



Crimea Responsibility to Protect and Self-Determination Under Article 2 of the UN Charter

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Abstract

The annexation of the Crimean Peninsula has sparked the debate on state sovereignty in the context of international law. This research aims to establish the legal consequences of Russia's annexation and the global communities' measures. The study also discusses Kosovo's independence and whether it can be used to solve the crisis in Crimea. International law has outlined some of the rules that are meant to govern the relationship between states. Russia is a signatory to the Budapest Memorandum on Security Assurances alongside other countries such as the United States, Ukraine, and the United Kingdom. The memorandum had all the signatories strive to uphold the territorial integrity of Ukraine, including Crimea. The Russian constitution stipulates that any acquisition of new federal subjects must be made with the consent of the affected state. The annexation of the Crimean Peninsula appears clearly to contravene these provisions.

Keywords: Annexation of the Crimea, Responsibility to protect, Tatars, Kosovo, Budapest Memorandum, Article 2 of the UN Charter

1. Responsibility to Protect and Self Determination

Turning to the existing international legal framework on the responsibility to protect, we begin by acknowledging that sovereignty is the cornerstone of the state system. Underpinning the nation-state's sovereignty is the recognition of each state's 'territorial integrity' and 'political independence.' This recognition is made explicit in Article 2(4) of the UN Charter:

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

Yet emerging from this sovereignty is the state's duty of care to its citizens or its responsibility to protect them. The 2001 International Commission on Intervention and State Sovereignty Report first delineated the commitment to protect. According to the report, the concept comprises two primary principles. The first concerns the responsibility that rests with the sovereign state itself:

State sovereignty implies responsibility, and the primary responsibility for protecting its people lies with the state itself.

The second addresses the responsibility of the international community:

Where a population is suffering serious harm as a result of internal war, insurgency, repression, or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect.

The UN makes a further distinction in the 2009 Report of the Secretary-General entitled *Implementing the Responsibility to Protect*. A three-pillar approach to the principle is adopted in the document.

- Pillar one: ‘the enduring responsibility of the state to protect its populations, whether nationals or not, from genocide, war crimes, ethnic cleansing and crimes against humanity, and their incitement.’
- Pillar two: ‘the commitment of the international community to assist States in meeting those obligations.’
- Pillar three: ‘the responsibility of Member States to respond collectively in a timely and decisive manner when a State is manifestly failing to provide such protection.’

According to the International Commission on Intervention and State Sovereignty (ICISS), arguments justifying military intervention to protect civilian populations have been historically controversial. Indeed, the ‘right of humanitarian intervention’ concept has been an intractable issue within international law and international relations theory, with disputes arising over whether such a right even exists and, if it does, ‘when it should be exercised, and under whose authority (Averre and Davies, 2015).’

2. International Human Rights Law and Criminal Law

Russia claims that its violation of the territorial integrity of Ukraine was justified on the grounds of a responsibility to protect. We must, therefore, assess whether such a justification is valid in regards to both 1) whether a unilateral violation of territorial integrity is lawful on such grounds, and 2) if it is, whether the actions taken by the government of Ukraine before the invasion constituted ‘genocide, war crimes, ethnic cleansing [or] crimes against humanity.’ Three aspects of contemporary international law are pertinent to our discussion: laws concerning the waging of war (*jus ad bellum*), laws concerning belligerent conduct in war (*jus in bello*), and laws concerning crimes against humanity. If Russia’s justification is without merit, they may well stand in violation of existing laws concerning war crimes and crimes against peace. It is, therefore, necessary to delineate the existing legal framework provided by international criminal law and international human rights law about war-making.

Contemporary norms underpinning the canons of international human rights law and international criminal law as they pertain to *jus bellum iustum* have been significantly influenced by the Nuremberg Principles. These principles emerged from the devastation and human catastrophe of the Second World War. Indeed, the post-war period has been defined by a concerted effort within international law to enshrine the value of human dignity in charters and treaties and protect the individual’s rights from state violence. In their totality, the Nuremberg Principles concern both the waging of war and the conduct of belligerents once engaged in it. That is to say that they provide a framework for understanding the legal demands of *jus ad bellum* and *jus in bello*, as per the definitions provided for crimes against peace and war crimes, respectively. A crime against peace is defined in Principle VI (a) as:

Planning, preparation, initiation, or waging of a war of aggression or a war violating international treaties, agreements, or assurances[.]

