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Editorial Comment

Russia, Ukraine, and the Future World Order

Ingrid (Wuerth) Brunk and Monica Hakimi 687

Russia's invasion of Ukraine, initiated on February 24, 2022, is among the most—if not the most—significant shocks to the global order since World War II. This piece assesses the stakes of the invasion for the core principles that lie at the heart of contemporary international law and the world order that it has helped to create. We argue, relying in part on the other contributions to the October 2022 agora on Ukraine in the *American Journal of International Law*, that however this war ends, it will reshape, in ways large and small, the world we all inhabit.

Agora Essays: The War in Ukraine and the Future of the International Legal Order

Ukrainian Refugees, Race, and International Law's Choice Between Order and Justice

Marissa Jackson Sow 698

The resurgence of racist rhetoric and policies concerning people fleeing the war in Ukraine serves as a reminder that the ostensible goals of the 1951 Convention Relating to the Status of Refugees and 1967 Protocol are regularly eschewed by states making decisions about how to allocate grants of asylum. This Essay makes the claim that racial tiering of protection-seekers demonstrates that states use international refugee law to negotiate their national whiteness contracts and to secure racially hegemonic geopolitical ordering.

In Defense of Comparisons: Russia and the Transmutations of Imperialism in International Law

Anastasiya Kotova and Ntina Tzouvala 710

While Western imperialism played a crucial role in the creation of modern international law, it is ever more important to analyze the engagements of non-Western imperialist powers with the field so as to comprehend the changing global patterns of legalized violence and expansionism. In this Essay, we analyze Russia's international legal arguments in support of its use of force against Ukraine through the lens of inter-imperial rivalry. In so doing, we call for strict scrutiny of the deployments of *jus ad bellum* equally by all imperial powers.

Trading with a Friend's Enemy*Anton Moiseienko*

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Economic sanctions have been the West's response of choice to Russia's full-scale aggression in Ukraine. Predictably, speculation abounds as to what these sanctions portend for future responses to acts of interstate aggression. The principles underpinning the "trading with the enemy" laws of a seemingly bygone era have resurfaced but applied not to the sanctioning powers' own enemies but in solidarity with another state, at least insofar as the breaches of erga omnes obligations through armed aggression are concerned. The contemporary expansion in sanctions practice may have far-reaching repercussions.

A Unified Understanding of Ship Nationality in Peace and War*Himani Raina*

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The entrenched understanding of the law governing nationality does not permit a state to look beyond a ship's flag and registration to ascertain its nationality during peacetime. Nonetheless, this very understanding also allows a state to pierce the veil of a ship's registration to ascertain its enemy character during wartime. However, the war in Ukraine has witnessed fresh state practice whereby states have claimed equivalent rights during peacetime as well, thus encouraging the concordant interpretation of the status of nationality across both the peace and wartime legal orders.

Weaponizing Energy: Energy, Trade, and Investment Law in the New Geopolitical Reality*Anatole Boute*

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Concerns over the weaponization of energy during the war in Ukraine have revived state anxieties about overreliance on certain foreign energy sources. This Essay argues that instruments of energy trade and investment protection have helped to lock states into dangerous dependencies. Trade and investment law can inhibit energy security strategies designed to diversify away from unreliable sources and to block suspicious investors. With energy used as a weapon, reform of the liberal energy regime is needed to allow states to prevent the creation of dependencies and protect their energy security in the new geopolitical reality.

Conflicting Declarations Under the Hague Service Convention Amid the Russo-Ukrainian War: Dilemmas and Preliminary Solutions*Jie (Jeanne) Huang*

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The 1965 Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters has increasingly been used by its member states to demonstrate their territorial claims, including in the Falklands dispute and the Israel-Palestine conflict. This has now arisen in the Russo-Ukrainian war, as conflicting declarations have been formulated by eight states under the Convention. This Essay analyzes the legal dilemmas brought by these declarations and proposes preliminary solutions.

Outcasting the Aggressor: The Deployment of the Sanction of "Non-participation"*Martina Buscemi*

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This Essay explores the sanction of "non-participation," which has been used against Russia following the start of the war in Ukraine. After mapping out the multifaceted instances of Russia's exclusion from international organizations, the analysis considers the legality of measures adopted that do not have an explicit basis in institutional rules. The Essay concludes with broad

reflections on the use of international organizations as platforms to stigmatize and isolate the violator and outlines some consequences and functions that the sanction of “non-participation” has today.

Ukraine and the Emergency Powers of International Institutions

Elena Chachko and Katerina Linos 775

As global crises become more frequent, international organizations increasingly invoke emergency powers to address them. But the study of international organization emergency governance remains in its infancy. We consider the EU response to the Russian invasion of Ukraine. The EU built on the emergency to accelerate EU integration and introduce unprecedented reforms in defense and security, migration and asylum, and energy. We map the techniques the EU deployed to achieve this and argue that they are not as alarming as critics have suggested.

Responsibility of Private Individuals for Complicity in a War of

Aggression

Nikola R. Hajdin 788

The crime of aggression requires that the perpetrator be in a position effectively to exercise control over—or to direct—the political or military action of a state. This requirement, called the “leadership clause,” has led to the view that private individuals are excluded from criminal responsibility because they lack the necessary authority over the state policy. In this Essay, I argue against this dominant view and outline an analytical framework for criminal complicity in a war of aggression.

The Russia-Ukraine War and the Seeds of a New Liberal Plurilateral Order

David L. Sloss and Laura A. Dickinson 798

Since about 2008, the rise of autocracy and the decline of democracy has threatened the modern liberal international order. To counter the threat of authoritarian international law, the United States should collaborate with liberal democracies from Europe, Asia, Africa, and Latin America to develop new plurilateral institutions and treaties to create a “liberal plurilateral order.” This Essay shows that states are planting the seeds of a future liberal plurilateral order in their response to Russian aggression in Ukraine.

Ukraine, Open-Source Investigations, and the Future of International Legal

Discourse

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Russia’s aggression against Ukraine has brought into focus the growing significance of open-source information for international legal processes. Enabled by novel digital technologies, civil society actors have seized the opportunity provided by the vast amount of publicly available evidence to counter-narrate Russia’s pretexts to justify its invasion within the deliberative bodies of the United Nations. This Essay explains the potential of this emerging practice to influence international legal discourse by increasing the costs for actors who base their conduct on false factual claims.

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