

The Crisis in Ukraine: Its Legal Dimensions

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**On behalf of
Razom, a Ukrainian-American
human rights organization**



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Executive summary

The political, military, economic, and social crisis in Ukraine is severe. Involving Ukraine, Russia, the European Union, the United States, and the rest of the international community, the crisis touches on many complex domestic and international legal issues. NYU law students and a recent NYU graduate researched and drafted this Report for Razom, a Ukrainian-American human rights organization. The Report attempts to provide relevant background and a legal context for the current situation. The authors hope it will assist the media, governments, international organizations, non-governmental organizations, businesses, academia, and individuals to understand what has happened, why it has happened, and what might happen next.

Part I examines the immediate political and legal developments leading to the domestic crisis and outlines what options Ukraine might have to redress the wrongdoing that has occurred.

Part II explores the often-overlooked geopolitical role of energy in the evolving crisis. Ukraine and Crimea in particular are critical to the Russian infrastructure to supply natural gas to Eastern and Western Europe. Before the crisis, Ukraine tried to decrease its heavy dependence on gas imports from Russia by increasing its domestic production. The Report analyzes this critical energy dimension.

Part III reviews Crimea's March 16 referendum on reunification with Russia; Russia's use of force to annex Crimea; the right to secede; the precedents of Kosovo, Republika Srpska, and the Turkish Republic of

Northern Cyprus; and the rights of Crimean Tatars as an indigenous people.

Part IV analyzes what legal issues might arise if Russia uses force in Eastern Ukraine in the future. Because Russia currently maintains a significant troop presence at the Eastern border, these issues are pertinent to understanding the situation fully.

Part V looks at Ukraine's international security arrangements, including the 1994 Budapest Memorandum, to which Ukraine, Russia, the United States, United Kingdom, France, and Russia are parties. That Memorandum memorialized Ukraine's delivery of its nuclear weapons to Russia in exchange for security assurances from all nuclear powers on its territorial integrity.

Part VI outlines significant military-law issues, including the Black Sea Fleet treaties that Russia had with Ukraine regarding its naval bases and humanitarian-law requirements for combatant identification.

Parts VII and VIII discuss Ukraine's possible countermeasures against Russia and the sanctions that the European Union and other countries have already adopted against key Ukrainian and Russian figures. The Table of Sanctions shows the sanctions imposed to date.

Finally, based on the analysis above, the Report makes specific recommendations to Ukraine, Russia and the international community.

I. DOMESTIC AND INTERNATIONAL ELEMENTS OF THE CRISIS

A. Background

In February 2010, Ukraine elected Viktor Yanukovich President; he held that position until he fled the country on February 22, 2014. Ukraine's acute crisis began in November 2013 when President Yanukovich failed to sign a popular trade agreement with the European Union (EU) and instead sought closer ties to Russia. Hundreds of thousands of people protested peacefully on Kyiv's central square against the President's dramatic policy change. After the police started to arrest demonstrators, the number of protesters grew, and Independence Square turned into a tent city. Protesters then took over several major government buildings.

On January 16, 2014, the Ukrainian Parliament passed anti-protest laws, dubbed "Dictatorship Laws," that sparked further clashes between protesters and police, leading to several deaths. By the end of January 2014,

Parliament annulled the anti-protest laws and passed an amnesty bill, but protesters rejected the government's proposed deal. From February 14-16, the government released all arrested protesters, and demonstrators abandoned government buildings.

On February 21, 2014, the day before abandoning his post, President Yanukovich and three opposition leaders, Arseniy Yatsenyuk, Vitaliy Klitschko, and Oleh Tiahnybok, signed an agreement to resolve the long-running civil crisis. Witnessed by foreign ministers from Poland, Germany, France and a representative of Russia, the agreement called for adopting a law within 48 hours to restore Ukraine's 2004 Constitution. Such a restoration would limit the powers of the President. The agreement mandated a government of national unity, constitutional reforms, and new presidential elections.² By that point, clashes between protesters and government forces had left at least 103 dead, 1,669 injured, and 144 people missing.³

Source: Western Information Agency Corporation





Source: pravda.com.ua

On February 22, 2014, the Parliament adopted an unprecedented resolution on Mr. Yanukovich's departure and the need for new presidential elections.⁴ An overwhelming majority, 328 of 447 Ukrainian members of Parliament, voted to declare that Mr. Yanukovich had resigned and to hold early presidential elections on May 25, 2014. That resolution was challenging, though, as the Constitution has no provisions for such an event. Article 108 of the Constitution provides that the President's powers terminate before the end of an elected term only in cases of (1) resignation; (2) ill health; (3) impeachment; or (4) death.⁵ In the case of resignation, the Constitution requires the President to announce his resignation to Parliament. That did not occur in this case.

Since his departure from Kyiv, Mr. Yanukovich has made three public appearances at press conferences in Rostov-on-Don, Russia, making clear that he is neither ill nor dead.⁶ Under Article 111 of the Constitution, Parliament may impeach a President for treason and other grave crimes.⁷ A simple majority, 226 votes, may initiate impeachment. A special Parliamentary commission must first investigate charges, and then a 2/3 vote of Parliament, or 300 votes, must approve the decision to indict. An impeachment verdict requires no fewer than 338 votes. Before such a decision, however, the Constitutional Court must review the case and issue a written opinion that the impeachment procedures were constitutional. Similarly, the Supreme Court must confirm that the acts of which the President is accused constitute treason or other grave crimes. In this case, there was no need for impeachment

as Mr. Yanukovich had abandoned his post. Presidential authority then vested in the Head of Parliament until the next presidential election.⁸ On February 22, pursuant to the Constitution, Parliament confirmed Mr. Turchynov, Head of Parliament, as acting President. The Parliament also reinstated the 2004 Constitution,⁹ thus finally limiting Presidential powers.¹⁰

Since the political crisis in February, many international institutions and countries have recognized the new government of Ukraine, including the United Nations, the European Union and the United States.¹¹ Many critical legal and political issues remain unresolved, however. For example, in recent public statements from Russia,¹² Mr. Yanukovich has stated that he did not resign and that he remains Ukraine's rightful President.

B. Parliament's Role

Parliament has asserted its authority in the current power vacuum, but the legitimacy of that authority is debatable. For instance, the Constitution provides that "the sovereign is the Ukrainian people who exercise authority either directly or through elected representatives" and that "[t]he Ukrainian people are the only subject eligible to adopt and change the constitutional order, a right which cannot be usurped."¹³ Parliament recently defended its powers based on this provision before the High Administrative Court, while a well-known Ukrainian lawyer argued for Mr. Yanukovich's continuing authority.¹⁴ The High

Administrative Court dismissed the case, finding that only the Constitutional Court has jurisdiction.¹⁵

The reinstatement of the 2004 Constitution is also controversial. Parliament grounded its resolution to reinstate it in the Constitution itself and referenced a Council of Europe Venice Commission report.¹⁶ This resolution squarely poses the legal issue: If the Constitutional Court has no authority to decide whether Constitutional amendments are valid, then who does? The issue will remain uncertain until the Constitutional Court or a newly adopted Constitution finally resolves it.

C. The Constitutional Court's Role

As in many civil-law countries, Ukraine has a Constitutional Court to resolve exclusively constitutional concerns.¹⁷ It alone decides whether laws are constitutional. The Constitutional Court has jurisdiction in three domains: (1) whether the laws and acts of Parliament, the President, and the Autonomous Republic of Crimea are constitutional; (2) whether treaties to which Ukraine is a party or seeks to be a party conform to Ukrainian law; and (3) whether procedures to investigate or impeach a President are constitutional.¹⁸ The Constitutional Court can also give declaratory judgments on constitutional amendments.¹⁹

Thus, the Constitutional Court has some authority in the current circumstances.

The Court may do the following:

- 1) Interpret the scope of the President's powers. Many actors, including the President, Parliament and the Supreme Court may petition the Court for a binding opinion;
- 2) Decide whether the President's acts are constitutional, although it has no authority over the administrative acts themselves;²⁰
- 3) Decide on the constitutionality of any impeachment proceeding; and
- 4) Indirectly influence who is or may be President by judging the constitutionality of Parliament's acts.

Therefore, the Constitutional Court has significant direct

and indirect power to resolve the issues around the Presidency today. Members of Parliament can request that the Court hear a case regarding Mr. Yanukovich's departure.²¹ The Parliament's acts are presumptively constitutional unless the Constitutional Court accepts a challenge to their actions and finds them unconstitutional.

D. Criminal Prosecution of Mr. Yanukovich and Members of his Administration

On November 30, 2013, the Presidential Administration used deadly force against peaceful protesters on Kyiv's Independence Square. Law-enforcement agents attacked and severely beat hundreds of people, mostly students. Berkut, the Ukrainian riot police, had received instructions to clear the Square in order to erect a Christmas tree.²² Violent riots erupted on December 1 and January 19-25 in response to police brutality and government repression.²³ No one expected what happened February 18-20, 2014, however; snipers and riot police opened fire on unarmed civilians.²⁴ Government-backed forces killed at least 103 people and injured at least 1,669.²⁵ The police report that 13 officers died and 130 were injured.²⁶

To satisfy popular demands for justice and to stabilize the situation, the newly appointed government initiated prosecution of many former officials. The General Prosecutor has brought charges against former President Yanukovich for mass murder and other crimes. In addition to former President Yanukovich, the Prosecutor General has charged the following people as suspects in mass murder: A. Klyuyev, former Head of the Presidential Administration; V. Pshonka, former Prosecutor General; V. Zakharchenko, former Minister of Internal Affairs; O. Yakymenko, former Head of the Security Service; and S. Shulyak, Commander of Internal Military Forces of the Ministry of Internal Affairs.²⁷ If found guilty, these people could serve sentences of ten years to life imprisonment.²⁸

The government has also recently charged V. Ratushnyak, former Deputy Minister of Foreign Affairs; S. Kusyuk, Chief of Berkut; A. Portnov, Vice-chief of the Presidential Administration; O. Lukash, former Minister of Justice; O. Prisyazhnyk, former Chief of special unit Alpha; as well as other Security Service and Interior Ministry officers.²⁹ None has yet been arrested.



Source: RTE

In addition, the Prosecutor General has formed a special group to investigate the shootings during the Kyiv protests. This group will investigate deaths among both protesters and law-enforcement officers,³⁰ investigating who gave and followed orders, as well as those who had the power to stop the use of deadly force and did not. Under the Criminal Code, a person's act or omission is deemed lawful, even if it caused harm to legally protected interests, if that person obeyed a lawful command.³¹ A command is lawful if the appropriate officials, acting within their scope of authority, give a command, and if that command does not violate the law or constitutional rights. In addition to mass murder, the government has named Mr. Yanukovych and other high-ranking officials as criminal suspects for money laundering, abuse of power, and illegally seizing power.³²

The Prosecutor General's Office has filed all of the criminal charges above in a public investigation register. Arrest warrants have issued for all those on the "wanted list,"³³ and arrests are critical, as current law does not permit conviction *in absentia*.³⁴ While Mr. Yanukovych remained in office, however, Parliament adopted amendments, known as the "Dictatorship Laws," in January 2014 to permit criminal trials *in absentia*.³⁵ Under those provisions, an investigator, prosecutor or judge could initiate a criminal trial against an absent defendant if the accused had been issued a subpoena and had failed to appear. Today, prosecutions *in absentia* are unlawful as Parliament revoked the "Dictatorship Laws" shortly after Mr. Yanukovych's departure.³⁶

Under the Criminal Code, there are four relevant categories for conspiracy to commit mass murder: organizer, abettor, accessory and principal offender.³⁷ It is very unlikely that the General Prosecutor will charge all of these actors as principal offenders, but most may face charges of aiding and abetting or organization. The actual charges will depend on investigations, which remain incomplete. In addition to these crimes, it seems likely that several former officials may face additional criminal charges of state treason, encroachment on the territorial integrity and inviolability of Ukraine, and embezzlement.³⁸

If law enforcement fails to bring Mr. Yanukovych to justice, the General Prosecutor must drop charges after the applicable statutes of limitations have run. The statute of limitations for money laundering is 15 years and for abuse of authority, 10 years. For crimes punishable by life imprisonment, including mass murder, the statute of limitations may run indefinitely.³⁹

E. Extradition from Russia to Ukraine

In February 2014, Ukraine's Prosecutor General requested the extradition of former President Yanukovych from Russia.⁴⁰ On March 5, 2014, Interpol, the international law enforcement agency, received a Ukrainian request for a

Red Notice, an international alert for a wanted person who has not yet been issued an international arrest warrant. Interpol is still reviewing this request.⁴¹ If Interpol grants the Red Notice, then 190 Interpol countries will issue warrants for Mr. Yanukovych's arrest. Although, any arrest is at the host's country discretion, this Interpol status greatly increases the likelihood of arrest.⁴²

Ukraine and Russia have both signed two multilateral agreements on extradition: the 1957 European Convention on Extradition⁴³ and the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters of the Commonwealth of Independent States.⁴⁴ We consider both treaties below.

1. European Convention on Extradition

All 47 member states of the Council of Europe and Israel, South Africa and South Korea have ratified the European Convention on Extradition.⁴⁵ The Convention envisions a general obligation to extradite following a valid request from one state party to another for crimes punishable with imprisonment of at least one year by both parties. Despite overarching obligations, there are many exceptions. A party may refuse to extradite if it considers the offense political or military; subject to an amnesty or the death penalty; beyond the applicable statute of limitations; or serving as a pretext for persecution on actual grounds of "race, religion, nationality or political opinion."⁴⁶

Ukraine and Russia have each ratified the first two of four additional protocols.⁴⁷ The first protocol limits the definition of political offenses, disallowing war crimes and crimes against humanity from consideration as "political." The second protocol permits extradition for financial crimes and other crimes punishable by forfeiture and fines so long as the extradition request is for at least one crime punishable by imprisonment.

2. Russia's Reservation and Comments to the European Convention on Extradition

In addition to the general bases to deny extradition discussed above, Russia also reserves the right not to extradite under the following conditions:

- 1) the requesting state relied on an "ad hoc tribunal" or "summary proceedings";

- 2) the extradition might cause an individual to face torture or other cruel, inhuman or degrading treatment;
- 3) extradition might adversely affect the extradited individual's health; or
- 4) extradition might affect Russia's "sovereignty, security, public order or other essential interests."⁴⁸

Furthermore, the treaty prohibits the accepting state from trying an extradited person for any charges other than those for which the sending state extradited him.⁴⁹ The European Convention supersedes the provisions of any other agreements between the two state parties to the extent that the provisions are in conflict. If the provisions are not conflicting, then the CIS provisions are supplementary.⁵⁰

3. The Commonwealth of Independent States Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters

Russia and Ukraine are both parties to the CIS Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters,⁵¹ as are Armenia, Belarus, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, and Uzbekistan.⁵² The 1993 CIS Convention imposes the obligation to extradite an individual criminal prosecution or execution of sentence upon any other party's demand.⁵³ Extradition for prosecution applies only to acts punishable under the laws of both parties by at least one year of imprisonment. There are certain grounds to refuse extradition: (1) the requested person is a citizen of the state where the citizen is located; (2) the statute of limitations has run; and (3) the host country has already prosecuted the individual.

In the event of extradition, the requesting state may not prosecute for charges outside the extradition request or send the individual to a third state without consent.⁵⁴ The state parties may agree on prosecution in either state.⁵⁵ The Convention envisions no consequences or sanctions in the event of non-compliance. In addition to the Convention provisions, both Russia⁵⁶ and Ukraine⁵⁷ have applicable Criminal Procedure Code provisions on extradition.

