The Crimean Crisis and International Law: A Realist Perspective

Samuel J. Cook

Follow this and additional works at: http://ir.stthomas.edu/ustjlpp

Part of the International Law Commons, and the Law and Politics Commons

Bluebook Citation
The Crimean Crisis and International Law: A Realist Perspective

Cover Page Footnote

This article is available in University of St. Thomas Journal of Law and Public Policy: http://ir.stthomas.edu/ustjlpp/vol10/iss1/5
THE CRIMEAN CRISIS AND INTERNATIONAL LAW: A REALIST PERSPECTIVE

SAMUEL J. COOK

“While we should never give up our principles, we must also realize that we cannot maintain our principles unless we survive.”

– Henry A. Kissinger

INTRODUCTION

This Note discusses generally the topic of international law from the realist perspective, both factually and normatively. Throughout this Note, the Crimean crisis will be used as a case study. Part I will discuss these issues in the factual, paradigmatic sense, and Part II will discuss these issues in the normative, prescriptive sense.

I. REALISM AND INTERNATIONAL LAW

In this Part, I seek to:

A. Introduce and explain the international relations theory of realism in its most basic form;

B. Summarize realism’s view that international law is largely epiphenomenal and cannot, in and of itself, affect international outcomes; and

C. Argue in favor of a newer, more refined form of realism that views international law as primarily power-reflective, but also, to an extent, autonomously self-enforcing.

A. The Basic Tenets of Realism

Perhaps the most important and influential branch of international relations study is that of realism. The realist school of thought, in its various forms, has largely dominated political science departments in American

universities since the end of World War II. Realism is an international relations theory that holds, above all else, that power is the key to understanding interactions between sovereign nation-states. Realism, in this sense, is paradigmatic; it predicts how sovereign nation-states will act given a certain set of external stimuli.

There are variations in the realist school of thought, but in general, realists believe the following: Sovereign, rational states are the primary actors in an anarchic international system that breeds insecurity and causes states to seek power gains relative to other states in an effort to ensure their own survival. In short, according to realists, “states seek power and . . . exercise their power to achieve relative gains in power, despite international institutions, rules or norms.” Embedded in the above propositions are four basic tenets, which are discussed below.

First, realists assume that nation-states operate in an incurably anarchic global system with no overarching “policing” system and that relations among nation-states are defined by a never-ending security battle between those sovereign states. There is no overarching international authority with the independent power to compel good behavior by state actors. Because there is no global system to enforce international law, states are always in doubt as to other nations’ true intents.

Second, realists assume that sovereign nation-states are the primary actors on the global scene and have been so roughly since the Peace of Westphalia of 1648. Non-state actors, such as terrorist groups or non-governmental organizations, may also be relevant at times, but they are of secondary concern. Nation-states—particularly powerful nation-states—are

---

4. Note that realism can be divided into two major camps: classical realism and neorealism (or structural realism). The former focuses on the psychology and human nature of world leaders. The latter focuses on the rationality of state actors within a structure of international anarchy. Neorealism can be further divided into two additional camps: offensive realism and defensive realism. Offensive realists assume that states seek power, while defensive realists assume that states seek security. For the purposes of this Note, and to keep things relatively simple, I will discuss realism as broadly and generally as possible.
8. Id.
9. Id.
10. See id.; see Delahunty & Yoo, *supra* note 3, at 36.
the only actors that are, at all times, truly relevant to global international law and politics.

Third, realists assume that nation-states are generally rational and self-interested. A state’s primary self-interest must be survival, because survival is a necessary prerequisite to achieving all other potential state interests. Additionally, realism generally does not concern itself with global normative standards or efforts for altruistic cooperation. Realists view these as necessarily secondary to a state’s primary self-interest of survival.

Fourth, realists assume that a nation-state’s ultimate goal is to maximize its power or security in relation to other states. The anarchic international system and lack of an international police power create insecurity in state actors as to the true intentions of other states. This inherent insecurity displayed by all sovereign nation-states leads to a global security dilemma, whereby each state actor seeks to maximize its power or security in relation to other states to ensure its own survival. This often manifests itself through military strength, but it can also be manifested through economic or other means. In sum, to a realist, the state and its relation to other states in terms of power distribution is what really matters in the story of international law and politics.

