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COUNCIL OF COUNCILS

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Session One

The Crisis in Ukraine

Russia's Invasion of Ukraine Will Have Lasting Implications

Council of Councils Global Perspectives

March 3, 2022

By: CEPS, INSOR, PISM, and CARI

Russia's military assault on Ukraine defies international laws and poses one of the most alarming challenges to European security in the post-Cold War era, with ripple effects far beyond the continent. In this Council of Councils global perspectives series, four experts analyze the implications for Russia, Europe, and the world.

Putin's Endgame: Europe Should Prepare for an Even Worse Scenario

Steven Blockmans, Director, Centre for European Policy Studies (Brussels)

Russia's premeditated war against Ukraine is without any justification whatsoever. In defiance of international appeals for a peaceful resolution, warnings about severe consequences, and the adoption of a tidal wave of sanctions, Russian President Vladimir Putin has not been deterred. His full-blown invasion of a sovereign European nation is nothing more than a flagrant act of aggression and a blatant violation of international law.

Crippling sanctions are the right response now and some credence can be given to the argument of incrementalism, whereby the European Union keeps certain sanctions up its sleeve in case of further escalation. It is morally right for EU countries to provide any and all support they can muster to help Ukraine resist the invaders. The European Union itself has crossed a Rubicon by providing direct military support to the Ukrainian army.

The prospect of a full Russian occupation of Ukraine and the installation of a puppet regime is a distinct possibility. It cannot be emphasized enough just how much Putin's warped interpretation of history, great deception, and criminal actions are a direct existential threat to a European security order that has prevailed for more than thirty years since the end of the Cold War.

Putin is the problem and should not be part of the solution in defining a future European security architecture. With his unprovoked war against Ukraine and unveiled threats against other European countries, Putin has entered his endgame. He sits atop a crumbling pyramid of power. That's why the West needs to be prepared for the worst. Reinforcing NATO's eastern flank is of vital importance to prevent any Russian attacks against other parts of Europe.

The invasion of Ukraine is the last call for the European Union to end its gas dependency on Russia and make a success of its European Defence Union. Guided by a new Strategic Compass, the European Union will have to contain the criminal regime in the Kremlin. In the face of such evil, it is essential that EU member states remain united.

A World Power in a Mammoth Trap

Igor Yurgens, Chairman, Institute for Contemporary Development (Russia)

The "special military operation" (if we use the Kremlin's wording) launched by Moscow on February 24 will have a profound effect on global governance, European security, and, of course, the future of Ukraine.

It is too early to be certain about Russia's future in light of the current events. First, Russia will be exposed to more external pressure. International institutions, national governments, non-governmental organizations, and people around the world have reacted to the events. These reactions are only just beginning to translate into specific measures. It is obvious that the effect of new measures on Russia's economy, its citizens, and its very place in international affairs will be much greater than what we saw in 2014–21. In those seven years, Russia has demonstrated that it is capable of mobilizing politically and economically in response to sanctions. Its economy has remained stable, while society and businesses have been willing to tolerate prolonged stagnation and abandon the prospects of development and growth of prosperity. And it seems that the limit of this tolerance can only be determined by trial and error.

Second, this large-scale armed conflict in Eastern Europe has clearly illustrated that the internal checks and balances, upon which the interactions of world powers have relied on for the past seventy-five years (including conflicts), do not have the desired effect on the current Russian leadership. Neither the experts nor the authorities should be overly confident that no further world-shattering actions will be undertaken.

While the quality of Russia's military strategy and planning can be only evaluated later, its poor political planning is already evident. The task of keeping Ukraine under control could be carried out in various forms (and it was often successfully realized in some periods of post-Soviet history). But the "demilitarization" and "denazification" efforts announced by Moscow can only be accomplished through occupation. To abandon the occupation would now mean to surrender potentially the only effective tool of control. Russia has willingly entered a mammoth trap of its own making—an enormous waste of resources and an inability to achieve its national interests anywhere outside the occupation zone.

Furthermore, Moscow's reliance on Beijing is growing considerably. The People's Republic of China remains the only stable and large external market for Russia and its only source of advanced technologies. But these new conditions made this relationship a deadly poison for the Chinese.

As of now, Russia is gradually turning from an actor into only a factor in efforts for a new kind of global resilience and sustainability. The events of February 2022 have become the strongest evidence for that. Seeing these events unfold from the vantage point of Moscow, one can only hope that no more drastic measures and radical steps will be taken.

Copernican Revolution in European Politics

Patrycja Sasnal, Head of Research, Polish Institute of International Affairs (Poland)

The Russian president has gone mad. No rational calculation justifies his illegal and deadly attack on Ukraine. His twisted historical dream of making Ukraine “Russian” again is as if France attacked the United States to get Louisiana back.

The preposterousness of Putin’s attack makes his blatant irrationality visible for the first time, not only to governments in Europe, but also to many people around the world. The past century of European history flashes before our eyes anew.

The war in Ukraine has refreshed and revived memories of the great wars that destroyed our European lands not even a century ago. The stories of our grandparents and great grandparents who fled East from one army and then West from another, had their homes leveled, and were gassed in concentration camps throughout Central Europe sound in our ears again—just in time, before we were about to forget. The fear of the atom bomb—the terrifying companion of the generations born between the Second World War and the 1970s—is back too. As if that weren’t enough, one of the first places Russia took control in Ukraine was Chernobyl—a symbol of existential danger for the 1980s generation.

It is because of these undercurrents of European generational memory on the one hand, and the arrogant absurdity of this war on the other, that Europe, the European Union in particular, is turning its policy around in what ultimately may be a Copernican revolution in politics. The president of the European Commission, Ursula von der Leyen, announced that, for the first time in history, the European Union would purchase and deliver military equipment worth five hundred million euros to a country under attack, and not even an EU member state. The same amount will be delivered in humanitarian aid. Many Russian banks will be removed from the SWIFT international payment system and vast individual and systemic sanctions were put in place. The European Union imposed larger sanctions than NATO members and Ukraine may now have a viable prospect of joining the European Union, while Europe truly becomes a united, autonomous global player. Germany made a similar 180 degree turn, announcing a gigantic increase in military expenditures of one hundred billion euros, surpassing the NATO goal of spending 2 percent GDP on defense, suspending Nord Stream 2, and delivering military equipment to Ukraine.

For Poland, the most remarkable result of this war so far is the immense and unprecedented societal mobilization to help Ukrainians. Almost half a million Ukrainians have already arrived, on top of the two million who already live and work in Poland. Such compassion may ultimately change the image of Poland as a migrant-averse society because Poles are not homogenous and, like many other societies, split half and half. The empathic half is now vocal and ready to help.

In *My Struggle*, considered a barometer of contemporary Europe, the Norwegian author Karl Ove Knausgaard wrote that “never has a society been further from revolution as our own.” Thanks to the war in Ukraine, a European political revolution may now be well underway. Although the price for it will be most likely paid in Ukrainian blood.

From “Little Green Men” to Green Helmets

Lila Roldán Vázquez, Advisory Member and Director of Eurasian Contemporary Studies, Argentine Council for Foreign Affairs (Argentina)

In March 2014, hundreds of “little green men” (soldiers without any national identification) surrounded Ukrainian barracks in Crimea and forced the local parliament to declare the Autonomous Republic of Crimea, an integral part of Ukraine, independent. Russian President Vladimir Putin ultimately acknowledged that they were, in fact, Russian soldiers.

Eight years later, preceded by “special military operations” in neighboring Belarus and along the eastern border, thousands of Russian soldiers have invaded Ukraine, this time with the aim of taking the whole country.

Putin’s actions have gone from conceit and delusion to open defiance and threat, and are a blatant violation of the main principles that the Charter of the United Nations enshrines.

But they are not unrelated facts—they belong in a series of actions taken by Putin in the pursuit of a broader strategy, oriented to modify the transatlantic security architecture. It also serves an even more ambitious purpose: to recover the imperial power of the Russia empire and place it in a prominent place in a multi-polar world.

The real surprise is not what Putin did, although nobody expected the actual scope of military aggression, but instead what the West did not see, did not adequately evaluate, or was not prepared to admit.

On one hand, the West suffered from too many misperceptions and opportunities lost. And on the other hand, a czarist-minded leader was able to seize each of them.

It is not that Putin did not give enough warnings of his ultimate intentions. His words and actions since the early 2000s should have rung alarm bells: his merciless repression of the Chechen revolt in 1999–2000, the Georgian war in 2008 that resulted in two new Republics of Abkhazia and South Ossetia, the renewal, in 2010, of the Black Sea Red Fleet lease until 2042, the annexation of Crimea by “little green men” in 2014, the amendments to the Russian Constitution in 2020, the distribution of Russian passports in neighboring countries, the demand that NATO and the United States reform the European security architecture in December 2021, and the recognition of the auto-proclaimed republics of Donetsk and Lugansk in February.

So now we have “green helmets” all over Ukraine, threatening its independence, even its very existence.

The West, as well as other world powers, need to heed the lessons of two decades of Putin in power and adopt an effective strategy to prevent more “little green men” elsewhere in the future.



FOREIGN AFFAIRS

How to Make Peace With Putin

The West Must Move Quickly to End the War in Ukraine

BY THOMAS GRAHAM AND RAJAN MENON

March 21, 2022

THOMAS GRAHAM, a Distinguished Fellow at the Council on Foreign Relations, served as Senior Director for Russia on the National Security Council staff between 2004 and 2007.

RAJAN MENON is the Director of the Grand Strategy Program at Defense Priorities, the Anne and Bernard Spitzer Professor of International Relations Emeritus at the City College of New York, and a Senior Research Fellow at Columbia University's Saltzman Institute of War and Peace Studies.

What terms should Ukraine accept to end Russia's unprovoked, unjustifiable war? Some may consider this an impertinent question. In a war between democracy and autocracy, or good and evil, only a righteous victor's peace is defensible. The right question, in that view, is what demands the United States and its partners, first and foremost Ukraine, should impose on Russia as punishment for its egregious aggression.

In reality, a satisfying victory is likely out of reach, at least for now. Russian President Vladimir Putin has run into unanticipated, stiff resistance from the Ukrainians and harsh sanctions from an unexpectedly unified West, but

nothing suggests that he is about to retreat. Instead, he is doubling down. His military is increasingly targeting civilians, especially in large cities. As the death toll, the scale of destruction, and the risk of a widening conflict mount, the priority must be an end to the suffering. This can only be achieved through diplomatic engagement that produces a political settlement.

The first, most urgent challenge is to broker a cease-fire and provide humanitarian aid to refugees, both inside and outside Ukraine. The next is to negotiate an end to the war. A cease-fire would create conditions for more fruitful diplomacy, but talks, such as those now underway between the Ukrainians and the Russians, should proceed even if it proves unattainable. Either way, the Russian army will be occupying considerable Ukrainian territory: Crimea, to be sure, but also parts of northern, northeastern, and eastern Ukraine, including a land corridor connecting Crimea to Russia and land north of the peninsula. Ukraine and the West will need to determine what compromises they can make to induce Putin to stop his war and withdraw his forces. Demilitarizing Ukraine or relegating the country to Russia's sphere of influence, as Moscow demands, would be unacceptable. Short of such appeasement, however, Kyiv and its partners must now consider how much they are willing to concede.

In a final deal, Kyiv's bid to join NATO—and, possibly, further enlargement of the alliance into the former Soviet space—will likely need to be ruled out, but Russia will also need to accept that a neutral Ukraine would retain close security ties with the West. The agreement must also include plans for Russia to contribute to the cost of reconstructing Ukraine and for referenda to settle the political futures of Crimea and the Donbas “republics.” The West, for its part, must clarify the circumstances under which it is prepared

to remove sanctions on Russia. No party will be satisfied with all aspects of the final settlement. But without hard compromises, the war may not end.

OUT OF OPTIONS

There is no obvious path to an early, decisive victory over Russia. The United States and its allies have rejected the possibility of direct military intervention to defend Ukraine, given the risk that it could trigger a nuclear war. The Western arms flowing into Ukraine will increase Russia's already substantial losses in soldiers and armaments, but Putin appears prepared to accept the cost if that is what it takes to subdue the Ukrainian army.

Putin started this war, but toppling him would not necessarily end it. A popular uprising that overthrows him is unlikely; the Russian state has formidable means of repression at its disposal and has proven its willingness to use them. In the event of a palace coup, a new leader could be more willing to talk but would hardly be interested in surrendering, given the risks that would pose to remaining in power. There is little reason to think regime change attempted from the outside would produce a positive outcome, either. Those who advocate this route assume one of two scenarios: the emergence of a new autocrat who is willing to end the war without victory, or even better, mass protests that eventually lead to a democratic Russia. They overlook a third outcome that cannot be ruled out: prolonged political upheaval and violence that destabilizes a nuclear superpower.

Likewise, harsh, punitive sanctions will not end the war any time soon. The historical record shows that sanctions take a long time to affect the calculations of the targeted state, if they do at all; consider the example of North Korea. Leaders who believe their actions are essential to achieve vital national security objectives, as Putin does today, have often proved willing to pay a steep economic price.

The United States and its European allies, meanwhile, cannot wait to find out how long the Kremlin can bear the costs of its war. They are fast approaching the limit of the sanctions they can levy without suffering the economic repercussions themselves. Gas prices are soaring, as is the cost of wheat (both Russia and Ukraine are major exporters). Inflation, already severe, is expected to get worse and economic growth rates to fall, introducing the risk of 1970s-style stagflation. The disruption of supply chains that began during the pandemic has been exacerbated by the war, as container shipping companies face higher insurance rates and cargo aircraft are forced to use longer routes following Russia's decision to deny overflight rights to 36 countries.

Prolonging the Russian offensive will lead to the deaths of many more innocent Ukrainians and wreak further economic damage on Ukraine that will take years, perhaps decades, to repair. And it will increase the chances of the war spreading beyond Ukraine, drawing the United States and its NATO allies into an armed confrontation with Russia. Moscow has already declared that the convoys carrying Western arms to Ukraine are legitimate targets and has stepped up airstrikes and missile attacks on locations near Ukraine's border with Poland. Demands to create a no-fly zone over Ukraine or to dial up sanctions with the aim of bringing down Putin's political order carry the risk of disastrous unintended consequences without achieving the desired results.

TIME TO START NEGOTIATING

Even though Ukraine and its Western backers are in no position to defeat Russia on any reasonable timescale, they do have leverage to push for negotiations. Stiff resistance from Ukraine's army and irregular forces is multiplying Russian casualties, which—together with deteriorating economic conditions in Russia and the ruling elite's fears of popular

discontent—could put enough pressure on Putin to make him amenable to a political settlement. Ukraine’s leaders, for their part, may be open to major concessions in order to end the human suffering and economic damage caused by the Russian assault. The tipping point for both parties to commit to the type of agreement that can end the war may be only weeks away.

That means the time to sketch the outlines of a diplomatic solution is now. It is the Ukrainians’ right, of course, to decide the terms acceptable for ending their armed resistance to Russian aggression. But negotiations will not be limited to Ukraine and Russia, as any resolution to the crisis will need to address not just Ukraine’s geopolitical orientation but Moscow’s broader concerns about Europe’s security architecture. For these discussions, Russia will accept no other interlocutor than the United States, the only other country with sufficient military might to alter the balance of power on the continent—and to act as guarantor for a final settlement.

Front and center in these negotiations will be the question of NATO’s eastward expansion, which the United States and its allies have so far categorically refused to discuss with Russia. It is hard to imagine, however, that Putin will drop his demand that Ukraine’s membership in NATO be blocked before he withdraws his troops. Before the war, NATO membership was non-negotiable for Ukrainian President Volodymyr Zelensky. But his recent statements have put neutrality back on the table. The United States and its allies, meanwhile, may have to decide whether they are willing to shut NATO’s door to other former Soviet countries seeking membership.

The next challenge is to find an arrangement under which a militarily nonaligned—or neutral—Ukraine can be confident in its security. After Russia’s invasion, a deal with terms similar to those of the 1994 Budapest Memorandum—in which Russia, the United States, and the United

Kingdom offered security assurances in exchange for Ukraine abandoning the nuclear arsenal it inherited from the Soviet Union—will hardly be acceptable to Ukrainian leaders. Kyiv will undoubtedly look to the United States and other NATO members for arms and military training, as well as assistance in modernizing its defense industries, to ensure that Ukraine has the capacity for self-defense.

Russia will be uneasy with such an outcome, but it may accept it as long as Ukraine agrees not to allow NATO combat troops, armaments, or bases on its soil. In exchange, Ukraine may seek limits on Russia's military deployments in its territory adjacent to Ukraine.

A settlement must also ensure that Russia abandons the territories it has occupied since its February 24 invasion and establish a procedure for determining the future status of Crimea and the Donbas statelets whose independence Putin recognized prior to the attack. Ideally, that procedure would end in a decision based on internationally monitored referenda that are certified as free and fair. Such a vote would likely affirm Crimea as a part of Russia, which Ukraine can accept as a reality without formally recognizing it—this would be similar to the way the Federal Republic of Germany and the German Democratic Republic handled their relationship in a treaty signed in 1972. The outcome of a referendum in the Donbas would be less certain. Since the separatist leaders have claimed, with Russian backing, the entirety of the Donetsk and Luhansk provinces, only a third of which they physically controlled before the war, Kyiv should insist that the referenda be conducted throughout the two provinces. That would almost certainly result in a defeat for the separatists and the liquidation of their strongholds.

Finally, the settlement must include provisions for the reconstruction of war-ravaged Ukraine. The Russians will be unwilling to bear the entire burden, but Moscow ought to cover a large share of the costs its invasion has inflicted, with the United States, Europe, and international financial institutions picking up the rest.

Convincing Russia to undertake a substantial financial commitment—or to make any of the tough concessions outlined here—will require the United States and its allies to put forward a plan for the removal of sanctions. Moscow will want to know the terms and timetable for phased economic relief and, eventually, the end of all penalties. Without this assurance, it will have no incentive to agree to a settlement.

