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EUROPEAN UNION MILITARY MISSIONS AND THE WAR IN UKRAINE: MOVING BEYOND THE JUS AD BELLUM FRAMEWORK

Abstract: Since the commencement of the Russian invasion of Ukraine on 24 February 2022, States and regional/international organisations have taken a number of measures both in favour of Ukraine and against the Russian Federation. In the context of support provided to Ukraine, these measures have varied, from financial and humanitarian aid, to weapons supplies and intelligence sharing. Despite the varying degrees of support, no State has yet claimed direct reliance on the *jus ad bellum* regime, the legal framework which would allow for military responses to the ongoing situation in Ukraine (most notably under the regime of collective self-defence). This paper considers the implications of support given to Ukraine by the European Union, considering its historical role in military and training operations across the Balkans and Africa. It questions whether and to what extent the *jus ad bellum* regime has been intentionally avoided to prevent escalation. In considering the ongoing support, the paper then examines whether avoidance of the *jus ad bellum* regime can be considered a move beyond the regime itself, or whether the various and increasing intensity of support ought to be considered a development of the regime itself.

Keywords: use of force; European Union; EUMAM Ukraine; regional enforcement action

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1. Introduction

On 24 February 2022, the Russian Federation launched its large-scale invasion of neighbouring Ukraine.² While much of the details need little recollection here, the following may be noted. Months prior to the invasion, Western allies, in particular the United States, had warned of the impending invasion, ordering an evacuation of its embassy staff and urging citizens to leave the country.³ These warnings came after months of Russian troop activity on the border with Ukraine, where it was estimated some 200,000 troops had amassed.⁴ What followed these warnings was the commencement of one of the largest invasions of a State in Europe since the end of the second World War.

The international community, both States and international organisations responded quickly, condemning the unlawful invasion. On 2 March 2022, the UN General Assembly adopted its Resolution ES-11/1, deploring the invasion as a violation of Article 2(4) of the UN Charter and demanding an unconditional and immediate cessation of hostilities and withdrawal of troops from the territory of Ukraine.⁵ On 15 March 2022, the Russian Federation was expelled from the Council of Europe under Article 8 of the Statute of the Council of Europe.⁶ On 16 March 2022, the International Court of Justice (ICJ) ordered the Russian Federation to suspend military activities in Ukraine.⁷ And on 7 April 2022, the Russian Federation was suspended from the Human Rights Council.⁸

Notwithstanding the broad condemnation and rejection of Russia's justifications for its invasion of Ukraine, what followed were numerous

2 On the prelude to the invasion and the conflict since Russia's annexation of Crimea in 2014, see Faix, Stejskal and Svcevic, "Introduction to the Issue", 5-8.

3 Lee, Madhani, Isachenkov, "US ramps up Ukraine warning, says Russia may invade any day"; see also Atwood and Liebermann, "US moves some forces out of Ukraine and orders evacuation of most embassy staff as fears of Russian invasion grow".

4 Wintour, "Russia has amassed up to 190,000 troops on Ukraine border, US warns".

5 UN General Assembly, 'Resolution ES-11/1. Aggression against Ukraine' (2 March 2022) UN Doc. A/RES/ES-11/1. See specifically paras 2-4.

6 Council of Europe, Committee of Ministers, 'Resolution CM/Res(2022)2 on the cessation of membership of the Russian Federation to the Council of Europe' (15 March 2022) < https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a5da51>.

7 *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)* (16 March 2022) Provisional Measures, p. 19.

8 UN General Assembly, 'Resolution ES-11/3. Suspension of the rights of membership of the Russian Federation in the Human Rights Council' (7 April 2022) UN Doc. A/RES/ES-11/3.

measures in both countering Russia's actions as well as supporting Ukraine. By far the most comprehensive of these came from the European Union (EU), which imposed unprecedented sanctions against Russian State officials and organs as well as private individuals linked to the State. Sanctions were similarly adopted by non-EU States, including Albania, Australia, Canada, Japan, Montenegro, Singapore, South Korea, the United Kingdom and the United States.⁹ While these sanctions in and of themselves have had various degrees of effectiveness in aiding Ukraine, by far the most impactful (and controversial) measures have been the supply of lethal and non-lethal weapons shipments to Ukraine. A large amount of these supplies have come from the EU and its Member States. In addition, in order to assist and coordinate its efforts, in October 2022 the EU established its EU Military Assistance Mission in Support of Ukraine (EUMAM Ukraine).¹⁰

The deployment of EUMAM Ukraine represents one of some two dozen EU military and training missions in a number of regions across the world.¹¹ Established under the EU's Common Defence and Security Policy, these EU missions serve as multifaceted responses to various situations of conflict and instability. Whereas some of these missions have been authorised to use military force, others serve training purposes which also focus on civilian components, security sector reform and the rule of law.

9 Piatetsky, "What are countries doing to counter Russia's war?"

10 See EU Military Assistance Mission in Support of Ukraine. See also Koziol, "EU launches Military Assistance Mission in Support of Ukraine".

11 The EU's ongoing missions include the following civilian mission: the European Union Advisory Mission in Support of Security Sector Reform in Iraq (EUAM Iraq); European Union Advisory Mission in Central African Republic (EUAM RCA); the European Union Border Assistance Mission in Libya (EUBAM Libya); European Union Border Assistance Mission for the Rafah Crossing Point (EUBAM RAFAH); European Union Capacity Building Mission in Mali (EUCAP Sahel Mali); EUCAP Sahel Niger; European Union Capacity Building Mission in Somalia (EUCAP Somalia); European Union Rule of Law Mission in Kosovo (EULEX Kosovo); EU Mission in Armenia (EUM Armenia); EU Advisory Mission for Civilian Security Sector Reform in Ukraine (EUAM Ukraine); EU Monitoring Mission in Georgia (EUMM Georgia); EU Military Partnership Mission in Niger (EUMPM Niger); EU Police and Rule of Law Mission for the Occupied Palestinian Territories (EUPOL COPPS); EU Regional Advisory and Coordination Cell for the Sahel (EU RACC SAHEL); EU Training Mission in Mali (EUTM Mali); EU Training Mission in Mozambique (EUTM Mozambique); EU Training Mission in Central African Republic (EUTM RCA); EU Training Mission in Somalia (EUTM Somalia); EU Partnership Mission in the Republic of Moldova (EUPM Moldova), and the following military missions: EUFOR Bosnia-Herzegovina (EUFOR Althea); EU Naval Force Irini (EUNAVFOR MED Irini); and the EU Naval Force Somalia (EUNAVFOR Somalia). See European Union External Action, 'Missions and Operations' (23 January 2023) <https://www.eeas.europa.eu/eeas/missions-and-operations_en?s=410260>.

