



**City Montessori School Model United Nations
Aliganj, 2019.**

UNSC

Territorial integrity of Ukraine

LETTER FROM THE EXECUTIVE BOARD

On behalf of the organizing committee, we welcome you to the simulation of United Nations Security Council, in the maiden edition of CMS Aliganj MUN.

The executive board comprises of two members who shall hold the presidency of the council.

Hello, my name is Suyash Dhasmana. It is my privilege to serve as the President of the UNSC simulation at the maiden edition of CMS Aliganj MUN. I am a student of law at Law College Dehradun and I have interest in debating, reading and writing. I have been a part of the Lucknow MUN circuit since 3-4 years and various debating competitions along the way. I hope the delegates have a good time in the committee under my moderation.

Hello, my name is Soumya Singh, It is my humble privilege to serve as the Vice President of the UNSC simulation at the maiden edition of CMS Aliganj MUN I am from City Montessori School. Apart from academics, I possess a keen interest in debating, social work and International relations. It's been almost two years I've been a segment of the Lucknow Model UN circuit, having said that, I have been to various Model UN conferences in the capacities of a delegate as well as an executive board member.

The executive board hopes to provide you all, an invigorating experience through discussions of the agenda at hand. Delegates, also consider that apart from being well-versed about the & try to be aware about your country's foreign policy and stance on the same which shall ensure that proper inroads are made to the essence of the agendum whilst being within the garb of legality as prescribed.

BACKGROUND OF SITUATION IN UKRAINE

Ukraine's most prolonged and deadly crisis since its post-Soviet independence began as a protest against the government dropping plans to forge closer trade ties with the European Union, and has since spurred escalating tensions between Russia and Western powers. The crisis stems from more than twenty years of weak governance, a lopsided economy dominated by oligarchs, heavy reliance on Russia, and sharp differences between Ukraine's linguistically, religiously, and ethnically

distinct eastern and western regions. After the ouster of President Viktor Yanukovich on the 21st February 2014, Russia annexed the Crimean peninsula and The port city of Sevastopol, deploying tens of thousands of forces near the border of eastern Ukraine, where conflict erupted between pro-Russian separatists and the new government in Kiev. Russia's moves, including reported military support for separatist forces, mark a serious challenge to established principles of world order such as sovereignty, nonintervention and respect for territorial integrity.

VIOLATION OF UKRAINE'S TERRITORIAL INTEGRITY

With these dimensions of territorial protection in mind, we can now turn to the task of applying these notions to the conflict between Russia and Ukraine. This application shows us three things: first, the acting militias as such have not violated international law (1.). Second, Russia has directly violated Ukraine's territorial integrity by using military force (2.). Third, indirect violations are also likely to have occurred but the facts remain insufficiently explored to give a full account (3).

WHAT IS TERRITORIAL INTEGRITY IN INTERNATIONAL LAW?

The concept of territorial integrity emerged as a general principle of international law during the course of the 19th century. In the middle of the 19th century the language on territorial protection that we still use today was already established within the discourse on international law. Territorial Integrity can be defined as “**Territorial integrity** is the principle under international law that nation-states should not attempt to promote secessionist movements or to promote border changes in other nation-states. Conversely it states that imposition by force of a border change is an act of aggression. Protection of territorial integrity forms a core principle of international law and is – together with the prohibition of the use of force – one of the foundations of the UN Charter's attempt to secure international peace and stability. The content of the legal concept is largely uncontested, but problems come into play at the level of application of the principle to specific

situations. We have seen that the concept of territorial integrity is internally linked to the idea of the expression of a political will over and within a certain territory. In concrete disputes over territories it is then often put into question how the relevant political community entitled to territorial control and protection shall be determined. As we have seen with regard to Crimea, this gives rise to historical arguments over such titles and to secessionist claims that aim at redefining the political community. International law, however, very much limits the possible arguments that can be invoked to challenge the existing territorial situation. The principle of “uti possidetis” determines the de facto boundaries at the time of independence as crucial and international law is also hostile towards recognizing territorial changes as the consequence of the self-determination of peoples.