NOT YET A VICTORY

The final terms of an actual agreement will depend on where the fight stands as the negotiations unfold. Positions on the battlefield and economic and political conditions within Russia, Ukraine, and the West will all influence the pace and results of the talks. Russia and Ukraine may be prepared to make the necessary concessions only after both conclude that the costs of continued fighting outweigh the sacrifices that a diplomatic settlement will require. And the West might push vigorously for a settlement only when it realizes that sanctions on Russia require that it endure severe economic blowback. No party has reached that stage yet, but given the brutality of the conflict, the mounting losses on both sides, and fragile socioeconomic conditions in the West, the time could come sooner than expected.

An enduring settlement will have to balance the interests of all parties to the conflict. In the framework proposed here, no party achieves its ultimate goals, but each gets something it urgently needs—this is the inevitable outcome of any negotiation to end a horrific war. It will not look like the

victory that many in the West and Ukraine yearn for. Still, a settlement that preserves an independent Ukraine with the wherewithal to defend itself should count as a major success. It is worth remembering that the West won the Cold War not in one fell swoop but through a series of steps—including, when necessary, compromises with Moscow to avert war. The result was the steady accumulation of advantages over 40 years. That is the approach the West should adopt today.

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From War of Choice to War of Perseverance

Peace in Ukraine remains a long shot unless the West can change Putin's calculus.

Project Syndicate

March 14, 2022

By Richard Haass

“Ripeness is all,” noted Edgar in Shakespeare’s *King Lear*. When it comes to negotiations to limit or end international conflicts, he is right: agreements emerge only when the leading protagonists are willing to compromise and are then able to commit their respective governments to implement the accord.

This truth is highly relevant to any attempt to end the war between Russia and Ukraine through diplomacy. Ukrainian President Volodymyr Zelensky has any number of reasons to end a conflict that has already killed thousands of his citizens, destroyed large parts of several major cities, rendered millions homeless, and devastated Ukraine’s economy. And his standing has grown by the hour, giving him the political strength to make peace – not at any price, but at some price.

Already, there are [signs](#) he might be willing to compromise on NATO membership. He would not recognize Crimea as being part of Russia, but it might be possible for him to accept that the two governments agree to disagree on its status, much as the United States and China have done for a half-century concerning Taiwan. Similarly, he would not recognize the independence of the Donetsk and Luhansk “people’s republics,” but he could sign on to their being given significant autonomy.

The question is whether even this would be enough for Russian President Vladimir Putin, who has demanded the “[de-Nazification](#)” of Ukraine, a phrase that seems to call for regime change, as well as the country’s total [demilitarization](#). Given that he has questioned whether Ukraine is a “real” country, it is hard to avoid the conclusion that he remains uninterested in coexisting with a legitimate government of a sovereign, independent state. So far, Putin has demonstrated he is more interested in making a point than in making a deal.

What could change this? What could make the situation riper for a negotiated solution? That is actually the purpose of the West’s policy: to raise the military and economic costs of prosecuting the war so high that Putin will decide that it is in his interest (he clearly cares little about the interests of Russia) to negotiate a ceasefire and accept terms that would bring peace. Again, this seems unlikely, if only because Putin almost certainly fears it would be interpreted as a sign of weakness, encouraging resistance to his continued rule.

Alternatively, he could be pressured to negotiate. In principle such pressure could come from below – a Russian version of “people power” in which the security services are overwhelmed, much as they were in Iran in the late 1970s. Or pressure could come from the side, from the few others who wield power in today’s Russia and could decide that they must act before Putin destroys more of Russia’s

future than he already has. The former does not seem to be in the offing, given mass arrests and control of information, and there is simply no way of knowing if the latter might happen until it does.

The one other party that could put pressure on Putin to compromise is China and its president, Xi Jinping. True, China has publicly cast its lot with Putin, [blaming](#) the US for the crisis and even [amplifying](#) Russian conspiracy theories. Xi might have calculated that it is good for China to have the US preoccupied with the threat from Russia rather than focused on Asia. Xi also likely sees little or no upside in edging toward the US position, given bipartisan support in the US for a tough policy toward his country.

At the same time, Xi cannot be happy that Putin's invasion violates a basic tenet of Chinese foreign policy, namely, to view sovereignty as absolute and not to interfere in other countries' internal affairs. Instead of dividing the West, Putin has united it to an extent unseen since the collapse of the Soviet Union, while simultaneously contributing to worsening views of China in Europe. Nor can Xi welcome the risks the Ukraine crisis poses at a time when China's post-pandemic economic recovery remains fragile and he is seeking an unprecedented [third term](#) in power.

While the chances of changing China's calculus are low, efforts to do so should nonetheless be explored. As a first step, the US should reassure China that it stands by its one-China policy. US President Joe Biden's administration could rescind the Trump-era tariffs, which have failed to induce any change in Chinese economic practices and have contributed to inflation at home. It could also signal its willingness to restart a regular strategic dialogue.

Most important, Chinese leaders should be made to understand that this is a defining moment for their country and its relationship with the US. If China continues to side with Putin, if it provides military, economic, or diplomatic support to Russia, it will face the prospect of economic sanctions and stricter technology controls in the short run and deep American enmity in the long run. In short, the US should make clear that the strategic costs for China of its alignment with Russia will far outweigh any benefits.

There is no way of knowing whether Xi will elect to reorient his stance, and if he did, whether it would cause Putin to approach negotiations in good faith. Without China's support, though, Putin would be even more vulnerable than he already is.

For now, a negotiated peace remains a long shot. There is no evidence that battlefield losses, the costs of sanctions, or internal protest will deter Putin from continuing his efforts to raze Ukraine's cities, crush its spirit, and oust its government. Meanwhile, the people, army, and leadership of Ukraine, backed by the West, continue to demonstrate extraordinary resilience. An unwarranted war of choice is morphing into an open-ended war of perseverance.

The End of an Era: The Page of Cooperation with the West Has Been ‘Turned’

Russia in Global Affairs

Editor’s Column

March 1, 2022

By: Fyodor Lukyanov

Russia’s military intervention in Ukraine has spelled the end of an epoch in the state of global affairs after President Vladimir Putin launched the action last week. Its impact will be felt for years to come, but Moscow has positioned itself to “become an agent of cardinal change for the whole world.”

The Russian Armed Forces’ operation in Ukraine marks the end of an era. It began with the fall of the Soviet Union and its dissolution in 1991, when a fairly stable bipolar structure was overturned by what eventually came to be known as the ‘Liberal World Order’. This paved the way for the US and its allies to play a dominant role in international politics centered around universalist ideology.

The crisis manifested itself long ago, although there was no significant resistance from major powers who were left unsatisfied with their position in the new political playing field. In fact, for quite a long time (at least a decade and a half), there had been practically no opposition at all. Non-Western countries, namely China and Russia, made efforts to integrate into the hierarchy. Beijing managed not only to do this, but also made the most of the situation to gain a foothold as a dominant player. Moscow, however, came out much worse and took longer to adjust to this new world order and cement a respectable place within its ranks.

The system turned out to be both inflexible and shaky as it conceptually excluded any balance of power. More importantly, however, it did not allow for a sufficient level of cultural and political diversity, which is inherently essential for the sustainable functioning of the world. A uniform worldview that ruled out all others was imposed using various means, including attitudes toward military activity.

As legend goes, Tsar Peter the Great raised a toast to his “Swedish teachers” after the Battle of Poltava in 1709. Now, the current Russian leadership can also say that it has learned a lot from the West. In Russia’s actions in Ukraine, it is easy to pinpoint elements – from military to informational – that were present in America and NATO’s campaigns against Yugoslavia, Iraq, and Libya.

Tensions have long been boiling, and Ukraine has now become the decisive frontline. This is not an ideological battle like the one witnessed in the second half of the twentieth century. World hegemony is currently being challenged in favor of a much more distributed model. The old Cold War concept of ‘spheres of influence’ is no longer applicable because the world has become much more transparent and interconnected, making isolation possible only to a limited degree. At least, that’s what we’ve thought — up until now.

As has often happened in the past, the current fight is being waged for strategically important territory. The old adage ‘history repeats itself’ is evident when flicking from one media outlet to another. Two different approaches have collided. On one side, there is the exercise of classic hard power, which is guided by simple, unpolished, but plainly understandable principles – blood and soil. Meanwhile, on the other is a modern method of propagating interests and influence, realized through a set of ideological,

communicative, and economic tools, which are effective and, at the same time, malleable – commonly referred to as ‘values’.

Since the Cold War, the more modern of these approaches has nearly always been the go-to method. Let’s call it by its fashionable, but inaccurate, name – ‘hybrid war’. For the most part, however, this has never been met with serious resistance, let alone direct armed confrontation.

The Russian leadership, which decided on extremely drastic steps, probably understood the consequences, or even consciously aspired to them. The page of cooperation with the West has been turned. This does not mean that isolationism will become the norm, but it does mark the end of an important historical chapter in political relations. The new Cold War will not end quickly.

After some time, the effects that the current military operation has caused will most likely begin to subside, and some forms of interaction will resume, but the line has inevitably been drawn. Even in a favorable scenario, it will be many years before sanctions are lifted and ties are gradually and selectively restored. Restructuring economic priorities will require a different approach, which will stimulate development in some ways, and slow it down in others. The most active part of Russian society will have to realize that their old way of life is gone.

‘Fort Russia’ has decided to put its strength to the test and, at the same time, has become an agent of cardinal change for the whole world.

The War in Ukraine: The Challenge of Shaping an Endgame

Udi Dekel | No. 1570 | March 15, 2022

The human tragedy in Ukraine is painful, and there is still no mechanism for ending the war. The United States and NATO have defined an objective – imposing a heavy cost on Russia in order to deter Putin from future aggression, while at the same time managing the conflict wisely in order to stop its sliding into a third world war. In view of the escalation in fighting, the US and its allies must examine the consequences of a continued war: mounting civilian casualties, the danger of expansion beyond Ukrainian borders, and the potential unconventional dimensions. Understanding that continuation of the war increases the risks of escalation to levels that none of the parties want, the United States will have to identify the critical point that if reached could expand the war arena. It will have to preempt this moment and agree to talk with Putin and even to show some flexibility, mainly by committing not to allow other countries bordering on Russia into the NATO alliance.

Russian President Vladimir Putin decided to launch a military attack against Ukraine when it became clear to him that he lacked political leverage to change the regime in Kiev, and after Western countries, led by the United States, rejected all his demands to divide influence in Eastern Europe and restrict the spread of NATO forces and capabilities in the area.

The United States and NATO member countries erred in their understanding of the possible outcomes of attempts to breach the defense belt around Russia – countries of the former Soviet Union – in order to reinforce a reality of a reduced, weak, and vulnerable Russia. Putin interpreted their actions as subversion and arrogance toward Russia, and the drive to prevent it from regaining its historical status as a superpower. Fueled by an underestimation of the willingness and determination of the West to confront him, and evidence of growing weakness in the status of the United States as the leader of the free world, Putin decided that this was the time to act. After 20 days of fighting, it is possible to identify the failure in the Russian President's assessment of the outcomes, and the unintended consequences of his decision to invade Ukraine.

President Putin's limited circle of advisers includes Defense Minister Sergei Shoigu, Chief of Staff Valery Gerasimov, and Director of the Foreign Intelligence Service Sergei Naryshkin. Nobody who opposes Putin's policies and methods participates in the decision making process. This fact explains, at least partially, Putin's miscalculation of the situation and his choice of military action: the Russian intelligence personnel underestimated the capabilities of the Ukrainian army, and did not evaluate the Ukrainian public's determination regarding mobilization and the armed struggle against the invasion, and the support they would receive. The Russian military commanders nurtured Putin's sense of power and ability to achieve a rapid victory at a reasonable cost; Putin adopted the optimistic scenario of a short war, without examining the possibility of a long, blood-soaked, and expensive war, or the risk that it would end in a military defeat. The decision makers in Moscow were also surprised by the extent of the West's response, by the unity of the NATO alliance around the goal of isolating Russia, and the demand that it pay a particularly high price. Putin and his associates did indeed estimate that the West would prefer to use economic sanctions against Russia, but were surprised at the scope of the sanctions – a record of some 5,000 – and their strict and rapid enforcement. In addition, the NATO countries understood that they had to increase their investment in security, and there is growing pressure by the United States on its allies in Europe to stop buying oil from Russia, certainly in the medium and long term.

Conflict on Two Levels

The conflict in Ukraine is underway on two levels: one is the bilateral level – a war between Russia and Ukraine intended to impose Russian influence on its western neighbor. The second is the regional and global level, with the United States and NATO members against Russia: this is a conflict over spheres of influence in Europe and the rules of the game in the international system. Putin wants to extend Russian influence into East European countries and block the eastward spread of NATO. Opposing it, the United States is fighting for its global status and the security of its allies, together with a fear of the consequences of hostilities with Russia for the competition between the powers, mainly between itself and China.

The NATO countries have avoided intervening militarily alongside the Ukrainian forces, anxious as to direct fighting against the Russian army, although there have been some voices in the West calling for military intervention, such as imposing a no-fly zone over Ukraine. But the enforcement of a no-fly zone would require United States and NATO warplanes to patrol the skies over Ukrainian territory and bring down any Russian planes and helicopters that violate the ban. This would mean that the United States and Russia were fighting each other, and in any case for a limited operational achievement, since Russia has the capability to attack Ukrainian cities with ground-to-ground missiles rather than aircraft. Another proposal was to set up a humanitarian refuge in western Ukraine, on territory not yet captured by Russian forces. The intention is to mark out a safe region for displaced Ukrainians, who would be protected by NATO forces under the auspices of the UN, and to prevent the further westward advance of the Russian army. Such a step would mean recognition of the division of Ukraine into an area under Russian control and a western area under NATO control. The expected outcome would be the creation of a region of direct friction between the Russian army and NATO forces, with a growing risk of leading to a third world war. Therefore the United States and Europe have chosen to avoid direct military conflict, to continue to apply sanctions and send weapons and ammunition to the Ukrainian army, while observing as the Russian army sinks in the Ukrainian quagmire, suffering heavy losses and unable to achieve its objectives.

Western aid to the Ukrainian army includes the provision of up-to-date and generally accurate intelligence about Russian moves; the supply of a large number of mobile anti-tank missiles such as Javelin missiles, and Stinger anti-aircraft missiles, which can be operated by small, scattered combat teams acting independently; and the supply and operation of attack drones from Turkey and Poland, which are operationally effective and reduce the risk of escalation. The proposal to send warplanes from Poland or other countries to Ukraine was rejected. As a result, the United States and NATO members are influencing the fighting without directly confronting the Russian army. There is a degree of cynicism in the fact that the conflict

between the parties is conducted on the backs of the Ukrainians, who are suffering heavy losses and a mass flight of civilian refugees out of the country (3 million so far), and the destruction spreads with each additional day of fighting.

How to Shape the Endgame

The United States is publicly refusing to negotiate with Russia, but is allowing bilateral talks between Russia and Ukraine, as well as mediation attempts, including the attempt involving Israeli Prime Minister Naftali Bennett. It is hard to imagine that the bilateral talks will lead to a stable end-state. President Putin embarked on a campaign to change the rules of the game between the powers, restore Russia's great power status, and return Ukraine to what he sees as its natural situation – as under Russian patronage. But as it becomes harder to promote the Russian objective in the struggle with the West, and as Russian war plans are disrupted, it appears that Putin is ready to negotiate with the Ukrainian leadership, even though he sees it as lacking legitimacy. Russia has presented a list of reduced demands for stopping the fighting, namely: an end to the Ukrainian military struggle, recognition of the Crimean Peninsula as Russian territory, recognition of the separatist republics of Donetsk and Lugansk as independent states, a constitutional commitment by Ukraine to neutrality and to remaining outside NATO and the European Union, and Ukrainian demilitarization.

For the United States, at this stage the endgame should be based on understandings and agreements between Russia and Ukraine, with no significant gains to Russia from the West apart from sanctions relief, and with no concessions regarding the deployment of NATO forces. It is important for Washington to demonstrate that NATO has the ability, the determination, and the will to defend every centimeter of its members' territory, as President Biden promised. However, since the US and NATO have no intention of offering Putin any gains, he is pushed into conducting talks while continuing to fight for his objectives. Therefore, the Russian army continues its efforts to encircle the capital Kyiv as well as attempts to attack Ukrainian President Volodymyr Zelensky personally; cut off

Ukrainian access to the Black Sea; take absolute control of the separatist eastern regions of Ukraine whose declarations of independence were recognized by Moscow; launch attacks on arms supply routes to the Ukrainian army; and fight to crush Ukraine's main cities.

If the West does not respond positively to some of Putin's demands, we can expect the attacks on Ukrainian cities to intensify; the takeover of nuclear power stations – in addition to the ones already seized – in order to cut off electricity supplies, which heightens fears of the danger of nuclear radiation leaks; and threats involving unconventional weapons, both chemical and nuclear. Russia has already raised the alert level of its nuclear forces. Its nuclear doctrine of 2020 states that it will consider being the first to use nuclear weapons in situations of “conventional aggression that threatens the very existence of the state.” At this stage, Russia is far from collapse. That is the reason the West has rejected ideas pushing for the broader objective of bringing down Putin's presidency.

The Challenge of Identifying the Critical Point

Notwithstanding their aim of bringing Putin to his knees, the United States and its allies must examine the consequences of continued fighting because of the spiraling number of Ukrainian civilian casualties, and because of the risk that the war will spread beyond the Ukrainian borders and into unconventional dimensions. The main objective of the United States at this time is to inflict heavy tolls on Russia – political, military, and economic – for the Ukrainian invasion, in order to deter Putin from future aggression. However, as Putin sustains heavier costs, he will reinforce his demands and find it harder to compromise. The possible outcome will be continued fighting, increasing the risks of escalation to levels that neither party wants. Therefore, the United States must preempt arrival at the critical point of loss of control and promote dialogue with Russia in order to bring an end to the fighting. In the framework of a settlement, the United States will also be required to show some flexibility, and even commit to refrain from allowing other countries bordering on Russia into the NATO alliance. The human tragedy in Ukraine is painful. The Ukrainian people deserve freedom, but the United States and NATO must handle the conflict

wisely in order to avoid the recurrence of similar incidents and to block the possibility of sliding into a third world war.