This paper examines the varying degrees of support provided to Ukraine, predominantly that of the EU, including the role of EUMAM Ukraine. In so doing, it considers the implications of support given to Ukraine by the EU in light of its historical role in military and training operations across, in particular, the Balkans and Africa. It questions whether and to what extent the *jus ad bellum* regime has been intentionally avoided to prevent escalation in the ongoing war. In considering this support, the paper then examines whether avoidance of the *jus ad bellum* regime can be considered a move beyond the regime itself, or whether the various and increasing intensity of support ought to be considered a development of the regime itself. In doing so, the paper adopts a doctrinal legal analysis, examining the various traditional sources of international law stipulated in Article 38(1) of the Statute of the ICJ. These include examinations of treaty law, customary international law and relevant case precedent. In addition, it also examines the corresponding state practice and the practice of the EU in this regard.

The paper departs with an examination of the *jus ad bellum* framework in place today, particularly under the UN Charter (part 2). Considering that the Russian intervention in Ukraine amounts to an armed attack, to which Ukraine has a right of individual and collective self-defence, this part of the paper also opens up the discussion concerning the right of States to rely on this regime (being legally dispensable to them). Following considerations of the legal regime regulating military force, the paper then examines previous EU missions and deployments (particularly those in Africa and the Balkans). In doing so, it considers the legal basis of these missions' use of military force (part 3). Thereafter, the paper considers the *jus ad bellum* regime with regard to the situation in Ukraine. As yet, no State providing political, military, financial and humanitarian assistance has invoked a justifiable right of intervention such as that of collective self-defence (part 4). Yet, the scale and extent of support provided to Ukraine questions whether States and the EU at large have intentionally avoided the *jus ad bellum* framework or whether existing support provided has moved outside this framework. Alternatively, a further question in need of answering is whether the existing support provided constitutes an expansion or a moving beyond the black letter law of the *jus ad bellum* regime to include also aspects such as the provision of military assistance but without direct involvement in an armed conflict.

2. The *Jus ad Bellum* Framework under the UN Charter

2.1. The Prohibition of the Use of Force

The use of force has had a long and turbulent history in international relations. This is no truer today than it has been over the course of centuries. While military force was not always prohibited, the adoption of the UN Charter and its pivotal Article 2(4) introduced the most robust prohibition and regulation of military force seen to date. Article 2(4) remains not only a cornerstone of the entire UN Charter system of collective security, but also the cornerstone of the entire international legal system. Article 2(4) prohibits both the threat and use of force in international relations. It reads:

All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.¹²

It is true that there has been much criticism regarding Article 2(4)'s endurance, with scholars arguing as early on as 1970 that the prohibition of the use of force had been eroded by the very States which had created it.¹³ At the same time, it remains today undoubtful that Article 2(4) has endured and remains pivotal in State relations.¹⁴ However, this does not mean the prohibition has not been tested significantly, with the turn of the century straining it to near breaking point: the United States invasion of Iraq in 2003, the NATO intervention in Libya in 2011, and most recently the Russia annexation of Crimea in 2014 and invasion of Ukraine in 2022. Despite the turbulence, violations of Article 2(4) only seem to strengthen its importance, relevance and purpose.

¹² Art. 2(4), Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI (UN Charter).

¹³ The most notable of these remains that of Franck, who declared Article 2(4)'s death only 25 years after the adoption of the UN Charter. See Franck, "Who Killed Article 2(4)? or: Changing Norms Governing the Use of Force by States".

¹⁴ See broadly, for example, Becker, "The Continuing Relevance of Article 2(4): A Consideration of the Status of the U.N. Charter's Limitations of the Use of Force", 583-609. See also Faix, Svcevic, Watts, "Regulating Military Force Series – Introduction".

2.2. Exceptions to the Prohibition

UN Security Council Authorisation

The UN Charter system of collective security not only prohibits the unilateral use of military force but also regulates it. Two exceptions to Article 2(4) are found within the UN Charter. The first concerns UN Security Council authorisation. Upon the determination of a threat to international peace and security under Article 39 of the UN Charter, the UN Security Council may authorise States to use military force under Article 42.¹⁵ In addition, the UN Security Council may also employ regional organisations to maintain or restore international peace and security and authorise their use of force under Article 53 (see further below with regard to the EU). The UN Security Council has given such forms of authorisation on a number of occasions: the first time it authorised the use of force concerned the Korean War in 1950.¹⁶ Similarly, the UN Security Council has authorised the use of force during the Gulf War and Balkan Wars of the 1990s, and more recently during the First Libyan Civil War in 2011.¹⁷

Individual and Collective Self-defence

A second exception to the prohibition concerns the right of individual and collective self-defence under Article 51 of the UN Charter. States which are the victim of an armed attack inherently have a right to defend themselves. The right of self-defence can be taken individually by the victim State, or it may request assistance from third States or organisations. The right of self-defence persists as long as the armed attack is ongoing, and only to the extent that the armed attack is repelled or the UN Security Council has become involved in so far as it takes measures necessary to restore international peace and security. It remains without doubt today that the situation in Ukraine represents one not only of an act of aggression taken against Ukraine by the Russian Federation, but that such action also represents a clear armed

¹⁵ Art. 39, 42, the UN Charter.

¹⁶ The relevant resolutions include S/RES/83 (27 June 1950) and S/RES/84 (7 July 1950).

¹⁷ See for example S/RES/678 (29 November 1990) on the Iraqi invasion of Kuwait. See also S/RES/1973 (17 March 2011) on the Libyan Civil War. See the list of other authorising resolutions in Sievers and Daws, *The Procedure of the UN Security Council*.

attack to which Ukraine has a right of self-defence.¹⁸ To the end that it should be mentioned and despite Russia's arguments to the contrary as a justification for its invasion,¹⁹ Ukraine's right of self-defence has been well acknowledged internationally.²⁰

*UN Security Council Authorised Regional Enforcement Action:
The Case of the European Union*

As mentioned, the UN Security Council, in its pursuit to maintain or restore international peace and security, may utilise regional arrangements or agencies (more commonly known as regional organisations). Article 53(1) of the UN Charter explicitly recognises this:

The Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority. But no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council.²¹

In practice, the UN Security Council has relied more on regional organisations to enforce its decisions than it has on individual States. It has, for example, authorised military operations on numerous occasions by the African Union (AU), the Economic Community of West African States (ECOWAS), and NATO.²² However, the UN Security Council has relied most on the EU. The reasoning behind this is two-fold. First, the EU (alongside NATO) remains one of the most capable organisations both financially and militarily. EU military and training missions are funded by, among others, the European

18 See Institut de Droit International, 'Declaration of the Institute of International Law on Aggression in Ukraine' (1 March 2022); Brunk, "International Law and the Russian Invasion of Ukraine".

