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EXTERNALIZED OUTCASTING OF RUSSIA: AN INTERDISCIPLINARY ANALYSIS

Abstract

Embracing a wide understanding of law enforcement, this paper examines the external outcasting regime imposed on Russia through various unilateral measures. This study identifies key aspects of the outcasting regime, including its legal basis, manifestations, timeline, and configuration. The US sanctions documents are examined as a portion of state practice related to Russia's outcasting. The unique configuration of the outcasting regime is identified: permissive, nonadjudicated, non-in-kind, proportional, and inclusive of 3rd parties. Finally, the outcasting of Russia is situated into a wider historical perspective as a response to the UN's internal enforcement mechanisms reaching their limits.

Key Words

External outcasting, Russia, Unilateral Measures, Sanctions, Aggression

1. Introduction: alliance of outcasts

On June 20, 2024, the representatives of the Russian Federation and North Korea convened in Pyongyang to negotiate the New Russia-North Korea Security Agreement.[1] It was Putin's first trip to North Korea since 2000 when he visited Kim Jong Il, the father of the current supreme leader and Putin's friend Kim Jong Un. The two leaders displayed utmost cordiality: Kim personally greeted the Russian president at the airport at 3 a.m., hours before the official meeting, while Putin offered flattering remarks about Pyongyang's development under Kim's

[1] Victor Cha and Ellen Kim, "The New Russia-North Korea Security Alliance," CSIS, June 20, 2024, https://www.csis.org/analysis/new-russia-north-korea-security-alliance; Alexandra Sharp, "Putin Signs Landmark Security Deal With North Korea," Foreign Policy, June 20, 2024, https://foreignpolicy.com/2024/06/20/putin-russia-kim-jong-un-north-korea-security-deal-vietnam/.

rule. The event concluded with the two leaders exchanging the "sweetest" hand waves through the window of Putin's jet.

This seemingly amiable interaction has a more serious undertone. The meeting signifies an attempt by the outcast states to forge what has already been termed a "new axis of evil."[2] Kim's declared assent toward Russia's aggressive agenda, particularly "special military operation" in Ukraine, signifies yet another conspicuous disregard for underpinning principles of the modern international legal order. The alliance of outcasts seems to be opposing the very idea of the prohibition of the use of force fleshed out in the UN Charter.

In this paper, we delve into the enforcement of the international legal order against rogue states through externalized outcasting, with various unilateral measures adopted to address Russia's behavior as the primary subject of our analysis. Apart from ordinary usage frequent in recent media coverage of Putin's activities, including the mentioned visit to Pyongyang, *outcasting* also has a legal theory context meaning nonviolent means of enforcement (**1**).[3] We unfold an interdisciplinary analysis focusing on the legal basis for the outcasting of Russia, its instances and customary roots (**2**), timeline (**3**), unique configuration (**4**), and place from a legal history perspective (**5**). This piece consolidates some of the core ideas discovered in my master's thesis and presents them from the edge-cutting angle.[4]

Among the introductory notes, it is necessary to delineate two different meanings of the term "sanction" used in this paper. The wider meaning of a *sanction* refers to a certain evil (penalty or punishment) imposed as a means to enforce obedience to law.[5] In Kelsen's terms it is a part of the legal rule imposing punishment. In this sense, external outcasting is a sanction for violation of the rules of international law. However, *sanctions* could also mean restrictive economic measures imposed on states as a specific tool for outcasting.

2. Enforcement of law and external outcasting

The attitude and approach to the enforcement of legal rules are closely linked to one's general understanding of law as such. Belief in and emphasis on certain aspects of legal phenomena inevitably shapes thinking about the ways in which legal systems affect the behavior of their participants, in particular, reacting to wrongdoing. Certain accounts of law,

[2] Albrecht Rothacher, "A New Axis of Evil?" *The Loop*, accessed July 12, 2024, https://theloop.ecpr.eu/a-new-axis-of-evil/.

[3] See a wide meaning of law enforcement and its modes described in Oona Hathaway and Scott Shapiro, "Outcasting: Enforcement in Domestic and International Law," *Yale Law Journal* 121, no. 2 (2011): 252, https://www.yalelawjournal.org/article/outcasting-enforcement-in-domestic-and-international-law.

[4] Dmytro Soldatenko, "Enforcement of International Law Against Russia: External Outcasting," (NaUKMA, 2024).

[5] "Sanction," in *Black's Law Dictionary*, 9th ed. (West, 2009), 1458.

[6] Hans Kelsen, *Pure Theory of Law*, trans. Max Knight (The Lawbook Exchange, 2009), 108.

for instance, proposed by John Austin, would deny that the subject of this paper is a legal inquiry at all.[7] Following this background, our research recognizes the broader theoretical discussion[8] and relies on the wide understanding of law enforcement summarized below.

In this paper, we endorse the approach that the enforcement of legal rules is not limited to brute physical coercion conducted exclusively by officials of a given legal system. This holds particularly true for international law where non-violent and externalized enforcement is ubiquitous.[9] In this context, non-violent enforcement is also referred to as "outcasting,"[10] while externalized enforcement means enforcement undertaken by states as members of a legal system as opposed to system's internal remedies. The figure proposed by Oona Hathaway and Scott Shapiro is a clear illustration of the idea:

Figure 1 Modes of law enforcement by Hathaway and Shapiro, "Outcasting," 303

	Internal	External
Physical	Modern State Conception	External Physical Enforcement
Nonphysical	Internal Outcasting	External Outcasting

The described understanding of law enforcement brings a completely new perspective on addressing wrongdoing by aggressor states such as the Russian Federation. To this extent, Russia is a permanent member of the United Nations Security Council with the right of veto

[7] John Austin, *The Province of Jurisprudence Determined*, ed. Wilfrid Rumble (Cambridge: Cambridge University Press, 1995). See detailed analysis of Austin's account of law in Hathaway and Shapiro, "Outcasting," 261-268.

[8] See Section 1 in Dmytro Soldatenko, "Enforcement of International Law Against Russia."

[9] We highly recommend that readers review Hathaway and Shapiro, "Outcasting" to better understand the concept.

[10] This mode of enforcement roughly resembles the outlawry in medieval Iceland but with peculiarities of the contemporary international context. During our research we have identified that this example may easily lead to perceiving outcasting in a narrow sense of physical expulsion. However, in the context of our study, it simply means non-violent influence on behavior.

which blocks out the possibility of internal outcasting on the UN level.[11] However, this time the discussion is far from being closed since the possibility of exploring the influence on the behavior of recalcitrant states through other modes of law enforcement is open.