Editors of the series: Anat Kurtz, Eldad Shavit and Judith Rosen

China's Difficult Balancing Act in Russia–Ukraine Crisis

China's inconsistent messaging on Russia's invasion of Ukraine reveals a difficult balancing act for Beijing, as it attempts to adhere to long-held principles while serving the interests of a valuable strategic partner. Meia Nouwens assesses Beijing's competing considerations in navigating the crisis.

IISS Analysis

March 4, 2022

By: Meia Nouwens

Russia's invasion of Ukraine came only days after the conclusion of the Winter Olympics in Beijing, and only three weeks after Russia and China issued a joint statement outlining their deepening partnership and shared vision for the global order. It is unclear, however, exactly to what extent Beijing was informed about Russia's move on Ukraine or whether Beijing had anticipated the global diplomatic, economic and indirect military pushback to it. Beijing's changing narrative shows that it is struggling to balance its policy options.

The West's swift and surprisingly united response to Russia's actions will give Beijing food for thought regarding its own plans for Taiwan, even though Ukraine and Taiwan are not entirely comparable case studies. Given the upcoming 20th Party Congress this autumn, 2022 will be the year that Beijing, more than ever, requires stability at home and in its international relations. It seems thus far that this is becoming increasingly difficult.

What's China's official position?

Since the outbreak of conflict, Beijing has subtly changed the focus of its statements regarding Ukraine several times. This suggests that it is finding it difficult to adhere to one policy line that bridges its long-held principles of non-interference and territorial integrity and also shows support for Russia. On 26 February, Wang Yi published China's official position on the Ukraine crisis, covering [five points](#):

- China maintains that all states' (including Ukraine's) sovereignty and territorial integrity should be respected and protected according to the UN Charter;
- China believes that the legitimate security concerns of all countries should be respected. Here, NATO's expansion raised legitimate security demands in Russia;
- China doesn't want to see the current situation in Ukraine, and all parties should exercise restraint;
- China supports a diplomatic resolution and peaceful settlement of the Ukraine crisis, and states that the Ukraine issue has evolved in a 'complex historical context';
- China stands against the invocation of UN Charter Chapter VII that authorises the use of force and sanctions in United Nations Security Council (UNSC) resolutions, but believes that the UNSC should play a constructive role in resolving the Ukraine issue.

There are contradictions in China's position on some of these points, however, and Beijing appears to be finding it difficult to find its exact footing with regards to the conflict. In his statement to the UNSC

meeting on Ukraine on 21 February, China's ambassador to the United Nations did not mention China's position on [safeguarding sovereignty and territorial integrity](#). This language [reappeared](#) in the next set of remarks the ambassador gave to the UNSC on 24 February 2022. And in a recorded address to Chinese citizens in Ukraine, the Chinese ambassador to Ukraine stated that 'we [respect Ukraine's independence, sovereignty and territorial integrity](#).' China has also sought to emphasise that [China and Russia are partners, not allies](#), and that China's position towards the Ukraine conflict has been arrived at by Beijing alone.

Similarly, while Beijing has avoided any language that criticises Russia for its invasion, it has oscillated between suggesting that Russia has security concerns that justify its actions, to directly accusing the US of instigating the war. At the Munich Security Conference, China's Foreign Minister Wang Yi noted that Russia had [reasonable security concerns](#) that should be taken seriously'. In a similar vein, Foreign Ministry Spokesperson Hua Chunying in her press conference on 23 February pointed to the need for 'all sides' to stop [stoking panic, or hyping up war](#)'. Hua pointed specifically to the US as 'pouring oil on the flame', and undermining Russia's security through 'five waves of NATO expansion eastward all the way to Russia's doorstep'. On 24 February, Hua went further to argue that the [US instigated the conflict](#) between Ukraine and Russia.

However, despite all this, on 26 February China did not exercise its veto of a draft UNSC resolution instructing Moscow to stop attacking Ukraine and to withdraw all troops immediately. Any hopes in the US and Europe – or Ukraine, which has asked China to mediate with Russia – that Beijing could influence Moscow's actions towards Ukraine will be dashed. Beijing publicly deepened its relationship with Russia through a [joint statement](#) on 4 February, and continues to factor US–China competition into its foreign-policy decision-making. Certain Chinese government-affiliated think tank [commentary](#) exemplifies this.

There also seemed to be confusing instructions from China's embassy in Ukraine to its citizens in the country. On 24 February, it instructed nationals driving through Ukraine to [affix China's flag to their cars](#). Two days later, it reversed its recommendation and urged its citizens [not to reveal their identity](#), as the escalation in the conflict with Russia posed a security risk to Chinese nationals.

Criticism at home

Chinese media has expectedly toed the government line on the Ukraine crisis, pointing to the Ukraine 'problem', 'conflict', 'issue' or 'situation' – anything short of calling it a war or Russia's actions as an invasion of a sovereign nation and violation of its territorial integrity. However, [discontent](#) with Putin and the Russian government has been voiced in China. On 28 February, five Chinese academics published a joint statement on Weixin stating that they were 'strongly opposed to the war Russia started against Ukraine'. It continued, 'the aggression against a sovereign nation with the use of force is tantamount to destroying the existing international security system, no matter what Russia says about the reason for doing so.' Notably, the professors stated their position on the war, but did not indicate direct disagreement with the Chinese government's reaction.

There should be little expectation that such statements, which have since been censored and removed from

their original sources, will influence Xi Jinping. Some Chinese think tankers have in the last few years lamented restrictions on their work and, therefore, their effective inability to provide sound policy advice to the government.

Other considerations for Beijing

China has criticised the sanctions imposed on Russia by European capitals, the European Union, the US and like-minded countries. Foreign ministry spokesperson Wang Wenbing has stated that [China does not support the use of sanctions](#) to solve the conflict and that they have no basis in international law. According to Wang's statement, sanctions only create new problems and interfere with the political settlement of conflicts. But the collective response by the West and others (and in particular the strong participation in these measures by the business sector) will have come as a surprise to Beijing, which has leveraged disunity within the very same blocs to its own political advantage. Beijing might have assumed that Europe's former disunity with regards to Russia would persist.

Beijing now faces another challenge. How to respond to a strategic partner facing sanctions imposed against its central bank and political leadership and elites, a heavily devalued currency, and partially blocked participation in the SWIFT banking system. Beijing has already stated that it will [maintain its normal trade](#) cooperation with Russia, and in line with an agreement signed earlier in February has lifted all restrictions on importing [Russian wheat](#). That relationship today is an important one: 17% of Russia's total exports went to China in 2021, of which 66% were oil and gas exports. In response to the sanctions placed on Moscow in 2014, China was able to negotiate lower gas prices for imports from Russia. And the two countries signed a 30-year supply deal in January 2022. Chinese companies may find opportunity in this crisis.

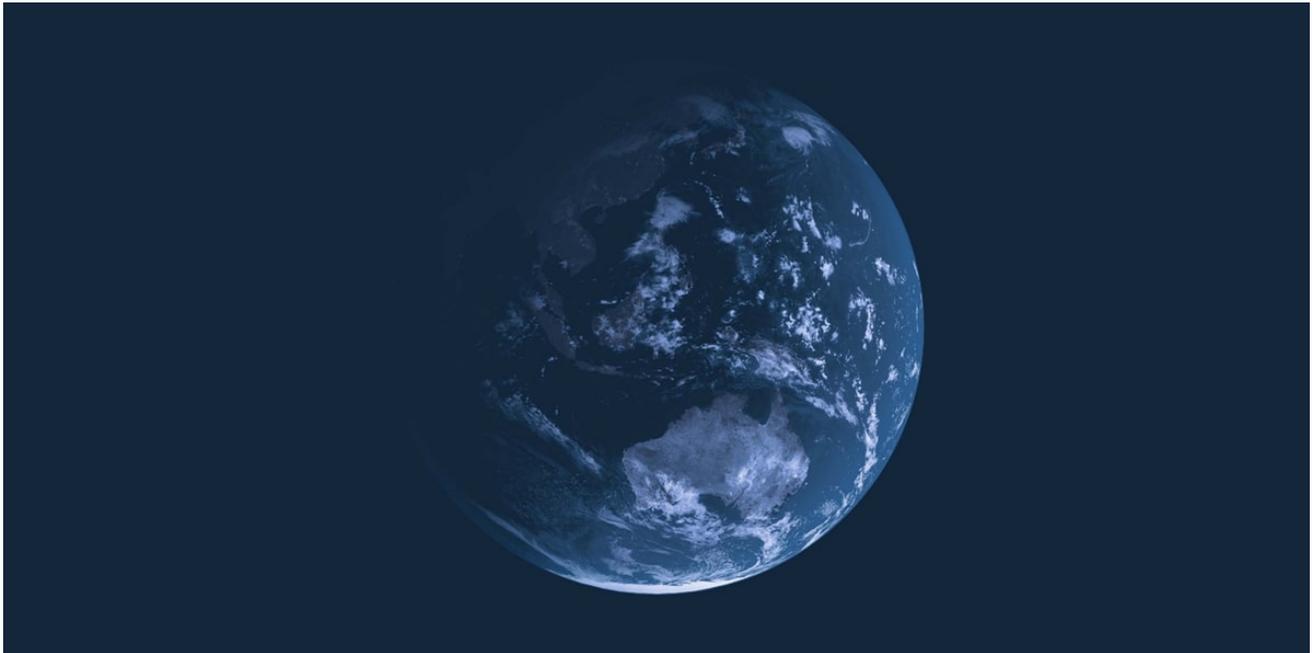
There is speculation that China and India could seek to alleviate Russia's expulsion from SWIFT, and increasingly trade with Russia in their own currencies. China operates a [SWIFT alternative](#) – the 'Cross-Border Interbank Payments System', or CIPS, which was announced in 2015 to facilitate the settlement of international payments in renminbi. Presently, 23 Russian banks are reported to be connected to CIPS. China has indicated that it would like a greater percentage of bilateral trade, including in oil and gas contracts, to be settled in [Chinese yuan](#) rather than other foreign currencies. And [India](#) is reportedly also considering whether to set up a rupee payment system for trade with Russia. However, as some [experts](#) have pointed out, CIPS still relies on SWIFT messaging within its system, and is thus not a perfect workaround. Furthermore, secondary sanctions or commercial sanctions on targeted sectors will make trading with Russia increasingly difficult, even for countries such as India and China.

Taiwan

While some analysts have stated that the current crisis in Ukraine has nothing to do with the Indo-Pacific, China and Taiwan will both be watching how the West responds to Russian aggression. As a result of the Ukraine crisis, a slogan has made the rounds in Taiwan: ['今日乌克兰 · 明日台湾'](#) (today Ukraine, tomorrow Taiwan) – echoing similar slogans following Beijing's crackdown on protests in Hong Kong in 2020. Taiwan's government has reported [no unusual People's Liberation Army movements](#) since the war

began, but has increased its alert level.

While Beijing won't base its decision on how to solve the 'Taiwan problem' based on timing that is convenient for Russia, it will take stock of messaging on Russia's actions from like-minded countries, especially those expressing unity or will to take decisive political, economic or military actions, or to incur financial and economic costs as a result of such measures. The US, while pre-occupied with the ongoing war in Ukraine, has made a point of reminding Beijing that it is both committed to European security as well as to that of the Indo-Pacific region. The US [reportedly](#) sailed a destroyer through the Taiwan Strait, briefly crossing the Median Line, and has also sought to send a signal to Beijing that it continues to support Taipei through the visit of a [delegation of former senior defence officials](#) to Taiwan. Based on how liberal democracies have responded to Russia's invasion of Ukraine, Beijing may have to factor in the possibility of similar responses to any Taiwan contingency.



COMMENTARY | 25 FEBRUARY 2022

THE WORLD THAT VLADIMIR PUTIN WANTS TO SEE

The Russian President would rather have a global disorder where Russia is central, than an order where it is peripheral. Originally published in the Australian Financial Review.



BOBO LO

It is time to call things by their proper names. The Russian invasion of Ukraine was never about Moscow's fears of NATO enlargement, much less Ukrainian membership of the alliance.

Nor was it the action of an insecure president, concerned about a stagnating economy and his political legitimacy, and therefore anxious to secure a foreign policy victory.

No, the decision to invade was that of a confident leader who believes he is smarter, stronger and tougher than anyone else.

Vladimir Putin sees himself as a serial winner, his Western counterparts as a motley bunch of losers, and the government of Ukrainian President Volodymyr Zelenskyy as a pesky irritant that needs to be squashed.

But what purpose does invasion serve, other than personal self-affirmation?

Much has been made of Putin's claims that Ukraine is not a real country with a distinct national culture, language and identity.

It is true that he sees the Russian and Ukrainian peoples as joined at the hip. One of the unintended consequences of Moscow's 2014 annexation of Crimea was that Ukraine became more oriented towards Europe and distant from Russia. Time, then, to fix this historical error.

Yet, Ukraine is only part of the story. For all his paeans to Slavic brotherhood, Putin's ambitions extend much further. He seeks nothing less than the reversal of the post-Cold War settlement in Europe and the assertion of Russia as a resurgent global power.

The demise of the Soviet Union three decades ago was not only "the greatest geopolitical catastrophe of the 20th century", as he once claimed. It also opened the way to a new liberal international order. Russia felt marginalised, but most of all humiliated.

Today, everything is different. As the Kremlin surveys the global landscape, it likes what it sees. The so-called "rules-based international order" has been shredded by two decades of Western policy failings.

The limits of American power have been exposed in Afghanistan and Iraq. Liberalism is in crisis across much of the West.

China is rising inexorably, while the Sino-Russian partnership has become a critical factor in international politics. The Europeans are impotent.

Meanwhile, Putin has scored success after success. He has been in power for 22 years with no end in sight. Despite a much derided economy, Russia retains huge financial reserves. Europe is more dependent than ever on its oil and gas. And Russian military power has secured crushing victories from Georgia through Syria to Ukraine.

All that is missing, it seems, is Western recognition of Russia's transformed status and influence. Subjugating Ukraine is key to this, especially when it comes in the teeth of loud Western objections.

Putin evidently subscribes to Machiavelli's dictum that "it is better to be feared than loved, if you cannot be both". Western condemnation fuels his animus and the conviction in his own rightness.

A sovereign Ukraine may be dead

So, how does this end? One likely but terrible outcome is that a sovereign Ukraine may be dead in the water. Despite declamations about solidarity with Kyiv and threats of "unprecedented" sanctions against Moscow, Western governments will not intervene to save Ukraine.

They neither care enough nor do they have the capacity to respond effectively. And the Kremlin knows this. It scoffs at the threat of further sanctions, judging – rightly – that they are the West's way of pretending to take meaningful action.

It is unlikely that Putin will go as far as to annex Ukraine in a new Russian empire, but then he doesn't need to. The model would be "limited sovereignty" – as with the Eastern bloc countries during the Cold War. Moscow would exert control indirectly through a pliant regime in Kyiv.

Putin will hope to build on the momentum from the invasion to establish new international realities. Europe would be divided once again between East and West.

Russia would seek a sizeable sphere of influence in Eastern Europe, and veto power over major decisions on the continent.

Globally, it aspires to be one of three independent centres of power, along with the US and China. There would be a rules-based system of sorts, but one dictated by great power imperatives. This would be a version of Yalta 1945, when Roosevelt, Stalin and

Churchill decided the fate of global order.

Such a vision cannot be allowed to pass. Not only is it an affront to many of the values and principles we hold dear, it is anachronistic to its core.

Great power arrangements and “grand bargains” have nothing to do with addressing 21st century challenges such as climate change, global poverty, pandemic disease and technological transformation.

That will scarcely bother Putin. For him, better a disorder where Russia is central than an order in which it is a secondary player. Power, not problem-solving, is the consuming priority.

The EU and the Ukraine War: Making Sense of the Rise of a “Geopolitical” Union

by Riccardo Alcaro

By ordering Russian armed forces into Ukraine, President Vladimir Putin has arguably made the greatest blunder of his twenty-two-year long rule. The Russian president seems to have underestimated not just Ukraine’s capacity to resist the invasion, but also the resolve of the United States and its partners to oppose it.¹ If that is indeed the case, the greatest surprise must have come from the European Union.

The rediscovered unity

The assumption that the EU would not respond forcefully to an escalation in Ukraine was not entirely far-fetched. The Union has supported Kiev’s European aspirations and maintained sanctions on Russia for its 2014 annexation of Crimea and destabilisation of the Donbas. Yet support was lukewarm and the

restrictions limited.

In truth, several EU member states, especially in western Europe, bet that they could freeze the unsolved conflict in the Donbas in order to preserve a degree of stability in Europe and keep cooperating with an increasingly intractable Russia on other fronts. Putin may well have determined that these countries would have stuck to this policy line.²

Undoubtedly, the Russian president and his advisers must have anticipated that the EU would have reacted to an escalation with harsher measures than those adopted in 2014. Yet, Putin must have also thought that, faced with a Russian *fait accompli*, EU cohesion would eventually melt away.

Putin’s calculus was based on the assumption that sanctions would have

¹ White House, *Remarks of President Joe Biden – State of the Union Address as Prepared for Delivery*, 1 March 2022, <https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/03/01/remarks-of-president-joe-biden-state-of-the-union-address-as-delivered>.

² Katya Adler, “EU Leaders Attempt to Dodge Putin’s Divide and Rule Tactics”, in *BBC News*, 8 February 2022, <https://www.bbc.com/news/world-europe-60297736>.

inflicted a significant cost on European states too, who have an interest in stabilising markets as well as energy and commodity prices jolted by the Russian intervention.³ Massive refugee flows from Ukraine would have further augmented pressure on the EU, which in recent years has clashed more on migration than anything else. And if all this would not have worked, Putin was ready to resort to intimidation and even threats of nuclear escalation.⁴

The (tragic) irony is that, if Putin had limited himself to recognising the self-styled separatist republics of Donetsk and Lugansk, the EU would have struggled to find an agreement on far-reaching sanctions and other restrictive measures. But a large-scale war whose ostensible goal is the destruction of Ukraine as an independent nation has swept aside any lingering hesitations that EU countries may have had.⁵ Just like that, the EU has found out that it can be a geopolitical actor.⁶

³ Rick Noack and Kate Brady, “European Sanctions on Russia Will Cost Europe, Too, Early Signs Show”, in *The Washington Post*, 2 March 2022, <https://www.washingtonpost.com/world/2022/03/02/europe-russia-sanctions-backlash>.

