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Crimea Proving to Be a War Fought With International Law

By Ingrid Burke

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Members of Crimean self defense forces standing with a Crimean flag during a rehearsal for an upcoming parade.

International law is the weapon of choice in the Crimea conflict, with adversaries using sections of the United Nations Charter like artillery to bolster their own defenses and target their opponents' weaknesses.

But who will end up on the right side of history?

The fact that the international community has found itself gripped in a battle for legal supremacy might suggest that UN Charter drafters left the world with high hopes for enduring peace but without the means to achieve it.

But at the same time, legal controversies, as vicious as they may be, can inspire sorely needed progress and modernization within the sphere of international law.

"The different sides to the [Crimea] dispute have armed themselves with legal justifications — a sign that the law is taken seriously and cannot be ignored," said Joseph Davids, a lawyer with Studio Legale Ghia in Italy and consultant for the UN Food and Agriculture Organization.

The legacy left by the Crimea crisis could prove beneficial or detrimental. History is rich with examples of the good that can come from diplomatic discord. At the same time, some analysts warn that the actions of powerful countries in cases such as this one can prove catastrophic. Good or bad, the conflict will have a crucial impact on the development of international law.

The Beginning

Amid the ongoing devastation of World War II, the leaders of the Allied forces compromised on a solution that they dreamed would spare future generations the catastrophic losses they were enduring.

Stalin, Churchill, and Roosevelt met in Tehran in late 1943 with the primary purpose of forging wartime agreements that would enhance their fight against the Axis powers.

At the culmination of the four-day conference, the three leaders signed a declaration vowing on behalf of themselves and "all the United Nations" to build a peace that would "banish the scourge and terror of war for many generations."

Two years later, as the world came to grips with its losses, the delegates of 50 nations convened in San Francisco to formally breathe life into the UN.

Addressing the final session of the San Francisco Conference, U.S. President Harry Truman lauded the initiative as "a solid structure upon which we can build a better world."

He then warned: "If we fail to use it, we shall betray all those who have died so that we might meet here in freedom and safety to create it. If we seek to use it selfishly — for the advantage of any one nation or any small group of nations — we shall be equally guilty of that betrayal."

The Crimea Crisis

Fast-forward seven decades to the Crimea crisis. On March 16, residents of the Crimean peninsula voted by a landslide to sever ties with Ukraine in favor of reuniting with Russia. Since then, the major powers' respective interpretations of international law have played out like a global game of tug-of-war.

"I told President Vladimir Putin yesterday, the referendum in Crimea was a clear violation of the Ukrainian Constitution and international law, and it will not be recognized by the international community," U.S. President Barack Obama said in a March 17 speech in the direct aftermath of the referendum.

In turn, President Vladimir Putin lauded the referendum for its "full compliance with democratic procedures and international norms," in a Kremlin speech on March 18.

Putin accused the West of hypocrisy in its approach to international law. "Led by the U.S., our Western partners prefer in their practical politics to be guided not by international law but

by 'might-makes-right' law," he said. "They have come to believe that they are chosen and exceptional; and that they have the license to decide the fate of the world; and it is only they that can always be right."

On March 27, the UN General Assembly adopted a nonbinding resolution declaring the referendum invalid, with 100 votes in favor, 11 against, and 58 abstentions. The resolution was based generally on the UN Charter, and specifically on Article 2 — which deals with the threat or use of force against territorial integrity.

Foreign Minister Sergei Lavrov bit back on March 29 when asked about the resolution. "I have seen a lot in my time, but when serious countries throw all their diplomatic power into 'arm twisting' of the entire world, including their close partners, expecting that they will fall for the argument about inalterability and of territorial integrity, ignoring all the other principles of the UN Charter, well, such 'agility' puzzled me," he said in an interview with the "Vesti" news program.

In the most recent iteration of these clashes, NATO announced on April 1 that it had decided to suspend all practical military and civilian cooperation with Russia. "We do not recognize Russia's illegal and illegitimate attempt to annex Crimea," a NATO statement said.

A Historic Battle for Moral Superiority

With no apparent end in sight to this global sparring match, Truman's warning of the selfish use of the UN Charter may seem to be proving prophetic. History, however, is replete with examples of the combative use of international law — particularly between the East and West.

"Given that the Cold War was as much about moral superiority as military and economic superiority, both sides were constantly trying to claim the higher ground," said Jeremy Friedman, a Russian history professor at Yale and associate director of the university's Grand Strategy program.

Because Russia and the West were both indispensable to the creation of the post-World War II international order, each has historically held a stake in maintaining it.

The Nuremberg Trials illustrate this quest for moral superiority, Friedman noted.

The decision to prosecute rather than summarily execute those deemed most responsible for the Nazi atrocities that defined World War II did not come easily. In his courtroom-history book "The Trial," lawyer and journalist Sadakat Kadri explained, "Nuremberg was conceived in Moscow and came into being despite the wishes of the Western Allies, rather than because of them."



Reuters

Men posing for a picture while examining their new Russian passports in front of a migration office in Simferopol.

