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Embodied Ecologies and Legal Wars: The Use of Force, Ukraine, and Feminist Perspectives on International Law

Gina Heathcote

C/-Newcastle Law School, gina.heathcote@newcastle.ac.uk

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**EMBODIED ECOLOGIES AND LEGAL WARS: THE USE OF FORCE,
UKRAINE, AND FEMINIST PERSPECTIVES ON
INTERNATIONAL LAW**

GINA HEATHCOTE*

ABSTRACT

In this article, I examine the international law on the use of force alongside a feminist analysis of the ongoing Russian aggression in Ukraine. I draw on records of mushroom foraging to evidence how everyday practices of communities are destroyed by military aggression that disrupts the embodied ecologies reproduced in intergenerational human and nonhuman encounters. The mushrooms foraged in Ukraine, the mushrooms destroyed during military encounters, and the mushrooms growing beside land mines provide an aperture for shifting both feminist and international legal accounts of armed conflict. I argue that ecologies of harm produce means to understand the gendered violence in armed conflict prompting a shift beyond the status quo of international law and legal relations on the use of force and the preoccupation with justifications and authorisations for military force.

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INTRODUCTION

“Stories of (the impossibility of) mushroom picking poignantly remind me of the extent to which Ukrainian realities have been invaded and destroyed, where the most mundane things have been devastated and crushed.”¹

The international law on the use of force focuses on the decisions, justifications, and authorisation of military force when conducted by one state on the territory of another state. The use of force by Russia in Ukraine, since 2014 and with significant expansion after February 2022, violates Article 2(4) of the UN Charter, which prohibits the threat or use of force on the territory of another state. Despite little dispute over the illegality of Russia’s military advances on Ukraine’s territory, the capacity of international legal institutions, such as the UN Security Council, to respond has been muted, illuminating tensions at the centre of a model built around great power privilege.² In this article, I take the stagnation of international institutions as an opportunity to think differently about the use of force, legality, and legitimacy by deploying a feminist analysis of Ukraine’s livelihoods and embodied ecologies within an account of collective security, self-defence, and the war in Ukraine. My feminist analysis draws on international legal approaches, Ukrainian feminist approaches, and posthuman feminism to respond to the Russian invasion in Ukraine: evoking embodied ecologies that traverse the human and the nonhuman, from crisis to the everyday.³

The following analysis responds across three sites of law. First, I return to the international law on the use of force and the right of states to use force in

1. Darya Tsymbalyuk, *A Landmine Detonates in the Woods*, 130 IWMPOST, Fall/Winter 2022, at 1, 11, https://www.iwm.at/sites/default/files/inline-files/IWMpost_130.pdf [<https://perma.cc/CMT2-G8JC>].

2. See Tamsin Phillipa Paige, *Mission: Impossible? Reforming the UN Charter to Limit the Veto*, 25 J. INT’L PEACEKEEPING 187, 187-88 (2022); U.N. GAOR, 11th Emergency Special Sess., 1st plen. mtg. at 7, U.N. Doc. A/ES-11/PV.1 (Feb. 28, 2022) (where Russia explained its justification for the use of force that commenced in February 2022 at a UN General Assembly emergency special session after the beginning of the invasion); Vladimir Putin, Letter dated 24 February, 2022 from the Permanent Representative of the Russian Federation to the United Nations addressed to the Secretary-General, annex, at 2 U.N. Doc. S/2022/154 (Feb. 24, 2022).

3. My analysis draws particular support from the following works: Darya Tsymbalyuk, *What Does It Mean to Study Environments in Ukraine Now?*, ENV’T & SOC’Y PORTAL (Summer 2022), <https://www.environmentandsociety.org/arcadia/what-does-it-mean-study-environments-ukraine-now> [<https://perma.cc/YX9S-ET3R>]; Mila O’Sullivan, “*Being Strong Enough to Defend Yourself*”: *Untangling the Women, Peace and Security Agenda Amidst the Ukrainian Conflict*, 21 INT’L FEMINIST J. POL. 746 (2019) [hereinafter O’Sullivan, *Being Strong Enough to Defend Yourself*]; Mila O’Sullivan, *The Forgotten Lives: Connecting Gender, Security, and Everyday Livelihoods in Ukraine’s Conflict*, 16 POL. & GENDER (2020) [hereinafter O’Sullivan, *The Forgotten Lives*]; Oksana Yarosh, *Ukraine’s Strategies of Empowering Women in Peace-Building: Implementation of UN Security Council Resolution 1325 on Women and Peace and Security*, 2 COPERNICUS J. POL. STUD. 33 (2020).

self-defence.⁴ I examine how the international legal classification of the conflict as aggression and self-defence impacts how Ukrainian actors are understood, listened to, and positioned in relation to the ongoing violence. Second, I examine the collective security structures, particularly the United Nations Security Council's response to the military aggression by Russia, its impotence, and the larger failings of its approach to security, whether human security or military security. Drawing on Ukrainian concepts of social and cultural reproduction and human-nonhuman relations, I question the petrocapialist frames of military security and the larger geopolitical refusals with respect to the environmental destruction of armed conflict.⁵ The third legal focus is the Security Council's women, peace, and security resolutions. I examine the gap between the rhetoric surrounding the resolutions and the ineffectiveness of the resolutions during ongoing military campaigns, the narrow versions of feminist and gender approaches incorporated within the resolutions, and the need for diverse feminist traditions to inform the development of women, peace, and security, and security more broadly.

Central to my analysis is the scholarship of environmental humanities and feminist author Darya Tsymbalyuk, whose writing on military violence in Ukraine has framed my understanding of embodied ecologies. I regard embodied ecologies as contributing a unique means of knowing military violence through the interruption to human and nonhuman livelihoods, as well as, importantly, the social and cultural relations that traverse the nonhuman and the human. I regard this as embodied, that is, felt and lived in bodies, especially in bodies gendered and racialised. The calling in and naming of ecologies as important in discussions of the law on the use of force, usually only attentive to territory as a politico-legal dimension of statehood, is at once alert to increased understandings of environmental insecurities while attending to the direct, urgent violence in Ukraine as I write. I examine how human encounters with the nonhuman, captured in the process of mushroom foraging, expose new insight into how gendered insecurities persist and undermine legal endeavours for containment or change. The deployment of embodied ecologies as a methodology and way of thinking on military violence throughout the paper draws together feminist encounters with how the gendered experience of wars is felt and lived in the body while acknowledging the limitations of frames that exclude the nonhuman—ecologies—from military violence. My approach is thus feminist in its turn to the embodied experience of armed conflict, and a

4. See generally Katie A. Johnston, *Identifying the Jus Cogens Norm in the Jus Ad Bellum*, 70 INT'L & COMPAR. L. Q. 29 (2021) (discussing norms that prohibit unjustified uses of force).