19 On a legal analysis of these justifications including Article 51, see Green, Henderson and Ruys, "Russia's attack on Ukraine and the *jus ad bellum*", 4-30.

20 See the recent acknowledgment in NATO, 'Vilnius Summit Communiqué' (11 July 2023) para 10, where States indicated they '[f]ully support Ukraine's inherent right to self-defence as enshrined in Article 51 of the UN Charter.'

21 Art. 53(1), the UN Charter. See also Article 52, the UN Charter, which recognizes the existence and role of regional organisations in maintaining or restoring international peace and security.

22 The various EU operations are discussed below; see for example the ECOWAS operations in Liberia (1990-1997), Sierra Leone (1997-1999), and The Gambia (2017); and the NATO intervention in Libya (2011).

Peace Facility (EPF).²³ It is precisely because of a lack of financial and logistical support that other organisations have been unable to effectively engage in conflict situations to the extent that the EU has. The EPF has, for example, a total budget exceeding EUR 12 billion for the 2021-2027 period.

Second, unlike other regional organisations, the EU has in practice insisted on a firm legal basis especially when it deploys military missions. Its practice particularly of military deployments in Africa shows that the EU prefers UN Security Council authorisation as a prerequisite for deployment. It has, on occasion, even insisted that the decision to authorise its military deployments be made under Chapter VII of the UN Charter, significantly because it is precisely under this chapter which the UN Security Council ordinarily takes not only binding decisions, but generally under which it authorises the use of force.²⁴ For this reason, it is worth considering both the nature of EU response (generally) and its military missions (specifically) as well as their legal basis under the *jus ad bellum*, given that such a determination will likely be needed considering also in the context of the EUMAM Ukraine.²⁵ The following section considers the historical EU military deployments and their basis under international law and more specifically under the *jus ad bellum* regime. Once this consideration is undertaken, the position of both the general EU measures and the EUMAM Ukraine deployment may be considered in determining whether the EU has moved beyond the *jus ad bellum* regime (or whether it is an extension of the regime itself).

23 The EPF was established under Council Decision (CFSP) 2021/509 of 22 March 2021. See 'Council Decision (CFSP) 2021/509 of 22 March 2021 establishing a European Peace Facility, and replacing Decision (CFSP) 2015/528 (24 March 2021) *Official Journal of the European Union* (L.102/14) < <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021D0509>>.

24 On the bindingness of Chapter VII, see Svicevic, "The Invocation of Chapter VII in United Nations Security Council Resolutions: Qualification, Classification, and Legal Bindingness".

25 It is worth noting that some EUR 5.6 billion has been dedicated to Ukraine under the EPF. See generally European Peace Facility, 'What we do' < <https://shorturl.at/IXZ03>>, and see specifically Council Decisions (CFSP) 2022/338 of 28 February 2022; 2022/339 of 28 February 2022; 2022/2245 of 14 November 2022; 2023/231 of 2 February 2023; 2023/927 of 5 May 2023.

3. EU Military and Training Missions: Towards Robust Legality through Enforcement Action and Complimentary Consent

3.1. EU Military Missions and Operations

The EU has to date been the single most prominent regional organisation engaged in matters of international peace and security. Despite the transformation of the Organisation of African Unity to the AU, it has been the EU which has had the largest number of UN sanctioned operations on the continent. Two aspects are particularly noteworthy in this regard. First, the EU is without doubt the most capable organisation, financially and logistically speaking, to undertake military missions and operations. Second, the EU has consistently conditioned its deployments on a firm legal basis – most often that of UN Security Council authorisation of regional enforcement action. It is also worth noting that the EU has also regularly conditioned its deployments on the consent of the host State in question. Before considering the EU's response to the situation in Ukraine to date, it is therefore worth examining its previous military deployments and examine the precise legal basis for these deployments under the *jus ad bellum*. This examination is indicative of the EU's *modus operandi*, reflecting its practice in preference when deploying military operations and missions.

EUFOR in the Democratic Republic of the Congo (Operation Artemis)

Following from the second Congo War, the Ituri conflict erupted in the Democratic Republic of the Congo (DRC). The UN Security Council responded initially by deploying the United Nations Mission in the Democratic Republic of the Congo (MONUC).²⁶ Continued violence saw the UN Security Council authorise the establishment and deployment of the Interim Emergency Multinational Force (IEMF).²⁷ Under Resolution 1484 (2003), the EU launched its *Operation Artemis* (EUFOR DRC).²⁸ *Operation Artemis* was

26 S/RES/1279 (30 November 1999), paras 4-5.

27 S/RES/1484 (2003).

28 Council Joint Action 2003/423/CFSP of 5 June 2003 on the European Union military operation in the Democratic Republic of Congo (11.6.2003) *Official Journal of the European Union* L. 143/50 <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003E0423>>. See also Council Decision 2003/432/CFSP of 12 June 2003 on the launching of the European Union military operation in the Democratic Republic of Congo (14.6.2003) *Official Journal of the European Union* L.147/42 <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003D0432>>.

a ground-breaker for the EU: it was the first ever EU lead military operation deployed and was also its first ever operation deployed outside of Europe.

Formally, the operation was led by France and undertaken within the EU's Framework Agreement (France having been appointed the framework nation). It was clear however that even before the operation was deployed and authorised by the UN Security Council, certain EU Member States required a firm legal basis for their involvement. Reportedly, France had conditioned the deployment on three issues: that there be a Chapter VII mandate by the UN Security Council, that the States parties to the conflict agree to the deployment, and that it be limited in time and space.²⁹ The fact that *Operation Artemis* received a UN Security Council mandate under Resolution 1484 (2003) is explicitly mentioned by Council Joint Action of 5 June 2003,³⁰ and the fact that it was mandated under Chapter VII of the UN Charter is explicitly mentioned in Council Decision 2003/432/CFSP of 12 June 2003.³¹ Noteworthy also is the fact that the operation was undertaken in response to a request by the UN Secretary-General, suggesting at the least that the EU would be giving a response to this request and had not itself initiated the military action in question.³² The fact that force was deployed in response to this request is explicitly acknowledged in the wording of the resolution itself, which also indicates that the request was agreed to by the parties involved in the conflict.³³

In essence therefore, the first ever EU military mission was seemingly taken under an abundantly cautious legal basis; one evidently consented to by the parties to the conflict and authorised by the UN Security Council. In addition, *Operation Artemis*, which was always envisaged as a temporary deployment, was swift to withdraw under pressure and not exceed the duration of the mandate given by the UN Security Council.³⁴

29 Faria, "Crisis management in sub-Saharan Africa: The role of the European Union", 40; Homan, "Operation Artemis in the Democratic Republic of Congo"; Hendrickson, Strand and Raney, "Operation Artemis and Javier Solana: EU Prospects for a Stronger Common Foreign and Security Policy", 39-40.

