

CONTEMPORARY PRACTICE OF THE UNITED STATES RELATING TO INTERNATIONAL LAW

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economic fragility.”³⁶ To mitigate some of the harms to low-income countries, the United States has announced that it will provide \$670 million in aid to Ethiopia, Kenya, Somalia, Sudan, South Sudan, and Yemen in response to food insecurity exacerbated by the invasion of Ukraine.³⁷

Even after the fighting ceases, remediating the conflict’s effects on civilian life in Ukraine will take significant resources and time. The remnants of war, particularly landmines and other explosive devices, pose ongoing hazards to civilians. Through the end of May, Ukraine’s State Emergency Services had cleared more than 127,000 “explosive devices,”³⁸ and estimates suggest that half of Ukrainian territory will require de-mining when the conflict concludes.³⁹ Ukraine will also need significant resources for rebuilding. The UN estimated that \$100 billion worth of Ukrainian infrastructure was damaged in just the first three weeks after the invasion.⁴⁰

Amidst the destruction, there are, however, hopeful signs. By mid-May, with fighting having shifted to the eastern portion of Ukraine, the Ukrainian border service reported that “[m]ore people have returned to Ukraine than left the country in recent days.”⁴¹

USE OF FORCE, ARMS CONTROL, AND NON-PROLIFERATION

The United States and Allies Provide Military and Intelligence Support to Ukraine

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In response to Russia’s invasion, the United States and numerous other countries have provided Ukraine with both lethal and non-lethal military aid, as well as intelligence assistance. In doing so, they are attempting to strike a balance between supporting Ukraine and avoiding further escalation of the conflict.

Although the United States has provided foreign and military aid to Ukraine since the collapse of the Soviet Union, those amounts increased after Russia’s invasion of Crimea in 2014.¹ From the invasion of Crimea through early October 2021, the United States “allocated more than \$2.5 billion in security assistance to Ukraine.”² During the Obama

³⁶ UN Security Council Press Release, Conflict, Humanitarian Crisis in Ukraine Threatening Future Global Food Security as Prices Rise, Production Capacity Shrinks, Speakers Warn Security Council (Mar. 29, 2022), at <https://www.un.org/press/en/2022/sc14846.doc.htm>.

³⁷ USAID Press Release, Biden Administration Announces Hundreds of Millions of Dollars in Global Food Aid to Respond to Putin’s Unprovoked Invasion of Ukraine (Apr. 27, 2022), at <https://www.usaid.gov/news-information/press-releases/apr-27-2022-biden-administration-announces-hundreds-millions-dollars-global-food> [<https://perma.cc/PV4U-YTDC>].

³⁸ UN Devpt. Programme, Ukraine Mine Action – 5W Situation Report 1 (June 1, 2022), at <https://reliefweb.int/report/ukraine/ukraine-mine-action-5w-situation-report-01-june-2022>.

³⁹ USAID, *supra* note 22, at 3.

⁴⁰ *Ukraine War: \$100 Billion in Infrastructure Damage, and Counting*, UN NEWS (Mar. 16, 2022), at <https://news.un.org/en/story/2022/03/1114022>.

⁴¹ Natalia Ojewska & Ian Lovett, *Ukrainian Refugees Are Heading Home in Drove*, WALL ST. J. (May 16, 2022), at <https://www.wsj.com/articles/ukrainian-refugees-are-heading-home-in-drove-11652695585>.

¹ CORY WELT, CONG. RES. SERV. R45008, UKRAINE: BACKGROUND, CONFLICT WITH RUSSIA, AND U.S. POLICY 32 (2021), available at <https://sgp.fas.org/crs/row/R45008.pdf>.

