

Enforcement of Jus Ad Bellum: From Mukden and Ethiopia to Ukraine

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Abstract: Jus Ad Bellum, the international law on using force, is a critical component of maintaining world peace. We compared the effectiveness of regulating and preventing conflict in the modern era by analyzing three cases: the Mukden Incident, the Second Italo-Ethiopian War, and the 2022 Russo-Ukrainian War.

Keywords: Jus Ad Bellum, Kellogg-Briand Pact, League of Nations, United Nations

1. Introduction

Concerning Jus Ad Bellum (JAB) before the end of World War Two and before the establishment of the United Nations, a broad consensus has been made that it was notoriously ineffective at preventing armed conflict. As a result, in popular media, textbooks, and other educational material, JAB is rarely mentioned as an impactful factor in state actions that preceded WWII. However, the modern era of conflicts is governed by evolved customs and laws concerning armed conflict and more robust organizations to impose consequences on those who undermine JAB. As a result, states are taking more cautious steps to ensure that they obey JAB and engage in ‘just’ wars, lest they be plagued with sanctions [1], domestic protests, and international isolation [2]. As a result, we can observe that JAB has evolved to become more customarily accepted and effective.

This passage seeks to prove that the enforcement of JAB has seen a drastic improvement from its early years and seeks to establish a more optimistic, constructive view of JAB in an age where it may be colloquially regarded as the wishful thinking of statesmen, disconnected from the gruesome realities of military conflict.

Therefore, we first worked on proving the failure of JAB in regulating and preventing conflict during its ‘infant years,’ limiting our scope of case studies to the time between the Kellogg-Briand Pact (KB Pact) of 1928 and the end of WWII. The KB pact was the first major binding treaty signed between many major and minor nations attempting to outlaw war, setting a precedent for breaking international law via unjust war. WWII was the dividing point between the prominence of the League of Nations and the United Nations. While both were the primary international organizations of their time, the extent to which JAB was enforced differed. We shall compare the enforcement of JAB during this time to the present day, giving us a holistic picture of its evolution. To this end, we will examine the Mukden Incident (1931) and the Second Italo-Ethiopian War (1935) as pre-WWII cases, and the 2022 Russo-Ukrainian War as a post-WWII case of similar magnitude.

2. The Kellogg-Briand Pact

Before discussing individual cases regarding violations of JAB, some contextual information on the KB Pact can provide insight into how the first attempt at JAB was envisioned in 1928. Initially designed to be a bilateral arrangement solely between the US and France to outlaw war between the two after WWI, the first drafts of the KB Pact were feared to be interpreted as a provocative bilateral alliance. Therefore, the two sides decided to “take the lead in inviting all nations to join them in outlawing war” [3]. Due to the pact prohibiting only wars of aggression but not wars of self-defense, the invitation to other states was met with a broadly positive response. By the latter half of 1929, most of the recognized nations of the world had signed the treaty. As a widely celebrated step in goodwill international cooperation between great powers, Frank B Kellogg received the 1929 Nobel Peace Prize for his contributions [4].

Notably, the treaty “renounces [recourse to war] as an instrument of national policy in [states’] relations with one another” in Article 1, and that “disputes and conflicts” were to be resolved “by pacific means” in Article 2 [5]. Therefore, we will use these two articles as the main criteria for determining whether an action breaches the KB Pact.

Infamously, however, the KB Pact had no mechanism for enforcement. The Pact did not provide punishments or consequences for those who broke it and entirely relied on countries acting in good faith to obey it. Therefore, the primary enforcer of JAB was the League of Nations, which in its Covenant, contained several articles designed to regulate conflict and prevent war to its best extent. Unlike the KB Pact, the League's Covenant presents potential consequences for violators, even containing a mutual defense article between its members in Article 16, similar to the well-renowned Article 5 of NATO seen today. Should a member engage in a war while disregarding the League’s other JAB articles (specifically Articles 12, 13, and 15), “it shall ipso facto be deemed to have committed an act of war against all other Members of the League” [6]. However, this article was never invoked, as no nation was realistically willing to go to war because of an illegal invasion.