F. Martial Law

On March 17, 2014, the day after the Crimean secession vote, the Parliament approved a Presidential Decree to partially mobilize the army. This mobilization covers

all Ukraine, except Crimea and Sevastopol, where only volunteers were called up.⁵⁸

The Decree requires army reservists to report for 45 days' service.⁵⁹ Parliament approved the mobilization of 40,000 reservists and agreed to allocate \$600 million for training, weapons, and equipment over the next three months.⁶⁰ Twenty thousand reservists are to deploy as part of the armed forces, and twenty thousand are to serve in the newly created National Guard.⁶¹

The Constitution envisions army mobilization and empowers Parliament to approve decrees on martial law and states of emergency within two days of the submission of the decrees to the President.⁶² In addition, Ukraine has another law on martial law.⁶³ Parliament may impose martial law throughout Ukraine for up to 30 days or, in specific regions, for up to 60 days. The National Security and Defense Council must consult with Parliament to approve any decree on martial law before the President signs it.⁶⁴ The contemplated martial-law regime includes temporary restrictions on civil rights.⁶⁵

The President has never imposed martial law in Ukraine, so the situation is unprecedented.⁶⁶ The "Svoboda" ("Freedom") party called for acting President Turchynov to introduce martial law in the beginning of March.⁶⁷ Vice Speaker of Parliament Ruslan Koshulinkyi also endorsed the imposition of martial law.⁶⁸ Nonetheless, there have been no decrees on martial law, and Justice Minister

Pavlo Petrenko stated on March 17 that the government expects to resolve the crisis peacefully.⁶⁹ He further stated that current government measures, including creating the National Guard, partial mobilization, and new military funding, are sufficient at this time.⁷⁰

G. The International Criminal Court's Potential Jurisdiction

The Rome Statute, adopted in 1998, created an International Criminal Court (ICC).

The treaty came into effect on July 1, 2002. As of May 2013, 122 states are parties. The ICC has jurisdiction over four international crimes: genocide, crimes against humanity, war crimes and crimes of aggression.⁷¹ The Court does not have universal jurisdiction and may exercise jurisdiction only in the following limited circumstances:

- 1) The accused is a national of a state party or a state otherwise accepting the ICC's jurisdiction;
- 2) The crime took place on the territory of a state party or a state otherwise accepting the Court's jurisdiction; or



3) The United Nations Security Council has referred the situation to the ICC Prosecutor, regardless of the accused's nationality or the location of the crime.⁷²

Ukraine is not a state party. Although it signed the Rome Statute in 2000, it has not yet ratified the treaty.⁷³ Under Article 4(2), the ICC may exercise jurisdiction in any state party if the state is “unwilling or unable” to investigate or prosecute the four grave crimes listed above.⁷⁴

In 2001, the Constitutional Court opined that Parliament must amend the Constitution to ratify the Rome Statute.⁷⁵ The Court concluded that for Parliament to ratify the Rome Statute, a Constitutional Amendment is required.⁷⁶ Although Ukraine is not a state party, the Rome Statute still plays a role because Ukraine signed it. Under accepted principles of international law, countries, by virtue of having signed a treaty, must refrain from “acts which would defeat the object and purpose of the treaty until they declare they do not intend to become a party to the treaty.”⁷⁷ Thus, Ukraine today has some obligation under the Rome Statute to ensure that crimes against humanity, genocide, crimes of aggression, and war crimes do not occur and that past criminal acts are both investigated and prosecuted.

Despite the ICC's lack of direct jurisdiction, Ukraine can request and accept ICC jurisdiction.⁷⁸ According to ICC Rules, a request would require accepting jurisdiction for all potential ICC crimes.⁷⁹ The Ivory Coast recently made such a request.⁸⁰ In addition, ICC spokesperson Fadi El Abdallah

has confirmed that “a government can make a declaration accepting the court's jurisdiction for past events.”⁸¹

On February 25, 2014, the Parliament passed a resolution requesting “the ICC to hold Viktor Yanukovych and other high-level officials criminally responsible for issuing and carrying out openly criminal orders.”⁸² According to a statement attached to the resolution, the purpose of the request is to ensure independent investigation and punishment for those responsible for crimes against humanity.⁸³ The ICC has confirmed that its General Prosecutor has the discretion to decide whether to intervene.⁸⁴ The General Prosecutor's decisions hinge on the gravity of the crimes, local conditions, and the availability of information to support criminal cases.⁸⁵ Some argue that it would be counterproductive for the ICC to accept *ad hoc* jurisdiction⁸⁶ because Ukraine's Constitutional Court has already ruled that ICC jurisdiction would require a Constitutional amendment.

Security Council

The Rome Statute allows the UN Security Council to refer a situation to the ICC Prosecutor as well.⁸⁷ Such a referral seems exceedingly unlikely, however, as Russia is a member of the UN Security Council and would presumably veto any ICC intervention.

II. THE ROLE OF ENERGY SECURITY AND INVESTMENT PROTECTION

“Natural gas is the new weapon in a new cold war.”⁸⁸

While the media has covered Russia’s explanations of its political and ethnic motivations for annexation of Crimea, it has largely failed to explore the role of energy in the crisis. This section examines that role.

A. Ukraine on the European energy map

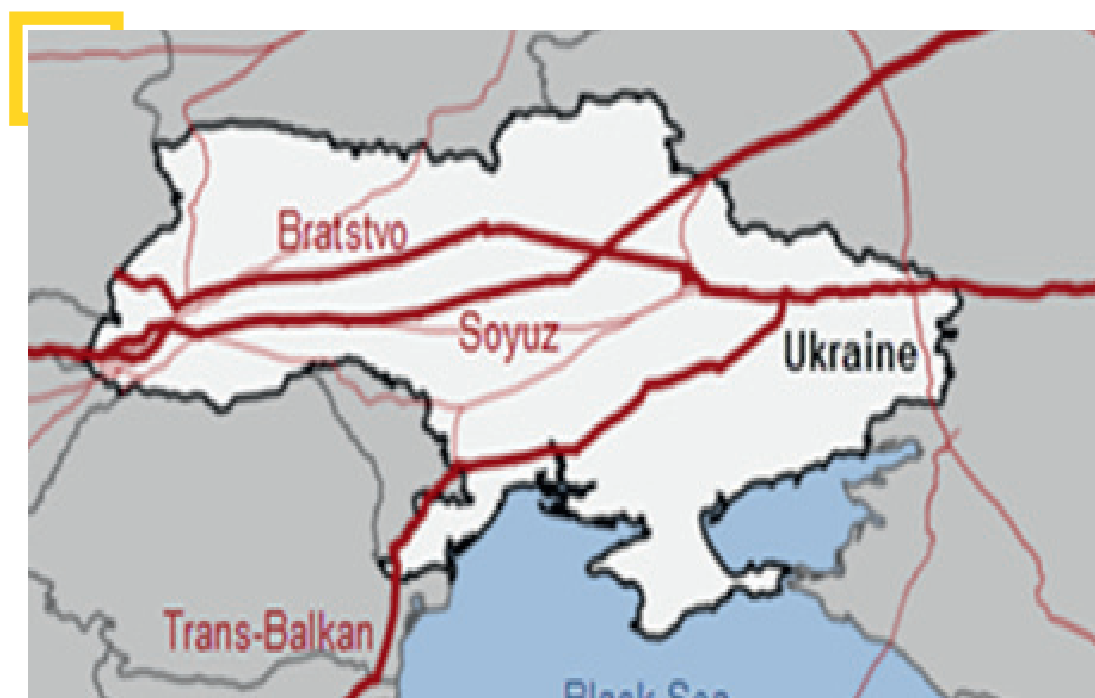
Ukraine’s geographic position and proximity to Russia explain its importance as a natural gas and petroleum transit country. Approximately 3.0 trillion cubic feet of natural gas flowed through Ukraine in 2013 to Austria, Bosnia-Herzegovina, Bulgaria, Croatia, Czech Republic, Germany, Greece, Hungary, Moldova, Poland, Romania, Slovakia, and Turkey.⁸⁹

The image to the right illustrates the three major gas pipelines flowing through Ukraine.

Two major pipeline systems carry Russian gas through Ukraine to Western Europe. The **Bratstvo** pipeline is Russia’s largest pipeline to Europe. It crosses from Ukraine to Slovakia and splits into two directions to supply northern and southern European countries.

The **Soyuz** pipeline links Russian pipelines to natural gas networks in Central Asia and supplies additional volumes to central and northern Europe.

A third major pipeline, the **Trans-Balkan**, cuts through Ukraine and delivers Russian natural gas to the Balkan countries and Turkey. In the past, disputes between Russia and Ukraine over natural gas supplies, prices, and debts resulted in interruptions to Russia’s natural gas exports through Ukraine.



Source: U.S. Energy Information Administration, IHS EDIN and International Energy Agency, <http://www.eia.gov/todayinenergy/detail.cfm?id=15411>

B. European gas supply

Ukraine dominates Europe's energy transport corridors, making its energy relations with Russia a vital concern to Western Europe. The EU imports over 54 percent of its total regional energy.⁹⁰ About one-fourth of Europe's oil and gas originates in Russia. Russia has disrupted supplies when it had disputes with transit countries, including disputes with Ukraine in 2006 and 2009. On both occasions, Russia pressured Ukraine using natural gas.⁹¹

A quick glance at the map below shows Ukraine's crucial role in gas transit.

This crisis highlights Europe's energy dependence on Russia.⁹² Following the annexation of Crimea, the EU not only responded with sanctions but also tasked⁹³ the European Commission to come up with a study on its energy dependence and ways to reduce it. The UK reportedly pushed EU leaders to support a new energy security plan that would ramp up new imports, including US shale gas and traditional gas from Iraq.⁹⁴

Germany is the most dependent of all the EU member states on natural gas imports from Russia.⁹⁵ While Angela Merkel, Chancellor of Germany, dismissed "dependency," saying that 30% imports is not a dependency,⁹⁶ she has declared⁹⁷ a need to respond to Russia's annexation of Crimea even if it goes against Germany's energy interests.

So far, the fateful events in Kyiv and the military occupation of Crimea have not affected the flow of gas.

The crisis did affect gas prices in Europe, however, causing a 10 percent price increase.⁹⁸ Russia may continue to use gas prices to influence Ukrainian politics⁹⁹ and could put its geopolitical interests in Crimea ahead of international law and any views of the international community. This possibility underscores the need for European leaders to develop alternative sources of natural gas.

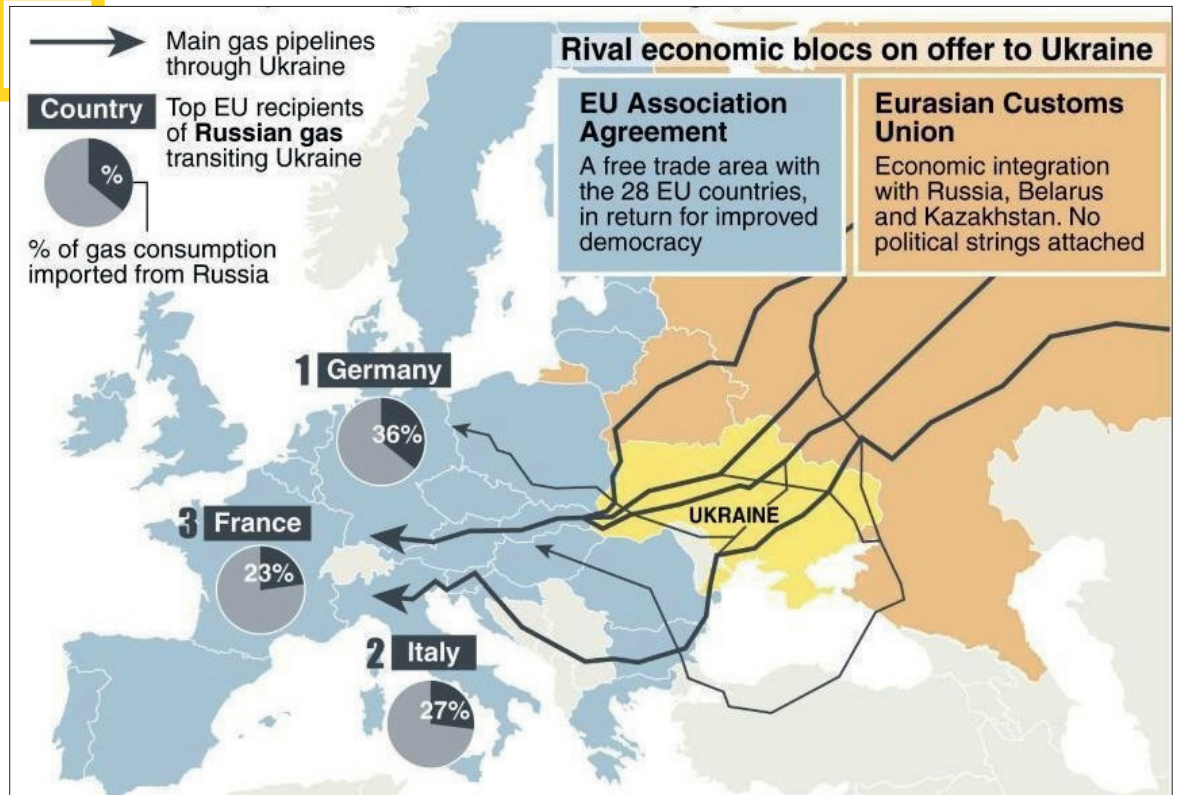
1. Crimea: Pipelines and transit of gas

In light of past conflicts with Ukraine that led to gas-supply disruptions, Russia initiated the construction and development of two alternative supply routes several years ago; the Nord Stream and South Stream pipelines (see pipelines in red on the map below). These projects seek to eliminate "transit risks" and intermediaries like Ukraine in Russia's supply of natural gas to the EU. The Nord Stream, which runs from Russia to Germany, has already cut down the proportion of EU-bound gas shipped through Ukraine from 80 percent in 2011 to about 50 percent today.¹⁰⁰

The South Stream pipeline is particularly relevant to the Crimean crisis. This pipeline is critical for Russia's supply chain diversification. After the Nabucco pipeline project stalled, the field was open for Russia's Gazprom to cement its dominant role in the region. It did this by building the South Stream pipeline to pump gas through the Black Sea into Southeast Europe to meet about 10 percent of Europe's demand by the end of the decade.



Source: The Economist
http://media.economist.com/sites/default/files/ef_images/20080126/CEU939.gif



Source: Business Insider, <http://www.businessinsider.com/heres-one-economic-reason-russias-invasion-of-ukraine-pulls-in-europe-2014-3>

South Stream Gas Pipeline: Original Route vs Potential Crimea Option



Source: Wood & Company, Geostrategy.org, U.S. Global Investors

The annexation of Crimea could reduce the high costs of the project as both depths and distances diminish substantially.¹⁰¹ Using the Crimean sea shelf to lay pipeline instead of the Black Sea seabed would enable Russia to complete the project much earlier and at lower cost. Before the annexation, Russia would have had to strike a deal with Ukraine and pay transit costs. Now, if Crimea remains under its control, it no longer has to do so. Western Europe's reaction to the annexation, however, makes unclear¹⁰² whether Russia will reap the benefits it intended.

Shortly after the annexation, sources in Brussels suggested that the South Stream project was "dead." Commentators predicted a radical change in EU energy policy as its staff prepared to shield Europe from energy blackmail.¹⁰³ Such an EU response could have a significant impact on the economic value of the Crimean annexation.¹⁰⁴ Gazprom's website still reports the South Stream project is under way.¹⁰⁵ At least for now, its future remains uncertain.

