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Third-State Position Amidst Russian Aggression Against Ukraine

On February 24, 2022, President Vladimir Putin of the Russian Federation announced what he referred to as a “special military operation” against Ukraine. Although the Russian Federation claims that its intervention is consistent with international law, the vast majority of the international community has condemned this action as a blatant violation of the prohibition on the use of force.

The military intervention continues, with Russian armed forces continuing to occupy significant Ukrainian territories. Due to the Russian Federation’s permanent membership and veto power in the UN Security Council, the collective security mechanism has been effectively paralyzed in responding to Russia’s actions. Nevertheless, the UN General Assembly has adopted resolutions condemning Russia’s annexation attempts and calling for their cessation. In a display of solidarity, the international community has supported Ukraine through various political, economic, and legal measures.

This study examines the actions undertaken by third states—those not directly party to the armed conflict—in response to Russia’s internationally wrongful acts. It does so within the framework of the principle of “aggravated state responsibility.” Specifically, it analyzes how third states have sought to end these breaches of international law by adhering to the obligations outlined in Article 41 of the Draft Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA).

Drafted by the International Law Commission (ILC) as a codification of customary international law, Article 41 imposes certain obligations on states in the face of serious breaches of peremptory norms. These obligations include refraining from recognizing or supporting such breaches, denying aid or assistance to the wrongdoing state, and cooperating to bring the breach to an end.

Within this context, the study evaluates third-state actions under two broad categories: measures directed at the Ukraine and those directed at the Russian Federation. The primary aim of this study is to assess how states, acting individually or unilaterally, can uphold international law when the UN Security Council fails to act due to political deadlock. By examining state practices, this research seeks to identify the tools available under international law to ensure compliance, even in the absence of collective measures.

Furthermore, it aims to propose guiding principles for the international community when demonstrating solidarity against internationally wrongful acts. These principles are drawn from ideal state practices and offer a roadmap for effective and lawful responses to breaches of international law. This analysis contributes to ongoing discussions about the interplay between state responsibility, third-state action, and international solidarity, while also shedding light on the broader implications of unilateral measures in addressing breaches of international norms.

Keywords: *international responsibility law, aggravated responsibility, international wrongful act, international community*

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Introduction

The Russian Federation (RF) engaged in actions against Ukraine in 2014 following the change of power in the country, actions that clearly constituted an "armed attack" under international law.¹ The reason for taking 2014 as the starting point of these actions is that, even though they were not openly claimed by the RF at the time, they were carried out—beyond any reasonable doubt—by armed elements acting "under the direction and control" of the Russian Federation.²

The process, which began in 2014 with the illegal annexation of the Crimean Peninsula and the *de facto* occupation of the Donbas and Luhansk regions, took on a different dimension in 2022. That year, RF President Vladimir Putin announced what he termed a "special military operation," which was later officially notified to the United Nations and defended as an act of self-defense under Article 51 of the UN Charter, marking the beginning of full-scale war.³

In its annexation efforts, the RF first declared that it recognized the separatist entities in Crimea, and later in Donbas, Luhansk, Zaporozhye, and Kherson, as "states" under the right of self-determination.⁴ Subsequently, through agreements signed with these so-called states, the RF declared that these regions had become part of its territory.⁵ Russian military

¹ For a more detailed analysis please see: Cüneyt Yüksel & Kaan Erdoğan, Jus Ad Bellum Çerçevesinde Rusya-Ukrayna Savaşı, in RUSYA-UKRAYNA KRIZI VE ULUSLARARASI HUKUK 1-40 (Cüneyt Yüksel & Ceren Karagözoğlu eds., Oniki Levha 2022).

² Oleksandr Merezhko, International Legal Aspects of Russia's War Against Ukraine in Eastern Ukraine, in THE USE OF FORCE AGAINST UKRAINE AND INTERNATIONAL LAW 111 (Sergey Sayapin & Evhen Tsybulenko eds., Springer 2018) pp. 112-116.

³ Letter from Vasily Nebenzia, Permanent Representative of the Russian Federation, to the Secretary-General, U.N. Doc. S/2022/154 (Feb. 24, 2022).

⁴ Address by the President of the Russian Federation, KREMLIN (Feb. 24, 2022), <https://www.en.kremlin.ru/events/president/news/67829>.

⁵ Meeting with Permanent Members of the Security Council, KREMLIN (Apr. 22, 2022), <http://en.kremlin.ru/events/president/news/69465>.

activities within Ukraine's sovereign territory persist, and as a result, armed conflict in the region remains ongoing.⁶

Today, there is widespread recognition within the international community that RF's actions constitute violations of international law. One indication of this recognition is the convening of an Emergency Special Session by the UN Security Council, prompted by "disagreements among the permanent members."⁷ Indeed, the resolution titled "Aggression against Ukraine," adopted under the Uniting for Peace⁸ framework, recalled Article 2(4) of the UN Charter,⁹ the Declaration on Friendly Relations,¹⁰ and the Definition of Aggression¹¹ resolution. This resolution condemned RF's attempts to annex territory through force and called for the immediate withdrawal of Russian military forces from Ukraine's sovereign territory, urging a return to peaceful resolution mechanisms.¹² These calls have been reiterated in subsequent resolutions.¹³

Similarly, although it does not constitute a direct *jus ad bellum* assessment and remains *prima facie* in nature, the provisional measures ordered by the International Court of Justice (ICJ) in the case concerning the Convention on the Prevention and Punishment of the Crime of Genocide may also be cited.¹⁴ Moreover, even a simple legal analysis makes it clear that the actions undertaken by the RF were not in response to any armed attack and failed to meet the criteria of necessity, proportionality, and immediacy required for

⁶ International Armed Conflict in Ukraine, RULE OF LAW IN ARMED CONFLICTS PROJECT, <https://www.rulac.org/browse/conflicts/international-armed-conflict-in-ukraine> (last visited Mar. 3, 2025).

⁷ S.C. Res. 2623 (Feb. 27, 2022).

⁸ G.A. Res. 377A(V), Uniting for Peace (Nov. 3, 1950).

⁹ U.N. Charter art. 2(4).

¹⁰ G.A. Res. 2625 (XXV), Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (Oct. 24, 1970).

