

European issues  
n°623  
22 February 2022

# Russia, Ukraine and international Law



Russian actions in Ukraine since 2014, and the tensions to which they have led, obscure the legal aspects of these attacks thereby opening the way to propaganda and approximations. To contribute to a better understanding of what is at stake, this contribution is limited to the legal aspects of an otherwise eminently political issue. This in fact heralds a spectacular break in the international order and a violation of commitments and treaties signed by a member of the Security Council of the United Nations that have not been witnessed since the Second World War[1].

For a long time, Russian diplomacy was attached to the strict and formal respect of the rules of international law, sometimes "clinging" to them in a bid to resist the demands made by the different populations. Even during the succession of the USSR, this constant was respected. However, the actions in Crimea and Donbass since 2014 have marked the abandonment of this formalism, while the Kremlin's diplomacy is promoting the need to conclude new treaties with the United States and European states so that Russia can endorse its claims.

Not since 1945 has the European continent experienced such a dramatic challenge as that posed by Russia's questioning of the borders resulting from the Second World War, which were confirmed in particular by [the Final Act of the Helsinki Conference](#) in 1975. Neither the break-up of the Soviet Union nor German reunification, two events of major importance, gave rise to a Russian about-turn of this kind.

Whatever the reasons, the reappearance, since 2008 on the borders of the European Union, of the use of armed force and methods that have been abandoned on the continent, is a particularly fierce challenge for the Union and its leaders, given that the latter was built on the law and through the law, that it functions, even in times of difficulty, thanks to the law, which is accepted and respected, and that this has led it to benefit from an exceptional stability in view of its painful past.

By annexing Crimea and by participating in the challenge of the territorial integrity of Ukraine, Vladimir Putin's Russia is violating the fundamental texts of the United Nations, the statutes of the Council of Europe, of which Russia is a member, at least two regional treaties organizing peace in Europe and two bilateral treaties signed with Ukraine, as well as, in passing, the constitutions of Ukraine and of Crimea

## THE CHARTER OF THE ORGANISATION OF THE UNITED NATIONS

Article 2 §4 of the [UN Charter](#) establishes the principles of the inviolability of borders, respect for the territorial integrity of states and the prohibition of the use of force[2].

Several acts, declarations and agreements concluded within the framework of the Organization, recall the imperative of peaceful settlement of disputes, non-interference or the ban on threats in international relations.

We can quote [resolution 2625](#), "Declaration

[1] This text is an update of a [study by the Foundation](#) published in 2015

[2] "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, or in any other manner inconsistent with the purposes of the United Nations."

on *Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations*" adopted on 24 October 1970 by the General Assembly. This text even anticipates the "hybrid war" in precise terms<sup>[3]</sup>. This text even anticipates the "hybrid war" in precise terms. On December 14, 1974, the UN, in a [resolution 3314](#) of the same General Assembly, defined the concept of aggression, including several of the acts that Russia has obviously committed in Crimea and in the East of Ukraine (military occupation, invasion, bombardments, passage of armed groups). It is easier to understand, after reading this document, that Russia, a member of the Security Council, refuses to admit the presence of several thousand of its troops in Ukraine, which should have led to an inevitable condemnation by the UN under a number of texts signed by it. But these precautions have not even been effective for Crimea, whose occupation will probably not be recognized by the UN, nor by most of its members.

### THE FINAL ACT OF THE HELSINKI CONFERENCE

The Helsinki Conference (1 August 1975) established the respect of borders in Europe and gave birth to the [OSCE](#), of which Russia is a member. Its Charter confirms the above-mentioned principles. It defined them and adjusted them to the specificity of the European situation of the moment, that of the Cold War which became a balance of terror and followed by *détente*. It is a regional agreement, based on the United Nations Charter, intended to give tangible content to the *détente* between the two blocs. It establishes the principles of inviolability of borders, territorial integrity of states, peaceful settlement of disputes, non-intervention in internal affairs, but also respect for human rights and minorities, equal rights of states and the right of peoples to self-determination within the framework of the law, and the fulfilment in good faith of obligations assumed in accordance with international law. It is supported by confidence-building measures, such as the obligation to notify military manoeuvres, but also by declarations of intent to cooperate in a range of areas, including freedom of information.

Through its actions, Russia, with the annexation of Crimea in 2014, and with its renewed threat to the

Ukrainian border since December 2021, is ignoring all parts of this treaty, which already addressed issues that apply to Ukraine today, such as:

- "They (states) also have the right to belong or not to belong to international organizations, to be party or not to bilateral or multilateral treaties, including the right to be party or not to treaties of alliance" I §2.