⁴ “Vladimir Putin Puts Russia’s Nuclear Forces on Alert, as Ukraine Agrees to Talks with Russia”, in *ABC News*, 27 February 2022, <https://www.abc.net.au/news/100866518>.

⁵ Riccardo Alcaro, “Europe’s Post-Cold War Order Is No More”, in *IAI Commentaries*, No. 22|08 (February 2022), <https://www.iai.it/en/node/14671>.

⁶ Josep Borrell, “Putin’s War Has Given Birth to Geopolitical Europe”, in *Project Syndicate*, 3 March 2022, <https://prosyn.org/2F8IAMd>.

The onslaught on Russia

The Union has not just condemned Russia’s aggression of Ukraine as a mammoth violation of international law. It has also construed the clash with Moscow in normative terms, as a collision between values – rule of law and freedoms on the one side, might and authoritarianism on the other.⁷ Many in the EU have framed their support for Ukraine’s accession as a way to secure the latter’s democratic future.⁸

Whatever aspiration still lingered to forge a shared European security space with Putin’s Russia has dissipated. Proximity to Russia, either as a result of ideological affinity (as in the case of Hungary’s illiberal president Viktor Orbán), financial opportunism (Cyprus) or the pragmatism underlying German and Italian *Ostpolitik*, is no longer sustainable. In the EU, Russia has no friends or partners left.

The EU has demonstrated that it can inflict massive harm on Russia. It has frozen or seized assets and properties of basically all oligarchs close to Putin, the most prominent cabinet members and the president himself. It has disconnected most Russian banks from the interbank messaging system

⁷ European Commission, *Speech by President von der Leyen at the European Parliament Plenary on the Russian Aggression against Ukraine*, 1 March 2022, https://ec.europa.eu/commission/presscorner/detail/en/speech_22_1483.

⁸ Alberto Nardelli and John Follain, “EU Agrees to Move to Next Step in Ukraine’s Membership Bid”, in *Bloomberg*, 1 March 2022, <https://www.bloomberg.com/news/articles/2022-03-01/eu-agrees-to-move-to-the-next-step-in-ukraine-s-membership-bid>.

run by Swift, although it has carved out exceptions to make payments for energy imports (which continue, for now). It has severely restricted access by Russian companies and banks to EU financial markets, and even established a ceiling of 100,000 euro to deposits held in EU banks by Russian nationals. Most dramatically, the EU has limited Russia's ability to absorb the costs of sanctions by blocking the Russian Central Bank's access to its euro-denominated foreign reserves, which account for around a third (approximately two hundred billion) of the total.⁹

The Union did not stop there. It has drastically curtailed, and at times blocked entirely, trade with key Russian companies in such sectors as defence, hydrocarbon extraction and export, aerospace, shipbuilding, maritime and land transport, as well as insurance and reinsurance. Severe limits have been imposed on the supply to Russia of dual use technologies and semiconductors, the key material to make electronic devices like smartphones and computers work.¹⁰ Finally, the EU has closed its airspace to Russian airlines and banned its own carriers from flying over Russian airspace.¹¹

The sanctions wave – EU measures have complemented similar restrictions by

⁹ Eir Nolsoe and Valentina Pop, “Russia Sanctions List: What the West Imposed Over the Ukraine Invasion”, in *Financial Times*, 4 March 2022, <https://www.ft.com/content/6f3ce193-ab7d-4449-ac1b-751d49b1aaf8>.

¹⁰ Ibid.

¹¹ Sean Goulding Carroll, “EU Closes Airspace to Russian Aircraft”, in *Euractiv*, 27 February 2022, <https://www.euractiv.com/?p=1719357>.

the United States, the United Kingdom, Japan, Australia and others – has kept mounting. Cultural and sport organisations have banned Russia's participation.¹² Most importantly, sanctions have spawned a spontaneous business disengagement of colossal proportions, with companies from Europe and elsewhere abandoning Russia in droves.¹³ In short, the EU has contributed to excluding Russia from the benefits of globalisation: open financial markets, investment, trade, travels, entertainment and technology-enabled payment and information services.

Meanwhile, the Union has opened the doors to hundreds of thousands of Ukrainian refugees, who have been granted freedom to move, reside and work across the EU.¹⁴ The Commission has reaffirmed its pledge to allocate 1.2 billion euro macroeconomic assistance to Kyiv, not counting contributions by individual member states.¹⁵

Last but certainly not least, the EU has for the first time in history agreed to facilitate the transfer of military

¹² Yasmine Serhan, “Why the Cultural Boycott of Russia Matters”, in *The Atlantic*, 2 March 2022, <https://www.theatlantic.com/international/archive/2022/03/article/623873>.

¹³ Arthur Sullivan, “From Russia with Haste: Mass Exodus of Companies over Ukraine Invasion”, in *Deutsche Welle*, 2 March 2022, <https://p.dw.com/p/47rFp>.

¹⁴ Jacopo Barigazzi, “EU Hails ‘Historic’ Deal to Protect Ukrainian Refugees”, in *Politico*, 3 March 2022, <https://www.politico.eu/?p=2012789>.

¹⁵ European Commission, *Commission Tables Proposal for €1.2 Billion Emergency Macro-Financial Assistance Package for Ukraine, as Announced by President von der Leyen*, 1 February 2022, https://ec.europa.eu/commission/presscorner/detail/en/IP_22_674.



equipment to Ukraine’s armed forces.¹⁶ This decision is in line with the orientation of most member states, including those traditionally reticent to do so like Sweden¹⁷ and Germany.¹⁸

German Chancellor Olaf Scholz’s decision to significantly augment defence spending¹⁹ – which is nothing less than a full German rearmament – is a watershed in itself, but it is also likely to spur other countries to follow suit. This may lead to a stronger EU foreign and defence policy, if not in terms of policy federalisation at least in terms of greater integration of the EU’s defence industrial base and potentially of its power projection capacity. The vision of European strategic autonomy or sovereignty, for years championed by French President Emmanuel Macron, may soon take on clearer contours.²⁰

¹⁶ Maïa de La Baume and Jacopo Barigazzi, “EU Agrees to Give €500M in Arms, Aid to Ukrainian Military in ‘Watershed’ Move”, in *Politico*, 27 February 2022, <https://www.politico.eu/?p=2005428>.

¹⁷ “Sweden to Send Military Aid to Ukraine - PM Andersson”, in *Reuters*, 27 February 2022, <https://www.reuters.com/world/europe/sweden-send-military-aid-ukraine-pm-andersson-2022-02-27>.

¹⁸ David M. Herszenhorn, Lili Bayer and Hans von der Burchard, “Germany to Send Ukraine Weapons in Historic Shift on Military Aid”, in *Politico*, 26 February 2022, <https://www.politico.eu/?p=2004438>.

¹⁹ Federal Government of Germany, *Policy Statement by Olaf Scholz, Chancellor of the Federal Republic of Germany and Member of the German Bundestag*, Berlin, 27 February 2022, <https://www.bundesregierung.de/breg-en/news/policy-statement-by-olaf-scholz-chancellor-of-the-federal-republic-of-germany-and-member-of-the-german-bundestag-27-february-2022-in-berlin-2008378>.

²⁰ Nathalie Tocci, *European Strategic Autonomy: What It Is, Why We Need It, How to Achieve It*, Rome, IAI, 2021, <https://www.iai.it/>

The limits of geopolitical Europe

The EU’s response to Russia’s invasion of Ukraine has been swift and hard. The Union has contributed to making the Russian economy toxic: whoever touches it does so at his or her own risk. It has (for the time being) neutralised migration flows as a potential trouble spot by offering refuge to Ukrainians. And it has supported Ukraine’s resistance against the invading armies. However, there are limits to its supposed transformation into a “geopolitical” power.²¹

The first is the war itself. There are rumours that the occupation army may be on the verge of collapse, yet even this would not automatically translate into an end to violence.²² For the time being, Putin has given no sign that he is ready to renege on his original objective of breaking Ukraine.²³ If, or when, the war becomes more brutal, the EU (like the United States) will be caught between two equally strong but conflicting logics: ratchet up the pressure (and military aid to Ukraine) and avoid an escalation between Russia and NATO.

Much as anyone else, the EU does not really have a strategy that goes beyond

[en/node/12819](#).

²¹ Luigi Scazzieri, “The EU’s Geopolitical Awakening?”, in *The UK in a Changing Europe*, 3 March 2022, <https://ukandeu.ac.uk/?p=48426>.

²² See comments by Russian military expert Michael Kofman, “I try not to make too many predictions”, *Twitter post*, 5 March 2022, <https://twitter.com/KofmanMichael/status/1499967950975115269>.

²³ “Russia’s Putin Says Ukraine Advance ‘Going to Plan’”, in *Al Jazeera*, 3 March 2022, <https://aje.io/dhtvsp>.

the combination of pressure on Moscow and assistance to Kyiv. How to deal with a Russian government that has turned the authoritarian screw on its people manifold will become harder now that the EU has wrapped itself in the ideological mantle of defender of democracy.²⁴ Reaching out to Moscow may become a controversial proposition within the Union, as some would be keener on ending the violence while others would rather cut any link to the Kremlin. Managing Ukraine's expectation for greater help and a speedier entry into the EU will be no less easy.

The second limit concerns the sustainability of the sanctions regime, especially if the EU were to opt for reducing its oil and gas imports from Russia. Should the war drag on until the autumn, the Union may struggle to secure alternative energy supplies.²⁵

The third limit is the EU's reliance on the United States. European cohesion, albeit it has acquired a life on its own, has originated from continuous information exchanges and coordination with a staunchly Atlanticist US administration.²⁶

²⁴ Elliott Davis Jr, "Putin's War at Home", in *U.S. News*, 4 March 2022, <https://www.usnews.com/news/the-report/articles/2022-03-04/war-weary-russians-threaten-trouble-for-vladimir-putin-amid-ukraine-attack>.

²⁵ International Energy Agency, *How Europe Can Cut Natural Gas Imports from Russia Significantly within a Year*, 3 March 2022, <https://www.iea.org/news/how-europe-can-cut-natural-gas-imports-from-russia-significantly-within-a-year>.

²⁶ Riccardo Alcaro, "The Return of US Leadership in Europe: Biden and the Russia Crisis", in *IAI Commentaries*, No. 22|04 (February 2022), <https://www.iai.it/en/node/14592>.

However, Joe Biden's popularity has been sagging for months.²⁷ If the Republicans – many coming from the Trumpian camp – were to win control of Congress following the mid-term elections in November, the transatlantic pillar of EU cohesion would weaken. And that pillar may crumble altogether if Donald Trump, who defined Putin a "genius" just two days before the invasion and never hid his profound disdain for the EU, or someone like him were to win the White House in 2024.²⁸

A fourth and most significant limit concerns the absolute exceptionality of Russia's war against Ukraine. The stakes are so high that EU member states have had greater incentives to close ranks and aim high than doing otherwise. But this has hardly been the case in the past – most painful is the strident contrast between the generous welcome of Ukrainian refugees and the barbed wire that migrants from other regions have been met with across the EU. It is anything but certain that the unity of purpose shown on Ukraine may be transferred to other issues.

In conclusion, the EU has shown considerable "geopolitical" power. Such power rests on unity, but it is not a given that unity may endure a drawn-out war in Ukraine or the loosening of

²⁷ RealClearPolitics, "President Biden Job Approval", in *RealClearPolitics Poll*, retrieved on 6 March 2022, <https://www.realclearpolitics.com/epolls/other/president-biden-job-approval-7320.html>.

²⁸ Joseph Gedeon, "Trump Calls Putin 'Genius' and 'Savvy' for Ukraine Invasion", in *Politico*, 23 February 2022, <https://www.politico.com/news/2022/02/23/trump-putin-ukraine-invasion-00010923>.

The EU and the Ukraine War: Making Sense of the Rise of a “Geopolitical” Union

the transatlantic front. The true test for the Union may lie ahead. But the precedent of this past week can hardly be ignored.

6 March 2022

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Via dei Montecatini, 17

I-00186 Rome, Italy

Tel. +39 066976831

iai@iai.it

www.iai.it

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Invasion of Ukraine

Consent & Trust in the World Order

By Joel Ng

SYNOPSIS

Power may order the world, but it is the consent and trust of smaller actors that allow the powerful to maintain their position. These signals should be heeded.

COMMENTARY

THE INVASION of Ukraine has brought unusually loud protests from unexpected corners. Singapore Foreign Minister Vivian Balakrishnan did not try to mask it with diplomatic niceties, calling it “an unprovoked military invasion of a sovereign state”. Prime Minister Lee Hsien Loong added that “when treaties and diplomacy fail, we cannot rely on others to protect us”. Yet they have been united in their call for the adherence to international law.

It is an oddity of Singaporean foreign policy circles that virtually everyone is a realist – that is, they believe that power is fundamentally what orders the world – while simultaneously an advocate of international law – that everyone should follow the agreed-upon rules of the international community. In academic circles, most realist thinkers do not have much time for international law: For them, international law works only where the powerful permit it, and should the powerful feel it obstructs their goals, they will contravene laws accordingly. Russia’s invasion of Ukraine seems a textbook example of that.

Maintaining ‘Order’

Singapore’s appeals to international law then may seem incoherent to some, but it rests on a simple principle: ‘Is’ does not imply ‘ought’: How we observe things to be does not mean this is how things *should* be, but there is more to it than mere virtue

signalling. Singapore understands that the world is governed by power. Only the powerful have the means to enforce transgressions of 'order'; only they can restrain themselves when push comes to shove.

Yet enforcing their preferred order is costly. If they had to send in tanks to enforce every rule or policy, they would quickly stop being powerful as the costs overwhelm them. The world's largest superpower, facing no international sanctions, still found a war in Afghanistan too costly to enforce and eventually had to withdraw.

The largest empires in the world, despite being victors in the Second World War, set timers on the end of their empires because they knew they could not hold all their territories once their subjects refused to be ruled any longer. Bloody uprisings in Algeria and Kenya occurred as if to prove the point.

Domestic consent is now a pre-requisite to maintain an international order, and small states help by speaking up when the principles they wish to abide by are transgressed.

Pretexts and Principles

Specific contentions are always fraught with historical cycles of disputes. This brings risks for anyone raising an issue, particularly when it is a great power infringing the principle. Russia came up with a narrative, accused Ukraine of provocation, and embarked on a 'military operation' to 'protect' alleged victims (themselves). No one with working critical faculties would buy this narrative, and we have seen this before – *many times*.

Hitler annexed the Sudetenland prior to World War 2 using this playbook, a move the Allies permitted despite the protestations of the Czechoslovakians. Facing no resistance, Hitler fatefully felt he could go much further.

Saddam Hussein tried a similar pretext to annex Kuwait: selectively interpreting historical debates about the status of Iraq, Kuwait, and the Ottoman empire. Many territorial disputes are tangled up in these conflicting principles around ethnicity, history, and conflict and ripe for opportunistic picking in a determined aggressor's hands.

There is no easy way to step in and argue the rights or wrongs about where today's modern territorial borders are drawn, especially the further back in time one goes. Small states can only call for these disputes to be settled peacefully and amicably.

Back to Consent

A great power that wishes to lead an international order without exhausting itself must do so with the consent of its members. For all the flaws of the US order, the rapid economic growth that it permitted, allowing its members to surge past those under a Soviet order, was the one more and more people were attracted to.

The fall of the Berlin Wall was the symbol of that. It is true today that the West is in need of getting its house back in order. But these problems are not simultaneously a call to return to some of the alternatives, such as the Warsaw Pact system.

The Soviet satellite system has already failed once, and it failed because it failed to learn the lessons about consent that Western colonial empires had to learn the hard way. Perhaps a great power can maintain such costly enforcement of their 'order' forever.

But as they do, the Soviet experience tells us, they fall behind other great powers as they divert their economies' resources toward unproductive ends. The Soviet order was costlier to maintain even as its members' weaker economies made its benefits less apparent than the West's.

Singapore's Position

Singapore's position is not contradictory as some may charge. The recognition that power structures the world does not rule out small states signalling effective ways to maintain order, ensuring their consent. That is why Singapore's United Nations ambassador was keen to point out that this was not about choosing sides, but about upholding the principle of international law and the UN Charter, a position that benefits all states.

This is a principle-based and realist-centred position to protect Singapore's interests, particularly those of city-states that are historically vulnerable.

In the long run, the maintenance of order is most effective with the consent and trust of all members in that system. Without their consent, the cost of upholding that order would be far greater. It is worth observing that today's discontents are not only small states but some large states who feel excluded from a place at the table too, and the same problem of the costs of their discontent would apply too.

Carving out self-serving exceptions within an order may be a great power's prerogative, but it reduces others' incentives to support the system, thus raising the costs of its maintenance. Promoting international law – which provides the security of predictability for small states – is the best means of securing that consent and trust, and these actions benefit great powers too.

Joel Ng is a research fellow at the Centre for Multilateralism Studies (CMS), S. Rajaratnam School of International Studies (RSIS), Nanyang Technological University (NTU), Singapore.



Ukraine war reveals Africa divided

Russia's invasion of its West-leaning neighbour revives Cold War faultlines and shows its influence across the continent.

18 MAR 2022 / BY PETER FABRICIUS

Ukraine has withdrawn an important contingent of peacekeepers from the United Nations (UN) Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) to defend their

homeland. The move symbolises wider concerns that Europe may retreat from Africa as it confronts a growing threat from Russia that so blatantly manifested itself on 24 February.