The present paper aims to identify central questions on external outcasting of Russian aggression establishing a foundation for further research in this direction. This type of enforcement may take different forms, including economic sanctions, non-recognition of a certain status (e.g. non-recognition of illegal territorial regimes), or denial of certain rights (e.g. right for the transition of post). It is generally described as:

> denying the disobedient the benefits of social cooperation and membership […] carried out by those outside the regime.[12]

While external outcasting is our primary subject, it is not the only mode available for research. Attempts were made to explore Russia's expulsion from various international organizations as a response to its aggression, which falls into the scope of internal outcasting.[13] Moreover, the current activities of the Armed Forces of Ukraine can be viewed as external physical enforcement of the UN Charter, opening even more logical space for inquiry.

3. External outcasting regime imposed on Russia and its legal basis

Hathaway and Shapiro focused on explaining configurations of external outcasting, which we also analyze in section 5. At the same time, the basis for the imposition of this mode of law enforcement should be explored as an important preliminary question. In our analysis, we focus on the collective imposition of unilateral measures by various states against Russia as a sanction for violating international law provisions.

While violation of the prohibition against the use of force is the most obvious item, the nature of the outcasting regime implemented through multiple unilateral decisions begs for a more cautious analysis. Attempts were made to describe the outcasting regime imposed on Russia as collective countermeasures,[14] which arguably puts this instance of law enforcement into the dimension of international customary law. Since the imposition of unilateral measures

[11] See a more detailed discussion of this in section 3.

[12] Hathaway and Shapiro, "Outcasting," 258.

[13] See Martina Buscemi, "Outcasting The Aggressor: The Deployment Of The Sanction Of 'Non-Participation,'" *American Journal of International Law* 116, no. 4 (2022): 764-767, https://www.cambridge.org/core/journals/american-journal-of-international-law/article/outcasting-the-aggressor-the-deployment-of-the-sanction-of-nonparticipation/16962C4F5600155D48244313ABD801D1.

[14] See Oona Hathaway, Maggie Mills, and Thomas Poston, "The Emergence of Collective Countermeasures," *Articles of War*, November 1, 2023, https://lieber.westpoint.edu/emergence-collective-countermeasures/.

is at the discretion of each state, their issuance can be guided by a belief that such measures are required to enforce international law.[15]

The belief mentioned can form gradually as a reflection of multiple violations and induce states to act individually as soon as a certain critical point is met. This belief can be further crystalized and strengthened proliferating more harsh unilateral measures. For instance, this process is visible in the dynamics of the discussion regarding freezing Russian sovereign assets and even using them for Ukraine's benefit.[16] Gravity, multiplicity, scale, and other characteristics of violations, as well as various legal and political considerations, can all boost or halt this process.

A quick but solid list of the Russian Federation's wrongdoings that arguably contributed to the adoption of various unilateral measures encompasses:

- the UN Charter, in particular, prohibition on the use of force stipulated in Article 4(2) and other related political and security agreements;
- systematic human rights violations, including the International Covenant on Civil and Political Rights, the European Convention on Human Rights, the International Convention on the Elimination of All Forms of Racial Discrimination;
- systematic violations of the rules of international humanitarian law;
- other treaty obligations, for instance, appropriation of investor's property on the illegally acquired territories.

This list of violations already existed since the initial study of Russian aggression in 2014.[17] However, Russia was able to block out any effective mechanisms for the enforcement of the listed rules. Most importantly, Russia has veto powers in the UN Security Council, preventing any binding UN-level decisions.[18] Additionally, Russia also barred the sole possibility of many claims by opting out of dispute resolution clauses under various treaties. This period was also characterized by the caution of many states to directly point Russia to the fact that it

[15] This belief is known in international law as *opinio juris*. See Malcolm Shaw, *International Law*, 8th ed. (Cambridge: Cambridge University Press, 2017), 62.

[16] See arguments in Anna Vlasiuk, *Legal Report on Confiscation of Russian State Assets for the Reconstruction of Ukraine*, ed. Nataliia Shapoval and Benjamin Hilgenstock (Kyiv School of Economics, February 2024), https://kse.ua/wp-content/uploads/2024/02/CBR-Assets-Legal-Report_February-2024.pdf.

[17] For example, see "Territorial Integrity of Ukraine," UNGA Res 68/262 (27 March 2014); UN High Commissioner for Human Rights reports on the human rights situation in Ukraine since 2014.

[18] See Security Council Report, "The Veto," Research Report 2015, No. 3, October 19, 2015, https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/research_report_3_the_veto_2015.pdf.

violates the rules of international law in domestic legal documents.[19]

After the full-scale invasion of 2022, a plethora of states endorsed various unilateral measures aimed at remedying Russia's behavior:

- various types of humanitarian aid;[20]
- economic sanctions declared to be unprecedented in terms of scope, coordination, and speed;[21]
- direct military support to Ukraine from various states with the gradual expansion of the supplied weapons employment scope;[22]
- various types of economic support, etc.[23]

This form of outcasting seems to be not a mere sum of actions conducted by individual states, which also happened before 2022, but rather a consolidated effect of those measures depriving Russia of social cooperation benefits and supporting Ukraine. Throughout this work, the entirety of the unilateral measures mentioned is referred to as the *external outcasting regime imposed on Russia*.

4. Analysis of the US declared reasons to impose economic sanctions on Russia: what changed in 2022?

In this section, we share the results of analyzing probes of state practice involving the imposition of unilateral measures against Russia since 2014. We chose the US legal documents imposing economic sanctions against Russia as an illustrative subject of analysis. We have also checked whether similar patterns appear in the documents of the European Union and the United Kingdom.

Decisions to impose unilateral economic sanctions on behalf of the United States are

[19] See the analysis of the related US presidential Executive Orders in section 3 of this paper.

[20] For this and some of the following items see "Ukraine Support Tracker: A Database of Military, Financial, and Humanitarian Aid to Ukraine," Kiel Institute for the World Economy, updated June 6, 2024, https://www.ifw-kiel.de/topics/war-against-ukraine/ukraine-support-tracker/.

[21] Rebecca M. Nelson, "The Economic Impact of Russia Sanctions," Report No. IF12092 – Version 3, Congressional Research Service, December 13, 2022, 1, https://crsreports.congress.gov/product/pdf/IF/IF12092.

[22] See Claire Mills, "Military assistance to Ukraine since the Russian invasion," Research Briefing, House of Common Library, 08 July, 2024, https://commonslibrary.parliament.uk/research-briefings/cbp-9477/.