2. Exploration of natural resources on the sea shelf

In recent years, Ukraine has sought to boost gas exploration and has tried to attract foreign investment and expertise by altering its tax and legal framework.¹⁰⁶ Major foreign

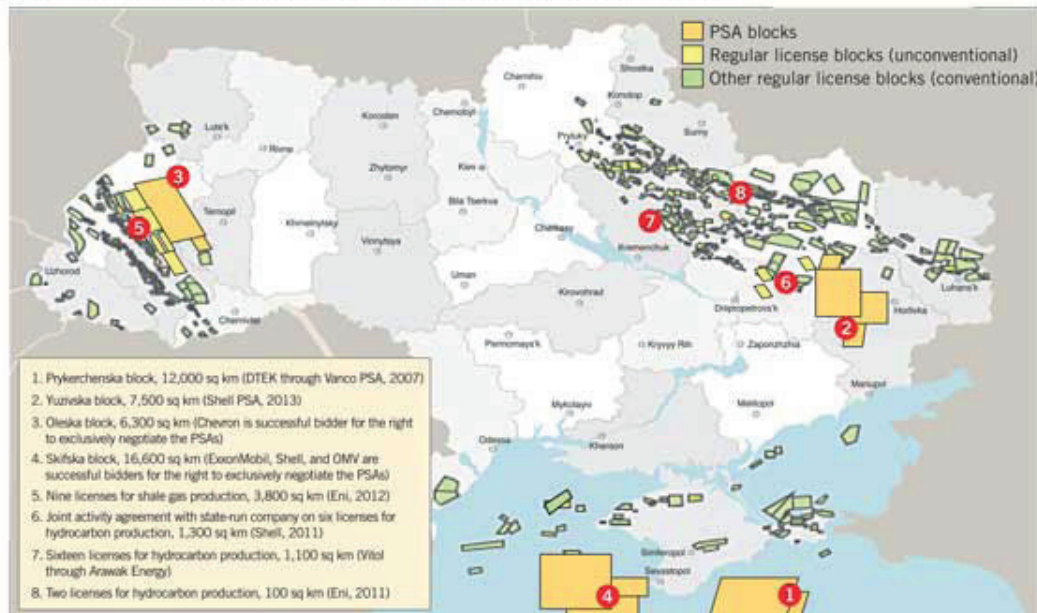
oil and gas companies, including Shell, Chevron, ENI and ExxonMobil, won tenders that allowed them to negotiate production-sharing agreements (PSAs) for hydrocarbons. These initiatives aim to improve the Ukrainian economy and reduce dependence on Russian natural gas.

Various commentators have opined that the Crimean crisis derives at least in part from Russia's fears about shale-gas production in Ukraine.¹⁰⁷ A shale-gas revolution could bring Ukraine a certain degree of energy independence and economic security.¹⁰⁸ Ukrainian energy independence would decrease gas imports and give the country more leverage in negotiations on gas prices and transit tariffs.

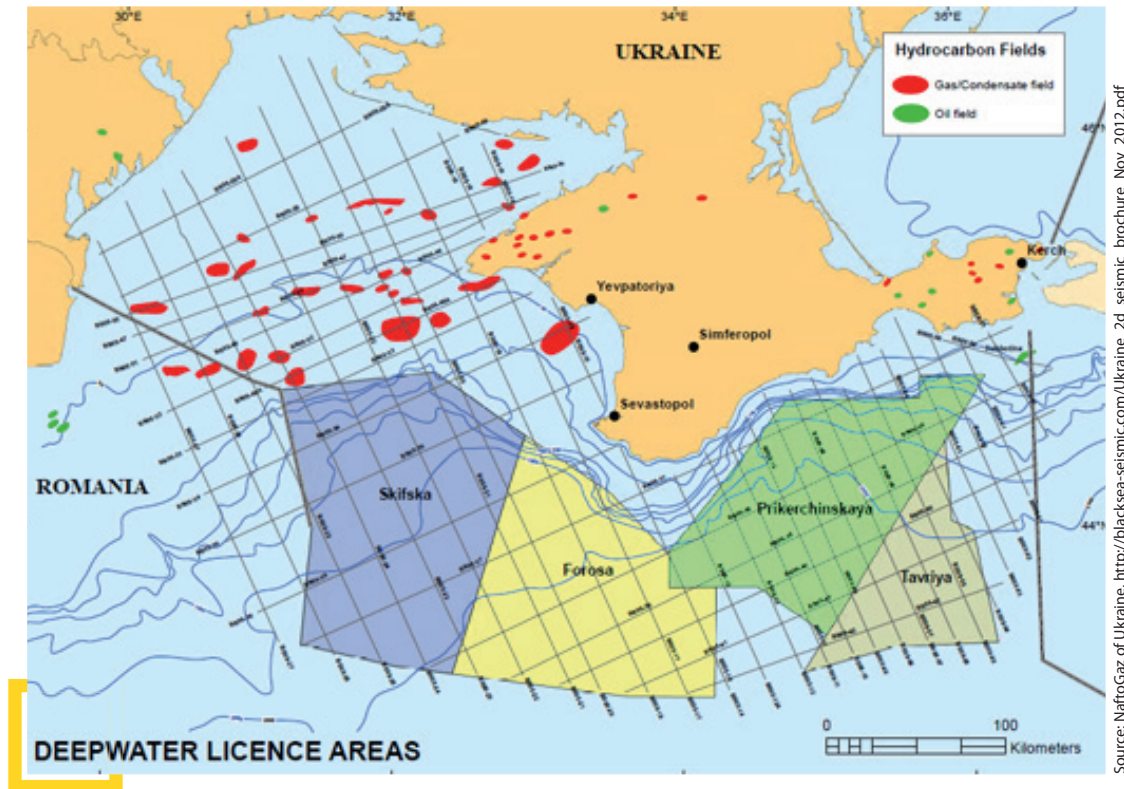
C. Projects in Mainland Ukraine

Ukraine signed PSAs with Shell and Chevron in January and November 2013, respectively. Both projects aim to explore and produce unconventional gas in the Yuzivska and Oleska shale gas fields with the use of fracking, the technology behind the recent natural gas boom in the United States. The image below illustrates the unconventional gas exploration projects in Ukraine. The Russia-Ukraine conflict influences two out of three areas where exploration activity is greatest: the Crimean peninsula and Eastern Ukraine, including the Donetsk and Kharkiv regions.

BIDDERS FOR PSA AND UNCONVENTIONAL DEVELOPMENT LICENSES IN UKRAINE



Note: As of May 2013, the PSAs and Joint Operating Agreement terms between the government and Chevron and ExxonMobil were being negotiated. Sources: Ukrainian-energy.com, producers' data bases, and other public sources.



Source: NaftoGaz of Ukraine, http://blacksea-seismic.com/Ukraine_2d_seismic_brochure_Nov_2012.pdf

D. Projects in Crimea

Two major developments in natural gas exploration on the Crimean sea shelf are of geopolitical significance. First, Italian ENI was engaged in exploring both shale gas and conventional gas in Ukraine. It also entered into a PSA with French company EDF in November 2013 to develop the Subbotina, Abikha, Mayachna, and Kavkazka blocks off the eastern coast of Crimea in the Black Sea.¹⁰⁹ The overall license area is around 2,000 square km, with a sea depth of around 100 meters. The United Kingdom expected investment of approximately \$4 billion, with oil production of two to three million tons a year.¹¹⁰ ENI's CEO told the press that they are waiting for the crisis to end and expect any government in control of the Crimea to honor its predecessor's obligations.¹¹¹

The protests in Ukraine erupted in November 2013, the month when Ukraine signed two PSAs: one with Chevron for shale gas in Western Ukraine and the other with ENI for offshore gas exploration on the Crimean sea shelf. It can be argued that Russia orchestrated and fueled the Kyiv protests and change of government to create a pretext for annexation of Crimea and potentially other parts of Ukraine.¹¹²

Another international energy project is in the Skifska area, where a group of companies, led by ExxonMobil

and Shell, won a bid to develop the undersea field that extends westward along the Black Sea coastline to Romania. The PSA signing was delayed several times and was not signed before the occupation of Crimea. This PSA could add \$325 million to the Ukrainian state budget and increase mid- and long-term national natural-gas production by 5-10 billion cubic meters per year.¹¹³ The map below illustrates the deep-water natural gas exploration areas in Crimea.

Shell withdrew from its project in January 2014.¹¹⁴ After the occupation of Crimea, ExxonMobil representatives told the press that they were putting their project on hold, too. Executives at ExxonMobil remain interested in exploring the area and have stated that they will not take sides in the dispute.¹¹⁵ ExxonMobil has ongoing projects with Russia that it intends to pursue, and it has developed a business relationship with the Russian state-owned company Rosneft.¹¹⁶

Ukraine estimates that oil and gas production from Skifska, along with another Crimean offshore area known as Forosa, could reach about 20 percent of Ukraine's current annual gas imports, which come mainly from Russia.¹¹⁷ A number of other smaller ongoing or planned projects are on the Crimean sea shelf.

1. Possible implications in the energy sector

If Russia succeeds in annexing Crimea, it will gain access to the major part of the explored offshore gas deposits and prospective hydrocarbon resources in the Black Sea. After the referendum on March 16, Ukraine lost effective control. Ukraine also appears to be losing an important piece of its economic and energy future under Crimean waters. Exploiting the Black Sea fields would reduce its dependence on Russian gas imports. These developments inevitably deter foreign investment in the exploration of natural resources critical to the development of the industry. (See images below.) It also harms the general investment climate.

The presence of separatist movements in Eastern Ukraine and the threat of further military occupation also undermine Ukraine's attempts to reduce energy dependence. The Yuzivska and Skifska PSA projects likely carry price tags of US\$10 billion each, while the Subbotina-Prykerchenska project could absorb US\$4 billion in investment. Losing access to that kind of investment is a hardship, considering Ukraine's cash-strapped state of affairs.¹¹⁸

Experts believe that the Crimean crisis will have a dampening effect on future shale exploration, and many projects will stall until the investment climate improves and

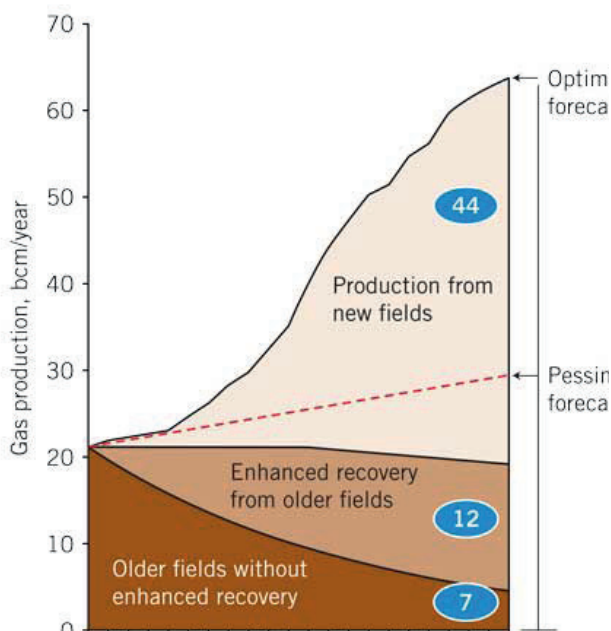
the situation stabilizes.¹¹⁹ Foreign investors are likely to seek more substantial investment protection guarantees going forward and to take account of the obvious geopolitical risks.

2. Different balance of power in the global natural gas market

Globally, the crisis in Crimea may position the US as a new leader in natural gas production; potentially, it could start exports to Europe. While the annexation of Crimea may help Russia control the energy flows from the Middle East and secure its role as a gas exporter to Europe, the US might try to deploy its vast supply of natural gas as a weapon to undercut Russian influence in Ukraine and Europe.¹²⁰

Two US Senators already have announced a bipartisan plan to expedite the US Department of Energy's review of applications to export liquefied natural gas. This process has been so slow that some might consider it equivalent to a natural-gas export ban. The presence of a new source of natural gas would decrease prices on the European market and adversely affect Russian interests. Nevertheless, the economic feasibility and availability of required infrastructure to accommodate US exports of liquefied natural gas exports remain problematic.

UKRAINE GAS PRODUCTION FORECAST



Source: The Oil and Gas Journal, <http://www.ogj.com/articles/print/volume-111/issue-6/exploration---development/ukraine-s-gas-upstream-sector-focus-on.html>

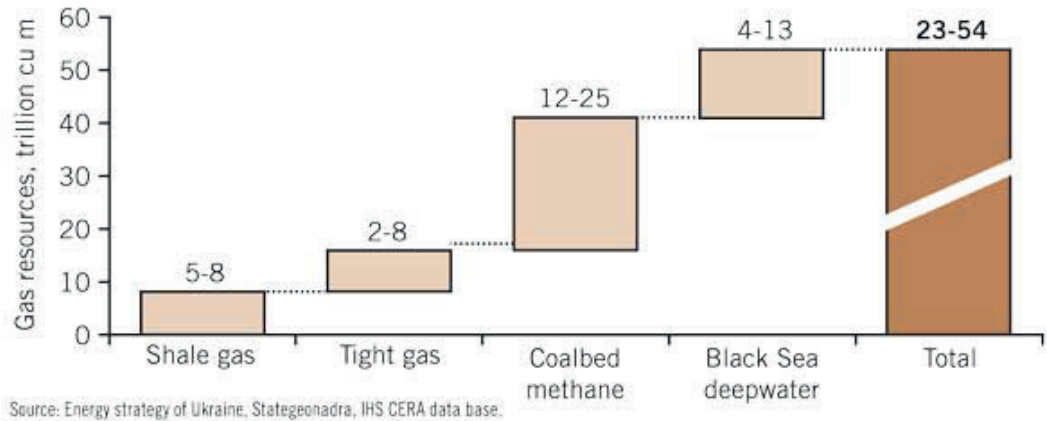
3. Reversal of the pipeline

Russia's efforts to bypass Ukraine with its energy exports to pressure Ukraine have led to the idea of reverse gas transport from Europe to Ukraine. The UK and the EU have discussed these initiatives in the context of becoming less dependent on Russian gas. Ukraine must increase domestic production by attracting foreign investment and technology, and the EU must diversify its supply sources further.

