

[NSL p. 262. Insert the following new Note.]

13. *Russian Aggression in Ukraine?* In 2014, Russia invaded and then annexed Crimea, a part of Ukraine, without serious opposition. Russian President Vladimir Putin argued that its takeover simply restored historic ties with the Black Sea peninsula. Neil MacFarquhar, *From Crimea, Putin Trumpets Mother Russia*, N.Y. Times, May 9, 2014. Why did the U.N. Security Council not condemn the Russian move as an act of aggression under Article 39 and a violation of Article 2(4) of the U.N. Charter? See Richard Gowan, *Guide to the Chess Game at the United Nations on Ukraine Crisis*, Just Security, Jan. 21, 2022 (analyzing in detail potential roles of the Security Council and General Assembly, and concluding that “the U.N. is unlikely to be much more than a platform for political theater over large-scale war in Ukraine”).



CIA Map of Ukraine

Also in 2014, Russia began supplying weapons, other supplies, and some military forces to support rebels fighting the Kyiv government in the Russian-speaking Donbas region of Eastern Ukraine. A detailed history and background are provided by Vincent L. Morelli, *Ukraine: Current Issues and U.S. Policy* (Cong. Res. Serv. RL33460), Jan. 3, 2017. By early 2022, the ongoing conflict there had claimed an estimated 13,000 lives and displaced 1.5 million people. Council on Foreign Rel., *Global Conflict Tracker* (updated Jan. 21, 2022). Has Russia’s support for Ukrainian rebels violated international law, based on standards set out in the *Nicaragua* decision?

In 2021, Russia began massing at least 100,000 troops, tanks, and artillery along Ukraine’s eastern border and in neighboring Belarus. Putin has insisted that Russia has no intention of invading. But he has warned that NATO must pledge never to admit Ukraine as a member, which he says would threaten Russian security, and that the United States and its allies must withdraw most military forces from former Soviet bloc states in Eastern Europe. Andrew E. Kramer & Steven Erlanger, *Russia Lays Out Demands for a Sweeping New Security Deal with NATO*, N.Y. Times, Dec. 17, 2021. Some suspect, however, that the real purpose of Russia’s military buildup is to prompt replacement of the current elected government in Kyiv with one friendly to Moscow. Paul Sonne, *U.K. Accuses Russia of Scheming to Install a Pro-*

*Kremlin Government in Ukraine*, Wash. Post., Jan. 22, 2022. Whatever Russia's motives are, do its actions on Ukraine's borders violate international law?

The United States has responded to these Russian moves with assurances that an invasion would be met with crippling economic sanctions, including possible expulsion from the global banking system. David E. Sanger & Eric Schmitt, *U.S. Details Costs of a Russian Invasion of Ukraine*, N.Y. Times, Jan. 8, 2022. An armed U.S. response was not among the options mentioned but was not specifically excluded. Nevertheless, in late January 2022 the Pentagon placed some 8,500 U.S. troops on heightened alert for possible deployment with a NATO quick reaction force in Eastern Europe. Barbara Starr & Jeremy Herb, *US Places up to 8,500 Troops on Alert for Possible Deployment to Eastern Europe amid Russia Tension*, CNN, Jan. 24, 2022. Would an armed U.S. response to a Russian invasion be justified under international law?

Meanwhile, U.S. diplomats have engaged in intensive negotiations with its NATO allies and with Russia in an effort to defuse the situation. At the same time, the United States and its allies have increased shipments of weapons and other military supplies to Ukraine. Amy Cheng, *Military Trainers, Missiles and Over 200,000 Pounds of Lethal Aid: What NATO Members Have Sent Ukraine So Far*, Wash. Post, Jan. 22, 2022. Do these shipments violate international law?

In a news conference on January 19, 2022, President Biden stated that

Russia will be held accountable if it invades. And it depends on what it does. It's one thing if it's a minor incursion and then we end up having a fight about what to do and not do, et cetera.

But if they actually do what they're capable of doing with the forces amassed on the border, it is going to be a disaster for Russia if they further . . . invade Ukraine, and that our allies and partners are ready to impose severe costs and significant harm on Russia and the Russian economy. [White House, Remarks by President Biden in Press Conference, Jan. 19, 2022.]

His remarks were immediately criticized as impliedly inviting Russian aggression short of a full-scale invasion. The next day, Secretary of State Anthony Blinken announced that "if *any* Russian military forces move across the Ukrainian border," the United States and its NATO allies would deliver "a swift, severe and united response." Michael Crowley & Steven Erlanger, *Biden Strengthens Words on Ukraine After Flustering European Partners*, N.Y. Times, Jan. 20, 2022 (emphasis added). Whether or not you believe that Biden's suggestion of a calibrated U.S. response reflected sound public diplomacy, was it consistent with international law, as described in the *Nicaragua* decision? Can you fashion a public declaration for President Biden that reflects the strongest possible legal deterrent threat?