¹¹ United Nations General Assembly Resolution 3314 (XXIX), "Definition of Aggression", 14 December 1974.

¹² G.A. Res. ES-11/1 (Mar. 2, 2022).

¹³ G.A. Res. ES-11/2 (Mar. 24, 2022); G.A. Res. ES-11/6 (Feb. 23, 2023).

¹⁴ While this resolution did not examine the Russian Federation's actions through the lens of U.N. Charter art. 2(4), it determined that the Russian Federation's military intervention in Ukraine based on claims of preventing genocide lacked legal foundation: Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), Order of 16 March 2022, 2022 I.C.J. paras. 60, 81.

the invocation of self-defense.¹⁵ As this issue is not the primary focus of this study and has already been extensively examined in academic literature, a more detailed analysis will not be pursued here.

The unavoidable global repercussions of RF's aggression against Ukraine have led third states to react in various ways within the framework of their foreign policies. Ultimately, since RF's actions cannot be classified under any category that would negate their illegality—particularly self-defense—they are inherently considered "internationally wrongful acts."¹⁶ The reactions of third states, taken in response to a breach of rights recognized as *jus cogens* under customary international law (namely, the unlawful acquisition of territory by force), serve as a notable example of the application of the theory of "aggravated state responsibility" in state practice. This theory, codified in Article 48 of the Draft Articles on State Responsibility for Internationally Wrongful Acts (ARSIWA) by the International Law Commission, reflects the consequences of serious breaches of peremptory norms in international law.¹⁷

I. Theoretical Analysis of the Third State

International law, based on the principle of the equality of sovereign states, differs from domestic legal systems as it operates within an anarchic legal order that lacks a central authority capable of enforcing sanctions. In the aftermath of World War II, in the hope of minimizing the risks posed by this structure, a collective security system was established, and the UN Security Council was designed—under Chapter VII of the Charter—as the sole organ authorized to use force lawfully, except in cases of self-defense.¹⁸

¹⁵ James A. Green, Christian Henderson & Tom Ruys, Russia's Attack on Ukraine and the Jus Ad Bellum, 9 J. ON THE USE OF FORCE & INT'L L. 4, 6 (2022); see also Ingrid Brunk Wuerth & Monica Hakimi, Russia, Ukraine, and the Future World Order, 116 AM. J. INT'L L. 687, 691 (2022).

¹⁶ G.A. Res. ES-11/5 (Nov. 14, 2022).

¹⁷ Int'l Law Comm'n, Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, U.N. Doc. A/56/10 (2001).

¹⁸ U.N. Charter ch. VII; U.N. Charter art. 51.

However, as mentioned above, the Security Council's decision-making mechanism can be effectively paralyzed by the veto power of any of its five Permanent Members. This has often led to inaction in matters where political interests diverge. The case of Ukraine provides a particularly stark example of this issue: the resolution aimed at terminating the RF's military intervention was ultimately blocked by the RF itself through the use of its veto power.¹⁹

The idea that third states possess certain rights and authorities in the event of a serious breach of a fundamental right protected under international law has long been advocated by international legal scholars through key concepts such as "solidarity," "international community," and "community interest."²⁰ This approach has also been reflected in the International Law Commission's work on the codification of state responsibility. Initially, certain internationally wrongful acts were proposed to be classified as "international crimes" and subjected to more severe sanctions.²¹ One of these sanctions was the granting of legal instruments to third states to respond to such breaches. However, due to criticism that the term "crime" belongs to the realm of criminal law, this approach was eventually replaced—under the rapporteurship of James Crawford—by the similarly structured theory of "aggravated state responsibility."²²

¹⁹ UNSC Resolution 2202 (2015) can be cited as the sole exception to the otherwise unsuccessful attempts in the UN Security Council.

²⁰ Bruno Simma, *From Bilateralism to Community Interest*, 250 COLLECTED COURSES OF THE HAGUE ACAD. OF INT'L L. 217 (1994); Rüdiger Wolfrum, *Solidarity and Community Interests*, 368 COLLECTED COURSES OF THE HAGUE ACAD. OF INT'L L. 9 (2013); Vincenzo Starace, *La responsabilité résultant de la violation des obligations à l'égard de la communauté internationale*, 153 COLLECTED COURSES OF THE HAGUE ACAD. OF INT'L L. 263 (1976); Hermann Mosler, *The International Society as a Legal Community*, 140 COLLECTED COURSES OF THE HAGUE ACAD. OF INT'L L. 1 (1974).

²¹ William Riphagen (Special Rapporteur), Third Rep. on the Content, Forms and Degrees of State Responsibility, para. 95, U.N. Doc. A/CN.4/354 (1982); Roberto Ago (Special Rapporteur), Eighth Rep. on State Responsibility, Add., para. 56, U.N. Doc. A/CN.4/318/Add.5-7 (1980); Rep. of the Int'l Law Comm'n on the Work of Its Fifty-Third Session, para. 5, at 111, U.N. Doc. A/56/10 (2001); Gaetano Arangio-Ruiz (Special Rapporteur), Fifth Rep. on State Responsibility, at 30, U.N. Doc. A/CN.4/453 (1993); Rep. of the Int'l Law Comm'n on the Work of Its Forty-Fifth Session, para. 299, U.N. Doc. A/48/10 (1993).

²² JAMES CRAWFORD, *THE INTERNATIONAL LAW COMMISSION'S ARTICLES ON STATE RESPONSIBILITY: INTRODUCTION, TEXT AND COMMENTARIES* 242-49 (Cambridge Univ. Press 2002).

According to this theory, in cases of *jus cogens* breaches, states have an obligation to lawfully refuse recognition of the breach and its consequences, to refrain from providing support or assistance for its continuation, and even to take legal measures to bring it to an end.²³ The International Court of Justice has also incorporated this understanding into its rulings through its interpretation of *erga omnes* obligations.²⁴

Assuming that RF's actions of armed attack and annexation fall within the scope of this principle, this study will examine to what extent and in what manner third states have considered and applied this provision in state practice. However, before proceeding with this analysis, two specific variations of the "third state" concept will be explored: the status of complicity and the existence of legal norms that impose special obligations on third states, each illustrated through relevant examples.

a. The Evolving Concept of the "Third" State and Complicity: The Case of Belarus

In this study, the term third state refers to any state that is not a party to a given dispute (in this case, Russia's aggression against Ukraine). However, a third state's involvement in a conflict may extend beyond its general responsibilities as a member of the international community.

