

LAWS2270

LAW IN THE GLOBAL CONTEXT

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5. Russia-Ukraine: Self-Determination, Use of Force and Lawfare

Self-determination vs territorial integrity

Concept	Rule	Application to Crimea/Donetsk/Luhansk
Self-determination	Peoples have a right to determine political status and pursue development; historically tied to decolonisation and later minority/Indigenous claims.	Russia invokes it to frame secession/annexation as choice rather than aggression.
Internal self-determination	Participation, autonomy and cultural/political rights within an existing state.	Usually the preferred international law response outside colonial contexts.
External self-determination	Separate statehood or union with another state.	Highly exceptional; risks undermining territorial integrity.
Territorial integrity	States are protected against external force and dismemberment.	The stronger view is that Russian annexation violates Ukraine's territorial sovereignty.

Use of force framework

Step	Question	Likely answer in Ukraine scenario
1	Is there a use of force against territorial integrity or political independence?	Yes: armed invasion and annexation engage Article 2(4).
2	Is there Security Council authorisation?	No: Russia's veto blocks binding UNSC authorisation.
3	Is Article 51 self-defence available?	Russia's claims are weak: no actual armed attack by Ukraine against Russia, and protection of nationals/genocide allegations are not enough on the facts.
4	Does self-determination justify force?	Generally no; self-determination cannot be used by an external state as a licence for annexation.
5	Conclusion	Russia's use of force is unlawful; legal rhetoric functions as lawfare and legitimising discourse.

Russia's legal narratives and rebuttals

Russian claim	Legal problem	HD rebuttal
NATO expansion created a threat	Article 51 requires an armed attack; anticipatory self-defence is controversial and not satisfied by general strategic anxiety.	This attempts to reconceptualise "threat" into an armed attack.
Protection of Russian nationals/genocide	Requires factual basis and legal nexus; Ukraine used Genocide Convention jurisdiction to contest the allegation.	Legal pretext can itself become part of the dispute.
Crimea/Donbas self-determination	External self-determination is exceptional and cannot override territorial integrity through foreign force.	Referenda under military pressure lack legitimating force.
Western hypocrisy/Iraq/Kosovo	Prior violations do not create a legal entitlement to violate Article 2(4).	Hypocrisy affects legitimacy but does not change legality.

ICJ Genocide Convention proceedings

- Ukraine could not simply sue Russia at the ICJ for aggression unless Russia consented to jurisdiction over that dispute.
- Ukraine instead used the Genocide Convention compromissory clause to challenge Russia's allegation that genocide justified force.
- This is a classic example of lawfare: law is used strategically within a broader geopolitical conflict.
- Provisional measures matter legally and symbolically even when compliance is poor.

CRITICAL POINT: The Russia-Ukraine materials show international law at its strongest as a language of delegitimation and coalition-building, and at its weakest when enforcement depends on institutions vulnerable to great-power veto.

6. Sanctions and Countermeasures

Sanctions: definition and architecture

Sanctions are coercive diplomatic, economic or cultural measures. They may be collective UNSC sanctions or unilateral/autonomous sanctions imposed by a state under domestic legislation. In Australia, the Autonomous Sanctions Act 2011 (Cth) creates a framework for sanctions intended to influence foreign governments, entities or persons in accordance with Australian policy.

Type	Examples	Legal/policy issue
Diplomatic	Closing embassies, expelling diplomats.	Usually within state discretion but can escalate tensions.
Targeted financial	Asset freezes, restrictions on listed individuals/entities.	More proportionate than comprehensive embargoes.
Trade sanctions	Import/export bans, tariffs, oil price caps.	Can affect civilians and third parties through price shocks.
Cultural/sporting	Exclusion from events and institutions.	Symbolic delegitimation; effectiveness contested.