B. Realism’s View of International Law

International relations scholars of the realist persuasion tend to be skeptical (or even entirely dismissive) of international law. Under the realist paradigm, international law is viewed as largely epiphenomenal. According to Steinberg and Zasloff, classical realist Hans J. Morgenthau believed that “[i]nternational law that did not enjoy compliance was not lawlike.” Morgenthau “warned of the dangers inherent in a reliance on international law that ignored underlying power realities.” Structural realist Stephen Krasner has held a similar position, noting that “state behavior and associated international outcomes may appear to be shaped by international law, but because international law mirrors the interests of powerful states, international law is merely an epiphenomenon of underlying power.” Krasner also noted that “international law may explain

11. Canestaro, supra note 5, at 120.
12. Id.
14. Delahunty & Yoo, supra note 3, at 38.
15. Id. at 37.
16. See Scott, supra note 2, at 314.
18. Id.
19. Id. at 74 (citing STEPHEN D. KRASNER, STRUCTURAL CAUSES AND REGIME CONSEQUENCES: REGIMES AS INTERVENING VARIABLES, IN INTERNATIONAL REGIMES 1 (Stephen D. Krasner ed., 1983)).
the details of process, but it has no autonomous power to explain international outcomes.”

For example, a realist would note that neither the League of Nations’ nor the United Nations’ rules of collective security have seemed to make much of a difference in decreasing the outbreak of war in the last century. Moreover, “[e]ven the apparent compliance with international treaties . . . can be explained by mutual deterrence and fear of retaliation rather than by regard for international law.” Indeed, “it is actually the great powers, rather than international institutions, that cooperate in maintaining international peace and security.”

Not all realists, however, “find international law meaningless.” Some realists even “find [international law] crucial to understanding state behavior.” Nevertheless, realists do tend to agree that, in most situations, international politics will play out in generally the same way under current international law as they would under a weaker or nonexistent international legal system. Absent international law, nation-states would still make the same calculated decisions as to which foreign actions constitute threats, whether to respond to those threats, and what magnitude of force is required to quell those threats.

C. International Law as Both Power-Reflective and Self-Enforcing

The question remains: Why do great powers bother themselves with international law at all? Indeed, “[t]he realist portrayal of international law is unable to account for occasions when powerful States show deference to international law even when to do so appears to be contrary to their power interests.” If international law were truly an irrelevant facade and purely a theoretical—but not practical—constraint on state action, then great powers would not bother consulting international lawyers when acting on the global stage. Consider the following:

[W]hen protecting vessels in the Persian Gulf in early 1988, the US Navy permitted the passage of a ship carrying a load of Silkworm missiles to Iran even though it perceived that this would increase the danger to both protected and protecting US ships in the region. The State Department had determined that interceptance of the ship

---

20. Id. at 75.
21. Delahunty & Yoo, supra note 3, at 40–43.
22. Id. at 41.
23. Id. at 49.
24. Steinberg & Zasloff, supra note 17, at 64.
25. Id.
26. These calculations can be quite complicated in the age of nuclear proliferation, but the same basic logic applies. Because mutually assured destruction is a real concern, great powers know they can “act out” in certain small ways with little risk of causing all-out war with another great power; the risk of global nuclear warfare would simply be too high for the other great power to intervene and escalate the situation. See Delahunty & Yoo, supra note 3, at 49.
27. Scott, supra note 2, at 314.
would constitute search and seizure on the high seas which was illegal under universally recognized rules of law and neutrality.\(^\text{28}\)

This is perhaps a minor example, but what did the United States stand to gain by deferring to international search and seizure laws, rather than stopping a ship full of missiles headed to Iran? Also, if international law were truly irrelevant in power politics, Russian President Vladimir Putin would have invaded Crimea, Ukraine, in early 2014 without even attempting to develop a coherent (even if shaky) legal argument for his actions. We know, however, that Putin did, at minimum, *try* to argue that his actions in Crimea were lawful under international law.\(^\text{29}\) Again, what did Putin, as leader of a relatively powerful nation-state, stand to gain by asserting to the world that he was complying with international law?

The answer to all this may be that great powers do not want to completely undermine an international legal system that otherwise allows them to express their power interests in a generally efficient manner. In this sense, international law may have some independent autonomous force—even over powerful states. Some realists are beginning to take this theory into account. They still focus on power relationships but instead propose that international law creates efficiencies that would not otherwise exist, and in that way international law autonomously incentivizes great powers to comply with it.\(^\text{30}\) This theory could appropriately be called a “realist-institutionalist hybrid.”\(^\text{31}\) In other words:

This version of realism, in contrast to structural realism, does not see politics as a pure zero-sum conflict between states. Positive-sum possibilities exist and cooperative, Pareto-improving outcomes may be facilitated by international law. However, like other realists, adherents of this approach believe that the relative power of states shapes international law: both cooperative and coerced outcomes are distributed asymmetrically, reflecting the relative power of states.\(^\text{32}\)

