

was unique and “*sui generis*.” Taken seriously, it was an assertion that NATO could act as it did but that no one else could follow suit.

That never made much sense. Even so, the comparison with Kosovo is strained. Kiev’s rule is not as brutal as Belgrade’s, and the United States did not seek to acquire the territory of Kosovo for itself.

Russia has, however, invoked these arguments before. It was during another Olympics—the 2008 summer games in Beijing—that Russia “liberated” South Ossetia and Abkhazia from Georgia. Virtually no states have recognized the new entities other than Russia, to which they are attached as client-states. Nevertheless, after some muted criticism, the Obama administration announced a “reset” in relations with Russia, and life went on.

IV. SO HOW SHOULD WE UNDERSTAND CRIMEA?

First, it is important to understand the Russian viewpoint: Kievan Rus’ was once at the center of what we now call Russia, before the center of power moved to Moscow in the 13th century. Even Aleksandr Solzhenitsyn, while in exile in Vermont, argued that the USSR should indeed be disbanded, but that Ukraine and Belarus were integral parts of Russia.

Suffice it to say that many Russians—and about a quarter of Ukrainians, and the vast majority of those who live in Crimea—do identify with Russia. (Note that this leaves many others, in particular the Crimean Tartars, who feel quite differently.) Indeed, the word “Ukraine” means “border.” And NATO was butting up against that border, and threatening to transgress it.

None of this justifies Russia’s actions, of course. But in retrospect it should have made Putin’s actions less surprising.

V. CONCLUSION

Let me offer two points by way of conclusion.

First, taken seriously, Russia is articulating a vision of spheres of influence. President Putin in 2005 called the collapse of the Soviet Union one of the greatest geopolitical catastrophes of the twentieth century, among other things because it left tens of millions of what he called our “co-citizens and co-patriots” outside of Russian territory. Interesting comparisons could be made here with the way in which China is articulating its maritime claims in the South China and East China Seas.

Second, for the United States this case should make it very clear what many of us have argued all along: meretricious legal arguments that are politically expedient can also be used by other states. Kosovo could never be truly *sui generis*, for example, and the Iraq war undermined the prohibition on the use of force. As we look at what the United States is doing with drone technology and surveillance—something that only it can do, at least for the time being—this should give us pause.

REMARKS BY PETER M. OLSON*

The situation in Ukraine, in particular relating to Crimea, is not merely a part of a larger NATO-Russia rivalry, and is decidedly not a *NATO-Russia* crisis. Recent events underscore why some former Soviet and former Warsaw Pact states eagerly supported NATO’s expansion and sought to join the alliance. Think what one may of NATO policy since the dissolution

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of the Soviet Union, nothing NATO is alleged to have done can excuse, explain, or justify Russia's threat and use of force, its violation of Ukrainian territorial integrity and political independence, its staging of a sham referendum in Crimea, and its unilateral annexation of Ukrainian territory. It is understandable that Russia would wish to recharacterize Ukraine as a Russia-NATO issue, and in so doing imply a supposed Cold War-style equivalency to divert attention from its own gross misdeeds. But there is no such equivalent in this case.

The references in Putin's March 18 speech to Iraq, Libya, and Kosovo are best understood simply as an attempt to change the subject. As a legal matter, the purpose of these references is not clear. Putin asserts that the Crimean situation, including the referendum, was a simple matter of self-determination, and that there had been no Russian use of force—a characterization that is risible in light of the facts. Yet two of the three cases he references (Iraq and Libya) have nothing whatsoever to do with self-determination, and appear to be cited as examples of violations of territorial integrity and use of force contrary to the UN Charter. Not only do they appear to be legally inapposite to the Russian legal case, they in fact draw attention precisely to the principles Russia seems otherwise to seek to avoid.

While personally I am not entirely comfortable with the Iraq invasion (which I consider a mistake even if legal), I note that the United States had its reasons for its actions, presented them publicly before acting, and debated them in the UN. Even if those reasons were not persuasive to all, it must be conceded that there were at the time real—and widely shared—concerns that Iraq retained weapons of mass destruction; these concerns were reflected in Security Council resolutions, including one adopted at the time of the debate. Moreover, whatever one may think of U.S. actions in Iraq, they did not involve annexation. Indeed, Iraq's recent actions vis-à-vis the United States confirm that it is now fully sovereign in a way that the short-lived "Crimean Republic" never was and never could be.

Nor did Libya involve self-determination. Russia has, for its own reasons, long alleged that NATO actions in Libya violated Security Council Resolution 1973—which it had supported—but they did not. Resolution 1973 established a mandate to protect civilians against attack (including, in particular, the regime's attack then in progress against Benghazi), and that is what it did. One may well wonder why Qaddafi chose to continue his attacks on civilians to the end, but there is no doubt that the original basis for the resolution remained fully applicable throughout the operation.