30 Council Joint Action 2003/423/CFSP of 5 June 2003 (n 27) preambular para 2 and 4, Art. 1(1).

31 Council Decision 2003/432/CFSP of 12 June 2003 (n 27) preambular para 1.

32 Council Decision 2003/432/CFSP of 12 June 2003 (n 27) preambular para 2.

33 S/RES/1484 (2003), preambular para 7. The request itself, made by then UN Secretary-General Kofi Annan, is found in S/2003/574 (28 May 2003). See also János, "Operation "Artemis": The First Autonomous EU-led Operation", 124.

34 János, *ibidem*, 128.

EUFOR (Operation Althea)

Less than a year since it deployed in the DRC, the conclusion of NATO's Stabilisation Force in Bosnia and Herzegovina (SFOR) presented the EU with a second opportunity to engage in efforts relating to peace and security. The initiative for the EU to take over NATO operations in Bosnia and Herzegovina (subsequently named *Operation Althea*) was first announced to the UN Security Council on 29 June 2004. In a letter to both the President of the Council of Europe and the President of the UN Security Council, the Minister of Foreign Affairs of Ireland expressed the EU's intentions and requested the UN Security Council be informed so as to 'be in a position to welcome the EU's intention to launch the mission...'³⁵ In addition, the letter also expressed the EU's sentiment that it would welcome if the UN Security Council would be in a position to determine that the status-of-forces agreement found in the Dayton Peace Agreements, which initially provided for NATO's deployment, would apply provisionally to the EU-led military operation.³⁶ The fact that the EU had written to the UN Security Council asking it for what amounted to its blessing again suggested a cautious approach.

It is worth recalling at this point that NATO's SFOR in Bosnia and Herzegovina was authorised under a Chapter VII mandate to use force under Resolution 1088 (1996).³⁷ That authorisation was re-affirmed in ten subsequent resolutions prior to the establishment and deployment of EUFOR. While the EU's request for acknowledgment of its planned takeover of NATO operations in Bosnia and Herzegovina may not have seemed as a request for authorisation, it certainly became so. A concept note of 29 September 2004 for *Operation Althea* suggested the EU would only approve of the deployment subject to Chapter VII authorisation by the UN Security Council. Assumption number 3 of the given assumptions of the concept note stresses that:

A new UNSCR will be adopted prior to the deployment of EUFOR detailing its mandate and role, based on Chapter VII of the UN Charter and will grant EUFOR full authority under the GFAP (Dayton Peace Agreement).³⁸

35 S2004/522*Annex (30 June 2004).

36 Ibidem.

37 S/RES/1088 (12 December 1996) para 19. This authorization was re-affirmed in ten subsequent resolutions until the establishment and deployment of EUFOR.

38 Council of the European Union, 'Concept for the European Union (EU) Military Operation in Bosnia and Herzegovina (BiH) – Operation Althea' (29 September 2004) para g <https://data.consilium.europa.eu/doc/document/ST%2012576%202004%20INIT/EN/pdf>.

In addition, a new status of forces agreement and host nation support arrangement was to be established. This would suggest that the EU was only prepared to deploy *Operation Althea* if it had the consent of the host state (thereby precluding any military action contrary to Article 2(4) of the UN Charter) and with the authorisation of the UN Security Council. The EU's wish for UN Security Council authorisation was granted with the adoption of Resolution 1575 (2004). Noting the confirmation by the Presidency of Bosnia and Herzegovina of the presence of EUFOR in the country,³⁹ and acting under Chapter VII, the UN Security Council authorised the establishment of a multinational stabilisation force as legal successor to SFOR.⁴⁰ Not only did the UN Security Council acknowledge that the EU operation would have the main peace stabilisation role under the military aspects of the Dayton Peace Agreement, but it also authorised both the EU operation and NATO to use force in their defence and to carry out their mission.⁴¹ With a firm legal basis, the EU formally launched *Operation Althea* on 2 December 2004.⁴²

The option of the EU to first seek UN Security Council authorisation, and in addition receive host state agreement to its deployment, showed again the EU's preference for a robust legal basis firmly placed within international law on the *jus ad bellum* regime. It should be noted that while UN Security Council enforcement is undertaken without the need for consent of the target or host State, the EU's second military operation, much like its first, opted to receive consent as a complimentary basis to the UN Security Council's authorisation. *Operation Althea* remains in force today, with the latest extension of its mandate having taken place in November 2023.⁴³

39 S/RES/1575 (22 November 2004), 17th preambular para; see also S/2004/917*Annex (19 November 2004).

40 S/RES/1575 (2004), para 10.

41 S/RES/1575 (2004), paras 11, 15.

42 Council Decision 2004/803/CFSP of 25 November 2004 on the launching of the European Union military operation in Bosnia and Herzegovina (27.11.2004) *Official Journal of the European Union* L. 353/21 < [https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32004D0803\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32004D0803(01)&from=EN)>.

43 S/RES/2706 (2 November 2023), paras 1, 3-5. For more on this operation, see European Union External Action, 'European Union Force in BiH: Operation Althea' <https://www.euforbih.org/?s=324>.

EUFOR R.D. Congo

Some three years after it first deployed to the DRC, the transitional government there was preparing for a general election in 2006. Ahead of these elections, Under-Secretary-General for Peacekeeping Jean-Marie Guéhenno formally requested the EU make available a deterrent force to be deployed to the DRC during the election process.⁴⁴ Among other things, the Under-Secretary-General cited the EU's previous *Operation Artemis* in the country which 'was a crucial factor in providing the basic degree of security necessary for the political process to begin.'⁴⁵ In response to this request, the EU decided on a military mission to the DRC. It however once again cautioned that such deployment could only take place if undertaken with UN Security Council authorisation. In a letter from the Minister of Foreign Affairs of Austria on behalf of the EU to the UN Secretary-General, the following was noted:

...At this stage, it is expected that the decisions permitting the deployment of the force will be taken subsequently on the basis of a resolution of the United Nations Security Council. The adoption of a United Nations Security Council resolution under Chapter VII is essential to enable the involvement of the European Union. Such a resolution must give a robust mandate to the European force and cover the members of the European force deployed in the Democratic Republic of the Congo during the operation itself, as well as during the disengagement phase. I would like to draw your attention to the urgency of this resolution, without which the Council of the European Union will be unable to take the necessary decisions to continue preparations for this operation.