Consider, for a moment, the following analogy. Imagine two parents who, primarily to benefit themselves, initiate a household rule that all household members must immediately wash their own dishes after supper. The parents, of course, have more power than their children and, if they choose, can break the rule themselves while still forcing their children to wash dishes. The parents might soon realize, however, that in order to avoid household conflict and instill confidence in the rule they have set forth

---

28. *Id.* (citing T. FRANCK, THE POWER OF LEGITIMACY AMONG NATIONS 3–4 (1990)).
30. Steinberg & Zasloff, *supra* note 17, at 75–76.
31. *Id.*
32. *Id.* at 76.
(thereby incentivizing their children’s compliance), they too must comply with the dish-washing rule. On one hand, the absence of the rule would lead to dirty dishes, which is not in the parents’ best interest. On the other hand, with the rule in place, the parents’ own noncompliance with the rule might cause conflict and instability as to the validity of the rule, which is also not in the parents’ best interest. Setting a rule and following it may be the most efficient way for the parents to exercise their power and advance their interest. In this sense, we might say that the rule is “self-enforcing,” or rather, that it has autonomous force that incentivizes compliance for all parties. This analogy is far from perfect, but it helps to explain how international law can both reflect the interests of powerful nations and also tend to autonomously incentivize compliance even by powerful nations.

This notion—that international law does have some autonomous force—is not inconsistent with realism. It simply acknowledges that international law can, over time, attain some independent force over otherwise sovereign nation-states. The cooperation and discussion made possible by international law under this slightly-adjusted realist paradigm still clearly favor powerful nations—but the results are, to powerful nations, favorable over those which would have resulted in the absence of international law.33 This creates a positive incentive for powerful nations to uphold international law and “think twice” before breaking it. Sure, powerful nations could still get their way by breaking international law and using brute force to pressure rival nations—but that just often isn’t as efficient as following international law.

Much of this efficiency comes from a reduction in transaction costs for state actors at the bargaining table. Powerful nations can attain their interests faster and at less cost using international law which, again, may explain why great powers bother with international legal systems at all. In the end, decision-makers do not act lawfully under international law because they are bound by international law, but rather because international law offers an efficient forum for diplomacy and an efficient avenue through which a powerful nation-state may advance its interests.

Great powers will disobey international law, however, when the cost of compliance with international law outweighs the value of the aggregate efficiencies that would be lost by undermining the international legal system. In other words, if a great power’s interest in a particular matter is sufficiently irreconcilable with the requirements of international law, the great power will almost assuredly disobey the law. This is why we must think of international law as truly both an expression of power and, to a degree, an autonomous curb on power. International law can accurately be described as simultaneously an epiphenomenal expression of power and an independent force that incentivizes state compliance. These ideas are deeply

33. *Id.* at 75–76.
intertwined; it is because nation-states seek to maximize their power that they have an incentive to uphold an international legal system that efficiently does just that.

In sum, realism’s central premise that power is the key to understanding international relations remains true. The complete dismissal of international law by some realists, however, goes too far. International law is formed initially as a way for powerful nations to efficiently express their interests. But over time, those same powerful nations must, to maintain efficiencies, uphold the very system they first created to express their power. In that way, international law can indeed have some degree of independent autonomous force over even hegemonic powers.

II. REALPOLITIK AND INTERNATIONAL LAW

In Part I, I argued that while realism is the most accurate paradigm of international relations, it sometimes fails to sufficiently acknowledge that international law can, at times, be autonomously self-enforcing (in that great powers may choose to abide by international law in order to maintain a legal mechanism that is otherwise an efficient means of expressing power). This second Part, however, will not discuss realism in the predictive, paradigmatic manner as above. Rather, the realism discussed here is of a prescriptive, policy-centric nature. This policy-oriented version of realism is oftentimes called realpolitik, which is a German word meaning “practical politics.”

In this Part, I seek to:

A. Briefly introduce and define the basic political philosophy of realpolitik;

B. Argue that a lack of realpolitik and an excess of idealism in Western foreign policy (1) provoked Russia’s recent violations of international law in Crimea, Ukraine, (2) undermined the force of international law, and (3) harmed the reputation of the West; and

C. Argue in support of Henry A. Kissinger’s and John J. Mearsheimer’s view that Ukraine (1) should not be westernized, (2) should not join the North Atlantic Treaty Organization (“NATO”) or the European Union (“EU”), and (3) should instead become, to the extent possible, a neutral buffer zone between the West and Russia.