In an international legal system built upon the notion of state sovereignty, the prohibition of crimes against peace represents a pillar of international law and a bulwark against assaults on the principle of non-intervention. Yet, as previously discussed, legal justifications exist for yielding this principle. First and foremost, there is a defensive argument where intervention is permissible to protect the sovereignty and security of a besieged state, thus transmuting the aggressive nature of the war. Traditionally, the orthodoxy of war held that the ‘principal just causes for war’ was ‘national self-defense against wrongful aggression.’ McMahan observes a moral equivalence between the justification of self-defense, widely understood and accepted as it pertains to the individual, and the same rationale for self-defense as it pertains to nation-states. The asymmetrical application of power is central to both cases, where a ‘wrongful aggressor’ plagues an ‘innocent victim.’ These arguments are part of a justification framework for the right to self-defense. Evans and Sahnoun (2002) acknowledge that such arguments were central in the debates surrounding intervention in Iraq and Afghanistan.

While a pillar of international law, the principle of non-intervention has to be weighed against arguments concerning the international community’s responsibility to protect people facing persecution by their governments. Thus, defensive rationales are not the sole justifications for military intervention. Instead, a legal case can be made for intervention on humanitarian grounds. The notion of state sovereignty has been truncated in recent decades by ‘the development of international human rights law,’ which has sought to mediate the historically fraught relationship between the state and the citizen. As such, the degree to which states have an ‘absolute and unqualified’ right to territorial integrity has become increasingly scrutinized, with contemporary orthodoxy characterized by a distinct opacity. The Russian defense for their actions in Crimea emerges in the legal interest created by this tension. Evans and Sahnoun (2002) define humanitarian intervention as ‘coercive action against a state to protect people within its borders from suffering grave harm.’ Yet such is the nature of international law, and so precarious is the balance between ‘the universal human rights of individuals’ and the ‘particularist, conditional, sovereign rights of states’ that, according to Hurd:

[T]he practice of humanitarian intervention exists between legality and illegality, where each practice instance can be plausibly seen as either compliance or noncompliance with international law.

As discussed in the preceding chapter, the responsibility to protect carries with it an obligation to first engage with the state unable to offer protection to its people, assisting in mitigating the threat of further violence and the risk of military intervention. Indeed, the principle does not limit the international community to military intervention alone but instead provides the latitude for a range of coercive measures to reduce the risk to civilian populations and to ‘maintain or restore international peace and security.’ This range of measures is delineated in Chapter VII, Article 41 of the UN Charter:

These may include complete or partial interruption of economic relations and rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

Botte (2015) acknowledges that referral to the International Criminal Court (ICC) is another coercive measure available to the international community.

Central to the ICISS’s aims in delineating the responsibility to protect principle was to move understandings of humanitarian intervention away from an overly coercive model, where concern for intervening states – ‘[their] perspectives, preferences, and priorities’ – was central.

Rather, they seek a ‘victim and people-centered approach.’ Their report stresses that military intervention is justified only in ‘extreme cases’ of humanitarian need. Instead, states should seek to prevent human catastrophes before they manifest, recognizing that violence is a coercive recourse only justified after all plausible non-violent alternatives have been exhausted. This threshold is referred to as the just cause principle and demands that military intervention is only warranted in the case of a ‘large scale loss of life’ or ‘large scale ethnic cleansing.’ The logic underpinning this principle is further developed by the report’s four additional precautionary principles: A) right intention, B) last resort, C) proportional means, and D) reasonable prospects. The first two of these precautionary principles are of concern to our discussion. Right intention demands that the curtailing of ‘human suffering’ be the ‘primary purpose of... intervention’. It recognizes that multilateral cooperation, ‘clearly supported by regional opinion,’ is the best way of guaranteeing this. The last resort demands that ‘every non-military option for the prevention or peaceful resolution of the crisis’ has been exhausted before military operations commence. Additionally, the principle of proper authority demands that:

[United Nations] Security Council authorization should be sought before any military intervention action.

Thus, central to the issue is whether or not Russia sought sufficient international and regional support for its actions and whether the crimes it alleged the Ukrainian government had committed were of a nature and scale that would justify military intervention (Wilson, 2009). The crimes delineated in Pillar One of the UN’s report on Implementing the Responsibility to Protect, whose manifestation provides the legal basis for humanitarian intervention, are called ‘core international crimes.’ These crimes, according to the report, are ‘genocide, war crimes, ethnic cleansing and crimes against humanity,’ the commission of which is ‘condemned in all societies,’ is beyond the scope of justification and, ultimately, demands consequences. Special Rapporteur to the UN, Doudou Thiam, argued that these core international crimes – due to their undermining of both the ‘fundamental interests of humanity’ and the ‘principles of civilization’ – were the only crimes that would permit a broad international consensus on their prohibition.

According to Article 7(1) of the Rome Statute of the International Criminal Court, crimes against humanity refer to a set of actions taken by a state;

Committed as part of a widespread or systematic attack directed against any civilian population with knowledge of the attack.