3. The Mukden Incident

On September 18, 1931, the Japanese army invaded Manchuria, which was under the control of North-Eastern Chinese warlord Zhang Xueliang. The region fell in a few short months as the various Chinese warlords’ weak forces quickly collapsed against the Japanese army. Initially, Japan declared it would withdraw its troops in due time, but in February 1932, it created Manchukuo, a puppet state.

Japan’s justification for the invasion was a variety of factors. For example, “On September 18, 1931, an explosion destroyed a section of railway track near the city of Mukden”, which was the fire that lit the powder keg of Sino-Japanese relations that have “deteriorated dangerously” [7]. Japan still insists on this reason, even though the railway incident was most likely staged [8]. Furthermore, even when considering an additional compilation by Japanese publicists of provocative incidents on the Chinese side [9], a full-scale invasion followed by occupation was never justified. A full-scale invasion was not a proportional retaliation, as per the laws on using force in the League's Covenant.

Shortly following the invasion, Japan claimed to have established the state of Manchukuo. Unfortunately, the Montevideo Convention that defined what constitutes a recognized state in terms of international law (which Manchuria would not have due to its diplomacy being decided by Tokyo) [10] did not convene until two years later, in 1933. The League ordered a policy of non-recognition of Manchukuo to be taken by the international community, with questionable effectiveness [11].

Following the invasion, many countries considered to be ‘minor powers’ protested this undermining of Chinese territorial integrity. They pushed for the strict application of the Covenant and an economic boycott of Japan. However, financial crises in the major powers of the League, as well as increased US-Soviet tensions, caused almost no meaningful action to be taken. The world's

significant authorities quickly dismissed collective military action against Japan as impractical, and economic sanctions were not effectively implemented [12]. Nevertheless, the League organized an inquiry commission named the Lytton Commission. The Commission investigated Manchuria and drew up a full report, which concluded that the territory seized by Japan was to be handed back to China. After a few weeks, the Japanese delegation walked out of the League assembly that adopted the Lytton Report and withdrew from the League of Nations [13]. No longer engaged in the primary organization of international law, Japan held much less responsibility and accountability for its actions during its further conquest and subjugation of Asia.

Even though the Mukden Incident was a clear breach of the KB Pact (which Japan had signed), the Pact had little influence over the incident. The Lytton Report noted that nations involved should “observe the provisions of” the KB pact, the League’s Covenant, and the Nine Power Treaty [14]. However, both the “worldwide depression” and a “limited desire to go to war to preserve China” meant that “neither the US nor the League could take any meaningful action to enforce it (the KB Pact)” [15]. Economic sanctions gained “little support,” and as a result, barely any were implemented [16].

As mentioned above, Japan also violated the Nine Power Treaty [17]. US Secretary of State Stimson declared that the US denounced “a challenge to the Nine-Power Treaty / the Pact of Paris as an instrument of national policy by using armed forces” and that the US was to initiate a policy of non-recognition of Japan’s territorial gains in the conflict (aka the Stimson Doctrine) [18]. Although the treaty signatories convened in the Brussels Convention of 1937 [19], the signatories quickly realized that they could do nothing other than attempt futile economic sanctions against Japan [20], which did little to stop its imperialist expansion into the rest of China and Asia.

Though Japan ignored the League’s Covenant, the KB Pact, and the Nine Power Treaty, it came out from the Mukden Incident unscathed (except for its international reputation). As such, the Mukden Incident points to one of the most paralyzing weaknesses of Pre-WWII JAB that made scholars question its principle foundations: there were barely any consequences.