Open sources indicate that hostile military actions against Ukraine's sovereign territory have not been carried out solely by the RF Armed Forces and affiliated units, but that certain third states (e.g., the Democratic People's Republic of Korea, also known as North Korea) have also been militarily engaged in the armed conflict.²⁵ Although such claims

²³ Bernhard Graefrath, *International Crimes and Collective Security*, in *INTERNATIONAL LAW: THEORY AND PRACTICE: ESSAYS IN HONOUR OF ERIC SUY* 237, 238 (Karel Wellens ed., Martinus Nijhoff Publishers 1998); Christian Tomuschat, *International Crimes by States: An Endangered Species?*, in *INTERNATIONAL LAW: THEORY AND PRACTICE: ESSAYS IN HONOUR OF ERIC SUY* 253, 254 (Karel Wellens ed., Martinus Nijhoff Publishers 1998).

²⁴ *Barcelona Traction, Light and Power Co., Ltd. (Belg. v. Spain)*, Judgment, 1970 I.C.J. 3 (Feb. 5); *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 2004 I.C.J. 136 (July 9).

²⁵ President of Ukraine, *Today, We Already Have Preliminary Data That the Russians Have Begun to Use North Korean Soldiers in Their Assaults – Address by the President* (Apr. 10, 2022), <https://www.president.gov.ua/en/news/sogodni-vzhe-ye-poperedni-dani-pro-te-sho-rosiyani-pochali-z->

require further verification, the case of Belarus stands as an objectively demonstrable example.

On February 22, 2022, Russian military units, following an order from Putin, launched their offensive against Ukraine via Belarus, where they had previously been stationed under the pretext of military exercises.²⁶ This situation clearly falls within Article 3(f) of the UN General Assembly Resolution 3314 on the Definition of Aggression, which states: *"The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State."*²⁷

Thus, Belarus's very act of enabling this offensive should, in itself, be considered an act of aggression. Moreover, under Article 16 of the Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA): *"A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible."*²⁸ This provision explicitly references "aid and assistance." However, it is important to distinguish the obligation of non-assistance established here from the broader framework of aggravated state responsibility.

The primary difference between these two obligations lies in their temporal scope.²⁹ While ARSIWA Article 16 regulates a state's responsibility regarding both the execution and the

95037; U.S. DEPT OF DEF., North Korean Soldiers Likely to Enter Russian War on Ukraine (Oct. 14, 2023), <https://www.defense.gov/News/News-Stories/Article/Article/3953130/north-korean-soldiers-likely-to-enter-russian-war-on-ukraine/>; UK GOV'T, DPRK Must Cease Its Support for Russia's Illegal War in Ukraine: UK Statement at the UN Security Council (Oct. 26, 2023), <https://www.gov.uk/government/speeches/dprk-must-cease-its-support-for-russias-illegal-war-in-ukraine-uk-statement-at-the-un-security-council>.

²⁶ Classification: International Armed Conflict in Ukraine, RULE OF LAW IN ARMED CONFLICTS PROJECT, <https://www.rulac.org/browse/conflicts/international-armed-conflict-in-ukraine#collapse3accord> (last visited Mar. 3, 2025).

²⁷ G.A. Res. 3314 (XXIX), Definition of Aggression, art. 3(f) (Dec. 14, 1974).

²⁸ Int'l Law Comm'n, Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, art. 16, U.N. Doc. A/56/10 (2001).

²⁹ HELMUT PHILIPP AUST, COMPLICITY AND THE LAW OF STATE RESPONSIBILITY (Cambridge Univ. Press 2011); VLADYSLAV LANOVOY, COMPLICITY AND ITS LIMITS IN THE LAW OF INTERNATIONAL RESPONSIBILITY 120 (Hart Publishing 2016).

preceding stages of an internationally wrongful act, the rules on aggravated state responsibility pertain to actions taken after the wrongful act has been committed and relate to its continuation. Another distinction is that Article 16 requires knowledge on the part of the assisting state for complicity to be established, whereas aggravated state responsibility does not impose such a requirement.³⁰

In conclusion, returning to the case of Belarus, its involvement in the armed attack on February 22, 2022, should be assessed within the framework of complicity. In this sense, its responsibility differs from that of other third states. Accordingly, it must be emphasized that the obligations examined under the concept of "third-state responsibilities" are distinct from, and additional to, any responsibility arising from complicity.

b. The Evolving Concept of the "Third" State and the Existence of *Lex Specialis* Obligations: The Case of the Montreux Convention

When examining third-state obligations in response to an internationally wrongful act, it is first necessary to establish the existence of an international obligation and the wrongful act that arises from a breach.³¹ In the background analysis of this case, these preliminary determinations have been briefly addressed. The International Law Commission, in its codification efforts on the law of responsibility, has refrained from defining general principles concerning the legal sources of such obligations and their interpretation, given the secondary nature of rules in this field.³²

Indeed, in the application of norms in this area to concrete cases, customary international law norms are generally relied upon. This study will follow a similar approach. However, before proceeding, it is important to examine a case where third-state obligations are

³⁰ Ibid.

³¹ JAMES CRAWFORD, STATE RESPONSIBILITY: GENERAL PART 217-19 (Cambridge Univ. Press 2013).

³² Int'l Law Comm'n, Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, art. 16 cmt. 1, U.N. Doc. A/56/10 (2001).

regulated through a treaty. By doing so, potential differences can be noted, ensuring that the position of third states in international law is clarified with these distinctions in mind.

Naturally, when assessing such an obligation, the most immediate example that comes to mind is a treaty containing provisions on the right of collective self-defense. However, since Ukraine is not a party to any such treaty, this example will not be considered. Furthermore, given that Article 51 of the UN Charter explicitly recognizes the right of collective self-defense and that there is extensive state practice in this regard, a hypothetical assessment of this scenario would not be particularly useful.