According to Ukraine's energy minister, Ukraine has paid "politically motivated" prices for natural gas. That is why Ukraine has talked to the EU about upgrading its pipeline network and adding reverse flow capability.¹²¹ As of May 2013, Poland, Hungary, and Slovakia have received about 291 million cubic meters of gas through cross-border gas infrastructure in reverse mode.¹²² The Ukrainian government is reportedly working on a gas deal that could enable Slovakia to start sending gas to Ukraine in November 2014.¹²³ Moreover, the Russian press reported on this deal in November 2013, while the Ukraine protests were erupting, as a threat to Gazprom.¹²⁴

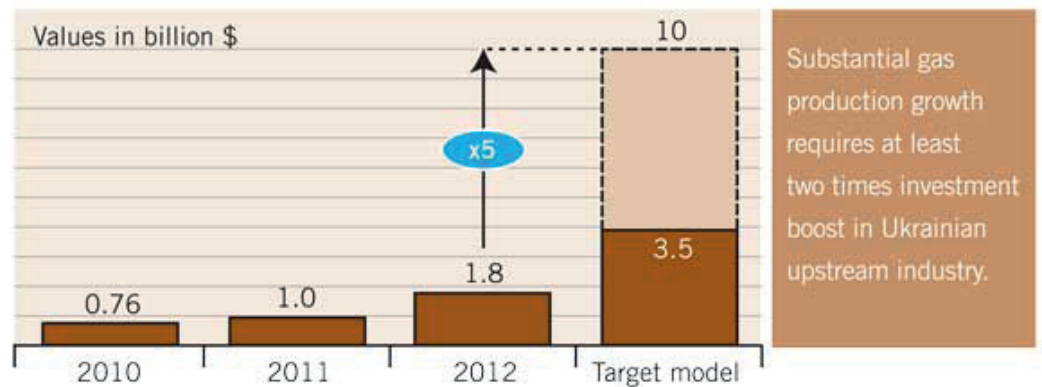
POSSIBLE UNCONVENTIONAL GAS RESOURCES IN UKRAINE

FIG. 4



UKRAINE CAPITAL INVESTMENTS IN HYDROCARBON PRODUCTION

FIG. 5



Source: The Oil and Gas Journal, <http://www.ogj.com/articles/print/volume-111/issue-6/exploration-development/ukraine-5-gas-upstream-sector-focus-on.html>

Measures such as reverse flows can decrease, but not eradicate, reliance on Russian gas. In case of further escalation of conflict and suspension of Russian gas, the reverse supply would fail to keep up with demand in a short time. Ukraine appears to have gas reserves that could suffice for approximately 4-5 months if transport from Russia ceased.¹²⁵ The reality, however, is that Russia currently supplies more than half of all Ukraine's natural gas supply, and any alternative supply is too small to suffice.

4. Nationalization of Ukrainian energy assets in Crimea

With Crimea's annexation, Ukraine faces the loss of other key energy sector assets as well. The self-proclaimed Crimean government has nationalized two major energy companies,¹²⁶ Chernomornaftogaz, a subsidiary

of a Ukrainian state-owned oil and gas company, and Naftogaz, which was involved in the development of hydrocarbons in the Black Sea and the Sea of Azov.¹²⁷ Following "nationalization," the Crimean government handed the company over to Gazprom, which effectively took control.¹²⁸ Ukrainian Prime Minister Yatsenyuk called this robbery, and the Ukrainian government threatened to respond with the nationalization of Russian assets in Ukraine.¹²⁹

5. Crimea's energy dependence on mainland Ukraine

Crimea heavily depends on mainland Ukraine for supplies of nearly all of its electricity, food and water.¹³⁰ Ukraine has not voiced any intention to cut off these supplies, but a shutoff could happen if the conflict escalates further.

6. Potential investment protection claims

The Russia-Ukraine conflict is likely to result in several nationalizations and expropriations on both sides. It could further lead to investment-protection claims by foreign investors against host states under various bilateral and multilateral investment treaties. The Energy Charter Treaty is one such multilateral treaty that provides foreign investors with a choice of forums in which to file their claims. Unlike Ukraine, Russia has not ratified this treaty and may be subject only to arbitration under separate bilateral investment treaties.

As the conflict develops, it is not yet possible to assess its full potential impact on foreign investment in Crimea.

As its legal status remains in dispute, it is not clear which state may be a respondent in arbitration on foreign investments claims.

Before the military occupation, Crimea was an integral part of Ukraine, and Ukraine had treaty obligations toward its foreign investors. Because Russia currently exercises de facto control over the territory, it could fail to honor the Ukrainian government's commitments to foreign investors by expropriating or otherwise impairing those investments. Whether foreign investors will be able to use investment treaties to protect their investments in Crimea remains an open question, but energy-related issues will continue to play a key role.

III. CRIMEA

A. Status of Crimea as an “autonomous” region

In 1954, the Soviet Union transferred the Crimean peninsula from the Russian Socialist Federative Soviet Republic to the Ukrainian Soviet Socialist Republic administratively. First, the Supreme Soviet of the Russian Federation approved the transfer, and then the Supreme Soviet of the Ukrainian accepted it on June 17, 1954.¹³¹ Such transfers were purely administrative and routine in the former Soviet Union. For example, on October 1, 1924, the Ukrainian SSR transferred the port city of Taganrog and the Shakhty Okrug region to the Russian SSR.¹³²

Mark Kramer, Director of the Cold War Studies Program at Harvard University and a Senior Fellow of Harvard’s Davis Center for Russian and Eurasian Studies, correctly points out:

“the legal system in the Soviet Union was mostly a fiction, but the transfer did occur in accordance with the rules in effect at the time. Moreover, regardless of how the transfer was carried out, the Russian Federation expressly accepted Ukraine’s 1991 borders both in the December 1991 Belovezhskaya Pushcha accords (the agreements that precipitated and codified the dissolution of the Soviet Union) and in the December 1994 Budapest Memorandum that finalized Ukraine’s status as a non-nuclear weapons state.”¹³³

Originally, Crimea was an “autonomous republic” in the RSFSR; however, its status changed to *oblast*, or province, in 1945. Therefore, when the Russian SSR transferred Crimea to the Ukrainian SSR, it was a province and remained so for 37 years until the USSR’s collapse in 1991. When Ukraine became an independent nation, it returned Crimea to the status of an “autonomous republic.”

Crimean Tatars are the indigenous people of Crimea. They lived in Crimea for centuries until 1944, when the Soviet regime deported them *en masse* for alleged collaboration

with the Nazis. The Stalinist government deported other ethnic minority groups as well, including Armenians, Bulgarians, and Greeks. Hence, in 1954, when the Russian SSR transferred Crimea to the Ukrainian SSR, it was more “Russian” than it had been in centuries because of the massive deportations.¹³⁴

Since 1991 and the end of the Soviet era, 300,000 Crimean Tatars have returned and resettled in Crimea. The Mejlis, or Crimean council, asked Crimean residents and Tatars to boycott the March 16 referendum. Since the referendum, Crimean Tatars are facing the threat of renewed persecution, and many are fleeing Crimea. Ukraine plans to accept at least 10,000 Crimean Tatar refugees.¹³⁵

On March 17, 2014, the Mejlis¹³⁶ asked the Ukrainian government to grant them recognition as an indigenous people.¹³⁷ Following the request, Parliament adopted a resolution recognizing them on March 20, 2014. Parliament instructed the Cabinet of Ministers to start the process to have Ukraine join the UN Declaration on the Rights of Indigenous People and to develop laws to define and reinforce the status of Crimean Tatars as an indigenous people.

Article 2(2) of the Ukrainian Constitution provides that Ukraine is a unitary state and that its territory is indivisible and inviolable. Ukraine is comprised of 25 administrative regions, including the Autonomous Republic of Crimea, the capital city Kyiv, and Sevastopol. The Autonomous Republic of Crimea enjoys special status with significant independence, yet it remains a constituent part of Ukraine.¹³⁸ Thus, Crimea’s autonomous Parliament and Council of Ministers must uphold the Constitution and laws, as well as the acts of the President and the governmental administration.¹³⁹

Under the Constitution, Parliament controls Ukraine’s territory and sovereignty through its lawmaking powers. Article 157 of the Constitution prohibits any amendment that would violate Ukraine’s territorial integrity. Article 73 provides that any change to the country’s territory requires

a referendum of the whole country, similar to the situation of Quebec in Canada. Article 72 outlines the mandatory procedure for such a nation-wide referendum.

Article 138 of the Constitution specifies the scope of the Autonomous Republic of Crimea's authority. Pursuant to this article, Crimea may pass laws and hold referenda regarding its domestic agriculture, public works, housing, tourism, cultural institutions, public transport, and hospitals. It is unambiguous, however, that a local referendum cannot resolve the issue of Crimea's territorial integrity. Under the Constitution, only Parliament may order a nationwide referendum related to territorial changes.

On March 6, 2014, the Supreme Council of the Autonomous Republic of Crimea adopted a resolution, "On the All-Crimean Referendum" on the basis of Constitution Articles 18(1)(7) and 26(2)(3). Article 18(1)(7) provides that the Autonomous Republic may "call and hold republican (local) referendums upon matters coming under the terms of reference of the Autonomous Republic of Crimea." Article 26(2)(3) provides that the Supreme Council may "pass a resolution upon holding a republican (local) referendum."

The Crimean Autonomous Republic Constitution unequivocally states, however, that any referendum to make changes to territorial boundaries must comply with the Ukrainian Constitution.¹⁴⁰ Furthermore, the first article of the Crimean Constitution declares that the

Autonomous Republic is an integral part of Ukraine and must govern itself in accordance with the Constitution.¹⁴¹ Article 2(2) of the Crimean Constitution further states that the national Constitution preempts any Republic of Crimea law that is in conflict with the national Constitution. The Ukrainian Constitution is supreme over all other laws and regulations.

In the event of the Crimean Parliament's noncompliance with the laws and Constitution, Article 138 mandates that the President suspend the act of the Crimean Parliament and simultaneously appeal to the Constitutional Court. Thus on March 7, 2014, acting President Turchynov signed a decree halting the Order of the Crimean Parliament of March 6, 2014 to hold a referendum on territorial integrity as a violation of the laws and the Constitution. On March 7, he also suspended the Crimean Parliament's resolution authorizing the March 16 referendum. On March 11, the national Parliament issued a statement demanding that the Crimean Parliament immediately revise its resolution to comply with law.

On March 14, the Constitutional Court ruled that the Crimean referendum was unconstitutional and ordered the Crimean authorities to cease all preparations for it immediately. Further, Ukraine's Minister of Justice Pavlo Petrenko, Ombudsman Valeriya Lutkovska and Chair of the Council of Judges Vasyl Onopenko all publicly condemned the Crimean referendum as unconstitutional and a violation of human rights. On March 15, the Council of Europe's Venice Commission for Democracy



Source: Forbes

through Law (Venice Commission) opined that the referendum was illegitimate.¹⁴²

In addition to the severe legal problems with Crimea's referendum, other issues tainted the referendum's legitimacy as well. First, a self-appointed individual, Mr. Aksenev, representing the Russian Unity Party, which garnered four percent of the popular vote in the last election, hastily called for the referendum with ten days' notice. The terms of the referendum were peculiar, as discussed below. Crimean authorities permitted no international election monitors or experts to observe. Furthermore, armed soldiers, without national or other insignia but widely deemed to be Russian, oversaw the referendum, suggesting that the election occurred under duress.¹⁴³

B. The March 16 Referendum

The March 16 referendum asking Crimeans to join Russia was illegal under both domestic and international law. It also violated the Constitution, domestic legislation and the basic principles of democracy. The United States, European Union, United Nations, and other institutions endorsed this view.

Only ten days before the vote, on March 6, 2014, the Crimean Parliament adopted a resolution "On the all-Crimean Referendum." Under the resolution, voters were to get a ballot with only two options: (1) Are you in favor of the reunification of Crimea with Russia as a part of the Russian Federation? and (2) Are you in favor of restoring the 1992 Constitution and the status of Crimea as a part of Ukraine? A return to the 1992 Constitution, adopted after the Soviet collapse but quickly thrown out by post-Soviet Ukraine, would effectively provide for Crimea's independence, while technically allowing it to remain part of Ukraine. Voters had to mark one option affirmatively, but had no option to vote for the *status quo*. As such, it denied voters the right to make a legally meaningful choice.

On March 14, 2014, the Constitutional Court ruled on the referendum:

"The Resolution of the Supreme Rada (Council) of the Autonomous Republic of Crimea 'On the all-Crimean Referendum' dated March 6, 2014 is not in accordance with the Constitution of Ukraine and therefore is unconstitutional.

1. The Resolution of the Supreme Rada (Council) of the Autonomous Republic of Crimea 'On the all-Crimean Referendum' dated March 6, 2014 is

unconstitutional and ceases to be effective as of the day of this decision.

2. The Commission of the Autonomous Republic of Crimea shall cease all activity regarding the Referendum in question.
3. The Council of Ministers of the Autonomous Republic of Crimea shall cease financing any activity regarding the Referendum in question, destroy all ballots and "advertising" materials.
4. The decision of the Constitutional Court is mandatory in Ukraine, final and cannot be appealed."

On March 21, 2014, the Venice Commission issued its own written opinion. It determined that "the indivisibility of the state is incompatible with secession." It found that "the Constitution of Ukraine does not allow for a referendum on secession . . . [I]t is typical for constitutions of Council of Europe member states not to allow secession." The Venice Commission further noted that "self-determination is understood primarily as internal self-determination within the framework of existing borders and not as external self-determination through secession." In its conclusion, the Venice Commission made the following findings:

"1. The Constitution of Ukraine, like other constitutions of Council of Europe member states, provides for the indivisibility of the country and does not allow the holding of any local referendum on secession from Ukraine. This results in particular from Articles 1, 2, 73 and 157 of the Constitution. These provisions, in conjunction with Chapter X, show that this prohibition also applies to the decision of the Autonomous Republic of Crimea. The Constitution of Crimea does not allow the Supreme Soviet of Crimea to call such a referendum. Only a consultative referendum on increased autonomy would be permissible under the Ukrainian Constitution.

2. Moreover, circumstances in Crimea did not allow the holding of a referendum in line with European democratic standards. Any referendum on the status of a territory should have been preceded by negotiations among all stakeholders. Such negotiations did not take place."¹⁴⁴

The Venice Commission also held that the two ballot questions were invalid because they failed to offer a *status quo* choice. In addition, the Commission noted that the second question "could not be regarded as valid on its own."¹⁴⁵

Moreover, the Crimean Tatars, whom Ukraine has now designated an indigenous people, publicly expressed their desire to preserve the *status quo*.¹⁴⁶ Crimean Tatars largely boycotted the referendum on March 16, 2014, but authorities did not even provide voting booths in Tatar regions. By holding the referendum in this manner, Crimean authorities violated the rights of Crimean Tatars and the Constitution itself.¹⁴⁷

C. Right of Secession

The historical evolution of the right to self-determination has a core area where the right to self-determination is beyond dispute. In the case of decolonization, for example, state practice has shown that non-self-governing territories as well as trusteeship territories enjoy a clear right to self-determination. The “people” in these circumstances are the autonomous population of the non-self-governing territories grouped together in colonial times to form a distinct political entity.¹⁴⁸

These territories became recognizable as independent states under the principle of *uti possidetis juris*, or recognition of the legal boundaries at the time of independence, because their geographical territories took shape when they were colonies. They simply inherited those boundaries from their colonial rulers.¹⁴⁹ Other

than in decolonization, there has never been serious international support for the claim of self-determination of an ethnic group that did not also have a firm territorial claim against a pre-existing political entity.¹⁵⁰ In essence, the debate turns on whether ethnic groups that qualify as minorities may also qualify also as “peoples” enjoying a right to self-determination. Accepting a right of self-determination for each of these groups could open a Pandora’s box of endless disputes.¹⁵¹ The general rule applies that self-determination is a right linked to a historically defined territory. A majority may decide its political status in a plebiscite, and neighbors must accept the clearly defined boundaries according to the principle of *uti possidetis juris*.¹⁵²

This is not to say that there is no controversy; the members of the previously dominant group usually do not wish to separate from their kin-state and become a minority in a new state, as was the case with Russians in the former Soviet republics. Nevertheless, the international community accepted the claims of those republics, as well as those of the former Yugoslav republics, to form their own states. Although in both cases recognition rested on arguments of dismemberment of former federations, the international community had no problem accepting their territory-based claims of self-determination.¹⁵³

Other cases have been more controversial, like the unilateral declaration of independence by the former Autonomous Province of Kosovo in Serbia. In general,



Source: Forbes

international practice has been clear: Subjects of self-determination must have a clear territorial basis and not simply be “peoples.”¹⁵⁴