Or:

- "No consideration may be invoked to serve as a justification for the threat or use of force in violation of this principle" and: "they (the States) shall refrain from any manifestation of force intended to make another participating State renounce the full exercise of its sovereign rights" II §1 and 2,
- They will also refrain from any demand or act of control over all or part of the territory of another participating State" III
- Similarly, the participating States will each refrain from making the territory of any of them the object of military occupation or other measures involving the direct or indirect use of force contrary to international law, or the object of acquisition by means of such measures or the threat of such measures. No such occupation or acquisition shall be recognized as lawful.

Justifying the military gathering at the Ukrainian border by claiming a feeling of insecurity, is an attempt to dissimulate a conscious and complete violation since 2014 of all the provisions of this text, although signed at the time by the Soviet Union, which saw it as the recognition of fragile borders since they resulted from the fighting and power relations on the ground at the end of the Second World War.

### THE COUNCIL OF EUROPE

Russia joined the Council of Europe on February 28, 1996, and the statutes of the latter are defined by the [Treaty of London](#). Today Russia does not sit in the Council of Europe. Reinstated in 2019, it refuses to be represented there and to pay its membership fee, in particular because it refuses to comply with the organization's gender quotas. Previously, on three occasions, the last time in January 2015, the [Parliamentary Assembly of the Council of Europe](#) found

<sup>[3]</sup>  
"Every State has the duty to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts, when the acts referred to in the present paragraph involve a threat or use of force."

it necessary to suspend the credentials of the Russian delegation and its participation in various bodies of the Assembly. " The still unratified credentials of the Russian delegation were challenged on the basis of Rules 8.1 and 8. 2 of the Rules of Procedure of the Parliamentary Assembly on the grounds that the role and participation of the Russian Federation in the conflict in eastern Ukraine, as well as its continued illegal annexation of Crimea, are contrary to the Statute of the Council of Europe (ETS No. 1) as well as to the commitments it made upon accession to the Council of Europe, which in general calls into question the compliance of the Russian delegation with the principles of the Organisation and the obligations imposed on its member states.

At the time of the illegal annexation of Crimea the Assembly reiterated that this act constituted a serious violation of international law, including the Charter of the United Nations, the Helsinki Final Act of the Organization for Security and Co-operation in Europe (OSCE), as well as the Statute of the Council of Europe and the commitments undertaken by Russia upon accession to this Organization.

The Council of Europe, which since its inception has embodied the Europe of Law and Human Rights, has repeatedly expressed its concern about the disturbing developments in the rule of law in Russia, its repeated violations of the rights of minorities and the methods used by Russia in Georgia in 2008, as well as in Crimea and Ukraine in 2014. The Assembly expressed no less than 17 requests condemning it and calling upon the Federation to fulfil the obligations it voluntarily subscribed to when it joined.

#### **THE GUARANTEES OFFERED TO DENUCLEARIZED UKRAINE**

The [Budapest Memorandum](#) (5 December 1994), concluded between Russia, the USA, the UK and Ukraine, of which France and China are also the guarantors as "witnesses", enabled the denuclearization of Ukraine, which housed the most formidable nuclear arsenal (1800 nuclear warheads), in exchange for the express guarantee of recognition of its borders. Signed by all the permanent members of the Security Council, applied at great cost, financed mainly but scrupulously and entirely

by the United States<sup>[4]</sup>, this text was also, in the context of the time, a message addressed to the states that had nuclear ambitions and that, under pressure from the united international community, agreed to renounce them during the 1990s. South Africa, Brazil, Libya and others renounced nuclear weapons. While the same efforts have been made for years to convince Iran to follow their example, the potential consequences of the violation of this treaty by a member state of the UN Security Council, which had pledged, both bilaterally and multilaterally, to guarantee them, are measured here.

Not only have Russia's guarantee, word and signature been permanently weakened, but so have those of the world's greatest powers, and even those of the UN itself.

#### **THE TREATY REGULATING POST-SOVIET UNION**

The Constitutive Act of the Commonwealth of Independent States (Treaty of Minsk - December 8, 1991) which established the organization of post-USSR, an empire constituted by force and dismantled by failure, guaranteed the new states in 1991, the respect of their borders, with Russia relinquishing to challenge them. Moreover, Ukraine, unlike others in Europe, had always maintained the façade of its independence and had a seat in the UN, even if it only had the choice of voting in line with the USSR.