² *Id.* at 33.

administration, the United States restricted itself to “provid[ing] Ukraine [with] nonlethal security assistance, such as body armor, helmets, vehicles, night and thermal vision devices, . . . advanced radios, . . . medical kits, and other related items.”³ The Trump administration announced in 2017 that it would also provide lethal military aid.⁴ Notably, military aid to Ukraine became a centerpiece of the first impeachment of former President Donald Trump, who placed a hold on \$391 million in security assistance to Ukraine in an attempt to pressure Ukrainian President Volodymyr Zelensky to announce investigations into then former Vice President Joseph Biden and his son’s ties to Burisma, a Ukrainian energy company.⁵ Using a variety of programs, the Biden administration has continued to provide “nonlethal aid and defensive lethal weaponry to Ukraine.”⁶ This aid accelerated in the runup to the February 2022 invasion. In December 2021, the administration used “Presidential Drawdown Authority (PDA), by which the President can authorize the immediate transfer of articles and services from U.S. stocks without congressional approval in response to an ‘unforeseen emergency,’” to provide \$200 million in defense materials to Ukraine.⁷

Security assistance has accelerated dramatically since Russia’s invasion on February 24. From the invasion through late April, the United States provided “more than \$3.7 billion” in security assistance to Ukraine, bringing the total of such assistance since 2014 to “more than \$6.4 billion.”⁸ Among other items, the United States has provided thousands of Javelin missiles, “a shoulder-held anti-tank weapon that shoots heat-seeking rockets . . . towards targets up to” 2.5 miles away, as well as Stinger anti-aircraft weapons, “hundreds of ‘Switchblade’ drones, which are designed to be sent crashing into enemy targets before exploding,” and so-called “ghost drones,” which reportedly are similar to Switchblade drones but “were ‘rapidly developed by the [U.S.] Air Force in response specifically to Ukrainian requirements.’”⁹

Provision of security assistance to Ukraine has drawn bipartisan support in Congress. Congress has repeatedly authorized additional funding,¹⁰ including \$3.5 billion in military assistance in March.¹¹ In April, Congress passed the Ukraine Democracy Defense Lend-Lease Act of 2022 by a voice vote in the Senate and a vote of 417 to 10 in the House, and Biden signed it into law on May 9.¹² The Act, which invokes the World War II-era Lend-Lease Act of 1941, “allow[s] the United States to deliver arms to Ukraine more speedily by doing away with a variety of procedural hurdles” and “essentially allow[s] the Biden administration to gift

³ CONG. RES. SERV., IF12040, U.S. SECURITY ASSISTANCE TO UKRAINE 1 (2022), at <https://crsreports.congress.gov/product/pdf/IF/IF12040>.

⁴ *Id.*

⁵ Jean Galbraith, *Contemporary Practice of the United States*, 114 AJIL 494, 496–501 (2020).

⁶ WELT, *supra* note 1, at 34.

⁷ CONG. RES. SERV., *supra* note 3, at 1; see 22 U.S.C. § 2318(a)(1).

⁸ U.S. Dep’t of State Press Release, U.S. Security Cooperation with Ukraine (Apr. 25, 2022), at <https://www.state.gov/u-s-security-cooperation-with-ukraine> [<https://perma.cc/C5V3-QTJN>].

⁹ Bernd Debusmann Jr., *What Weapons Has the US Given Ukraine – and How Much Do They Help?*, BBC NEWS (Apr. 21, 2022), at <https://www.bbc.com/news/world-us-canada-60774098> (quoting Pentagon spokesman John Kirby).

¹⁰ CONG. RES. SERV., *supra* note 3, at 2.

¹¹ Bianca Pallaro & Alicia Parlapiano, *Visualizing the \$13.6 Billion in U.S. Spending on Ukraine*, N.Y. TIMES (Mar. 18, 2022), at <https://www.nytimes.com/interactive/2022/03/18/upshot/ukraine-aid-details.html>.

¹² S.3522 - Ukraine Democracy Defense Lend-Lease Act of 2022, Actions Overview S.3522 – 117th Cong., at <https://www.congress.gov/bill/117th-congress/senate-bill/3522/actions?q=%7B%22search%22%3A%5B%22s.+3522%22%2C%22s.%22%2C%223522%22%5D%7D&r=4&s=1>.

vast tranches of arms to Kyiv.”¹³ By the end April, the Biden administration had “nearly exhausted the emergency military funding Congress approved in March” and asked Congress to approve “\$33 billion in additional defense, economic and humanitarian assistance for Ukraine,” of which “[r]oughly half . . . is expected to fund new military assistance.”¹⁴ In mid-May, Congress passed an additional aid package, exceeding Biden’s request and providing \$40 billion in assistance.¹⁵ While \$20 billion of the total is devoted to military aid, the bill also includes, among other funding, “more than \$8 billion in general economic support for Ukraine, nearly \$5 billion in global food aid to address potential food shortages sparked by the collapse of the Ukrainian agricultural economy, and more than \$1 billion in combined support for refugees.”¹⁶