Renzo (2012) observes that the specification that actions are ‘widespread or systematic’ and that they are not incidental constitutes the contextual element of crimes against humanity. He stresses that, as such, crimes against humanity have a ‘collective dimension.’ (Renzo 2012) demarcates several features of these crimes that are pertinent to our discussion here; namely, that they ‘concern the international community’ and, thus, justify ‘international intervention,’ and that they are a product of policy, ‘committed, instigated, or at least tolerated, by a state.’ The deliberate and systematic nature of crimes against humanity dramatically contributes to their odiousness. Citing the work of Luban and Vernon, Renzo (2012) acknowledges that such crimes constitute a perversion of politics. This perversion stems from a failure to recognize and uphold those responsibilities central to state sovereignty.

This is distinct from the definition provided for war crimes by Principle VI (b) of the Nuremberg Principles:

Violations of the laws or customs of war, which include, but are not limited to, murder, ill-treatment or deportation to slave labor or for any other purpose of the civilian population of or in occupied territory, murder or ill-treatment of prisoners of war, of persons

on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity.

Article 8(2) of the Rome Statute of the International Criminal Court proffers a similar definition and list of behaviors for war crimes. The definition explicitly distinguishes violations of the Geneva Convention of 1949 as constituting such crimes. Of most significance to the discussion of Russian action in Ukraine is section 2(a)[iv] of the article, which declares war crimes include:

Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

The responsibility to protect implicitly recognizes that the asymmetrical application of power – which McMahan observed as characterizing cross-border wars of aggression – is possible within a state's borders and seeks to fashion an international legal response to wrongful aggression in a domestic setting. Evans (2008) notes that the consensus achieved on the responsibility to protect is a triumph of international law but one whose essential fragility makes it susceptible to the actions of great powers. He argues that ‘every misapplication of the [responsibility to protect] – genuine or cynical – is an occasion for alarm.’ It is, therefore, necessary to explore the Russian claim that their military intervention in Ukraine was justified on the grounds of this principle and to assess the validity of this claim concerning the existing international legal regime (Kurowska, 2014).

3. Crimea and The Responsibility to Protect

In light of the customs of international law delineated in the previous chapters, one can deduce that for Russia's claim to be valid, there must be evidence of particular actions being taken by both the Ukrainian and Russian governments in the time immediately preceding the annexation of Crimea (Kurowska, 2014). Firstly, the Ukrainian government must have violated the ICISS and UN agreements by failing to provide for its citizens' security adequately. Yet this failure must manifest in particular actions, all extreme by their very nature. According to the ICISS, a population must suffer serious harm for an international intervention to be justified. The UN further clarifies this point by guiding what can be understood as severe harm, namely, ‘genocide, war crimes, ethnic cleansing and crimes against humanity.’ Thus, the justification of Russian military intervention to protect the citizens of a foreign state could only be legally valid under the principle of the responsibility to watch if there is evidence of a large-scale humanitarian crisis being orchestrated by the Ukrainian government (McDougal 2015). The accusation alone, implicit in Russia's actions that Ukraine was guilty of such crimes, is a profound attack on the legitimacy of the Ukrainian government and, if without merit, constitutes an affront to the sovereignty of the state. However, as the intervening state, Russia also has legal responsibilities it must fulfill (Kurowska, 2014). Namely, it must exhaust all plausible non-military solutions to the crisis. Evidence of a concerted diplomatic effort by Russia, both regionally and within the UNSC, is required for their justification for military intervention to be valid. This chapter examines both points regarding the actions taken and the claims made by both parties. Underlying this examination will be an overview of the historical context in which these events occurred.

Russia asserts that the responsibility to protect ethnic Russians living in Eastern Ukraine and Crimea provided sufficient justification for them to undermine the territorial integrity of Ukraine (Marxsen, 2014). Thus, the element of aggression central to crimes against peace was absent. However, the international protocols on the responsibility to protect stress the collective

element necessary in legitimizing intervention in countries where the state has failed to safeguard the security and well-being of its citizens. For Russia's claim to be valid, there would need to be evidence of the following:

1. A systematic policy of 'genocide, war crimes, ethnic cleansing and crimes against humanity' adopted and implemented by the Ukrainian government in Crimea.
2. The Russian government is attempting to address the crisis through existing diplomatic protocols.
3. The construction of regional alliances in support of their legal position.
4. The gaining of UNSC approval for intervention.

For the secession and subsequent annexation of Crimea to be legal, the Crimean population must prove they constitute a people. In addition, there must be evidence of internal secession efforts exercised through the appropriate mechanisms within domestic Ukrainian law. For claims of remedial secession to be valid, similar to the burden on Russia's responsibility to protect the claim, evidence of a systematic campaign of crimes against humanity would have to exist.

