



ECONOMIC SANCTIONS AGAINST THE RUSSIAN FEDERATION ARE ILLEGAL UNDER PUBLIC INTERNATIONAL LAW

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The economic sanctions imposed upon the Russian Federation, for its supposed military intervention in Ukraine, violate public international law on three grounds: (1) lack of authorisation under the United Nations Charter, (2) inapplicability of Article XXI of the GATT, and (3) lack of legal authority based on the International Law Commission's Draft articles on Responsibility of States for Internationally Wrongful Acts.

The United Nations Charter explicitly specifies the procedures to be followed in the event of a perceived threat to international peace and security, and implicitly forbids Member States from taking unilateral or concerted action outside the ambit of the UN Charter to respond to perceived threats to international peace and security. Any contrary interpretation would run afoul of the fundamental principles underlying the United Nations Charter.

Article 24 of the UN Charter confers authority upon the Security Council to maintain international peace and security. Article 34 confers authority upon the Security Council to investigate disputes that may destabilise the peaceful relations upon Member States and Article 39 states, "The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security".

The Security Council has not found that the Russian Federation has threatened the peace or stability of Ukraine, or has committed an act of aggression. Ample opportunity exists to confirm the presence of Russian military in Ukraine through the Open Skies Treaty and the deployment of other surveillance technology available to the US and its allies. No data supports the allegations of President Obama, his representatives, and counterparts in the EU and Australia, that the Russian Federation has mobilized troops and artillery in Ukraine. The accusations may be deemed reckless, provocative, and contrary to principles underlying the international order implemented by Bretton Woods.

Equally devoid of persuasive authority is reliance upon Article XXI of GATT 1994. Article XXI states that the GATT will not prevent a WTO member "from taking any action which it considers necessary for the protection of its essential security interests . . . taken in time of war or other emergency in international relations." While the GATT, as typical of legal instruments, does not define critical terms such as "considers necessary," "essential security interests," "time of war," and "emergency in international relations", it arguably allows a State to determine subjectively whether there is a war or "other

emergency in international relations", in direct conflict with the United Nations Charter. In any event, except for Ukraine, Article XXI is not germane for any other country.

First, the United States, European Union, and Australia lack essential security interests in a civil war in Ukraine, unless the concept of "essential security interest" is stretched to an absurdity, as it was under the Clinton Administration when the Caspian Sea was deemed a matter of national security interest. The Russian Federation has not taken any action against the United States or its allies. Indeed, the Russian Federation has taken the opposite tack, providing information within its possession and offering to broker a settlement. Ukraine arguably is the only State that could rely upon Article XXI, but Ukraine has not invoked this provision of the GATT. Noteworthy also is the fact that the WTO probably lacks jurisdiction to hear a dispute under Article XXI.

Further unavailing is recourse to the International Law Commission's Draft articles on Responsibility of States for Internationally Wrongful Acts (2001) (Draft Articles). First, the Draft Articles are not law, as never adopted by the United Nations. Second, Article 3 of the Draft articles provides, "The characterization of an act of a State as internationally wrongful is governed by international law. Such characterization is not affected by the characterization of the same act as lawful by internal law." Article 40 states "This chapter applies to the international responsibility which is entailed by a serious breach by a State of an obligation arising under a peremptory norm of general international law.

Nation States cannot rely upon national law, or subjective judgment, to satisfy this requirement, bringing the argument full circle back to the principles of the United Nations Charter. Therefore, the Russian Federation has not committed an internationally wrongful act, in the absence of a Security Council determination of that fact, a prerequisite to any act of retaliation provided under Part Three of the Draft articles.

However, the US, EU, Australia and other countries that have imposed economic sanctions against the Russian Federation may have violated peremptory norms of international law by intervening in the internal affairs of the Russian Federation to cause a modification of its foreign policy, and may have violated peremptory norms of internal law by providing military assistance to Ukraine in its effort to defeat by lethal means its internal conflict in the Donbass region. Ukraine is indiscriminately killing its citizens in Eastern Ukraine, who are exercising rights of self-determination under Treaties signed by Ukraine, US, EU, and Australia.

While public international law is razor thin on what actions a Sovereign may take to quell an internal conflict, killing its citizens, including civilians, children, the sick and elderly, do not accord with the moral principles espoused publicly by the US/EU axis. In addition, the US/EU support of the Kiev regime has enabled Ukraine to destroy schools, hospitals, residences, and transport infrastructure in the Donbass. The international community of States must question, if not condemn, the aggression of the US/EU, and any other countries involved in imposing punitive measures against the Russian Federation in the absence of independent corroboration and a Security Council determination.

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Featured: "Allegory of Justice," by Raphael, mosaic, ca. 1508.