A. Brief Summary of Realpolitik

Realpolitik is, in essence, the idea that national interests and the balance of power are more important than moral or idealistic concerns. Realpolitik

posits not only that states tend to act with security concerns, the distribution of power, and national interests in mind (as do realists), but also that they ought to. “In theory, [realpolitik] most closely resembles Morgenthau’s contention that a nation could not ‘escape . . . into a realm where action is guided by moral principles rather than by considerations of power.’”35 Realism predicts how nation-states will interact based on power and security concerns; realpolitik urges a foreign policy that considers the realities of international power politics rather than solely the goals of a certain political or moral ideology.

To analogize, if realism predicts that theft will occur where there are unlocked doors, then realpolitik prescribes that one ought to lock his door. Surely, if we accept the proposition that nation-states on the international scene tend to act egoistically, then it would be illogical for a single nation to choose to act in a primarily altruistic or ideological manner, lest they disadvantage themselves and, ultimately, undermine their greater goals.

British historian and scholar John Bew has stated that realpolitik was historically viewed as a sort of “curb” on idealism—it sought to find a geopolitically realistic way of achieving desirable international goals.37 The term realpolitik was coined in 1853 by Ludwig von Rochau,38 and according to Bew:

Rochau wanted to achieve liberal aims such as parliamentary government and equality before the law. But he recognized that liberals had to get smart, compromise, and truly understand the nature of power if they were to win. He was a “liberal mugged by reality.” . . . [T]his seems to be closer to the quintessential dilemma of modern American foreign policy.39

Indeed:

[T]he creation of the concept of realpolitik was an early attempt to answer a conundrum that has been at the heart of Anglo-American

38. See JONATHAN HASLAM, NO VIRTUE LIKE NECESSITY: REALIST THOUGHT IN INTERNATIONAL RELATIONS SINCE MACHAELI 184 (2002).
39. Evans, supra note 37.
foreign policy ever since: how to achieve liberal, enlightened goals in a world that does not follow liberal, enlightened rules; and how to ensure political and social progress in an unstable and unpredictable environment.\footnote{Bew, supra note 35.}

To analogize again—for the purpose of illustration—if an idealist is a student who wants to move to Barcelona and teach art history, then a realpolitiker is the idealist’s friend who suggests that the idealist ought to first develop a formidable savings account, learn about art history, and learn to speak Spanish. This image is, admittedly, a caricature, but I hope the underlying point is well-taken: realpolitikers, in the historical sense, are not opposed to moral or humanitarian considerations—they simply consider such aims to be impossible to achieve without first recognizing practical concerns and important national interests. People often associate realpolitik with Machiavellian ruthlessness; but according to Bew, that is clearly a mischaracterization.\footnote{Evans, supra note 37.} As the famous realpolitiker Henry A. Kissinger once said: “While we should never give up our principles, we must also realize that we cannot maintain our principles unless we survive.”\footnote{Kissinger, supra note 1.} This is the type of realpolitik I intend to promote in this Note—one that simply considers moral concerns subordinate to practical concerns, not one that fails to consider morals at all. As Kissinger said in his most recent book \textit{World Order}, “as a general rule, the most sustainable course will involve a blend of the realism and idealism too often held out in the American debate as incompatible opposites.”\footnote{HENRY KISSINGER, WORLD ORDER 125–26 (2014).}

\section*{B. Realpolitik and the Crimean Crisis}

So far we have defined the realpolitik of this paper as a political philosophy that considers moral and ideological concerns relevant only if concerns regarding survival, the distribution of power, and geopolitical realities have first been satisfied. My next goal is to argue that a lack of realpolitik and an excess of idealism in Western foreign policy (1) provoked Russia’s recent violations of international law in Crimea, Ukraine, (2) undermined the force of international law, and (3) harmed the reputation of the West.

In a recent essay published in \textit{Foreign Affairs}, offensive realist John J. Mearsheimer asserts that the Crimean crisis is, contrary to popular opinion, the West’s fault.\footnote{John J. Mearsheimer, \textit{Why the Ukraine Crisis is the West’s Fault: The Liberal Delusions that Provoked Putin}, \textit{FOREIGN AFF.}, Sep./Oct. 2014, available at https://www.foreignaffairs.com/articles/russia-fsu/2014-08-18/why-ukraine-crisis-west-s-fault.} First, Mearsheimer rejects the common assertion that the Crimean crisis is a reflection of “Russian aggression” stemming from the
Kremlin’s “long-standing desire to resuscitate the Soviet empire.” Instead, he asserts, “the United States and its European allies share most of the responsibility for the crisis.” Ultimately, Mearsheimer cites three incidents that motivated Russia’s recent actions in Crimea: first, the potentiality of Ukraine joining NATO; second, the potentiality of Ukraine joining the EU; and third, the “West’s backing of the pro-democracy movement in Ukraine,” which began with the Orange Revolution in 2004. Russia, since the mid-1990s, has quite naturally been clear in its vehement opposition to NATO enlargement and the westernization of Ukraine. When there was a coup in Ukraine to oust pro-Russian President Viktor Yanukovych, Putin responded by taking Crimea, which he did in part out of a reasonable fear that Crimea, if admitted into NATO, could one day host a NATO naval base.