Unilateral secession, unlike self-determination, does not involve the exercise of a right generally recognized under international law. The government of a state may oppose the unilateral secession of part of that state by all lawful means. Third states should remain neutral during such a conflict, as assistance to an unrecognized group may be perceived as intervention in internal affairs or as a violation of neutrality.¹⁵⁵ On the other hand, international law may acknowledge the political reality once the independence of a seceding entity has been firmly established. The Canadian Supreme Court addressed this issue in its *Quebec Secession* decision in 1998.¹⁵⁶

The Commission of Jurists, appointed by the League of Nations in the 1920s to examine the *Åland Islands*¹⁵⁷ case, arrived at the same view as is generally accepted today, notwithstanding subsequent developments in the principle of self-determination. “Positive international law does not recognize the right of national groups, as such, to separate themselves from the state of which they form a part by the simple expression of a wish.”¹⁵⁸

Normally, a right to self-determination supports only internal self-determination. However, if a state completely blocks any internal self-determination and subsequently employs forms of violent oppression that lead to crimes against humanity, and forms of ethnic cleansing, then a right to secession may exist as an emergency tool based on natural law or a general principle of law, such as self-defense in extreme emergency.¹⁵⁹

While some groups have asserted this right in practice, states have been extremely reluctant to accept such an argument as a justification to secession. For obvious reasons, most states have not wanted to legitimate secessionist movements. Secession usually does not solve the political problems lying beneath the surface, and often tends to escalate them. Claims of secession regularly produce counterclaims of secession of smaller sub-entities and lead to endless conflicts over territory, boundaries, and resources. As a result, it is not only an ethnic group that is seceding, but also a certain territory that must separate from the territory of the former sovereign in order to form a new state. Nevertheless, what is the natural territory of an ethnic group? In the end, a territorial entity is seceding, not the ethnic group *per se*.¹⁶⁰

If one concludes that only territorial entities of a pre-determined, historical nature can assert rights to self-determination, this does not mean that the issue of secession is completely closed. In exceptional cases,

there might be reasonable grounds for political entities to seek secession. Ongoing or pending genocide may be such a case, as well as gross and consistent patterns of discriminatory crimes against humanity, targeted massacres among an oppressed population, and large-scale ethnic cleansing.¹⁶¹

Whether such exceptional circumstances can lead to a clear right to secession is an open question. It is up to the international community to judge the legitimacy of any attempt.¹⁶² Despite the violence that may characterize a particular situation, international actors might still prefer internal self-determination or autonomy instead of secession. Overriding concerns of international policy might demand such a situation, and a clear legal entitlement, a “right” to secession, would create obstacles for all attempts at international mediation. It is thus better to view situations of exceptional legitimacy of secession not in terms of a clear-cut collective right, but in broader terms of legitimacy, open to international moderation and judgment.¹⁶³

The Autonomous Region of Crimea cannot claim a right to secession on these extraordinary bases, because there was neither a pattern of human rights violations over time nor a reduction in its autonomy. Furthermore, since its independence from the former Soviet Union, Ukraine has largely respected the Crimean right to self-determination.

D. Annexation and Recognition: the Precedents

Since 1945, there have been numerous attempts of groups to secede unilaterally.¹⁶⁴ Several efforts, including Kosovo, Republika Srpska, and Northern Cyprus provide useful comparisons to the Crimean case.

1. Kosovo

Kosovo, formerly in southern Serbia, has an ethnically mixed population, the majority of which is ethnic Albanian. Until 1989, the region enjoyed a high degree of autonomy within former Yugoslavia. Then Serbian leader Slobodan Milosevic altered the region's status, bringing it under the direct control of Serbia. The Kosovar Albanians strenuously opposed the move. In 1998, open conflict between Serbian military and police forces and Kosovar Albanian forces resulted in over 1,500 Kosovar Albanian deaths and 400,000 displaced persons. The international community became concerned about the escalating

conflict, its humanitarian consequences, and the risk of its spread. President Milosevic's disregard for diplomatic efforts to resolve the crisis and the role of destabilizing militant Kosovar Albanian forces were additional complicating factors.¹⁶⁵

The case of Kosovo challenged one of the core principles of the international legal order: the prohibition against the use of force, as stipulated in Articles 2(3) and (4) of the UN Charter. When NATO carried out air strikes against Serbian forces in 1999 to bring an end to massive human rights violations against civilians without Security Council authorization, this raised the issue of whether international law supported the use of force for humanitarian intervention. Subsequently, the commitment of UN and NATO forces in civil and security capacities also raised issues of nation building. The principle of self-determination, however, was not at the forefront.

Although Kosovo has proclaimed its independence, its international legal status remains unclear and will likely remain so for the near future. Many states are unwilling to recognize Kosovo formally, even if they are willing to form working relationships with it. Kosovo's future participation in multilateral organizations, fora, and agreements is uncertain.¹⁶⁶

2. Republika Srpska

In January 1992, the Serbian population in Bosnia-Herzegovina, which made up about thirty-five per cent of the Republic's population, formed its own parliament, conducted a plebiscite, and on 9 January, 1992 proclaimed itself the Republika Srpska. The EU Arbitration Commission was specifically asked whether the Serbian population in Croatia and Bosnia-Herzegovina had a right of self-determination. It said:

"1. The Commission considers that international law as it currently stands does not spell out all the implications of the right to self-determination. However, it is well established that, whatever the circumstances, the right to self-determination must not involve changes to existing frontiers at the time of independence (*uti possidetis juris*) except where the states concerned agree otherwise.

2. Where there are one or more groups within a state constituting one or more ethnic, religious or language communities, they have the right to recognition of their identity under international law. As the Commission emphasized in its *Opinion No. 1* ... the—now preemptory—norms of

international law require states to ensure respect for the rights of minorities. This requirement applies to all the republics vis-à-vis the minorities on their territory. The Serbian population in Bosnia-Herzegovina and Croatia must therefore be afforded every right accorded to minorities under international conventions as well as national and international guarantees consistent with the principles of international law and the provisions of Chapter II of the Draft Convention of 4 November 1991, which has been accepted by these Republics.

3. Article 1 of the two 1966 International Covenants on Human Rights establishes that the principle of the right to self-determination serves to safeguard human rights. By virtue of that right every individual may choose to belong to whatever ethnic, religious or language community he or she wishes. In the Commission's view one possible consequence of this principle might be for the members of the Serbian population in Bosnia-Herzegovina and Croatia to be recognized under agreements between the Republics as having the nationality of their choice, with all the rights and obligations which that entails with respect to the states concerned."¹⁶⁷

The Commission treated the Serbian population as a minority and denied that they had any right to form an independent state. On the other hand, it did not deny the right of self-determination at the internal level. As a result, all people may choose to belong to whatever ethnic, religious, or language community they wish and might have the right to adopt the nationality of choice, under agreements between the various republics. In the ruling, the Commission denied external self-determination to Republika Srpska, a position expressly confirmed in the Dayton Agreement largely resolving the war.¹⁶⁸

3. The Turkish Republic of Northern Cyprus

On February 13, 1975, the Turkish Cypriot administration reorganized itself by proclaiming a Turkish Federated State of Cyprus (TFSC) under the Turkish Cypriot leader Denktash. Most of the Turkish Cypriots who had lived in the southern part of Cyprus resettled to the north. Moreover, Turkey and the TFSC encouraged additional Turkish settlers to move to northern Cyprus, thereby changing the demographic composition of the island.

On November 15, 1983, the TFSC proclaimed itself the "Turkish Republic of Northern Cyprus" (TRNC). Turkey

recognized the TRNC as an independent state, a move that encountered sharp international resistance. The UN Security Council declared that the proclamation of the TRNC was “null and void” and called upon all states not to recognize it.¹⁶⁹ Moreover, when Turkey established diplomatic relations with the TRNC, the UN Security Council called on states not to “facilitate or in any way assist the secessionist entity.”¹⁷⁰

According to the prevailing view, an entity is not a state because it is recognized; it is recognized because it is a state. In the case of the TRNC, it fulfilled at least two of the objective criteria of statehood, territory and population. Whether there is an independent government in view of the close ties with Turkey is an open question. The UN Security Council’s call for collective non-recognition still stands. UN Member States have not entered into formal relations with the TRNC. Thus, the TRNC neither has access to international organizations nor any international agreements with any state, except Turkey.

The legal status of the TRNC – both as a non-state and as an illegal, unrecognized state – today resembles the status of a local *de facto* government. Other states are free to engage with this secessionist entity as long as they do not confer recognition, facilitation, or assistance, the exact meaning of which falls within the discretion of states.¹⁷¹ What happened in Northern Cyprus seems to be the closest precedent situation to Crimea today.

E. Evaluating the Precedents

Under international law, the people of Crimea are not precluded from holding a referendum and even *declaring* independence and their willingness to integrate with Russia. However, international law does not give them a *right* to secession from Ukraine or integration with Russia. Not even the will of the people expressed at the referendum, however democratically and overwhelmingly, changes this position. Absent widespread international recognition, the Crimean attempt at “secession” would have remained ineffective without Russia’s use or threat of the use of force.¹⁷²

Although some Russian military presence in Crimea was legal under the Black Sea Fleet Agreement, Russia breached that agreement. Even if Russia contested allegations of its use of force, its actions still constituted at least a threat of the use of force, which Article 2(4) of the UN Charter prohibits. According to paragraph 81 of the ICJ Kosovo Advisory Opinion, Russia’s actions removed this case from being a simple unilateral declaration of independence and turned it into a violation of a preemptory norm of international law, or *jus cogens*,

because of the threatened use of force. This circumstance triggered Article 41 of ILC Articles on State Responsibility, which prohibits all countries from recognizing Crimea. Foreign states are now required to withhold recognition, because Russia created an illegal territorial situation by the use or the threat of use of force. In other words, Russia created a situation legally comparable to Northern Cyprus, although Crimea sought integration rather than independence.¹⁷³

In 1999, the Security Council adopted Resolution 1244, which created an international territorial administration for Kosovo and established its governance separate from Yugoslavia and Serbia. Nevertheless, as far as general international law is concerned, paragraph 81 of the ICJ Kosovo Advisory Opinion implicitly confirmed that Kosovo’s declaration of independence did not violate a preemptory norm. In the ICJ’s view, the declaration of independence did not follow from a use of force, but rather from the subsequent legal regime established by Resolution 1244. The Resolution thus interrupts the link between the illegal use of force in 1999 and the declaration of independence in 2008. The legal situation in Crimea therefore is different and its change of legal status flows directly from Russia’s military activities. Although Crimea sought integration with Russia rather than independence, the territorial illegality is closer to what happened in Northern Cyprus than Kosovo.¹⁷⁴

F. The Rights of Crimean Tatars as indigenous people

Crimean Tatars are a Turkic ethnic group native to Crimea.¹⁷⁵ They trace their heterogeneous ethnic roots to Crimean antiquity, descending from Scythian, Samartian, Turkic Hun, Kipchak, Ostrogoth, Italian and Pontic ancestors. The influences of all these myriad cultures are evident to this day among contemporary Crimean Tatars, underscoring roots that predate the 13th century arrival of Islam and Mongol conquests. By the mid-15th century the sovereign state of the Crimean Khanate was established, and its 300-year rule played a central role in political, military and international relations within the Eurasian space.

After the Russian defeat of the Ottoman Empire, Crimea became independent, conducting its own internal and foreign affairs.¹⁷⁶ Russia then annexed Crimea in 1783, when Crimean Tatars constituted ninety eight percent of the population. Oppression, restructuring and restrictive land reforms led to large numbers of Crimean Tatars fleeing their native land. This emigration continued unabated until the Russian Bolsheviks sealed the Crimean

borders. Between 1783 and 1921, it is estimated that approximately 1.8 million Crimean Tatars took refuge and settled in Romania, Turkey and other parts of the Ottoman Empire.

In the 19th century, Crimea became Russia's Black Sea bridgehead. The expropriation of Crimean land and deportations, especially from 1850-60, forced a large number of Crimean Tatars to emigrate to Turkey. At the same time, an influx of Russians began. By the end of the 19th century, Crimean Tatars constituted a minority in their historic homeland.¹⁷⁷ The [Crimean War](#) of 1853–1856, regressive laws of 1860–63, the Tsarist policy against Crimean Tatars and the [Russo-Turkish War of 1877–78](#) all caused a further exodus of Crimean Tatars. About 200,000 out of 300,000 Crimean Tatars emigrated.¹⁷⁸

In 1921, the Communists won the Russian civil war. The Russian Council of People's Commissars adopted a decree establishing the Soviet Socialist Republic of Crimea. Soviet policies, however, were hostile to the Crimean Tatars. Stalin supported the imprisonment and execution of their political leaders and intellectuals. The Soviet regime deported or killed thousands of Crimean Tatars during the forced collectivization of 1928-29.¹⁷⁹ The first famine in the early Soviet years of 1921-1923 and the second famine of 1932-1934¹⁸⁰ destroyed hundreds of thousands of Crimean Tatar lives.¹⁸¹

The 1930's represented a second decade of the Soviet authorities' repression and systematic "extermination" of Crimean Tatar intellectuals.¹⁸² Within that decade over 20,000 people were expelled from Crimea, deported to Siberia and the Ural Mountains.¹⁸³

During World War II, the remaining Crimean Tatars faced deportation *en masse*. Crimean Tatars were deported to the Uzbek Soviet Socialist Republic and other eastern parts of the Soviet Union.¹⁸⁴ Their attempts to return to their homeland began anew in 1987 with petitions and protest demonstrations. In 1989, the Supreme Soviet of the Soviet Union adopted a formal decision allowing the Crimean Tatars and Volga Germans to return to their homelands.¹⁸⁵ It was only after Ukraine declared independence in 1991 that Crimean Tatars returned to reclaim their homeland.¹⁸⁶

The Crimean Tatars started returning in large numbers. More than 250,000 Crimean Tatars returned. The Crimean Tatars demanded the restoration of the Autonomous Socialist Republic of Crimea. If all the deported Crimean Tatars had returned, they would have constituted about twenty percent of the whole population; they were unable to do so, however, and today constitute only fourteen percent of the population.¹⁸⁷

1. Status as an indigenous people

Indigenous peoples under international and national legislation have a set of specific rights based on their historical ties to a particular territory and their cultural or historical distinctiveness from other, often politically dominant, groups. There is no more specific, universally accepted definition of indigenous peoples because of the variety of different circumstances. The four most frequently invoked characteristics of indigenous peoples, however, are:

- priority in time;
- the voluntary perpetuation of cultural distinctiveness;
- an experience of subjugation, marginalization and dispossession; and
- self-identification.¹⁸⁸

The United Nations issued a Declaration on the Rights of Indigenous Peoples to guide member-state national policies on the collective rights of indigenous peoples, such as culture, identity, language, and access to employment, health, education, and natural resources.¹⁸⁹

The Crimean Tatars fall within this definition of indigenous peoples. They are (a) descendants from populations that have long inhabited a defined geographical region within its present state boundaries. They have (b) preserved their cultural, linguistic and religious group identity apart from the identities of the dominant nation and other national minorities and continue to express the desire to maintain and develop their identity. They have (c) their own historical traditions, social institutions, self-government systems, and bodies. And finally, (d) there is no other national state or homeland beyond Ukraine's boundaries for Crimean Tatars.¹⁹⁰

Ever since Ukraine's independence, the Crimean Tatars have struggled for their status as an indigenous people. Some authors believe that the Law on National Minorities does not sufficiently guarantee the rights of Crimean Tatars because it protects only cultural and linguistic but not political, social, and economic rights.¹⁹¹ Ukraine has not supported the UN Declaration on the Rights of Indigenous Peoples until very recently.

