

## CONTEMPORARY PRACTICE OF THE UNITED STATES RELATING TO INTERNATIONAL LAW

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# Russia's war on Ukraine | Population displacement and casualties



## USE OF FORCE, ARMS CONTROL, AND NONPROLIFERATION

*Russia Invades Ukraine*

doi:10.1017/ajil.2022.26

In the lead up to Russia's invasion of Ukraine, the United States and its allies attempted a delicate balancing act of diplomacy and deterrence. While the United States and the North American Treaty Organization (NATO) brought Russia to the negotiating table, they also issued threats of sanctions and disclosed intelligence to undermine pretextual claims that Russia might make to justify an invasion. Despite these efforts, Russia announced on February 21 that it would recognize the independence of two regions of eastern Ukraine, Donetsk and Luhansk, and on February 24, Russia invaded Ukraine.

Both former Soviet republics, Russia and Ukraine have historically had strong social, economic, and political ties emanating from a shared history.<sup>1</sup> In 2014, Ukraine's pro-Russian leader, Viktor Yanukovich abandoned plans for closer ties with the European Union (EU), igniting protests in Ukraine known as Euromaidan, which prompted Yanukovich to flee to Russia, reportedly with Russian help.<sup>2</sup> Citing concerns with "ongoing threats of violence by ultranationalists against the security, lives and legitimate interests of Russians and all Russian-speaking peoples,"<sup>3</sup> and calling Yanukovich's removal a "fascist coup" with Western backing,<sup>4</sup> Russia annexed a portion of Ukrainian territory known as the Crimean Peninsula, and began aiding and abetting a secessionist war in Ukraine's eastern Donbas region, specifically in Donetsk and Luhansk.<sup>5</sup> Through January 2022, that conflict resulted in the loss of some 14,000 lives, including 3,000 civilians.<sup>6</sup> Russia, Ukraine, France, and Germany negotiated two rounds of ceasefires, formalized in the so-called Minsk agreements in September 2014 and February 2015.<sup>7</sup> However, fighting has continued. Beginning in 2014, the United States and others in the international community registered their disapproval of Russia's actions through formal condemnations and economic penalties, including Obama-era economic sanctions that remain in force.<sup>8</sup>

<sup>1</sup> Council on Foreign Relations, *Ukraine: Conflict at the Crossroads of Europe and Russia* (Apr. 1, 2022), at <https://www.cfr.org/background/ukraine-conflict-crossroads-europe-and-russia>.

<sup>2</sup> *Id.*; Jeremy Kahn, *Who Is Viktor Yanukovich, the Former Ukrainian President Putin Reportedly Wants to Put Back in Power?*, FORTUNE (Mar. 2, 2022), at <https://fortune.com/2022/03/02/viktor-yanukovich-yanukovich-putin-put-back-in-power-ukraine-russia>.

<sup>3</sup> 7125th Meeting of the Security Council, at 3, UN Doc. S/PV.7125 (Mar. 3, 2014), at <https://digitallibrary.un.org/record/766547?ln=en>; see also Kristina Daugirdas & Julian Davis Mortenson, *Contemporary Practice of the United States*, 108 AJIL 783, 792 (2014).

<sup>4</sup> Council on Foreign Relations, *supra* note 1.

<sup>5</sup> Matthew Mpoke Bigg, *A History of the Tensions Between Ukraine and Russia*, N.Y. TIMES (Mar. 26, 2022), at <https://www.nytimes.com/2022/03/26/world/europe/ukraine-russia-tensions-timeline.html>.

<sup>6</sup> Ruby Mellen, *The Human Toll of the Russia-Ukraine Conflict Since 2014*, WASH. POST (Jan. 22, 2022), at <https://www.washingtonpost.com/world/interactive/2022/russia-ukraine-conflict-photos-2014/>.

<sup>7</sup> Bigg, *supra* note 5; see also Mark Trevelyan, *Factbox: What Are the Minsk Agreements on the Ukraine Conflict?*, REUTERS (Feb. 21, 2022), at <https://www.reuters.com/world/europe/what-are-minsk-agreements-ukraine-conflict-2022-02-21>.

<sup>8</sup> See Daugirdas & Mortenson, *supra* note 3, at 802–15; U.S. Dep't of State, *Ukraine and Russia Sanctions*, at <https://www.state.gov/ukraine-and-russia-sanctions>.

Despite these actions, Russian President Vladimir Putin remained skeptical of an independent Ukraine. In July 2021, Putin penned a 5,000-word article entitled “On the Historical Unity of Russians and Ukrainians.”<sup>9</sup> The essay highlighted the countries’ shared history and attributed the downfall of their relationship to Ukraine’s increasing involvement with Western powers.<sup>10</sup> Putin claimed that when the countries’ boundaries were drawn after the Soviet Union’s collapse, “Russia was robbed,”<sup>11</sup> and asserted that “true sovereignty of Ukraine is possible only in partnership with Russia.”<sup>12</sup>