In the end, even though Putin’s annexation of Crimea was, by most accounts, illegal under the United Nations Charter and customary international legal norms, his actions should nevertheless come as no surprise to the West. Putin has been decrying the West’s eastward movements for a while now, and he is not without justification in his fear of being geographically surrounded by international powers greater than Russia. Indeed, as one Huffington Post article puts it, “Putin has been acting rationally, protecting his country and its citizens against perceived threats to their interests by an important next-door neighbor.” Nevertheless, the West seemed to be surprised by Putin’s violation of international law in his annexation of Crimea (although as discussed in Part I, Putin did at least try to argue that his actions were legally justified). According to Mearsheimer:

Elites in the United States and Europe have been blindsided by events only because they subscribe to a flawed view of international politics. They tend to believe that the logic of realism holds little relevance in the twenty-first century and that Europe can be kept whole and free on the basis of such liberal principles as the rule of law, economic interdependence, and democracy.

But this grand scheme went awry in Ukraine. The crisis there shows that realpolitik remains relevant—and states that ignore it do so at

45. Id.
46. Id.
47. Id.
48. See id.
49. See id.
50. See id.
their own peril.\textsuperscript{52}

What we seem to forget is that, while Russia’s annexation of Crimea constitutes a \textit{de facto} expansion of the Russian border, so would the acceptance of Ukraine into NATO or the EU act as a \textit{de facto} expansion of the Western “border.” Putin’s opposition to these possibilities (and his willingness to take military measures against them even in violation of international law) should come as no surprise. Again, “[w]hen it comes to the international system, realists believe that changing distributions of power are dangerous.”\textsuperscript{53} The westernization of Ukraine would certainly constitute a “changing distribution of power” that could be justifiably viewed by Russia as “dangerous.”\textsuperscript{54} The West stands to lose far more by upsetting Russia than it does to gain by westernizing Ukraine, and it made a mistake in its attempt to do so.\textsuperscript{55}

This ignorance of realpolitik concerning Russia began in the mid-1990s with the Clinton administration’s goal of facilitating NATO expansion and promoting nuclear non-proliferation.\textsuperscript{56} First, in December 1994, the Clinton administration and the world’s great powers convinced Ukraine to give up its nuclear arsenal per the requirements of the Budapest Memorandums (the West did not, however, promise to defend Ukraine in the event of an attack on Ukraine by Russia or another great power).\textsuperscript{57} This—as will be discussed later in this Note—was detrimental for Ukraine and was most certainly a mistake for all parties involved (except Russia).

Moreover, in 1999, the Czech Republic, Hungary, and Poland were all admitted into NATO, marking the beginning of the West’s eastward crawl toward Russia.\textsuperscript{58} To Russia’s dismay, NATO expansion did not stop there. In 2004, Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia all joined NATO, with “Moscow complain[ing] bitterly from the start.”\textsuperscript{59} From the Russian perspective, the situation grew even worse in April 2008 at NATO’s summit in Bucharest.\textsuperscript{60} There, NATO considered welcoming Georgia and Ukraine into the alliance, which the Bush administration supported.\textsuperscript{61} But Germany and France (enjoying a rare moment of wisdom) opposed the admission of Georgia and Ukraine into NATO “for fear that it would unduly antagonize Russia.”\textsuperscript{62} Ultimately,
NATO reached a compromise. Although Georgia and Ukraine would not immediately be admitted into the alliance, NATO nevertheless said in the Bucharest Summit Declaration press release: “NATO welcomes Ukraine’s and Georgia’s Euro-Atlantic aspirations for membership in NATO. We agreed today that these countries will become members of NATO.”\textsuperscript{63} Through all of this, Putin maintained that the admittance of Georgia and Ukraine into NATO would be a “direct threat” to Russia.\textsuperscript{64} Eventually, in August 2008, Russia invaded Georgia in an attempt “to keep Georgia weak and divided.”\textsuperscript{65} This, of course, proved Russia’s willingness to protect its interests. Nonetheless, in 2009, NATO kept expanding and ultimately also admitted Albania and Croatia into the alliance.\textsuperscript{66}

