

The Legality of War

Column: Politics

Region: Russia in the World



The western mass media and governments have fallen into a frenzy of anti-Russian propaganda over Russia's military operations in Ukraine. One element of their propaganda war is the claim that Russia's action is illegal under international law. But is this the case and what does it mean for these countries to make that claim when they have themselves invaded and attacked too many nations to enumerate, every one of which was not only illegal, but without any moral, ethical justification whatsoever?

The law on the use of force in international relations has two aspects, codified international law as set out in the Charter of the United Nations, and the commonly understood right to self-defence.

The UN Charter is the primary document governing the use of force. Nation states do not have a right to use force in relations with other sovereign states except in very limited circumstances. It used to be, before the twentieth century, that there was an understanding that all nations had the right to use force, to go to war to ensure their interests. But the cataclysms of World War I and World War II led in each case to an attempt to prevent wars of aggression.

After WWI the League of Nations was created, supported by the Kellogg-Briand Pact of 1928, which I have referred to in previous articles as a Treaty still in effect, in which the USA and Soviet Union and all other nations promised never to use war to solve political disputes. The League of Nations fell apart in the 1930's with the rise of fascism and the aggressions of Italy and Germany. But the Kellogg-Briand Pact still exists.

However the Pact was understood to permit wars in defence of a nation that was under attack. The same applies to the security structure set up after WWII with the creation of the United Nations and the UN Charter that governs relations between sovereign nations and the use of force,

According to Article 2(4) of the Charter all member states are obliged to refrain from the threat or use of force against the territorial or political integrity of any state. There are two important exceptions to this obligation, the first being the right of individual or collective self defence under Article 51 and the collective enforcement by the Security Council on the basis of Chapter VII of the Charter which deals with threats to the peace, breaches of the peace and acts of aggression. The inherent right of self-defence, individually or collectively, with the support of other states, exists so long as the Security Council has not taken measures to "maintain international peace and security." The right, therefore is meant to be a measure of last resort.

The Kellogg-Briand Pact was a paradigm shift in how war was regarded. Before it, war was considered a part of a continuation of political intercourse with the addition of other means, as Clausewitz put it in his famous book, *On War*, and an acceptable way of resolving

disputes. At least, it was not considered illegal. It was outside of law, except for the customary rules of war governing treatment of combatants, civilians, proportionality and so on.

This shift is set out in the UN Charter's preamble which states that,

“Armed force shall not be used, save in the common interest. and Article 2(4) prohibits any threat or use of forces “inconsistent with the purposes of the United Nations.

The common interest is determined by essential principle of the sovereignty equality of states, which in turn means protection against acts of aggression.

When the common interest is involved then the Security Council can enforce the Charter by using the coercive measures contained in the Charter. Article 42 of Chapter VII authorises the Council to take action, using armed force, to “maintain or restore international peace and security.” But this authority is exercised within the strictures of Article 27(3) that gives the permanent members of the Council the right to veto any decision, including even when the nation casting the veto vote is the subject of the vote. This veto power has effectively led to the paralysis of the United Nations in a number of international conflicts, where national interests are in conflict and has resulted in reality to a state of the world where might makes right.

Disputes in the UN have also led to a situation in which, for instance the United States was able to manipulate the Council to authorise, in the name of self-defence, the use of force through the back door, and form “coalitions of the willing” to attack US targeted nations. The term is of course a euphemism for a coalition willing to violate international law for the interests of the United States. This practice has become routine for the United States and its NATO alliance since the Korean War. It undermined the general ban on the use of force and in effect allowed the United States to attack and to invade nations at will.

So, how does the Russian claim of legality in its Ukraine operations stand up to the international law and how does it compare with the military operations of the United States?

To answer that question we have to look back in history to the Korean War since it is the only American-NATO war the Americans claim had legal backing. This was the first of the many illegal acts of aggression conducted by the United States after World War II. The Americans claim that their “police action,” their euphemism for the invasion and destruction of Korea and the deaths of millions of people and the attacks on and attempted invasion of China, at that time, was legal, through a decision of the Security Council. But this is a lie.

There was no valid approval of that American-NATO aggression against Korea and China by the UN. The USA manipulated the vote so that their motion to approve their military plans was presented to the Security Council on a day the Russians were absent from the Council. Votes in the Security Council require the positive vote of all the permanent members. Russia was not there to vote but the Americans pushed their NATO allies, Britain, France and the Kuomintang Chinese, who still held the seat for China at the UN, to vote to approve their war anyway. They did what they were told. That vote was not valid and in law never existed. It is on this trickery that their aggression rested.