This resolution should also provide a legal basis for the presence of European troops in the Democratic Republic of the Congo. To that end, it would be useful if a provision of the United Nations Security Council resolution could provide for the status of MONUC forces could also apply to the European force, thereby guaranteeing a status similar to that of the forces already in the Democratic Republic of the Congo. A key point of the resolution will be autonomy for the European Union in deciding on the use of force.⁴⁶

44 S/2006/219* Annex I (13 April 2006).

45 Ibidem.

46 S/2006/219* Annex II (28 March 2006).

This address to the UN Secretary-General was perhaps the clearest manner in which the EU had to date expressed itself being subject to the authorisation of the UN Security Council (albeit in implicit terms). The EU's express request for UN Security Council authorisation came with the adoption of Resolution 1671 (2006). Under this resolution, the UN Security Council authorised the deployment of EUFOR R.D. Congo, including authorisation for it to use military force to carry out its tasks.⁴⁷ Interesting to note is the manner in which EUFOR R.D. Congo's authorisation was given, in so far as it was allowed to operate for as long as MONUC operated in the DRC.⁴⁸

In addition, it should also be noted that EUFOR R.D. Congo was deployed in the DRC with the explicit consent of the DRC government, which had endorsed the deployment one month prior.⁴⁹ Much in the same way as with its previous two deployments, the EU's second deployment in the DRC was undertaken both with UN Security Council authorisation under a Chapter VII mandate, and with the consent of the host State in question.

EUFOR Tchad/RCA

Having established itself as a capable and willing force for peace and security, in 2007 the EU was authorised again by the UN Security Council, this time with a deployment to Chad and the Central African Republic (CAR). The EU's operation was mandated to protect and monitor the protection of human rights, facilitate the delivery of humanitarian aid, and contribute to the protection of UN personnel (under the UN Mission in CAR and Chad – MINURCAT)). While it is true that the idea of an EU-led deployment was spearheaded by France at the time, its eventual deployment was in fact recommended by the UN Secretary-General.⁵⁰ The prospects of a deployment in the region had been hampered for some time, with the then UN Secretary-General Kofi Annan concluding that conditions for a UN peacekeeping mission were not in place. Negotiations however progressed between the UN and its new Secretary-General Ban Ki Moon, and Chadian President Deby. In response to these negotiations, in early 2007 the UN Secretary-General

47 S/RES/1671 (25 April 2006), paras 1-2, 8.

48 S/RES/1671 (2006), para 4.

49 S/2006/203 (30 March 2006).

50 Seibert, 'Operation EUFOR Tchad/RCA and the European Union's Common Security and Defence Policy', 9-11.

proposed a multidimensional UN peacekeeping operation.⁵¹ President Deby, however, continued to express his reluctance, in particular being concerned with the military component of the mission.⁵²

The situation had changed by June, when President Deby met with French Foreign Affairs Minister Bernard Kouchner. Following this meeting, the UN was informed that in principle, Chad would accept an international military presence of French and EU forces.⁵³ This proposal was supported on 23 July 2007 by the EU Council of Ministers. On the basis of these developments, the UN Secretary-General revised his recommendations, indicating that the military component of the proposed UN multidimensional force 'would be performed by a European Union military force that has been accepted by President Deby.'⁵⁴

Subsequently, the EU expressed its readiness to support the UN initiative and approve deployment of an EU force. Much like its deployment in the DRC, the EU once again strictly conditioned its deployment on a firm UN Security Council authorised mandate. In a letter addressed to the UN Secretary-General, Permanent Representative of Portugal to the UN conveying the message of Javier Solana, then High Representative of the CDSF, stressing that:

In order for the European Union to participate, however, the Security Council must adopt a resolution providing a mandate adapted for the European force and authorizing the deployment of elements of the European force in Chad and the Central African Republic during the operation itself as well as during its disengagement phase. I should like to draw your attention to the urgent need for this resolution, because without it the European Union will be unable to take all the decisions necessary to continue preparing for this operation. This resolution should also provide a legal basis for the presence of European troops in Chad, in the Central African Republic, and in the transit countries for the force, and should invite the Governments concerned to conclude Status of Forces Agreements with the European Union as soon as possible.⁵⁵

51 S/2007/97 (23 February 2007) para 47 et seq.

52 S/2007/97 (2007) para 93.

53 S/2007/488 (10 August 2007) para 25.

54 S/2007/488 (2007) para 29. See also para 35.

55 S/2007/560*Annex (21 September 2007).

The legality considerations during the pre-deployment phase of EUFOR Tchad/RCA therefore followed a similar path as with EUFOR R.D. Congo. These considerations were given effect to when on 25 September 2007, the UN Security Council adopted Resolution 1778 (2007).⁵⁶ Under that resolution, the UN Security Council approved the establishment of a multidimensional presence in eastern Chad and north-eastern CAR (MINURCAT) and authorised the deployment of EUFOR Tchad/RCA.⁵⁷ The EU operation was authorised to use military force under a Chapter VII mandate.⁵⁸ Some 3,700 troops took part in the operation, with 14 EU Member States sending troops.⁵⁹

What should again be noted is that not only did the EU deploy the operation subject to UN Security Council authorisation, but it also secured the consent of both Chad and the CAR prior to this deployment.⁶⁰ EUFOR Tchad/RCA was therefore the EU's fourth military operation undertaken with a strict legal basis (UN Security Council authorisation) and on a consensual basis of the host States involved.

While it is clear that the EU had, particularly following from *Operation Artemis* become more involved militarily outside of Europe, it has by far and large ensured that its operations considered military in nature, have been based on well-grounded legal bases. The repeated insistence by the EU on UN Security Council authorisation, in some cases explicitly requesting Chapter VII authorised mandates, bears on two suggestions. The first is that the EU considers itself a Chapter VIII/Article 53 regional organisation, capable of addressing matters of regional peace and security, even in cases where that region is located outside of Europe. Second, conditioning its deployments on UN Security Council authorisation, by implication suggests that the EU has subjected itself to the will and authority of the UN Security Council. By extension, it is arguable that in doing so, the EU has carved out a role for itself in the broader UN Charter system of collective security as a regional instrument both capable and willing to either initiate or respond to UN Security Council calls to maintain or restore international peace and security.