5. See generally Matthew Gillett, *Criminalizing Reprisals Against the Natural Environment*, INT'L REV. RED CROSS, Aug. 11, 2023, <https://www.cambridge.org/core/journals/international-review-of-the-red-cross/article/criminalizing-reprisals-against-the-natural-environment/5DDE9E9BBDD71372AB2398BF8FF5364> [<https://perma.cc/Y6HP-3FET>] (discussing the damage caused to the environment during warfare).

posthuman feminist analysis in its dissolution of the human-nonhuman distinction. As a nascent methodology for approaching international law, I provide some tentative thoughts and frame my contribution as an aperture for new scholarship on the laws on the use of force, on collective security, and on gender and violence, in particular, military violence.

I draw on the contributions of Ukrainian feminists to shape my argument, while incorporating existing feminist encounters with the law on the use of force and collective security. I highlight several different Ukrainian feminist works, with an interdisciplinary spread across the environmental humanities, gender and conflict, and women, peace, and security. Rather than looking for a sole (or uniform) Ukrainian feminist voice, I develop various understandings to articulate a feminist approach. As a feminist analysis, I regard gender as structural and intersectional in its shaping, in multiple and multifaceted ways, of all lives. I argue that together these diverse feminist approaches frame the possibilities for moving on from the tensions between legality and legitimacy which often shape international legal responses to acts of aggression.⁶ I distinguish my argument from feminist and gender scholarship which centres on women's experience of armed conflict, often articulated in scholarship on the Security Council's multiple resolutions on women, peace, and security.⁷ While this work has influenced some of the accounts on the gender dynamics of the use of force in Ukraine, especially with respect to the gendered impact of displacement and the risks of sexual exploitation, abuse, and violence, as well as accounts of women's capacity to participate in all stages of decision-making concerning armed conflict and post-conflict processes, my argument draws on accounts of the structures of war and law to examine the possibility for feminist thinking to aid shifts in how armed conflict is understood and responded to, that is the law on the use of force and collective security.

My argument begins with an account of feminist scholarship on the international law on the use of force and collective security, examining how violence is constructed through a masculine lens in law, how crises propel the discipline of international law, and how discourses of empire shape the different responses to force across global divisions. Ultimately, feminist approaches to international law on the use of force have highlighted the everyday nature of gendered violence and the continuum between this and the regulation of international/inter-state violence, exposing how violence is gendered in its embodiment and the need for a decolonial and postcolonial feminist method,

6. See THOMAS FRANCK, *RECOURSE TO FORCE: STATE ACTION AGAINST THREATS AND ARMED ATTACKS* 174-75, 181-82, 191 (2002) (discussing the impact of legitimacy and legality on shaping responses in international law).

7. For an introduction to and critique of the resolutions, see generally SARA BERTOTTI ET AL., *THE LAW OF WAR AND PEACE: A GENDER ANALYSIS* 17-18, 36-37 (2021); CHRINTINE CHINKIN, *WOMEN PEACE AND SECURITY AND INTERNATIONAL LAW* (2022).

which understands plural knowledge and legal structures, as well as plural feminist possibilities, to direct my analysis toward Ukrainian feminist perspectives. From 2014 and the first campaigns of Russian violence to occupy the Crimea and the Donetsk and Luhansk oblasts, to post-2022 feminist accounts on erasure from debates,⁸ understandings of embodied ecologies of violence,⁹ and demands for recognition of the petrocapiatist legacies of imperialism,¹⁰ reading Ukrainian feminist accounts expands feminist methodologies on international law in new and important ways. Here I centre, in particular, an understanding of livelihoods and social reproduction at risk from the ongoing military action and epitomised in accounts of mushroom foraging since 2022. In questioning the legitimacy of expertise on Ukraine that does not seek out and listen to Ukrainian perspectives, I argue for a queer feminist peace that holds the nonhuman relations with humans as a frame for rethinking responses to war, the use of force, and the possibilities of collective security otherwise.

This article progresses with a review of feminist approaches to international law and collective security in the following section. This is followed by an account of gender and its centrality to the Russian aggression in Ukraine. The third section offers a reflection on ways in which the insertion of Ukrainian feminist approaches to the armed conflict might address both the international law on the use of force and feminist understandings of collective security, beyond the women, peace, and security agenda, toward an understanding of embodied ecologies and law.

I. FEMINIST APPROACHES TO THE LAW ON THE USE OF FORCE

The law on the use of force is usually beset by concerns regarding legitimacy when states embark on the use of military force without Security Council authorisation and with some non-legal criteria propelling action, such as when humanitarian concerns exist.¹¹ Gender has emerged as a factor in discussions on the legitimacy of force, often underscoring the need for action; such discussions occur in response to military violence against women, or against civilians, as a motivation for humanitarian force.¹² Feminist scholarship has always addressed the law on the use of force and collective security, although much of this work focuses on the Security Council's resolutions on women, peace, and security.¹³

8. See generally Katharine A.M. Wright, *Gendered Silences in Western Responses to the Russia-Ukraine War*, 19 PLACE BRANDING & PUB. DIPL. 237 (2023).

9. Tsybalyuk, *supra* note 1.

10. Tsybalyuk, *supra* note 3.

11. See generally JANE STORMSETH, HUMANITARIAN INTERVENTION: ETHICAL, LEGAL AND POLITICAL DILEMMAS 255 (J.L. Holgreffe & Robert O. Keohane ed., 2003).

12. See Karen Engle, "Calling in the Troops": *The Uneasy Relationship Among Women's Rights, Human Rights, and Humanitarian Intervention*, 20 HARV. J. HUM. RTS. 189, 192-95 (2007).