Regarding the presence of violence in Crimea before Russian intervention, the period between February 22nd, 2014 (the formation of the new Ukrainian government) and February 26th (the day before the first reports of Russian intervention) is of particular interest. If the new revolutionary Ukrainian government adopted any systematic policy of genocide or ethnic cleansing, one would expect to see a sharp rise in conflict deaths recorded in the country (Kuzio, 2012). Yet, according to the Uppsala Conflict Data Program (UCDP), there were no conflicts or deaths in the country during this period. While the revolutionary period before February 22nd had witnessed an estimated 88 deaths, most of the violence associated with the conflict occurred after Russian forces began their offensive. Furthermore, rhetoric emanating from the Ukrainian government and legislation being debated in the Ukrainian parliament (Verkhovna Rada) does not suggest a systematic policy of genocide, forced displacement, mass incarceration, or mass sterilization of civilian populations, or any other of the constituent crimes one would expect to find when dealing with crimes against humanity. Indeed, it would appear that the only threat the new Ukrainian government posed to the Crimean people was the introduction of a bill in the Verkhovna Rada, which sought to repeal the existing law on state language policy and institute Ukrainian as the sole state language in the country (Morello and Constable, 2014). Yet any fears that the role of the Russian language would be debased or threatened by this bill were largely unfounded, as Russian is explicitly recognized in Article 10 of the Ukrainian Constitution:

In Ukraine, the free development, use, and protection of Russian and other languages of Ukrainian national minorities is guaranteed.

Moving on to Russia's diplomatic efforts, we are confronted by a distinct lack of action to resolve the dispute through non-violent means. Despite a plethora of appeals emanating from Moscow regarding the alleged closeness of the two countries, existing bilateral arrangements – such as the 1997 Treaty of Friendship, Cooperation, and Partnership and the 1997 Agreement on the Status and Conditions of the Russian Federation Black Sea Fleet's Stay on Ukrainian Territory – were not utilized as a mechanism through which to resolve the dispute. However, Russia could legitimately argue that the revolution that had taken place in Ukraine voided any existing treaties now that a new state had emerged in Kyiv (Snyder, 2014). Russia also appears to have neglected its responsibilities as per existing multilateral agreements. Issaeva, reviewing a 2015 conference on the international legal implications of the Crimean case, lists the following multilateral contracts pertinent to the Russia-Ukraine situation through which peaceful resolution could have been pursued:

- United Nations Charter (1945)
- Final Act of the Conference on Security and Cooperation in Europe (1975)
- Protocol to the Commonwealth Pact (1991)
- Memorandum on Security Assurances (1994)
- United National Friendly Relations Declaration (1970)
- United Nations Definition of Aggression (1974)

In their totality, Russia's diplomatic efforts were scant to the point of non-existence. When diplomacy was pursued – such as during the discussions that led to the Minsk protocol and later to Minsk II – Crimea had already been annexed. Regarding the construction of regional alliances or broader international coalitions, Russia's lack of effort suggests a distinct commitment to unilateral action. This means a strategic rather than humanitarian rationale underpinning the invasion and subsequent annexation.

On March 18th, 2014, the Russian Federation annexed Crimea. This event followed a referendum held in Crimea two days prior, where 96.77% of voters (of an estimated 83.1% of the electorate) voted for independence from Ukraine and to become a federal subject of Russia (Marxsen, 2014). According to a speech Russian President Vladimir Putin delivered in the Kremlin on the same day as the annexation, the referendum was 'in full compliance with democratic procedures and international norms.' Yet this contentious point ultimately depends upon one's interpretation of international and domestic Ukrainian law (Kuzio, 2012). What is less controversial is that Russia's actions in Crimea – and Eastern Ukraine more broadly – have deftly exploited tensions long existent within the international legal order. Burke-White (2014) recognizes how using force was justified to protect Crimea's right to self-determination. In the absence of gross violations of international humanitarian law, it would seem that Russia's invocation of the responsibility to protect was aimed at securing the right to self-determination through secession for the Crimean people, or more specifically, for Russians living in Crimea (Morello and Constable, 2014). Driest recognizes that implicit in the Russian government's argument is that the right of self-determination carries with it a secondary right of independence, which finds realization in the act of unilateral secession. Secession is defined as:

The action of breaking away or formally withdrawing from an alliance, a federation, a political or religious organization, etc.

Or, more specifically:

The formal withdrawal from an established, internationally recognized state by a constituent unit to create a new sovereign state.