56 S/RES/1778 (25 September 2007).

57 S/RES/1778 (2007) paras 1, 6.

58 S/RES/1778 (2007), para 6(a).

59 EU Council Secretariat, 'EU Military Operation in Eastern Chad and North Eastern Central African Republic (EUFOR Tchad/RCA)' (January 2008) < <https://reliefweb.int/report/central-african-republic/eu-military-operation-eastern-chad-and-north-eastern-central-african>>.

60 See S/2007/540*Annex (12 September 2007) and S/2007/551*Annex (19 September 2007) on Chad and the CAR's approval of the international presence.

The consequences of the EU's capabilities being subjected to the authority of the UN Security Council are larger than they may initially appear, especially when one considers that most EU States are also NATO members. In contrast to the EU, NATO has avoided acknowledging itself as an Article 53 regional organisations, precisely so as not to give the impression that it is subjected to UN Security Council authority. This may be at odds with the EU position (or some of its Member States which are also Member States of NATO) given that NATO has on at least one occasion engaged in military action which lacked a firm legal grounding.⁶¹

The position bears consequences considering the situation in Ukraine, to which we may now turn. Member States from both NATO and the EU have and continue to provide significant material and financial support to Ukraine. The question which arises is whether such support, be it financial support for weapons purchases, directly supplying Ukraine with weapons, or intelligence sharing, has engaged the *jus ad bellum* regime. If the answer to this is affirmative, a subsequent question raised is what the precise legal basis under the *jus ad bellum* regime is.

4. The EU's Involvement in the Situation in Ukraine vis-à-vis the *Jus ad Bellum* Framework

Together with the United States, the EU has been at the forefront of financial and material support to Ukraine. This support has taken many forms; for purposes of this examination, they may be broadly categorised as being either military or non-military in nature. In so far as non-military measures concern, the following serves as a consideration of the various and massive response the EU has undertaken. First, and to date, the EU has adopted eleven sanctions packages. The first sanctions package was adopted on 23 February 2022 following from Russia's recognition of Ukraine's Donetsk and Lugansk provinces as independent States. The EU sanctioned some 27 individuals involved (for undermining Ukraine's sovereignty and territorial integrity), asset freezes, travel bans, and restrictions on economic relations with the self-proclaimed territories.⁶²

61 On the legality of the NATO intervention in Kosovo, see Franchini and Tzanakopoulos, "The Kosovo Crisis – 1999", 594-622.

62 Council Implementing Regulations (EU) 2022/260 of 23 February 2022, 2022/261 of 23 February 2022; Council Regulations (EU) 2022/262 of 23 February 2022, 2022/262 of 23 February 2022, Council Decisions (CFSP) 2022/264 of 23 February 2022, 2022/265 of 23 February 2023,

Following the commencement of the Russian invasion of Ukraine, the European Council held a special meeting to decide on further restrictive measures.⁶³ On 25 February, the EU's second sanctions package was adopted: sanctioning Russian President Vladimir Putin and Minister of Foreign Affairs Sergei Lavrov, members of the National Security Council and the Russian State Duma, imposing sanctions on the financial, energy, transport, and technology sector.⁶⁴ In addition, visa restrictions were imposed on Russian officials and businesspersons.⁶⁵ A third package of sanctions banned transactions with the Russian Central Bank, banned overflight of EU airspace by Russian aircraft, and sanctioned an additional 26 persons and one entity.⁶⁶ Additional measures under the third package included the exclusion of seven Russian banks from the SWIFT system and the suspension of Russian broadcasters Russia Today and Sputnik.⁶⁷ These initial sanctions were followed by numerous others, targeting every facet of the Russian State and its involvement in the aggression against Ukraine.⁶⁸ The EU's fifth and sixth sanctions packages included further sanctions listings, further SWIFT and broadcasting exclusions, prohibition of access to EU ports by Russian registered vessels, and the prohibition of import, purchase and transfer

2022/266 of 23 February 2022, 2022/267 of 23 February 2022, (23 February 2022) Vol. 65 *Official Journal of the European Union* L. 42 I. See also Council of the European Union, 'Statement by the Presidents of the European Council and European Commission on Russian aggression against Ukraine' (22 February 2022) <https://shorturl.at/afCLZ>.

63 European Council, 'European Council conclusions on Russia's unprovoked and unjustified military aggression against Ukraine' (24 February 2022) <https://shorturl.at/eswZ3>.

64 Council Decision (CFSP) 2022/329 of 25 February 2022; Council Regulation (EU) 2022/330 of 25 February 2022; Council Decision (CFSP) 2022/331 of 25 February 2022; Council Implementing Regulation (EU) 2022/332 of 25 February 2022, (25 February 2022) Vol. 65 *Official Journal of the European Union*.

65 Council Decision (EU) 2022/333 of 25 February 2022 (25 February 2022) Vol. 65 *Official Journal of the European Union* L. 54/1.

66 Council Regulation (EU) 2022/334 of 28 February 2022 and Council Decision (CFSP) 2022/335 of 28 February 2022.

67 Council Regulation (EU) 2022/345 of 1 March 2022; Council Decision (CSPF) 2022/346 of 1 March 2022; Council Regulation (EU) 2022/350 of 1 March 2022; Council Decision (CSPF) 2022/351 of 1 March 2022.

68 See for example also sanctions imposed on Belarus: Council Regulation (EU) 2022/398 of 9 March 2022; Council Decision (CFSP) 2022/399 of 9 March 2022; Council Regulation (EU) 2022/394 of 9 March 2022; Council Decision (CFPS) 2022/395 of 9 March 2022. See further sanctions in Council Implementing Regulation (EU) 2022/396 of 9 March 2022; Council Decision (CFSP) 2022/397 of 9 March 2022; Council Implementing Regulation (EU) 2022/427 of 15 March 2022; Council Regulation (EU) 2022/428 of 15 March 2022; Council Decision (CFSP) 2022/429 of 15 March 2022; Council Decision (CFSP) 2022/430 of 15 March 2022.

of coal, crude oil and other fossil fuels.⁶⁹ On 28 November 2022, the EU determined that violations of restrictive measures and sanctions it imposed would be considered an ‘EU crime’.