2. The 2014 Crisis

The Crimean Tatars fear a return to Russian reoccupation of Crimea. After the referendum, there have been reports that Tatars have had their front doors marked to designate

their ethnic identity.¹⁹² They fear that this may foreshadow a new wave of ethnic cleansing or deportation.

Since the March 16 referendum, many legal issues remain unresolved. Crimean Deputy Prime Minister Rustam Temirgaliyev announced that the government would ask the Tatars to vacate illegally occupied land to make way for “social needs.”¹⁹³ If adopted as law, this policy would influence nearly all Crimean Tatars. Upon returning to the peninsula in 1991, the Crimean Tatars were forced to build makeshift homes on unauthorized property.¹⁹⁴ These circumstances constitute violations of indigenous peoples’ rights. It does not appear likely that Russia will recognize the Tatars as indigenous to Crimea since it has repeatedly tried to populate the region with Russians instead.

On March 17, the day after the referendum, the Crimean Tatar Mejlis,¹⁹⁵ or indigenous council, urged the Ukrainian government to recognize Crimean Tatars as an indigenous people.¹⁹⁶ On March 20, the Ukrainian Parliament passed a resolution recognizing them as such. The resolution guarantees the protection and realization of ethnic, cultural, language, religious and other rights of ethnic minorities in Ukraine, including Crimean Tatars. Parliament instructed the Cabinet of Ministers to initiate the adoption of the UN Declaration on the Rights of Indigenous Peoples and to develop legislation that would define and reinforce their rights in Ukraine.¹⁹⁷ Nevertheless, any single resolution is unlikely to protect them. Crimean Tatars did not favor rejoining Russia, and politicians continue to exploit past enmity between pro-Russian and Crimean Tatar groups.¹⁹⁸

IV. THE SITUATION IN EASTERN UKRAINE

Possible further escalation of the conflict may occur in Eastern Ukraine,¹⁹⁹ where a large Russian-Ukrainian population resides.²⁰⁰ There have been periodic pro-Russia demonstrations²⁰¹ and Russian troop movements on the Russian side of the Ukraine-Russia border.²⁰² The situation is murky, however, with many divisions among the pro-Russia groups²⁰³ and a partial Russian troop withdrawal.²⁰⁴ According to news reports, contentious future issues might include recognizing Russian as an official language,²⁰⁵ creating a federated Ukrainian state,²⁰⁶ and Russian use of force to annex Eastern Ukraine.²⁰⁷ This Report does not seek to predict future events or assess the probability of any risks. It does outline, though, some of the legal issues that might arise in certain potential scenarios.

A. Military invasion by Russia

If the Russian military invades, the same legal issues would arise as occurred in the Crimean annexation. Russia might be culpable for the international crime of aggression, as defined in the UN General Assembly Resolution 3314 and customary international law.²⁰⁸

Resolution 3314, Article 2, provides that the use of armed force by a state shall constitute *prima facie* evidence of an act of aggression. Article 3 lists actions that may constitute aggression, including an armed attack; blockades of ports or coastlines; and sending armed bands or groups to carry out acts of armed force.²⁰⁹ The Crimean situation included some of these acts, so it is plausible that Russia might follow the same pattern in Eastern Ukraine. The crime of aggression constitutes a clear violation of a preemptory international law norm.²¹⁰

B. Military intervention leading to a frozen conflict

If Russia invades Eastern Ukraine, it could lead to another “frozen conflict,” analogous to what happened in the Russia-Georgia conflict in 2008, in which Russia argued that it did not invade Georgia but was exercising a right of self-defense. Declaring that Russia was exercising its rights under UN Charter Article 51, President Medvedev responded to a Georgian attack on Russian peacekeepers in Tskhinvali, who were present pursuant to a 1992 Sochi ceasefire agreement. Russia also argued that it intervened to protect Russian citizens.²¹¹

As a result, South Ossetia and Abkhazia, both autonomous, heavily Russian-populated areas in Georgia, declared themselves independent from Georgia. Other nations have not recognized them: they remain “frozen conflicts.” This is a potential outcome in Eastern Ukraine.²¹² Scholars define “frozen conflicts” as those in which violent ethno-political conflict over secession leads to the establishment of a *de facto* regime recognized neither by the international community nor the state from which the territory seceded.²¹³ Examples in addition to South Ossetia and Abkhazia include Northern Cyprus, Kosovo, Transdniestria and Nagorno-Karabakh.²¹⁴

Potential solutions to frozen conflicts include legislation to protect minorities; arbitration; adopting a federal system; and even a power-sharing arrangement, as in Lebanon.²¹⁵ Managing frozen conflicts is not easy, though. Both structural and ethnic issues are complex, and given Russia’s significant security, economic and political interests in the region, frozen conflicts pose serious challenges to regional security.²¹⁶



A police station in Sloviansk was taken over on April 14, 2014 by unidentified gunmen. (Photo: AFP)

C. Foreign interference: funding of secessionist or political groups

Another possible scenario could entail Russian support for secessionist groups in Eastern Ukraine. That support would violate a UN General Assembly declaration²¹⁷ and resolution.²¹⁸ The International Court of Justice further elaborated these principles of nonintervention in *Nicaragua v. United States*.²¹⁹ There, the Court stated categorically that “[t]he principle of non-intervention involves the right of every sovereign state to conduct its affairs without outside interference; though examples of trespass against this principle are not infrequent, the court considers that it is *part and parcel of customary*

international law.”²²⁰ The case clarifies that financial support, training, supply of weapons, intelligence, and logistical support all constitute breaches of the principle of non-intervention.²²¹

Russian support to militant pro-Russian groups in Eastern Ukraine is plausible in light of its behavior in Crimea and its accusations against Western countries of allegedly engineering the ouster of former President Yanukovych.²²² Russia has also asserted that the United States has been responsible for aggression in Iraq and excessive use of force in Libya and Afghanistan. These arguments may be correct, but they are nonetheless beside the point. The use of force or wrongdoing of one state does not justify the wrongdoing of another.²²³ Russian efforts to destabilize Ukraine might qualify as international acts of aggression.

V. UKRAINE'S INTERNATIONAL SECURITY ARRANGEMENTS

After the collapse of the Soviet Union, Russia became its successor in the international community and assumed its role as a nuclear weapons state. However, the new nations of Belarus, Kazakhstan, and Ukraine also emerged as countries with nuclear weapons. After the Cold War, the resolve of the international community to reduce nuclear weapons became stronger. For that reason, those three new countries decided to give up their nuclear arsenals and to adhere to the Treaty on the Non-Proliferation of Nuclear Weapons. In exchange, nuclear weapons countries, including Russia, declared their commitment to defend and respect the sovereignty and economies of the three nations.²²⁴

A. The Budapest Memorandum

Each of the three countries signed the Budapest Memorandum, dated of December 5, 1994, to accede to the Treaty on Non-Proliferation of Nuclear Weapons.²²⁵ The Presidents of Russia and the United States and the Prime Minister of the United Kingdom also signed. Each of the signatories to the Budapest Memorandum provided national-security guarantees to each of the countries, including Ukraine. China and France, as nuclear-weapon states, later signed on to and agreed to support these obligations in the form of individual signing statements.²²⁶ A Joint Declaration by Russia and the United States, dated December 4, 2009, further confirmed the security guarantees for Belarus, Kazakhstan, and Ukraine set out in the Budapest Memorandum.²²⁷

Articles 1 and 2 of the Memorandum impose clear obligations on Russia to respect and support Ukraine's political independence and territorial integrity within its "existing borders" of 1994 and not to threaten it or use any force.²²⁸ By invading and annexing Crimea, Russia has violated the commitments it made in the Memorandum.

The legal status of the Budapest Memorandum is subject to debate. On the one hand, some scholars say that the Memorandum qualifies as an international agreement under the 1969 Vienna Convention on the Law of

Treaties.²²⁹ As such, it created legally binding obligations for the guarantor states and could become the subject of inter-state litigation before the International Court of Justice.²³⁰ Others argue that the Budapest Memorandum created no security obligations.²³¹ It gives signatories only the right to take action, not the obligation to act on Ukraine's behalf.²³²

On the other hand, the Budapest Memorandum may qualify as a unilateral act of a state. Although it is a multilateral document, it is a written document reflecting the will and commitment of all the signatories. In 2006, the United Nations International Law Commission established certain "Guiding Principles applicable to unilateral declarations of states capable of creating legal obligations," which reflect the judgment of international courts and tribunals.²³³

The first Principle unequivocally confirms that "[d]eclarations publicly made and manifesting the will to be bound may have the effect of creating legal obligations."²³⁴ Concerned states may consider these declarations and rely on them.

The fourth Principle adds the following requirement: "A unilateral declaration binds the State internationally only if it is made by an authority vested with the power to do so." At the same time, in accordance with the Law on Treaties, "[b]y virtue of their functions, heads of State, heads of Government and ministers for foreign affairs are competent to formulate such declarations."²³⁵ Hence, if a country issued a Unilateral Declaration, the State would have a legally binding obligation under international law.²³⁶

Principles 3,²³⁷ 5²³⁸ and 7²³⁹ point out that although the precise form of a Unilateral Declaration, written or oral, is immaterial, it will entail obligations for the formulating State only if the declaration is "in clear and specific terms," taking account of the circumstances at hand. In accordance with the ICJ's *Frontier Dispute (Burkina Faso v. Republic of Mali)* judgment, Principle 6 recognizes that Unilateral Declarations "may be addressed to the international community as a whole, to one or several States or to other entities."²⁴⁰

Principle 10 stresses that a state may not arbitrarily revoke a Unilateral Declaration that creates legal obligations²⁴¹: “In assessing whether a revocation would be arbitrary, consideration should be given to: (a) any specific terms of the declaration relating to revocation; (b) the extent to which those to whom the obligations are owed have relied on such obligations; (c) the extent to which there has been a fundamental change in the circumstances.”²⁴²

The ILC’s Commentary on the “Guiding Principles” contains an extensive analysis of the ICJ’s case law on the topic and references many relevant precedents. They include declarations by Egypt on the Suez Canal and French statements on nuclear testing; Jordan’s waiver of claims to the West Bank territories; the “Ihlen Declaration” by the Norwegian Foreign Minister on Denmark’s sovereignty over Greenland; Swiss statements concerning the privileges and immunities of UN staff; a declaration by the Colombian Foreign Minister about Venezuelan sovereignty over the Los Monjes archipelago; and a declaration by the Cuban Foreign Minister about the supply of vaccines to Uruguay.²⁴³

The Budapest Memorandum appears to meet all the above requirements. As a matter of law, Russia made a binding declaration in the Memorandum that Ukraine relied upon in good faith in giving up its nuclear arsenal. Russia’s actions breached the terms of the

Budapest Memorandum, which explicitly prohibits the use of force against Ukraine.²⁴⁴

There may be other legal issues associated with Ukraine’s accession to the Treaty on the Non-Proliferation of Nuclear Weapons. Ukraine signed the Treaty on the Non-Proliferation of Nuclear Weapons with reservations.²⁴⁵ In reservation 4, Ukraine pointed out that aggression by any nuclear power would constitute an extraordinary circumstance that would serve as an attack on the national security interests of the country. In these circumstances, Ukraine reserved the right to withdraw from the treaty under Article 10.²⁴⁶ A draft resolution is now before Parliament to require Ukraine to withdraw from the treaty.²⁴⁷ Consequently, Russia’s behavior may open a Pandora’s box, where other countries, perceiving threats to their security, might renounce the Treaty and withdraw.

B. The United Nations Security Council

Russia might also face consequences under the United Nations Charter: a prohibition from voting in the Security Council on Ukraine-related matters as a member involved in a dispute²⁴⁸ and a General Assembly summons for the Security Council to address the Crimean annexation as it endangers international peace and security.²⁴⁹

VI. Military law

On February 28, 2014, about fifty armed gunmen marched into Simferopol's airport after arriving in Kamaz trucks. They cordoned off the domestic terminal and then moved on to other areas. In Sevastopol, armed men set up a perimeter around the city's airport. Soon after, in Simferopol, men dressed in fatigues stormed Crimea's administration, hoisting a Russian flag above the Crimean Parliament building. About 120 men holed up inside with heavy weapons, including rocket-propelled grenades and sniper rifles.²⁵⁰

The men described above bore no insignias on their uniforms, and it was unclear who they were and who commanded them. The Russian government issued public statements that it had not moved into Crimea. Journalists soon identified these armed men as Russian soldiers, however, as elsewhere armored personnel carriers with Russian insignia and men wearing Black Sea Fleet uniforms appeared. Russian soldiers also surrounded the Ukrainian air force base in Sevastopol.²⁵¹

On March 1, 2014, with the stated reason of saving Russian lives, President Vladimir Putin announced the invasion of Crimea and then warned of wider use of military force against Ukraine. The upper chamber of Russia's Parliament supported these actions unanimously.²⁵² President Putin's statement came after Russia's military intervention had already begun in Crimea.

Besides the use of force itself, does the use of unmarked troops in Crimea constitute a violation of humanitarian laws?

A. International Law on Military Uniforms

The international law of war reflects international humanitarian treaties and customary laws. It provides the rules that govern the conduct of war and the limits of acceptable wartime conduct. It also sets out the rules on declarations of war, acceptance of surrender, treatment of

prisoners of war, military necessity, and the principles of distinction and proportionality.

Distinction is a principle under international humanitarian law that governs the legal use of force in an armed conflict. Under it, belligerents must distinguish between combatants and civilians at all times.²⁵³ Article 48 of the Additional Protocol I to the Geneva Conventions explicitly defines the principle as follows:

“In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to a conflict are required at all times to distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly must conduct their operations only against military objectives.”²⁵⁴

Toni Pfanner, an international-law scholar, explains that the term “fixed distinctive recognizable at a distance” in the Hague Regulations²⁵⁵ and Third Geneva Convention²⁵⁶ include a traditional military uniform. Although uniforms can be of various designs and colors, what matters for international humanitarian law is that one can distinguish combatants from the civilian population.²⁵⁷

Additional Protocol I²⁵⁸ of the Geneva Conventions also takes into account the “generally accepted practice of States with respect to the wearing of the uniform by combatants assigned to the regular, uniformed armed units of a Party to the conflict. The article was intended to point out that regular troops normally wear uniforms.”²⁵⁹

B. Deployment of Russian troops

International law is clear that troops must wear uniforms. Uniforms are responsible for providing troops with combatant legal status and to make it clear to the enemy



Source: Forbe

state that the laws of war apply. The apparent deployment of unmarked Russian troops in Crimea violates international law.

Jonathan Eyal, the international director at the London-based Royal United Services Institute, has written that “[i]t is a gross violation. It is highly illegal. It is something that violates all conventions of warfare going back hundreds of years.” He has gone further to express his surprise at the lack of response from the international community:

“The basic principle in every conflict is combatants must have clear markings and they must belong to a state. If they do not belong to a state, they are classified as mercenaries or petty criminals. They are not entitled to prisoner of war status.”²⁶⁰

Russia appears to have deliberately shrouded the identity of its troops. Russia’s denial of a military presence in Crimea appears to have been misleading. The troops’ status and allegiance were unclear. This approach delegitimized their status under international law. In these circumstances, acting President Turchynov appears to have been justified in calling the men in Simferopol “terrorists with automatic weapons, judged by our special services to be professional soldiers.”²⁶¹ Eyal is also of the opinion that “[t]hese troops do not enjoy protection under international law. The Ukrainians would be entitled to shoot them on sight or arrest them as they would any bank robbers. It shows a wanton disregard by Russia for international law.”²⁶²

It is clear that these men were trained, under command, and doing regular shifts, meaning that they were not guerrilla forces. In Crimea, the Russian artillery pieces and armored vehicles also bore no insignias. In fact, the military removed or covered the identification marks. Eyal believes that “[i]t shows they have been planning this for a lengthy period of time. It is not just the removal of the ID but the fact they knew where they were being deployed.”²⁶³ Russia seems to have acted with deliberate intent to deny state responsibility when armed conflict began. There appears to have been a clear intent to breach international law.

