

# Russia's revenge

*The Crimean incursion highlights the tensions between the right to self-determination and the principle of territorial integrity*

By David C. Hendrickson

*The violation of* the territorial integrity of Ukraine by Russia's encouragement of a referendum on secession in Crimea, followed by Russia's annexation of the territory, has produced a first-class crisis in Europe. The crisis is a very big deal, threatening to unravel over 25 years of progress in escaping the logic of the Cold War competition.

In several respects, the crisis is a lot less dangerous than the standoff over Berlin from 1958 to 1962. In one respect, however, this is worse. In Berlin, maintaining the lifelines to the West meant maintaining the status quo; as events showed, that provided a satisfactory ground for both parties, especially after the erection of the Berlin Wall staunched the flow of refugees from East to West. The Russians, not wanting to risk a confrontation with America, eased its pressure on the city.

In Ukraine, the status quo has been blown up by the Ukrainian revolution, which has entailed the installation, via methods grossly violative of Ukraine's constitution, of

a government the legitimacy of which Russia refuses to recognise. This violation of constitutional procedure, sanctimoniously ignored in the West, is an extremely important aspect of the Ukraine crisis. By violating both the electoral calendar (with presidential elections scheduled for February 2015) as well as the procedures for impeachment (which required both a lengthy review process, together with a three-fourths vote of the Ukrainian Parliament, neither of which was observed by the Revolution), the West has birthed a new government under extremely dubious circumstances. This was not by any means an Immaculate Conception; all manner of dirty deeds were done to accomplish the hoped-for result.

Territorial integrity arose to a central place in international law alongside several others. In the mid-20th century, the American foreign policy elite, including the government, saw the maintenance of territorial integrity as a fundamental value. In the Helsinki Final Act, the first six core principles were listed in the following order: “(1) sovereign equality, respect for the rights inherent in sovereignty; (2) refraining from the threat or use of force; (3) inviolability of frontiers; (4) territorial integrity of states; (5) peaceful settlement of disputes; (6) non-intervention in internal affairs.”

These together form what the political philosopher Michael Walzer has termed “the legalist paradigm.” The norms of political independence and territorial integrity, writes Walzer, are ultimately founded on “the right of men and women to build a common life and to risk their individual lives only when they freely choose to do so.” As Walzer notes, however, “the relevant law refers only to states.” The keystone in the arch of the legalist paradigm is the view it takes of aggression. “Any use of force or imminent threat of force, by one state against the political sovereignty or territorial integrity of another constitutes aggression and is a criminal act.”

There was, of course, another key international norm — the self-

determination of peoples — that challenged the basic principle of territorial integrity in a rather sweeping way: National self-determination became the catchphrase that summarised Woodrow Wilson’s attempt to negotiate a just and stable peace in the conference that ended World War I. Wilson’s promise of “justice to all peoples and nationalities, and their right to live on equal terms of liberty and safety with one another, whether they be strong or weak” evoked a tremendous response in the peoples who had lived under the boot of the Russian, Austrian, German, and Ottoman Empires.

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“It was like deep calling unto deep,” noted Colorado senator Charles Thomas: “The response greeting it was universal.” However, there was not a border drawn in postwar Europe that did not elicit harsh condemnation for having left minorities outside the newly established states, or for having reduced them to a strategic or economic rump that raised questions about their future viability. Poland’s experience is emblematic; its military clashed with forces from Ukraine, Germany, Lithuania, Czechoslovakia, and Russia between 1918 and 1921.

Wilson has been criticised for his seemingly cavalier dismissal of the principle of territorial integrity, but he was not quite the idle dreamer so often portrayed. Robert Lansing, his estranged secretary of state, made the memorable prophecy that the principle of self-determination would unleash expectations that could never be satisfied. Lansing saw it as an incendiary principle, and criticism of Wilson on

this score is frequently encountered among historians with realist sympathies.

But it needs to be recalled that it was the conservative nationalists under the leadership of Theodore Roosevelt and Henry Cabot Lodge who, with Lansing's approval, pushed for the breakup of the Austrian empire as a war measure in 1918, advancing well beyond Wilson's initially cautious formulation of the principle in his Fourteen Points. There he declared that every people "should be left free to determine its own polity, its own way of development, unhindered, unthreatened, unafraid, the little along with the great and powerful." That meant an independent Poland with access to the sea, but something less than full independence was contemplated, in January 1918, for the peoples of Austria-Hungary. They were to be "accorded the freest opportunity of autonomous development" in what Wilson seems to have imagined would be a newly federalised but still intact Austria-Hungary.