In May 2008, the EU released its “Eastern Partnership” initiative, intended to facilitate the integration of eastern European countries like Ukraine into the EU economy.\textsuperscript{67} According to Mearsheimer, “[i]n the eyes of Russian leaders, EU expansion is a stalking horse for NATO expansion.”\textsuperscript{68} As Henry Kissinger recently said in an article in the \textit{Washington Post}, “[t]he European Union must recognize that its bureaucratic dilatoriness and subordination of the strategic element to domestic politics in negotiating Ukraine’s relationship to Europe contributed to turning a negotiation into a crisis.”\textsuperscript{69}

To top it all off, the United States has “invested more than $5 billion since 1991” in support of democracy and anti-Russian factions in Ukraine.\textsuperscript{70} Between NATO expansion, EU expansion, and America’s financial support for anti-Russian factions in Ukraine, it is no wonder Putin feels threatened and is willing to lash out militarily. Even though Russia is a declining power, it is still a great power and a key player on the international scene. Russia may also, over time, prove to be a key player in the war on terror in the Middle East, which is, needless to say, of great importance to the West.\textsuperscript{71} A wise foreign policy, then, would not be one that needlessly angers Russia by camping at their doorstep, but instead one that balances Russia from afar while maintaining a neutral buffer zone between the West and Russia in key places like Ukraine. According to Kissinger, “[f]ar too often the Ukrainian issue is posed as a showdown: whether Ukraine joins the East or the West. But if Ukraine is to survive and thrive, it must not be either

\textsuperscript{64} Mearsheimer, \textit{supra} note 44.
\textsuperscript{65} Id.
\textsuperscript{66} Id.
\textsuperscript{67} Id.
\textsuperscript{68} Id.
\textsuperscript{69} Id.
\textsuperscript{70} Mearsheimer, \textit{supra} note 44.
\textsuperscript{71} See \textit{DeLahunty}, \textit{supra} note 29, at 49–50.
side’s outpost against the other—it should function as a bridge between them.”

Kissinger also hints that the West does not sufficiently understand Russia’s long relationship with Ukraine—especially Crimea. He says that, to Russia, Ukraine is much more than a foreign country or a neighbor; Ukraine is an important part of Russia’s history. Not only had Ukraine previously been a part of Russia for centuries, but the Russian Orthodox religion largely spread from an area of Ukraine formerly known as Kievan Rus. Additionally, “[s]ome of the most important battles for Russian freedom, starting with the Battle of Poltava in 1709,” says Kissinger, “were fought on Ukrainian soil.” And perhaps most important, Russia’s Black Sea Fleet is based, in part, in Sevastopol in Crimea. Notably, the Ukrainian government in 2009 announced that it would not extend Russia’s lease for their naval bases in Crimea beyond the year 2017, no doubt contributing to tensions in the region. Surely, “Vladimir Putin, not illogically, sees Russia threatened on its borders by [a] U.S.-led coalition.”

In his Foreign Affairs essay, Mearsheimer bolsters his position by mentioning that “Napoleonic France, imperial Germany, and Nazi Germany all crossed [Ukraine] to strike at Russia itself.” He also says that, ultimately, it would be ridiculous to expect a Russian leader to “stand idly by” while the West installed a pro-democracy government in and formed military alliances with Ukraine. Certainly, if Canada or Mexico were seriously considering becoming a socialist nation and forming an alliance with Russia or China, the United States would be justifiably concerned.

Additionally, the Ukrainian people are very divided at heart. Western Ukraine is made up primarily of Ukrainian-speaking Catholics, while eastern Ukraine is made up largely of Russian-speaking followers of the Russian Orthodox church. Any attempt to force the country at large to “choose sides” is foolish and will lead to strife—potentially even a civil war proxied on each side by the U.S. and Russia. Again, if the goal is to bring the West and Russia together as part of a cooperative international system,

72. Kissinger, supra note 69.
73. Id.
74. Id.
75. Id.
76. Id.
77. Id.
78. Id.
80. Mearsheimer, supra note 44.
81. Id.
82. See id.
83. Kissinger, supra note 69.
84. See id.
argues Kissinger, then Ukraine should not be treated “as part of an East-West confrontation.” Rather, a “wise U.S. policy toward Ukraine would seek a way for the two parts of the country to cooperate with each other.”

