue of when exactly a state providing support to a party to an armed conflict becomes a co-belligerent remains heavily contested. On the one hand, active participation in hostilities [clearly](#) amounts to co-belligerency, as might be involved in enforcing a [no-fly zone](#). More complicated is determining whether less direct forms of support also result in co-belligerency. Reasoning from the "overall control" standard for determining when an indirect intervention [results in](#) an international armed conflict, as well as the IHL [standard](#) for direct participation in hostilities by civilians, [commentators](#) have attempted to draw some lines. While participating in decision-making about attacks, supplying [information](#) sufficient to enable attacks, and allowing the use of military or air bases to enable attacks may all potentially amount to co-belligerency, financing, equipping, or training parties to an armed conflict are alone generally considered insufficient.

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To the extent that in addition to hosting [thousands](#) of Russian troops, Belarus takes steps to execute a joint attack across Ukraine's northern border, as certain sources have warned, or to make good on its [threat](#) to send forces to fight alongside Russia, Belarus would be hard-pressed in those circumstances to argue that it was not a co-belligerent of Russia.

The question of aggression is considerably more straightforward. The [Definition of Aggression](#), adopted by the U.N. General Assembly, includes "the action of a State in allowing its territory ... to be used by ... [an]other State for perpetrating an act of aggression against a third State." Accordingly, if Belarus' conduct can be characterized as enabling Russian attacks on Ukraine via its territory, such conduct likely [would fall](#) within the definition of aggression.

[Next, let's look at another example farther from Ukraine's borders: Iran has had an increasing role in supplying Russia with drones and reportedly providing personnel to assist in their operation on the ground. Iran is also reported to be entering into a new agreement to manufacture additional drones in Russia. Does Iran's assistance to Russia violate international law? What are the potential repercussions if so? We assume the answers to this question can also elucidate the general legal framework that would apply to other state's conduct, including China's.](#)

First, as noted at the outset, Iran's supply of weapons to Russia may constitute a violation of Article 2(4), given Russia's lack of a justification for the use of force.

Second, Iran's transfer of drones likely also runs afoul of Common Article 1, which [prohibits](#) states from transferring weapons with "[recklessness](#)" to parties likely to commit violations of IHL. That is so particularly given the well-documented and frequent pattern of Russia's indiscriminate [attacks](#) on civilians and civilian infrastructure in Ukraine.

Third, Iran's actions may also render it liable under Article 16 of the ILC's [Articles](#) especially as they amount to a [significant](#) or [material](#) contribution to Russia in its commission of internationally wrongful acts. While commentators have [debated](#) whether the required mental element under Article 16 is "knowledge" or "intent," in these circumstances, it would be difficult to claim [unawareness](#) of Russia's illegal war and related violations, meaning that Iran can be presumed to intend the foreseeable consequences of its assistance—namely, assisting Russia's commission of these acts. The commentary to the ILC's Article 41(2) further supports

this view as it notes in the context of peremptory breaches of international law, it is “hardly conceivable” that a state lending support would not have notice of those breaches.

As for potential consequences, Iran and other states that have rendered illegal support to Russia may face countermeasures, which could be taken by Ukraine, the injured state, or potentially by third states. Such third-party countermeasures could be justified under a theory of enforcing *erga omnes* obligations, or the [notion](#) of collective self-defense of Ukraine. In addition, ILC Article 41(1) [potentially](#) imposes a positive duty on third states to “cooperate to bring an end to” serious breaches of international law, though the relevant Commentary recognizes that such a duty may still be developing under customary international law.

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Individuals engaging in illegal assistance may also risk international criminal liability for [“aiding and abetting”](#) various crimes, as noted previously. Such individuals may also face sanctions, and in fact the United States has already applied sanctions to dozens of Belarussian [individuals and entities](#) believed to have facilitated Russia’s invasion, as well as [several firms](#) and individuals involved in the [production and transfer](#) of Iranian drones to Russia.

What does international law have to say about providing assistance to a victim of aggression? Is there any legal reason why assistance to Ukraine has been circumscribed? For example, there are reports that the United States has limited the range on Himars rocket launchers it has provided to Ukraine, presumably to ensure Ukraine can’t use U.S. weaponry to strike Russian territory. Do you think this move is primarily about policy concerns over escalation risks in the war? Or are there legal risks that need to be weighed as well? And is the distinction between “offensive” and “defensive” weapons meaningful as a legal matter when a country is engaging in military operations to regain its own occupied territory?

These decisions are likely informed by both policy and legal concerns, given Russia’s [dangerous threats](#) concerning nuclear weapons, as well as Russia’s [rhetoric](#) appealing to legal concepts, and the desire to give wide berth in the event of any [disagreement](#).

In relation to the supply of weapons to Ukraine, one key legal issue which I haven’t yet mentioned is neutrality. In the wake of Russia’s invasion of Ukraine, commentators have disagreed about whether the law of neutrality is at all relevant to the provision of support to Ukraine. Briefly stated, while [some](#) have maintained that the law of neutrality [does not](#) apply following the outlawing of war and the adoption of the U.N. Charter, [others](#) have suggested that the provision of support to Ukraine *does* breach neutrality, but that Russia would at most only be permitted to take countermeasures in response, not resort to the use of force. For its part, the U.S. government has [adhered](#) to a “qualified neutrality” position, which [allows](#) for assistance to states that are victims of aggression.

As a practical matter, it is difficult to discern the difference in the context of active hostilities between “defensive” and “offensive” weapons. Nevertheless, one potential reason for limiting the provision of weapons to those which might be considered “defensive” may be to make abundantly clear that U.S. provision of weapons to Ukraine is solely for purposes of defending Ukraine from Russia’s aggression, thus squarely falling within the confines of “qualified neutrality” and the previously mentioned justification of Ukraine’s right of collective self-defense under Article 51. As one [commentary](#) has pointed out, ILC [Article](#) 21 furthermore precludes certain acts from being considered violations of international law if performed in the exercise of self-defense under the U.N. Charter. 🌐

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