

Sergey Sayapin and Evhen Tsybulenko, editors. The Use of Force against Ukraine and International Law: Jus ad Bellum, Jus in Bello, Jus post Bellum

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Sergey Sayapin and Evhen Tsybulenko, editors. *The Use of Force against Ukraine and International Law: Jus ad Bellum, Jus in Bello, Jus post Bellum*. Foreword by Leila N. Sadat, T. M. C. Asser Press, 2018. Distributed by Springer-Verlag. xxviii, 458 pp. Tables. Appendices. References (end of chapters). \$159.99, cloth.

The edited volume under review, *The Use of Force against Ukraine and International Law: Jus ad Bellum, Jus in Bello, Jus post Bellum*, represents yet another scholarly attempt to empirically and theoretically approach that which escapes neat and unequivocal qualification under international law—Russia’s hybrid aggression and use of force against Ukraine.¹ The book stands out in its endeavour to bridge the discussion of the conflict’s past, present, and future, primarily by elucidating in a three-dimensional way selected legal and empirical blind spots in the conflict’s eruption and in the ongoing conduct of hostilities, as well as in the ideas regarding what is to come afterward.

The twenty chapters structured around the book’s three thematic parts—*jus ad bellum*, *jus in bello*, and *jus post bellum*—examine Russia’s overt and covert uses of force against Ukraine in the Crimea and in the Donbas against the tripartite backdrop of the legally regulated conditions (that is, the legitimate reasons) under which states may resort to war or the use of (armed) force in general (meaning, *jus ad bellum*); the laws and customary international norms that regulate the conduct of warfare (meaning, *jus in bello*, or international humanitarian law proper); and the entire body of laws, norms, and principles (that is, the moral and normative frameworks) that apply during the transition from war to peace and that help achieve *jus post bellum* ‘justice after war.’ While the law of armed force is traditionally conceptualized within the context of the former two notions, the addition of the *jus post bellum* perspective on the Russo-Ukrainian conflict in this edited volume helps both to tackle empirical issues of transitional justice and to develop a more comprehensive—tripartite—conception of the use of force

¹ Other book-length legal studies on the (Russian) use of force against Ukraine are notably Grant’s *Aggression against Ukraine: Territory, Responsibility, and International Law*; Chinkin and Kaldor’s *International Law and New Wars*; and the edited volume *The Use of Force in International Law: A Case-Based Approach* (especially chapter 63 [855-72]). There is also the impressive Ukrainian-language volume *Ukrains'ka Revoliutsiia hidnosti, ahresiia RF i mizhnarodne pravo: Kolektyvna monohrafiia* (1016 pages!), compiled and edited by Oleksandr Zadorozhnii, to whom the current book under review is dedicated (see xvii); some of the contributing authors in the book here are also contributors in Zadorozhnii’s book.

that is more rooted in legal theory and moral philosophy than confined to international humanitarian law.

Thus, the first seven chapters of part 1, “Jus ad Bellum” (3-170), look into the question of whether there were any legitimate reasons for Russia’s illegal use of force against Ukraine during the Crimean-annexation campaign and during the hybrid incursion in Ukraine’s east. Symbolically, part 1 opens with a chapter on the so-called *jus contra bellum*—Miras Daulenov’s discussion of both the legal and the political frameworks, including the 1994 Budapest Memorandum on Security Assurances, that should have shielded Ukraine (but failed!) from any foreign incursion, territorial or otherwise, especially from the Russian side (see 3-19). Next, Bill Bowring’s essay discusses those “people of Crimea” who in principle could have sought, and who allegedly did seek, “self-determination” (see 21-40), and Valentina Azarova details what implications Russia’s *occupation qua annexation* (that is, belligerent occupation) has and will have for both Russia proper as an aggressor-state and for the Crimea as an “illegal territorial regime” post-2014 (see 41-71). The final four chapters in this part deal with the international legal aspects of the Russian war against Ukraine in the Donbas (see Oleksandr Merezhko’s essay [111-21]); the challenges of defining Russian proxies in this hybrid war as “separatists” versus “local collaborators,” “Russian troops,” or “mercenaries” (see Evhen Tsybulenko and J’moul A. Francis’s essay [123-44]); the legal status of the so-called Donetsk People’s Republic and Luhansk People’s Republic (or DNR and LNR; see Tymur Korotkyi and Nataliia Hendel’s essay [145-70]); and Russian compatriot and “passportization” politics across the post-Soviet space, and in southeastern Ukraine more generally (see Sabine Hassler and Noëlle Quéniwet’s essay [73-110]).

Eight chapters in part 2, “Jus in Bello” (173-326), survey in a more overarching way selected aspects, or “faces,” of the Russian war in Ukraine—from the legal challenges and implications of hybrid warfare (see Gergely Tóth’s essay [173-83]), including the hindered operation of international treaties (see Olga Butkevych’s essay [185-213]) and the legal dimensions of illegal occupation (see Tsybulenko and Bogdan Kelichavyi’s essay [277-96]), to cyber operations during Russia’s continued aggression in Ukraine (see Jozef Valuch and Ondrej Hamulak’s essay [215-35]), manipulations of historical memory and information warfare (see Sergii Pakhomenko, Kateryna Tryma, and Francis’s essay [297-312]), the use and status of foreign fighters (see Anastasia Frolova’s essay [237-59]), the precarious lives, rights, and well-being of children in conditions of armed conflict (see Natalia Krestovska’s essay [261-75]), and the Russian abuses of international legal frameworks as part of its hybrid warfare against Ukraine (also known as “lawfare”; see Sergey Sayapin’s essay [313-26]).