Although the United States is the largest provider of military assistance to Ukraine,¹⁷ many other countries are also giving military assistance to Kyiv. By late March, roughly two-thirds of NATO member states had committed to providing lethal military aid,¹⁸ and the European Union (EU) had committed €1 billion in military support for Ukraine, including funding for both military equipment and non-lethal aid, such as medical supplies.¹⁹

Some of the assistance commitments represent a significant shift in foreign policy. Germany, for example, departed from its historical ban on weapons exports into conflict zones and committed to sending anti-tank weapons and anti-aircraft systems from its stockpiles.²⁰ Finland and Sweden, which have long pursued neutrality, have both provided weapons to Ukraine.²¹

Some countries have only committed to providing non-lethal aid. Ireland has stated that its financial contributions as part of the EU aid package will only go to non-lethal aid, such as

¹³ Catie Edmonson, *Congress Clears Bill to Allow Lending Arms to Ukraine*, N.Y. TIMES (Apr. 28, 2022), at <https://www.nytimes.com/2022/04/28/us/politics/ukraine-lend-lease-arms.html>.

¹⁴ *Id.*

¹⁵ H.R. 7691 - Additional Ukraine Supplemental Appropriations Act, 2022, 117th Cong. (2022); see Catie Edmonson & Emily Cochrane, *The Senate Overwhelmingly Approves \$40 Billion in Aid to Ukraine, Sending It to Biden*, N.Y. TIMES (May 19, 2022), at <https://www.nytimes.com/2022/05/19/us/politics/senate-passes-ukraine-aid.html>.

¹⁶ Mike DeBonis & Dan Lamothe, *U.S. Deepens Ukraine Commitment with \$40 Billion in Aid and Expanded NATO*, WASH. POST (May 19, 2022), at <https://www.washingtonpost.com/politics/2022/05/19/ukraine-aid-senate>.

¹⁷ Kiel Inst. for World Econ., *Ukraine Support Tracker*, at <https://www.ifw-kiel.de/topics/war-against-ukraine/ukraine-support-tracker>.

¹⁸ Shane Harris, Adela Suliman & David L. Stern, *Zelensky Steps up Criticism of West, Demanding Weapons and Sanctions*, WASH. POST (Mar. 27, 2022), at <https://www.washingtonpost.com/national-security/2022/03/27/ukraine-russia-zelensky-biden-nato/>; see also Kiel Inst. for World Econ., *supra* note 17.

¹⁹ European Council Press Release, *EU Support to Ukraine: Council Doubles Funding Under the European Peace Facility* (Mar. 23, 2022), at <https://www.consilium.europa.eu/en/press/press-releases/2022/03/23/eu-support-to-ukraine-council-doubles-funding-under-the-european-peace-facility>.

²⁰ David M. Herszenhorn, Lili Bayer & Hans von der Burchard, *Germany to Send Ukraine Weapons in Historic Shift on Military Aid*, POLITICO (Feb. 26, 2022), at <https://www.politico.eu/article/ukraine-war-russia-germany-still-blocking-arms-supplies>.

²¹ See Peter Hille, *Will the War in Ukraine Spell the End of Neutrality for Certain States?*, DW (May 5, 2022), at <https://www.dw.com/en/will-the-war-in-ukraine-spell-the-end-of-neutrality-for-certain-states/a-61628426>; Essi Lehto, *Finland Sends Weapons and Ammunition to Ukraine in Policy Shift*, REUTERS (Feb. 28, 2022), at <https://www.reuters.com/world/europe/finland-sends-weapons-ammunition-ukraine-2022-02-28/>; Finnish Gov’t Press Release, *Finland to Send Arms Assistance to Ukraine* (Feb. 28, 2022), at <https://valtioneuvosto.fi/en/-/finland-to-send-arms-assistance-to-ukraine>; Gov’t of Sweden Press Release, *Sweden to Provide Direct Support and Defence Materiel to Ukraine* (Feb. 28, 2022), at <https://www.government.se/articles/2022/02/sweden-to-provide-direct-support-and-defence-materiel-to-ukraine>.