Instead, this analysis will focus on the Montreux Convention, a *sui generis* legal arrangement. While the author's familiarity with the subject is one reason for this choice, there are multiple substantive justifications for selecting this treaty: the Montreux Convention introduces regulations that diverge from the customary international law norms governing passage through straits; its provisions are geographically relevant to the conflict; it contains clauses closely related to neutrality; its implementation has been widely respected by both sides; and, crucially, it has contributed to preventing the further deterioration of the situation in the region.³³

Following Turkey's determination that Russia's armed attack against Ukraine constituted a "war," Turkey, in accordance with the treaty's provisions, issued a notification barring warships from belligerent states from passing through the Turkish Straits.³⁴ While under the United Nations Convention on the Law of the Sea, coastal states are not granted the authority to impose transit restrictions on warships, the fact that such a right is explicitly recognized under the Montreux Convention provides a contemporary example of how *lex*

³³ Nilüfer Oral, To Close or Not to Close the Turkish Straits Under Article 19 of the 1936 Montreux Convention Regarding the Regime of the Straits, CENTRE FOR INT'L L. BLOG (Mar. 3, 2022), <https://cil.nus.edu.sg/blogs/to-close-or-not-to-close-the-turkish-straits-under-article-19-of-the-1936-montreux-convention-regarding-the-regime-of-the-straits-by-nilufer-oral/>; Yücel Acer, Russia's Attack on Ukraine: The Montreux Convention and Türkiye, 100 INT'L L. STUD. 285, 309 (2023).

³⁴ Minister of Foreign Affairs of Türkiye, My Article Published at Bled Strategic Forum, MINISTRY OF FOREIGN AFFAIRS OF TÜRKİYE (Aug. 29, 2022), <https://www.mfa.gov.tr/sayin-bakanimizin-bled-strategic-forum-makalesi.en.mfa>.

specialis can create additional responsibilities for a third state in cases of internationally wrongful acts.³⁵

Unsurprisingly, the primary addressee of this notification was the RF, whose navy was effectively prevented from reinforcing its military presence in the Black Sea. In the absence of such a treaty provision, the coastal state might have been hesitant to take such a critical foreign policy step, or, alternatively, the lack of a clear legal norm could have triggered legal and political objections from the treaty parties.³⁶ In our view, this situation underscores the potential for customary international law norms on third-state obligations to be further reinforced and institutionalized through treaty-based regulations within relevant branches of law.

II. The *Lex Generalis* Obligations of Third States

As discussed in the examples above, even in the absence of a specific legal fact or norm imposing additional responsibilities on third states, they still bear obligations arising from the serious breach of jus cogens norms. These obligations can be categorized as negative (non-recognition, non-assistance) and positive (taking lawful measures to end the breach).³⁷

a. The Negative Obligations of Third States in Response to RF's Aggression Against Ukraine

The negative obligations (non-recognition, non-assistance) are by their nature targeted toward the state responsible for the serious breach of international law. Therefore, when assessing whether third states are fulfilling these obligations, it is not necessary to

³⁵ United Nations Convention on the Law of the Sea art. 42, Dec. 10, 1982, 1833 U.N.T.S. 3.

³⁶ When evaluating this determination through a concrete example, it is useful to keep in mind the following lines from Váli's work examining Turkish foreign policy: "The threatening shadow of Moscow determined Turkey's basic policy lines during the decade following 1946 and, with a reduced emphasis, still determines it at present." FERENC A. VÁLI, BRIDGE ACROSS THE BOSPORUS: THE FOREIGN POLICY OF TURKEY 35 (Johns Hopkins Univ. Press 1971).

³⁷ Int'l Law Comm'n, Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, art. 41 cmt., U.N. Doc. A/56/10 (2001).

differentiate between their positions toward the Russian Federation and Ukraine. It is self-evident that both the obligation of non-recognition and the obligation of non-assistance and non-support are directed toward the RF.

aa. The Obligation of Non-Recognition

When legally evaluating the position of third states concerning RF's annexation of Ukrainian territory and ongoing armed aggression, the obligation of non-recognition must be addressed first. This obligation represents the minimum standard that governs third states' conduct in such situations.³⁸ While recognition has traditionally been understood as a political decision left to the discretion of sovereign states,³⁹ contemporary international law has placed limitations on this discretion in cases involving aggravated state responsibility.⁴⁰

The obligation of non-recognition has frequently been invoked in state practice. Looking at past examples, it can be observed both in UN Security Council resolutions adopted under Chapter VII due to a "threat to international peace and security" (e.g., South Africa's annexation of Rhodesia,⁴¹ Iraq's annexation of Kuwait⁴²) and in resolutions issued under the Council's general mandate without reference to a specific article (e.g., the status of Jerusalem⁴³).

Moreover, the Security Council is not the only UN body that has invoked the obligation of non-recognition. In fact, such calls are more frequently encountered in General

³⁸ Martin Dawidowicz, *The Obligation of Non-Recognition of an Unlawful Situation*, in *THE LAW OF INTERNATIONAL RESPONSIBILITY* 677, 677 (James Crawford, Alain Pellet, Simon Olleson & Kate Parlett eds., Oxford Univ. Press 2010).

³⁹ HERSCH LAUTERPACHT, *RECOGNITION IN INTERNATIONAL LAW* 6 (Cambridge Univ. Press 1947).

⁴⁰ CEREN ZEYNEP PIRIM, *ULUSLARARASI HUKUKTA DEVLETİN AĞIRLAŞTIRILMIŞ SORUMLULUĞU* 67-68 (Turhan 2022).

⁴¹ S.C. Res. 216 (Nov. 12, 1965); S.C. Res. 217 (Nov. 20, 1965); S.C. Res. 221 (Apr. 9, 1966); S.C. Res. 232 (Dec. 16, 1966).

⁴² S.C. Res. 660 (Aug. 2, 1990); S.C. Res. 661 (Aug. 6, 1990); S.C. Res. 662 (Aug. 9, 1990); S.C. Res. 664 (Aug. 18, 1990).

⁴³ S.C. Res. 478 (Aug. 20, 1980).