Throughout the fall of 2021, several developments raised tensions. Russian officials and their allies ramped up rhetoric regarding Ukraine and its relationship with Western powers. Russia began questioning Ukrainian sovereignty and warned of Moscow’s “red line” against any NATO military presence on Ukrainian territory.<sup>13</sup> In October, Putin said that “military expansion on [Ukraine’s] territory is already underway, and this really poses a threat to the Russian Federation.”<sup>14</sup> Belarusian President Alexander Lukashenko, a close ally of Putin, similarly falsely claimed that “[t]he United States is establishing bases in Ukraine. Clearly, we [Russia and Belarus] need to respond to that.”<sup>15</sup> The Ukrainian-Russian conflict in the Donbas region was also heating up in the background, as Ukraine used a drone against Russian-backed separatists in the region.<sup>16</sup> In response, Russian Ministry of Foreign Affairs’ spokeswoman Maria Zakharova accused Ukraine of attempting to forcibly reintegrate the separatist region, while Ukrainian Foreign Minister Dmytro Kuleba said that Russia “is actively spreading fakes about Ukraine allegedly preparing an offensive or other nonsense. For the record, Ukraine does not prepare any offensive in the Donbas.”<sup>17</sup> Diplomatic relations between Russia and NATO also deteriorated when NATO expelled eight members of the Russian mission to NATO in Brussels on suspicion of espionage, and Russia then suspended its mission altogether.<sup>18</sup>

On October 30, 2021, the *Washington Post* broke the news that Russia was amassing troops near the Ukrainian border, citing anonymous officials in the United States and Europe who were “tracking what they consider[ed] irregular movements of equipment and personnel on Russia’s western flank.”<sup>19</sup> The *Post* reported that after a Russian military training exercise with

<sup>9</sup> President of Russia Press Release, Article by Vladimir Putin “On the Historical Unity of Russians and Ukrainians” (July 21, 2021), available at <https://web.archive.org/web/20220331042503/http://en.kremlin.ru/events/president/news/66181>.

<sup>10</sup> *Id.* (noting that “Ukraine was dragged into a dangerous geopolitical game aimed at turning Ukraine into a barrier between Europe and Russia, a springboard against Russia”); see also Peter Dickinson, *Putin’s New Ukraine Essay Reveals Imperial Ambitions*, ATLANTIC COUNCIL (July 15, 2021), at <https://www.atlanticcouncil.org/blogs/ukrainealert/putins-new-ukraine-essay-reflects-imperial-ambitions>.

<sup>11</sup> President of Russia Press Release, *supra* note 9.

<sup>12</sup> *Id.*

<sup>13</sup> Paul Sonne, Robyn Dixon & David L. Stern, *Russian Troop Movements Near Ukraine Border Prompt Concern in U.S., Europe*, WASH. POST (Oct. 30, 2021), at [https://www.washingtonpost.com/world/russian-troop-movements-near-ukraine-border-prompt-concern-in-us-europe/2021/10/30/c122e57c-3983-11ec-9662-399cfa75efee\\_story.html](https://www.washingtonpost.com/world/russian-troop-movements-near-ukraine-border-prompt-concern-in-us-europe/2021/10/30/c122e57c-3983-11ec-9662-399cfa75efee_story.html).

<sup>14</sup> *Id.*

<sup>15</sup> *US Creating NATO Bases in Ukraine Under Guise of Training Centers—Belarusian President*, TASS (Sept. 27, 2021), at <https://tass.com/defense/1342817>.

<sup>16</sup> Sonne, Dixon & Stern, *supra* note 13.

<sup>17</sup> *Id.* (internal quotation marks omitted).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

Belarus in mid-September, Russian battalions usually based elsewhere in Russia did not return to their bases and instead joined other troops gathered on the border.<sup>20</sup> Although Russia “ha[d] prompted alarm by amassing large contingents of troops near the Ukrainian border in the past, only to subsequently withdraw those forces,” Russian officials’ heightened rhetoric about Ukraine sparked concern among experts.<sup>21</sup>

The United States and its European allies moved quickly to coordinate among themselves and with Ukraine while monitoring the situation on the ground. U.S. Secretary of State Antony Blinken and Ukrainian President Volodymyr Zelensky met on November 2, 2021, at COP26 in Glasgow, and the United States reaffirmed its support for Ukraine’s sovereignty.<sup>22</sup> On November 10, President Joseph R. Biden, Jr. met with EU Commission President Ursula von der Leyen to discuss Ukraine,<sup>23</sup> and U.S. National Security Advisor Jake Sullivan met with Ukrainian officials and reaffirmed the United States’ “unwavering commitment to Ukraine’s sovereignty and territorial integrity.”<sup>24</sup>

By mid-November, the Biden administration stepped up its public and private messaging about concerns over Russia’s intentions. Blinken warned that “Russia may make the serious mistake of attempting to rehash what it undertook back in 2014, when it amassed forces along the border, crossed into sovereign Ukrainian territory and did so claiming falsely that it was provoked.”<sup>25</sup> Press reports in mid-November indicated that U.S. intelligence officials were “warning allies that there is a short window of time to prevent Russia from taking military action in Ukraine” and “push[ed] European countries to work with the United States to develop a package of economic and military measures to deter Moscow.”<sup>26</sup>

The United States attempted to engage Russia directly, while also coordinating with NATO allies. During a trip to Moscow on November 2, Central Intelligence Agency Director William J. Burns conveyed the administration’s concerns about the military buildup along the border directly to Putin.<sup>27</sup> On November 18, Putin accused the West of ignoring Russia’s “warnings about red lines” in reference to Ukraine’s NATO aspirations and reiterated that he would not

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> U.S. Dep’t of State Press Release, Secretary Blinken’s Meeting with Ukrainian President Zelenskyy (Nov. 2, 2021), available at <https://www.state.gov/secretary-blinkens-meeting-with-ukrainian-president-zelenskyy> [<https://perma.cc/9CKU-5464>].

<sup>23</sup> White House Press Release, Readout of President Biden’s Meeting with European Commission President Ursula von der Leyen (Nov. 10, 2021), at <https://www.whitehouse.gov/briefing-room/statements-releases/2021/11/10/readout-of-president-bidens-meeting-with-european-commission-president-ursula-von-der-leyen> [<https://perma.cc/A4ZK-LTCM>].