Yet, Issaeva (2015) notes that employing military force in the Crimean peninsula may extinguish any lawful claim that the Crimean people had to exercise such a right. Furthermore, the application of military force across borders to secure a regional referendum is a violation of international law. As such, the international community widely dismissed the validity of the Crimean referendum. The UN General Assembly recognized that the referendum was an unlawful assault on the territorial integrity of the sovereign state of Ukraine. Laurinavičiūtė and Biekša (2015) observe that both 'self-determination and secession constitute the core issue of international public law.' Therefore, Reflecting upon the legal basis for unilateral secession concerning international law and domestic Ukrainian law is necessary.

According to Shany (2014), the classical orthodoxy in international law has held that 'unilateral secession of subnational entities' is forbidden because the 'internationally recognized borders of existing states' are inviolable. Despite the rhetoric of self-determination, which alludes to universal rights owing to all people in the abstract, there is scant historical evidence of a people exercising such a right outside of particular political contexts. Ultimately, protecting the right

to self-determination of a group not recognized as a people under any conception within contemporary international law would not provide the legal justification for applying military force. This conclusion is further reinforced when one considers that the group in question enjoys a considerable degree of political autonomy and has not exhausted the means to achieve internal secession through the constitutional mechanisms available within Ukrainian law.

The case of Kosovan independence was central to the claims made by both Crimean separatists and the Russian government. Specifically, the advisory opinion expressed by the UN and the ICJ that ‘unilateral declarations of independence do not violate international law’ was held up as justification for the behavior in both the original declaration of independence made by the Crimean government and in subsequent public utterances by the Russian president. However, this position represents a change from the arguments advanced by the Russian government in the past. Issaeva (2015) points to the prior legal position taken by the Russian government on issues of self-determination and territorial integrity, explicitly referring to their ‘written and oral pleadings in the Kosovo proceedings at the International Court of Justice’ (2009). Citing the work of Chris Borgen, Issaeva (2015) notes that the position Russia adopted – that the term will of the people referred to the broad national will rather than a specific regional will – contradicted the position it sought to assume regarding Crimea. Indeed, if Russia’s logic in the case of Kosovo were applied in Crimea, the independence referendum would have required a nationwide vote for Crimea to secede. More revealing still, if Russian law had been applied to the situation, Crimea would have been unable to secede unilaterally (Ziegler, 2016). Any claim to remedial secession – that a right to self-determination owed due to gross human rights violations – seems to collapse for the same reason the initial responsibility to protect the claim collapsed; no gross human rights violations, as they are generally understood, were evident.

One must ultimately disagree with Burke-White’s assertion that Russia’s aggression in Crimea is ‘the first time’ since the end of the Cold War that the country has ‘[asserted] itself as a renewed hub for a particular interpretation of international law.’ Following the conflict in Georgia, Russia also applied justifications grounded in the language of remedial secession when recognizing the self-proclaimed republics of South Ossetia and Abkhazia. Thus, while Russia may be challenging the existing order and America’s centrality, the entire operation in Eastern Ukraine appears to be part of a much larger regional strategy where Moscow exploits tensions within that system for political advantage (Hilpold, 2015). Offering protection to ethnic Russians in Eastern Ukraine was not the first instance of the Russian government employing the responsibility to protect as a justification for controversial foreign policy. In 2008, Russia’s justification for aggression in Georgia centered on its commitment to protect ethnic Russians living in South Ossetia. At the time of this conflict, President Medvedev, Prime Minister Putin, and Ambassador Churkin accused the Georgian government of genocide (Saivetz, 2012). Thus, we see evidence of a new precedent emerging in humanitarian law, which Russia will hope becomes the prevailing consensus, where one state can violate the territorial integrity of another to secure a supposed right of secession for a group of ethnic nationalists. However, in his review of Russia’s invocation of the responsibility to protect rationale in Georgia, Evans (2008) notes that the principle in law doesn’t provide the latitude for a state to ‘protect its nationals located outside its borders.’ Skepticism is only compounded when one country ‘confers its citizenship on a large number of people outside its borders, and then claims that it is entitled to intervene coercively to protect them.’

3.1. Ethical and Moral Implications and the Potential Long-Term Consequences of the Annexation

The annexation of Crimea by Russia was a clear violation of international law that carries significant ethical and moral implications. By forcibly invading and occupying the Crimean peninsula, Russia unilaterally redrew international borders and undercut the sovereignty of its neighbor Ukraine (Hilpold, 2015). This sets a dangerous precedent that could incentivize other countries to pursue territorial gains through force rather than diplomacy and respect for the rule of law.

From an ethics and morality standpoint, Russia's actions displayed a blatant disregard for human rights, self-determination, and international norms. The sham referendum held in Crimea under military occupation was neither free nor fair and cannot be considered an expression of the will of the Crimean people (Morello and Constable, 2014). Russia also justified its intervention by falsely claiming a need to protect ethnic Russians from persecution when, in reality, no such human rights crisis existed before the invasion. Basic principles of human rights and self-determination were violated.