Assembly resolutions. This is largely due to the General Assembly's ability to adopt resolutions more swiftly than the Security Council. Notably, the General Assembly has also issued non-recognition resolutions concerning Russia's annexation of Crimea and its aggression against Ukraine.⁴⁴

Examining past cases, there appears to be no significant difference in compliance levels between decisions made by the Security Council and those issued by the General Assembly. For instance, despite clear determinations in Security Council resolutions—later echoed in General Assembly resolutions—regarding the status of Jerusalem and Israel's annexation of Palestinian territories, opposing state practices have continued.⁴⁵ On the other hand, there are instances where states have widely adhered to non-recognition obligations even in the absence of a Security Council resolution, as demonstrated by the overwhelming rejection of Russia's annexation attempts in Ukraine.

A review of non-recognition obligations reveals that, while these obligations fall within the category of *jus cogens* norms, they have been applied to only a limited subset of cases. These cases are primarily related to the acquisition of territory through unlawful use of force, self-determination, and decolonization processes. However, this does not indicate that the obligation of non-recognition applies only to a narrow category of international legal norms; rather, it reflects the fact that recognition decisions in state practice have historically been most relevant in these contexts.

Current state practice suggests a consensus that the obligation of non-recognition arises directly from the serious breach of a *jus cogens* norm, even in the absence of a specific resolution by the UN Security Council or General Assembly.⁴⁶ Naturally, Security Council

⁴⁴ G.A. Res. 68/262 (Mar. 27, 2014); G.A. Res. ES-11/4, para. 4 (Oct. 12, 2022).

⁴⁵ S.C. Res. 252 (May 21, 1968); S.C. Res. 478 (Aug. 20, 1980). For a practice that contradicts the non-recognition obligation set forth in this resolution, see U.S. DEP'T OF STATE, Recognizing Jerusalem as Israel's Capital (Dec. 6, 2017), <https://2017-2021.state.gov/recognizing-jerusalem-as-israels-capital/>.

⁴⁶ Stefan Talmon, The Duty Not to "Recognize as Lawful" a Situation Created by the Illegal Use of Force or Other Serious Breaches of a *Jus Cogens* Obligation: An Obligation without Real Substance?, in *THE LAW OF INTERNATIONAL RESPONSIBILITY* 99, 122 (James Crawford, Alain Pellet & Simon Olleson eds., Oxford Univ. Press 2010).

resolutions—particularly those adopted under Chapter VII—carry legally binding force, and General Assembly resolutions reflect the widespread opinion of the international community. These factors facilitate compliance with the norm. However, even in the absence of such resolutions, states are still expected to fulfill their customary international law obligation of non-recognition.

bb. The Obligation of Non-Assistance

Another obligation of restraint imposed on third states in the event of an internationally wrongful act is the duty of non-assistance. Considered a "logical extension" of the obligation of non-recognition, this duty encompasses refraining from any action that would contribute to the continuation of the wrongful act.⁴⁷ In previous Security Council resolutions, this obligation has been concretized through calls for the cessation of arms and ammunition trade, as well as the termination of the supply of any materials necessary for the production and use of such military equipment.⁴⁸ Similarly, when addressing the issue, the UN General Assembly has prioritized halting the export of military technology.⁴⁹

In the case of Russia's aggression against Ukraine, the first measure taken by third states under the obligation of non-assistance has been the suspension of military technology trade, following precedents set in similar situations. Many states with advanced defense industries, led by the United States of America (USA) and European Union (EU) member states, have imposed export bans on weapons, ammunition, and dual-use technologies to the RF.⁵⁰

⁴⁷ Nina H.B. Jørgensen, *The Obligation of Non-Assistance to the Responsible State*, in *THE LAW OF INTERNATIONAL RESPONSIBILITY* 690, 690-92 (James Crawford et al. eds., Oxford Univ. Press 2010).

⁴⁸ S.C. Res. 418 (Nov. 4, 1977); S.C. Res. 1965 (Dec. 20, 2010).

⁴⁹ G.A. Res. ES-10/24, para. 5(b) (Dec. 21, 2022).

⁵⁰ UK GOV'T, *RUSSIA SANCTIONS GUIDANCE*, <https://www.gov.uk/government/publications/russia-sanctions-guidance/russia-sanctions-guidance> (last visited Feb. 28, 2025); U.S. DEPT OF COM., BUREAU OF INDUS. & SEC., *DEPARTMENT OF COMMERCE ANNOUNCES ADDITIONAL EXPORT RESTRICTIONS TO COUNTER RUSSIAN AGGRESSION* (Feb. 24, 2022), <https://www.bis.gov/press-release/departments-commerce-announces-additional-export-restrictions-counter-russian>; EUR. COMM'N, *RESTRICTIVE MEASURES FOLLOWING RUSSIA'S INVASION OF UKRAINE*, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=legissum:25_2 (last visited Feb. 28,

However, it is difficult to speak of uniform enforcement in this regard. Reports have surfaced that Iran has continued to supply kamikaze drones to Russia⁵¹ and that North Korea has provided arms and ammunition.⁵² Iran, on the other hand, has defended its position by asserting that it has acted in accordance with its neutrality obligations,⁵³ claiming that its military technology exports to Russia were carried out before February 22, 2024.⁵⁴ Regardless of the accuracy of these claims, Iran's reliance on the principle of neutrality in its defense indicates the presence of an *opinio juris* in this regard. As for North Korea, its military trade with Russia already constitutes a clear violation of existing UN Security Council resolutions explicitly prohibiting such transactions.⁵⁵

Therefore, it can be observed that third states have largely interpreted the obligation of non-assistance in a narrow manner, primarily restricting it to the supply of military technologies that would facilitate the continuation of Russia's breaches. There appears to be broad consensus among third states on refraining from such actions. Nevertheless, while the impact of exceptional cases remains limited, it is evident that the obligation of

2025); AUSTL. GOV'T, DEP'T OF FOREIGN AFFS. & TRADE, EXPORT SANCTIONED GOODS TO RUSSIA AND SPECIFIED REGIONS OF UKRAINE, <https://www.dfat.gov.au/international-relations/security/sanctions/guidance/export-sanctioned-goods-russia-and-specified-regions-ukraine> (last visited Feb. 28, 2025).