<sup>24</sup> White House Press Release, Statement by NSC Spokesperson Emily Horne on National Security Advisor Jake Sullivan’s Meeting with Ukrainian Officials (Nov. 10, 2021), at <https://www.whitehouse.gov/briefing-room/statements-releases/2021/11/10/statement-by-nsc-spokesperson-emily-horne-on-national-security-advisor-jake-sullivans-meeting-with-ukrainian-officials-2> [<https://perma.cc/9DP6-C6K8>].

<sup>25</sup> Michael Crowley, *Blinken Warns Russia Against Making a “Serious Mistake” in Ukraine*, N.Y. TIMES (Nov. 10, 2021), at <https://www.nytimes.com/2021/11/10/us/politics/russia-blinken-ukraine.html>.

<sup>26</sup> Julian E. Barnes & Eric Schmitt, *U.S. Warns Allies of Possible Russian Inursion as Troops Amass Near Ukraine*, N.Y. TIMES (Nov. 19, 2021), at <https://www.nytimes.com/2021/11/19/us/politics/russia-ukraine-biden-administration.html>.

<sup>27</sup> Jim Sciutto & Natasha Bertrand, *CIA Director Had Rare Conversation with Putin While in Moscow Last Week*, CNN (Nov. 8, 2021), at <https://www.cnn.com/2021/11/08/politics/bill-burns-cia-putin-moscow/index.html>.

tolerate any NATO missile-defense systems on Ukrainian soil.<sup>28</sup> While NATO foreign ministers met in Riga, Latvia to discuss the Ukrainian situation on November 30, Russian Foreign Minister Sergei Lavrov said that “if the West fails to keep Ukraine in check but instead chooses to stimulate it, we will definitely take all necessary steps to ensure our security.”<sup>29</sup> At the conclusion of their meeting on December 2, the NATO foreign ministers warned in a joint statement that “any future Russian aggression would come at a high price, and have serious political and economic consequences for Russia.”<sup>30</sup> The same day, Blinken met Lavrov and called for a pullback in Russian troops, attempting to set a diplomatic path forward, including full implementation of the 2014 and 2015 Minsk agreements.<sup>31</sup>

The diplomatic efforts were coupled with increasingly urgent warnings about Russia’s intentions. On December 3, media reports cited U.S. intelligence assessments suggesting that Russia was preparing for a large-scale invasion of Ukraine with up to 175,000 troops “as soon as early 2022.”<sup>32</sup> A U.S. official also noted that “Russian influence proxies and media outlets have started to increase content denigrating Ukraine and NATO, in part to pin the blame for a potential Russian military escalation in Ukraine.”<sup>33</sup>

On December 7, Biden and Putin met via video call.<sup>34</sup> Biden told Putin that if Russia further invaded Ukraine, the United States and its European allies would “respond with strong economic measures,” “provide additional defensive materiel to the Ukrainians . . . and fortify . . . NATO allies on the eastern flank with additional capabilities.”<sup>35</sup> Biden further reiterated that Putin could choose to deescalate and engage diplomatically.<sup>36</sup> For his part, Putin reiterated his demand that Ukraine not be considered for NATO membership, but called the conversation “open, substantive and constructive” and indicated that he would continue diplomatic engagement with the United States.<sup>37</sup>

<sup>28</sup> Robyn Dixon, *Russia’s Rifts with the West Keep Growing. How Did We Get Here?*, WASH. POST (Jan. 8, 2022), at <https://www.washingtonpost.com/world/2022/01/08/russia-us-nato-putin-ukraine>.

<sup>29</sup> Missy Ryan, *Tensions with Russia Loom Over NATO Talks*, WASH. POST (Nov. 30, 2021), at [https://www.washingtonpost.com/national-security/nato-russia-ukraine/2021/11/30/e1671d58-51ed-11ec-8ad5-b5c50c1fb4d9\\_story.html](https://www.washingtonpost.com/national-security/nato-russia-ukraine/2021/11/30/e1671d58-51ed-11ec-8ad5-b5c50c1fb4d9_story.html).

<sup>30</sup> NATO Press Release, Closing Press Conference by NATO Secretary General Jens Stoltenberg Following the Meetings of NATO Foreign Ministers in Riga, Latvia (Dec. 2, 2021), at [https://www.nato.int/cps/en/natohq/opinions\\_189152.htm](https://www.nato.int/cps/en/natohq/opinions_189152.htm).

<sup>31</sup> U.S. Dep’t of State Press Release, Secretary Blinken’s Meeting with Russian Foreign Minister Lavrov (Dec. 2, 2021), at <https://www.state.gov/secretary-blinkens-meeting-with-russian-foreign-minister-lavrov-2> [<https://perma.cc/C74T-Z926>].

<sup>32</sup> Shane Harris & Paul Sonne, *Russia Planning Massive Military Offensive Against Ukraine Involving 175,000 Troops, U.S. Intelligence Warns*, WASH. POST (Dec. 3, 2021), at [https://www.washingtonpost.com/national-security/russia-ukraine-invasion/2021/12/03/98a3760e-546b-11ec-8769-2f4ecd7a2ad\\_story.html](https://www.washingtonpost.com/national-security/russia-ukraine-invasion/2021/12/03/98a3760e-546b-11ec-8769-2f4ecd7a2ad_story.html).

<sup>33</sup> *Id.* (internal quotations omitted).