Specifically, Kadri asserted that Stalin remained adamant that court decisions would be imperative to avoiding the appearance that the Allied powers were simply seeking revenge against their opponents. A 1945 pre-trial conference in London was characterized by an ever-widening chasm between the Soviet and U.S. delegations on everything from the presumption of innocence to the definition of aggressive war.

Eventually the conference culminated in key decisions about the court's jurisdiction that would have a lasting impact on international criminal law, but not before chief U.S. Prosecutor Robert Jackson threatened the creation of a separate U.S. tribunal.

"Nuremberg really is the collective assertion of moral superiority on the part of the Allies, including the U.S.S.R., and it is this moral superiority, based on their mutual sacrifices in the eradication of evil, that is supposed to form the basis of the new peaceful international order centered on the UN," Friedman said.

Another classic example of the battle for moral supremacy can be found in the International Control Commission, which was established in 1954 to enforce the Geneva Accords and monitor the situation in Indochina.

"The ICC was made of one communist country, one NATO country, and one neutral — Poland, Canada, and India — and both sides were endlessly trying to manipulate the ICC and use it to claim the other side was the aggressor and principle violator of the Geneva Accords,"

Friedman said.

In many respects, the Cold War was fought with instruments of international law. "It would be much harder to think of any Cold War conflict in which international law was not invoked," Friedman said.

Any example of this trend could be categorized as an example of the selfish use of the UN Charter. Some analysts argue, however, that this squabbling itself has often served to propel international law forward, allowing it to evolve in real time alongside a changing world.

Conflict and Evolution in International Law

Professor Peter Erlinder of William Mitchell College of Law stressed the importance of dialogue in ensuring that the UN functions as effectively as possible, suggesting that the Crimea crisis may in fact evidence a "return to a more normal situation in which powerful nations must balance each other's interests before the UN Security Council can act."

The Security Council, the UN organ charged with maintaining international peace and security, was initially established with the goal of counterbalancing the interests of the world's most powerful nations. It has five permanent members — Russia, Britain, the U.S., France, and China — and each enjoys veto power over council decisions.

Following the Cold War, the Security Council itself was largely dominated by the U.S. and Britain. "Until Russia and China began exercising the veto, as the Charter initially intended, to balance the power of major nations, the UN, itself was functioning as something like a 'rogue' institution," Erlinder said.

A similar point was recently made by Dmitry Trenin, director of the Carnegie Moscow Center, in a March 19 op-ed for China Daily. "Essentially, the Russians believe that it is the interests of the various countries — the U.S., China, Russia and others — that inform their behaviors, and that it is the power relationships among the leading members of the international community which set the rules of the game," he said.

The piece closed with Trenin's sentiment that while Moscow has remained unhappy with Western domination and other issues that followed the end of the Cold War, it now feels "strong and confident enough to challenge them."

Kushtrim Istrefi, visiting fellow of international law at the Graduate Institute of Geneva, pointed out that as a rule countries do not voluntarily admit to violating international law. "There has not been any war, any annexation, any conflict, where one side would say, 'I am going against the UN Charter,'" Istrefi said.

To claim that bold actions are in line with international law, countries occasionally need to get creative with their interpretations. However, Istrefi said that creative interpretations tended to inspire scholars and stakeholders to scrutinize issues of international law that might previously have fallen under the radar. In other words, a certain degree of creativity in interpreting international law can force gradual progress.

Toward that end, the dialogue surrounding the Crimea conflict has the potential to impact

the law surrounding secession, an area ripe for development.

As Davids put it: "At present, the law is not clear on when it is permissible for a region or autonomous province to secede and become independent without the consent of the State of which it is a part. The tendency toward secession is possibly on the rise." He said the Crimea situation "highlights that this law is either in flux or poorly defined."

Where Do We Go From Here?

While Truman's warning was important, subsequent history suggests that the UN Charter should be viewed as a living document. No fixed set of principles interpreted literally can effectively address the countless conflicts the world will face over time. Principles can endure for ages, however, if given room to breathe and to embrace the times.

Davids noted that dialogue in and of itself is no reason for concern. "Debates about when it is proper to use force or intervene in a particular situation would not be a betrayal of the principles of the UN, as noted by President Truman ... unless it is merely a pretext for selfish gain and not connected to the need to prevent war and protect human rights," he said.

Through diplomatic conflict our world leaders and policymakers will — for better or worse — usher in developments in international law that will impact the global community for the foreseeable future. Their squabbling is as crucial as it is unnerving.

Looking forward, Erlinder said, the imperative of recognizing that international law is still in its very early stages. World leaders and policymakers must continue to insist on the development and support of the institutions of international law, he explained, and must refrain from concluding that that the job is done.

"What I object to vociferously is countries holding up international organizations and international law as they exist at this point, as some sort of end point, and as if these nations ... are somehow the paradigm to which other nations should be held, because hypocrisy is rife," Erlinder said. He added that, "the most powerful countries, and particularly the superpowers, teach all of the other countries how to behave by the way that they behave."

If the adversaries to the Crimea conflict can rise to the occasion with foresight and awareness that the total outcome will be bigger than the immediate impact will be for any single country, experts said, governments will continue upping the ante on moral superiority, and future generations will be better off for it.

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