⁵¹ U.S. DEP'T OF DEF., GENERAL SAYS IRANIAN DRONES, TROOPS OPERATING IN UKRAINE (Oct. 24, 2022), <https://www.defense.gov/News/News-Stories/Article/Article/3195380/general-says-iranian-drones-troops-operating-in-ukraine/>; UK GOV'T, UK SANCTIONS IRAN OVER KAMIKAZE RUSSIAN DRONES (Oct. 20, 2022), <https://www.gov.uk/government/news/uk-sanctions-iran-over-kamikaze-russian-drones>; UK GOV'T, UK SANCTIONS IRAN FOR AIDING RUSSIA'S ILLEGAL WAR IN UKRAINE AS FOREIGN SECRETARY CHAIRS UN SECURITY COUNCIL (Feb. 16, 2023), <https://www.gov.uk/government/news/uk-sanctions-iran-for-aiding-russias-illegal-war-in-ukraine-as-foreign-secretary-chairs-un-security-council>.

⁵² STOCKHOLM INT'L PEACE RSCH. INST., TRENDS IN INTERNATIONAL ARMS TRANSFERS 2023, at 10 (Mar. 2024).

⁵³ MINISTRY OF FOREIGN AFFS. OF THE ISLAMIC REPUBLIC OF IRAN, IRAN STRONGLY REPUDIATES CLAIMS OF SENDING WEAPONS OR DRONES TO RUSSIA FOR USE IN UKRAINE WAR (Mar. 11, 2022), <https://en.mfa.gov.ir/portal/newsview/698706>.

⁵⁴ Amin Ranjbar, Iran's Involvement In Russia's Military Operations In Ukraine: An International Law Perspective, 1 IRANIAN J. INT'L & COMPAR. L. 76, 86-87 (2023).

⁵⁵ S.C. Res. 2270 (Mar. 2, 2016); S.C. Res. 2321 (Nov. 30, 2016); S.C. Res. 2397 (Dec. 22, 2017).

non-assistance has not yielded a definitive outcome, largely due to Russia's reliance on its domestic defense industry.⁵⁶

b. Efforts of Third States to End the Breach Through Lawful Means

Under ARSIWA, third states are not only subject to obligations of restraint in cases of serious breaches of international law; they are also assigned a duty to take measures to end such breaches “through lawful means.” In the context of Russia's aggression against Ukraine, two primary mechanisms have emerged within this framework. The first is to support Ukraine in dealing with the violation and its consequences, while the second consists of various measures taken against Russia, including countermeasures or retorsion.

aa. Measures in Support of Ukraine

1. Diplomatic Support

Since both 2014 and the onset of “total war” in 2022, numerous third states have provided diplomatic support to Ukraine. This support can be grouped into two main categories: bringing the issue to the agenda of international political forums and intervening in cases before international judicial bodies.

Third states' diplomatic support for Ukraine has initially taken the form of individual expressions of solidarity through official channels, which were later brought to international political platforms. As mentioned earlier, due to the Security Council's failure to fulfill its primary function, efforts to address the situation have been pursued through the UN General Assembly. Similarly, political support has been expressed by major international organizations such as NATO, despite Ukraine not being a member.⁵⁷

⁵⁶ STOCKHOLM INT'L PEACE RSCH. INST., TRENDS IN INTERNATIONAL ARMS TRANSFERS 2023, at 10 (Mar. 2024).

⁵⁷ □ N. ATL. TREATY ORG., NATO'S RESPONSE TO RUSSIA'S INVASION OF UKRAINE (Feb. 28, 2025), https://www.nato.int/cps/em/natohq/topics_192648.htm.

In the case of Ukraine, beyond political statements of support, the role of third states in international judicial proceedings has been particularly pronounced. Notably, 33 states have submitted requests to intervene in the case brought by Ukraine against Russia before the ICJ under the Convention on the Prevention and Punishment of the Crime of Genocide.⁵⁸ All of these requests, except for that of the USA, have been accepted. Moreover, these intervening states have actively contributed to the legal analysis of the case by submitting detailed written and oral statements.⁵⁹

The scale of this intervention has even been criticized by Russia, which has referred to it as a form of “mass intervention” that allegedly places it at a disadvantage.⁶⁰ While the ICJ has yet to issue a final ruling on the dispute, and Russia has failed to comply with the Court’s provisional measures, the contributions of third states to clarifying the relevant international legal norms remain significant. This case underscores the potential for diplomatic support to be exercised not only through political statements but also through legal mechanisms, utilizing international law to reinforce Ukraine’s position.

2. Economic and Financial Support

⁵⁸ Allegations of Genocide Under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukr. v. Russ. Fed.), Order on Admissibility of the Declarations of Intervention, 2023 I.C.J. Rep. para. 13, 15, 17, 19, 21 (June 5). These states: [the Governments of Australia, the Republic of Austria, the Kingdom of Belgium, the Republic of Bulgaria, Canada, the Republic of Croatia, the Republic of Cyprus, the Czech Republic, the Kingdom of Denmark, the Republic of Estonia, the Republic of Finland, the French Republic, the Federal Republic of Germany, the Hellenic Republic, Ireland, the Italian Republic, the Republic of Latvia, the Principality of Liechtenstein, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Republic of Malta, the Kingdom of the Netherlands, New Zealand, the Kingdom of Norway, the Republic of Poland, the Portuguese Republic, Romania, the Slovak Republic, the Republic of Slovenia, the Kingdom of Spain, the Kingdom of Sweden, the United Kingdom of Great Britain and Northern Ireland].

⁵⁹ The Court explained the basis for this distinction as the United States' reservation to Article IX of the Genocide Convention. Allegations of Genocide Under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukr. v. Russ. Fed.), Order on Admissibility of the Declarations of Intervention, 2023 I.C.J. Rep. para. 93-98, 102 (June 5).

⁶⁰ Allegations of Genocide Under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukr. v. Russ. Fed.), Order on Admissibility of the Declarations of Intervention, 2023 I.C.J. Rep. para. 42, 47, 54, 61, 72, 77, 82 (June 5).

Following diplomatic support, the most frequently employed measure by third states has been economic and financial assistance. A number of third states -particularly the United Kingdom,⁶¹ the EU member states,⁶² and the United States- have provided direct financial aid to Ukraine in an effort to mitigate the material devastation caused by Russia's aggression.