While these sanctions in and of themselves do not necessarily ‘activate’ the *jus ad bellum* regime, the position regarding the EU’s sanctions being more military in nature raise questions. The EU’s first measures which were arguably military in nature came with its third sanctions package when some EUR 500 million in funding was approved under the European Peace Facility (EPF) to finance equipment and supplies for the Armed Forces of Ukraine and permitting Member States to allow transit of military equipment across their territory.⁷⁰ For the first time, such funding was included for the provision of lethal force.⁷¹ The commitment to provide financial support to the Armed Forces of Ukraine gained further traction, and the initial EUR 500 million was increased sixfold to EUR 4.12 billion.⁷² Further provision of military aid to Ukraine increased in 2023. The funding provisions for the Armed Forces of Ukraine have been used for a number of purposes, including reimbursing EU Member States for military equipment and materials donated to Ukraine. On 3 May 2023, the European Commission adopted the Act in Support of Ammunition Production (ASAP), in direct response to provide more ammunition (and missiles if requested), to Ukraine.⁷³ In addition, it is worth noting that EU Member States at the domestic level have also made and undertaken various commitments not only to financing for the Armed Forces of Ukraine but also to direct weapons supplies. The Czech Republic, for example, was the first State to send tanks (T-72s as well as BVP-1 infantry vehicles) to Ukraine.⁷⁴ Together with Belgium, Croatia, Denmark, Estonia,

69 See broadly the regulations and decisions in *Official Journal of the European Union* (8 April 2022) Vol. 65 L. 111, and *Official Journal of the European Union* (3 June 2022) Vol. 65 L. 153. The notorious private military company Wagner Group was also sanctioned, see Council Implementing Regulation (EU) 2023/755 of 13 April 2023 and Council Decision (CFSP) 2023/756 of 13 April 2023.

70 Council Decision (CFSP) 2022/338 of 28 February 2022; Council Decision (CFSP) 2022/339 of 28 February 2022.

71 Art. 1, Council Decision (CFSP) 2022/338 of 28 February 2022.

72 Council Decision (CFSP) 2022/471 of 23 March 2022; Council Decision (CFSP) 2022/636 of 13 April 2022; Council Decision (CFSP) 2022/809 of 23 May 2022; Council Decision (CFSP) 2022/1285 of 21 July 2022; Council Decision (CFSP) 2022/1971 of 17 October 2022; Council Decision (CFSP) 2023/230 of 2 February 2023; and Council Decision (CFSP) 2023/810 of 13 April 2023.

73 European Commission, ‘Act in Support of Ammunition Production (ASAP)’ <<https://shorturl.at/gGU17>>.

74 ‘Czech Republic sends tanks, infantry vehicles to Ukraine’ (5 April 2022) *Reuters*.

Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, the Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, and Sweden, Ukraine has received hundreds of pieces of military equipment and hundreds of thousands of rounds of ammunition. The military support provided ranges, and includes for example ammunition (mortar shells, artillery shells, tanks shells, rockets, hand grenades), small arms (pistols, assault rifles, machine guns), anti-tank weapons (MILAN, Javelin, Panzerfaust, RGW 90 Matador), rocket launchers (MLRS, BM-21 Grads) infantry fighting vehicles (BVP-1, BVP-2, BMP-1A1), tanks (T-72M1, Leopard 2A4, Leopard 2A6, Leopard 1 A5, T-72 Avenger), air defence systems (SAMP/T) and helicopters (Mi-8). It is also worth noting that several EU Member States have pledged to send fighter jets to Ukraine, although this has not yet materialised.

The EU's massive capabilities combined with its dedication to provide large amounts of funding and weapons equipment to Ukraine raises a number of questions under international law and more specifically the *jus ad bellum* regime. First, it questions whether the use of force has been 'activated' given the fact that the EU and its Member States actively provide assistance that is military in nature to Ukraine (by extension, it raises the question whether the EU or its Member States have become parties to the armed conflict). And second, considering that these weapons supplies are taken alongside the EUMAM Ukraine, there is a need to consider the legal basis of an EU mission in a State party to an armed conflict. Collectively, this raises questions also as to whether the EU's position in Ukraine represents a break from consistent practice in ensuring a firm legal basis based either on UN Security Council authorisation or host State consent (often both, being complimentary).

5. Moving Beyond the *Jus ad Bellum* Framework?

That Ukraine has a right to both individual and collective self-defence under international law as the victim of armed aggression and of an armed attack remains without dispute. That UN Member States can come to its aid is equally without question. Ukraine has indeed indicated that it is relying on individual and collective self-defence. Yet, those States and organisations, including the EU and its Member States, have not yet formally acknowledged that they are engaged in collective self-defence on behalf of Ukraine. This is most likely because no State is willing to be considered a party to the armed conflict, since reliance on collective self-defence may imply they are indeed involved

themselves in the armed conflict. By extension, as a party to the conflict, they would be targetable under international humanitarian law. Despite these shortcomings, the situation in Ukraine, and more particularly, the EU response to Ukraine, remains firm.

This raises the first question: is the EU at all involved in Ukraine to the extent that the *jus ad bellum* regime finds application. If so, then what does the *jus ad bellum* regime dictate under the circumstances. A second question is whether the actions of the EU represent a moving away or moving beyond the *jus ad bellum* regime, where States assist a victim of armed aggression without directly relying on an exception to the prohibition of the use of force.

The primary consideration is therefore to place EU military measures in support of Ukraine within international law. Framed differently, does the supply of weapons to Ukraine, involved in an armed conflict, constitute a use of force under Article 2(4). If the provision of weapons supplies is a breach of Article 2(4), then this could raise further issues under State responsibility. It is prudent here to depart with this question by considering that although not directly involved in the conflict, the EU and its Member States are engaged to some degree with a party to the conflict. The ICJ in *Nicaragua v. United States*, and in the context of a non-international armed conflict, already in 1986 indicated that the ‘...arming and training of contras can certainly be said to involve the threat or use of force...’ and that ‘... the mere supply of funds ... did not in itself amount to a use of force.’⁷⁵ On this basis, it has been well pointed out that this logic would apply equally to the case of international armed conflicts where weapons were supplied to a State to engage in hostilities against another State.⁷⁶ The EU and its Member States are both providing weapons to Ukraine to counter Russian aggression, and the Armed Forces of Ukraine are receiving training. In addition, EUMAM Ukraine provides direct training to the Armed Forces of Ukraine, including training on logistics and communication, preparation of companies, and advice on planning, preparation and conduct of live firing exercises. Members of the Armed Forces of Ukraine are in turn trained across several EU Member States under EUMAM.

75 *Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, ICJ Reports 1986, p. 14, para 228.