4. The Second Italo-Ethiopian War

After the First Italo-Ethiopian War, where the Ethiopian army, led by King Menelik II, defeated the Italian invading force soundly at the Battle of Adwa, the Treaty of Addis Ababa was signed, which favored Ethiopia. This treaty recognized Ethiopian independence and annulled the disputed 1889 Treaty of Wuchale [21].

Tensions between Italy and Ethiopia were high before their second war, and the two often clashed with words in the League. After the Treaty of Addis Ababa, Italian colonial expansionist aims still treated Ethiopia as a target. In 1935, the first draft of the communique at the Stresa Summit between Britain, France, and Italy spoke of upholding worldwide stability. However, British Foreign Secretary Sir John Simon insisted that the final draft declare that Britain, France, and Italy were to maintain peace “in Europe” instead. Mussolini took this as a British promise of inaction if Italy invaded Ethiopia. As the Italians decrypted the British naval codes, Mussolini knew that Britain did not order its Mediterranean Fleet to stop Italian troops from passing through the Suez Canal.

Additionally, the Franco-Italian Agreements of 1935 gave Italy the French permission to conquer Ethiopia [22]. These concurrent events led Mussolini to believe that the British and French opposition to the invasion, which had come as an unwelcome surprise, was not sincere and that the two would not intervene in Ethiopia [23].

As Italy tested the waters for foreign reactions to a potential conquest of Ethiopia, a crisis was evolving. A controversial armed border conflict occurred between Italian and Ethiopian forces near the border between Ethiopia and Italian Somalia, named the Wal Wal Incident. The two countries began “throwing responsibility upon the other” in the League [24]. After a failed Ethiopian attempt

to push for arbitration by invoking the two states' Treaty of Friendship and Commerce of 1928 [25], Ethiopia appealed to the League under Article 11, Paragraph 2 of the Covenant [26]. During the League's following processes, Italy threatened to leave the League and go to war as a means of bargaining, which violated the disuse of the threat of war as an instrument of national policy, as stated in the KB Pact [27]. In the following months of the League's slow process of pressuring Italy to arbitration, Italy gradually mobilized its colonies of Eritrea and Somaliland, as noted by Ethiopian representatives in the League's following assemblies [28].

Determined to conquer Ethiopia and confidence due to the League's reaction (or lack thereof) to the Mukden Incident, Mussolini ordered the invasion of Ethiopia on Oct 3rd, 1935. As the Second Italo-Ethiopian War started, Ethiopian representatives appealed to the League and requested action against Italian aggression. As a result, the League condemned the Italian invasion in 1935 and imposed economic sanctions on the aggressor. The impact of the sanctions was minimal, though, as said sanctions notably did not include crucial war resources like petroleum, and many states did not impose heavy sanctions due to their state interests in maintaining trade and relations with Italy [29]. By June 1936, most sanctions against Italy were lifted.

Perhaps more outrageously, though, negotiations between British, French, and Italian officials in December 1935 resulted in the Hoare-Laval Plan, which proposed a partition of Ethiopia. Although this Plan was never implemented and both Hoare and Laval were sacked, it did demonstrate some disingenuousness of Britain and France in stopping Italy, as well as bringing into question the extent of the first two nations' sanctions on the latter. In addition, these secret negotiations undermined Ethiopia's integrity as a state and directly worked against the integrity of the League [30].

The failed sanctions contributed heavily, together with other political reasons, to Italy leaving the League in 1937, further decreasing the legitimacy and effectiveness of the League of Nations as an international organization.

By initiating a colonial expansionist campaign, Italy violated the KB Pact. However, this case, similar to the Mukden Incident, displayed that the Pact had no mechanisms for enforcement. As a result, Italy maintained control over Ethiopia until the success of the Allies' East African Campaign in 1941.

International law contributed little to preventing the Second Italo-Ethiopian War and, with modern hindsight, barely even served to delay it. The League of Nations, a platform for negotiation and advisory from the international community, served no decisive purpose when Italy was void of goodwill and actively sought war to conquer Ethiopia. The failed sanctions that followed displayed to the world the inability of the League of Nations to execute collective action against aggression and almost certainly strengthened the confidence of other warmongers at that time to undermine the League.