13. See Gina Heathcote, *Women and Children and Elephants as Justification for Force*, 4 J. ON USE FORCE & INT'L L. 54, 54 (2017); Laura J. Shepherd, *Making War Safe for Women?*

In this section, I focus on the larger remit of collective security, the use of force and self-defence, where feminist scholars have delved into the relationship between law and violence, the crisis mentality of international law, the legacy of imperialism in authorisations for force, and the displacement of perceptions of peace that challenge assumptions regarding gender and sexuality.

In approaching the relationship between law and violence, feminist scholars have examined how masculinity infuses legal relations, thereby directing perceptions of when violence is justified, authorised or even legitimate.¹⁴ Law reproduces assumptions around violence that reinforce gender norms, often justifying and excusing male violence in ways that infiltrate international law and state behaviour. My larger study of the law on the use of force demonstrates how gendered forms of law and violence are produced within international law through mirroring domestic legal relations and thus attributed to subjects.¹⁵ A good example is the law on self-defence, where the notion that subjects have the right to defend themselves against attacks to the self (State) is assumed to traverse interpersonal laws and emerge in international laws, despite feminist histories challenging the gendered nature of self-defence.¹⁶ Kulick's account of the "gendered vulgarism" in Russian president Vladimir Putin's language as he embarked upon the upscaling of violence in Ukraine during 2022 links the horrendous sexual violence happening in the theatre of war to the gendered language of military invasion, offering a stark account of the continuum of gender from the international to the local.¹⁷

The nexus between the international and the local also emerges in Charlesworth's study of the use of force on humanitarian grounds to protect Kosovan people as she explores the relationship between international law and violence through the lens of crisis, describing how crisis becomes not only a central frame for understanding international law but also a mechanism for excluding a range of debates in the "crisis" moment.¹⁸ The crisis propels the use of military solutions for complex, often intergenerational, and multifaceted problems. The fixation on Russian violence in Ukraine after February 2022, that is, after the full-scale attacks on Ukrainian territories, beyond the Crimea and

National Action Plans and the Militarisation of the Women, Peace and Security Agenda, 37 INT'L POL. SCI. REV. 324, 324 (2016); FUMNI OLONISAKIN ET AL., WOMEN, PEACE AND SECURITY: TRANSLATING POLICY INTO PRACTICE 1-6 (2011).

14. GINA HEATHCOTE, THE LAW ON THE USE OF FORCE: A FEMINIST ANALYSIS, 20-21 (2012).

15. *Id.* at 13.

16. See generally Susan S.M. Edwards, "Demasculinising" the Defences of Self-Defence: The 'Householder Defence' and Duress, 2 CRIM. L. R. 111, 111-29 (2022).

17. Orysia Kulick, *Gender and Violence in Ukraine: Changing how We Bear Witness to War*, 64 CAN. SLAVONIC PAPERS 190, 191-93 (2022).

18. See Hilary Charlesworth, *International Law: A Discipline of Crisis*, 65 MOD. L. REV. 377, 377 (2002).

the Donetsk and Luhansk oblasts, following Charlesworth's analysis, produces a thin account of the complexity and longer temporalities of interstate violence by Russia in the region.¹⁹ Tsyumbalyuk's analysis of the current Russian violence in the context of the larger—and longer—Ukrainian resistance to Russia's cultural, physical, and discursive incursions into Ukraine is thus understood as a space of self-determination, or de-occupation, against the attempts at empire building by the regional hegemon, with important social and cultural dimensions that tend to be filtered out of international legal narratives.²⁰ This approach is in contrast to the reading of self-defence that has dictated mainstream accounts of the Russian aggression, time-slicing the February 2022 escalation of military action in a manner that aligns with Charlesworth's analysis of the crisis mentality and her conclusion that "[i]f the idea of security is understood more broadly, the futility of the standard form of international collective action becomes clear."²¹ While it is accepted that Ukraine has a right to act in self-defence, the temporal shift to address the decades prior to February 2022 holds visible not just Russian aggression, but also Ukrainian resistance and the myriad of social, cultural, and economic interventions that preceded the military invasion.

The feminist account of the relationship between imperialism, international law, and the use of force emerges across the work of several scholars and further demonstrates the entrenched role of gender in the production of the law and violence relationship.²² For example, Orford's account of the narratives of international law builds on Charlesworth's work on international law as a discipline of crisis, demonstrating how crisis narratives produce moral assumptions regarding the role of Western states as "saviours" or white knights to deliver the international community beyond the crisis moment.²³ The corresponding proliferation of international legal writing displaces how conflict, occupation, and resistance are negotiated by communities; through small acts of solidarity and through attention to different and diverse ways of knowing and being. Drawing on this frame, below, I turn to human relations with the nonhuman, in particular, ecological livelihoods and the ways in which military

19. See *id.*; Kostia Gorobets, *Russian "Special Military Operation" and the Language of Empire*, OPINIO JURIS (May 24, 2022), <http://opiniojuris.org/2022/05/24/russian-special-military-operation-and-the-language-of-empire/> [https://perma.cc/96U5-Z2RZ].

20. See Tsyumbalyuk, *supra* note 1.

21. Charlesworth, *supra* note 18, at 391.

22. E.g., ANNE ORFORD, *READING HUMANITARIAN INTERVENTION: HUMAN RIGHTS AND THE USE OF FORCE IN INTERNATIONAL LAW* 162 (Cambridge 2003); Vanja Hamzić, *International Law as Violence: Competing Absences of the Other*, in *QUEERING INTERNATIONAL LAW: POSSIBILITIES, ALLIANCES, COMPLICITIES, AND RISKS* 78-79 (Dianne Otto ed., Routledge 2018); see also Anastasiya Kotova and Ntina Tzouvala, *In Defense of Comparisons: Russia and the Transmutations of Imperialism in International Law*, 116 AM. J. INT'L L. 716-17 (2022).