<sup>34</sup> Michael Crowley & Anton Troianovski, *As Fears that Russia May Invade Ukraine Escalate, Biden Spoke with Putin*, N.Y. TIMES (Dec. 7, 2021), at <https://www.nytimes.com/2021/12/07/world/europe/as-fears-that-russia-may-invade-ukraine-escalate-biden-will-speak-with-putin.html>.

<sup>35</sup> White House Press Release, Press Briefing by Press Secretary Jen Psaki and National Security Advisor Jake Sullivan, December 7, 2021 (Dec. 7, 2021), at <https://www.whitehouse.gov/briefing-room/press-briefings/2021/12/07/press-briefing-by-press-secretary-jen-psaki-and-national-security-advisor-jake-sullivan-december-7-2021> [<https://perma.cc/7QBG-V848>].

<sup>36</sup> *Id.*

<sup>37</sup> Robyn Dixon & David L. Stern, *Kremlin Sees Expanded Talks with U.S. on Ukraine Crisis After Putin Call with Biden*, WASH. POST (Dec. 8, 2021), at [https://www.washingtonpost.com/world/europe/russia-ukraine-biden-putin-talks/2021/12/08/37f9aeca-5823-11ec-8396-5552bef55c3c\\_story.html](https://www.washingtonpost.com/world/europe/russia-ukraine-biden-putin-talks/2021/12/08/37f9aeca-5823-11ec-8396-5552bef55c3c_story.html).

On December 17, Putin issued a sweeping set of demands in “the form of two draft treaties, one with NATO and the other with the United States.”<sup>38</sup> The proposed agreements “codified a series of demands floated” by Russian officials, including that “NATO should offer written guarantees that it would not expand farther east toward Russia,” including Ukraine, and “halt all military activities in the former Soviet republics.”<sup>39</sup> NATO officials quickly took issue with a Russian veto over independent countries’ ability to join the alliance.<sup>40</sup> Although the Biden administration acknowledged a willingness to discuss some of Russia’s requests, it emphasized that it would “not compromise on key principles on which European security is built, including . . . that all countries have the right to decide their own future and their own foreign policy free from outside interference.”<sup>41</sup> In a statement, the National Security Council described the administration’s approach to the situation as “clear and consistent: Unite the alliance behind two tracks, deterrence and diplomacy.”<sup>42</sup>

The United States and Russia agreed to hold talks on January 10, 2022, but in the meantime, bilateral efforts continued.<sup>43</sup> Biden and Putin spoke again on December 30, 2021, with the latter recounting previous complaints about NATO weaponry close to Russia’s border.<sup>44</sup> Biden tried to “deter Russia with unusually specific warnings about imposing a series of sanctions that would go far beyond what the West agreed upon in 2014” after Russia annexed Crimea.<sup>45</sup> Putin warned that such action would cause a “complete rupture in relations” between the West and Russia.<sup>46</sup>

The United States coordinated its position with its allies and Ukraine in the lead-up to the January 10 meeting with Russia,<sup>47</sup> but during the meeting itself, diplomacy quickly stalled. The United States refused to close NATO’s “open-door” policy.<sup>48</sup> A similar dynamic played out during the follow-up meeting two days later between all NATO partners and Russia in Brussels, when Russia sought “legally binding guarantees that [Ukraine] will never join the

<sup>38</sup> Andrew E. Kramer & Steven Erlanger, *Russia Lays Out Demands for a Sweeping New Security Deal with NATO*, N.Y. TIMES (Dec. 17, 2021), at <https://www.nytimes.com/2021/12/17/world/europe/russia-nato-security-deal.html>.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> U.S. Dep’t of State Press Release, Senior Administration Official on U.S. Diplomatic Engagement Regarding Our Ongoing Commitment to Ukraine’s Sovereignty, Territorial Integrity, and Independence (Dec. 17, 2021), at <https://www.state.gov/senior-administration-official-on-u-s-diplomatic-engagement-regarding-our-ongoing-commitment-to-ukraines-sovereignty-territorial-integrity-and-independence> [<https://perma.cc/YG5T-QKM5>].

<sup>42</sup> David E. Sanger, *U.S. and Russia Agree to Talks Amid Growing Tensions Over Ukraine*, N.Y. TIMES (Dec. 28, 2021), at <https://www.nytimes.com/2021/12/28/us/politics/nato-russia-ukrain-us.html>.

<sup>43</sup> *Id.*

<sup>44</sup> David E. Sanger & Andrew E. Kramer, *Putin Warns Biden of “Complete Rupture” of U.S.-Russia Relationship Over Ukraine*, N.Y. TIMES (Dec. 30, 2021), at <https://www.nytimes.com/2021/12/30/us/politics/biden-putin-ukraine-call.html>.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* (internal quotations omitted).

<sup>47</sup> White House Press Release, FACT SHEET: U.S. Diplomatic Engagement with European Allies and Partners Ahead of Talks with Russia (Jan. 10, 2022), at <https://www.whitehouse.gov/briefing-room/statements-releases/2022/01/10/fact-sheet-u-s-diplomatic-engagement-with-european-allies-and-partners-ahead-of-talks-with-russia> [<https://perma.cc/3EXH-GHSA>].