5. The 2022 Russo-Ukrainian War

The 2022 Russo-Ukrainian War is still going at the time of writing (December 2022). Events may evolve to disprove this essay or require more elaboration.

On February 24th, 2022, Russian president Vladimir Putin gave a televised speech announcing a 'special military operation' into Ukraine, giving the official justification of protecting people who 'have been subjected to abuse and genocide' by the Ukrainian state and 'protect Russia and its people.' Putin also stated that the Donetsk People's Republic and the Luhansk People's Republic, which Russia had only formally recognized via another speech by Putin two days ago, requested assistance in their conflict against Ukraine. Putin stated that the operation's goal was the 'demilitarization and denazification of Ukraine' [31].

The invasion has been deemed an illegal war of aggression, while its justifications were denounced as a distortion of history by the vast majority of the academic world [32]. The KB Pact is mostly

irrelevant in the modern enforcement of JAB since the previous two examples of Mukden and Ethiopia nullified it. Instead, the UN charter serves as the primary criteria for the legality of this conflict. The Russian invasion of Ukraine can be internationally categorized as illegal due to the UN Charter setting out conditions for member states to use armed force. Similar to the Kellogg-Briand pact and the Covenant of the League of Nations, the UN Charter continued attempting to outlaw war. Specifically, Article 2(3) stipulates that all member states must "settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered." Additionally, Article 2(4) outlaws "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" [33].

To characterize the invasion as justified, the Russian government presented several arguments, each of which has been refuted by experts in international law. First, Russia could not use defense in the name of another nation as a pretext for intervention, as the Donetsk PR and Luhansk PR are not widely recognized as sovereign states by international law, only being recognized by Russia a few days before the invasion [34]. Neither could Russia use the justification for stopping the Ukrainian genocide in the Donbas, as there has been no evidence that such genocides were taking place [35]. Finally, comparing the invasion to the Syrian Civil War, the Iraq War, or the Kosovo War would not stand in litigation because, in principle, one instance of illegal use of force should not justify another [36].

In addition to the UN Charter, Russia violated several other international agreements in invading Ukraine. First, the Minsk Agreements, signed between Russia and Ukraine in 2014 for a ceasefire between the two nations, were rendered broken. Second, Russia violated the agreement to recognize and respect Ukrainian territorial sovereignty in the 1994 Budapest Memorandum as part of multiple treaties concerning the transfer of nuclear weapons from former Soviet republics to Russia [37]. Finally, Russia also violated the 1975 Helsinki Accords, where signatories agreed, although not bindingly, not to violate the territorial integrity of other signatories [38].

The international response to the 2022 Russian Invasion of Ukraine was much more determined when compared to the Mukden Incident or the Second Italo-Ethiopian War. A week into the invasion, the UN General Assembly voted overwhelmingly in favor of a resolution condemning the illegal invasion on the grounds of JAB and called for the withdrawing of Russian forces [39]. On March 16, the International Court of Justice ruled, in a 13-2 split, that Russia must "immediately suspend the military operations that it commenced on 24 February 2022 in the territory of Ukraine" [40].

Compared to those imposed before WWII, international sanctions following the invasion of Ukraine were particularly aggressive and effective in economically punishing Russia. Countries like Singapore and South Korea and non-UN member territories like Taiwan, who had not participated in the previous round of sanctions against Russia for the occupation of Crimea, joined the coalition of sanctioning countries led by western nations, crippling Russia's access to electronics and other equipment crucial to warfare and civilian production [41-43]. Total Russian assets frozen in world banks amounted to around \$1 Trillion by March 1st [44]. The sanctions had a wide range of targets: trade, banks, businesses, oligarchs, and Putin himself [45,46]. Even China, a geopolitical ally of Russia, followed the international wave of sanctions and restricted financing for Russian commodities [47]. The US, the EU, and the UK have all crippled imports of oil from Russia, one of the country's most profitable exports [48,49]. G7 nations, the EU, and Australia also implemented a price cap on Russian oil to hinder Russia's funding for its war of aggression [50]. Even as the sanctions on oil can severely damage the economies of the sanctioning countries [51], the 2022 Russo-Ukrainian War demonstrated the impressive ability of the modern international community, under the guidance of international law, to impose comprehensive and damaging economic sanctions on a violator of JAB, which would also discourage other countries from illegally using force.