[23] For example, a new wave of bilateral security agreements concluded with Ukraine. While they are not strictly unilateral, they also aim to remedy Russia's behavior, in particular violations of multilateral security agreements such as the Budapest Memorandum.

made by the President under the International Emergency Economic Powers Act.[24] The exercise of those powers may be justified by a threat to national security, foreign policy, or economy of the United States originated outside of the States. If such a threat appears, the President is empowered to declare a national emergency by adopting executive orders, which are subsequently implemented by the US Department of Treasury.

We have gathered and analyzed wordings of EOs declaring national emergencies related to Russian aggression against Ukraine since 2014. Those EOs could be divided into two groups declaring two different national emergencies in respect of the "Situation in Ukraine"[25] and "Specified Harmful Foreign Activities of the Government of the Russian Federation."[26] Both national emergencies were continued annually and remain in force as of July 2024.

The first group primarily addressed the events of 2014, in particular the Russian occupation of Crimea and support for the so-called Donetsk and Luhansk People's Republics. Also, there was a later extension of this emergency related to the recognition of the self-proclaimed republics by Russia in 2022. The overarching justification exploited by the President to sanction Russia was a description of the following activities:

> […] undermine democratic processes and institutions in Ukraine; threaten its peace, security, stability, sovereignty, and territorial integrity; and contribute to the misappropriation of its assets, constitute an unusual and extraordinary threat to the national security and foreign policy of the United States […][27]

Within this group of EOs, the activities of the Russian Federation are not explicitly recognized as violations of international law. The early EOs 13660 and 13661 contained descriptive and neutral formulations:

> […] asserted governmental authority in the Crimean Region without the authorization of the Government of Ukraine […]
>
> […] deployment of Russian Federation military forces in the Crimea region of Ukraine […]

[24] United States Code, Title 50, Chapter 35, para 1701, https://uscode.house.gov/view.xhtml?path=/prelim@title50/chapter35&edition=prelim.

[25] Executive Order 13660, Executive Order 13661, Executive Order 13662, Executive Order 13685, Executive Order 14065.

[26] Executive Order 14024, Executive Order 14066, Executive Order 14068, Executive Order 14071.

[27] Executive Order 13660, Executive Order 13661, Executive Order 13662, Executive Order 13685. Executive Order 14065 contained only "further threatens the peace, stability, sovereignty, and territorial integrity of Ukraine."

Wordings of the subsequent EOs feature terms closely associated with unlawful use of force in international law, in particular, "annexation," "use of force," and "occupation."[28] The latest EO in this group declared that Russian actions contradicted the Minsk agreements concluded between Ukraine and Russia to regulate the dispute. Yet, neither of those formulations directly involved the illegal character of Russian actions under international law.

The second set of EOs addressed certain activities of the Russian government as a threat to the US in a general manner. The reasons in the initial EO 14024 issued in 2021 are not specifically related to Ukraine and include undermining of democratic elections, cyber-attacks against the US and its allies, extraterritorial targeting of dissents and journalists, undermining security in regions important for the security of the US. Additionally, one of the specified harmful activities was a violation of *"well-established principles of international law, including respect for the territorial integrity of states*."[29]

This was the first national emergency in respect of threats posed by Russia, which explicitly mentioned violations of international law. While the formulation used does not specify exact provisions, respect for the territorial integrity of states is a cornerstone of the United Nations Charter implying the prohibition against the use of force. This was confirmed in further EO 14066 issued in reaction to Russia's full-scale invasion of Ukraine in 2022 containing the most explicit and direct formulations:

> […] the Russian Federation's unjustified, unprovoked, unyielding, and unconscionable war against Ukraine, including its recent further invasion in violation of international law, including the United Nations Charter […][30]

Noteworthy, the term "war" was used, which is a very strong expression emphasizing Russia's manifestly unlawful conduct. Such terminology clearly transcends the framework of the UN Charter and is more prone to the 1928 Briand-Kellogg Pact.[31] A similar change in the language can be also tracked in sanctions-related documents of the UK[32] and the EU.[33] This emphasizes the gravity of Russian behavior, its brazenness contrary to the very idea of the prohibition on the use of force.

[28] Executive Order 13662, Executive Order 13685.

[29] Executive Order 14024.

[30] Executive Order 14066.

[31] See Section 6 below for more details about the Kellogg-Briand Pact.

[32] Foreign Commonwealth and Development Office, "Explanatory Memorandum to the Russia (Sanctions) (EU Exit) (Amendment) (No. 2) Regulations 2023," No. 665, para. 7.5.

[33] Council Decision (CFSP) 2024/633 of 19 February 2024 amending Decision (CFSP) 2022/266 concerning restrictive measures in response to the illegal recognition, occupation, or annexation by the Russian Federation of certain non-government-controlled areas of Ukraine, OJ L 2024/633, 20 February 2024, preambular para. 3.

The formulation treats the Russian invasion of 2022 as a part of the "war against Ukraine," while other components of this war are not explicitly named. In line with EO 14024, EO 14066 provides an open-ended description of Russia's international law violations with particular emphasis on the UN Charter. This confirms our earlier suggestion that the legal basis for the outcasting regime imposed on Russia is not limited to the illegal use of force but accumulates a reflection on a wider list of international law violations.

The overall dynamics in the reasoning of the executive orders also indicate a shift in perception of the unilateral economic sanctions imposed by the US and the emergence of *opinion juris* since 2021. In the initial stages of Russian aggression, EOs merely described Russian illegal behavior without any allegations that the rules of international law were infringed. It is reasonable to suggest that at that time the US viewed sanctions against Russia as moral or political acts. Against that background, invoking international law, particularly the UN Charter, EOs 14024 and 14066 demonstrate a sense of legal right or obligation to impose extensive sanctions against Russia.

This indication of *opinion juris* can be explained by the need to justify more stringent unilateral measures, which could themself violate Russia's rights under international law. For instance, the scope of restraints on sovereign assets belonging to the Central Bank of Russia is a highly debated issue.[34] At this stage, we suppose that the identified change in the practice of the US marks the crystallization of various unilateral measures having moral and political significance into the legal remedy.

This regime gained momentum in 2022 after the full-scale invasion of Ukraine casting light on the collective nature of unilateral measures imposed on Russia. The coordinated efforts started featuring not only from the US, the EU, and the UK but also from Japan, Switzerland, Taiwan, Singapore, South Korea, Australia, New Zealand, and many others.[35]

That said, our suggestion is based on a limited portion of state practice and should be further corroborated with an inquiry into other types of unilateral measures adopted by various states and organizations.[36] Uniform patterns of state practice supported by *opinion juris* should be looked for to explore whether new customary rules related to enforcement of the underpinning principles of international law are emerging.