#### **BILATERAL TREATIES AND AGREEMENTS SIGNED WITH UKRAINE**

The friendship agreement signed between Russia and Ukraine on May 31, 1997 specifically emphasized the respect of borders, which proves that it was signed with full knowledge of the facts, because no one is unaware of the history of the colonization of Crimea, which resulted in its annexation in 1783 and the decision of the Plenum of the Central Committee of the USSR in 1954, attaching it to Ukraine "because of (their) special economic ties".

The agreement on the presence of the Russian fleet, signed on May 28 1997 and renewed in 2010, established the distribution of the ships of the former

*[4] The denuclearization of Ukraine made it, for a time, the main recipient of US foreign aid, which financed most of the destruction of these materials in Russia.*

USSR in exchange for a compensation of \$526 million, confirmed Ukraine's ownership of this territory whose naval facilities were leased to Russia for an annual rent of \$97 million, and specified the conditions for the stationing of Russian troops (25,000 men, 132 armoured vehicles, 24 artillery pieces).

### THE MINSK AGREEMENTS

The Minsk agreements, signed on [September 5 2014](#) and [February 12 2015](#) between Russia, Ukraine and the self-proclaimed republics of Donetsk and Lugansk, provided for a military disengagement of both sides in Donbass. The first protocol agreed on a ceasefire, withdrawal of military troops, the decentralization of the Ukrainian state, special status for the disputed territories and the organization of local elections, a buffer zone between Ukraine and Russia, release of prisoners and hostages, a Ukrainian amnesty law, as well as reconstruction and humanitarian aid programs. The second version of these agreements concerned the concrete implementation of the decisions. However, a major disagreement arose concerning the order of implementation of these measures. The Russian government has refused to withdraw its soldiers until Ukraine reforms its constitution in favour of a decentralized state and until elections are held in the disputed territories. The ceasefire has thus been regularly violated since 2015 and Ukraine does not control its eastern border to this day.

### THE UKRAINIAN AND CRIMEAN CONSTITUTIONS

In addition, both the [Constitution of Ukraine](#) in its Articles 73 and 132[5], as well as the [Constitution of the Autonomous Republic of Crimea](#) in its Articles 2 and 6, provide for compliance with the legal rules of the Ukrainian fundamental text and in particular the assumption of a change of borders that can be decided only by all Ukrainians.

As a result, at least two fundamental UN texts, five important treaties and two constitutions are violated by the Russian annexation.

### INVALID JUSTIFICATIONS USED IN 2014

With unprecedented flippancy, Russia has flouted many of the obligations implied by its membership of the United Nations, pointing to the liberties taken by other nations in Kosovo, Libya or Syria, which have allegedly exceeded the UN mandates recently given to certain states or organisations (NATO) to deal with serious crises. Yet these comparisons are not justified.

On 22 July 2010 [the International Court of Justice](#), referred to for its opinion by the United Nations General Assembly considered "*that Kosovo's declaration of independence adopted on 17 February 2008 did not violate international law*".

In a 105-page judgment, delivered by a vote of 10 to 4 after hearings and contributions from all the States who wished do so, the Court noted the involvement of the Security Council and its decisions, which are part of international law, as well as the sequence of circumstances and the international community's real but unsuccessful search for other solutions (Ahtisaari Plan) likely to halt a genocide that was already ethnically and religiously based, as well as Kosovo's legal status under the Council's trusteeship, in accordance with the objectives of the UN Charter.

It concluded that "*the declaration of independence did not violate Security Council resolution 1244 (1999)*" and that "*the declaration of independence did not violate the constitutional framework*" of the time.

In Libya, the Security Council authorised, under Chapter 5 of the Charter, the use of force to stop a serious and immediate disturbance that could lead to the extermination of entire populations. The "liberties" taken by the nations that brought down the Libyan dictator did not violate the law. They interpreted it under the control of the Secretary General and the Council. The same would have been true in Syria had it not been for Russia's repeated veto of proposals to end a civil war that worsened as a result.

Short of legal arguments, Moscow's diplomacy went so far as to exhume the precedent of the independence of the Comoros, ratified by referendum except in the

[5] Article 73: "The modification of the territory of Ukraine may be decided only by a national referendum. Article 132: The territorial structure of Ukraine shall be based on the principles of unity and territorial integrity, combination of centralization and decentralization in the exercise of state authority, balanced economic and social development of the regions, taking into account their historical, economic, ecological, geographical and demographic peculiarities, and ethnic and cultural traditions."

island of Mayotte, which voted by more than 98% to remain a French territory, to the great displeasure of several African states. But the circumstances cannot be compared, as France has never acted positively to annex this territory, but rather responded to a massive and democratic demand from a threatened population.