Foreign aid is a well-established tool of foreign policy. Many states with sufficient financial capacity offer various forms of support to their allies, considering their long-term or short-term political interests, as well as socio-cultural and historical ties. In this particular case, economic and financial assistance is directly linked to Russia's internationally wrongful acts primarily because such aid has been provided in parallel with Russia's violations and because the assisting states have justified their actions—at least in broad terms—as efforts to bring an end to the breaches.

However, there is no clear indication that such economic and financial assistance has been extended as part of a legal obligation. On the contrary, recent examples suggest that third states' actions in this category are closely intertwined with daily political relations. Therefore, economic support provided to the injured state should be viewed as a strategic choice made within the sovereign discretion of states, rather than a legally mandated duty.

3. Military Assistance

State practices regarding military assistance to Ukraine have varied significantly. One of the most restrictive positions has been taken by Switzerland, which, in accordance with the principle of neutrality, has declared that it will not export any military technology to either party in the armed conflict—including Ukraine. Due to the incorporation of Swiss-

⁶¹ EUROPEAN UNION, EU SOLIDARITY WITH UKRAINE, <https://www.consilium.europa.eu/en/policies/eu-solidarity-ukraine/> (last visited Feb. 28, 2025).

⁶² UK GOV'T, UK SUPPORT TO UKRAINE FACTSHEET (Feb. 2025), https://assets.publishing.service.gov.uk/media/67c1b5acb0bb6528ee866c83/UK_support_to_Ukraine_factsheet.pdf.

origin technology in certain military equipment, this policy has also affected third-state arms exports subject to end-user restrictions.⁶³

A different approach can be observed in the cases of Austria, Bulgaria, Hungary, Ireland, and Malta, where states have permitted military exports to Ukraine but limited them to *non-lethal* military equipment (e.g., protective gear).⁶⁴

The final category consists of states that have allowed unrestricted military technology transfers to Ukraine.⁶⁵ The USA, for example, has not only provided direct arms and ammunition to Ukraine but has also authorized third states to export U.S.-origin defense products to Ukraine.⁶⁶

However, even among states in this last group, military assistance has been subject to certain restrictions. These restrictions have either been imposed based on the capabilities of the military technology itself or have been applied to limit how and where the provided military technology can be used. A notable example is the US' initial prohibition on Ukraine's use of U.S.-supplied ballistic missiles within Russian sovereign territory, followed by a subsequent relaxation of this restriction within certain geographical limits. While concerns over the potential escalation and territorial expansion of the conflict have certainly played a role in shaping such policies, it is reasonable to argue that these legal constraints also aim to ensure that military assistance is used strictly for the purpose of ending the breach.

⁶³ FED. DEPT OF FOREIGN AFFS. SWITZ., SWITZERLAND JOINS EU SANCTIONS AGAINST RUSSIA (Mar. 2, 2022), <https://www.eda.admin.ch/eda/en/fdfa/fdfa/aktuell/newsuebersicht/2022/03/neutralitaet.html>.

⁶⁴ Ester Sabatino, EU NON-PROLIFERATION AND DISARMAMENT CONSORTIUM, 89 SIPRI 8 (May 2024).

⁶⁵ STOCKHOLM INT'L PEACE RSCH. INST., TRENDS IN INTERNATIONAL ARMS TRANSFERS 2023, at 10 (Mar. 2024).

⁶⁶ U.S. DEPT OF STATE, BUREAU OF POL.-MIL. AFFS., U.S. SECURITY COOPERATION WITH UKRAINE (Jan. 2025), <https://www.state.gov/bureau-of-political-military-affairs/releases/2025/01/u-s-security-cooperation-with-ukraine>.

At first glance, providing military assistance to one party in a conflict might appear to be inconsistent with the legal concept of *neutrality*. However, considering the official statements made by states supplying military aid, this practice can be explained through the framework of the *benevolent/qualified neutrality theory*.⁶⁷

bb. Measures Directed Against the RF

1. Diplomatic Protest and Isolation

Parallel to the diplomatic support extended to Ukraine, third states have also engaged in diplomatic protest against Russia as a means of pressuring it to cease its violations. Indeed, many states formally denounced Russia's actions as a breach of international law from the very outset, issuing statements through their respective authorities and publicly demanding an immediate end to the aggression.⁶⁸

Beyond condemning violations through international forums, states have also sought to establish mechanisms to ensure accountability. Diplomatic reactions toward Russia have not been limited to mere denunciations; the RF was expelled from the G8 (now the G7)

⁶⁷ Guilo Bartolini, The Law of Neutrality and the Russian/Ukrainian Conflict: Looking at State Practice, EJIL: TALK! (Apr. 11, 2023), <https://www.ejiltalk.org/the-law-of-neutrality-and-the-russian-ukrainian-conflict-looking-at-state-practice/>.

⁶⁸ For instance, please see UK GOV'T, PRIME MINISTER'S ADDRESS TO THE NATION ON THE RUSSIAN INVASION OF UKRAINE (Feb. 24, 2022), <https://www.gov.uk/government/speeches/prime-ministers-address-to-the-nation-on-the-russian-invasion-of-ukraine-24-february-2022>; AUSTL. GOV'T, DEPT OF FOREIGN AFFS. & TRADE, RUSSIA'S INVASION OF UKRAINE, <https://www.dfat.gov.au/crisis-hub/russias-invasion-ukraine> (last visited Feb. 28, 2025); MINISTRY FOR EUR. & FOREIGN AFFS. OF FR., UNDERSTANDING THE SITUATION IN UKRAINE FROM 2014 TO 24 FEBRUARY 2022, <https://www.diplomatie.gouv.fr/en/country-files/ukraine/situation-in-ukraine-what-is/understanding-the-situation-in-ukraine-from-2014-to-24-february-2022/> (last visited Feb. 28, 2025); GOV'T OF THE NETH., THE NETHERLANDS' POSITION ON RUSSIA AND UKRAINE, <https://www.government.nl/topics/russia-and-ukraine/the-netherlands-position> (last visited Feb. 28, 2025); FED. GOV'T OF GER., FEDERAL GOVERNMENT CONDEMNS RUSSIAN ATTACK (Feb. 24, 2022), <https://www.bundesregierung.de/breg-en/news/federal-government-ukraine-war-russia-2007196>; MINISTRY OF FOREIGN AFFS. OF THE REPUBLIC OF KOR., ROK GOVERNMENT STATEMENT ON RUSSIA'S ARMED INVASION OF UKRAINE (Feb. 24, 2022), https://www.mofa.go.kr/eng/brd/m_5676/view.do?seq=322002; GOV'T OF ICE., ICELAND STRONGLY CONDEMNS RUSSIA'S ATTACKS ON UKRAINE (Feb. 24, 2022), <https://www.government.is/diplomatic-missions/embassy-article/2022/02/24/Iceland-strongly-condemns-Russias-attacks-on-Ukraine-/>.