6. The Role of International Organisations

Looking back on the League's efforts to counter breaches of JAB in the above cases, it had widely failed. From the absence of consequences for violators of the KB Pact to the League's futile efforts of economic sanctions as one of its only methods to dissuade wars of aggression, we can confidently conclude that JAB was not effectively enforced before the end of WWII. Countries tended not to uphold JAB in a conflict unless their interests were somehow affected. As such, JAB could perhaps be described as a tool for diplomacy between countries of interest, as opposed to a universally accepted concept that was the responsibility of the states of the world to enforce.

All countries are indirectly interested in maintaining JAB. War is a mutually destructive process, where even the winners could come out of one economically, militarily, and politically weaker than before. All countries in our current globalized economic ecosystem feel the negative impacts of war: from trade routes being blocked (Suez Crisis [52]) to refugees (Syrian Refugee Crisis [53]) to price hikes of crucial resources (Russo-Ukrainian War [54]). Even if we take the realist perspective that states should naturally be in constant conflict, resolving that conflict and competition of power by peaceful means should always be preferable in contrast to war.

Therefore, international organizations are crucial in enforcing JAB, as countries can hardly act alone in upholding international law [55]. These enforcers have the power to order collective action, including but not exclusively consisting of economic sanctions, coordinated military action, arbitration, denunciation, intelligence sharing, and reporting of escalating tensions and military mobilization.

The United Nations, the successor of the League of Nations as the primary organization for international law, has been much more effective than the League. The UN contains all recognized sovereign states, with non-member states being evaluated and considered regularly. The League, on the contrary, did not include many of the sovereign states of the time, the most important being the US. This membership universality helps the UN establish legitimacy and prevents countries from simply leaving as they desire. International institutions that can prosecute aggressors, like the ICJ and the ICC, were found along with the UN, giving international law a universally recognized court and litigation system. Countries' views on international diplomacy have evolved to respect international institutions more, mainly due to the threat of nuclear annihilation discouraging overly aggressive action that would trigger Mutually Assured Destruction.

The permanent members of the UN Security Council are, in theory, the enforcers of collective action against members who violate laws on the use of force. These members—the US, Britain, France, Russia (formerly the USSR), and the People's Republic of China (replacing the Republic of China) – also hold veto powers in the UN voting system. As a result of seven decades of world history since the establishment of this security council, it is under heavy debate regarding its legitimacy and effectiveness. For example, the Russian and Chinese vetoes in the UNSC will likely block any attempt to try Putin in the ICC for crimes of aggression [56]. However, a Security Council that has been reformed has the potential to more justly and legitimately call for collective action against violators of JAB.

A much more radical change would be to expand the UN peacekeeping force and give it more authority to take military action against states that violate JAB to pose increased consequences for said violators. In addition, the KB Pact can be revised to include a mutual defense article that ensures collective military action against violators of JAB. Similarly, the UN could encourage states to join coalition forces ordered by the Security Council under Article 49 of the UN Charter [57] to execute military action against illegal aggressors.

7. Conclusion

Jus Ad Bellum remains a crucial component of international law. When properly enforced, states would be discouraged from waging wars of expansion, helping preserve peace for the world's benefit. After examining how the enforcement of JAB has successfully evolved since the early days of international law, we must strive to improve it furthermore to defend global peace.

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