[34] See Monica Hersher and Joe Murphy, "Graphic: Russia Stored Large Amounts of Money with Many Countries. Hundreds of Billions of It Are Now Frozen," *NBC News*, March 17, 2022, https://www.nbcnews.com/data-graphics/russian-bank-foreign-reserve-billions-frozen-sanctions-n1292153.

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

[36] More is needed to establish rules of customary law. Shaw 60.

5. Basic characteristics of the outcasting regime imposed on Russia

Shapiro and Hathaway described possible configurations of outcasting regimes based on five categories, which we will summarize here.[36] Firstly, an outcasting regime can be *permissive*, meaning that states are allowed to impose outcasting at their discretion, or mandatory where the states are obliged to outcast. Secondly, *adjudicated* outcasting permits action only when a relevant body has established a violation of international law, while in some international legal regimes, *adjudication is not required* for outcasting. Thirdly, *in-kind* outcasting withdraws the same kind of benefits from the violating state, while *non-in-kind* denies the outcast a different kind, class, or category of benefits (cross-countermeasures). Fourthly, an outcasting regime may exploit a *proportional* response or allow a *nonproportionate* one. Finally, international legal regimes may allow only *1st party* to exercise outcasting, that is the party directly injured by the violation, or allow *3rd parties* to take part.

We organized this external outcasting framework along with the Yale professors' examples into a table finding that the imposition of collective economic sanctions on Russia has a unique character:

Figure 2 Matrix of external outcasting forms

External outcasting regimes	Permissive / Mandatory	Nonadjudicated / Adjudicated	In-Kind / Non-In-Kind	Proportional / Nonproportional	1st parties / 3rd parties	Examples
Simple outcasting	■	■	■	■	■	Article 60 VCLT
One Step Removed: Adjudicated	■		■	■	■	WTO
Two Steps Removed: Adjudicated and Non-in-Kin	■			■	■	Investment treaties
Three Steps Removed: Adjudicated, Nonproportional, and Third Parties Included	■		■			The International Coffee Organization
Three Steps Removed: Mandatory, Non-in-Kind, and Third Parties Included		■		■		The Convention on International Trade in Endangered Species of Wild Fauna and Flora
Four Steps Removed: Mandatory, Adjudicated, Non-in-Kind, and Third Parties Included				■		International Criminal Law
Four Steps Removed: Adjudicated, Non-in-Kind, Nonproportional, and Third Parties Included	■					Economic sanctions against South Africa (1962)
Five Steps Removed: Mandatory, Adjudicated, Non-in-Kind, Nonproportional, and Third Parties Included						Montreal Protocol on Substances That Deplete the Ozone Layer; European Convention on Human Rights.
Two Steps Removed: Non-In-Kind and Third Parties Included	■	■		■		Collective outcasting regime imposed on Russia

[37] See in more detail Hathaway and Shapiro, "Outcasting," 315.

In this Section, we substantiate each variable pertaining to the outcasting regime imposed on Russia illustrated in the table (**5.1-5**) and try to explain some key features identified (**5.6**).

5.1 Permissive

A regime of externalized outcasting can either allow states to choose whether or not to extend cooperation benefits to an outcast state, or it may compel them to withhold such benefits.[38] Therefore, the distinction between permissive and mandatory outcasting regimes hinges on whether certain actions are expected of the states engaging in outcasting.

Remember that Russia has a veto power in the Security Council, which precludes the imposition of mandatory sanctions by UN member states. Instead, states condemning Russian aggression and willing to act to terminate that conduct have the discretion to enact unilateral economic sanctions or other means of outcasting. At the same time, a state could recognize violations on behalf of the Russian Federation but still refrain from enacting sanctions for various reasons.[39] Consequently, the outcasting regime imposed on Russia is *permissive*.

5.2 Nonadjudicated

In an adjudicated externalized outcasting regime, outcasting is authorized only after an authoritative body has adjudicated whether a norm was breached.[40] Conversely, in an unadjudicated outcasting regime, actors can outcast without the need to present their claims to an authoritative decision-making entity beforehand.

As a notable illustration of a nonadjudicated externalized outcasting Hathaway and Shapiro speak about countermeasures as defined by the International Law Commission.[41] Such countermeasures are permissible where dispute settlement options are not available to resolve a dispute. As a specific example, they describe a 1978 dispute between the United Sta-

[38] Hathaway and Shapiro, "Outcasting," 311.

[39] Turkey is an apt example. See Karol Wasilewski, "Turkey's Response to Russia's Aggression Against Ukraine," *PISM*, 2022, https://www.pism.pl/publications/turkeys-response-to-russias-aggression-against-ukraine.

[40] Hathaway and Shapiro, "Outcasting," 313.

[41] International Law Commission, "Report of the International Law Commission on the Work of its fifty-third session (23 April – 1 June and 2 July – 10 August 2001)," UN Document A/56/10, 128, https://legal.un.org/ilc/documentation/english/reports/a_56_10.pdf:

measures that would otherwise be contrary to the international obligations of an injured State vis-à-vis the responsible State, if they were not taken by the former in response to an internationally wrongful act by the latter in order to procure cessation and reparation.

tes unilaterally suspended certain benefits of the French under the mentioned treaty before the dispute was referred to arbitration.[42] Moreover, countermeasures could also have a collective manner.

While the UN Security Council is unable to address the issue of Russian aggression, there are no other mandatory procedures to impose any sanctions on Russia. To this extent, the very idea of unilateral sanctions aims to cope with this situation, where no institutionalized adjudication can take place. Moreover, the idea that economic sanctions currently imposed on Russia constitute an instance of collective countermeasures is getting more attention in international law scholarship.[43] For those reasons, we consider the outcasting regime imposed on Russia to be *nonadjudicated*.international law. Instead of witnessing such failure and, in particular, in case of violation of *jus cogens* rules, international community shall act in order to stop such violation and to restore the compliance with international law, for this reason proposing new means and adapting existing instruments necessary to uphold the legal world order and retain its effectiveness.

5.3 Non-In-Kind

In an externalized outcasting regime, in-kind outcasting involves responding to violations of the regime's rules by withdrawing benefits similar to those denied by the outcast.[44] Conversely, non-in-kind outcasting, termed "cross-countermeasures," entails denying the outcast different types of cooperative benefits than those originally denied by the outcast, offering an alternative approach to enforcing the regime's rules.