Like climate change, Africa may have done very little – or indeed nothing – to cause the war in Ukraine, but is nonetheless feeling the impact. Fuel, cooking oil and wheat prices have risen rapidly, the latter particularly affecting dry North African countries like Egypt that depend heavily on imports. And rising global inflation has consequences for Africa like everyone else.

Amid the general economic gloom, there could be some glimmers of opportunity, as Jakkie Cilliers, Head of International Futures and Innovation at the Institute for Security Studies (ISS) in Pretoria, notes. South Africa, for example, is a net exporter of maize and some of the same minerals – like platinum – that are being hit by Western sanctions against Russia. It may be able to take advantage and fill some of the vacuum.

And he observes that Africa more broadly could and should try to fill the gap in oil and gas supplies to Europe that will open up as it reduces its vast dependence on Russian energy. Cilliers says this creates an opportunity to exploit and export the Sahara's huge solar energy potential to Europe.

He told ***ISS Today*** that Africa's many gas producers should also be gearing up to replace Russian gas supplies. Of course, both would be long-term projects, considering that Europe aims to stop buying Russian gas in around 2030.

What does the Ukraine war mean for Africa politically? As ISS Senior Researcher Priyal Singh points out, the war has been sharply divisive in Africa. That was demonstrated in statistical terms by the UN General Assembly vote on 2 March to condemn Russia for its 'aggression' and demand a withdrawal from Ukraine, respecting its territorial integrity and sovereignty.

The group of African countries not supporting the UN's resolution was disproportionately high



Twenty-seven African states voted for the resolution, just one – Eritrea – voted against, while 17 abstained and the rest were absent. Globally, the resolution was overwhelmingly supported, with 141 votes in favour, five against and 35 abstentions. So the proportion of African countries not supporting the decision was disproportionately high.

Part of the reason, Cilliers points out, was the nostalgia that South Africa and several other Southern African states still feel for the Soviet Union's support of their liberation struggles. Part was probably also African states' reluctance to be drawn into an apparent resurrection of the Cold War in which many African countries were mere proxies.

And a new element was also Russia's recent growing influence in Africa. The country has consciously attempted to make up for the lost intervening years by reviving the old Soviet-era relations with the continent. This was formalised in the first Russia-Africa summit in 2019 in Sochi. Russia has also been expanding its military footprint, largely

through proxy, supposedly private, military companies like Wagner, in countries like the Central African Republic, Libya, Mali and perhaps beyond.

As Cilliers notes, Russia is essentially playing the spoiler here, seemingly motivated by a desire to frustrate Western powers such as France. And it's offering little more than succour to putschists and other authoritarians and no sustainable model for Africa to follow.

South Africa no doubt spoke for many of the abstainers when it emphasised the need for the North Atlantic Treaty Organization (NATO) to take greater account of Russia's security interests – and even blamed it for the war – while also demanding Russia's withdrawal from Ukraine.

Russia offers little more than succour to African authoritarians and no sustainable model for the continent



This contrasted with the speech that Kenya's ambassador to the UN, Martin Kimani, gave to the Security Council on 22 February in which he gave Putin a pertinent history lesson. Addressing Putin's nostalgia for that greater Russia that disappeared in 1991 with the collapse of the Soviet Union – and which the invasion of Ukraine seemed designed to resurrect – Kimani said most African states had been created by imperial powers, paying no heed to ethnic affiliations.

But if African states had chosen at independence to try to reunite their ethnic, racial or religious groupings, 'we would still be waging bloody wars these many decades later.' Instead, Kimani advised Putin, 'We must

complete our recovery from the embers of dead empires in a way that does not plunge us back into new forms of domination and oppression.’

Singh laments that Africa couldn’t adopt a united position on the Ukraine war. African Union Commission chairperson Moussa Faki Mahamat and current African Union chair Senegal’s President Macky Sall outlined a possible common stance in their joint statement on 24 February.

They called on ‘the Russian Federation and any other regional or international actor to imperatively respect international law, the territorial integrity and national sovereignty of Ukraine.’ They urged negotiations ‘to preserve the world from planetary conflict’ – an evident reference to the concern that the war could go nuclear.

Yet even Sall couldn’t align Senegal behind a vote for the General Assembly resolution, preferring to abstain. Sall might have been trying to remain neutral to help mediate the conflict, as suggested by his call to Putin last week.

Only 27 African states condemned a major nuclear power for invading its much smaller neighbour



South Africa’s President Cyril Ramaphosa also talked to Putin – perhaps in part not to be upstaged by Sall – and tweeted that he had been approached by an unnamed third party to mediate. But there was no credible evidence of a serious mediation effort as the Ukrainians said

they hadn't been contacted. So this looked more like an effort to justify South Africa sitting on the fence for other reasons, including its BRICS (Brazil, Russia, India, China, and South Africa) economic allegiance.

These sharply varied responses show that the Ukraine war is resurrecting some Cold War divisions between African states and within them. But more concerning than Africa's lack of unity was that only 27 of its states stood up to condemn a major nuclear power for invading its much smaller neighbour on implausible grounds such as 'denazification'.

Peter Fabricius, Consultant, ISS Pretoria

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Ukraine-Russia War: Vladimir Putin's Big Gamble

Putin's war against Ukraine is more about his domestic political standing, but it has already laid the foundation of a new global order that is unlikely to be of his liking.

ORF Commentaries

March 3, 2022

By Harsh V. Pant

As Russian aggression against Ukraine drags on, there is a palpable sense that the world has entered a more dangerous phase. Russian president Vladimir Putin has unleashed mayhem not only in Ukraine but has also transformed the landscape of European security that will have reverberations far and wide. What started as a smart game of diplomatic manoeuvring by Putin has turned into an urban siege where whatever the Russian leader may or may not achieve on the battlefield will result in him losing significantly over the long term. Tactical, and even operational, success is likely to yield little strategic gain for Russia as nations around the world assess the impact of one of the most profound shifts in global security in decades.

After holding back in the initial few days and facing fierce resistance from Ukraine, Russia is likely to go all out in decimating Ukraine. It wants to wreck the country to such an extent that it doesn't even think of joining the Western camp and eventually install a pro-Russian government in Kyiv. Russia has the military wherewithal to do it and Putin has every intention of doing it in the name of "demilitarisation" and "de-Nazification." The fact that Russian military has not performed as well in the initial days as many had anticipated has only made it more likely that Putin would want Russian military to demonstrate its prowess in full force.

It was this that led Putin to even resort to the insanity of issuing a nuclear threat at such an early stage in escalation. First, he merely warned that "no matter who tries to stand in our way or all the more so create threats for our country and our people, they must know that Russia will respond immediately, and the consequences will be such as you have never seen in your entire history." And then 24 hours after announcing the invasion, he declared that Russia's nuclear forces have been put on high alert.

Yet, for all the machismo of Putin, it is the Ukrainian president Volodymyr Zelenskyy who has ended up winning hearts and minds. Not only has he emerged as a charismatic leader at a time of national crisis for the Ukrainians, he has also galvanised a large part of the world in his support. With his speeches and social media posts challenging Russia, he has ignited a renewed sense of nationalism amongst Ukrainians that will make any attempt by Russia to forcefully occupy or place a pliant government in Kyiv that much more difficult. Zelenskyy, in his address to the European Parliament, underscored Ukraine's fight to be recognised as an "equal member of Europe" even as he stressed that the country is now "fighting for survival" in the war with Russia. Russian invasion and Ukraine's resistance has united Europe against Putin like never before and has drowned out voices that, till a few days back, were talking about recognising legitimate security grievances of Russia.

The European Union, in a show of defiance, has decided to move with the membership negotiations with Ukraine after the Ukrainian president formally sent an application to Brussels. And Europe has now moved ahead with one of most remarkable shifts in its foreign and security policy posture that would have been unthinkable just a few days back. Russia has been relying on European disunity and unwillingness to take concerted action. But, faced with one of the most significant challenges since the end of the Cold War, the EU has come together to impose strong sanctions targeting the Russian financial sector as well as banning Russian state media and moving ahead with shipments of weaponry to Ukraine. Even Switzerland, the forever neutral state, has decided to freeze assets belonging to Russia's president Putin, prime minister Mikhail Mishustin and foreign minister Sergey Lavrov as well as key Russian oligarchs.

The most striking development, however, has happened in Germany, with the European economic powerhouse now deciding to significantly increase its defence spending, recognising the unsustainability of its posture where its economic power has been a function of American security guarantees. Germany will now be boosting its military spending above 2% of GDP and committing 100 billion euros to a fund for its armed services. In a major shift from its post World War II policy, it has removed some restrictions on German-made weapons being sent to conflict zones, thereby enabling more third-party countries to send weapons to Ukraine as well. This is happening despite Germany's heavy reliance on Russian gas, and the message is unmistakable that history is truly back in Europe.

The trans-Atlantic relationship has been re-energised. Rather contrary to the effect Putin would have wanted from his threats, Finland and Sweden are now seriously considering joining NATO. In his State of the Union address this week, US president Joe Biden announced that the US was joining European allies in closing its airspace to Russian planes. Signalling steps to weaken Russia's military in the future despite the presumptive Russian gains on the Ukrainian battlefield, Biden underlines that the West is "choking off Russia's access to technology that will sap its economic strength and weaken its military for years to come." The economic sanctions imposed on Russia have been serious and major companies such as Apple, Google, Ford and Exxon Mobil have moved against Russia, leaving Russia's currency, the rouble, plunging to a value of less than a penny. Russian oligarchy has been the target of a lot of sanctions, and as their fortunes come undone, their relationship with Putin can also get strained.

For Putin, this crisis is more about his domestic political standing. If his resolute stand against the Chechen rebels made him a national star and if his 2014 Crimea campaign led to a soaring of his popularity ratings, he would be hoping that the Ukraine invasion would give him another lease of life. In standing up to NATO, he is also rallying his domestic support base. After all, the growing reach of NATO and the EU in Russian periphery is more a threat to Putin's political future. He has framed it as a threat to Russia by arguing that NATO itself is not the real problem but that "in territories adjacent to Russia, which I have to note is our historical land, a hostile 'anti-Russia' is taking shape" and "Russia cannot feel safe, develop, and exist while facing a permanent threat from the territory of today's Ukraine."

So Putin has shaken the world indeed and his own political prospects at home with the Ukraine invasion. But if the Cold War did not end in 1990, this war will also not end with the wreckage of Ukraine. It has already laid the foundation of a new global order that is unlikely to be of Putin's liking. After all, tactics without strategy is the noise before defeat. India, much like the rest of the world, should not be swayed by the immediate battlefield realities but should carefully assess the long term costs and opportunities this crisis is generating.

This brief is a part of [*The Ukraine Crisis: Cause and Course of the Conflict.*](#)



Legal Aspects of the Attack on Ukraine

Szymon Zaręba

Russia's aggression against Ukraine, carried out with the support of Belarus, is a violation of the norms of international law that form the basis of the international order shaped after the Second World War. Russian President Vladimir Putin's justifications of the attack are legally questionable and contradictory to facts. There are also violations of humanitarian law being committed in the course of the hostilities, especially concerning the protection of civilians. The aim of the international community should be to stop the aggression and hold accountable states and individuals responsible for these violations.

How should Russia's attack and Belarus's support be assessed from the perspective of international law?

Russia's armed attack is a use of force against the territorial integrity and political independence of another state, contrary to Article 2(4) of the Charter of the United Nations and entitling Ukraine to self-defence under Article 51 of the Charter. It is an act that contradicts the principles of the Statute of the Council of Europe and the obligations expressed in the CSCE Final Act, the Charter of Paris for a New Europe, and the Budapest Memorandum. In light of the judgments of international tribunals and UN General Assembly Resolution 3314 of 1974, which reflects customary law, actions including bombing, attacks on armed forces, invasion, military occupation, and support for separatist attacks must also be described as aggression. Any territorial acquisitions obtained as a result would be contrary to customary international law, such as the case of Iraq's attack on Kuwait in 1990, and recognition of these acquisitions by other states would violate international law.

Although the troops of Belarus, according to a statement by Alexander Lukashenka, are not involved in the armed attack on Ukraine, it is an aggressor state as well. Resolution 3314 clearly indicates that aggression includes making one's territory available to another country to commit an act of aggression against a third country.

Why does the Russian justification for the attack not provide a legal basis for the attack?

In his speech on 24 February, Putin tried to justify the attack primarily on the basis of the need for preventive collective self-defence of the so-called "People's Republics" (DNR/LNR) against an alleged attack by Ukraine and NATO. The legality of such self-defence is controversial in international law. Ukraine has for years sought to regain Crimea and parts of Donbas by peaceful means, including through negotiations and proceedings before international tribunals. NATO is a defensive alliance and has been strengthening its capabilities in Eastern Europe over fears of Russia's increasing aggressiveness, which the attack on Ukraine has just confirmed. Moreover, the "people's republics", entities not recognised by any state other than Russia, were not entitled under international law to ask for assistance in self-defence. Putin also invoked the need to stop what he termed "genocide" committed by Ukraine in Donbas, which is a claim not supported by any credible source, such as reports from international human rights organisations.

Can Russia and Belarus be held accountable and how?

According to judgments of the International Court of Justice (ICJ), including the February 2022 verdict in the *Democratic Republic of the Congo v. Uganda*, aggression gives rise to international responsibility towards the victim state and results in the obligation to pay reparations. However, holding Russia and Belarus responsible for it will be

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impossible as they have not consented to ICJ jurisdiction. On the other hand, Ukraine will be able to bring Russia before the ICJ based on conventions containing an automatic consent clause, such as those on combating the financing of terrorism (for supporting separatists) and eliminating all forms of racial discrimination (for violations based on national origin). It will also be able (as will its citizens) to claim compensation from Russia, for example, for damage to private property or civilian casualties, before the European Court of Human Rights. However, enforcement of a ruling will likely be fraught with difficulties due to Russia's probable resistance.

What is the assessment of the ongoing armed actions from the point of view of humanitarian law?

The armed conflict caused by the Russian invasion of Ukraine is an international conflict to which the 1949 Geneva Conventions and the 1977 First Additional Protocol apply. Media reports indicate, among others, cases of bombing or rocket attacks on civilian settlements and hospitals, resulting in deaths or serious injuries of defenceless civilians, and large-scale destruction of property. Such actions are contrary to the Fourth Geneva Convention and the First Protocol. As such, they may be defined as war crimes and, depending on their scale, the intent of the perpetrators, and other factors, they may take the form of crimes against humanity or even be legally qualified as genocide. Verification of information on

violations could be carried out by, for example, a specially appointed UN rapporteur or an EU fact-finding mission, although with the continuation of the Russian attacks, probable occupation, and a lack of Russia's consent to monitor their activities, the room for action will be limited.

How can the perpetrators of violations of humanitarian law be held accountable?

Although perpetrators of crimes of aggression can be tried by the International Criminal Court (ICC), this will not be possible for Putin, Lukashenka, or their subordinates in the current situation. The Rome Statute establishing the ICC excludes this possibility for states that are not parties to it, and Belarus, Russia and Ukraine have not ratified it. These people could, however, be held accountable before the ICC for war crimes, and potentially for crimes against humanity or even genocide on the basis of Ukraine's 2015 declaration to recognise the ICC's jurisdiction. It is also possible in countries allowing a legal feature called "universal jurisdiction", with is the trial of criminals by national courts. Such steps were taken, for example, by the UK and Spain against former Chilean President Augusto Pinochet in the 1990s, and more recently by Germany and Sweden against suspected criminals in Syria. Both in the case of the ICC and national courts, however, the challenge is to apprehend the perpetrators, which requires their arrest while on the territory of a state party to the statute.

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Session Two

Preparing for the Next Pandemic

List of Possible Policy Prescriptions

Session Two: Preparing for the Next Pandemic

Please find below the second session guiding questions and a bulleted list of proposed policy prescriptions to improve future pandemic preparedness taken directly from various high-level reports. This is not an exhaustive list, nor does it update the recent progress on some of the proposals. It is meant to provide a top line list of recommendations to aid in our discussions on what new governance mechanisms, reforms of intergovernmental and institutions and agreements, or proposals for new financial mechanisms and strategies world leaders should prioritize. We have included links to reports that either recommend or discuss individual policy prescriptions, if you are interested in reading more.

Guiding Questions

- How can national governments and the multilateral system be better prepared for the next pandemic?
- From the many proposals made to improve future pandemic preparedness, what are the most important policies that world leaders should prioritize in 2022?
- In an increasingly divided world, where should the political center of gravity be for pursuing better pandemic preparedness—multilateral institutions, club mechanisms (e.g., G7, G20), regional organizations, or existing or new coalitions of states (e.g., Global Health Security Agenda, Health Silk Road)?