A minority view in the international community does not characterize Russia’s actions as violating international law. David-Pierre Marquet, a spokesperson for the Geneva-based International Committee of the Red Cross, said: “The situation is not so clear.” In his view, there were lots of different armed groups in Ukraine. “It is difficult to tell about a violation of the convention.”²⁶⁴ One can argue that the situation in Crimea was not clear-cut as no shots were fired. The minority view therefore holds that the laws of war do not apply.²⁶⁵ In addition, even though there is a requirement to wear uniforms, there may be no requirement that the uniforms bear the marks of a country. The only requirement is that the uniforms distinguish combatants from civilians. In the present case, one can argue that the Russian soldiers were in green uniforms and were at all times distinguishable from civilians.

Brigadier Ben Barry, a land army specialist at the London-based International Institute for Strategic Studies, put it this way:

“It is quite clear. The evidence is overwhelming. These are Russian troops. Some have identified themselves as Russian marines from Sevastopol, all are wearing standard Russian uniforms and although number plates have been blanked out, some of them have lost their covers and are clearly Russian armed forces number plates. There is no requirement about details of uniforms. It simply says you have to fight in uniform. Wearing someone else’s uniform is perfidy. I do not believe wearing the national flag is a mandatory provision of the Geneva conventions.”²⁶⁶

C. Black Sea Fleet Treaties between Ukraine and Russia

The Black Sea Fleet is a large sub-unit of the Russian (formerly Soviet) Navy, operating in the Black Sea and the Mediterranean Sea since the late 18th century, with its principal base located in Sevastopol, Ukraine. Since the collapse of Soviet Union, Ukraine and Russia disputed the proper division of the Black Sea Fleet between the two newly formed countries. Subsequently, the two governments signed an interim treaty, establishing a joint Russo-Ukrainian Black Sea Fleet under bilateral command.²⁶⁷

In 1995, however, Russia and Ukraine finally signed the Partition Treaty, establishing two independent national fleets and dividing armaments and bases between them.²⁶⁸ Following years of disagreement, Ukraine and Russia reached a settlement, and on May 28, 1997, Ukrainian Prime Minister Lazarenko and Russian Prime Minister Chernomyrdin signed three intergovernmental agreements:

- 1) the Agreement on the status and conditions of the presence of Russia’s Black Sea Fleet in Ukraine;²⁶⁹
- 2) the Agreement on the parameters of the division of the Black Sea Fleet;²⁷⁰ and
- 3) the Agreement about mutual financial transactions concerning the division of the Black Sea Fleet and the presence of the Russia’s Black Sea Fleet in Ukraine.²⁷¹

On March 24, 1999, the Ukrainian Parliament finally ratified the three 1997 intergovernmental agreements.

Ukraine agreed to lease port facilities in Sevastopol to the Russian Navy.²⁷² Under these agreements, Russia received half of the fleet but eventually purchased more ships and became the ultimate owner of four-fifths of the Black Sea Fleet. All of the bases and facilities in Ukraine became its property. As part of the deal, Ukraine agreed to the continuation of the Black Sea Fleet presence.²⁷³

Under the Black Sea Fleet Agreements, Russia agreed to lease extensive air and naval facilities for twenty years at about \$100 million annually, which Ukraine agreed to use to pay off its debt to Russia.²⁷⁴ The main base would be Sevastopol, with other stations located in designated locations.²⁷⁵

Russia could station no more than 25,000 military personnel at its bases in Ukraine. It could keep no nuclear weapons at the leased facilities. Russian troops could not interfere in internal relations, and Russian troops had to obey Ukrainian law. Under these Agreements, Russian military personnel, machinery and equipment had to show visible markings.²⁷⁶

On April 21, 2010, Ukraine and Russia signed another Black Sea Fleet Agreement as part of the so-called “Kharkiv Agreements.”²⁷⁷ By this agreement, the parties extended the term of their existing lease agreement for an additional 25 years, commencing May 28, 2017, thus lasting until 2042. They also modified the commercial provisions and provided for additional payments as discounts on gas purchases, which would depend on the actual price for gas.²⁷⁸

1. The Uncertain Constitutionality of the Black Sea Fleet Agreements

Under the Ukrainian Constitution, “Foreign military bases shall not be permitted on the territory of Ukraine.”²⁷⁹ Under the Transitional Provisions of the Constitution, however, the use of existing military bases could continue if duly ratified treaties sanctioned them.²⁸⁰ The fourth 2010 Black Sea Fleet Agreement, under which the Russian Black Sea Fleet would be in Ukraine until May 28, 2042, raised many concerns. The Ukrainian opposition called it unconstitutional.²⁸¹ They argued that Article 17 of the Constitution banned foreign military bases. As a result, in April 2010 President Yanukovych and 50 members of Parliament filed two separate applications to the Constitutional Court for an official interpretation of conflicting language in the Transitional Provisions and Constitutional Art. 17(7). The Court dismissed both applications on the same day in 2010 that former President Yanukovych signed the Kharkiv Agreements.²⁸²

The Constitutional Court found that these applications did not require constitutional interpretation of the above provisions but rather an evaluation of Kharkiv Agreements.²⁸³ On June 9, 2010, the Constitutional Court dismissed yet another application for an official interpretation of conflicting language in the Transitional Provisions and Constitution Art. 17(7) and thus ducked the issue again.²⁸⁴ Following these applications, no further petitions have requested review of the Kharkiv Agreements or the Black Sea Fleet Agreements.

There are two possible positions on the validity of the 2010 Kharkiv Agreements. Mr. Yanukovych and supporters of the 2010 Kharkiv Agreements argued that Constitution Art. 17(7) permits the permanent presence of foreign military bases in Ukraine. Mr. Yanukovych stated that Transitional Provisions Section 14 allows the temporary presence of foreign military bases because Parliament had approved the lease agreements.²⁸⁵

The opposition, by contrast, argued that Section 14 of the Transitional Provisions allowed only foreign military bases, *i.e.* the Russian Black Sea Fleet, until 2017, based on the existing fleet agreement of 1997.²⁸⁶ Mr. Tarasyuk, the former Minister of Foreign Affairs, argued in addition

that the 2010 Kharkiv agreements violated not only Constitution Article 17, but also Article 16 of the 1997 Black Sea Fleet Agreement, which contains its own prolongation procedures.²⁸⁷

The 1997 Black Sea Fleet Agreements were unquestionably valid. The dispute arose over extending those agreements in exchange for discounted gas prices in 2010. The issue will remain unresolved until the Constitutional Court takes on a relevant case and delivers a judgment.

There are even more conundrums around the Black Sea Fleet. What effect will the annexation of Crimea have on the 2010 Kharkiv Agreements? Russian news reports already consider those Agreements, as well as the 1997 Black Sea Agreements, void because Ukraine no longer controls Crimea and Sevastopol.²⁸⁸ Ukraine, for its part, also wants to denounce the Kharkiv Agreements, as Russia has already violated them by military occupation, seizing territory and property, and increasing gas prices.²⁸⁹ On March 31, 2014, Russia denounced all four Black Sea Fleet Agreements based on its annexation of Crimea. Ukrainian officials have stated their opposition to Russia's withdrawal from the treaties.²⁹⁰

VII. Ukraine's possible Countermeasures

Russia's violations of international law in Crimea include, among others:

- the use of military force and the threat of use of military force;
- violating territorial integrity by invading Crimea and annexing its territory;
- occupying Ukraine before and after the referendum in Crimea; and
- interference in internal relations by supporting and aiding the separatist self-proclaimed government in Crimea.

Ukraine has a number of options about how it may respond. It may undertake any or all of the following:

- countermeasures allowed under customary international law in response to an internationally wrongful act, as defined in the ILC Articles on Responsibility of States for Internationally Wrongful Acts;
- countermeasures that constitute violations of international law that are not excused under customary international law as proper countermeasures in (1) above; and
- other measures within Ukraine's discretion that are in accord with the rules of international law.²⁹¹

The government may opt to respond to the annexation of Crimea and related violations with the following measures, among others:

- denouncing treaties with Russia;
- filing claims with international institutions and courts like the International Court of Justice, the European Court of Human Rights and other international bodies;

- nationalizing Russian property in Ukraine;
- imposing various economic and trade sanctions that will impact Russian businesses;
- nationalizing property privately owned by Russian citizens;
- terminating cooperation and membership in the Commonwealth of Independent States where Ukraine served as associate member; and
- imposing a visa regime for Russian citizens.

Because the situation continues to evolve, the final scope of countermeasures Ukraine might adopt is unclear.

When resorting to countermeasures, the government should analyze whether such measures are within its discretion or excusable under Article 22 of the ILC Articles on Responsibility of States.

According to the ICJ decision in *Gabčíkovo – Nagymaros Project* case,²⁹² a countermeasure must satisfy the following requirements to be justifiable:

1. The act constituting a countermeasure must be taken in response to a previous intentional wrongful act of another state and must be directed against that state;
2. The injured state must have already called upon the state committing the wrongful act to discontinue its wrongful conduct or to make reparation, but the request was refused;
3. The countermeasure must be proportionate to the injury suffered; and
4. The purpose behind evoking the countermeasure should be to induce the wrongdoing state to comply with its obligations under international law. Therefore, the measure must be reversible.²⁹³

VIII. INTERNATIONAL SANCTIONS AGAINST UKRAINIAN AND RUSSIAN OFFICIALS

Several nations and international bodies have imposed sanctions on Russian and former Ukrainian officials because of recent events. This section briefly reviews those sanctions.

A. United States

On March 6, 2014, the US President imposed sanctions under Executive Order 13660.²⁹⁴ The relevant text states:

“**Section 1.** (a) All property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person (including any foreign branch) of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in: any person determined by the Secretary of the Treasury, in consultation with the Secretary of State:

- (i) to be responsible for or complicit in, or to have engaged in, directly or indirectly, any of the following:
 - (A) actions or policies that undermine democratic processes or institutions in Ukraine;
 - (B) actions or policies that threaten the peace, security, stability, sovereignty, or territorial integrity of Ukraine; or
 - (C) misappropriation of state assets of Ukraine or of an economically significant entity in Ukraine;
- (ii) to have asserted governmental authority over any part or region of Ukraine without the authorization of the Government of Ukraine;
- (iii) to be a leader of an entity that has, or whose members have, engaged in any activity described in

subsection (a)(i) or (a)(ii) of this section or of an entity whose property and interests in property are blocked pursuant to this order;

(iv) to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, any activity described in subsection (a)(i) or (a)(ii) of this section or any person whose property and interests in property are blocked pursuant to this order; or

(v) to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to this order.

(b) The prohibitions in subsection (a) of this section apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order.

Sec. 2. I hereby find that the unrestricted immigrant and non-immigrant entry into the United States of aliens determined to meet one or more of the criteria in subsection 1(a) of this order would be detrimental to the interests of the United States, and I hereby suspend entry into the United States, as immigrants or non-immigrants, of such persons. Such persons shall be treated as persons covered by section 1 of Proclamation 8693 of July 24, 2011 (Suspension of Entry of Aliens Subject to United Nations Security Council Travel Bans and International Emergency Economic Powers Act Sanctions).

Sec. 3. I hereby determine that the making of donations of the type of articles specified in section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)) by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to section 1 of this order would seriously impair my ability to deal with the national emergency

declared in this order, and I hereby prohibit such donations as provided by section 1 of this order.

Sec. 4. The prohibitions in section 1 of this order include but are not limited to:

- (a) the making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to this order; and
- (b) the receipt of any contribution or provision of funds, goods, or services from any such person.

Sec. 5. (a) Any transaction that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in this order is prohibited.

- (b) Any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited....

Sec. 7. For those persons whose property and interests in property are blocked pursuant to this order who might have a constitutional presence in the United States, I find that because of the ability to transfer funds or other assets instantaneously, prior notice to such persons of measures to be taken pursuant to this order would render those measures ineffectual. I therefore determine that for these measures to be effective in addressing the national emergency declared in this order, there need be no prior notice of a listing or determination made pursuant to section 1 of this order....”

On March 16, 2014, ten days later, the President imposed additional sanctions against more individuals.²⁹⁵

B. European Union

The Council of the European Union imposed sanctions under the Treaty on the Functioning of the European Union, and Council Decision 2014/145/CFSP of March 17, 2014 concerning actions undermining the sovereignty and independence of Ukraine.²⁹⁶ Relevant sections of the Council Decision 2014/145/CFSP provide:

“Article 2

1. All funds and economic resources belonging to, owned, held or controlled by any natural persons or natural or

legal persons, entities or bodies associated with them as listed in Annex I shall be frozen.

2. No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of natural persons or natural or legal persons, entities or bodies associated with them listed in Annex I.

Article 3

1. Annex I shall include natural persons who, in accordance with Article 2 of Decision 2014/145/CFSP, have been identified by the Council as being responsible for actions which undermine or threaten the territorial integrity, sovereignty and independence of Ukraine, and natural or legal persons, entities or bodies associated with them.

2. Annex I shall include the grounds for the listing of natural or legal persons, entities or bodies concerned.

3. Annex I shall include, where available, information necessary to identify the natural or legal persons, entities or bodies concerned. With regard to natural persons, such information may include names including aliases, date and place of birth, nationality, passport and ID card numbers, gender, address, if known, and function or profession. With regard to legal persons, entities and bodies, such information may include names, place and date of registration, registration number and place of business....

Article 9

It shall be prohibited to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent the measures referred to in Article 2.

Article 10

1. The freezing of funds and economic resources or the refusal to make funds or economic resources available, carried out in good faith on the basis that such action is in accordance with this Regulation, shall not give rise to liability of any kind on the part of the natural or legal person or entity or body implementing it, or its directors or employees, unless it is proved that the funds and economic resources were frozen or withheld as a result of negligence.

2. Actions by natural or legal persons, entities or bodies shall not give rise to any liability of any kind on their part if they did not know, and had no reasonable cause to suspect, that their actions would infringe the measures set out in this Regulation.”

C. Canada

On March 5, 2014, Canada imposed sanctions on 18 members of the former Yanukovich government. Its Act allows Canada to freeze assets at the written request of a foreign state, when the Governor-in-Council has determined that the foreign state is in a state of turmoil or political uncertainty, and where the act would be in the interests of international relations.²⁹⁷ The relevant text states:

“Freezing Assets of Corrupt Foreign Officials (Ukraine) Regulations

Application

1. Section 2 applies in respect of the property of the politically exposed foreign persons listed in the schedule.

Prohibitions – Asset freeze

2. A person in Canada or a Canadian outside Canada must not deal, directly or indirectly, in any property, wherever situated, of any politically exposed foreign person;

enter into or facilitate, directly or indirectly, any financial transaction related to a dealing referred to in paragraph (a); or

provide financial services or other related services in respect of any property of any politically exposed foreign person.

Application before publication

For the purpose of paragraph 11(2)(A) of the statutory instruments Act, these Regulations apply before they are published in the *Canada Gazette*.”

D. Australia

On March 19, 2014, the Australian Minister for Foreign Affairs Julie Bishop made the following statement on the situation in Ukraine:

“The Australian Government will impose targeted financial sanctions and travel bans against individuals who have been instrumental in the Russian threat to the sovereignty and territorial integrity of Ukraine.