23. ORFORD, *supra* note 22, at 173-78.

violence displaces humans and traditions of living that have profound social and cultural legacies. Nesiah's study of imperialism further reinforces this approach, arguing for feminist methods that require that "the very terms through which a debate has been structured are called into question, [so] that questioning itself often generated a new ground, with a new set of fault lines, from which to situate and shape political engagement."²⁴ I want to draw on these approaches to collective security and the use of force, considering what they mean in relation to Russian aggression in Ukraine, to ask how the intergenerational violence, both direct and indirect, the gendered language of statehood and geopolitical relations, the stories of crisis, saviours and rogue states, as well as the legacies of imperialism, obscure how a gender analysis might shift our thinking on what security looks like. In framing my approach as examining the embodied ecologies of law, I pull these threads of feminist knowledge, on crisis narratives, on the gendered knowledge within the law, on the relationship between gender and imperialism, alongside recent work on feminist posthumanism, the spaces of peace in wartimes, that hold a space to theorise queer feminist peace and praxis. Embodied ecologies acknowledge, then, a gendered history and frame of law, as well as a space to move beyond the human, to theorise imperialism, and to think about gender itself as embedded in other vectors of difference. In the following section, I examine how gender has been read and understood in contemporary academic responses to the Russian aggression in Ukraine.

II. GENDER ANALYSIS OF RUSSIAN AGGRESSION IN UKRAINE

The escalation of Russian aggression on the territory of Ukraine during February 2022 offers an opportunity to think with scholars researching gender, international law, and war in real-time. The ongoing violence in Ukraine demonstrates the resistance of international legal structures to gender analysis, alongside the persistence of gendered violence as integrated and integral to war and armed conflict. As a site of ongoing violence and changing scenarios on the ground, where the brutal violence of armed conflict and gendered violence are occurring in Ukraine,²⁵ I draw on the available scholarship in English, from Ukrainian feminist scholars,²⁶ to demonstrate the utility of gender as a cross thread for analysing the law on the use of force. In her analysis of the Russian

24. Vasuki Nesiah, *The Ground Beneath Her Feet: "Third World" Feminisms*, 4 J. INT'L WOMEN'S STUD. 30, 37 (2003).

25. U.N. WOMEN AND CARE INT'L, RAPID GENDER ANALYSIS OF UKRAINE 1, 8-9 (2022), <https://www.unwomen.org/sites/default/files/2022-05/Rapid-Gender-Analysis-of-Ukraine-en.pdf> [<https://perma.cc/RA7U-TMRC>]; Míla O'Sullivan and Kateřina Krulišová, *Women, Peace and Security in Central Europe: In Between the Western Agenda and Russian Imperialism*, 99 INT'L AFF. 625, 640-42 (2003).

26. See generally Tsybalyuk, *supra* note 1; Darya Tsybalyuk, *Academia Must Recentre Embodied and Uncomfortable Knowledge*, 6 NAT. HUM. BEHAV. 758, 758 (2022); Kulick, *supra* note 17, at 194.

invasion and violence in Ukraine, Kulick writes of the interplay between the language of war, and in particular, the use of the language of rape in Putin's public statements immediately prior to the invasion in February 2022 and the acts conducted in the theatre of war, including sexual violence and attacks on civilian targets.²⁷ Kulick reflects:

It is our collective silence about gender-based violence and how rape culture presents itself in discussions of war and geopolitics that stood out to me as I sat down to write these reflections on the war in Ukraine. It was striking to me that we had a world leader talking about a neighbouring country as an abusive partner might talk about an ex, while analyses focused on "rational" causes of geopolitical conflict. When talking about Ukraine, Putin wanted to make sure everyone understood that the country belonged to him and that he could do with it what he pleased—and yet we focus on whether NATO (or, more precisely, the United States) erred in encouraging membership expansion eastward.²⁸

Kulick's analysis of gender as a persistent thread provides a deeply troubling account of the nexus between justifications for war and how they are lived by those who are targeted. Kulick notes how the violent, gendered language of statesmen—and women—stands in contrast to the failures to speak to and name the abhorrent violence unleashed on the Ukrainian community that she identifies as straddling the personal and communal in an embodied fashion.²⁹

Evidence on gendered harms in conflict, such as those that emerged from very early in the conflict,³⁰ when positioned alongside the gendered narratives of statesmen, such as Putin's quote in Kulick's article,³¹ seemingly take us away from the international laws on collective security. Alternatively, it is possible to exceptionalise Putin's language—and leadership—to imagine this is the rogue state, permitting NATO to be perceived as the "good" military alliance, supporting—saving—Ukraine in ways that are reminiscent of the language of humanitarian intervention. The difference here is that these additional moral and ethical agendas are not needed to legitimise Western and allied assistance to Ukraine, as Russia's aggression justifies Ukraine's right to individual and collective self-defence.³² Kulick exposes the relationship between ways in which wars are justified and the ways in which wars are fought, such that gendered knowledge and forms infiltrate legal thinking to avoid discussion of the reality of gender harms in war.³³ This becomes increasingly apparent when reports, such as the Cooperation for Assistance and Relief Everywhere

27. Kulick, *supra* note 17, at 192-95.

28. *Id.* at 192.

29. *Id.* at 193.

30. U.N. WOMEN AND CARE INT'L, *supra* note 25, at 36.

31. Kulick, *supra* note 17, at 191.

32. See James A. Green et al., *Russia's Attack on Ukraine and the Jus ad Bellum*, 9 J. ON USE FORCE & INT'L L. 4, 7-9 (2022).