Proposals for New Governance Mechanisms

- **The United Nations should establish a Global Health Threats Council.** The council could be set up by either the UN secretary-general or UN General Assembly. The council could supervise a united response to global health emergencies, maintain pandemic preparedness; international crisis cooperation; monitor, report on, and publish countries' progress toward World Health Organization (WHO) health goals; guide allocation of new funding proposals; and provide oversight to ensure enhanced and predictable global financing for pandemic preparedness. ([CFR Task Force](#), [Independent Panel](#), and [NAS Report](#))
- **National governments should adopt a pandemic framework convention.** A framework convention could establish clear principles, priorities, and targets for pandemic preparedness and response through a legally-binding international framework. Article 19 of the WHO Constitution provides the World Health Assembly (WHA) with the authority to adopt conventions or agreements. ([Independent Panel](#), [Pan-European Commission on Health and Sustainable Development](#), and [NAS Report](#))
- **National governments, civil society partners, and the WHO should create a global epidemic surveillance system.** ([CFR Task Force](#), [G20 High Level Independent Panel](#), [Independent Panel](#), [NAS Report](#), [Pan-European Commission on Health and Sustainable Development](#)) These proposals include:
 - National governments and civil society should build a voluntary, international sentinel surveillance network that could incentivize health-care facilities around the world to regularly share hospitalization data, using anonymized patient information, to improve

- the availability and reliability of early epidemic threat surveillance and to enable rapid identification, characterization, and tracking of emerging infectious diseases. ([CFR Task Force](#))
- The WHO secretariat should establish a new global system for surveillance, based on full transparency by all parties, using state-of-the-art digital tools to connect information centers around the world and including animal and environmental health surveillance, with appropriate protections of people's rights. ([Independent Panel](#))
 - The Group of Seven (G7) and Group of Twenty (G20) should ensure that increased investments are made in surveillance systems for pathogens with pandemic potential, which support and encompass every country and region. ([NAS Report](#))
 - **The WHA should give the WHO the explicit authority to publish information about outbreaks with pandemic potential on an immediate basis without requiring the prior approval of national governments.** The WHO should be empowered to investigate pathogens with pandemic potential in all countries with short-notice access to relevant sites, provision of samples and standing multi-entry visas for international epidemic experts to outbreak locations. ([Independent Panel](#))
 - **National governments should establish highest level national coordination for pandemic preparedness and response.** Possible recommendations include heads of states and government appointing national pandemic coordinators accountable to the highest levels of their domestic governments with the mandate to drive whole- of-government coordination for both preparedness and response. ([Independent Panel](#))
 - **National governments should develop a global pandemic vaccine policy that sets out the rights and responsibilities of all.** A global pandemic vaccine policy—in accordance with the WHO Global Vaccine Action Plan 2030—could set out the rights and responsibilities of all concerned, including those funding and undertaking the research needed to develop and evaluate vaccines, those who approve the products, those concerned with intellectual property, and those who must ensure that vaccines are distributed to those in need and administered by frontline health workers. ([Pan-European Commission on Health and Sustainable Development](#))
 - **National governments and international organizations should ensure universal and equitable access to countermeasures for pandemic preparedness and response.** This includes intellectual property waivers for preparedness and response technologies, addressing the need for universal access to the internet and digital technology. ([Pan-European Commission on Health and Sustainable Development](#))
 - **National governments should establish a pre-negotiated platform for tools and supplies.** These proposals include:
 - National governments and WHO member states should transform the current ACT-A into a truly global end-to-end platform for vaccines, diagnostics, therapeutics, and essential supplies, shifting from a model where innovation is left to the market to a model aimed at delivering global public goods. ([Independent Panel](#))
 - National governments should ensure technology transfer and commitment to voluntary licensing are included in all agreements where public funding invested in research and development. ([Independent Panel](#))

- National governments, WHO, international financial institutions, and the private sector should establish strong financing and regional capacities for manufacturing, regulation, and procurement of tools for equitable and effective access to vaccines, therapeutics, diagnostics, and essential supplies, and for clinical trials. ([Independent Panel](#))

Proposals to Reform Intergovernmental Institutions and Agreements

- **WHO members should consider measures to improve member states' compliance with the International Health Regulations (IHR).** Reforms could focus on improving information sharing, transparency, and the independence and competence of the IHR Emergency Committee. The WHO has the potential tools to improve compliance, but implementing them would require revising the IHR and seeking approval from the WHA. These proposals include:
 - IHR could be amended to make it mandatory for WHO to share with all states parties when a state party does not respond within twenty-four hours to a verification request of a potentially serious disease event or accept WHO's offer of collaboration. ([CFR Independent Task Force](#))
 - WHO member states could establish an IHR review conference. Members could discuss how IHR has been used during this pandemic; consider issuing interpretive guidance to inform WHO and member states' actions on information sharing, particularly of pathogen samples and genetic sequence data; and how to improve the effectiveness of how the Emergency Committee advises on the declaration of a public health emergency of international concern. ([CFR Independent Task Force](#))
- **Strengthen independence and authority of the WHO.** These proposals include:
 - The WHA should strengthen the authority and independence of the director-general, including by having a single term of office of seven years with no option for re-election. The same rule should be adopted for regional directors. ([Independent Panel](#))
 - The WHO should formalize universal periodic peer reviews of national pandemic preparedness and response capacities against set targets as a means of accountability and learning between countries. ([Independent Panel](#))
 - The WHO could seek to expand Article 7 of WHO's constitution, which provides that member states that fail to meet obligations could have their voting privileges or other services suspended. ([CFR Independent Task Force](#))
 - WHO member states should establish the WHO's financial independence, based on fully unearmarked resources, increase member states fees for the WHO base program, and have an organized replenishment process for the remainder of the budget. ([Independent Panel](#), [G20 High Level Independent Panel](#), and [CFR Independent Task Force](#))

Proposals for New Financial Mechanisms and Strategies

- **Advanced economies should increase international assistance and pursue external sources of financing to assist low- and lower-middle-income countries.** This will require finding sustainable, external sources of financing for pandemic preparedness that rely less on traditional foreign assistance. One possible financing mechanism would be user fees on international economic activity, such as international travel or financial transactions, that depend

particularly on improved pandemic detection, preparedness, and response. ([CFR Independent Task Force](#))

- **National governments should commit to a new base of multilateral funding for global health security based on pre-agreed and equitable contribution shares by advanced and developing countries.** This will ensure more reliable and continuous financing, so the world can act proactively to avert future pandemics, and not merely respond at great cost each time a new pandemic strike. ([G20 High Level Independent Panel](#))
- **The G20, likeminded countries, and regional organizations should establish a new Global Health Threats Board.** It could provide systemic oversight of finance for pandemic preparedness and response, and ensure coordination and accountability of the critical international health and finance organizations. The board could be supported by a permanent, independent secretariat, drawing on the resources of the WHO and other multilateral organizations, and be loosely modeled on the successful experience of the Financial Stability Board. The board would complement the proposed Global Health Threats Council. ([G20 High Level Independent Panel](#))
- **National governments and regional and international institutions should step up their investments in One Health.** WHO, World Organization for Animal Health, Food and Agriculture Organization, and UN Environment Program should be supported to drive the development of standards for the prevention and control of health risks at the human-animal-ecosystems interface, with the WHO providing active support to the immediate response to emerging outbreaks once identified. ([G20 High Level Independent Panel](#))
- **Governments must collectively commit to increasing international financing for pandemic prevention and preparedness by at least \$75 billion over the next five years, or \$15 billion each year, with sustained investments in subsequent years.** Two-thirds of this additional amount, i.e. \$10 billion per year, could be pooled in a Global Health Threats Fund to be deployed across the various organizations and global initiatives. The remaining \$5 billion should go directly towards strengthening funding to existing institutions like the WHO and multilateral and regional development banks. ([G20 High Level Independent Panel](#))
- **Global public goods should be made part of the core mandate of the international financial institutions**—namely the World Bank and other multilateral development banks and the IMF ([G20 High Level Independent Panel](#)). These proposals include:
 - **The International Monetary Fund (IMF) should routinely include a pandemic preparedness assessment, including an evaluation of the economic policy response plans.** The IMF should consider the public health policy evaluations undertaken by other organizations. Five-yearly Pandemic Preparedness Assessment Programs should also be instituted in each member country, in the same spirit as the Financial Sector Assessment Programs, jointly conducted by the IMF and the World Bank. ([Independent Panel](#))

Reports Cited:

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Healthcare Reform: The Transformative Potential of the Pandemic

By: Oommen C Kurian, Observer Research Foundation

The last two years have shown that the direct impact of COVID-19 in the form of deaths and suffering has been only one part of the tragedy that is still unfolding. The disruption that the pandemic caused in the health sector effectively denied healthcare services to a large number of critically ill patients, causing avoidable deaths. Doctors share stories of meeting their cancer patients again, for example, after the severe pandemic waves, only to realise that lack of treatment resulted in the cancer worsening to advanced stages. Moreover, the economic disruption from the pandemic as well as the strict public health containment measures have triggered severe social and economic distress, perhaps at an unquantifiable scale.

It is often said that the skies are darkest just before dawn breaks; that things ought to get worse before they get better. However, with the experience of 2020 and 2021 before us and with the Omicron variant wreaking havoc, any forecast for 2022 remains highly uncertain. At the same time, as a definitive marker in world history, the pandemic may have triggered possible fast-paced changes in national health systems across the world, as it re-emphasised the strong link between a resilient health system and economic growth.

Healthcare as a Strategic Priority

First, it is expected that political barriers to universal healthcare will be weakened significantly due to the devastating impact of the pandemic. The ruling elites in many developing countries have faced the frightening prospect that they can no longer isolate themselves from health risks by selectively accessing the health system of a developed country according to their need. This will have long-lasting impacts in national health systems across the world, particularly the weaker ones.

Indeed, the status quo has changed for good; and policymakers will be forced to shed conventional wisdom around issues such as prioritising healthcare services, private sector participation in service delivery, and unbridled flow of healthcare personnel from the global South to the global North.

Democratisation of Health Systems and Business Models

The second major impact of the pandemic will be on global health governance structures, including institutions like the World Health Organization. Two years of the pandemic have strengthened demands for institutional reform like never before. Many countries, including India, have suggested that reforms within WHO are long overdue. As the global demand for operationalising the “health for all” agenda increases significantly amid the pandemic, only far-reaching reforms in the key institutions can ensure equitable and efficient changes in health systems.

The pandemic proved that the global pharmaceutical manufacturing ecosystem answers mostly to dollar power, and empty rhetoric on global solidarity may not amount to much in the real world. The stark vaccine inequality, which the world surprisingly tolerated in 2021, is likely to become politically untenable in 2022, and the case for local pharmaceutical production will be stronger than ever in most countries of the global South. This will have several strategic imperatives as well.

India’s experience in the sector makes it uniquely placed to mentor developing countries in achieving some level of self-sufficiency in their health systems, at least across Asia, Africa, and Latin America. The demand

for health system reform and enhanced domestic investments will likely ensure that such shifts may now even make business sense. Many pharmaceutical multinational corporations can make strategic moves readjusting their current business models to secure a portion of the pie, if such tectonic changes do happen. Any movement towards a more broad-based, high-volume, low-margin model in pharmaceuticals will mean a key global leadership role for India, in general, and Indian pharmaceutical companies in particular.

Healthy Lifestyles as Vaccine

Lastly, continuous waves of novel-coronavirus variants have made a convincing case that a healthy lifestyle may be the only true vaccine available yet. In the immediate future, it is expected that there will be renewed focus on prevention, with greater attention being paid to the benefits of physical activity and healthy food habits, and to reducing self-harming behaviour such as smoking and excessive consumption of alcohol.

The pandemic may yet manage to shake the world from its stupor, and finally acknowledge that green spaces and playgrounds are as important parts of a national healthcare infrastructure as hospital buildings. Then SARS-CoV-2 could be said to have played its part in changing history and influencing modern society.

Excerpted from "[*The World in 2021: An Epilogue*](#)," Harsh Pant (ed.), ORF Issue Briefs and Special Reports, December 29, 2021.

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To Stop a Pandemic

A Better Approach to Global Health Security

Jennifer Nuzzo

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To Stop a Pandemic

A Better Approach to Global Health Security

Jennifer Nuzzo

The COVID-19 pandemic, in the words of Tedros Adhanom Ghebreyesus, the director general of the World Health Organization (WHO), “is a once-in-a-century health crisis.” Indeed, the last public health emergency to wreak such havoc was the great influenza pandemic that began in 1918, which sickened about a third of the world’s population and killed at least 50 million people. But because global conditions are becoming increasingly hospitable to viral spread, the current pandemic is unlikely to be the last one the world faces this century. It may not even be the worst.

The novel coronavirus hit a world that was singularly unprepared for it. Lacking the capacity to stop the spread of the virus through targeted measures—namely, testing and tracing—countries were left with few options but to shut down their economies and order people to stay at home. Those policies worked well enough to slow the growth of cases by late spring. But over

JENNIFER NUZZO is a Senior Scholar at the Johns Hopkins Center for Health Security, an Associate Professor at the Johns Hopkins Bloomberg School of Public Health, and Senior Fellow for Global Health at the Council on Foreign Relations.

the summer and into the fall, governments faced pressure to relax those restrictions, and cases rose. On November 4, more than 685,000 new cases worldwide were reported in a single day—then an all-time high. By that point, more than 48 million people had been infected with COVID-19, and more than 1.2 million had died.

The economic and societal effects of the pandemic will linger for decades. Worldwide productivity is expected to have contracted by five percent in 2020. The United States alone has suffered an estimated \$16 trillion cost from lost productivity, premature deaths, and sickness. More than one billion children around the world have had their schooling interrupted. The World Bank has warned that some 150 million additional people will enter the ranks of extreme poverty as a result of the pandemic.

This staggering toll reveals the severe inadequacy of the global systems in place to protect against pandemics. Today’s public health architecture was built for outbreaks and epidemics, but pandemics require a different approach. In outbreaks and epidemics, the spread of disease is geographically limited, so the unaffected countries can, in theory at least, help the affected ones. In a pandemic, however, nearly everyone is hit at once, which means that there is far greater demand on the limited resources of the WHO, the World Bank, and other international organizations. This means that countries have to rely on themselves to stop the spread.

The United States and other countries are rightly focused on recovering from the current crisis, but they need to look past it and focus on preparing for the next one, too. That requires a

fundamental change in the way that countries think about global health security. They have to give the WHO and other international institutions the resources and mandate they need to identify emerging threats and incentivize countries to develop the capacities to contain them. And they have to strike agreements to share data and conduct joint trials, so as to enable a truly global response to a pandemic. Otherwise, the world's response will once again prove to be too little, too late.

CONDITIONS FOR CONTAGION

The emergence of COVID-19 should not have been surprising. Respiratory viruses, including the novel coronavirus behind this pandemic, are often well suited to widespread transmission. Because each infected person can pass the virus to several others, it spreads exponentially until control measures are put in place. Respiratory viruses also tend to have short periods between exposure and contagiousness, which leaves only a narrow window of time to intervene. To make matters worse, they often cause symptoms that look like those of other, more common diseases—and sometimes cause no symptoms at all—creating difficulties in identifying who is infected and who isn't.

Then there is the matter of mortality. Respiratory viruses have a demonstrated potential to cause serious illness and death in a high percentage of cases. The coronavirus that caused the SARS epidemic in 2003 is estimated to have killed ten percent of the people who caught the disease, and the one that has caused outbreaks of MERS since 2012 has killed about 35 percent. Both are respiratory viruses.

Once a pathogen like this emerges and starts spreading locally, if it is not contained quickly, it can easily spread globally. Although there is no single definition of “pandemic,” epidemiologists generally use the word to describe an outbreak of infectious disease that has spread across multiple parts of the globe. Such spread is much easier today, in an era of international travel, mass displacement, migration, and urbanization, all of which allow pathogens to reach new susceptible populations. And the prevalence of chronic diseases, including obesity, makes people more prone to develop serious cases once they are infected.

The H1N1 influenza took only two months from when it was first detected, in April 2009, to circulate around the world—and just a year to kill somewhere between 150,000 and 575,000 people. That pandemic turned out to be just the first in a series of infectious disease emergencies. After H1N1 came the emergence of the deadly coronavirus that causes MERS; the two biggest Ebola epidemics on record, first in West Africa and then in the Democratic Republic of the Congo; and the global spread of the once obscure Zika virus. There will be more. Even when accounting for better surveillance, the number of new emerging infectious diseases has increased steadily since 1940. Most of these new pathogens originated in wildlife and jumped to humans—a phenomenon called “spillover,” which is driven by globalization and humans' increasing encroachment on nature.

The emergence of new, worrisome pathogens is to be expected; whether they cause a global pandemic depends

on how the world responds. As the epidemiologist Larry Brilliant once put it, “Outbreaks are inevitable; epidemics are optional.” Even as global conditions empower pathogens, countries and international organizations can take measures to stop outbreaks from becoming epidemics and epidemics from becoming pandemics. But doing so successfully will require changing the way they approach the basic task.

PANDEMIC GOVERNANCE

The International Health Regulations, or IHR, are a set of guidelines first adopted by the WHO in 1969 and strengthened after the 2003 SARS epidemic. A legally binding agreement, the IHR require governments to develop the capacity to respond to outbreaks that have the potential to spread widely, and it gives the director general of the WHO the power to declare a “public health emergency of international concern.” Arguably, the IHR’s greatest strength lies in their requirements for early detection. The regulations establish the expectation that countries will develop the public health capacities necessary to identify and report potential global emergencies. If national governments can quickly detect and notify the WHO of major outbreaks, the logic goes, then the rest of the world has a chance to prevent them from growing.

Yet many countries have failed to fulfill their obligations under the IHR. By 2012, less than a quarter of all WHO members had reported full compliance. Two years later, that fraction had increased only slightly, to just over a third. As was made clear during the West African Ebola epidemic that

began in 2013, the lack of progress is deadly. Delays in detecting an outbreak in Guinea allowed the disease to spread to Liberia, Nigeria, and Sierra Leone, eventually sickening close to 30,000 people and killing more than 11,000. Only after foreign governments and international organizations sent in personnel to help was the epidemic eventually contained.

In the wake of that episode, several independent commissions concluded that it was not enough for countries to grade themselves on their compliance with the IHR; rigorous external review was needed. In response, the WHO developed a voluntary process for outside evaluation. To date, more than 100 countries have opened themselves up for inspection, although there are some notable exceptions: China, India, and Russia, along with much of western Europe and all of Latin America. And although this process represents an improvement over self-assessment, few countries, even wealthy ones, have taken steps to address the gaps that have been identified.

The WHO’s implementation of its own regulations has also come under scrutiny, particularly its process for determining whether to declare a global public health emergency. During the Ebola epidemic in West Africa, the organization waited until August 2014 to make that declaration, more than four months after the virus had spread internationally and more than eight months after the epidemic likely began. After another outbreak of the disease began in Congo in August 2018, it waited 11 months to do the same, even as the number of deaths exceeded 1,000. When Tedros finally declared the epidemic a global

emergency, he stressed that countries should not respond by implementing travel or trade restrictions, reflecting concerns about the political consequences of making such a designation.

The WHO's judgment was called into question again once COVID-19 started spreading in the Chinese city of Wuhan in December 2019. At meetings on January 22 and 23, the organization declined to declare an emergency, contending that there were insufficient data from China, before reversing course a week later. A week's delay may not have mattered much in terms of the virus's spread, but it suggested something troubling: that the WHO was letting Beijing influence what was supposed to be an independent, science-driven process.