It was not to be. The exigencies of war led on to support for independence for the subject nationalities of Austria-Hungary, as of other discarded remnants of the fallen empires. Wilson told a British official that "he disliked most intensely" the idea of "setting the Austrian people against their own government by plots and intrigues. We were not good at that work, and generally made a mess of it, but he saw no other way" to win the war. "He intended to support the Czechs, Poles, and Yugoslavs." The territorial integrity and political independence of the new states were guaranteed by the League, but the US Senate's refusal to ratify the Treaty of Versailles virtually doomed the new settlement from the outset: the power constellation that had brought the Central Powers low was now missing its most crucial ingredient.

When Versailles was challenged serially by Adolf Hitler in the 1930s, he did so by appealing to the normative foundation of a treaty erected on the foundation of national self-determination: both the

*Anschluss* and the incorporation of the German speaking Sudetenland from Czechoslovakia (awarded by the four-power Munich agreement in 1938) were justified by Germany on these grounds. Hitler smashed the Western liberal world by appealing to the very principles it had championed. The appeal was deeply insincere, as was shown by Hitler's subsequent destruction of Czechoslovakia in March 1939 — the act that led even those in the West who had condemned the injustice of Versailles and the unequal treatment it had afforded Germany to understand, at last, that Hitler was not a German nationalist cut from the traditional cloth.

At the end of World War II, the problem that had bedeviled the League of Nations — charged among other things with supervising the treatment of minorities in the new states — was transformed by the huge movements of population that accompanied the war and its aftermath. The states of Europe were now more “nation-states” than they had ever been. Territorial integrity and political independence were sanctified in the Charter no less than in the Covenant. Those principles were at the center of the American conception of the post-World War II world. What needed to be shut out of the conduct of international relations was the threat or use of force that would challenge the territorial integrity and political independence of states. It was on the basis of that creed that the United States went to war in Korea in 1950, and it was on the basis of the same appeal that Lyndon Johnson took the United States to war in Vietnam in 1965.

The experience of Vietnam showed that the principle of territorial integrity could function as a mask disguising the real nature of the conflict. The Americans saw a blatant territorial aggression by North Vietnam against the South, but it was just as reasonable — as we came to understand, more reasonable — to see the conflict as a civil war. The presence of more than 500,000 US forces in South Vietnam suggested that the major external actor intervening in Vietnam's affairs was the United States military. After the collapse of South Vietnam in 1975,

American opinion drew the lesson of “no more Vietnams,” but the attachment of the US establishment to the central norm of territorial integrity was barely affected by that grim experience. Out of the disaster of Vietnam, the United States attempted to restore its tattered legitimacy by reaffirming its commitment to the norms of a peaceful international system and vouchsafing its commitment to the stability of possession, as it did in 1975 at Helsinki.

The end of the Cold War saw the old norms of political independence and territorial integrity spectacularly reaffirmed in the 1991 Gulf War, but then the old question of territorial integrity was suddenly cast in a new light, one that closely resembled the problem of 1919 but now with one unprecedented aspect. Yugoslavia was dissolving into war at the same time the Soviet Union was breaking up; their near-simultaneous collapse raised the urgent question of how to handle the borders of the twenty-odd new states clamouring for international recognition.

In March 1992, the US government chose the principle that has, with one notable exception, governed the West’s approach ever since: the administrative boundaries of the former Soviet Union and the former Yugoslavia were to become the borders of the newly independent states. In the case of the former Soviet Union, that meant 25 million Russians would become minorities in the new states, of which Ukraine had about half the total number. Yeltsin was so dependent on the United States that he felt he had no alternative but to acquiesce in this new dispensation, and did so. In the past, the dissolution of a multi-ethnic state had invariably led to war: the scale of the catastrophe that might ensue was shown by the experience of India, whose partition after the British withdrawal led to over a million deaths in the frenzied confusion that followed. It was something of a minor miracle that the Soviet Union dissolved with so little violence, but the same happy outcome did not follow in Yugoslavia.

The dissolution of Yugoslavia showed how volatile could be the

relationship between, on the one hand, the right of self-determination, and, on the other, the principle of territorial integrity. The West recognised the independence of Slovenia, Croatia, and, in March 1992, of Bosnia and Herzegovina. When the Serbs, newly disadvantaged by the creation of a Bosnian state in which they were now a minority, took up arms with the help of the Serbian government to resist that new dispensation, they were branded as criminals. The Serbs — and Russians — took the line that what was legitimate for the Bosnian Muslims could not be denied to the Serbs of Bosnia. If the former had a right of secession, so did the latter. But these claims were ill-heard in the West, which rejected the legitimacy of the Serb claims. At least it did so in theory: when the Dayton Peace Accords were signed in 1995, the territorial integrity and political independence of Bosnia and Herzegovina was reaffirmed, but the territory was effectively divided between the Serbs, Croats, and Muslims and was put under a European Union protectorate that remains in place to this day.