33. Kulick, *supra* note 17, at 192.

(“CARE”) and UN Women co-authored rapid study of gender published early in 2022, illuminate the extensive and entrenched gendered consequences of the Russian invasion.³⁴ This can be contrasted with the mobilisation of support for Ukraine, for example, by NATO, which has been silent on its commitment to addressing gender insecurity as a component of the military agenda to support Ukraine.³⁵ Although NATO states have been at the forefront of developing the women, peace, and security agenda within the UN Security Council, including as a key component of the work NATO has undertaken in Ukraine prior to the 2022 Russian scaling up of its invasion, the military commitment to learning from the over two decades of feminist and institutional support to address gender insecurity wains at the moment of crisis. For Wright, the consequence is “a return to a narrative of NATO as a ‘muscular military power’, with far less attention paid to the human stories underpinning the war, particularly the voices of Ukrainian women and their agency, or a concern with how to reach beyond audiences primarily interested in military power.”³⁶ The nature of gendered insecurity in Ukraine illuminates the gap between state commitments, via National Action Plans on women, peace and security, in Security Council statements and resolutions, and within the agendas of alliances, including NATO, and the reality of armed conflict as relying on forms of gender that imbricate both the justifications for the use of force³⁷ and the methods and means through which armed conflict unfolds.³⁸

In the following section, I start with Nesiah’s directive regarding the need to question the structure of debates and engagement, turning to the writing of Ukrainian feminist scholars to read the meanings of war and the legacy of armed conflict on human and nonhuman actors—and their intergenerational relationships.³⁹ This interlocks and is influenced by Otto’s perception of queer feminist peace-making, which searches out how—and where—peace emerges and what it means to “read” laws on war and collective security through a queer lens.⁴⁰ Furthermore, I am influenced by Jones’ account of posthuman feminism to acknowledge changing discourses on subjectivity, moving beyond the state as the primary legal subject on the international plane, while displacing subjectivity

34. U.N. WOMEN AND CARE INT’L, *supra* note 25, at 14, 16, 37; *See also* Katherine A.M. Wright, *Where is Women, Peace and Security? NATO’s Response to the Russia–Ukraine War*, 5 EUR. J. POL. & GENDER 275, 276 (2022).

35. Wright, *supra* note 34, at 276.

36. *Id.*

37. Heathcote, *supra* note 13, at 56.

38. *See generally* Helen M. Kinsella, *Gendering Grotius: Sex and Sex Difference in the Laws of War*, 34 POL. THEORY 161 (2006).

39. Nesiah, *supra* note 24, at 31.

40. *See* Dianne Otto, *Rethinking ‘Peace’ in International Law and Politics from a Queer Feminist Perspective*, 126 FEM. REV. 19, 31 (2020).

from the fetishising of the human to know, remember, and see human-nonhuman relations.⁴¹

III. UKRAINIAN FEMINIST APPROACHES

“The process of reassembling an imperial body operates by rupturing established relations, including relations across multispecies environments, as well as erasing and/or extracting local knowledges of ecosystems.”⁴²

Feminist scholarship emerging from Ukraine identifies a number of gendered realities that shift a gender analysis significantly and anticipate a need from international lawyers to reflect differently on the resort to, and the deployment of, military force. In particular, Tsymbalyuk writes of embodied ecological harms that link the gendered violence of the invasion with the destruction of the environment.⁴³ Tsymbalyuk further links the destruction of the Ukrainian environment to the petrocapialist dependencies and extractivist mindset that underpin much of both the Western and Russian agendas for Ukraine.⁴⁴ Tsymbalyuk writes of mushroom foraging, mud, and livelihoods that are deeply integrated into the environment while also displaced and disconnected from these nonhuman encounters as a consequence of military choices:

When the military fighting finally stops, the land mines will remain. They will continue killing, injuring, and contaminating for years. Ukraine’s forests, steppes, and seas will continue to be places of heightened risk and potential death. Many oblasts have already prohibited the access to forests. If the war stops tomorrow, Ukraine will not be fully demined in one week or two, or not even in a year. What does this mean for people’s relations with environments? What does it mean for their perception of spaces around them? What does it mean for the lives of ecosystems?⁴⁵

Tsymbalyuk’s work significantly, and poignantly, challenges how legal accounts of war are organised—focused either on justifications and authorisations, in this case, Ukraine’s right to act in self-defence, or on the permissions and tests that form international humanitarian law (“IHL”)—to the detriment of those who must live with the violence and its aftereffects.⁴⁶ This aligns with contemporary queer feminist accounts of the need for a shift toward posthuman feminism, with Jones’ linking “international law’s exclusionary

41. See EMILY JONES, FEMINIST THEORY AND INTERNATIONAL LAW: POSTHUMAN PERSPECTIVES 131 (2023).

42. Tsymbalyuk, *supra* note 3.

43. *Id.* On the relationship between conflict and the environment, see generally ELIANA CUSATO, THE ECOLOGY OF WAR AND PEACE: MARGINALISING SLOW AND STRUCTURAL VIOLENCE IN INTERNATIONAL LAW 56 (2021).

44. Tsymbalyuk, *supra* note 3.

45. Tsymbalyuk, *supra* note 1.

46. See *id.*; Tsymbalyuk, *supra* note 3.

humanist and anthropocentric underpinnings.”⁴⁷ A gender analysis leads away from the legal preoccupation of what is permitted to question how the legal regime becomes complicit in the production and maintenance of the gender forms of war and their perpetuation.⁴⁸ This expands work on women’s experiences of war to investigate how gender functions as an assumed category of analysis, of belonging, and of ordering, infiltrating laws and war.

An important gender erasure is the silencing and limiting of feminist expertise during the deployment of force. The Women, Peace and Security (“WPS”) Agenda and resolutions, now numbering ten and infiltrating much of the Security Council’s work, are generally absent from resolutions and debates while a conflict is unfolding, to re-emerge once direct military hostilities subside and peace processes are formalised.⁴⁹ This erasure of women, peace, and security from state and institutional considerations is epitomised in NATO’s response and engagement in Ukraine since February 2022, as Wright notes, “the WPS agenda, its principles, and its aspirations have been noticeable by their absence from NATO’s and the West’s response to the war despite numerous policy commitments by NATO, its members and partners.”⁵⁰ The failure of NATO to effectively absorb the consequences of its women, peace, and security commitments into its response at the moment of crisis, underscores the thin nature of rhetoric on women, peace, and security that has been critiqued elsewhere.⁵¹ Here I want to illuminate the further erasure of the diversity of Ukrainian expertise that happens simultaneously, including—and importantly—Ukrainian feminist knowledge.

