

USALI Perspectives

Is the UN Charter Order Dead After Ukraine?

If so, China shares the blame with Russia

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Since Russia's invasion of Ukraine with China's apparent backing (if not complicity), [pundits are asking whether the order created by the UN Charter is dead](#). The question is legitimate.

The UN Charter's key innovation was to make the word "war" verboten for any leader tempted to follow in Hitler's footsteps. The state of today's Security Council, paralyzed on many issues besides Ukraine [by not one but two vetoes](#), suggests to many that what we now have is a new world *disorder* unable to respond to emerging new "cold wars" between both the US and

Russia and the US and China. A world just getting a respite from former President Trump's populist threat to international law and its institutions is now reeling from Russian President Putin's ongoing attempt to restore the former Soviet empire by force. Bereft of any plausible justification under the law of the Charter, Russia's onslaught and the West's response is producing global havoc in the form of worldwide inflation, threats of famines and a global recession, and fears of a nuclearized WWII. The declaration by Putin and Chinese President Xi that their friendship is "[without limits](#)," which

builds on [prior formal Russia-China declarations](#) about international law, adds to the perception that the UN legal order is on its deathbed.

Before pronouncing its demise, it is worth remembering what the UN legal order actually is. A fully functional Security Council has existed only for a historical blink of an eye. The drafters of the UN Charter anticipated that nine votes – including those of the permanent five members or P-5 – will sometimes not be found. Therefore, they accorded the Security Council primary but not *exclusive* jurisdiction over threats to the peace. They affirmed that states together and individually have inherent rights to self-defense. They exempted regional collective security organizations such as NATO from needing advance UN permission to use collective force. And, critically, they accepted that the UN system is only one instrument among many to prevent aggression and restore peace.

The Charter has never been a suicide pact. Security Council paralysis need not stop member states from delivering arms and mounting sanctions (like those we now see imposed on Russia) to aid states under attack. The Charter anticipates that such sanctions, even if not authorized by the Security Council, are legal if taken pursuant to states' inherent powers to defend themselves and secure allies to assist them under Art. 51 or customary international law.

In addition, the Charter order anticipates that the UN General Assembly can respond when threats to the peace arise. In response to Security Council paralysis during the Cold War, the General Assembly passed the [Uniting for Peace Resolution](#), which permits it to recommend collective and individual responses to threats to the peace when the Security Council does not. During the Cold War, the General Assembly used that power to authorize peacekeeping and recommend that sanctions be imposed on violators of the peace. While the General Assembly probably cannot legally *require* states to take sanctions, it can open the door to them. Since Russia's invasion, the General Assembly has stepped up by [condemning the invasion](#), [suspending Russia from the Human Rights Council](#), and passing a [landmark resolution](#) to scrutinize future Security Council vetoes.

The [International Court of Justice \(ICJ\)](#) has affirmed the General Assembly's power to establish and fund independent administrative tribunals charged with issuing binding judgments. Accordingly, the General Assembly has legitimately [established a commission of inquiry to gather evidence of probable war crimes committed in Ukraine](#). It also has the power to recommend that states unilaterally freeze or perhaps even seize Russian assets in their territory to be

used for war crimes reparations. This would bring political and legal legitimacy to what some states are now contemplating doing on their own.

Thanks to the Charter order, we have a considerable body of international laws requiring the prosecution of war crimes and enabling remedies for victims. These laws could provide the basis for eventual trials at the International Criminal Court (ICC) or a specialized ad hoc tribunal with jurisdiction to reach the crime of aggression. Both [the ICC](#) and [the ICJ](#) have accepted jurisdiction over Russia's actions in Ukraine.

The Charter also does not preclude states' unilateral and collective efforts to defend themselves or others from threats of aggression or continued uses of force in breach of the Charter. This means it does not bar NATO from admitting Finland and Sweden. Nor does it forbid numerous collective security actions now being taken in China's neighborhood, at least some of which would probably not have occurred but for China's defense of Russian aggression in Ukraine. These include upgraded security dialogues between the US and its allies such as the [Quadrilateral Security Dialogue](#), and expanded or [new military exercises](#) among the US and its allies. Similarly, if Japanese [Prime Minister Kishida](#) creates a new National Security Strategy that authorizes "counterstrike capabilities,"

he may be reinterpreting the Japanese constitution but not international law. All of these developments in Asia are consistent with a Charter-backed world order that embraces regional coalitions of the willing to supplement the predictable failings of the UN's collective security system.

China's Global Security Initiative (GSI) targets this fundamental premise. As Katherine Wilhelm indicates in her recent [USALI Perspective Essay](#), a key idea in the GSI – [articulated here](#) by Chinese Foreign Minister Wang Yi [and here](#) by a state-affiliated Chinese scholar – is that states should not be allowed to form security alliances that are perceived by others as security threats. Wilhelm argues that China "does not want to dismantle the UN system" and, in the past, I would have readily agreed. As she suggests, China's foreign policy has long included support for parts of the Charter order. This includes China's reliance on the World Trade Organization to resist US trade sanctions in violation of its rules, support for the international investment regime and binding arbitration to enforce its rules, and at least rhetorical support for some international human rights (principally economic, social, and cultural rights). It has engaged in a rivalry with development institutions like the World Bank without fundamentally challenging the purposes of those

institutions, and has contributed to UN peacekeeping. But if China has, as she suggests, now adopted the view that a “core interest” is to undermine the US’s ability to use sanctions and alliances in response to obvious Russian aggression, then China is attacking the Charter’s core project: to enable states to resist and punish aggression through a variety of mechanisms beyond those authorized by nine votes in the Security Council.

When combined with China’s post-Ukraine vetoes of actions by the General Assembly and its apparent opposition to any attempt to hold Russian officials criminally accountable, China’s actions

suggest that it is trying to rewrite the established rules on the use of force, self-defense, and the need for accountability for fundamental violations of international law. Although the GSI’s actual language is vague, explanations by Chinese insiders make it very hard to take seriously China’s simultaneous claim that it wants to safeguard the “UN-centered international system.”

If the UN Charter dies in the wake of Ukraine, China as well as Russia will share the blame.



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