

Military Aid & Assistance and the Rules Pertaining to the Use of Force and Neutrality

LTC W. Casey Biggerstaff

Military Professor, Stockton Center

U.S. Naval War College



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Preliminary Matters

- Thank you
- Disclaimer
- No, I am not angry. This is just what my face looks like.



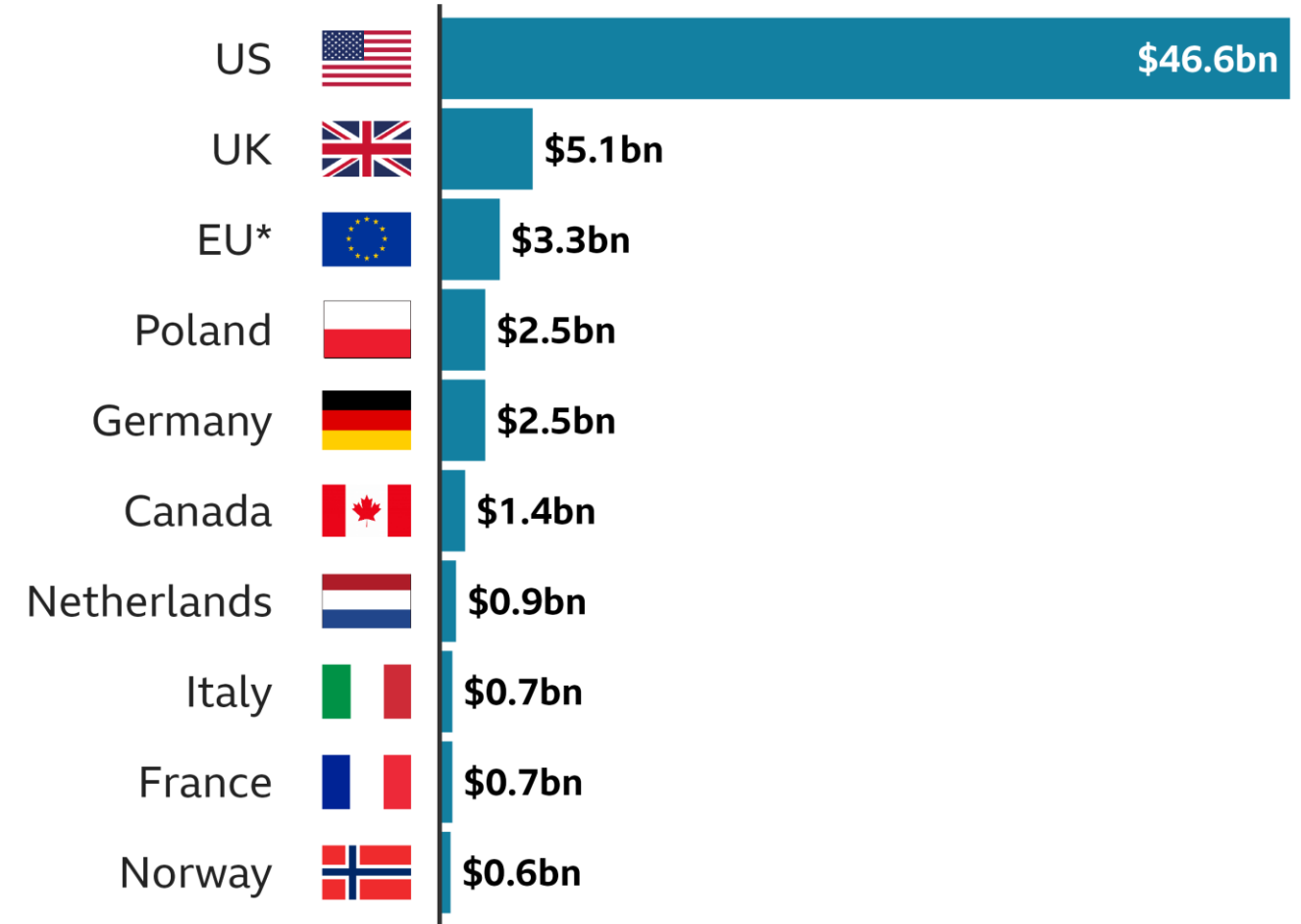
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- Intelligence
 - Tactical
 - Operational
 - Strategic
- Training
- Targeting consultation
- Wargaming
- Maintenance hotlines
- Other

Largest donors of military aid to Ukraine

Commitments made by donors for arms and equipment, 24 Jan 2022 to 15 Jan 2023



*Commitments by EU institutions include the Commission, Council, EPF and EIB
 Figures do not include commitments related to other military purposes



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Source: Kiel Institute for the World Economy, 21 Feb 2023



Legal Implications

- Use of force
- Neutrality
- Party to the conflict
- State responsibility (Art. 16)
- Common Article 1
- Others?



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Legal Implications

- Use of force
- Neutrality
- ~~Party to the conflict~~
- ~~State responsibility (Art. 16)~~
- ~~Common Article 1~~
- ~~Others?~~

Distinct purposes

Correlation (not causation)



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Setting the Stage

- 5th-16th Centuries
 - Just war tradition
 - Church
- 17th-19th Centuries
 - Westphalian system
 - Modern international law
 - Anarchic
 - Two tensions
- Neutrality law
 - Custom
 - Codification: Hague, London
- World War I
- 1928 Pact of Paris
- World War II



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U.N. Charter

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

- Article 2(4)



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Use of Force



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Use of Force

Severity

Immediacy

Directness

Invasiveness

Measurability of effects

Military character

State involvement

Presumptive legality

Others?



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Use of Force



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Use of Force

- Charter's Text
- U.N.'s 1970 *Friendly Relations Declaration*
- U.N.'s 1974 *Definition of Aggression*
- Int'l Court of Justice
 - *Paramilitary Activities* (1986)
 - *Armed Activities* (2005)
- Intent
- Timing
- Directness
- Nature
- Geopolitical context
- Impact
- Others?



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Does it extend to IACs?

- Interpretation vs. crystallization
- Logical, in good faith, reasonable
- Scope and scale

- **Lack of State verbalization & dialogue**



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Use of Force, Quo Vadis?

Interpretation too expansive?

Bolster or undermine the Charter?



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Neutrality Law

- Strict neutrality, but...
 - Lack of enforcement
 - Self-defense?
 - Countermeasures?
- No neutrality
- “Qualified” neutrality
 - UNSCR
 - Unilateral
- Other?



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Neutrality Law, Quo Vadis?

Is the law of neutrality dead?

Duty vs. Option

Is the law fit for purpose?

Close calls (anarchic)

Are the rules for the UoF (w/ QN) an adequate substitute?

Lack of State dialogue

What happens in a world of mixed neutrality paradigms?

What happens to means & methods of warfare?

Other?



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