The nature of Russia’s violation of the prohibition on the use of force contained in Article 2(4) of the UN Charter excludes the possibility of in-kind outcasting. It is hard to imagine an action by the international community directed at defying Russian aggression, which will constitute an aggression itself. This would require the use of force against Russia, which would not be necessary and would exceed the limits of self-defense. So far economic sanctions are far from that and qualify as non-in-kind outcasting.

5.4 Proportional

Externalized outcasting regimes may mandate either proportional or non-proportional responses to lawbreaking.[45] Proportional regimes typically demand that the harm inflicted on

[42] For a detailed description, see Marry O’Connel, *The Power and Purpose of International Law: Insights from the Theory and Practice of Enforcement* (Oxford University Press, 2008), 237.

[43] See Hathaway, Mills, and Poston, “The Emergence of Collective Countermeasures.”

[44] Hathaway and Shapiro, “Outcasting,” 315.

[45] Hathaway and Shapiro, 317.

the outcast state mirrors the harm caused by its violation, often seen in regimes withdrawing in-kind benefits. Alternatively, non-proportional regimes allow for responses not directly equivalent to the harm caused by the outcast's actions.

Assessment of the outcasting regime imposed on Russia in light of this criteria is dependent on whether to treat unilateral economic sanctions as countermeasures. Each option would have certain benefits and drawbacks. On the one hand, the application of countermeasures would possibly justify certain violations of international law against Russia, for example, confiscation of its frozen assets disregarding sovereign immunities.[46] On the other hand, economic sanctions as countermeasures would be subjected to certain limits such as the proportionality requirement.

These considerations involve an ongoing debate in current international law scholarship and deserve a separate space for contemplation. We believe that unilateral economic sanctions even in the case of an aggressor state should have certain limits. For instance, they should cease as soon as the aggression is stopped and all the reparations are paid in order to avoid infinite regress.[47] Therefore, we characterize the outcasting regime imposed on Russia as proportional, however, this consideration begs for further debate.

5.5 3rd parties included

International legal regimes employing externalized outcasting may entail first-party or third-party outcasting.[48] 1st party regimes feature exclusion from community benefits exercised only by states directly harmed by the outcast's actions, while 3rd party regimes permit other states to also suspend benefits, even if not directly affected. This characteristic is tightly linked to the nature of a prohibition and whether it has *erga omnes* character, i.e. obligations owed to the international community as a whole. This characteristic of a norm provides states with a legal interest to vindicate violated principles of international law even without direct injury suffered.[49] The prohibition of aggression was the first example of obligation *erga omnes* outlined by the ICJ in the *Barcelona Traction* case:

[46] See Oona Hathaway, Maggie Mills, and Thomas Poston, "War Reparations: The Case for Countermeasures," *Stanford Law Review* 76, no. 5 (2023): forthcoming, Yale Law School Public Law Research Paper, Yale Law & Economics Research Paper, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4548945.

[47] For instance, this is precisely the way in which the UK defines the aims of its sanctions regime against Russia. See The UK Secretary of State, The Russia (Sanctions) (EU Exit) (Amendment) (No 2) Regulations 2023, No. 665, Regulation 4, https://www.legislation.gov.uk/uksi/2023/665/contents/made.

[48] Hathaway and Shapiro, "Outcasting," 318.

[49] International Court of Justice, *South West Africa Second Phase Judgment*, ICJ Reports 1966, 6, paras. 41-59, https://www.icj-cij.org/sites/default/files/case-related/47/047-19660718-JUD-01-00-EN.pdf.

> Such obligations [erga omnes] derive, for example, in contemporary international law, from the outlawing of acts of aggression […][50]

The violation by the Russian Federation of the UN Charter underpinning principles, in particular, *erga omnes* prohibition on the use of force, explains the involvement of 3rd parties in the imposed outcasting regime.

5.6 High cost vs high risks

Differences between various configurations of external outcasting are not random and reflect the characteristics of the underlying legal system,[51] which is also the case for the outcasting regime imposed on Russia. One of the main distinctive features of the reviewed configuration of outcasting is that it operates outside the conventional law dimension because Russia completely blocks the latter. In that sense, the outcasting regime at stake is also unique since it was not intentionally designed by humans but crystalized from the circumstances of international legal order and state behavior.

Even though the provisions arguably violated by Russia pertain to treaty law, their enforcement lies in the formation of new state practices.[52] In other words, there are no blueprint treaty provisions prescribing enforcement mechanisms for states that decide to join collective sanctions against Russia. Instead, the main incentive and guidelines come from an overwhelming belief that there is a serious violation of underpinning principles of international legal order and that individual actions by states are a necessary alternative to the unavailable UN internal mechanisms.[53]

Under ordinary circumstances, invoking this form of external outcasting would not be feasible due to its high cost[54] and inevitably permissive character.[55] However, we suggest that in the case of Russia, incentive issues arising from the high cost of outcasting are mitigated by the gravity and scale of Russian recalcitrant behavior as well as various other legal and political circumstances. Detailing this and identifying other explanations for the configuration of the

[50] International Court of Justice, *Barcelona Traction, Light and Power Company, Limited Judgment*, ICJ Reports 1970, 3, para. 35, https://www.icj-cij.org/sites/default/files/case-related/50/050-19700205-JUD-01-00-EN.pdf.

[51] Hathaway and Shapiro, "Outcasting," 310.

[52] We imply here the formation of a certain customary enforcement mechanism; however, further research is needed before this can constitute a solid argument.

[53] That's the opinio juris part of international customary law implied here. This is particularly evident in the reasoning dynamics of the US presidential executive orders related to Russia, which we analyzed in section 3.

[54] Outcasting may harm imposing states as well, particularly if they try to outcast an oil giant such as Russia. See Oona Hathaway and Scott Shapiro, *The Internationalists: How a Radical Plan to Outlaw War Remade the World* (Simon and Schuster, 2017), 433.

[55] If outcasting will incur high costs, it should be made mandatory. See description of this connection in Hathaway and Shapiro, "Outcasting," 320.

outcasting regime is a venue begging for further inquiry.

6. External outcasting of Russia in a historical perspective

In this section, we consider Russia's outcasting as a part of the evolution of the prohibition on the use of force since 1928. We argue that Russian aggression against Ukraine posed an existential challenge to the UN security system, exhausting its internal enforcement mechanisms and necessitating a resort to external outcasting mechanisms. This section situates the outcasting regime imposed on Russia into a historical perspective further exploring its ties to the provisions of 1928 the Kellogg-Briand Pact.