Kissinger urges, to the extent possible, a reconciliation of the factions—not the dominance of a single faction. Ultimately, it was the faulty belief that the end of the Cold War also spelled the end of the realist story of international relations that led foreign policy officials in the Clinton administration, and later in the Bush administration, to overestimate Russia’s tolerance for Western ideas. Truly:

In essence, the two sides have been operating with different playbooks: Putin and his compatriots have been thinking and acting according to realist dictates, whereas their Western counterparts have been adhering to liberal ideas about international politics. The result is that the United States and its allies unknowingly provoked a major crisis over Ukraine.

The West, then, was certainly not acting with realpolitik in mind when it backed the coup against Viktor Yanukovych, as the direct result was Putin’s invasion and subsequent annexation of Crimea. As Mearsheimer puts it, “Putin put massive pressure on the new government in Kiev to discourage it from siding with the West against Moscow, making it clear that he would wreck Ukraine as a functioning state before he would allow it to become a Western stronghold on Russia’s doorstep.” Needless to say, this tension is not good news for Europe. As one writer for the Houston Chronicle stated:

Europe is beholden to Russia for [natural] gas, a situation that makes them uncomfortable since there is little they can do when Russian President Vladimir Putin decides to invade his neighbors. The EU worries that if they make too much of a fuss when Russia violates international law, they’ll have a very long, cold winter the following year.

This is an excellent example of how, at the end of the day, international legal mechanisms founded in idealism (such as the United Nations Charter) can do little to suppress a great power’s desires. Even though America has itself skirted the lines drawn by international law in places such as Kosovo

---

85. Id.
86. Id.
87. Id.
88. Mearsheimer, supra note 44.
89. Id.
90. Id.
and Iraq, America was nonetheless surprised that Putin would dare do something similar. Even if, *arguendo*, Putin’s actions in Crimea were a clearer violation of international law than America’s actions in Kosovo or Iraq, it is still hard to argue that Russia’s geostrategic interest in Crimea is not well-founded. Moreover, Russia, as a P5 member, can veto any measures the United Nations Security Council may wish to take in response to the events in Crimea and Russia’s violations against the United Nations Charter and the international legal norm of non-aggression. This realpolitik makes international law seem, in this instance, all but silly. Had the West (1) allowed Ukraine to keep its nuclear weapons arsenal and (2) not sought to westernize Ukraine, Ukraine and Russia would naturally balance each other and prevent one another from becoming aggressive. This situation would have, at the very least, not undermined the efficacy or legitimacy of the United Nations Charter and international law in the way the Crimean crisis has.

International law can, at times, be autonomously self-enforcing on a great power (as discussed in Part I); at other times, however, international law has no effect whatsoever on the actions of powerful nations. In times when a great power’s interest in violating international law is sufficiently strong to the point that international law, in itself, is not self-enforcing, the force of international law requires that other great powers be ready, willing, and able to enforce it. America and the West are foolish to, on one hand, rely on international law to restrict Russia’s actions, but then, on the other hand, not be willing to step in and enforce international law when Russia does, indeed, violate it. In doing this, the West further undermines the already fledgling legitimacy of international law in the eyes of highly realist states like Russia. If we had foreseen that Russia would act as it did (that is, respond when provoked regardless of international law), perhaps we could have avoided the Crimean crisis altogether and prevented this further erosion of the legitimacy of international law.

The only real response that the West is willing to give to Putin’s actions in Crimea is the imposition of economic sanctions against Russia. These, so far, have been quite limited and are unlikely to get stronger, as Western Europe has everything to lose if Russia strikes back with economic sanctions of its own against Europe. Moreover, “[h]istory shows that countries will absorb enormous amounts of punishment in order to protect their core strategic interests,” and “[t]here is no reason to think Russia represents an exception to this rule.”

Now, the idealist goals of admitting Ukraine into NATO and the EU may have made sense, from a realpolitik perspective, had Russia in fact

92. See DELAHUNTY, *supra* note 29, at 50.
93. Mearsheimer, *supra* note 44.
95. Mearsheimer, *supra* note 44.
needed to be further balanced. That, however, simply was not the case. Russia’s population is aging, and its military, while nothing to shake a stick at, is certainly not ready to challenge Europe and the United States. One could ask: If Russia is not militarily ready for war against NATO, then why should we hesitate to admit Georgia and Russia into NATO? The answer, simply, is that if Russia feels sufficiently threatened, it just might start a war anyway. Russia is, after all, still a nuclear power, which is a fact that must enter into any foreign policy equation. As Stephen D. Krasner has noted:

[N]uclear weapons have removed any ambiguity about the costs of war. . . . In [today’s world], an all out war between nuclear states . . . would be catastrophically destructive. Nuclear weapons have made leaders much more cautious as evidenced by the fact that there has not been a direct war between major powers since 1945, the longest period of major power peace in the last several hundred years.