body armor and medical supplies.²² Japan has committed to sending military supplies, such as bullet proof vests, but has not promised to send weapons.²³

The United States has also provided Ukraine with intelligence. After concerns from Congress about reports that the United States was not providing Ukraine with “real-time targeting data that would enable Ukraine’s military to strike” Russian positions, the White House reportedly “modified existing guidance for the Pentagon and U.S. spy agencies on sending intelligence data to the Ukrainian government to clear the way of any bureaucratic roadblocks to information sharing.”²⁴ In a subsequent congressional hearing on March 17, National Security Agency Director Gen. Paul Nakasone noted that he had never seen better sharing of actionable intelligence in his career than the sharing with Ukraine, and Defense Intelligence Agency Director Army Lt. Gen. Scott Berrier called the intelligence sharing with Ukraine “revolutionary in terms of what we have been able to do.”²⁵ Media reports citing U.S. officials have indicated that U.S. intelligence sharing has helped Ukraine, among other efforts, to move air defenses out of the way of incoming Russian strikes.²⁶

The assistance provided to Ukraine has provoked debates over how much and what precise types of aid countries can give to belligerent parties consistent with international law. Media reports noted internal U.S. government debates about whether providing certain types of weapons and intelligence to the Ukrainian government would make the United States a cobelligerent in the conflict.²⁷ Outside experts, including former U.S. government lawyers, have argued that the UN Charter’s regulation of the use of force displaced earlier laws regarding neutrality between parties to an armed conflict, and therefore that providing weapons and other support to Ukraine—the victim of an unlawful aggression—neither violates international law nor makes the sending countries parties to the conflict.²⁸

²² Conor Gallagher, *Ireland to Fund Provision of Non-Lethal Equipment to Ukrainian Military*, IRISH TIMES (Feb. 27, 2022), at <https://www.irishtimes.com/news/ireland/irish-news/ireland-to-fund-provision-of-non-lethal-equipment-to-ukrainian-military-1.4813568>.

²³ Alastair Gale, *Japan Will Send the Ukrainian Military Basic Supplies*, WALL ST. J. (Mar. 4, 2022), at <https://www.wsj.com/livecoverage/russia-ukraine-latest-news-2022-03-04/card/japan-will-send-the-ukrainian-military-basic-supplies-V0tpnPjTX2ooK8dqQ8o8?mg=prod/com-wsj>.

²⁴ Warren P. Strobel & Michael R. Gordon, *Biden Administration Altered Rules for Sharing Intelligence with Ukraine*, WALL ST. J. (Mar. 8, 2022), at <https://www.wsj.com/articles/biden-administration-altered-rules-for-sharing-intelligence-with-ukraine-11646744400>.

²⁵ U.S. House Armed Services Committee, *20220317 ISO Hearing: “Defense Intelligence Posture to Support the Warfighters and Policy Makers,”* YOUTUBE, at 39:40 (Mar. 17, 2022), at https://www.youtube.com/watch?v=sr54QBU2lBc&ab_channel=U.S.HouseArmedServicesCommittee.

²⁶ Ken Dilanian, Courtney Kube, Carol E. Lee & Dad De Luce, *U.S. Intel Helped Ukraine Protect Air Defenses, Shoot Down Russian Plane Carrying Hundreds of Troops*, NBC NEWS (Apr. 26, 2022), at <https://www.cnbc.com/2022/04/26/us-intel-helped-ukraine-protect-air-defenses-shoot-down-russian-plane-carrying-hundreds-of-troops.html>; see also Julian E. Barnes, Helene Cooper & Eric Schmitt, *U.S. Intelligence Is Helping Ukraine Kill Russian Generals, Officials Say*, N.Y. TIMES (May 4, 2022), at <https://www.nytimes.com/2022/05/04/us/politics/russia-generals-killed-ukraine.html>.