The Serbs continued to get the short end of the stick in the context of Kosovo. The rebellion of the Kosovars from Belgrade met with violent repression by Slobodan Milosevic. In anticipation of yet more atrocities — 100,000 thousand Kosovar men had gone missing, US Defense Secretary William Cohen falsely alleged in the spring of 1999 — NATO fought its aerial war against Serbia in 1999. Nine years later, Kosovo emerged as an independent state. The Russians were furious, as were the Serbs. They were thrice disadvantaged in the dissolution of Yugoslavia. Secession of the constituent parts of Yugoslavia was permitted, over their protests; secession of Serbs from Bosnia was denied; and then the same claim that had been denied to the Serbs was granted to the Kosovars in 2008.

Russia, stung by these reversals, was pleased to reply in kind when Georgian units went on the offensive in South Ossetia in 2008. The Russians invoked the freshly minted Kosovo precedent in according separate status to two new protectorates, though almost no other states

accorded recognition. The Russian action led John McCain to proclaim that “we are all Georgians now,” but the Bush administration, in its waning days, did not push its objections to extremes.

If anything, the Russian response showed to Europeans the dangers of Bush’s plan to bring Georgia and Ukraine into NATO. Obama then confirmed that more cautious approach with his attempted “reset” of US–Russian relations in 2009, but the US government showed itself not entirely opposed to secessions from established governments. In Africa, the independence granted to South Sudan, after heavy lobbying by Christian groups in the United States, showed that the principle of territorial integrity might be cast overboard in some circumstances.

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The importance accorded to the principle of territorial integrity in today’s Ukraine crisis must be assessed not only against the backdrop of these past episodes but also in light of the American government’s own rather cavalier treatment of international law. The late Democratic senator and former United Nations ambassador Daniel Patrick Moynihan complained in 1990 that the status once accorded these ideas in official Washington had greatly diminished; it was as if a new elite had arisen that had not been educated in the grand American tradition, dating from the first years of the republic, in which respect for the law of nations was accorded the status of a first principle. The temptations of sole superpowerdom proved too much to resist.

Strictly speaking, the war in Kosovo was illegal. NATO’s

authorisation may have made it “legitimate” — so its advocates repeatedly reaffirmed — but its actions did not conform to the UN Charter, which required Security Council authorisation for the NATO military operation against Serbia’s territorial integrity to be squared with the dictates of international law. Clinton’s dubious record was then followed by an administration seemingly contemptuous of international law. The 2003 Iraq invasion was simply the most striking instance of the Bush administration’s cavalier dismissal of the significance of international law, against the authority of which neoconservatives sallied forth daily.

Obama promised a return to the old standard when he came to office, but that was an edict at odds with the now firmly established inclinations of the US government. Its greatly expanded drone strikes have violated the principle of territorial integrity on numerous occasions, as have the vast spying operations of the NSA. The Russians had no ground to stand on in complaining of the latter violations — they do the same — but allied governments, especially Germany’s, took sharp objection. Not unreasonably, Merkel and her inner circle were appalled by the bugging of the chancellor’s cell phone, which began in 2002 when she first emerged as a significant player in German politics. Given its serial violations, the conclusion is unavoidable that the American political class and security state sees international law as a club with which to beat hostile governments when convenient, and on such occasions can sing a wonderful hymn to its sacred status, but when law imposes constraints on Washington, it exits the church with undue haste and searches out a plenitude of reasons to preserve its discretion unencumbered.

The legalist paradigm continues to be the vital underpinning of the society of states, and undoubtedly any civilised government, even those ruled by really exceptional people, should in nearly all circumstances take its strictures to heart. How far they are obligated to correct, sanction, and overturn the violations of other states is a different

question, to which different rules apply. Here, relative interests, propinquity, feasibility, and all other manner of prudential considerations come into play.

Russia's annexation of Crimea does not look to be reversible. Russia did not justify this violation of Ukraine's territorial integrity, as it might have done, as a reprisal for the West's previous illegal intervention in Ukraine — conniving at the unconstitutional seizure of power in Kiev. Much as the West has tuned them out, the Russians feel that they have an abundance of reasons for Crimea that would each stand inspection, but if they had characterised it as a reprisal they would have had to give Crimea back if they had gotten satisfaction elsewhere. And they don't want to give it back. So Putin grounded it in Crimea's historic attachment to Russia. The West needs now to decide for how long it will kick its head against the wall in protest.

How far the escalatory pressure will run is unclear. As always, the situation contains elements that would make it escalate and salves that would arrest escalation and would potentially provide a way forward. Unfortunately, the situation is not entirely under the control of the diplomats: angry men are armed; the authority of the state is uncertain. No one should underestimate the dangers until some kind of diplomatic settlement is reached, and even then mutual disappointment and rancour is written all over the future development of this unexpected crisis.

The American diplomats especially have been conducting a dialogue of the deaf that would be comical were it not so dangerous. John Kerry has taken to the principle of territorial integrity as avidly as Lyndon Johnson, and with about as much understanding of the local terrain. That is not a good sign. ■