The first irony here is that while the phenomenon of nuclear proliferation has made war between great powers highly unlikely, it has also made great powers exceedingly unlikely to directly challenge another great power on anything less than a direct, credible, and serious threat. Putin understands this logic all too well; he knew that the United States would be unlikely to respond militarily if he quietly annexed Crimea—and he was right. The second irony is that, had the Clinton administration not convinced Ukraine to give up their nuclear weapons in December 1994—an act founded solely in idealism with no thoughts of realism or realpolitik—the entire Crimean crisis may have been avoided. If Ukraine had nuclear weapons today, it would have the means to protect itself against Russia, and Russia would have taken that into account before invading Crimea.

C. Realpolitik and Ukraine Moving Forward

As stated briefly above, the philosophy of realpolitik does offer at least a partial solution to this crisis. This solution, says both John J. Mearsheimer and Henry A. Kissinger, is for the West to abandon its efforts to westernize Ukraine and forego any plans to admit Ukraine into NATO or the EU.

This makes sense because Ukraine is such an important strategic interest for Russia but really is not all that strategically important for the West. The primary reason the West desires to westernize Ukraine is to spread the ideals of democracy across Eastern Europe. This is certainly a noble desire born of good intentions, but it is likely not worth the trouble it is causing in

96. See id.
97. Krasner, supra note 53.
98. See DELAHUNTY, supra note 29, at 55.
99. See Kissinger, supra note 69; See Mearsheimer, supra note 44.
100. See Mearsheimer, supra note 44; See DELAHUNTY, supra note 29, at 50.
Crimea. Remember, it was the idealism behind the nuclear non-proliferation deal made with Ukraine, and the potential westernization of Ukraine, that caused this crisis in the first place.

Ultimately, Mearsheimer proposes that the West “help fashion an economic rescue plan for Ukraine funded jointly by the EU, the International Monetary Fund, Russia, and the United States—a proposal that Moscow would welcome, given its interest in having a prosperous and stable Ukraine on its western flank.” The U.S. should also stop supporting anti-Russian factions in Ukraine and instead simply encourage Ukraine to respect the rights of minorities in the country, “especially the language rights of Russian speakers.” Kissinger says that this type of Ukraine would look a lot like Finland, which “leaves no doubt about its fierce independence and cooperates with the West in most fields but carefully avoids institutional hostility toward Russia.” Mearsheimer, however, raises a potential counterargument to this overall strategy of creating a buffer zone in Ukraine between the West and Russia by stating that:

Some may argue that changing policy toward Ukraine at this late date would seriously damage U.S. credibility around the world. There would undoubtedly be certain costs, but the costs of continuing a misguided strategy would be much greater. Furthermore, other countries are likely to respect a state that learns from its mistakes and ultimately devises a policy that deals effectively with the problem at hand.

This, to me, is quite persuasive. Not only have the United States’ and the West’s idealist policies led to the Crimean crisis, but they have also contributed to the undermining of the legitimacy of international law and have themselves had negative consequences in terms of the West’s reputation globally. Such a drastic change in policy as suggested by Mearsheimer and Kissinger may be hard to swallow at first, but once the world sees the wisdom of the new policy, it will accept it.

CONCLUSION

Although international law can, at times, be autonomously self-enforcing on great powers, it often is not. In most circumstances, the force of international law relies on the willingness of great powers to intervene when another international actor breaks the law. To prevent the undermining of the legitimacy (and thereby the efficacy) of international law, great powers must be careful to avoid situations where violations of international law are

101. Mearsheimer, supra note 44.
102. Id.
103. Kissinger, supra note 69.
104. Mearsheimer, supra note 44.
law go ignored. If the United States and the West wish to promote good in the world and uphold international law, it must first maintain a foreign policy that does everything in its power to prevent violations of international law globally. And certainly, if we are to take action that severely tempts another nation to violate international law, we should either stand ready to enforce the law against that nation or refrain from complaining of the nation’s legal violations. To simultaneously provoke violations and condemn those violations (while also being wholly unwilling to meaningfully back up those condemnations) is to make international law look as though it has no force whatsoever.

In doing so, the West has widened the gap between what international law requires on paper and what international law requires in reality. The wider that gap, the harder it will be for international law to function at all. Through the use of realpolitik in its foreign policy, the West can work to narrow this gap. This is the type of realpolitik that Ludwig von Rochau promoted in 1853—one that uses the realities of power and geopolitics to forward the otherwise idealistic and moral goal of making the world a better place through international law and a stable world order.105

---

105. Evans, supra note 37.