²⁷ Mark Mazzetti, Helene Cooper, Julian E. Barnes & David E. Sanger, *For the U.S., a Tenuous Balance in Confronting Russia*, N.Y. TIMES (Mar. 19, 2022), at <https://www.nytimes.com/2022/03/19/us/politics/us-ukraine-russia-escalation.html>; Ken Dilanian, Carol E. Lee, Courtney Kube & Dan De Luce, *Biden Admin Carefully Examining Legal Issues Around Providing Arms to Ukraine*, NBC NEWS (Feb. 25, 2022), at <https://www.nbcnews.com/politics/national-security/biden-admin-carefully-examining-legal-issues-providing-arms-ukraine-rcna17758>.

²⁸ Michael N. Schmitt, *Providing Arms and Materiel to Ukraine: Neutrality, Co-belligerency, and the Use of Force*, LIEBER INSTITUTE: WEST POINT (Mar. 7, 2022), at <https://lieber.westpoint.edu/ukraine-neutrality-co-belligerency>.

Setting aside the legal debate, however, U.S. “officials acknowledge that the judgments of government lawyers are valuable only up to a point, and that all that really matters is the judgment of one person: Mr. Putin.”²⁹ As an anonymous U.S. official warned, “The American legal definitions of what constitutes entering the war are not Mr. Putin’s definitions.”³⁰

Nonetheless, as Ukraine pushed back Russian forces in parts of the country and fighting shifted to eastern Ukraine, the United States and other countries have delivered more and more significant military and intelligence assistance to Ukraine. Early in the conflict, U.S. officials reportedly attempted to calibrate military assistance so as not to provoke escalation, including by focusing on providing Ukraine with shorter range weapons that Putin was less likely to regard as a threat to Moscow.³¹ By mid-April, however, the United States provided Ukraine with “heavier weaponry . . . including artillery, armored personnel carriers and helicopters, to help Ukrainian forces hold off a major Russian offensive” in eastern Ukraine, and the United Kingdom pledged to “provide antiship missiles and armored vehicles, among other systems.”³² The United States also reportedly increased intelligence sharing with Ukraine, shifting from merely providing intelligence to Ukraine “about Russian capabilities in Donbas and Crimea” to “providing targeting data that would enable the Ukrainians to take offensive action to recapture those territories, which Moscow’s forces occupied in 2014.”³³ When asked at the end of April about U.S. goals, U.S. Defense Secretary Lloyd Austin said after a visit to Kyiv, “We want to see Russia weakened to the degree that it can’t do the kinds of things that it has done in invading Ukraine.”³⁴

The United States and its allies have continued to refuse certain types of assistance, however, including providing fighter jets to Ukraine.³⁵ The United States and NATO also repeatedly declined Zelensky’s request that they establish a no-fly zone over Ukraine, citing concerns about escalation because a no-fly zone would require shooting down Russian aircraft.³⁶ In a press conference on March 4, NATO Secretary General Jens Stoltenberg said that “we . . . believe that if we [established a no fly zone], we’ll end up with something that could end in a full-fledged war in Europe, involving many more countries, and causing

use-of-force; Oona Hathaway & Scott Shapiro, *Supplying Arms to Ukraine is Not an Act of War*, LAWFARE (Mar. 12, 2022), at <https://www.lawfareblog.com/supplying-arms-ukraine-not-act-war>.

²⁹ Mazzetti, Cooper, Barnes & Sanger, *supra* note 27.

³⁰ David E. Sanger, Eric Schmitt, Helene Cooper, Julian E. Barnes & Kenneth P. Vogel, *Arming Ukraine: 17,000 Anti-Tank Weapons in 6 Days and a Clandestine Cybercorps*, N.Y. TIMES (Mar. 6, 2022), at <https://www.nytimes.com/2022/03/06/us/politics/us-ukraine-weapons.html>.

³¹ Mazzetti, Cooper, Barnes & Sanger, *supra* note 27.

³² Michael R. Gordon, Warren P. Strobel & Vivian Salama, *Biden Administration to Provide Ukraine with More Intelligence, Heavier Weapons to Fight Russia*, WALL ST. J. (Apr. 13, 2022), at <https://www.wsj.com/articles/u-s-expands-flow-of-intelligence-to-ukraine-as-white-house-sends-more-arms-11649868029>.

³³ *Id.*

³⁴ U.S. Dep’t of State Press Release, Secretary Antony J. Blinken and Secretary Lloyd Austin Remarks to Traveling Press (Apr. 25, 2022), at <https://www.state.gov/secretary-antony-j-blinken-and-secretary-lloyd-austin-remarks-to-traveling-press> [<https://perma.cc/4NMY-CQKN>].