Ukrainian feminist knowledge becomes doubly feminised, first, as an adjunct to the WPS agenda and therefore potentially relevant to the post-conflict period but not to the use of force or action in self-defence and, second, as localised and particularised and consequently displaced from the assumed universal and global criteria that propel something into the remit of international law and its institutions.⁵² The erasure of local knowledge as expertise with respect to the unfolding and ongoing aggression in Ukraine maintains the status quo of international law, and its frames of law and war, as the only global response to the crisis. The women, peace, and security agenda is often consulted and incorporated at the end of hostilities, as a component of peacebuilding

47. See JONES, *supra* note 41, at 154.

48. See BERTOTTI ET AL., *supra* note 7, at 13-14.

49. Gina Heathcote, *Humanitarian Intervention and Gender Dynamics*, in OXFORD HANDBOOK ON GENDER AND CONFLICT, 201-02 (Fionnuala Ní Aoláin et al. eds., 2017) (ebook).

50. Wright, *supra* note 34, at 275.

51. See Katharine A.M. Wright & Annika Bergman Rosamond, *NATO’s Strategic Narratives: Angelina Jolie and the Alliance’s Celebrity and Visual Turn*, 47 REV. INT’L STUD. 443, 462-65 (2021).

52. See Annelise Riles, *The View from the International Plane: Perspective and Scale in the Architecture of Colonial International Law*, 6 L. & CRITIQUE 39, 40 (1995).

strategies, when the need for women's participation in peace processes tends to be acknowledged and strategies for addressing gendered violence, in particular conflict-related sexual violence, emerge.⁵³ As a consequence, during the period of actual military violence layers of erasure construct the women, peace, and security agenda as peripheral to military strategy and geopolitical agendas.⁵⁴ Accordingly, the forms of law, and war, constructed by international law continue to derive from narrow and incomplete understandings of violence, security, and subjectivity. Through drawing on Tsymbalyuk's writing of embodied ecologies and the forms of imperialism understood from within Ukrainian and Ukrainian feminist scholarship I present a single, poignant, re-reading of armed conflict, subjectivity, and international law: acknowledging its partial and plural possibilities.

I want to return to mushroom foraging to think with Tsymbalyuk on embodied ecologies. That is to rethink legal subjectivity in ways that acknowledge human-nonhuman relations as non-hierarchical, as dynamic, and as co-constitutive. The international lawyer might be forgiven for thinking mushroom foraging has little to do with contemporary debates on the use of force in Ukraine, which have focused on the legal nature of NATO's weapons and logistical support,⁵⁵ the implausibility of the Russian state justifications for its military force,⁵⁶ the possibility of judicial responses,⁵⁷ and the application of

53. BERTOTTI ET AL., *supra* note 7, at 18-19.

54. See generally *id.* (critiquing the characterization of sexual violence against women in conflict).

55. See, e.g., James A. Green, *The Provision of Weapons and Logistical Support to Ukraine and the Jus ad Bellum*, 10 J. ON USE FORCE & INT'L L. 3, 12-13 (2023); Christian Schaller, *When Aid or Assistance in the Use of Force Turns into an Indirect Use of Force*, 10 J. ON USE FORCE & INT'L L. 173, 196 (2023); Michael N. Schmitt & W. Casey Biggerstaff, *Aid and Assistance as a "Use of Force" Under the Jus ad Bellum*, 100 INT'L L. STUD. 186, 189-90 (2023); Michael N. Schmitt, *Providing Arms and Materiel to Ukraine: Neutrality, Co-Belligerency, and the Use of Force*, LIEBER INST. WEST POINT (March 7, 2022), <https://lieber.westpoint.edu/ukraine-neutrality-co-belligerency-use-of-force/> [<https://perma.cc/4SXD-KJFP>]; Kevin Jon Heller & Lena Trabucco, *The Legality of Weapons Transfers to Ukraine Under International Law*, 13 J. INT'L HUMANITARIAN LEGAL STUD. 251, 252-53 (2022).

56. See, e.g., Nico Krisch, *After Hegemony: The Law on the Use of Force and the Ukraine Crisis*, EJIL: TALK! (March 2, 2022), www.ejiltalk.org/after-hegemony-the-law-on-the-use-of-force-and-the-ukraine-crisis/ [<https://perma.cc/W8PS-NNEJ>]; Richard Gowan, *The UN Is Another Casualty of Russia's War: Why the Organization Might Never Bounce Back*, FOREIGN AFFS. (March 10, 2022), www.foreignaffairs.com/articles/west-africa/2022-03-10/un-another-casualty-russias-war [<https://perma.cc/68KT-RVZM>]; Ingrid Brunk & Monica Hakimi, *Russia, Ukraine, and the Future World Order*, 116 AM. J. INT'L L. 687, 688-89 (2022).

57. See, e.g., Kevin Jon Heller, *Options for Prosecuting Russian Aggression Against Ukraine: A Critical Analysis*, J. GENOCIDE RSCH. FORUM: RUSSIA'S WAR ON UKRAINE, July 6, 2022, at 8-10; Yudan Tan & Suhong Yang, *The Joint Investigation Team in Ukraine: An Opportunity for the International Criminal Court?*, 22 CHINESE J. INT'L L. 103, 106-16 (2023); Kai Ambros, *Ukraine and the Double Standards of the West*, 20 J. INT'L CRIM. JUST. 875, 877 (2022).

the international humanitarian law of armed conflict to specific attacks and military decisions.⁵⁸ The environment has emerged in a broader sense, with significant publicity given to attacks, such as that on the Nova Kakhovka Dam,⁵⁹ and the consequences of nuclear tensions.⁶⁰ Foraging for mushrooms seems, in some ways, hopelessly insignificant alongside the environmental consequences of the destruction of the dam or the risk of nuclear fallout. However, following Charlesworth, and thinking with Tysumbalyuk, a law that shifts from the narratives of crisis and, perhaps, to make sense of crisis, “an international law of everyday life would require a methodology to consider the perspectives of non-elite groups.”⁶¹ Charlesworth’s call here, for a methodology rather than simply inclusion of non-elite groups, asks how structural and discursive change must precede any attempts to shift beyond the ways in which crisis shapes responses to violence through international law.⁶² An account of embodied ecologies starts from the lived and visceral consequences of understanding human-nonhuman encounters and their displacement and destruction during armed conflict. Mushroom foraging provides an intergenerational, economic, and cultural space of knowledge that connects humans to the environment with knowledge of the geography and patterns of mycology that is more than a simple knowledge of where and how to forage.⁶³ Attained through family traditions and socio-cultural expectations of behaviour that are derived from the growth and sustaining of mushroom species, local mycology:

allows for a deeper understanding of ecosystems as well as of the different beings and elements that constitute them. For many people in Ukraine, the war took away the possibility to engage with the woods and other ecosystems through mushroom picking and other practices, therefore dramatically changing their relations to environments. The war has also displaced and fragmented families from every corner of Ukraine, disrupting networks that would allow people to pass on knowledge about forests, mushroom picking, and foraging further. While the war continues, and even after it is over, these networks and the knowledge they pass on will never be fully restored.⁶⁴