The potential long-term consequences of Russia's annexation are severe. This act has destabilized European security by showing that national borders can be re-drawn through force rather than negotiation (Headley, 2012). It risks provoking armed conflict with Ukraine or other neighbors who fear Russia's territorial ambitions. Countries may respond by boosting military spending and aligning more closely with hostile blocs, heightening tensions between Russia and NATO. Baranovsky and Mateiko (2016). Economically, this crisis has led to sanctions and counter-sanctions that harm Russian and European economies.

Additionally, Russia's actions have severely damaged its international standing and relationships with Western democracies. As a permanent UN Security Council member, Russia is supposed to be invested in upholding international law and norms. However, the annexation shows a willingness to violate principles of sovereignty and non-aggression when it suits Russian interests.

4. Russia, Human Rights and War Crimes

The necessary preconditions for the legal exercise of the responsibility to protect were lacking in the case of Russia's annexation of Crimea, as were the efforts required of the Russian government to justify the use of military force. Furthermore, the right to secession was not owed to the Crimean population due to their failure to constitute a people, their inability to pursue secession by domestic Ukrainian law, and the lack of systematic violence to which they were victims that would give cause to a remedial secession claim (Hilpold, 2015). Consequently, it appears as though Russia's violation of Ukraine's territorial integrity, the subsequent violence initiated in Eastern Ukraine, and the eventual annexation of Crimea may make Russia guilty of the very crimes it accused the post-revolutionary Ukrainian government of. Indeed, Russia may be guilty of the ultimate crime in the international system: crimes against peace. This assertion seems all the more plausible when one reflects on the historical context that has defined the Russian-Ukrainian relationship and how this has changed in recent years, contemporary geopolitical realities about Russia and its sphere of influence, and the strategic logic that seemed to determine Russia's current behavior.

The events in Ukraine in early 2014 are of central importance to the contemporary international system. Underlying Russia's actions in Crimea – and other post-Soviet states (i.e., Georgia) – is the recognition that the modern global system has undergone a profound shift where power has been drastically redistributed in a 'fluid and unpredictable' environment. This redistribution has ended the 'transatlantic moment in international law.' Yet despite acknowledging the 'rapid acceleration of global pressures' that defines the contemporary international system and

demonstrating a willingness to exploit these pressures, Russia still pays lip service to the ‘universally recognized principles and rules of international law, [and] international treaties.’ In the Concept of the Foreign Policy of the Russian Federation, clause four states that the core ambition of the country’s foreign policy is:

[S]trengthening the rule of law and democratic institutions, and ensuring human rights and freedoms... active promoting of international peace and universal security and stability to establish a just and democratic system of international relations based on collective decision-making in addressing global issues... promoting good-neighborly relations with adjoining states and helping to overcome existing and prevent potential tensions and conflicts in regions adjacent to the Russian Federation... ensuring comprehensive protection of rights and legitimate interests of Russian citizens and compatriots residing abroad.

Russian government figures make additional public utterances alluding to the country’s shared values with those in the (West Petro & Rubinstein, 1997). For instance, President Putin, writing in a 2005 article in *Le Figaro*, notes that:

The Russian nation has always felt part of the large European family and has shared common cultural, moral, and spiritual values. On our historic path... we have been through the same stages of establishing democratic, legal, and civil institutions.

The president reiterated these points in the same year during an address to the Federal assembly:

Above all else, Russia was, is, and will be a significant European power. Achieved through much suffering by European culture, the ideals of freedom, human rights, justice, and democracy have been our society’s determining values for centuries.

In 2014, the Ukrainian population comprised two dominant ethnic groups: Ukrainian (77.8%) and Russian (17.3%). Yet, according to Donaldson and Noguee (2009), Crimea represented an approximate inversion of these numbers, with ethnic Russians accounting for 67.04% of the population and ethnic Ukrainians accounting for 24.75%. The strong ethnic and linguistic linkage between the two countries has produced numerous appeals by Russian politicians to the apparent strength and closeness of the bonds between their respective peoples. In 1997, the two countries signed the Treaty on Friendship, Cooperation, and Partnership, pledging to ‘respect each other’s territorial integrity, and confirm[ing] the inviolability of borders existing between them.’ In a 2013 interview, Russian Prime Minister Dmitry Medvedev (2009) described Ukraine as Russia’s ‘closest neighbor,’ appealing to ‘an affinity and close partnership in a whole range of areas.’ Again, during a 2013 speech about orthodox Slavic values, President Putin committed Russia to respecting Ukrainian independence and whatever political eventualities such independence produced:

We will respect whatever choice the Ukrainian government and people make on the depth of Ukraine’s engagement in these processes in the post-Soviet area... [and] will appreciate whatever choice our Ukrainian partners, friends, and brothers make.