The IHR are also limited by their lack of teeth. The regulations grant the WHO the power to recommend which travel and trade restrictions are necessary and which aren't, but governments often go their own way. As the H1N1 pandemic swept across the United States and Mexico, the WHO issued strong warnings against the use of travel or trade restrictions, contending that they would do little to slow a virus that was already spreading widely across the globe. Nonetheless, China and Russia quarantined planes from North America and banned U.S. pork imports, which likely exacerbated the social and economic toll of the pandemic. Similarly, during the West African Ebola epidemic, more than a third of countries went beyond what the WHO recommended, instituting measures that did nothing to prevent Ebola from coming out of West Africa but did make it harder for doctors and supplies to get in.

When COVID-19 first appeared, the WHO did not recommend travel restrictions, a decision that has been the subject of much controversy since. But the WHO was trying to keep in mind a larger consideration: that the prospect of such restrictions can make countries unwilling to report major outbreaks. When countries respond to reports of new disease outbreaks by penalizing those that first report them, it undermines the IHR's greatest strength: early detection. The later the rest of the world learns of an outbreak, the harder it is to respond. Ideally, countries that honor their obligations to report outbreaks early should be rewarded with help and priority access to resources—not penalized. Yet the IHR offer no such incentives.

The shortcomings brought to light by COVID-19 have led to renewed calls for strengthening the IHR. Tedros himself has called the pandemic “an acid test” for the regulations, and in August 2020, he announced that an independent committee would review them. Upgrading the IHR would not be easy: the last major overhaul came after a decade of debate and was completed only in response to the shock of SARS. Especially in the wake of the Trump administration's decision to withdraw the United States from the WHO, countries may decide it's not worth trying to negotiate stronger regulations.

GETTING GOVERNMENTS TO ACT

Ultimately, it's up to sovereign states to prepare for pandemics. The problem, however, is that efforts to motivate action have largely failed. COVID-19 may have caught political leaders by surprise, but health experts had been sounding the alarm for decades, making it clear that a serious pandemic was a matter not of if

but of when. Perhaps the highest-profile of these warnings came in a September 2019 report. The Global Preparedness Monitoring Board, an independent panel convened by the WHO and the World Bank, called a fast-moving, highly lethal pandemic a “very real threat” and urged countries to prepare.

Despite such premonitions, governments dragged their feet in reacting to COVID-19. Many restricted travel from China or otherwise closed their borders, but it was too late: the virus had already leaped across continents. Governments waited weeks and weeks to institute lockdowns at home—a delay that gave the virus crucial time to flourish. Part of the problem may have been the WHO’s reluctance to call COVID-19 a “pandemic.” It was only on March 11 that the organization first used that word to describe the disease. By then, more than 100,000 cases and more than 4,000 deaths had been reported. The label carries no legal significance, so the delay in using “pandemic” to describe the spread of a virus to more than half of the world’s countries was puzzling.

Tedros justified the WHO’s hesitation by making the dubious argument that the word “pandemic” could “cause unreasonable fear, or unjustified acceptance that the fight is over, leading to unnecessary suffering and death.” In refusing to use the word for months, the WHO missed a chance to educate the public that the term “pandemic” indicates a disease’s geographic spread, not its severity. It also missed a chance to motivate governments to take preemptive action. In all likelihood, some of them failed to institute lockdowns in part because they did not understand the virus’s transmission potential.

As countries began to grasp the gravity of the unfolding pandemic, they found themselves hindered by inadequate health-care systems. Efforts to “flatten the curve,” such as shut-downs, have been aimed largely at preventing hospitals from becoming overwhelmed by a surge of patients. In the United States, images of overrun intensive care units in Italy spurred politicians into action. The realization that there wasn’t enough personal protective equipment for health-care workers only added to the concern.

Countries were right to fear that their health-care facilities wouldn’t be able to cope with COVID-19. The 2019 Global Health Security Index—published jointly by the Johns Hopkins Center for Health Security (where I work), the Nuclear Threat Initiative, and the Economist Intelligence Unit—looked at 195 countries and assessed their readiness for an epidemic across six categories. The average score for their health-care systems was 26 out of 100, the lowest average among all the categories. Even rich countries lost the most points in this category.

Yet even though hospitals and clinics play a central role in mitigating or amplifying the toll of public health emergencies, governments have given them short shrift. The WHO, for its part, has issued a list of “core capacities” needed to combat infectious disease outbreaks, but that list excludes the tools needed to deal with serious respiratory illnesses. It doesn’t include the capacity to keep critical government functions working in the face of widespread illness and absenteeism, for example. Nor does it include the capacity to rapidly acquire medicines and

protective equipment when other countries are trying to do the same. COVID-19 has revealed both the fragility of global supply chains and the unequal distribution of medical supplies around the world. Low-income countries, in particular, have suffered a severe shortage of masks, respirators, gloves, gowns, and much else.

ON THE LOOKOUT

COVID-19 has also uncovered the inadequacies of existing efforts to conduct surveillance for pandemic threats. Early on, it was clear that there was no single official source for tracking the spread of the disease in real time, which sent public health researchers scrambling to fill the void. The COVID-19 dashboard set up by my school, Johns Hopkins University, emerged as one of the first places to publish reliable, up-to-date case numbers from around the world. But the very fact that a university website, rather than the WHO, became the go-to source for information about the pandemic's spread exposed the gaping holes in international surveillance. There are no clear expectations that governments should share data about potential pandemics, nor is there a standardized way for them to do so.

A key flaw of surveillance efforts is that they rely on voluntary reports from governments. As COVID-19 took off in Wuhan, the Chinese government delayed sharing information about the number of cases and the ease of transmission, a decision that limited the rest of the world's understanding of the new pathogen. Relying on individual governments to report data in a timely, complete fashion has not worked out well, and nongovernmental sources are often

more reliable: after all, it was the Seattle Flu Study, a project funded by Bill Gates, that first detected community transmission of the novel coronavirus in the United States. Such initiatives should be encouraged. Health-care facilities, for example, should band together to create a global network that shares hospitalization data.

Governments should also pledge to share samples of emerging pathogens. Although Chinese researchers shared early genetic sequencing data from patients infected with the novel coronavirus, they held back samples of the virus. Their reluctance was problematic because scientists need more than genetic specimens to develop vaccines, medicines, and diagnostic tests; they need actual samples of the virus. It would be useful, then, for the world to expand on the method it has employed since 2011 to share samples of avian influenza, a WHO framework known as "pandemic influenza preparedness." Indeed, global pandemics require global responses. With COVID-19, larger, more international trials of medicines and vaccines have fared far better than smaller, unilateral ones. For example, the Solidarity trial, an approximately 12,000-patient study of COVID-19 treatments organized by the WHO, has yielded useful data about which therapeutics work and which don't.

One of the biggest challenges to pandemic preparedness, of course, is funding. Historically, much more money has been spent on responding to epidemics and other emergencies than preparing for them. Making matters worse, the economic toll of the current pandemic will squeeze budgets, as was the case following the recession that

began in 2008. That's why there is an urgent need for new financing mechanisms to fill the gaps in countries' core capacities. One option would be to create a global health security challenge fund, through which donors would agree to match low-income countries' spending on preparedness. Another idea is for the World Bank to encourage the world's poorest countries to use its grants and loans to pay for pandemic preparedness; historically, countries have spent World Bank money on other priorities, only to turn to the bank for emergency funds once an outbreak occurs.

THE OTHER THREAT

As challenging as COVID-19 has been, there are even worse scenarios out there. The very same scientific advances necessary to develop new therapies and vaccines also raise the possibility of an accidental or deliberate release of a deadly novel pathogen—natural or laboratory-engineered. The harm from such an event could eclipse anything ever seen. A new pathogen could prove more severe than known diseases and resistant to traditional methods of diagnosis and treatment. Moreover, if it were thought to have been released deliberately, then countries' security and intelligence agencies would no doubt spring into action. They would be unlikely to act transparently and share information about the nature of the pathogen. That, in turn, could make it harder for countries to assess their risk and develop evidence-based response plans.

An exercise at the Munich Security Conference in February 2020 showed just how unprepared the world is for such a scenario. A key finding was that dealing with natural diseases is hard

enough, but dealing with a deliberate one requires capabilities beyond those found in public health agencies. And there is a distinct lack of clarity about who would be in charge were such a scenario to occur. Although the WHO's mandate includes leading the global response to pandemics of natural origin, it is the UN secretary-general who is empowered to investigate state-sponsored biological attacks. It is far from clear which organization would be responsible for looking into an event that was neither natural nor carried out by a state. Countries need to figure out the division of labor now rather than trying to work it out on the fly during an emergency.

It's impossible to put a number on the probability of an accidental or deliberate release of a new pathogen, but given the enormous consequences, it certainly merits more attention. Working with the private sector and philanthropies, governments should establish norms and safety measures to safeguard biological research and make plans for how to respond if those efforts fail. The goal should be to discourage ill-intentioned governments or people from unleashing a disaster. Of course, as COVID-19 has shown, disasters do not require malevolence. A lack of preparation is enough. 🌐

FUTURE-PROOFING PANDEMICS

Analysing the EU's proposal to clarify and simplify the compulsory licensing procedure

Weinian Hu

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Future-proofing pandemics:

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Abstract

The 'TRIPS waiver' proposal, first submitted by India and South Africa to the WTO TRIPS Council in October 2020, has resulted in diametrically split positions amongst WTO members. But the EU has chosen a middle way. Its three-fold response seeks to provide answers to the concerns raised by the proposal that developing countries may face 'institutional and legal difficulties' when using the policy flexibilities provided by the TRIPS Agreement. Thus, the EU wishes to clarify and simplify the authorisation procedure of compulsory licensing, a policy flexibility that could provide affordable generic versions of patented pharmaceutical products. However, an onerous procedure is a long-heard complaint against compulsory licencing.

Consequently, the EU's response is more focused on improving the administrative procedure of compulsory licensing rather than on responding directly to the Covid-19 pandemic. Thus, the effect of the EU's response to the proposed waiver agreement on the wider battle against the pandemic will be limited, not least because since the beginning of the outbreak, the international community had already rallied itself to combat Covid-19. A recent case in point is that, in February 2022, six African countries received the technology needed to produce mRNA vaccines on the continent. After all, there is no proof that the TRIPS Agreement has undermined efforts in technology transfer, pharmaceutical manufacturing, etc. as the 'TRIPS waiver' proposal suggests.

Overall, this CEPS Policy Insights paper finds that the EU's proposed solutions have shifted the focus from Covid-19 vaccines supply to the compulsory licensing procedure. Thus, the merit of the 'TRIPS waiver' proposal is no longer about taking moral decisions but rather it's about technical aspects. The real impact of the EU's response will most likely benefit future users of compulsory licensing, especially when the next pandemic strikes, whenever that may be.

Weinian Hu is a CEPS Research Fellow.

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Introduction

The members of the World Trade Organization (WTO) have been diametrically split in their response to the 'Waiver from certain provisions of the [TRIPS Agreement](#) for the prevention, containment and treatment of COVID-19' communication (hereunder the 'TRIPS waiver' proposal) that was [originally published](#) on 2 October 2020 and [revised](#) on 25 May 2021. A chief argument [against](#)¹ the TRIPS waiver proposal is that the policy flexibilities provided by the TRIPS Agreement, such as compulsory licensing, are sufficient to respond to the pandemic. The TRIPS waiver proposal foresees these flexibilities but argues that developing countries may face institutional and legal difficulties when applying them in practice.

Indeed, a persistent complaint against compulsory licensing is its onerous authorising procedure. It is even alleged that, because of this, compulsory licensing has not been widely used. Justifiable or not, the EU's [response](#) to clarify and simplify the compulsory licensing procedure attempts to address this long-running complaint.

This CEPS Policy Insights paper will analyse the criticism against the authorisation procedure of compulsory licensing in section one. Before the conclusion, section two will examine the EU's three-fold proposal which aims to improve the compulsory licensing procedure, including the notification procedure under Article 31*bis* for export purposes.

1. Compulsory licensing - an onerous procedure?

To prioritise public health over intellectual property rights, the TRIPS Agreement has granted its members the flexibility to adopt the measures necessary to promote the public interest, without the risks of violating the obligations to protect intellectual property rights. Transitional periods and compulsory licensing are such policy flexibilities. [Compulsory licences](#) may be granted for use by a government or third parties to enable the generic versions of a patented pharmaceutical product to be manufactured and sold for non-exclusive use, on payment of royalties. Of course, generic pharmaceutical products cost significantly less than original patented products. In the context of the Covid-19 pandemic, in the absence of voluntary licensing, compulsory licensing could provide developing countries with affordable access to Covid-19 vaccines.

But what are the grounds for authorising a compulsory licence? In short, these include 'national emergency or other circumstances of extreme urgency', 'public health' or 'insufficient or no manufacturing capacity' of particular pharmaceutical products, by virtue of Article 31*bis* of the TRIPS Agreement.

¹ See also: Bacchus, J. (2020), *An Unnecessary Proposal: A WTO Waiver of Intellectual Property Rights for COVID-19 Vaccines*, Free Trade Bulletin No 78, CATO Institute, Washington, D.C.; and Mercurio, B. (2021), 'WTO Waiver from Intellectual Property Protection for COVID-19 Vaccines and Treatments: A Critical Review', *62 Virginia Journal of International Law Online*, pp. 10–31.

Conventionally, a compulsory licence may only be authorised if efforts for voluntary licensing fail to materialise within a reasonable period of time. This prerequisite may look burdensome and time-consuming, but it may be waived if the authorisation is under ‘a national emergency or other circumstances of extreme urgency...’²

An oft-quoted piece of evidence to support the argument that the compulsory licensing procedure is onerous is the fact that Article 31*bis* of the TRIPS Agreement has been applied only once since the 2001 adoption of [the Doha Declaration on the TRIPS Agreement and Public Health](#). In this one instance it took nearly four years, from the moment when Apotex Inc., the exporter, expressed its initial interest to manufacture triple antiviral therapy, to the first shipments that were sent to [Rwanda](#), the importer³. Legislative amendment, voluntary licencing negotiations, and the ‘drug-by-drug, country-by-country decision-making process’ of the compulsory licensing procedure under Article 31*bis*, were blamed for this long and protracted process⁴.

On the other hand, although ‘institutional and legal difficulties’ that developing countries face are quoted as a justification for the ‘TRIPS waiver’, it is maybe for other reasons that some countries have been restricted from invoking compulsory licensing. The restrictions under bilateral trade agreements (e.g. the requirements for test data exclusivity for pharmaceutical product patents) and possible retaliation by trade partner countries (e.g. sanctions by the United States under [Section 301](#)) could deter some countries from invoking the policy flexibility. Additionally, some countries also [did not incorporate compulsory licensing into their national legislation](#) simply because they felt it was not necessary.

Nonetheless, within the present context of the ‘TRIPS waiver’ proposal, the EU’s response tries to improve the efficiency of the compulsory licensing procedure, for better clarity, certainty and simplification, especially as far as exports are concerned, as will now be discussed below.

2. The EU’s proposal to improve the compulsory licensing procedure

The EU’s proposal is three-fold. It focuses on the administrative procedure of compulsory licensing. The impact would be possible in the long-term when a new pandemic strikes post Covid-19.

² These efforts include trying to obtain authorisation from the rights holder on reasonable commercial terms and conditions and within a reasonable period of time. This requirement may, however, be waived by national legislation in the case of a national emergency or other urgent circumstances or in cases of public non-commercial use, in accordance with Articles 31 (b) of the TRIPS Agreement.

⁴ See [here](#) for further info.

2.1 'A national emergency or other circumstances of extreme urgency'

The first component of the EU's proposal is to determine that '... a pandemic is a national emergency or other circumstances of extreme urgency...'. Once this is done, when authorising a compulsory licence, the prerequisite of negotiating with the patent right holder would be waived in accordance with Article 31(b) of the TRIPS Agreement. The EU also proposes to extend this to Article 31*bis*⁵.

Some scholars have [argued](#) that the EU's request for clarification does not imply a 'substantial flexibilisation of the system' as the possibility for this already exists. Nonetheless, such a clarification could be important when a future pandemic strikes for absolute certainty's sake. Presently, the Covid-19 outbreak has been classified, *de facto*, as a 'national emergency' after the WHO [declared](#) it an official pandemic on 11 March 2020.

De jure, the outbreak of the Covid-19 pandemic may constitute 'an emergency in international relations'. Thus, by virtue of Article 73(b)(iii) of the TRIPS Agreement, on the strength of 'security exceptions', a government's policy measures may override the IP protection obligations⁶, to protect a WTO member's essential security interests. A few governments have taken [action](#) on this ground of 'national emergency' in the wake of the outbreak. For example, in Canada, the government or 'another specified person' is empowered to supply a patented invention when responding to a public health emergency of national concern.

Nonetheless, thanks to the Doha Declaration, WTO members have the freedom not only to grant a compulsory licence but to also determine the grounds upon which compulsory licences may be granted. They equally have the right to determine what constitutes 'a national emergency or other circumstances of extreme urgency'. Moreover, it is understood that a public health crisis can represent 'a national emergency or other circumstances of extreme urgency'⁷. On this account, the EU's request for clarification on the term 'national emergency' seems to have had limited impact on the Covid-19 pandemic.

But, if we want to heed to the complaints voiced by Apotex Inc., where the generic pharmaceutical manufacturer was compelled to negotiate with three patent holders who held a 'proliferation of fragmented and overlapping rights⁸', the EU's request for clarification could help to improve the efficiency of compulsory licensing, also for export purposes, under Article 31*bis* of the TRIPS Agreement.

⁵ This is because, under normal circumstances, Article 31*bis* may only override Articles 31(f) (predominantly for the supply of the domestic market) and (h) (adequate remuneration).

⁶ Abbott, F. (2020), *The TRIPS Agreement Article 73 Security Exceptions and the COVID-19 Pandemic*, South Centre Research Paper 116, South Centre, Geneva, August. Also, Zaman, K. (2022), 'The Waiver of Certain Intellectual Property Rights Provisions of the TRIPS for the Prevention, Containment and Treatment of COVID-19: A Review of the Proposal under WTO Jurisprudence', *European Journal of Risk Regulation*, pp. 1-19.