<sup>48</sup> Isabelle Khurshudyan, Missy Ryan & Paul Sonne, *Russia-U.S. Talks Hit Impasse Over NATO Expansion as Moscow Denies Plans to Invade Ukraine*, WASH. POST (Jan. 10, 2022), at <https://www.washingtonpost.com/world/2022/01/10/us-russia-delegations-meet-geneva>.

alliance,” and NATO members rejected the demand.<sup>49</sup> After a week of negotiations, Russia signaled that diplomacy was reaching a “dead end,” and that it would be “forced to draw the corresponding conclusions and take all necessary measures to assure the strategic balance and remove unacceptable threats to [its] national security.”<sup>50</sup>

On January 14, the United States took the unusual step of declassifying and publicly releasing information about actions it believed Russia would take in Ukraine. Specifically, the United States disclosed intelligence suggesting that Russia was sending operatives into eastern Ukraine to stoke disruption and violence as pretext for an invasion.<sup>51</sup> National Security Advisor Jake Sullivan alleged, “Russia is laying the groundwork to have the option of fabricating a pretext for an invasion, including through sabotage activities and information operations, by accusing Ukraine of preparing an imminent attack against Russian forces in Eastern Ukraine.”<sup>52</sup> The following week, the UK government, backed by U.S. officials, released intelligence suggesting that the Kremlin had plans to install a pro-Russian leader in Ukraine, even going so far as to have a particular candidate in mind.<sup>53</sup> These and subsequent intelligence disclosures marked a strategic shift by the United States and its allies to undercut Russian attempts to legitimize an invasion and build support for Ukraine, and as one commentator noted, “[n]ever before has the United States government revealed so much, in such granular detail, so fast and so relentlessly about an adversary.”<sup>54</sup>

By the end of January, diplomatic efforts had largely collapsed. After a series of high-level meetings between U.S. and European officials, on January 26, the United States and NATO formally rejected the security demands Russia had made in December, though they left some room for further negotiations on issues of mutual concern.<sup>55</sup> With the collapse of negotiations, the U.S. government began to lay out in more detail potential sanctions that it would impose if Russia invaded Ukraine.<sup>56</sup> The proposed sanctions targeted Russia’s economy by cutting off foreign lending and sales of Russia’s sovereign debt, placing financial institutions on the Treasury Department’s Special Designated Nationals List, and imposing export

<sup>49</sup> Anton Troianovski & David E. Sanger, *Russia, at an Impasse with the West, Warns It Is Ready to Abandon Diplomacy*, N.Y. TIMES (Jan. 13, 2022), at <https://www.nytimes.com/2022/01/13/world/europe/russia-ukraine-talks.html>; *NATO Rejects Russian Security Demands, but Says It’s Open to More Diplomacy*, RADIO FREE EUR. RADIO LIBERTY (Jan. 12, 2022), at <https://www.rferl.org/a/nato-russia-council-talks/31650372.html>.

<sup>50</sup> Troianovski & Sanger, *supra* note 49.

<sup>51</sup> David E. Sanger, *U.S. Says Russia Sent Saboteurs into Ukraine to Create Pretext for Invasion*, N.Y. TIMES (Jan. 14, 2022), at <https://www.nytimes.com/2022/01/14/us/politics/russia-ukraine-us-intelligence.html>.

<sup>52</sup> White House Press Release, Press Briefing by Press Secretary Jen Psaki and National Security Advisor Jake Sullivan, January 13, 2022 (Jan. 13, 2022), at <https://www.whitehouse.gov/briefing-room/press-briefings/2022/01/13/press-briefing-by-press-secretary-jen-psaki-and-national-security-advisor-jake-sullivan-january-13-2022> [<https://perma.cc/S6QP-4AA2>].

<sup>53</sup> Michael Schwartz, David E. Sanger & Mark Landler, *Britain Says Moscow Is Plotting to Install a Pro-Russian Leader in Ukraine*, N.Y. TIMES (Jan. 22, 2022), at <https://www.nytimes.com/2022/01/22/world/europe/ukraine-russia-coup-britain.html>.

<sup>54</sup> Amy Zegart, *The Weapon the West Used Against Putin*, ATLANTIC (Mar. 5, 2022), at <https://www.theatlantic.com/ideas/archive/2022/03/russia-ukraine-invasion-classified-intelligence/626557>.

<sup>55</sup> Michael Crowley & David E. Sanger, *U.S. and NATO Respond to Putin’s Demands as Ukraine Tensions Mount*, N.Y. TIMES (Jan. 26, 2022), at <https://www.nytimes.com/2022/01/26/us/politics/russia-demands-us-ukraine.html>.

<sup>56</sup> Michael Crowley & Edward Wong, *U.S. Sanctions Aimed at Russia Could Take a Wide Toll*, N.Y. TIMES (Jan. 29, 2022), at <https://www.nytimes.com/2022/01/29/us/politics/russia-sanctions-economy.html>.



controls on technology required by Russia's critical industries.<sup>57</sup> The United States also warned that it might sanction Putin himself or members of Putin's family, as well as Putin's inner circle and their family members.<sup>58</sup> The United States initially avoided preparing sanctions targeting Russia's energy industry, due to European allies' reliance on Russian energy sources.<sup>59</sup> Zelensky pushed for the immediate implementation of sanctions, arguing that making the sanctions contingent on invasion was "not the way to do it."<sup>60</sup>

The United States further increased the urgency of its warnings about the likelihood and timing of a Russian invasion, with White House Press Secretary Jen Psaki saying in late January that "[w]e're now at a stage where Russia could at any point launch an attack in Ukraine."<sup>61</sup> The warnings of an imminent invasion provoked pushback from both Russia and Ukraine. During a UN Security Council meeting on January 31, the United States, "backed by [its] Western allies, accused Russia of endangering peace and destabilizing global security by massing more than 100,000 troops on Ukraine's borders," while Russia's ambassador accused the United States of "whipping up tensions and provoking escalation" and "insisted that Russia had no plans to invade Ukraine."<sup>62</sup> For his part, Zelensky "accused Western officials and media of causing panic and destabilization in Ukraine by insisting that . . . 'tomorrow there will be war,'" claiming that the warnings helped Russia's real aim of internally destabilizing Ukraine and its economy.<sup>63</sup>