However, such appeals belie the new geopolitical reality underpinning relations between the two states. Since the end of the Cold War and the consequent breakdown of Soviet power, Ukraine has had to wrestle between its longstanding historical, ethnic, and linguistic ties with Russia and a nascent desire within its population to forge closer ties with Europe and the West. Donaldson and Noguee (2009) note that President Kuchma (1994-2005) recognized the inherent tensions in pursuing a ‘pro-Western orientation.’ Any ‘realistic assessment’ of the newly independent Ukraine’s geopolitical situation could not ignore the definite limits on the degree to which Russia could be victimized. Historically, Ukraine has been a central consideration within

Russian military strategy. Indeed, Taylor (1963) notes the country's strategic importance to Russia and Germany during the Second World War and the fear within Moscow of ceding Ukraine to Wehrmacht aggression. Thus, despite repeated appeals to the familial bonds that have long existed between Russia and Ukraine, recent years have seen evidence of a fracturing relationship between the two countries. In a 2009 letter from then Russian President Dmitry Medvedev (now Prime Minister) to Ukrainian President Victor Yushchenko – described as ‘scandalous’ – Russia’s concerns regarding the ‘departure [of Ukraine] from the principles of friendship and partnership’ are voiced. These concerns were enumerated as 1) the Ukrainian government’s sale of arms to Georgia around the time of the 2008 Russian-Georgian war, 2) concerted efforts by the Ukrainian government to join NATO in the face of ‘Russia’s well-known position,’ and 3) attempts by the Ukrainian government to undermine the economic relations between the two countries, specifically: failure to both protect the property rights of investors from Russia and to maintain the existing energy supply dynamic.

Despite Russia’s repeated claims of maintaining ‘good-neighborly relations with adjoining states,’ the Ukrainian public had begun to doubt the permanence of Russia’s commitment to the country’s independence. The sense of insecurity emanated from the continued presence of the Russian Black Sea Fleet (BSF) in Ukrainian waters and the lengthy running disputes over the sovereignty of the Crimean peninsula. Its historic actions about Crimea ultimately undermine Moscow’s justifications for military intervention. For instance, the BSF had begun to employ dragnet surveillance methods in Ukraine in the years before the invasion. Indeed, according to a report published in the Russian newspaper *Novaya Gazeta*, Putin had devised an invasion plan before the Ukrainian government collapsed. It does appear that the Russian government made some effort to obscure its role in the application of force in Ukraine (Hilpold, 2015). Throughout the period in question, Russia maintained that its armed forces had not entered Eastern Ukraine and that residents were offering any military resistance. These denials were made despite the Russian government arguing that soldiers were required to ensure Crimean self-determination. Furthermore, before the invasion – and even before the collapse of the Ukrainian government following the 2014 revolution – Russia had increased its military presence on the Crimean peninsula to roughly twenty-two thousand soldiers.

It appears as though the geopolitical realities of the 21st century, as they are perceived in Moscow – through the lens of a declining great power – permeate the foreign policy ambitions of the Russian government. Averre and Davies (2015) assert that Moscow’s attitude towards the responsibility to protect and humanitarian intervention is greatly influenced by its broader foreign policy considerations. The authors stress that it is not the humanitarian principles underpinning the responsibility to protect that generate Russia’s ‘substantive reservations’ but concerns about ‘the means of implementation.’ Yet Burke-White (2014) acknowledges that the subtle manipulation of legal arguments justifying the illegitimate use of force is not the preserve of Russia alone but rather, lifted ‘straight from America’s playbook. This argument echoes comments made by former Australian Prime Minister Malcolm Fraser in his response to Timothy Garton Ash’s analysis of Russia’s aggression in Georgia:

[Ash’s claim] that Russia now challenges the whole way Western Europe has tried to conduct affairs since 1945 ignores both American and European action... contrary to the UN charter or beyond NATO’s mandate for it to defend members under attack (Farrell and Finnemore, 2013).

Indeed, the post-9/11 period has seen an undermining of the arguments historically proffered by administrations within the West for their military interventions. For instance, the covert operations conducted by Russia’s SBU to foster and develop Crimean separatist movements before 2014 could be contrasted with the more overt US attempts to undermine and influence

political and social conditions in strategically valuable states through the use of transformational diplomacy. These behaviors truncate the West's ability to rebut Russian aggression or expansionary efforts through appeals to customary international law. While this in no way excuses Russia's actions in Eastern Ukraine, it does provide a more significant political and historical context in which to understand the intervention. Even if Russia were able to deny the charge of crimes against peace plausibly, the government would struggle to repudiate the claims its operations in Eastern Ukraine constituted war crimes. The high number of civilian deaths following the engagement of their forces suggests that Russia violated the laws and customs of war. Janina Dill observes that distinguishing combatants (those that can be killed) from civilians (those that can't be killed) is the primary imposition of contemporary laws that regulate belligerent conduct in war.