Last but not least, five chapters in part 3, “Jus Post Bellum” (329-445), introduce debate on several critical issues within a whole range of questions pertaining to the enforcement of responsibility, the transition from war to peace, and the pursuit of transitional justice. This block of topics, which relate to currently unfolding and anticipated future processes, presents a vastly underexplored area of inquiry in the literature. Thus, the book’s five concluding chapters are a welcome contribution. This final part opens with a broad discussion of the options on the table for pursuing post-conflict justice in the context of the Donbas war (see Gerhard Kemp and Igor Lyubashenko’s essay [329-54]), followed by an analysis of the legal mechanisms for triggering Russia’s international responsibility for alleged crimes committed across Ukraine, including in the Crimea and in the Donbas (see Beatrice Onica Jarka’s, Rustam Atadjanov’s, and Ioannis P. Tzivaras’s essays [355-83, 385-407, 409-24]), and a comparative (but perhaps only tangentially relevant to Ukraine) account of post-conflict reconstruction of trust in the media (see Katrin Nyman Metcalf’s essay [425-45]).

Notably, the book does not feature conclusions or an introduction. In place of the latter, a short editorial preface (xv-xviii) is accompanied by a more elaborate, guest-authored foreword (v-xiii) that engages with the book’s structure and the topics addressed. Importantly what is missing is a detailed co-editors’ explanation about why selected issues have been addressed in this volume while others, more significantly, have not been covered. Furthermore, for no good reason, a couple of chapters lack a concluding section (see chapters 1 [Daulenov 3-19] and 5 [Merezhko 111-21]).

It should be noted that in the absence of a single, identifiable analytic framework or approach in this edited volume, it is challenging to pinpoint the main argument(s) or an overarching vision on the conflict that the volume is advancing or aims to advance. As a result of the rather “loose editing” of this joint compilation, individual chapters “speak” little to one another and are somewhat unevenly written. For instance, chapter 8 (Tóth 173-83), on the legal implications of Russian hybrid warfare against Ukraine, could have been more elaborate and taken into account the growing contributions to this most important debate instead of merely scantily addressing such a crucial issue (see 177-81). Chapter 7 (Korotkyi and Hendel 145-70), which discusses the legal status of the so-called DNR and LNR, nearly exclusively focuses on the matters of the legitimacy and legitimization of these formations, leaving the problematique concerning their very (il)legality unaddressed. At the same time, chapter 13 (Tsybulenko and Kelichavyi 277-96) is a reprint of an earlier-published journal article. Other chapters seem to have found a better path to a well-

balanced and holistic coverage of the issues and a theory-embedded empirical legal analysis. In particular, the book brings up some important topics on the “humanitarian dimension” of the Ukraine conflict that remain largely under the radar of international debate—for instance, on the challenges regarding the protection of the rights and lives of children (chapter 12 [Krestovska 261-75]); on sexual violence in the temporarily occupied Ukrainian territories (chapter 19 [Tzivaras 409-24]); and on the even less obvious or straightforward problematique of the status of foreign fighters and the respective states’ obligations toward them (chapter 11 [Frolova 237-59]). In chapter 15 (Sayapin 313-26), the book also legally qualifies (or, to be more precise, disqualifies) Russia’s essentially quasilegal and utterly ridiculous (ab)uses of international criminal law mechanisms, including the (legally unfounded) Russian domestic prosecution of the alleged “genocide of Russian-speaking persons” in eastern Ukraine. This act of a staged prosecution is in fact part of Russia’s unwinding narrative offensive and its efforts to justify aggressive acts in Ukraine—rather than serving “justice” or in any way relating to the notion of “the responsibility to protect,” which is inapplicable here. Chapters 17 (Jarka 355-83) and 18 (Atadjanov 385-407) will be of particular interest to those who are following Ukraine’s two ongoing lawsuits against Russia in the International Criminal Court; these two cases are unprecedented in court practice.

All in all, this impressive collection of essays, despite being “loosely” edited, presents a timely, welcome, and important analysis of *selected* legal and socio-legal issues pertaining to the outbreak, conduct, and anticipated termination of the continued Russian war against Ukraine. The high quality of the individual chapter contributions and their “autonomous” internal design and narrative make this edited volume an excellent collection of stand-alone reference materials on various aspects of the Russian hybrid aggression (or “hybression”) against Ukraine. The forceful occupation and unlawful annexation of the Crimea and the unlawful occupation (or, at least, “effective control”) of certain Donbas territories are just a corollary of a multi-dimensional and ongoing *international* armed conflict. Thus, this volume will be of great interest and assistance to those readers who can confidently navigate the myriad of perplexing topics and issues relating to the (Russian) use of force against Ukraine and who are looking for succinct answers to specific questions.

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