These very serious violations of law by a permanent member of the Security Council have been matched by the use of unacceptable arguments and coercive diplomacy.

Today, the threat of violation of Ukraine's territorial integrity is a profound challenge to the international order, which is already undergoing major changes. The Kremlin's actions and justifications could influence other countries and lead to the creation or re-emergence of areas of tension, first and foremost with China, which could use a precedent to seize Taiwan.

We should remember that on [7 February 2015](#), Sergey Lavrov, the Russian Foreign Affairs Minister, as he addressed the [Munich Security Conference](#), tried to justify these violations in law. His outrageous speech - triggered laughter (unusual in this forum) of incredulity, but he failed to convince and one can imagine the despair of Russian diplomats, whose professional quality is well known. Following on from [Vladimir Putin's 2007 speech](#) to the same assembly, which had indeed left its mark on people's minds by its offensive character, it demonstrates that Russia intends to free itself from the law so that it can pursue its political objectives.

## SERIOUS CONSEQUENCES

As in civil life, breaches of obligations that have been voluntarily undertaken constitute serious precedents for relations between states.

In this case, Russian diplomacy's about-face on the value of international commitments may have direct consequences in several theatres and for several difficult cases that occupy the international community.

The elimination, or at least reduction, of nuclear weapons was a long-time shared goal, including on both sides of

the Iron Curtain. The case of North Korea has even rallied the major Asian powers to this cause. Negotiations with [Iran](#) and with the former are obviously being weakened, or even seriously jeopardised. Who and how can we guarantee a state that voluntarily gives up this type of weaponry, as South Africa, Brazil or Libya have done in the past, that its basic state rights of independence, equality, non-interference and the inviolability of its borders will be respected? In the case of [Ukraine](#), they were guaranteed by all permanent members of the Security Council and backed up by bilateral treaties that were binding for its neighbours.

Russia's attitude is therefore liable to revive the nuclearization of international relations, i.e. the acquisition by any state that has the means - and there are more and more of them - of nuclear weapons, the ultimate guarantee of its integrity. As a result, the already fragile regime of the Non-Proliferation Treaty has been undermined.

The law of war is being profoundly affected by the large-scale use of "hybrid warfare", which uses soldiers masking their uniforms or mercenaries, and by cyber-attacks. Whilst since the beginning of the 20th century, the law governing warfare has constantly moved towards the reduction of conflict<sup>[6]</sup> and has attempted to mitigate its most reprehensible practices, the concealed use of armed forces and clandestine groups, is challenging the progress achieved, particularly the ban on certain behaviour, the protection of prisoners and combatants, not to mention civilian populations. The whole architecture of this complex law has thus been undermined.

History will tell us if we should interpret this as weakness, a typically Russian response as it constantly bids to expand its already immense territory whose unity is fragile; is it the expression of a feeling of encirclement, of deep humiliation after the failure of the communist dictatorship, the incessant quest for new horizons, in this case those of the warm seas, or the nostalgia of the empire? Europe cannot stand idly by and watch as stability on the continent is challenged by force in defiance of so many treaties and binding legal texts.

<sup>[6]</sup> The Hague (1899,1907) and Geneva Conventions (1864, 1907, 1929, 1949) <https://www.icrc.org/applic/ihl/dih.nsf/vwTreaties1949.xsp?redirect=0> et <https://www.icrc.org/dih/INTRO/195>

European diplomatic efforts must be acknowledged and supported because the response to the current crisis must be European and autonomously defined if it is to have any chance of being sustainable. It cannot be only legal and political, because Russian interventionism and revisionism, a defeat of the law, also requires strong political responses. For Europe, it is also a reminder that active diplomacy cannot do without "*hard power*". We know that already. In this sense, the adoption of the Strategic Compass in March under the French Presidency of the Council is essential to give Europeans a real capacity to respond.

Finally, the common interests of the Union and Russia are obvious to any observer and should be the subject of a more systematic positive and concrete development. No one wants to exacerbate tensions and provoke a

showdown. But is it possible for Europe to deal with a governmental partner that violates its word like this, that makes a mockery of the very principles on which it is founded, and that is responsible for a conflict that has already resulted in 13,000 deaths and 30,000 wounded?

The spectre of war on our borders must not weaken our founding convictions that the law remains the best instrument for settling relations between states and between people. It is not idealism to proclaim this; on the contrary, it is a reminder of an ardent necessity for the stability and security of international relations.

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