58. See, e.g., David Sloss & Laura A. Dickinson, *The Russia-Ukraine War and the Seeds of a New Liberal Plurilateral Order*, 116 AM. J. INT’L L. 798, 802 (2022); Tempa Dorji, *Critical Analysis of IHL in Present Times: Russia and Ukraine War*, 5 INDIAN J. L. & LEGAL RSCH. 1679, 1680 (2023).

59. See Stavros Evdokimos Pantazopoulos, *Reflections on the Destruction of the Nova Kakhovka Dam from an International Law Perspective*, HELLENIC FOUND. FOR EUR. & FOREIGN POL’Y, June 2023.

60. Erika Weinthal and Carl Bruch, *Protecting Nuclear Power Plants During War: Implications from Ukraine*, 53 ENV’T L. REP. 10285, 10286 (June 6, 2023).

61. Charlesworth, *supra* note 18, at 391.

62. *Id.*

63. See Tysumbalyuk, *supra* note 1.

64. *Id.*

Tsyumbalyuk further links the local, regional, and international acknowledgment of the relationship between environmental displacement, military destruction, and climate change,⁶⁵ and the larger petrocapiatist agendas that reproduce military-techno relations with capital while displacing human relations with the nonhuman in cascading, violent, and intergenerational ways.⁶⁶ The linking of military consumption of fossil fuels, the cavalier destruction of environments—micro and macro—via armed conflict, and the failure to see human-nonhuman relations as vital to all species provides an urgent global agenda for change that addresses security in important and distinctive ways. Current international legal understandings of the relationship between armed conflict and the environment are stalled in finding a way to voice and recognise ecocide, fixating on large (crisis) moments and ignoring the small, quotidian acts of violence that produce the conditions for these larger acts to occur with little censure.⁶⁷ Tsyumbalyuk writes of “military-geological entanglements” to identify and challenge “the continuing role that fossil-fuel extraction plays in imperial forms of violence everywhere.”⁶⁸ A study of embodied ecologies thus provides a mechanism to draw links between scales of violence and the lived experiences of the harm.

Reading Tsyumbalyuk’s work as expertise on approaching armed conflict, law, and war requires several steps that will be anathema to an international lawyer: disciplinary switching, re-wiring expectations on where knowledge is found and who is an expert, and speaking of mushrooms and regional histories that are unfamiliar. It is, in many ways, easier to return to the crisis lens, to acknowledge the violation of Article 2(4) of the UN Charter, the silence of the UN Security Council under the geopolitical reality of the veto, and to hold on to women, peace, and security as grounds for future action, whether including some women in peace processes or prosecuting gender-based violence after the military hostilities conclude. It might also be possible to think differently, to ask questions about the relationship between local displacement, local knowledge forms, and human-nonhuman relations as important frames of war that can re-orientate global laws. An embodied ecology thinks with multispecies survival that traverses spaces of violence and destruction while challenging the petrocapiatist agendas of states with significant military arsenals.

The final component of Tsyumbalyuk’s thinking addresses her framing of ongoing Russian military violence in Ukraine, to explain how “the longer history of the region reflects the temporal depth of this violence.”⁶⁹ In focusing on the Donbas oblast, Tsyumbalyuk describes the extractivist histories, such that: “The

65. Darya Tsyumbalyuk, *Kakhovska Dam Destruction is Part of the Climate Emergency*, OPEN DEMOCRACY (June 12, 2023), <https://www.opendemocracy.net/en/odr/ukraine-russia-kakhovska-dam-destruction-ecocide-environment/> [<https://perma.cc/K4YK-MUJC>].

66. Tsyumbalyuk, *supra* note 3.

67. Gillett, *supra* note 5, at 3-5.

68. Tsyumbalyuk, *supra* note 3.

69. *Id.*

name itself, Donbas, which stands for Donetsk Coal Basin, reflects the colonial logic of perceiving the region only as a resource, forged as a coal—and steel—producing industrial site. Extractivism turns human and nonhuman subjectivities into resources for fueling imperial desires.”⁷⁰

The frames of war for Ukrainian peoples are situated not in the immediacy of an Article 51 narrative of self-defence, despite the compounding violence since 2022, or the occupation and expansion of Russia into the Crimea since 2014, but rather a longer existential struggle against attempts at cultural, social, and economic assimilation: a struggle against the imperialist desires of Russia across the region. Framed in this way, the international legal responses become fragmented and unclear, potentially acknowledging and asserting the right to self-determination and, yet, in terms of the use of force and its relation to self-determination, hiding behind the mantra of statehood and the doctrine of *uti posseditis*.⁷¹ Legal analysis of self-determination and secession has focused on the Crimea, the Donetsk and Luhansk oblasts and Russia’s attempt to control the territories via arguments for remedial secession, rather than Ukraine’s longer history of resistance.⁷² Ukraine’s right to self-determination was already, supposedly, achieved at the time of the breakup of the Soviet Union.⁷³ To read with Ukrainian scholars, such as Tsybalyuk, that this is part of that same struggle, to reject foreign domination, changes the legal narrative and exposes the limitations of an international legal system that positions expert knowledge elsewhere.

70. *Id.*

71. See Agnieszka Szpak, *Ukraine: Remedial Secession and Russian Aggression*, 31 J. CONTEMP. EUR. STUD. 1012, 1017 (2023).