Have any of the other American wars been legal? None of them. All of them are in violation of Article 2(4). The list is long. When I first drafted this I set out all the invasions of nations the Americans conducted since then but to list them here would turn this into a thick book of American crimes, from Korea to Vietnam, from Cuba to Congo, from Iraq to Afghanistan, from Latin America, to Yugoslavia, Syria, Lebanon. But one crime must be added to all their war crimes and aggressions, the crime of hypocrisy. For all of their aggressions were conducted for reasons of domination and exploitation of resources and peoples, for profit. There was never any legal justification ever offered, as there were none. None of them were conducted in self-defence, whereas Russia's action clearly is.

In my opinion Russia acted in accordance with international law under Article 51 of the UN Charter for the following reasons;

First, the Kiev regime was mounting a major offensive with NATO's help against the Donbass Republics with the intent of destroying them. Intensive shelling had already begun days before Russia acted, the shelling of civilian buildings and infrastructure, which resulted in scores of thousands of civilians fleeing into Russia. During that period the Kiev regime also attempted to assassinate a leader of the Republics with a car bomb. Russia had no choice but to protect the Donbass peoples and since the Security Council could do nothing, and the EU and NATO were supporting the Kiev offensive against the Donbass, Russia was the only nation that could act.

The request for military assistance from the Donbass Republics also compelled Russia to send in its forces to help push back the Kiev forces from the territories of the Republics.

Second, Russia itself had been attacked multiple times by Kiev regime forces. Saboteurs were sent into Crimea time and again to carry out raids, assassinate officials, to destroy infrastructure. They even cut Crimea's water supply, a crime against humanity. Just a few days before Russia acted a Kiev reconnaissance unit invaded Russia but was detected and destroyed. Russia had every right under The Caroline Doctrine to go after the attackers and to prevent further attacks.

The Caroline Doctrine was established in 1837 when American forces invaded Canada, to assist Canadian rebels who had risen against the government. The Americans travelled to Canada by ship across Lake Ontario. The British then later invaded New York State to retaliate and burn the ship, named the Caroline. As a result of that incident, it was agreed by both the USA and Britain that the right of a nation to self-defence rested on two factors:

1. The use of force must be necessary because the threat is imminent and thus pursuing peaceful alternatives is not an option, and,

2. The response must be proportionate to the threat.

In this case the threat was more than imminent. It was on-going and increasing. The only effective and proportional defensive response was to destroy the offensive forces being deployed. These forces include not only Kiev regime government forces but also the nationalist Nazi brigades supporting and spearheading the Kiev offensive and all the NATO equipment being supplied to them to conduct the Kiev offensive.

Thirdly, the deeper issue was the imminent threat to Russia from NATO posed by its continuous expansion to the east, its continuous build up of forces and offensive structure pointed at Russia and the completion this September of the American missile systems in Poland Romania and Ukraine which could then be used to launch a nuclear attack against Russia.

We remember that in the past few months the NATO nations have conducted military exercises that included practicing launching nuclear attacks on Russia. We also remember that the USA has a first strike nuclear war policy, claiming the right to use nuclear weapons wherever and whenever they deem fit. It was evident that they were practising attacks because that was and is their intention.

Russia demanded the Americans withdraw those systems, and to withdraw NATO from Eastern Europe. They flatly refused. Ukraine talked of acquiring nuclear weapons and threatening Russia with them. It would take time for them to manufacture but there was nothing to stop the Americans from giving them nuclear weapons, under their control, as the Americans have done with Germany, for instance.

Russia could do nothing, keep the peace, and watch, as the weapons for its destruction were installed and made ready to fire; to commit suicide in other words, or it could defend itself. It warned the US that it would do so, and had the right to do so, the same right the Americans always claim to have, but again Russia was ignored. It had to act or face destruction and subjugation.

We remember that during the Cuban Missile Crisis, in 1962, the Americans threatened to invade Cuba and to attack the USSR because nuclear missiles had been placed in Cuba to protect it against American aggression. President Kennedy established the precedent principle that when a nation feels its existence is at stake from nuclear weapons it has the right to use force to protect itself pre-emptively. Russia is acting on the same principle.

Lastly, the NATO powers have lately relied on their bogus legal doctrine of "responsibility to protect" that they invented after the fact to try to justify their aggression against Yugoslavia. No such doctrine exists in international law but they claim the right to use it nevertheless. It applies, according to them, when a military action is justified, though illegal, "for legitimate humanitarian reasons." They were warned that this false doctrine could be turned against them. Russia has not referred to it at all, but if NATO can rely on it for their wars of aggression then surely Russia can rely on it to justify their military action to defend the Donbass, and themselves.

When one takes account of all the factors that governed the Russian decision to send its forces into Ukraine it is clear that in law they had the legal right to do so whereas the United States continues its illegal invasion and occupation of Iraq and Syria to this day and the NATO media powers and governments say nothing, because they are all complicit in those invasions.

If the United States and the NATO alliance had complied with international law in the first place as set out in the UN Charter, the world would not be in this mess. They caused this, not Russia. The responsibility is entirely theirs and they will be judged for it.

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