

‘It’s All Starting Now’: Crowell’s Ian Laird on the Commercial Disputes Likely to Result from Russia’s Invasion of Ukraine

By Ross Todd
March 29, 2022

Ian Laird, like many of us, is watching the unfolding story of Russia’s invasion of Ukraine with a sense of disgust and concern about the humanitarian situation on the ground.

But Laird, the Washington, D.C.-based co-chair of the international dispute resolution group at **Crowell & Moring**, also has been watching the news with an eye toward an eventual resolution — and the inevitable web of legal disputes that will likely play out in any resolution’s wake. Laird and about 25 colleagues at the firm work full-time on international commercial arbitration matters and investor-state disputes. The group recently pointed out that Russia is still an active party to [60 investment treaties](#) which could give investors ways to seek compensation for direct or indirect expropriation of their assets.

When we spoke by phone last week, Laird said he thinks Russia is likely to make a deal at some point to avoid becoming a global economic pariah. Companies and individuals who have been harmed, Laird says, need to figure out where they fit into the developing landscape of disputes: The events unfurling on a daily basis will form the foundation for what evolves and develops over the next five-to 10 years. “So, it’s all starting now,” Laird says. The following has been edited for length and clarity.

With Russia’s invasion of Ukraine, most of the focus so far rightfully has been on the humanitarian crisis on the ground and the international law implications of Russia’s actions. With the caveat that things are changing day to day in Ukraine, what do you see as the potential impact of the invasion and the resulting fallout on what’s going to go on in the world of commercial legal disputes?

I agree with that initial assessment. I mean, we obviously have huge humanitarian impacts, which will continue to have ripples for many, many, many years. Of course, we’ve seen the ICJ action and we’ve seen the UN General



Courtesy photo

Ian Laird of Crowell & Moring.

Assembly confirm the illegality of the aggression from an international law point of view. But I agree there’s another dimension, which is the economic part of it. It’s perhaps a longer-term picture because depending on how the conflict develops — and hopefully terminates sooner than later — there are going to be all sorts of impacts and ramifications coming out of whatever deal is ultimately made. The process of compensating those damaged by the conflict — I’m not sure they’ll ever be whole again because these things are absolutely devastating for those involved — but this is one of the elements of the international system.

Certainly, there is a price to pay for all of this. We could see legal disputes and resolutions going on for 10 to 20 years at least however this gets resolved. That’s our focus: Pointing out that inevitably there will be commercial disputes. That can occur in courts or in international arbitration. But there’s also the possibility, and I think likelihood, that there will be investor-state disputes since we know that Russia has a lot of these treaties and its current actions are very consistent with the type of actions that are anticipated to be covered by those treaties.

There's also this idea of claims commissions and funds being set up after the conflict is over to help compensate [those damaged]. That could well be part of any final deal that is made. There are lots of examples throughout history of how international law has filled that void. The idea of having claims commissions after conflicts and revolutions goes back to the late 1800s. There are a number of famous claims commissions involving Mexico, Venezuela and various Latin American countries from the late 1800s and early 20th centuries. Even more recently, coming out of the Iran Revolution, there was this extensive claims process that was agreed to called the Iran-US Claims Tribunal, and that went on for years. That compensated Americans in particular for the losses they experienced in those events. Even more recently, the invasion of Kuwait resulted in a claims commission being set up by the UN, which again resulted in billions of dollars in compensation. So, I think it's not an unreasonable conclusion that similar mechanisms will be set up here. How will they be set up and in what manner? That is yet to be seen. But I think they will be set up and that's part of the future looking down the road.

Well, what can and should companies and the lawyers who represent them take away from those mass claims commissions and tribunals of the past and how they were hashed out? What sort of lessons were learned by the claimants coming out of those processes?

Well, ultimately most of them are state-to-state diplomatic efforts. And that requires, in the U.S. context, for those impacted by events in Russia to be working with government, looking for these types of mechanisms to be part of whatever deal is ultimately made. And, because of the impact and scope of what's going on, obviously, I think the deal is going to be much broader than just between Ukraine and Russia. Obviously, Ukraine is the one driving that particular train, but there are a lot of other passengers who are going to have a lot to say. Setting up some mechanism to allow for compensation out of these terrible events, I think will be part of the game plan.

I think companies aren't looking that far ahead yet. But once they get there, they kind of wits about them and they've dealt with the immediate issues — which are obviously huge and ongoing and day-to-day — having those kinds of discussions with government officials at the State Department and even political officials is probably going to

be part of the process of pushing for these types of mechanisms.

You say that companies and individuals who have been harmed need to understand where they will fit into whatever landscape develops. Are there steps that they could be taking now? Or is everyone in wait-and-see mode?

I think most of what I'm talking about comes with the fallout. For instance, launching an investor-state arbitration under a bilateral investment treaty takes some time to build up, to do some legal research and get the evidence together. It's like any litigation that can take years to come to fruition. And we saw actually some examples of similar cases coming out of the Crimea annexation in 2014. There are at least a dozen or more treaty arbitrations that came out of that. It's not a dissimilar situation in that Russia, as you know, annexed Crimea. And then once they annexed that they declared it Russian territory and expropriated all sorts of businesses which were previously owned by Ukrainians. And so many of those Ukrainians actually went back and sued Russia under the Ukraine-Russia bilateral investment treaty for expropriation and many of them have succeeded. Those cases are public and available. The Russians know how this game works. Frankly, I really find it strange that after all the efforts that Putin has made over the last 20 years to improve the economy of Russia that he's so thoroughly taking a stance of bringing it back to the bad ol' days. But clearly, it's part of their game plan.

They didn't seem to miss a beat when they threatened these expropriations of businesses that have reacted to the sanctions and either pulled out of Russia or stopped all operations pending the war. This legislation was put into motion almost immediately. So you've got to think this was part of their plan. They've done it before. They know what the result is: They'll be sued.

Is part of what companies and lawyers can do now is just take stock of everything that is happening on the ground in real-time?

I think right now, it's a question of monitoring for those companies, in particular, that are being expropriated. That's moving as we speak. I'm not sure if that's been finalized. But [tracking] how that process occurs and in what manner is going to be crucial to how potential claims come out of that and how those claims will be prosecuted. It really is kind of a stock-taking and monitoring at this point.