6.1 Nested structure of legal rules

Each social collective requires fundamental guidelines to mitigate differences between its members, which leads to the construction of legal systems. Initially effective, these rules eventually reveal the necessity for enforcement mechanisms to prevent exploitation by individuals exhibiting antisocial behavior or freeloading tendencies. It seems plausible to suggest that in each human society with certain rules there will be people violating them. To this extent, an interesting example is portrayed by Anthony D'Amato regarding the emergence of sanctions for free riding in the US.[56]

In the early 1920s, as automobiles became more common in the United States, the need for enforcement of societal regulations became evident. To address increasing traffic congestion at intersections, cities introduced automated traffic signals. Initially, voluntary compliance was based on road etiquette. However, with some drivers exploiting the system by disregarding signals, enforcement mechanisms became necessary. Cities responded by enacting legislation mandating compliance and imposing fines for violations.

The appearance of legal rules and related law enforcement practices does not stop disobedient behavior completely. As new ways of violating legal rules appear, a more sophisticated legal framework is needed. These dynamics may well be compared with the arms race: each participant of the race continuously comes up with more new decisions to overcome the other side. This is also reminiscent of the trial and error method as the system continuously adjusts regulation to meet the constantly changing reality.

[56] Anthony D'Amato, "The Moral and Legal Basis for Sanctions," *Fletcher Forum of World* 19 (1995): 5, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1694879.

Scott Shapiro in his work *Legality* describes this phenomenon as *fleshing out* of legal rules, all of which, as he believes, constitute plans or planlike norms.[57] As a set of plans, legal systems primarily rely upon more general rules, which begin as empty shells and as more details are added, they become more comprehensive and useful. For example, in a domestic legal system a constitution is a master plan, provisions of which are fleshed out by laws, court practice and law enforcement activities.[58]

International law has not been much studied or described through the abovementioned prism of plans and their "nested" structure. That said, we will draw certain immediate observations in this direction. In the international law realm, the rules of conduct are predominant, and it takes ages to fill up those empty shells with specific subplans which will secure the enforcement of international legal order in practice. The development of more nuanced rules is complicated by the absence of a centralized enforcement mechanism, time-consuming and politically charged procedures to develop and adjust legal framework. Additionally, a direct way to amend international law in order to facilitate compliance with its rules will usually require perpetrator's consent.[59]

6.2 The "empty shell" of the Kellogg Briand Pact

The international community began contemplating prohibition of the acts, titled "aggression" today, after the severe losses of WWI. While it might be hard to track the specific origin of the idea, and we do not pursue such an aim, the first formulation of a kind embodied in an international treaty was contained in Article 1 of the 1928 Briand-Kellogg Pact. This instrument was brought to the table by the US and France and signed by the major powers of that time outside of the League of Nations framework[60] and prohibited war as a tool of national policy:

> The High Contracting Parties solemnly declare in the names of their respective peoples that they condemn recourse to war for the solution of international controversies, and renounce it, as an instrument of national policy in their relations with one another.[61]

[57] Scott Shapiro, *Legality* (Belknap Press, 2011), 120-122.

[58] This has been described as a nested structure of plans. See Shapiro, *Legality*, 121, referring to Michael E. Bratman, *Intention, Plans, and Practical Reason* (Stanford, CA: Center for the Study of Language and Information, 1999), 28-30.

[59] See a detailed analysis of this problem in Andrew T. Guzman, "Against Consent," *Virginia Journal of International Law* 52, no. 4 (2012): 747, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1862354.

[60] Jonathan A. Bush, "'The Supreme Crime' and Its Origins: The Lost Legislative History of the Crime of Aggressive War," *Columbia Law Review* 102, no. 8 (2002): 2324, 2334.

[61] Kellogg-Briand Pact. 1928. Avalon Project. Yale Law School Lillian Goldman Law Library. https://avalon.law.yale.edu/20th_century/kbpact.asp.

Inherent in this provision was the right to self-defense against aggressor states. Before the ratification of the Kellogg-Briand Pact, various countries such as the United States and Britain, among others, had submitted diplomatic notes asserting that wars fought in self-defense would be considered permissible.[62] Frank B. Kellogg, one of the Pact's initiators and authors, argued that the concept of self-defense was evident, hence there was no necessity to explicitly state it in the Pact. He underscored that the right of self-defense "is inherent in every sovereign state and is implicit in every treaty."[63]

Observing the "time-lapse" of almost a century after the adoption of this provision, no doubt that at the very point of its enactment it was an empty shell, a general plan without specific steps to achieve it.[64] The initial significant test for the Pact arose shortly thereafter in 1931 triggered by the Mukden Incident which prompted the Japanese invasion of Manchuria.[65] Despite Japan being a signatory to the Pact, a combination of the global depression and a reluctance to engage in warfare to safeguard China hindered any action by the League of Nations or the United States to enforce it. Additionally, Italy, the Soviet Union, Germany, also signatories to the Pact, posed further threats to its integrity.[66] It swiftly became evident that there was no effective means to uphold the agreement or penalize those who violated it. Furthermore, the pact failed to clearly delineate the concept of self-defense, leaving ample loopholes in its provisions.

To illustrate those dynamics, imagine an island of heavy smokers, where ingestion of nicotine is a tradition with roots reaching the very emergence of the local community. One day the community experiences a plague of smoking-related deaths (60% of the population is dead) resulting in all sorts of human suffering. Their "Smoking Parliament" adopts a bill declaring smoking on the island illegal, and everybody seems cognizant of the need for this action. However, trading tobacco is yet not prohibited and every storefront on the islands displays a plethora of cigarette packages, while storages and private stocks are full of nicotine products. Islanders will develop the withdrawal syndrome in 3-4 hours after the Smoking Parliament's

[62] For example, see the position of the United States in Hearings Before the Committee on Foreign Relations, United States Senate, Seventieth Congress on The General Pact for the Renunciation of War signed at Paris, August 27, 1928, Avalon Project, Yale Law School Lillian Goldman Law Library, https://avalon.law.yale.edu/20th_century/kbhear.asp.

[63] Further Correspondence with Government of the United States Respecting the United States Proposal for the Renunciation of War, United States No. 2, 1928, https://avalon.law.yale.edu/20th_century/kbbr.asp.

[64] Many of the contemporaries would agree with that, referring to the Pact as a 'worthless piece of paper.' See Harold Josephson, "Outlawing War: Internationalism and the Pact of Paris," *Diplomatic History* 3, no. 4 (1979): 377. See also Sally Marks, *The Illusion of Peace: International Relations in Europe, 1918–1933* (London: Macmillan, 1976); Brian McKercher, *Esme Howard: A Diplomatic Biography* (Cambridge: Cambridge University Press, 1989), 324; Henry Kissinger, *Diplomacy* (New York: Simon and Schuster, 1994), 280.