76 Schmitt, “Providing Arms and Materiel to Ukraine: Neutrality, Co-Belligerency, and the Use of Force”.

If one considers that collectively, the provision of weapons to Ukraine together with the training of the Armed Forces of Ukraine (including under EUMAM), represents an ‘activation’ or actual use of force under Article 2(4) of the UN Charter, then the natural next question is whether there is a legal exception concerned. In contrast to the right of self-defence claimed by the Russian Federation, it remains almost entirely without dispute that it is Ukraine who has been the victim of an armed attack and possesses the right of individual and collective self-defence.⁷⁷ This much has been confirmed broadly within academia by experts and scholars of international law, as well as by State pronouncements on the international stage.⁷⁸ That Ukraine is in fact acting in self-defence is evident, and that the EU and its Member States have assisted in this defence without explicit terms is as evident. The reason for this ‘implicit practice of collective defence of Ukraine’ is obvious. Should the EU or its Member States formally acknowledge they are acting in collective self-defence, they could be seen as a party to the conflict and could open up direct military confrontation against the Russian Federation.⁷⁹ For this reason, no EU Member State has yet formally invoked the right of self-defence under Article 51, suggesting that they do not themselves consider to be acting under it.⁸⁰

An alternative view recently presented is that the right of self-defence is broader than merely use of military force measures; correspondingly, not all actions taken during the exercise of the right may be military in nature.⁸¹ This is supported both by a textual interpretation of Article 51 of the UN Charter, which neither content nor structure limit measures only to forcible ones, and by subsequent State practice.⁸² If one follows this line of argument, then States which engage in individual or collective self-defence are not necessarily only engaging in the use of armed force. If one were to apply this to the situation in Ukraine, it could be interpreted that the EU and its

77 On an extensive analysis pertaining to Russia’s reliance on several legal bases for its invasion of Ukraine, see Green, Henderson and Ruys, *ibidem*, 4-30. On Ukraine’s right of self-defence, see Doubek, “War in Ukraine: Time for a Collective Self-Defense?”.

78 See for example: Permanent Mission of France to the UN in New York, ‘France supports Ukraine in exercising right to self-defence’ (12 September 2023) < <https://onu.delegfrance.org/nouvelle-traduction-france-supports-ukraine-in-exercising-its-right-to-self>>.

79 Hoogh, “The Elephant in the Room: Invoking and Exercising the Right of Collective Self-Defence in Support of Ukraine against Russian Aggression”.

80 Green, “The provision of weapons and logistical support to Ukraine and the *jus ad bellum*”, 11.

81 See extensively Buchan, “Non-Forcible Measures and the Law of Self-Defence”, 5-18.

82 Buchan, *ibidem*, 9-10, 14-18.

Member States are not necessarily engaged in military use of force in Ukraine by virtue of their actions of weapons supplies and training through EUMAM Ukraine. As a consequence, they would be relying on Article 51 collective self-defence in response to Russia's armed attack but without necessarily making use of military measures (direct military confrontation). On this basis, it is therefore worth recalling that if the EU support and EUMAM's actions qualify as a use of force, they are covered within the confines of the right of collective self-defence. If they fall short of the use of force in international law, there may not necessarily require a legal exception to Article 2(4)'s prohibition of the use of force.

Finally, it is worth noting that the division between whether the provision of weapons to Ukraine and the EUMAM deployment be an instance of use of force and whether such use of force be justified in a *de facto* collective self-defence, is not at all clear.⁸³ In the first instance, it is in fact not entirely clear, neither from the jurisprudence of the ICJ which has limited pronouncements on non-international armed conflicts, nor from State practice, as to whether the provision of weapons is at all a use of force. Secondly, it is equally unclear whether such provision of weapons and also training of armed forces should need to be justified under self-defence, or whether such provision may be considered a non-forcible measure under self-defence. To the extent that it should be mentioned, the development of such views suggests that the situation in Ukraine may be such that in order to assist the victim of an armed attack against an aggressor State which is not militarily confronted directly, there may be a move beyond the strict military nature of the *jus ad bellum* regime.⁸⁴

The potential to view the EU's response to the situation in Ukraine as a move beyond the *jus ad bellum* regime would, however, not be without limits. While the precise contours of that limitation are not always clear, one could reasonably foresee that if they EU were to become directly involved in the conflict by, for example, deploying troops, there would be a return to the *jus ad bellum* regime.

83 Green, *ibidem*, 15-16.

84 Arguments on the law of neutrality have faced similar questions as to its practicality and applicability today.

6. Conclusion

The EU has had a moderate history of military deployments. Four successive deployments have shown that when it resorts to military measures, the EU optimistically looks to firm legal grounding under international law. Its operations in Chad, the DRC, and Bosnia and Herzegovina have shown that at times, the EU has deployed military force only upon the explicit authorisation of the UN Security Council and with a Chapter VII-outlined mandate. In addition, the EU has always aimed at and achieved securing the consent of the host State to which it deploys its military missions and operations. To this end, EU military missions and operations have never sat on legally shaky or unclear ground. A consequence of this is that through its deployments in line with the CDSP, the EU has subjected itself to the authority of the UN Security Council.

Turning to Ukraine, there is understandably little to no prospect that the EU could secure any authorisation for its mission in Ukraine, considering the obvious fact that the EU's response is aimed against the veto-wielding Russian Federation itself. In the absence of a fully functional and tolerant UN Security Council, the EU has had to forego the blessing it has previously received. Its deployment to Ukraine, the EUMAM Ukraine mission, remains to be conducted without any UN Security Council involvement. As one of the exceptions to the UN Charter's prohibition of the use of force in Article 2(4), UN Security Council authorisation can no longer be seen as a means to secure a legal basis for EU military deployments.

The consequences of the EU's response to Russian aggression in Ukraine are cumbersome, considering which perspective one takes on these responses. Evolving literature and corresponding State practice suggests divergence in opinion, but also opportunities for new perspectives. If one considers the EU responses and its deployment of EUMAM Ukraine as a use of force, such force needs legal justification to avoid the perception that Article 2(4) has been violated. The difficulty in justifying the EU's responses under the almost automatic assumption of collective self-defence within the meaning of Article 51 is that the EU and its Member States have been hesitant in formally declaring their actions as such. For obvious reasons, such a declaration is unlikely in the near future. It is on this basis that alternative perspectives be taken into account. Particularly so that if one considers the right of self-defence as encompassing not only military measures but also non-military measures, then the EU's responses either do not activate

‘force’ within the meaning of Article 2(4) or do not need justification under Article 51.

On this basis, it is possible to conclude that the actions of the EU, its individual Member States, and EUMAM Ukraine, may represent a notable shift beyond the *jus ad bellum* regime. This shift suggests that States can aid others who have been the victim of an armed attack, while not themselves becoming involved in the conflict (at least not directly), and neither formally having to invoke an exception to the prohibition of the use of force. While such a possible shift beyond the *jus ad bellum* may serve as one way to confront aggressive States violating international law, it remains to be seen whether other States and international organisations would take a similar approach under comparable circumstances.

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