LIMITS OF TERRITORIAL INTEGRITY

International law does not protect a state's territorial integrity without restraint, but sets certain limits. A first limitation is the possibility for Security Council Action under Chapter VII of the UN Charter. In order to maintain or restore international peace and security, the Security Council may use forceful measures in the territories of the states involved in a conflict. Further, a state's territorial integrity would not be violated if the acting state responded to an armed attack and were therefore acting in self defense under Article 51 of the Charter. Both of these limits are, however, obviously not relevant with regard to Crimea because Ukraine has not attacked Russia and Security Council action under Chapter VII has not been taken. Another legal justification for foreign military presence on the territory of another state exists when the receiving state has agreed to that military presence. A so-called intervention upon invitation does not violate the political independence and territory of a state because it is in accordance with the will that the organs of this state have expressed. This justification for the presence of troops has been invoked within the Crimean crisis. Though Russian President Mr. Vladimir Putin initially kept claiming that Russian troops were not present on Crimea, he justified the hypothetical presence of Russian troops under reference to an invitation letter issued by Mr. V. Yanukovych. However, for reasons spelled out in V. Bílková's contribution to this symposium Yanukovych's invitation cannot justify Russia's use of force. A further argument that has been brought up in the political debate was that the Russian intervention is necessary to protect the Russian-speaking minority living in Crimea. Essentially this argument invokes the responsibility of states to protect their citizens from massive human rights violations and claims a right and possibly also a duty of foreign states to intervene in case this responsibility is not

met. However, this argument is deficient for two reasons. First, there is de facto no evidence for such large-scale human rights violations in Crimea. Secondly,

International law, as it stands, clearly does not regard the concept of humanitarian intervention to be a self-standing justification for the use of force. The 2005 World Summit Outcome has made clear that the legal concept of a responsibility to protect does not substitute Security Council authorization for the use of force, but rather requires it. In the political and academic discourse, the argument has been occasionally put forward that the violation of Ukraine's territory is justified or at least not a serious matter because it was necessary to enforce the alleged right of the Crimean population to self-determination. However, this argument is not valid because international law does not provide, as has been pointed out above, a right to self-determination in the Crimean case.

Consequently, there are limits to territorial protection but they do not affect the protection of Crimea as a part of Ukrainian territory.'

Possible Reactions to Violations of a State's Territorial Integrity Ultimately, the question remains how states may react to violations of their territory in accordance with international law. The crucial and primary instrument that the UN Charter offers is Article 51, which references the "inherent right of individual or collective self-defense." This right to self-defense is triggered by an armed attack, which requires the use of force of certain gravity. The gravity of the use of force has to be assessed based on the concrete circumstances, taking into account the specificities of the situation. Mere small-scale border incidents will usually not amount to an armed attack. On the other hand, armed attacks do not have to consist of large-scale invasions, as this would unduly limit the possible legal reactions for states against violations of their territory. In the Oil Platforms case the ICJ has, for example,

explicitly not excluded "the possibility that the mining of a single military vessel might be sufficient to bring into play the 'inherent right of self-defence'. We should now take a look at the types of violations of a state's territory that have been discussed above, and at what the law on self-defense provides for these situations. First, it is highly contested whether acts by non state actors can be interpreted as armed attacks. The ICJ holds that self defense is possible "in the case of armed attack by one State against another State" and implicitly suggests that self-defense is only possible in this case. It is highly controversial whether the latter view, in fact, reflects the current state of international law, especially as there is significant state practice in which military actions against non-state actors have been justified as self-defense under either endorsement or at least lack of clear rejection by other