Yet the United States persisted in warnings of invasion. On February 3, the United States asserted that Russia planned to create a pretext for invasion by releasing a fake graphic video, purporting to show Ukrainian forces attacking Russians or Russian-speaking people.<sup>64</sup> A few days later, according to press reports, "U.S. military and intelligence assessments briefed to

<sup>57</sup> *Id.*

<sup>58</sup> Julian Borger, *Biden Threatens Putin with Personal Sanctions if Russia Invades Ukraine*, GUARDIAN (Jan. 26, 2022), at <https://www.theguardian.com/world/2022/jan/26/biden-threatens-putin-with-personal-sanctions-if-russia-invades-ukraine>; David E. Sanger, *The White House Threatens Sanctions Against Putin's "Inner Circle" if Russia Invades Ukraine*, N.Y. TIMES (Jan. 31, 2022), at <https://www.nytimes.com/2022/01/31/world/europe/putin-sanctions-list.html?searchResultPosition=45>.

<sup>59</sup> See White House Press Release, Background Press Call by Senior Administration Officials on Russia Ukraine Economic Deterrence Measures (Jan. 25, 2022), at <https://www.whitehouse.gov/briefing-room/statements-releases/2022/01/25/background-press-call-by-senior-administration-officials-on-russia-ukraine-economic-deterrence-measures> [<https://perma.cc/26ZU-D53K>].

<sup>60</sup> David L. Stern, Robyn Dixon, Rick Noack, John Hudson & Andrew Jeong, *Ukraine's President Criticizes West's Handling of Russia Crisis*, WASH. POST (Jan. 28, 2022), at <https://www.washingtonpost.com/world/2022/01/28/ukraine-russia-us-nato-putin-macron>.

<sup>61</sup> White House Press Release, Press Briefing by Press Secretary Jen Psaki and Infrastructure Implementation Coordinator Mitch Landrieu, January 18, 2022 (Jan. 18, 2022), at <https://www.whitehouse.gov/briefing-room/press-briefings/2022/01/18/press-briefing-by-press-secretary-jen-psaki-and-infrastructure-implementation-coordinator-mitch-landrieu-january-18-2022> [<https://perma.cc/D4FX-H62C>].

<sup>62</sup> Rick Gladstone & Maria Varenikova, *Angry U.S.-Russia Exchange at U.N. Punctuates Deepening Ukraine Rift*, N.Y. TIMES (Jan. 31, 2022), at <https://www.nytimes.com/2022/01/31/world/europe/ukraine-russia-united-nations.html>.

<sup>63</sup> David L. Stern & Robyn Dixon, *Ukraine's Zelensky's Message Is Don't Panic. That's Making the West Antsy.*, WASH. POST (Jan. 30, 2022), at <https://www.washingtonpost.com/world/2022/01/30/ukraine-zelensky-russia-biden>.

<sup>64</sup> Ellen Nakashima, Shane Harris, Ashley Parker, John Hudson & Paul Sonne, *U.S. Accuses Russia of Planning to Film False Attack as Pretext for Ukraine Invasion*, WASH. POST (Feb. 3, 2022), at <https://www.washingtonpost.com/national-security/2022/02/03/russia-ukraine-staged-attack>; see also Defense Dep't Briefing, C-SPAN (Feb. 3, 2022), at <https://www.c-span.org/video/?517714-1/pentagon-briefs-raid-killed-islamic-state-leader-syria#> (noting at 32:05 the relevant intelligence).

lawmakers and European partners” concluded that “the window for a diplomatic resolution of the crisis appear[ed] to be closing.”<sup>65</sup> The assessments reportedly warned that Russia was “close to completing preparations for what appears to be a large-scale invasion of Ukraine that could leave up to 50,000 civilians killed or wounded, decapitate the government in Kyiv within two days, and launch a humanitarian crisis with up to 5 million refugees fleeing the resulting chaos.”<sup>66</sup> Russian officials accused the United States of “[m]adness and scare-mongering” and of “doing everything possible to fan a new conflict.”<sup>67</sup>

The Biden administration continued to rally allies and warn other countries not to support Russia. German Chancellor Olaf Scholz, accused by some of not doing enough to respond to Russia, traveled to the United States to meet with President Biden,<sup>68</sup> and Scholz subsequently warned that there would be “very high prices if [Russia] intervene[s]” in Ukraine.<sup>69</sup> Meanwhile, U.S. Assistant Secretary of State for East Asian and Pacific Affairs Daniel Kritenbrink had pointed words for China, warning that an invasion could “embarrass” China, as “it suggests that China is willing to tolerate or tacitly support Russia’s efforts to coerce Ukraine.”<sup>70</sup> On February 4, in conjunction with a meeting between Putin and Chinese President Xi Jinping, China and Russia issued a joint statement highlighting a “no limits” partnership between the two countries.<sup>71</sup>

Russia feigned a de-escalation in tensions on February 15 when Putin announced that he would “partially pull back troops” from the Ukrainian border and attempt to negotiate a “diplomatic path.”<sup>72</sup> Biden promised to “give . . . diplomacy every chance” but was clear that “[a]n invasion remains distinctly possible” as intelligence had not confirmed any departure of Russian forces.<sup>73</sup> Two days later, Biden revealed that Russia “ha[d] not moved any of their

<sup>65</sup> Karen DeYoung, Dan Lamonthe, John Hudson & Shane Harris, *Russia Could Seize Kyiv in Days and Cause 50,000 Civilian Casualties in Ukraine, U.S. Assessments Find*, WASH. POST (Feb. 5, 2022), at <https://www.washingtonpost.com/world/2022/02/05/ukraine-russia-nato-putin-germany/>.