[65] John Swift, "Mukden Incident: Chinese History," *Britannica*, 2017, https://www.britannica.com/event/Mukden-Incident.

[66] Carroll Quigley, *Tragedy and Hope* (New York: Macmillan, 1966), 295.

declaration, somewhere around this time the first violation will occur.

Prohibiting aggressive war seems even more problematic since your community lacks a legislative body with the established procedures to swiftly come up with necessary updates to the prohibition. Instead, there was a need to convene an *ad hoc* "legislative" body, members of which speak different languages. And that is just a simplified model of how much harder it is to legislate internationally in comparison to national systems. Additionally, getting rid of a habit to resolve conflicts with war proved to be a problem comparable for the islanders to overcome nicotine addiction. As the Frank B. Kellogg put it:

> It is not to be expected that human nature will change in a day; perhaps it is too much to expect that the age-old institution of war, which has, through the centuries, been recognized by international law as a sovereign right […] will be at once abolished.[67]

The feature of "empty shell" legal rules is that they do not only organize human behavior, but they also organize human thinking about how to organize human behavior.[68] Closer look at the initial violations of the Pact reveals that even without enforcement mechanisms it changed the way aggressive wars were launched. The signatories, despite renouncing war formally, proceeded to engage in hostilities without formal declarations, as seen in the Japanese invasion of Manchuria in 1931 called by the Japanese as an "incident,"[69] the Italian invasion of Abyssinia in 1935 titled by Italians as an "expedition,"[70] the Soviet invasion of Finland in 1939, and the joint German-Soviet invasions of Poland. This practice was not usual in pre-Pact times when launching wars need not have been covered.[71] Even nowadays, Russia tries to portray its aggression against Ukraine as a "special military operation" launched in compliance with international law flagrantly abusing the notions of self-defense and the right to self-determination.

To compare with the abovementioned anecdotal scenario, islanders just continued smoking denying that they do it. The paradox is that it appears hard to prove that smoking is smoking, and aggression is aggression in the absence of the rigid legal framework. Next, we will describe steps undertaken to flesh out the prohibition on the use of force.

[67] Frank B. Kellogg, "Acceptance Speech," Nobel Prize Outreach AB 2024, accessed July 12, 2024, https://www.nobelprize.org/prizes/peace/1929/kellogg/acceptance-speech/.

[68] Bratman, *Intention, Plans, and Practical Reason*, 32-35.

[69] Nico Schrijver, "The Ban on the Use of Force in the UN Charter," in Marc Weller, ed., *The Oxford Handbook on the Use of Force in International Law* (Oxford: Oxford University Press, 2015), 468-469.

[70] See Bernardus V. A. Röling, "On the Prohibition of the Use of Force," in D. Blackshield, ed., *Legal Change: Essays in Honour of Julius Stone* (Sydney: Butterworths, 1983), 274–298.

[71] Hathaway and Shapiro, *The Internationalists*, 54.

6.3 Fleshing out the internal enforcement of the prohibition on the use of force

Returning to the modes of law enforcement mentioned in Section 2, international law can be enforced through four modes: physical enforcement (external or internal) and outcasting (internal and external). Interestingly, there are certain events we could consider as external physical enforcement of the prohibition on the use of force. The obvious example is WWII described by Hathaway and Shapiro as a contest between the two competing visions:

> [B]etween one that saw the Pact as a piece of paper and one that saw it as a new legal reality; between that clung to the right of conquest and one that rejected it; between one that held on to the belief that neutrality required impartiality and one that regarded the "sanctions of peace" as an essential tool of law enforcement; between one that condemned economic sanctions and one that condemned military force.[72]

The logical end of this contest did not come with a physical defeat of the Axis Powers and the related acts of surrender. Exercising physical control over the defeated, the Allies moved on to prosecute some of the Nazi leaders for the "crimes against peace" also titled by the Nuremberg Tribunal as aggression. The Briand-Kellogg Pact served as a legal basis for the Tribunal to conclude that acts of aggression were prohibited before 1939:

> The question is, what was the legal effect of this Pact? […] In the opinion of the Tribunal, the solemn renunciation of war as an instrument of national policy necessarily involves the proposition that such a war is illegal in International Law; and that those who plan and wage such a war, with its inevitable and terrible consequences, are committing a crime in so doing. War for the solution of international controversies undertaken as an instrument of national policy certainly includes a war of aggression, and such a war is therefore outlawed by the pact. [73]

Under the classical idealist paradigm, the ways to implement the prohibition of aggression include the elaboration of more comprehensive legal rules, creation of international organizations as well as the exploitation of international trade and interdependence between states.[74] The first two directions were fleshed out by updating rules

[72] Hathaway and Shapiro, 214.

[73] Judgment of the International Military Tribunal in Nuremberg dated 1 October 1946, 53, https://www.legal-tools.org/doc/45f18e/pdf/.

[74] Mykola Kapitonenko, *International Relations Theory* (Routledge, 2022), 61.

on the prohibition of the use of force, as well as the creation of the United Nations, the international organization tasked with upholding international peace and security. The UN Charter enshrined the modern formulation of the prohibition of the use of force:

> 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.[75]

Importantly, this provision reacted to the new reality, where states may launch undeclared wars, therefore the term "use of force" was coined. Article 51 of the Charter also explicitly recognized, what Frank Kellogg opined was implicit in each treaty, the right to self-defense.[76]

To some extent, the institutional structure of the UN allowed gradual fleshing out of the abovementioned rules via judicial interpretations by the International Court of Justice. While there may be different views on the effectiveness of this Court, nevertheless, it has addressed a plethora of issues related to the use of force injecting this corpus of international law with judicial practice.[77]

Another important feature of the UN is its Security Council, the primary organ for crisis management, which holds the authority to enforce mandatory obligations on all 193 UN member states to uphold peace.[78] Its composition includes five permanent members and ten elected members who convene regularly to evaluate various threats to global security, such as civil conflicts, natural calamities, arms proliferation, and terrorism.

The objective of the Security Council is to peacefully resolve international conflicts as outlined in Chapter VI of the UN Charter. This chapter grants the Security Council the authority to urge parties involved to seek resolutions through negotiation, arbitration, or other peaceful methods. In the event that such efforts fail, Chapter VII allows the Security Council to undertake more assertive measures, such as imposing sanctions or authorizing the use of force,

[75] United Nations, *Charter of the United Nations*, 26 June 1945, 1 UNTS XVI ("UN Charter"), Article 2(4), https://www.un.org/en/about-us/un-charter/full-text.