following the annexation of Crimea,⁶⁹ and after the full-scale war began in 2022, its membership in the UN Human Rights Council was suspended.⁷⁰ Additionally, Russia has been excluded from numerous international sporting and cultural events.⁷¹

2. Economic Sanctions

One of the most widely used tools under the *duty of cooperation* has been the imposition of economic sanctions against Russia. Notably, these *sanctions* have been implemented unilaterally by third states or in accordance with decisions adopted by international organizations of which they are members—without a prior UN Security Council resolution.

Although the interpretation of ARSIWA does not provide a clear consensus on the legitimacy of countermeasures taken by third states, state practice indicates that economic tools are frequently employed to achieve political and legal objectives. In the case of Russia, economic measures have been explicitly linked to its unlawful armed intervention against Ukraine.

The legal characterization of these economic sanctions is crucial to assessing their legitimacy. In summary, if such measures result in a breach of an existing legal obligation, they may be classified as countermeasures; if they do not create such a legal conflict, they may be regarded as mere retorsion.⁷² In any case, given the limited number of states resorting to this mechanism, it is evident that states perceive economic sanctions as a right rather than a legal obligation. Furthermore, in the absence of a binding Security Council

⁶⁹ GROUP OF SEVEN, ABOUT THE G7, <https://www.g7italy.it/en/about-g7/> (last visited Feb. 28, 2025).

⁷⁰ G.A. Res. ES-11/3 (Apr. 7, 2022).

⁷¹ INT'L OLYMPIC COMM., Q&A ON SOLIDARITY WITH UKRAINE, SANCTIONS AGAINST RUSSIA AND BELARUS, AND THE STATUS OF ATHLETES FROM THESE COUNTRIES, <https://www.olympics.com/ioc/media/q-a-on-solidarity-with-ukraine-sanctions-against-russia-and-belarus-and-the-status-of-athletes-from-these-countries> (last visited Feb. 28, 2025).

⁷² Abdullah Bora, Rusya Federasyonu'na Yönelik Tek Taraflı Yaptırımların Uluslararası Hukuk Çerçevesinde Değerlendirilmesi [Evaluation of Unilateral Sanctions Against the Russian Federation Within the Framework of International Law], in RUSYA-UKRAYNA KRİZİ VE ULUSLARARASI HUKUK [RUSSIA-UKRAINE CRISIS AND INTERNATIONAL LAW] 215-16 (Cüneyt Yüksel & Ceren Karagözoğlu eds., On İki Levha Yayıncılık 2023).

resolution, no legal obligation to impose sanctions on Russia can be said to exist for third states.

Conclusion

There is a broad consensus within the international community that Russia's aggression against Ukraine constitutes a breach of international law. The fact that only a small number of states have maintained an opposing stance, without providing any legal justification for the legitimacy of Russia's actions, further supports this conclusion. Moreover, some of these dissenting states have been repeatedly criticized in UN Security Council resolutions for their persistent disregard for international legal norms.

Regarding the obligation of non-assistance in maintaining the breach, there is a consensus—except among Russia's close political allies—that direct military assistance should not be provided to the RF. However, the same level of consistency cannot be observed in terms of economic support. In this regard, third states have largely adopted a narrow interpretation of their obligations, often seeking to comply by refraining from engaging in trade with the annexed territories rather than ceasing all economic ties with Russia.

It is also evident that the use of lawful measures to end the breach has been treated as a *right* rather than an *obligation*, as reflected in the varying approaches of different states.⁷³ One indicator of this perception is the fact that actions that would typically be considered inconsistent with certain international legal norms—such as the unilateral economic sanctions imposed on Russia without a UN Security Council resolution—have been widely accepted as lawful countermeasures.

⁷³ For a similar conclusion using a different example, see James Crawford, *THIRD PARTY OBLIGATIONS WITH RESPECT TO ISRAELI SETTLEMENTS IN THE OCCUPIED PALESTINIAN TERRITORIES* 14 (2012), <https://www.tuc.org.uk/sites/default/files/tucfiles/LegalOpinionIsraeliSettlements.pdf> (last visited Feb. 28, 2025).

The efforts of states to end the breach through lawful means have taken the form of supporting Ukraine's access to necessary mechanisms and imposing diplomatic, economic, and military measures to hinder Russia's ability to continue its unlawful actions. However, despite these efforts, millions of people have been affected by the war, significant damage has been inflicted, and—most notably—the violation itself has not yet been fully halted. This raises questions about the effectiveness of these measures.

The primary reason for this shortcoming is the dysfunctionality of the collective security system, which was designed to operate through the UN Security Council but has proven ineffective when a permanent member is involved in the violation. The alternative solution—third-state action—has faced challenges due to selective and inconsistent enforcement. To address this issue, it may be beneficial to establish minimum standards for third-state responses to serious breaches of international law by codifying such principles within primary norms across different areas of international law. This could help mitigate the selective enforcement problem and enhance the effectiveness of third-state measures.

Otherwise, states will continue to prioritize their short-term political interests over ambiguous legal obligations, leaving room for broad diplomatic maneuvering. As Judge Buergenthal once stated: *“The so-called ‘realities,’ which more often than not consisted of crime and lawlessness on a massive scale, proved to be less real and less permanent than many assumed.”*⁷⁴

⁷⁴ Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. 136, 240, para. 4 (July 9) (separate opinion by Buergenthal, J.).