<sup>66</sup> *Id.*

<sup>67</sup> Rachel Pannett, Amy B. Wang, Robyn Dixon & Karen DeYoung, *As U.S. Predicts Russia Could Seize Kyiv in Days, Diplomatic Efforts Set to Intensify This Week*, WASH. POST (Feb. 6, 2022), at <https://www.washingtonpost.com/world/2022/02/06/ukraine-russia-military-putin/>.

<sup>68</sup> Souad Mekhennet, *Scholz Says Response to Russia Will Be “United and Decisive” if Ukraine Is Invaded*, WASH. POST (Feb. 6, 2022), at <https://www.washingtonpost.com/national-security/2022/02/06/scholz-interview-germany-ukraine/>.

<sup>69</sup> *Id.*

<sup>70</sup> DeYoung, Lamonthe, Hudson & Harris, *supra* note 65.

<sup>71</sup> President of Russia Press Release, Joint Statement of the Russian Federation and the People’s Republic of China on the International Relations Entering a New Era and the Global Sustainable Development (Feb. 4, 2022) (archived), available at <https://web.archive.org/web/20220213071825/http://en.kremlin.ru/supplement/5770>; see Steven Lee Myers, *On the Eve of His Meeting with Xi, Putin Pledges to Deepen Ties with China*, N.Y. TIMES (Feb. 3, 2022), at <https://www.nytimes.com/2022/02/03/world/asia/putin-xi-meeting-russia-china.html>.

<sup>72</sup> Anton Troianovski & Michael D. Shear, *As Russia Welcomes Talks, Biden Warns Invasion Is Still Possible*, N.Y. TIMES (Feb. 15, 2022), at <https://www.nytimes.com/2022/02/15/world/europe/russia-ukraine-troops.html>; see also White House Press Release, Remarks by President Biden Providing an Update on Russia and Ukraine (Feb. 15, 2022), at <https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/02/15/remarks-by-president-biden-providing-an-update-on-russia-and-ukraine> [<https://perma.cc/SM4V-QZTC>].

<sup>73</sup> White House Press Release, *supra* note 72; see also Shane Harris, Robyn Dixon, Rachel Pannett & Emily Rauhala, *Biden Says U.S. Has Not Verified a Pullback of Russian Troops from Ukraine’s Border, Despite Moscow’s Claims*, WASH. POST (Feb. 15, 2022), at <https://www.washingtonpost.com/world/2022/02/15/ukraine-russia-nato-putin-germany/>.

troops out” and had in fact “moved more troops in.”<sup>74</sup> On February 18, after consulting with European allies and NATO, Biden announced that he believed Putin had decided to invade Ukraine and would likely target its capital, Kyiv, despite Putin’s statements to the contrary.<sup>75</sup> Biden explained, “[w]e’re calling out Russia’s plans loudly, repeatedly, not because we want a conflict, but because we’re doing everything in our power to remove any reason that Russia may give to justify invading Ukraine, and prevent them from moving.”<sup>76</sup>

In the same vein, Blinken on February 17 addressed the UN Security Council and warned that Russia was “preparing to launch an attack against Ukraine in the coming days.”<sup>77</sup> Blinken noted that “Russia plans to manufacture a pretext for its attack,” and warned that “[w]e have information that indicates Russia will target specific groups of Ukrainians.”<sup>78</sup> In a letter to UN High Commissioner for Human Rights Michelle Bachelet, U.S. Ambassador to the United Nations in Geneva Bathsheba Crocker gave more details, asserting that the “Russian military’s targets would include Russian and Belarusian dissidents in exile in Ukraine, journalists and anti-corruption activists, and ‘vulnerable populations such as religious and ethnic minorities and LGBTQI+ persons’” and that the United States has “credible information that indicates Russian forces are creating lists of identified Ukrainians to be killed or sent to camps following a military occupation.”<sup>79</sup> Commentators noted that credible intelligence disclosures eliminated any element of surprise and “enabled Washington to present a highly public case for a real and present danger, narrowing the daylight between the U.S. and European allies on decisions for high sanctions.”<sup>80</sup>

Russian officials attempted to discredit U.S. claims, denying the allegations and calling the United States fear-mongers.<sup>81</sup> They also turned to disinformation. Russia’s ambassador to the United States Anatoly Antonov suggested that the intelligence disclosures were actually pretext by the United States for a Western-backed military incursion against Russia in the contested Donbas region of Ukraine.<sup>82</sup> He said that “Washington has been provoking the whole world for several months with statements that Ukraine is about to become a victim of ‘Russian aggression.’”<sup>83</sup>

In a televised address on February 21, 2022, Putin formally recognized Donetsk and Luhansk as independent from Ukraine, while simultaneously denying Ukraine’s statehood

<sup>74</sup> White House Press Release, Remarks by President Biden Before Marine One Departure (Feb. 17, 2022), at <https://www.whitehouse.gov/briefing-room/statements-releases/2022/02/17/remarks-by-president-biden-before-marine-one-departure-14> [<https://perma.cc/6GJM-HYPK>].

