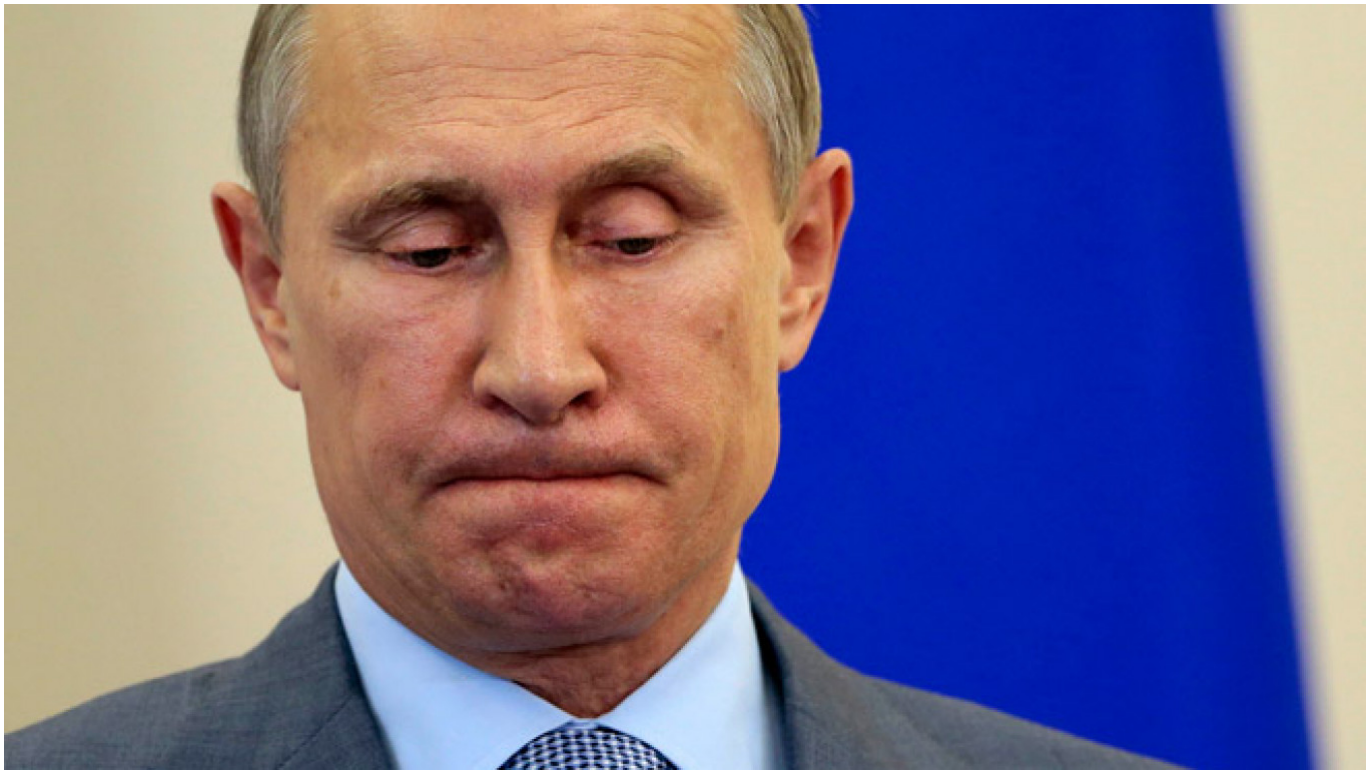
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Putin's Kremlin Is a Fugitive From International Justice

By Mark Lawrence Schrad

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In the summer of 2006, some Russian friends visited my Moscow apartment, where I was busily preparing course lectures on international law for the fall semester. "But you're an American," they guffawed, "what could you possibly know about international law?" Then they delighted in listing America's legal transgressions — Iraq, Abu Ghraib, Guantanamo Bay, Kosovo, etc. It was galling, but they were right.

Teaching courses on both international law and Russian politics in subsequent years, I've been particularly attuned to international law as a tool of Russian foreign policy. Acting as self-appointed global counterweight to the U.S. — and often wielding its veto in the United Nations Security Council to that effect — Russia has consistently invoked international law and the principle of national sovereignty to oppose everything from additional sanctions against Iran to humanitarian intervention in Syria.

And though many may disagree with Russia's politics, until recently the Kremlin's invocation of international law has — with the glaring exceptions of the 2008 war with Georgia,

the expropriation of Yukos, and the endless Chechnya-related petitions before the European Court of Human Rights — been largely consistent, understandable and defensible.

