

## **ZOOM OUT**

### ***The Question:***

#### **The war in Ukraine: An ongoing debate**

*Introduced by Maurizio Arcari and Beatrice Bonafé*

More than one year after the launching of the Russian ‘special military operation’ in Ukraine, plans for bringing the conflict to an end remain largely conjectural. Almost to mark the anniversary of this catastrophic war, on 23 February 2023 the General Assembly generously attempted to cope with the issue of a ‘comprehensive, just and lasting peace in Ukraine’ through a resolution sustained by an overwhelming majority.<sup>1</sup> However, that text made very little apart recalling some basic (and admittedly obvious) principles considered as critical for reaching a just peace;<sup>2</sup> and, ultimately, it did not seem to have produced significant material consequences.<sup>3</sup>

Apparently, also from a legal standpoint the overall picture seems to have changed very little during this year of war. The Russian military operation is still qualified as an ‘aggression’.<sup>4</sup> Ukraine is still claiming to be acting in the exercise of its right to self-defence.<sup>5</sup> The Security Council, in spite of the impressive average score of one meeting per week devoted to the conflict, is still deadlocked on the operative side.<sup>6</sup> Hence, the bulk

<sup>1</sup> See UNGA Res ES-11/6 ‘Principles of the Charter of the United Nations underlying a comprehensive, just and lasting peace in Ukraine’ UN Doc A/RES/ES-11/6 (23 February 2023).

<sup>2</sup> *ibid* operative paragraphs 1 and 4 to 9.

<sup>3</sup> See however the G7 Leader’s Statement on Ukraine (19 May 2023) para 2 available at <[www.g7hiroshima.go.jp/documents/pdf/230519-01\\_g7\\_en.pdf](http://www.g7hiroshima.go.jp/documents/pdf/230519-01_g7_en.pdf)>. This part of the statement is entitled ‘Towards a comprehensive, just and lasting peace in Ukraine’ and expressly recalls GA Res ES-11/6.

<sup>4</sup> UNGA Res ES-11/6 (n 1) seventh preambular paragraph; G7 Leader’s Statement on Ukraine (n 3) para 1 (preamble).

<sup>5</sup> See for example the statement by the Foreign Minister of Ukraine, Dmytro Kuleba, at the meeting of the Security Council of 24 February 2023, UN Doc S/PV.9269 at 5.

<sup>6</sup> See M Arcari, ‘The Conflict in Ukraine and Its Implications for the UN System of Collective Security’ (2022) 32 *Italian YB Intl L* (forthcoming).



of the reactions to the Russian aggression continues to unfold outside the institutional context of the United Nations, mainly through economic sanctions against Russia or military assistance to Ukraine provided by third States, acting individually or in the framework of regional organizations.

While the latter forms of reactions seem to run in parallel (not by chance, insofar as they come essentially from the same side of the international community, ie Western States), in recent months a spectacular escalation has been registered concerning the supply of weapons to Ukraine. The debate ignited by the recent, controversial decision of the US administration to allow the supply of F16 warplanes to Ukraine's defense forces is nothing but the tip of the iceberg.<sup>7</sup> These developments reinvigorate the discussion about the legal qualification of the military assistance provided by third States to one of the parties of an international armed conflict in light of the relevant categories of *ius ad bellum* and *ius in bello*. At the same time, the issue has important implications for the domestic legal order of third States providing military assistance to Ukraine, especially where constitutional provisions do exist that repudiate the aggressive use of force.

On account of this ongoing debate, QIL decided to look afresh at the Ukraine question, by adding new contributions to those already issued in a previous Zoom-out and covering different aspects of the crisis. In the present issue, Giulio Bartolini will investigate whether the supply of lethal weapons to Ukraine is consistent with the law of neutrality; Paolo Zicchittu will consider the question of military assistance to Ukraine from the standpoint of the Italian constitutional legal order. As other sensitive problems are raised by the Ukraine conflict (ie, the violation of rules of international humanitarian law and the related question of individual criminal responsibility for such breaches), nothing prevents that the current debate be further pursued in next issues of QIL.

<sup>7</sup> J Beale, J Gregory, 'F-16 fighter jets: Biden to let allies supply warplanes in boost for Kyiv' BBC News (20 May 2023) available at <[www.bbc.com/news/world-us-canada-65649471#:~:text=The%20US%20says%20it%20will,submit%20in%20Japan%20on%20Friday](https://www.bbc.com/news/world-us-canada-65649471#:~:text=The%20US%20says%20it%20will,submit%20in%20Japan%20on%20Friday)>.