[76] UN Charter, Article 51:

Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.

[77] See an overview of the ICJ practice related to the use of force in Claus Kress, "The International Court of Justice and the 'Principle of Non-Use of Force,'" in Marc Weller, ed., *The Oxford Handbook on the Use of Force in International Law* (Oxford: Oxford University Press, 2015).

[78] See "The UN Security Council," *CFR*, 2024, https://www.cfr.org/backgrounder/un-security-council.

"to maintain or restore international peace and security."[79] Peacekeeping missions serve as the most visible aspect of the United Nations' conflict-resolution efforts. As of early 2024, the Security Council oversees eleven operations spanning three continents, with nearly ninety-seven thousand uniformed personnel involved.[80]

A fly in that ointment is the decision-making procedure of the Security Council, as each of its permanent members (the United States, China, France, Russia, and the United Kingdom) can veto binding resolutions of the body.[81] This system constituted a shaky political basis for the very founding of the UN, the result of negotiations between the US, UK, and the Soviet Union conducted during WWII.[82] The veto power was proposed by the Soviet Union as a necessary condition for them to join the UN, the condition which the US and the UK could not but accept in those circumstances.[83]

In practice, the effectiveness of the whole UN system was *ab initio* conditional upon the emergence of a dispute involving one of the permanent members, which could constrain any binding action by the Security Council. Certain non-physical internal mechanisms were developed to address such deadlocks, in particular, recognition of the aggression by the United for Peace resolutions of the General Assembly, which are not subject to the veto powers.[84]

While Russian aggression against Ukraine is not the first occasion of a kind, it is among the most challenging for the international legal order so far. The effective exercise of the veto power by Russia in the Security Council simply diminishes efforts that have been directed towards flashing out of the prohibition on the use of force since the adoption of the UN Charter. The system has just reached the limits set by the founders, therefore, giving floor to external methods of law enforcement, including unilateral measures adopted by individual states as a next loop of fleshing out the prohibition against the use of force.

[79] UN Charter, Articles 41-42.

[80] "Where we operate," *UN Peacekeeping*, accessed July 12, 2024, https://peacekeeping.un.org/en/where-we-operate.

[81] The veto power originates in Article 27 of the UN Charter:

Decisions of the Security Council on all other matters shall be made by an affirmative vote of nine members including *the concurring votes of the permanent members*. [Emphasis added]

[82] Hathaway and Shapiro, *The Internationalists,* 234-243.

[83] See Sumner Welles, *Seven Decisions that Shaped History* (New York: Harper & Brothers, 1950), 193-194.

[84] See Michael P. Scharf, "Power Shift: The Return of the Uniting for Peace Resolution," *Case Western Reserve Journal of International Law* 55 (2023): 1, https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=3153&context=faculty_publications.

7. Conclusions and Further Considerations

In this paper, we delved into the enforcement of the international legal order against recalcitrant states through externalized outcasting, using the regime of unilateral measures imposed on Russia as the primary subject of our analysis. The presented interdisciplinary approach draws connections between the basis and configuration of Russia's outcasting and situates it within the development of international law on the use of force.

Our analysis began with an examination of the modes of law enforcement from a legal theory perspective with particular attention to *externalized outcasting*. We explored the enforcement mechanisms available in international law, particularly in cases where traditional internal remedies are blocked, as is the case with Russia due to its veto power in the United Nations Security Council. We also described the essence of the *external outcasting regime imposed on Russia* as a consolidated effect of the unilateral measures imposed on Russia.

Our research suggests that the external outcasting regime imposed on Russia gained momentum following the Russian full-scale invasion of Ukraine in 2022 marking a significant shift in international legal practice. We were able to spot this change through the analysis of the US presidential executive orders imposing sanctions on Russia since 2014. As our analysis revealed, executive orders began explicitly addressing violations of international law, particularly the UN Charter, and invoking the term "war" in 2022. This change in treating sanctions against Russia as a response to a violation of international law and not as a political or moral act indicates *opinion juris* in the analyzed portion of state practice.

In the following section, we identified and analyzed the configuration of the outcasting regime imposed on Russia, characterizing it as *permissive, nonadjudicated, non-in-kind, proportional, and inclusive of 3rd parties*. We suggested that this unique configuration reflects the nature of the underlying legal system, which operates primarily through customary means as an alternative to conventional venues for enforcement blocked by Russia. Considering the high cost and permissive character of the discovered configuration the incentive to outcast Russia can be explained by the gravity and scale of Russian recalcitrant behavior as well as various other legal and political circumstances.

Subsequently, we situated the outcasting regime imposed on Russia within a broader historical perspective of the prohibition on the use of force. Russia's full-scale invasion of Ukraine in 2022 underscores the necessity of external outcasting mechanisms, as the UN's internal enforcement capabilities have reached their practical limits. This constitutes a new loop in the development of the prohibition of the use of force stemming from the 1928 Kellogg-Briand Pact. In this respect, the outcasting of Russia continues the historical trajectory aimed at upholding international peace and security.

The direction of inquiry and the approach we presented invite further inquiry into the outcasting regime imposed on Russia to enable reasoned proposals for its enhancement. This should be done considering other available modes of international law enforcement, in particular externalized physical enforcement and internal outcasting. We believe that following these kinds of questions will serve a wider objective of overcoming current security challenges and preparing the international community to make necessary amendments to existing international law enforcement mechanisms when a short window of such opportunity appears.

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ЕКСТЕРНАЛІЗОВАНЕ ВИГНАННЯ РОСІЇ: ІНТЕРДИСЦИПЛІНАРНИЙ АНАЛІЗ

Анотація

У цій статті, що послуговується широким розумінням примусу до виконання права (англ. law enforcement), розглядається режим екстерналізованого вигнання, застосований до Росії у вигляді односторонніх заходів різних країн. Це дослідження визначає загальні ознаки режиму вигнання, включаючи його правову основу, прояви, часові рамки та конфігурацію. Санкційні документи США розглянуто як приклад практики держав щодо застосування заходів зовнішнього вигнання до Росії. Далебі, визначено унікальну конфігурацію розглянутого режиму вигнання: дозвільний, без судового розгляду, не в натуральній формі, пропорційний і з залученням третіх сторін. З рештою, вигнання Росії розглянуто в ширшій історичній перспективі як відповідь на досягнення своїх меж внутрішніми механізмами примусу в системі ООН.

Ключові слова

Зовнішнє вигнання, Росія, односторонні заходи, санкції, агресія