⁷ Article 5(b)(c), Doha Declaration on the TRIPS Agreement and Public Health.

⁸ Heller, M. and Eisenberg, R. (1998), 'Can Patents Deter Innovation? The Anticommons in Biomedical Research', *Science*, Vol. 280, pp. 698-701.

2.2 'The remuneration should reflect the price charged under the compulsory licence'

The second component of the EU's proposal aims to determine that, under circumstances caused by a pandemic, remuneration should reflect the price charged by the manufacturer of the pharmaceutical products that were produced under the compulsory licence.

As a principle, when authorising a compulsory licence, in accordance with Article 31(h) and paragraph 2 of Article 31*bis* of the TRIPS Agreement, 'adequate remuneration' should be paid to the patent right holder by taking into account the 'economic value' of the licence to the importing member.

In general, WTO members have the freedom to determine the level of 'adequate remuneration' in the context of compulsory licensing. In the meantime, the United Nations Development Programme (UNDP) and the WHO have recommended a range of royalty rates from; 1.) 4 %, 2-4 % based on the generic product price; 2.) 0.02-4 % based on the generic product price and dependent on the UNDP Human Development Index rank of the concerned country; 3) 4 % based on US or European country product prices, and all with a variation of ± 2 % considering other relevant factors⁹.

Taking the above into the consideration, the EU's proposed solution provides another criterion on 'adequate remuneration', with uniformity and clarity as far as generic pharmaceutical supplies are concerned.

2.3 One single notification for 'exporting members'

The third component of the EU's response to the 'TRIPS waiver' proposes that exporting members may provide just one single notification with a list of all countries to which the generic versions of pharmaceutical products are to be supplied directly, or indirectly, through international joint initiatives. 'Notification' is a request obliged by Article 31*bis* of the TRIPS Agreement; Paragraph 2(b)(c) of the Annex to the TRIPS Agreement provides the details as far as exports are concerned.

However, the impact of the EU's 'one notification' proposal and its ability to actually help countries, especially developing countries, to use the Article 31*bis* system is hard to assess at the moment.

Firstly, the likelihood of generic pharmaceutical manufacturers in developing countries, such as India and South Africa, to become exporters is slim. This is because to be a potential exporter of a generic pharmaceutical product, for example a Covid-19 vaccine, the exporter/manufacturer must be located in a country where the particular patent is in force and requires a compulsory licence for export. To date, among the developing countries with manufacturing capacity, only five Covid-19 related patent applications have been submitted in South Africa,

⁹ UNDP and WHO, *Remuneration Guidelines for Non-Voluntary Use of a Patent on Medical Technologies*, pp. 51-7.

and one in India. With such an insignificant number of patent applications, it is highly unlikely that Indian and South African pharmaceutical manufacturers would be able to become exporters.

And then what about the world's top recipient countries of Covid-19 patent applications and with high manufacturing capacity? Presently, the top three recipients are the United States, that has received 18 425 applications, the World Intellectual Property Office (WIPO) that has received 10 460 applications under the Patent Cooperation Treaty (PCT) system, and the European Patent Office (EPO) that has received 4 175 applications¹⁰.

Looking at the patent application numbers, the United States seem to be the most likely candidate exporter, especially because of its high capacity in generic pharmaceutical manufacturing. However, the country may not be inclined to invoke Article 31*bis* as it opted out of the mechanism, although noting that it would be open to an 'opt-in' at a later date if circumstances warranted such a move.

At the same time, for those applications submitted to the WIPO, we do not know which countries they will eventually be enforced in, since the patent examination process is still ongoing. It is possible that, after passing the patent examination at the 'international stage', a considerable number of patent holders would [enforce their rights](#) in some developing countries (at the 'national stage'¹¹), such as in India and South Africa. Having said that, one essential consideration when electing jurisdiction for patent enforcement is that patent holders will want to protect their rights in countries with strong legal enforcement mechanisms.

The same 'unknown' can be extended to those Covid-19 patents submitted to the EPO. These patents may well be enforced eventually by the EPO contracting members, such as Germany, Belgium and Spain, and they all have high pharmaceutical manufacturing capacity¹². In theory, they could all become an exporter country within the definition of Article 31*bis*.

Nonetheless, just like the United States, the EU and its Member States [opted out](#) of Article 31*bis*. Whether they would one day opt-in would of course depend on the specific circumstances at hand.

It must be highlighted that the Article 31*bis* mechanism may only be invoked under exceptional circumstances (which may be the reason why it has been used only once thus far). In the first place, the objective of compulsory licencing is '[never to issue lots of compulsory licences but to provide cheaper medicines for the poor.](#)' Under most procurement scenarios, before

¹⁰ Other big recipients of COVID-19 patent applications are: Russia (129), Australia (124), Canada (124), and Japan (61). For details, see [Lens Patent Search: Coronavirus](#) (as of 14 January 2022).

¹¹ As an international patent system, by filing one patent application under the Patent Cooperation Treaty (PCT), in theory applicants can simultaneously seek protection for an invention in 154 PCT contract states.

¹² For countries' pharmaceutical manufacturing capacity, see IFPMA (2021), *Towards Vaccinating the World, Landscape of Current COVID-19 Supply Chain and Manufacturing Capacity, Potential Challenges, Initial Responses, and Possible "Solution Space"*, IFPMA Discussion Document.

resorting to Article 31*bis* for export/import purposes, affordable supplies would usually already become available from countries where the relevant patents are not in force. Sometimes, once compulsory licensing is discussed, prices for the originator pharmaceutical product can be reduced through negotiation to an affordable level without recourse to a compulsory licence. Donations may also be yielded¹³. Alternatively, the originator company may have agreed to grant a [voluntary licence](#) to a generic producer.

In the context of the Covid-19 pandemic, Gilead Sciences has [concluded](#) non-exclusive voluntary licensing agreements with generic pharmaceutical manufacturers based in Egypt, India and Pakistan to further expand the supply of remdesivir, an antiviral medication developed by Gilead for emergency use to treat Covid-19, to 127 countries. These agreements not only enable technology transfer of the Gilead manufacturing process for remdesivir, but they also authorise the local licensees to set their own prices for the generic pharmaceutical product they manufacture. Additionally, in February 2022, it was [announced](#) that six African countries – Egypt, Kenya, Nigeria, Senegal, South Africa and Tunisia – would be the first on the continent to receive the technology needed to produce an mRNA vaccine.

3. Conclusion

To bring about an effective response and eventual end to the Covid-19 pandemic, pharmaceutical manufacturers have been actively conducting voluntary licensing and technology transfer/coordination activities. New manufacturing plants have also been constructed in developing countries, such as South Africa, to scale up pharmaceutical manufacturing capacity. These undertakings have not been hampered by compulsory licensing, however onerous its authorisation procedure might be.

Nonetheless, the EU's response has addressed the concerns raised by the TRIPS waiver proposal on 'institutional and legal difficulties' that countries may face when using policy flexibilities provided by the TRIPS Agreement. But the solutions advocated by the EU's proposal move beyond the pandemic. If adopted, it will most likely benefit future users during a new emergency situation (such as the next pandemic) with a simplified compulsory licensing procedure and universal legal clarity on what actually constitutes 'economic remuneration'.

¹³ Such success was achieved when Thailand and Brazil used compulsory licensing as a negotiating tool to seek supplies of affordable antiretroviral treatments for their citizens living with HIV/AIDS.

The Next Pandemic – When Could It Be?

How, when, and where could a new pandemic occur, what measures might prevent such an event, and is the world well-prepared if it does happen?

Chatham House Explainer

February 23, 2022

By: David Heymann, Emma Ross, and Jon Wallace

The next pandemic

This article explains how a new pandemic might occur, what it could be, and what measures might prevent such an event. First, to explain the issue, it's useful to understand some key terminology:

An epidemic is an outbreak of a disease in a particular location.

A pandemic is an outbreak of a disease which spreads to and occurs in many different geographic areas at the same time.

Endemic diseases are established and circulating regularly in populations. Some endemic diseases such as influenza can have surges in transmission or have epidemics at certain times.

A pathogen is an organism which causes a disease to its host, including but not limited to viruses.

When could the next pandemic happen?

It is impossible to predict when the next pandemic will occur as they are random events. They can begin anywhere in the world where animals and humans are in close proximity as pandemics most often originate when a pathogen transfers from an animal in which it lives to a human never before infected with that pathogen.

When emergence in humans occurs, one of three outcomes are the result: the pathogen causes an illness in a single person, as with rabies; it causes a wider outbreak, such as the Ebola virus disease in the Democratic Republic of Congo in 2014 and 2015; or it causes a pandemic with the potential to become endemic, such as HIV.

The large influenza pandemic in 1918 is a major historical point of reference but there have been several less lethal influenza pandemics since then. Some experts call HIV a pandemic which has become endemic.

Infectious disease outbreaks are most likely to occur when a series of risk factors happen together. An El Niño weather event in 1997 caused flooding in Kenya, Somalia, Sudan, and Tanzania which meant cattle and humans were forced to live closer together on the remaining dry land. This increased the risk of cross-species pathogen transmission. Due to a shortage of vaccines, the cattle were unvaccinated against the Rift Valley Fever virus, a common infection among ruminant animals in the region.

The flooding created more breeding sites for mosquitoes, leading to a rapid increase in the mosquito population. Mosquitoes are one means of transmission of the Rift Valley Fever virus from animals to humans, and from human to human. This facilitated emergence of the virus in human populations which was then transmitted from human to human.

Alignment of all these risk factors resulted in a major outbreak of Rift Valley Fever among the region's human population.

Where could the next outbreaks occur?

Efforts have been made to predict where pandemics may originate by identifying sites of emergence in the past, such as mapping all known emerging-infection incidents from the 1940s to the early 2000s and predicting that emergence would occur at one of those sites. But emergence is a random event both in time and place and mapping has not been a reliable predictor.

Influenza pandemics historically emerged in southern China so that area was the focus of attention as a possible source of new strains of the influenza virus. But the 2009 H1N1 'swine flu' pandemic is thought to have originated in Mexico and/or the southern US rather than in China.

Even if there was a genetic-sequencing library of all organisms carried by wild animals linked to the animals in which they are found, such a database would be difficult to keep updated. At best, it could give an idea of the origin of a newly identified pathogen but scientists cannot predict an outbreak using such databases. A new pandemic could begin anywhere where there is close interaction of people and either domesticated or wild animals.

What could be the next pandemic?

There are a few known pathogens – either viruses or bacteria – that can cause pandemic- or epidemic-prone diseases.

Most influenza viruses originate in wild waterfowl. The H1N1 swine flu virus had its origins in bird populations thought to have then transferred infection to pigs where it mutated in such a way that it could transmit easily from human to human – once humans had been infected directly by pigs.

Respiratory infections represent one of the highest risks of an epidemic or pandemic after emergence and human-to-human spread, as infected humans often create aerosols when they cough, sneeze, or speak loudly.

Influenza

The influenza virus is an unstable virus which originates in wild waterfowl which transmit infection to domestic birds and poultry, and they then pass it on to animals and/or humans. Sometimes, the influenza virus mutates into a form which can spread easily in humans. In those circumstances a pandemic can occur.

Before the COVID-19 pandemic, advance plans in most countries anticipated a pandemic strain of influenza virus. But countries in Asia which had experienced outbreaks of SARS coronavirus in 2003 tended also to take coronaviruses into consideration.

Coronavirus

There have been three outbreaks caused by coronaviruses in humans during the past 20 years. Each originated among wild animals and one of these viruses – SARS-CoV-2 – is the cause of the COVID-19 pandemic.

In addition, there are four coronavirus strains that are endemic in humans, causing the common cold. These are thought to have emerged from animals at some time in the past. SARS-CoV-2 will most likely become the fifth endemic strain.

Ebola

Highly lethal infections with a short incubation period, such as the Ebola virus disease, are much less likely to become pandemic.

They cause severe illness early in infection that incapacitates and kills those infected, giving the virus little time to be transmitted to others.

By contrast, HIV has a long period when it does not cause signs and symptoms but can transmit from human to human, making it well-adapted to becoming endemic.

SARS-CoV-2 has a relatively low level of mortality compared to the Ebola virus. In the future it is possible, but not predictable, that a more lethal coronavirus strain could emerge.

What role does climate change play in the next pandemic?

The leading causes of climate change can also increase the risk of pandemics occurring. Deforestation, urbanization, and the enormous livestock husbandry required for a growing meat-production industry all bring more and more animals into closer contact with humans. This in turn increases the likelihood of pathogens ‘jumping’ from animal to human.

It is generally accepted there will be another pandemic and that, through many of the same activities that fuel climate change, humans are giving pandemics more opportunities to occur.

That is why a ‘one health’ approach is so important – the animal health, human health, and environmental sectors must work together to rapidly detect and respond to pandemic risks.

Pandemic prevention and preparedness must be considered in the context of the ecosystem and animal health as much as in that of human health.

Only by maintaining a healthy environment and animal populations can we hope to protect and ensure the security of human health.

How do we monitor for the next outbreak?

The most important task for all countries is to strengthen their capacity to identify and respond to outbreaks where and when they occur. This includes genetic sequencing of pathogens and sharing of sequence data in global databases.

To ensure the best possible health security for the human population, industrialized nations should support lower- and middle-income countries as they strengthen their public health capacity.

The COVID-19 pandemic exposed weaknesses in laboratory capacity in many parts of the world. A major effort by the World Health Organization (WHO) and partners is helping strengthen that capacity, essential for detecting the spread of future pathogens.

To do that requires more than a one-size-fits-all approach – laboratories can only be sustained if they are adapted to suit the environments and societies hosting them.

Another major factor in monitoring is the need to shift the emphasis from detecting pathogens in humans to detecting them in animal populations early and preventing them from becoming established long before they spread to humans.

What is the current pandemic prevention strategy?

Individual countries have their own plans for managing pandemics. There is also a global governance mechanism – the International Health Regulations (IHR) – which attempts to bring countries together with common strategies and policies during major outbreaks and pandemics. The regulations are currently being assessed to identify weaknesses exposed during the COVID-19 pandemic.

At the same time, efforts are underway to develop a pandemic preparedness treaty, which is considered by the World Health Assembly (WHA) to be especially urgent as the COVID-19 pandemic exposed serious deficiencies in the world's ability to respond.

In December 2021, WHA members agreed to begin drafting an international instrument to strengthen pandemic prevention, preparedness, and response.

It is vital to learn from history. After the 2003 SARS outbreak, studies of one farm selling to wild animal markets in China showed 80 per cent of its animals had antibody evidence of prior coronavirus infection. And 13 per cent of the workers in the market had antibody evidence, compared to 1-3 per cent of the population served by the market.

These studies provide clear lessons about the need to improve education in the farming and market industry, to develop vaccines for animals and humans, and to protect animal husbandry from potential carriers of coronaviruses such as bats. But the policy response was to ban the selling of wild animals in Chinese markets, potentially driving the trade underground and increasing the risks of emergence.

There is also a need to establish global standards for maximum-security laboratories which handle dangerous pathogens, whether operated by public institutes or by private industry.

The last recorded human cases of smallpox were caused by a laboratory accident in the UK, and the last human infections of SARS were the result of laboratory accidents in China, Singapore, and

Taiwan. The origin of the COVID-19 pandemic is uncertain but one hypothesis is it was caused by a leak from a laboratory working with coronaviruses.

There is therefore a need for a robust consensus on biosafety in laboratories – one developed by scientists to ensure they buy into the concept and countries understand their responsibilities for safe laboratory operations. This is tremendously challenging because different countries have different needs.

How do we prepare for the next pandemic?

The success of any preparations for the next pandemic relies on the strength of countries' systems for detecting and responding to outbreaks. But at the same time countries must better cooperate to ensure more equitable distribution of the tools needed for preparedness and response.

COVID-19 saw wealthy nations prioritize their own populations over a more equitable global response, arguably prolonging and extending the effects of the pandemic in the process. Some developing nations struggled to access the diagnostics, vaccines, and treatments they needed to respond effectively.

The ACT-A (Access to COVID Tools Accelerator) was set up by WHO and partner organizations early in the COVID-19 pandemic. The intention was to more equitably distribute COVID diagnostics, treatments, and vaccines and to help countries use them efficiently. COVAX, part of the ACT-A, was created to ensure that all nations could access vaccines at a favourable cost regardless of their wealth.

But by the time the ACT-A had been established, many countries – including the UK and the US – had pre-purchased billions of dollars-worth of vaccines at considerable risk, hoping that this upfront funding would enable vaccines to be developed, licensed, and produced rapidly.

Arguably, if it had been established before these pre-purchases occurred, the ACT-A mechanism could have better realised the vision of providing an equitable marketplace for all countries.

Are we better prepared for the next pandemic?

The world is better prepared for the next large outbreak or pandemic because of technologies developed for vaccines, diagnostic tests, and therapeutics. These technologies have built on years of investment in research and the COVID-19 pandemic has massively accelerated their development.

If there is another influenza or coronavirus pandemic, the same technologies could hopefully be used to swiftly develop effective vaccines, diagnostics and therapeutics.

The world is also hopefully better prepared through improved regional solidarity, evident by African nations which, throughout the COVID-19 pandemic via the African Union, developed their own programme to purchase vaccines and therapeutics.

A series of vaccine and diagnostics research and production facilities are now being set up across Africa, a scale of cooperation that had not occurred before. This collaboration may provide a route for stronger future pandemic-response planning in African countries.

The greatest challenges to preparedness for the next pandemic may well be political. As in the current pandemic, national sovereignty must be respected but the challenge is to ensure such concerns do not override the solidarity required for an adequate global response.

The risk is that, as COVID-19 becomes endemic, politicians may lose the will to fund and drive the measures needed to maintain and improve the world's preparedness for another pandemic.

As with climate change, pandemic preparedness relies on solidarity between the developed and developing worlds, as well as a political focus on fixing problems, rather than on assigning blame.