states. Within the debate on the application of the principle of self-defense to non-state actors it is especially controversial whether and under which circumstances a state may also take action against non-state actors on the territory of another state. While this is, in general, a theoretically and practically crucial problem, it does not pose specific challenges in regard to Crimea. Ukraine would in any case have had the right to use armed force against the separatists as a policing measure against internal unrest, covered by its sovereign rights. A problematic constellation would then only be reached when actions against non-state actors would also have affected the territory of another state (i.e. Russia) – a highly hypothetical discussion, however, that shall not be followed up here. Second, there is the dimension of self-defense against Russia's intervention and in that regard the situation becomes more complicated. Here we have to take up the differentiation made above between direct and indirect violations. With regard to direct violations, i.e. those that are attributable to the conduct of another state, there is an established international law that allows for self-defense. This is obvious in cases where the territorial integrity is violated by a state's regular military forces, but it is also accepted where the violation is carried out by non-state actors under the state's effective control. Having arrived at the conclusion earlier that such a direct violation of Ukraine's territory has occurred, the crucial question for the Crimean case, therefore, is only whether Russia's use of force reaches the gravity threshold of an armed attack. Since we do not know the details of the concrete forms of Russian involvement, the required evaluation faces factual uncertainties. However, all the evidence suggests that the Russian involvement in Crimea was not isolated and limited, resembling the prototype of a mere border incident. Rather, it was large-scale and systematic, demonstrating military superiority and ensuring that Ukrainian military forces would not dare to oppose the military actions taken in Crimea. Creating a scenario in which Ukraine would no longer be in a position to oppose the separatists has been the declared aim. In the already quoted press interview Putin pointed out the necessity of the use of Russian military forces as it "was impossible in any other way to ensure the open, honest and decent way for people [in Crimea, C.M.] to express their opinion". Subject to further factual findings, all that points in the direction that the threshold of an armed attack clearly has been met. Russian military forces played a crucial role in blocking Ukrainian military units and therefore hindered the exertion of Ukraine's sovereign rights. For the sake of effective protection of territorial integrity, the threshold of an armed attack cannot be set too high. The adequate level of response will then have to be determined according to the criteria of necessity and proportionality that every action in self-defense needs to fulfill. Consequently, international law would have granted Ukraine the right to self-defense against the intervening Russian military forces.

This is, however, just the law. Whether it would have been politically advisable to resort to self-defense is a completely distinct question that shall not be put up for discussion here. Third, international law does not allow self-defense against indirect violations of the territorial integrity. While the offender state violates the victim state's territorial integrity by providing support to rebels, it does not exert a sufficient degree of control to consider the use of force by third groups an armed attack by the state. However, the state that has become victim of the use of force that does not amount to an armed attack may nevertheless engage in counter-measures "analogous to the right of collective self defence". The ICJ has avoided taking a clear position on whether these counter-measures may involve the use of force. However, the better arguments are in favor of such a right to resort to – as B. Simma puts it – "defensive military action 'short of' full-scale self-defense". In lack of such a right, a state would not be able to take effective actions against the use of force against its territory at all. The difference of these counter-measures and a full-fledged right to self-defense then is a matter of scale. The right to take counter-measures is less comprehensive and a higher threshold must be applied in regard to the necessity and proportionality of the defensive action.

DEFINITIONS OF KEY TERMS

Crimean Tatars: The Crimean Tatars are a Turkic ethnic group indigenous to the Crimean Peninsula. Today, the Crimean Tatars make up 12% of the population of Crimea.

Referendum: A referendum is a general vote in which an entire electorate is asked to vote directly on a particular proposal. In 2014, Russia submitted a referendum asking the people of Crimea if they wanted the Crimean Peninsula to become part of Russia. Most members of the international community consider the results of this referendum illegitimate.

Annexation: The forcible acquisition of a particular territory into another state. The cause of the Ukraine crisis was Russia's annexation of Crimea, a peninsular territory of Ukraine.

Autonomy: The right or condition of self-government. Since 1991, the Crimean Peninsula has been an autonomous territory of Ukraine.

SOURCE

http://www.zaoerv.de/75_2015/75_2015_1_a_7_26.pdf

<https://www.un.org/press/en/2019/ga12122.doc.htm>

MORE FOR RESEARCH

<https://www.un.org/press/en/2019/ga12122.doc.htm>

<https://www.un.org/press/en/2018/ga12108.doc.htm>

<https://www.securitycouncilreport.org/un-documents/ukraine/>

<https://news.un.org/en/story/2014/03/464812-backing-ukraines-territorial-integrity-un-assembly-declares-crimea-referendum>

CMSMUN ALIGANJ