On the subject of Russia's incursion into Georgia in 2008, Evans starkly asserts that:

It needs to be made clear beyond doubt or confusion that whatever other explanation Russia had for its military action in Georgia, the R2P principle was not one of them.

This seems to be true of Russia's incursion into Crimea also. Yet, ultimately, the international system is not a realm of law but a realm of power (Roslycky, 2011). There's the rub. In the realm of power, no matter how hollow Russia's legal justifications may ring, the law ultimately lacks the necessary mechanisms to impose meaningful sanctions. In a political system where power is the currency, Russia's use of force is justified by its possession of force and its ability to project it despite it undermining existing legal norms.

5. Conclusion

Hurd observes that international law should not be conceptualized as a 'fixed standard,' a yardstick by which we determine the legitimacy of a state's behavior. Instead, the true power of a framework of internationally agreed legal principles is 'its ability to shape the terrain for political contestation in international relations.' Writing on the topic of the 2008 Russia-Georgia conflict, Gareth Evans remarked that the aggression highlighted:

[T]he dangers and risks of states, whether individually or in a coalition, interpreting global norms unilaterally and launching military action without UN Security Council authorization.

Averre and Davies observe that the orthodox Western perception of Russia's understanding of humanitarian intervention and the responsibility to protect runs counter to widely understood norms within the international system. However, Botte (2015) recognizes that the responsibility to protect principle is fundamentally undermined by the UN Security Council's 'lack of consistency' regarding implementation. She argues that this inconsistency in action emerges from the divergent interpretations between Eastern (i.e., China and Russia) and Western powers (i.e., US, UK, and France) as to 'how and in which situations' the principle is applied. Recent military intervention by the United States and the United Kingdom in North Africa and the Middle East has been justified on the spurious grounds of self-defense and responsibility to protect. Evans (2008) notes that while those incursions undermine the credibility of the US and UK, they ultimately do not justify Russia to act similarly. Thus, Burke (2015) is ultimately wrong when he claims that 'any dispute regarding recent developments in Crimea involves only two states: Ukraine and the Russian Federation.' Threats to international peace and the international legal order are a concern of all states and all peoples.

Once the case's particulars are reflected upon, there is little doubt that the Russian Federation breached international law. While it might be challenging to prove that Russia committed crimes against peace, the civilian death toll within Eastern Ukraine following their military

incursion suggests that a war crimes charge could be levied against them. Thus, Russia is liable to be called before the International Criminal Court. However, considering the significant geopolitical dimension of seeking to hold a nuclear non-Western state to legal account, one must conclude that justice may be rhetorical alone. While Western powers have sought to impose economic sanctions on Russia, there is some dispute regarding the legal grounds for this action. Burke (2015) argues that the economic sanctions imposed on Russia immediately after their intervention are illegal. He claims that the motivation for the sanctions was the ‘common political agenda’ of curtailing Russian political power. Yet the UNSC is the sole body with authority to ‘sanction the use of force against belligerent States deemed to have violated a mandatory international norm.’ Burke (2015) points to five resolutions adopted by the UN since 1965, culminating in the 1997 declaration that a ‘State may no longer claim a general legal right to impose economic sanctions against other states.’ Indeed, Article 2(4) of the UN Charter itself is cited as prohibiting sanctions because they constitute a form of ‘force.’ According to this line of argument:

[T] The Russian Federation has standing to bring suit against third-party countries before the International Court of Justice on the grounds of the illegality of the sanctions.

Thus, Burke (2015) concludes that the nations responsible for imposing sanctions on Russia following its annexation of Crimea violate the principles of international public law. Yet, one is struck by the irony of his argument. While defending Russia’s violation of Ukrainian territorial integrity, he argues that the sanctions applied in response to this violation constituted ‘rogue action by individual Member States pursuing their economic, military, and political agenda outside the parameters of the UN Charter.’ One is left to ponder what Burke (2015) means by ‘the renaissance of the Russian Federation.’ If any pattern or trend is discernible in Russia’s immediate geopolitical sphere, it suggests renewed imperialism.

Abbreviations

DPR		Donetsk People’s Republic
ICISS		International Commission on Intervention and State Sovereignty
LPR		Luhansk People’s Republic
UCDP		Uppsala Conflict Data Program
UNGA		United Nations General Assembly
UNSC		United Nations Security Council

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