72. See generally Green et al., *supra* note 32, at 18. On Ukraine’s resistance and “de-occupation,” see Adriana Petryna, *De-Occupation as Planetary Politics*, 50 AM. ETHNOLOGIST 1, 3, 11, 15, 16 (2023). On Russia’s attempts to articulate a right to remedial secession, see Andrea Maria Pelliconi, *Self-Determination as Faux Remedial Secession in Russia’s Annexation Policies: When the Devil Wears Justice*, VÖLKERRECHTSBLOG (Jan. 1. 2023), <https://voelkerrechtsblog.org/self-determination-as-faux-remedial-secession-in-russias-annexation-pol> [https://perma.cc/6YGM-HXFU].

73. See Umut Özsu, *Ukraine, International Law, and the Political Economy of Self-Determination*, 16 GERMAN L. J. 434-51 (2015).

CONCLUSION

The current Russian aggression poses serious threats to the biocultural diversity of Ukraine . . . attacking its identity expressed through local ecological practices, for three main reasons. First, it disconnects Ukrainians from their home food, landscapes as a result of both the inability to move freely and massive, forced emigration. Second, it separates family members, preventing local knowledge transmission. Third, it is likely to prevent people from observing traditional rituals in terms of food production, moving to essential, energy-rich, and available food products, no matter their origin.⁷⁴

Mycology and the use of force are not so often the focus of a single academic inquiry. Mushrooms emerge elsewhere in discussions of nuclear fallout,⁷⁵ but are otherwise a long way from analysis of the use of force, collective security, and self-defence under international law. In this article, I have explored several feminist approaches in relation to the Russian aggression in Ukraine since 2014 and with greater intensity and reach since 2022. Ukrainian feminist Tsymbalyuk's account of mushroom foraging is indicative of how the everyday practices and livelihoods are destroyed by military aggression. Tsymbalyuk provides a visible and tangible record of how ecologies are embodied and reproduced in human and nonhuman encounters across generations and geographies. The mushrooms foraged in Ukraine, the mushrooms destroyed during military encounters, and the mushrooms growing beside land mines provide a poignant entry point to shift both feminist and international legal accounts of armed conflict. Ecologies of harm are not distinct from the harms that humans, buildings, and animals experience, each is intertwined and produces the multiscale spaces of violence that, I have argued, require attention to shift beyond the status quo of international law and legal relations.

The Russian aggression is seemingly uncomplicated from an international legal perspective.⁷⁶ As Green et al., conclude:

a lawful justification for Russia's military invasion of—or “special military operation” in—Ukraine does not exist; the various claims advanced by Russia not only all fail, but most of them fail on *multiple grounds*. The invasion of Ukraine constitutes an unlawful use of force, an act of aggression and an egregious violation of a rule of *jus cogens*.⁷⁷

74. Nataliya Stryamets et al., *One More Way to Support Ukraine: Celebrating its Endangered Biocultural Diversity*, 23 ETHNOBOTANY RSCH. & APPLICATIONS 1, 2 (2022).

75. Michal Smetana & Michal Onderco, *From Moscow with a Mushroom Cloud? Russian Public Attitudes to the Use of Nuclear Weapons in a Conflict with NATO*, 67 J. CONFLICT RESOL. 183, 186 (2023).

76. See Green et al., *supra* note 32, at 5-6.

77. *Id.* at 30.

The practice of the Security Council, and its design under the UN Charter, requires all five permanent members of the Security Council to create a binding resolution,⁷⁸ meaning that despite the illegality of Russia's aggression there is, and will be, no Security Council condemnation of the ongoing military destruction. The reality of nuclear capacities means that direct support by way of collective self-defence from NATO allies for Ukraine is also not possible, as Green writes "the risks of escalation inherent in NATO *et al* taking such steps are vast."⁷⁹ A feminist analysis of the ongoing aggression asks different questions, tracing alternative temporalities and harms, while naming the imperial and petrocapiatist agendas that speak beneath and through the crisis, and well before. Integral to a feminist approach to the use of force and collective security is a theory of embodiment that might start with the gendered body and its multiple deployments during armed conflict—in gendered justifications and geopolitical provocations, in the bodies of soldiers sent to protect, or expand, the nation, in the gendered violence inflicted upon civilian communities—but which expands to see the embodied ecologies of war, where human and nonhuman relations are as myriad as they are intertwined.

The constraints of international institutions in relation to the use of force, legality, and legitimacy are illuminated in important and unique ways when a feminist analysis of collective security, self-defence, and the war in Ukraine is deployed. This feminist analysis requires attention to international legal approaches and Ukrainian feminist approaches, thinking through tensions and potentialities.⁸⁰ While it is clear that the use of force by Russia in Ukraine since 2014, and with significant intensity since February 2022, violates Article 2(4) and the United Nations Charter and that there is little dispute over the illegality of Russia's military advances on Ukraine's territory, the incapacity of international legal institutions to respond compels alternative sites of knowledge as possibilities for rethinking security through subjectivities understood through embodied ecologies, that address the legacy—and ongoing realities—of imperialist mindsets and their regional repercussions, and the erasure of local voices as sites of expertise and knowing.⁸¹ While the international law on the use of force attends to the decisions, justifications, and authorisation of military force, knowing security through the expertise of those who carry the histories of

78. U.N. Charter art. 27, ¶ 3.

79. Green, *supra* note 55, at 4.

80. See O'Sullivan, *The Forgotten Lives*, *supra* note 3, at 8-9; Wright, *supra* note 8, at 1, 3; Yarosh, *supra* note 3, at 33; O'Sullivan, *Being Strong Enough to Defend Yourself*, *supra* note 3, at 747.

81. See generally ANNA LOWENHAUPT TSING, *THE MUSHROOM AT THE END OF THE WORLD: ON THE POSSIBILITY OF LIFE IN CAPITALIST RUINS* (2021).

aggression and resistance in their communities, in their bodies, and through displacement, offers an embodied ecology of security that opens to address a myriad of harms. This resonates with Otto's approach to peace as a queer feminist project that acknowledges:

peace is the recognition of just how political the personal is and how crucial grassroots archives of peace are to resisting the claims to truth of militaristic and evolutionary stories of peace. We need to challenge the politics of inevitability by telling other stories of peace, of transformational peace that is not merely lack of war but a celebration of life—of all life—both human and non-human.⁸²

82. Otto, *supra* note 40, at 34.