³⁵ Gordon, Strobel & Salama, *supra* note 32.

³⁶ Katie Edmondson, *Meeting with Congress, Zelensky Asks for More Jets and a No-Fly Zone*, N.Y. TIMES (Mar. 5, 2022), at <https://www.nytimes.com/2022/03/05/us/politics/zelensky-congress-no-fly-zone.html>; Austin Ramzy, *Here’s Why Western Leaders Are Reluctant to Impose a No-Fly Zone Over Ukraine*, N.Y. TIMES (Mar. 6, 2022), at <https://www.nytimes.com/2022/03/05/world/europe/what-is-no-fly-zone.html>.

much more human suffering.”³⁷ On March 15, White House Press Secretary Jen Psaki stated that “[the President] continues to believe that a no-fly zone would be escalatory, [and] could prompt a war with Russia.”³⁸ Putin himself has also said that a no-fly zone would be “participating in the armed conflict.”³⁹

Escalation remains a serious concern. Beginning days after the invasion, Putin and other officials have suggested that Russia might use nuclear weapons.⁴⁰ In late April, Russian Foreign Minister Sergey V. Lavrov warned that the West “must not underestimate” the possibility of nuclear conflict and accused NATO of “in essence . . . engag[ing] in a war with Russia through a proxy.”⁴¹ Russia has also launched strikes on weapons deliveries from Western nations.⁴²

As battles with Russian forces continue, the United States and its allies are engaging in longer term planning to continue military assistance to Ukraine. After meetings in Germany with “more than 40 nations helping Ukraine with military and humanitarian aid,” Defense Secretary Austin announced on April 26 the formation of a U.S.-led “Ukraine Contact Group,” through which “defense ministers and military chiefs” of allied countries will meet monthly to coordinate assistance.⁴³ Ukraine continues to rely on many Soviet-made weapons, which has led Western allies to source non-standard ammunition—so called because it is “incompatible with those used by the United States and many allied nations, which are generally known as NATO-standard ammunition”—from Eastern Europe.⁴⁴ The United States and other allies have also facilitated transfers of Soviet-made equipment and weapons systems to Ukraine from countries that still have them in their arsenals because the Ukrainian military is already familiar with them, avoiding the need for additional training.⁴⁵ Countries have reportedly agreed to such transfers on the basis of U.S. and other countries’

³⁷ NATO Press Release, Press Conference by NATO Secretary General Jens Stoltenberg Following the Extraordinary Meeting of NATO Ministers of Foreign Affairs (Mar. 4, 2022), at https://www.nato.int/cps/en/natohq/opinions_192739.htm.

³⁸ White House Press Release, Press Briefing by Press Secretary Jen Psaki, March 15, 2022 (Mar. 15, 2022), at <https://www.whitehouse.gov/briefing-room/press-briefings/2022/03/15/press-briefing-by-press-secretary-jen-psaki-march-15-2022> [<https://perma.cc/A4JE-J8UX>].

³⁹ Michael Schwirtz, Andrew E. Kramer & Michael Levenson, *Russian Forces Pound Civilians, as Putin Likens Sanctions to a “Declaration of War,”* N.Y. TIMES (Mar. 5, 2022), at <https://www.nytimes.com/2022/03/05/world/europe/ukraine-russia-putin.html>.

⁴⁰ See, e.g., Missy Ryan, Karoun Demirian, John Hudson & Shane Harris, *With Russian Nuclear Forces on Alert, Ukraine Crisis Enters More Dangerous Phase*, WASH. POST (Feb. 27, 2022), at <https://www.washingtonpost.com/national-security/2022/02/27/ukraine-russia-nuclear-alert>.

⁴¹ Ronald Popeski, *Russia’s Lavrov: Do Not Underestimate Threat of Nuclear War*, REUTERS (Apr. 25, 2022), at <https://www.reuters.com/world/russia-says-western-weapons-ukraine-legitimate-targets-russian-military-2022-04-25>.