<sup>75</sup> Missy Ryan, Mary Ilyushina, Robyn Dixon & David L. Stern, *Putin Has Decided to Invade Ukraine, Biden Says, and Will Likely Target Its Capital*, WASH. POST (Feb. 18, 2022), at <https://www.washingtonpost.com/world/2022/02/18/ukraine-russia-donetsk-evacuations>.

<sup>76</sup> *Id.*

<sup>77</sup> U.S. Dep’t of State Press Release, Secretary Antony J. Blinken on Russia’s Threat to Peace and Security at the UN Security Council (Feb. 17, 2022), at <https://www.state.gov/secretary-antony-j-blinken-on-russias-threat-to-peace-and-security-at-the-un-security-council> [<https://perma.cc/9X4M-W2DL>].

<sup>78</sup> *Id.*

<sup>79</sup> John Hudson & Missy Ryan, *U.S. Claims Russia Has List of Ukrainians “to Be Killed or Sent to Camps” Following a Military Occupation*, WASH. POST (Feb. 20, 2022), at <https://www.washingtonpost.com/national-security/2022/02/20/ukraine-russia-human-rights>.

<sup>80</sup> Anthony Faiola, *Why the Biden Administration Is Being so Public About the Russian Threat in Ukraine*, WASH. POST (Feb. 11, 2022), at <https://www.washingtonpost.com/world/2022/02/11/biden-public-specific-russian-threat-ukraine>.

<sup>81</sup> See Pannett, Wang, Dixon & DeYoung, *supra* note 67.

<sup>82</sup> DeYoung, Lamonth, Hudson & Harris, *supra* note 65.

<sup>83</sup> *Id.*

overall.<sup>84</sup> Putin falsely alleged that Ukraine was committing “genocide” against Russian speakers in the separatist regions and called Ukraine “a colony with puppets at its helm.”<sup>85</sup> He further stated that “Ukraine has never had its own authentic statehood. There has never been a sustainable statehood in Ukraine.”<sup>86</sup> On February 22, 2022, Putin ordered Russian forces in the two regions to “perform peacekeeping functions.”<sup>87</sup> The United States and allies quickly responded with an initial round of sanctions tracking their pre-invasion threats.<sup>88</sup>

On the evening of February 23, 2022, the UN Security Council met in New York for a last-ditch effort to dissuade Russia from a full-scale invasion,<sup>89</sup> but during the meeting, Putin announced a “special military operation” in Ukraine.<sup>90</sup> Hours before the invasion began, Zelensky appeared on television to address both the Ukrainian and Russian people, pleading with Russian citizens in Russian:

Many of you have been to Ukraine. Many of you have relatives in Ukraine . . . You know our character. You know our people. You know our principles. You are aware of what we cherish. So please listen to yourselves. To the voice of reason. To common sense. Hear us. The people of Ukraine want peace. The Ukrainian authorities want peace.<sup>91</sup>

Russian missiles quickly rained down on Ukrainian cities, including Kyiv, and Russian troops entered Ukraine from Belarus and Russia and via the Black Sea.<sup>92</sup> Putin claimed the invasion was necessary as “Russia cannot feel safe, develop, and exist with a constant threat emanating from the territory of modern Ukraine,” and he pledged to “demilitari[ze] and denazif[y]” Ukraine.<sup>93</sup> Biden’s message was clear: “Putin is the aggressor. Putin chose this war. And now he and his country will bear the consequences.”<sup>94</sup>

<sup>84</sup> Robyn Dixon, *In Long Speech, Putin Recognizes Two Ukrainian Regions as Independent, a Potential Pretext for War*, WASH. POST (Feb. 21, 2022), at <https://www.washingtonpost.com/world/2022/02/21/putin-speech-ukraine>.

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> *Putin Orders Russian Forces to “Perform Peacekeeping Functions” in Eastern Ukraine’s Breakaway Regions*, REUTERS (Feb. 22, 2022), at <https://www.reuters.com/world/europe/putin-orders-russian-peacekeepers-eastern-ukraines-two-breakaway-regions-2022-02-21>.

<sup>88</sup> *Timeline: The Events Leading Up to Russia’s Invasion of Ukraine*, REUTERS (Mar. 1, 2022), at <https://www.reuters.com/world/europe/events-leading-up-russias-invasion-ukraine-2022-02-28>; see also Kristen E. Eichensehr, *Contemporary Practice of the United States*, 117 AJIL 614, 615 (2022).

<sup>89</sup> 8974th Meeting of the Security Council, Ukraine (Feb. 23, 2022), available at <https://media.un.org/en/asset/k1j/k1j8unn1me>.

<sup>90</sup> *Id.*

<sup>91</sup> Dominic Cruz Bustillos, *Full Translation: Ukrainian President Volodymyr Zelenskyy’s Feb. 23 Speech*, LAWFARE (Feb. 24, 2022), at <https://www.lawfareblog.com/full-translation-ukrainian-president-volodymyr-zelenskyy-feb-23-speech>.

<sup>92</sup> *Russian Forces Launch Full-Scale Invasion of Ukraine*, AL JAZEERA (Feb. 24, 2022), at <https://www.aljazeera.com/news/2022/2/24/putin-orders-military-operations-in-eastern-ukraine-as-un-meets>.

<sup>93</sup> *Id.*

<sup>94</sup> White House Press Release, *Remarks by President Biden on Russia’s Unprovoked and Unjustified Attack on Ukraine* (Feb. 24, 2022), at <https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/02/24/remarks-by-president-biden-on-russias-unprovoked-and-unjustified-attack-on-ukraine> [<https://perma.cc/M6XN-AJVD>].