Kosovo *did* involve self-determination, and it is clear from Putin's speech that it is this aspect to which he refers. One key difference between Crimea and that situation, however, is that, unlike in Kosovo, the Crimean act of supposed self-determination occurred in the context of an illegal use of force and intimidation by Russian forces. Although he did not so note, the World Court opinion Putin cites itself underscores that the few occasions on which a unilateral declaration of independence has in fact been assessed as illegal were ones "connected with the unlawful use of force or other egregious violations of the norms of general international law."¹

Other essential differences were historical (including an extended history in Kosovo of oppression, atrocities, and expulsions laid out in detail in Security Council Resolution 1244), legal (including Resolution 1244's removal of Yugoslav exercise of sovereignty in Kosovo and its establishment of autonomous institutions of government), and political (including the years-long process to determine status through a process established in Resolution 1244 and supervised by the UN Secretary-General's special representative and the fact that the eventual

¹ ICJ Advisory Opinion on Kosovo UDI, para 81.

unilateral declaration of independence was made by freely elected representatives unquestionably reflecting the desires of their constituents).

It is important as well to note that all three examples of supposed Western unilateralism were in fact deeply embedded in the UN system. The Libyan military measures directly implemented a Security Council resolution. Developments in Kosovo, too, were based on a Security Council resolution and involved a decade of UN administration and years of attempts to resolve the final status puzzle. Even the U.S. invasion of Iraq followed Security Council resolutions adopted in 1991 and 2002, which the United States considered to authorize its further enforcement action. In all three cases, there were extensive debates and discussions in the Security Council.

By contrast, nothing of the sort took place or is now taking place with reference to Crimea. Indeed, Russia has made no effort whatsoever to raise the supposed issue of Ukrainian oppression of Russian-speakers in the Security Council.

I will now turn to the question, “Does Crimea show that the UN Charter’s collective security system is powerful against a determined P5 member?” If that refers to coercive enforcement action by the UN, and in particular the use of force or threat thereof, then the short and easy answer is “Yes,” for the reasons noted by Simon Chesterman, i.e., that the principal enforcement organ established by the Charter is the Security Council, the design of which includes a P5 veto. As in 1945, the building blocks of the international system today are sovereign states, and in particular the big ones. The result in this case is thus exactly what might be expected.

The answer is not so clear if the “collective security system” is viewed more broadly. The Charter’s system includes other elements besides the Council, including regional organizations. There is no prohibition on states’ grouping together for purposes of self-defense—precisely, in fact, what the members of NATO did in the late 1940s. Such groupings can make essential contributions to collective security and keeping the peace; again, that is exactly the contribution made by NATO throughout the Cold War, and it is why NATO is responding—defensively and prudently—to Russian actions in Ukraine today. The UN’s founders were not starry-eyed: they realized that Article 2(4) was more likely to be respected if violating it was costly, and that those costs need not necessarily only be ones imposed by the Security Council. Moreover, whatever role the Council may play today, the international system has developed since 1945, and there are others forms of and fora for enforcement. Those forms include political and economic sanctions, including such measures as the General Assembly’s calls on international organizations to take no action recognizing the Russian annexation of Crimea. So it is too early to suggest that the whole system has failed—any more than it “failed” in 2008 in Georgia, in 1968 with Czechoslovakia, or in 1956 with Hungary.

I would also suggest that it was not correct to say that Russia’s actions in Crimea should be considered “business as usual among the P5.” Russia’s actions in fact attack three core elements of the postwar international legal order:

- (1) Territorial integrity and political independence, the first and most express commitment in the Charter—one repeated many times and in many contexts since 1945, and one that builds on the core concept underlying traditional views of public international law—the centrality of the sovereign state.

- (2) Human rights, including genuine self-determination, a pillar that has developed over the past 70 years and is viewed by many today as a co-equally central element of public international law in the 21st century.
- (3) Procedural norms, in particular those of the UN and the Security Council, which is where issues allegedly affecting international peace and security are to be raised and debated. Russia is not the first bad actor, nor the first state to ignore core elements of the Charter and international law since 1945—but it is arguably the first to treat the UN as literally irrelevant to its actions.

The Russian actions are especially striking in their European context because these three elements, in particular the first two, have been accepted as normative in post-war Europe—to a degree, in fact, far greater than anywhere else in the world. They thus represent a fundamental attack on the entire underpinnings of European peace and security since 1945.

Clearly, some are uneasy about accepting this view of Russian actions and its implications. Many would like to think that the international community has moved beyond having to rely on “historical relics” such as NATO to defend them against such gross violation of the legal order. But many Europeans today are also very happy that such an entity still exists.