The Kremlin even alludes to international law some 17 times in the most recent "Concept of the Foreign Policy of the Russian Federation," the mission statement of Russian foreign policy. Approved by President Vladimir Putin in February 2013, it prioritizes strengthening international law ahead of even international security, economic cooperation, environmental concerns and human rights.

But with breathtaking speed, the Kremlin has gone from one of the staunchest defenders of international law to being one of the biggest fugitives from it. Russia's "unconditional respect for international law" as declared in the 2013 "concept" can only be read as a farce in light of Russia's overt and covert intervention in Ukraine in 2014.

The Kremlin's "concept" articulates the legal foundations in the UN Charter, the 1970 Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States, and the Helsinki Final Act of 1975.

The most fundamental provision of the UN Charter is Article 2(4): "All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state."

This was the basis for the Kremlin's accusations against Western interference from Kosovo to Syria. Now, it more readily applies to Russia's invasion of Crimea, aiding rebels in the Ukrainian east, and threatening military force by massing tanks at the border.

But if overturning the entire legal foundation of both the European and global security order — one that the Kremlin itself swore to uphold just months before — wasn't enough, the invasion and annexation of Crimea adds more to Russia's rap sheet.

In 1991, Russia, Ukraine and the other soon-to-be post-Soviet republics affirmed their respect for national sovereignty and inviolability of exiting borders in the Alma-Ata Declarations, which legally replaced the Soviet Union with a Commonwealth of Independent States. Those Russian legal pledges have likewise now been violated.

The dissolution of the Soviet Union left part the Soviet nuclear stockpile in Ukraine, which saw these weapons as a defense against a possible invasion by a revanchist Russia. After protracted negotiations, Ukraine and the Russian Federation, along with the U.S. and Britain, signed the 1994 Budapest Memorandums in which Ukraine gave up its nuclear weapons to Russia for legal assurances against economic coercion or the threat or use of force against Ukraine.

Obviously, these legal assurances did not dissuade Putin from annexing Crimea or meddling in eastern Ukraine; neither did the bilateral 1997 Treaty of Friendship, Cooperation and Partnership, nor the various treaties spelling out the terms of Russia's lease on naval bases in Crimea.

Some have argued that the Kremlin had a right to intervene in self-defense in Crimea — more specifically, to safeguard ethnic Russians and Russian speakers — invoking the international

"Responsibility to Protect" (R2P) doctrine of UN-sanctioned humanitarian intervention, which justified NATO intervention in Libya.

But there are at least three fatal problems with Russia's argument. First, the evidence that Russian nationals were under threat is shoddy at best. Second, the R2P doctrine does not permit occupation or annexation and must be sanctioned by the UN Security Council. And finally, in the aforementioned Russian foreign policy "concept," Putin states in no uncertain terms that "military interventions and other forms of interference" that undermine state sovereignty "on the pretext of implementing the concept of 'responsibility to protect' are decidedly unacceptable."

To this international law rap sheet, we now must consider the potential legal ramifications from the downing of Malaysia Airlines Flight MH17. Weeks prior to that unspeakable tragedy, there were indications Russia was increasing the inflow of heavy weapons, potentially including the Buk surface-to-air missile battery that likely brought down the airliner.

The shooting-down of MH17 likely qualifies as a war crime. According to the ICC, a war crime includes intentionally directing attacks against persons taking no part in hostilities. "In this context," says professor Stephen Hall, "'intentionally' would mean firing the missile at the aircraft without taking reasonable steps to ascertain that it was not a civilian plane."

In this case criminal liability would accrue not only to the individuals who gave the order to fire and those who pressed the button, but also potentially to superiors with effective authority and control to knowingly direct such a strike.

If found to have supplied the weaponry and the know-how to the rebels that led to the downing of MH17, the Kremlin could be found to be in violation of the Fourth Geneva Convention (relative to the Protection of Civilian Persons in Time of War) as well as other human rights charges by fueling the pro-Russian separatist movement. The ongoing human rights violations in Ukraine being committed by both sides is worthy of its own, separate consideration.

In the culmination of a decade-long legal debacle over Russia's illegal expropriation of Yukos, last month an international arbitration court in The Hague ruled against Russia to the tune of $50 billion. In response, Russian lawmakers declared "an urgent need to revise the entire array of signed international treaties, charters and conventions," which suggests that the Kremlin's recent flaunting of international law is not going to abate anytime soon.

For whatever short-term geopolitical gains in Ukraine, Russia has forever tarnished its growing reputation as a defender of international law. If Russia's recent turn in foreign policy is indeed part of a larger movement to forge a political, economic and even cultural alternative to the decadent West, Russia's record of belligerence and open disdain for international law will make it hard to court allies, especially amid the growing isolation from international sanctions.

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