⁴² Guy Faulconbridge, *Russia Strikes U.S. Weapons at Airfield Near Odesa, Defence Ministry Says*, REUTERS (May 1, 2022), at <https://www.reuters.com/world/europe/russia-strikes-us-weapons-airfield-near-odesa-defence-ministry-says-2022-05-01>.

⁴³ John Ismay, *A New U.S.-led International Group Will Meet Monthly to Focus on Aiding Ukraine*, N.Y. TIMES (Apr. 26, 2022), at <https://www.nytimes.com/2022/04/26/world/europe/lloyd-austin-ukraine-contact-group.html>.

⁴⁴ John Ismay & Eric Schmitt, *Seeking Arms for Ukraine, Pentagon Buyers Scour Eastern European Factories*, N.Y. TIMES (Apr. 25, 2022), at <https://www.nytimes.com/2022/04/25/us/ukraine-pentagon-arms-buyers.html>.

⁴⁵ Steven Erlanger, Eric Schmitt & Julian E. Barnes, *The U.S. Races to Arm Ukraine With Heavier, More Advanced Weaponry*, N.Y. TIMES (Apr. 19, 2022), at <https://www.nytimes.com/2022/04/19/world/europe/us-ukraine-weaponry.html>.

promises to “backfill” the transfers, replacing the older weapons systems being transferred with newer and more advanced Western models.⁴⁶ The United States and allies have begun to train Ukrainian military officials to operate Western military systems,⁴⁷ part of a longer term strategy to “transition [Ukraine] to NATO-standard weapons . . . so that it can further take advantage of the West’s vast stockpiles of ammunition.”⁴⁸

Russia’s invasion also appears poised to shift the strategic map of military alliances in Europe. After visiting Kyiv in late April, U.S. Secretary of State Antony Blinken asserted that “when it comes to Russia’s war aims, Russia is failing, Ukraine is succeeding,” and Russia’s military “is dramatically underperforming.”⁴⁹ Blinken also noted that Russia “sought to divide the West and NATO,” but the result has been “exactly the opposite . . . and, indeed, new countries [are] considering applying for membership.”⁵⁰ On May 18, Finland and Sweden applied to join NATO.⁵¹ In a statement, Biden said that he “warmly welcome[s] and strongly support[s]” the countries’ applications and that he “look[s] forward to working with the U.S. Congress and our NATO Allies to quickly bring Finland and Sweden into the” alliance.⁵²

⁴⁶ *Id.*; Karoun Demirjian & Dan Lamothe, *Slovakia Will Send Ukraine S-300 Air Defenses “Immediately” if NATO Backfills Its Weapons*, WASH. POST (Mar. 17, 2022), at <https://www.washingtonpost.com/national-security/2022/03/17/s-300-ukraine-slovakia/>; U.S. Dep’t of State Press Release, U.S. Security Cooperation with Ukraine (Apr. 25, 2022), at <https://www.state.gov/u-s-security-cooperation-with-ukraine> [<https://perma.cc/V3ET-Y8N7>] (noting that the State Department intends to obligate several hundred million dollars in financing to “help NATO Allies backfill capabilities they have donated to Ukraine from their own stockpiles to retain and strengthen NATO deterrence”).

⁴⁷ U.S. Dep’t of Defense Press Release, U.S. Troops Train Ukrainians in Germany (Apr. 29, 2022), at <https://www.defense.gov/News/News-Stories/Article/Article/3015610/us-troops-train-ukrainians-in-germany> [<https://perma.cc/83U7-U5VM>].

⁴⁸ See Ismay & Schmitt, *supra* note 44 (reporting comments by U.S. Congressman and House Armed Services and Intelligence Committee member Jason Crow (D-CO)).

⁴⁹ U.S. Dep’t of State Press Release, *supra* note 34.

⁵⁰ *Id.*

⁵¹ NATO, Finland and Sweden Submit Applications to Join NATO (May 18, 2022), at https://www.nato.int/cps/en/natohq/news_195468.htm?selectedLocale=en.

⁵² White House Press Release, Statement by President Biden on the Applications to NATO by Finland and Sweden (May 18, 2022), at <https://www.whitehouse.gov/briefing-room/statements-releases/2022/05/18/statement-by-president-biden-on-the-applications-to-nato-by-finland-and-sweden> [<https://perma.cc/VX77-TQTT>].