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Ukraine and international law

by GWYNNE DYER

Just before the first anniversary of the Russian invasion of Ukraine (Friday, 24 February), France's President Emmanuel Macron declared that he wanted to see Russia ?defeated, but not crushed.? That is a very fine distinction, but an important one.

?I chose to stay in touch as much as I can?with President Putin to try and convince him to lay down his arms,? Macron explained, ?? and to prevent the spread and widening of the conflict.? And he particularly deplores loose talk by NATO hard-liners about permanently crippling Russia.

Not many of these extremists have senior positions, but US Secretary of Defence Lloyd Austin certainly made the grade when he declared last April that ?We want to see Russia weakened to the degree that it can't do the kinds of things that it has done in invading Ukraine.?

That meant, Austin added, that Russia should ?not have the capability to very quickly reproduce? the forces and equipment that had been lost in Ukraine. So, presumably, it should end up with neither the manufacturing ability nor the financial resources to rebuild its army. That's certainly how Russians interpreted his remarks.

This unhinged proposal harks back to the Morgenthau Plan of 1944, a delusional proposal by US Treasury Secretary Henry Morgenthau Jr. to turn defeated Germany into a deindustrialised nation of farmers so it could never wage aggressive war again. The 80 million German peasants might not be happy, but they wouldn't be able to do anything about it.

Morgenthau's plan was eventually abandoned as unworkable, but Macron fears that there are some similar crazies in the ranks of the NATO countries today: ?I do not think, as some people do, that we must aim for a total defeat of Russia, attacking Russia on its own soil. These people want to, above all else, crush Russia. That has never been the position of France and it will never be our position.? It shouldn't be anybody's position. NATO's objective in helping Ukraine should be to see the country entirely freed from Russian rule (including the parts Moscow seized in 2014) not because Ukraine is democratic or ?pro-Western', but simply because that is what international law requires. And the same international law does not permit a counter-invasion of Russia.

Significantly, China agrees with all that, although you have to examine its opaque statements on the war quite closely to grasp their meaning. Beijing is being deliberately obscure, because Russia is currently in transit from being China's ?no limits' strategic partner to being its compliant sidekick. No point in disrupting that process with too much frankness ? but look what the Chinese officials actually say.

Virtually every public statement by Chinese diplomats on the war in Ukraine includes the sentence ?all countries deserve respect for their sovereignty and territorial integrity?. The key phrase here is ?territorial integrity': it refers to Chapter 2 (4) of the United Nations charter, which prohibits states from using force directed ?against the territorial integrity or political independence of another state.?

The implication is that any changes in a country's borders that are achieved by violence are illegitimate and should never be recognised by any other country. This may sound hopelessly idealistic, but the founding states of the UN made this law because it was in their own interest.

Ninety percent of all the states that ever existed have been destroyed by war. It is in every country's interest to minimise territorial changes imposed on them by force by backing a rule that takes the potential profit out of them. They generally won't fight expensive wars in distant places to reverse a military conquest elsewhere, but they will withhold recognition of the change forever.

That's why China (rather shyly) supports the territorial integrity of Ukraine. So do most other countries, although many in the Global

South are also shy about it.

The goal of ending the Russian occupation on all Ukraine's territory (whose borders Russia officially recognized as recently as 1997) is not a fantasy. But the goal of permanently crippling Russia, to the extent that it really exists, is neither legitimate nor wise.