I condemn in the strongest terms Russian President Vladimir Putin’s move to annex the Ukrainian territory of Crimea. The unauthorized vote in Crimea on 16 March, carried out while Russian forces were effectively in control of the territory, cannot form the legitimate basis for any alteration of the status of Crimea.

The situation in Ukraine remains serious, with the potential for military confrontation. The fatal attack on a Ukrainian serviceman in Crimea is deplorable and underlines the volatility of the crisis Russia is fuelling.

Australia’s financial sanctions and travel bans will cover 12 Russian and Ukrainian individuals at this point. These actions reaffirm Australia’s clear and unequivocal support for the territorial integrity and sovereignty of Ukraine.

Australia stands with the international community in taking action. We have remained in close contact with friends and allies, including through our membership of the United Nations Security Council, where we have delivered strong protests to Russia about its conduct in relation to Ukraine.

I continue to urge the Russian government to abide by its international obligations, including its responsibility as a permanent member of the United Nations Security Council, for the maintenance of international peace and security. I call on Russia, again, to change course.”²⁹⁸

TABLE OF SANCTIONS

The following table summarizes information on sanctions available as of April 8, 2014.

| Country | Name | Sanctioned by | | | Reasons |
|------------------|---------------------------------|---------------|----|----|---|
| | | CA | EU | US | |
| Crimea (Ukraine) | Aksyonov Sergey | ✓ | ✓ | ✓ | Aksyonov was elected “Prime Minister of Crimea” in the Crimean Verkhovna Rada on 27 February 2014 in the presence of pro-Russian gunmen. His “election” was decreed unconstitutional by Oleksandr Turchynov on 1 March. He actively lobbied for the “referendum” of March 16, 2014. |
| Ukraine | Azarov Mykola Yanovych | ✓ | ✓ | | Former Prime Minister of Ukraine |
| Ukraine | Azarov Oleksii Mykolayovych | ✓ | ✓ | | Son of former Prime Minister of Ukraine Mykola Yanovych AZAROV |
| Russia | Bank Rossiya (ОАО АБ Россия) | | | ✓ | The personal bank for senior officials of the Russian Federation. Bank Rossiya’s shareholders include members of Putin’s inner circle associated with the Ozero Dacha Cooperative, a housing community in which they live. Bank Rossiya is also controlled by Kovalchuk, designated today. Bank Rossiya is ranked as the 17th largest bank in Russia with assets of approximately \$10 billion, and it maintains numerous correspondent relationships with banks in the United States, Europe, and elsewhere. The bank reports providing a wide range of retail and corporate services, many of which relate to the oil, gas, and energy sectors. |
| Ukraine | Berezovsky Denis Valentinovich | | ✓ | | Berezovskiy was appointed commander of the Ukrainian Navy on March 1, 2014 and swore an oath to the Crimean armed force, thereby breaking his oath. The Prosecutor-General’s Office of Ukraine launched an investigation against him for high treason. |
| Ukraine | Bohatyriova Raisa Vasylivna | ✓ | | | Former Minister of Health of Ukraine |
| Russia | Bushmin Evgeny Viktorovich | | ✓ | ✓ | Deputy Speaker of the Federation Council of the Russian Federation. On March 1, 2014 Bushmin publicly supported in the Federation Council the deployment of Russian forces in Ukraine. |
| Crimea (Ukraine) | Chaliy Aleksei Mikhailovich | | ✓ | | Chaliy became “Mayor of Sevastopol” by popular acclamation on February 23, 2014 and accepted this “vote”. He actively campaigned for Sevastopol to become a separate entity of the Russian Federation following a referendum on March 16, 2014. |
| Russia | Dzhabarov Vladimir Michailovich | | ✓ | ✓ | First Deputy-Chairman of the International Affairs Committee of the Federation Council of the Russian Federation. On 1 March 2014 Dzhabarov, on behalf of the International Affairs Committee of the Federation Council, publicly supported in the Federation Council the deployment of Russian forces in Ukraine. |
| Russia | Fursenko Andrei | | | ✓ | An aide to the President of the Russian Federation and has been in that position since May 21, 2012. Fursenko has held a number of positions in the Government of the Russian Federation since 2001, including Minister of Education and Science from 2004 - 2012. Although not being designated for being a member of the Russian leadership’s inner circle, Fursenko first met Putin in 1993 and they remain closely associated. |

| Country | Name | Sanctioned by | | | Reasons |
|------------------|------------------------------------|---------------|----|----|---|
| | | CA | EU | US | |
| Russia | Galkin Aleksandr | | ✓ | | Russia's Southern Military District, forces of which are in Crimea; the Black Sea Fleet comes under Galkin's command; much of the force movement into Crimea has come through the Southern Military District. Commander of Russia's Southern Military District ("SMD"). SMD forces are deployed in Crimea. He is responsible for part of the Russian military presence in Crimea, which is undermining the sovereignty of the Ukraine and assisted the Crimean authorities in preventing public demonstrations against moves towards a referendum and incorporation into Russia. Additionally the Black Sea Fleet falls within the District's control. |
| Russia | Glazyev Sergey | ✓ | ✓ | ✓ | Adviser to the President of the Russian Federation. Publicly called for the annexation of Crimea. |
| Russia | Gromov Alexei | | | ✓ | First Deputy Chief of Staff of the Presidential Executive Office. |
| Russia | Ivanov Sergei | | | ✓ | Chief of Staff of the Presidential Executive Office |
| Russia | Ivanov Victor | | | ✓ | Director of the Federal Drug Control Service (FSKN) of the Russian Federation since May 15, 2008; he was appointed as a member of the Security Council of the Russian Federation on May 25, 2008. Ivanov has served in a number of other government positions prior to that; he was Assistant to the President of the Russian Federation from 2004 - 2008; and Deputy Chief of the Administration of the Russian Federation from 2000 - 2004. Ivanov joined the KGB in 1977 and eventually rose to become the Deputy Director of the Federal Security Service. Ivanov is a close ally of Putin and served alongside Putin as the chief of staff of the St. Petersburg Mayor's office in 1994 when Putin was first deputy head of the city's administration. |
| Ukraine | Kalinin Ihor Oleksandrovych | ✓ | | | Former Adviser to the former President of Ukraine Viktor Fedorovych YANUKOVYCH |
| Russia | Kiselyov Dmitry Konstantinovich | | ✓ | | Appointed by Presidential Decree on December 9, 2013 Head of the Russian Federal State news agency "Rossiya Segodnya". Central figure of the government propaganda supporting the deployment of Russian forces in Ukraine. |
| Russia | Klishas Andrei Aleksandrovich | ✓ | ✓ | ✓ | Chairman of the Committee on Constitutional Law of the Federation Council of the Russian Federation. On March 1, 2014 Klishas publicly supported in the Federation Council the deployment of Russian forces in Ukraine. In public statements Klishas sought to justify a Russian military intervention in Ukraine by claiming that "the Ukrainian President supports the appeal of the Crimean authorities to the President of the Russian Federation on landing an all-encompassing assistance in defense of the citizens of Crimea". |
| Ukraine | Kliuiev Andrii Petrovych | ✓ | | | Former Head of Administration of the former President of Ukraine Viktor Fedorovych YANUKOVYCH |
| Ukraine | Kliuiev Serhii Petrovych | ✓ | | | Brother of Andrii Petrovych KLIUIEV |
| Crimea (Ukraine) | Konstantynov Volodymyr Andriyovych | ✓ | ✓ | ✓ | As speaker of the Supreme Council of the Autonomous Republic of Crimea, Konstantynov played a relevant role in the decisions taken by the Verkhovna Rada concerning the "referendum" against territorial integrity of Ukraine and called on voters to cast votes in favor of Crimean Independence. |

| Country | Name | Sanctioned by | | | Reasons |
|---------|-------------------------------|---------------|----|----|--|
| | | CA | EU | US | |
| Russia | Kovalchuk Yuri | | | ✓ | The largest single shareholder of Bank Rossiya and is also the personal banker for senior officials of the Russian Federation including Putin. Kovalchuk is a close advisor to President Putin and has been referred to as one of his “cashiers”. |
| Russia | Kozhin Vladimir | | | ✓ | Appointed the Head of Administration under the President of the Russian Federation by Putin on January 21, 2000. He has served continuously in that position until the present time. Kohzin is responsible for overseeing a staff of 60,000, over a hundred enterprises and institutions including the Kremlin and several other government buildings, and over four thousand vehicles. Kohzin's positions have been variously referred to as Head of Administration, Head of the Presidential Affairs Office, Head of the Presidential Business Management Directorate of the Russian Federation, and head of the Presidential Property Management Directorate. |
| Russia | Kulikov Valery Vladimirovich | | ✓ | | Deputy-Commander of the Black Sea Fleet, Rear-Admiral Responsible for commanding Russian forces that have occupied Ukrainian sovereign territory. |
| Ukraine | Kurchenko Serhiy Vitaliyovich | ✓ | | | Businessman and close associate of former President of Ukraine Viktor Fedorovich YANUKOVYCH |
| Ukraine | Lukash Olena Leonidivna | ✓ | | | Former Minister of Justice of Ukraine |
| Russia | Malyshev Mikhail | | ✓ | | Chair of the Crimea Electoral Commission Responsible for administering the Crimean referendum. Responsible under the Russian system for signing referendum results. |
| Russia | Matviyenko Valentina Ivanovna | ✓ | | ✓ | Speaker of the Federation Council. On March 1, 2014, publicly supported in the Federation Council the deployment of Russian forces in Ukraine. |
| Ukraine | Medvedchuk Viktor | ✓ | | ✓ | Ukrainian oligarch |
| Russia | Medvedev Valery | | ✓ | | Chair of the Sevastopol Electoral Commission Responsible for administering the Crimean referendum. Responsible under the Russian system for signing referendum results. |
| Russia | Mironov Sergey Mikhailovich | | ✓ | ✓ | Member of the Council of the State Duma; Leader of Fair Russia faction in the Duma of the Russian Federation. Initiator of the bill allowing Russian Federation to admit in its composition, under the pretext of protection of Russian citizens, territories of a foreign country without a consent of that country or of an international treaty. |
| Russia | Mizulina Elena Borisovna | ✓ | ✓ | ✓ | Deputy in the State Duma Originator and co-sponsor of recent legislative proposals in Russia that would have allowed regions of other countries to join Russia without their central authorities' prior agreement. |
| Russia | Naryshkin Sergei Evgenevich | | ✓ | ✓ | Speaker of the State Duma. Publicly supported the deployment of Russian forces in Ukraine. Publicly supported the Russia-Crimea reunification treaty and the related federal constitutional law |
| Russia | Nosatov Alexander Mihailovich | | ✓ | | Deputy-Commander of the Black Sea Fleet, Rear-Admiral Responsible for commanding Russian forces that have occupied Ukrainian sovereign territory. |

| Country | Name | Sanctioned by | | | Reasons |
|---------|-------------------------------|---------------|----|----|---|
| | | CA | EU | US | |
| Russia | Ozerov Victor Alekseevich | | ✓ | ✓ | Chairman of the Security and Defense Committee of the Federation Council of the Russian Federation. On 1 March 2014 Ozerov, on behalf of the Security and Defense Committee of the Federation Council, publicly supported in the Federation Council the deployment of Russian forces in Ukraine. |
| Russia | Panteleev Oleg Evgenevich | | ✓ | ✓ | First Deputy Chairman of the Committee on Parliamentary Issues. On March 1, 2014 Panteleev publicly supported in the Federation Council the deployment of Russian forces in Ukraine. |
| Ukraine | Portnov Andriy Volodymyrovych | ✓ | | | Former Adviser to the former President of Ukraine Viktor Fedorovych YANUKOVYCH |
| Ukraine | Pshonka Artem Viktorovych | ✓ | | | Son of former Prosecutor General Viktor Pavlovych PSHONKA, Deputy Head of the faction of Party of Regions in the Verkhovna Rada of Ukraine |
| Ukraine | Pshonka Viktor Pavlovych | ✓ | | | Former Prosecutor General of Ukraine |
| Ukraine | Ratushniak Viktor Ivanovych | ✓ | | | Former Deputy Minister of Internal Affairs of Ukraine |
| Russia | Rogozin Dmitry Olegovich | ✓ | ✓ | ✓ | Deputy Prime Minister of the Russian Federation. Publicly called for the annexation of Crimea. |
| Russia | Rotenberg Arkady | | | ✓ | Provided support to Putin's pet projects by receiving and executing high price contracts for the Sochi Olympic Games and state-controlled Gazprom with Boris Rotenberg. They have made billions of dollars in contracts for Gazprom and the Sochi Winter Olympics awarded to them by Putin. Both brothers have amassed enormous amounts of wealth during the years of Putin's rule in Russia. The Rotenberg brothers received approximately \$7 billion in contracts for the Sochi Olympic Games and their personal wealth has increased by \$2.5 billion in the last two years alone. |
| Russia | Rotenberg Boris | | | ✓ | Provided support to Putin's pet projects by receiving and executing high price contracts for the Sochi Olympic Games and state-controlled Gazprom with Arkady Rotenberg. They have made billions of dollars in contracts for Gazprom and the Sochi Winter Olympics awarded to them by Putin. Both brothers have amassed enormous amounts of wealth during the years of Putin's rule in Russia. The Rotenberg brothers received approximately \$7 billion in contracts for the Sochi Olympic Games and their personal wealth has increased by \$2.5 billion in the last two years alone. |
| Russia | Ryzhkov Nikolai Ivanovich | | ✓ | ✓ | Member of the Committee for federal issues, regional politics and the North of the Federation Council of the Russian Federation. On March 1, 2014 Ryzhkov publicly supported in the Federation Council the deployment of Russian forces in Ukraine. |
| Russia | Sergun Igor | | | ✓ | Head of Russia's military intelligence service (GRU) and is Deputy Chief of the General Staff. |
| Russia | Sidorov Anatoliy Alekseevich | | ✓ | | Commander, Russia's Western Military District, units of which are deployed in Crimea. Commander of Russia's Western Military District, units of which are deployed in Crimea. He is responsible for part of the Russian military presence in Crimea which is undermining the sovereignty of the Ukraine and assisted the Crimean authorities in preventing public demonstrations against moves towards a referendum and incorporation into Russia. |

| Country | Name | Sanctioned by | | | Reasons |
|------------------|---------------------------------|---------------|----|----|--|
| | | CA | EU | US | |
| Russia | Slutsky Leonid Eduardovich | ✓ | ✓ | ✓ | Chairman of the Commonwealth of Independent States (CIS) Committee of the State Duma of the Russian Federation (member of the LDPR). Actively supporting use of Russian Armed Forces in Ukraine and annexation of Crimea. |
| Russia | Surkov Vladislav Yurievich | ✓ | ✓ | ✓ | Aide to the President of the Russian Federation. He was an organizer of the process in Crimea by which local Crimean communities were mobilized to stage actions undermining the Ukrainian authorities in Crimea. |
| Ukraine | Tabachnyk Dmytro Volodymyrovych | ✓ | | | Former Minister of Education and Science of Ukraine |
| Crimea (Ukraine) | Temirgaliev Rustam | | ✓ | | As Deputy Chairman of the Council of Ministers of Crimea, Temirgaliev played a relevant role in the decisions taken by the Verkhovna Rada concerning the “referendum” against territorial integrity of Ukraine. He lobbied actively for integration of Crimea into the Russian Federation. |
| Russia | Timchenko Gennady | | | ✓ | One of the founders of Gunvor, one of the world’s largest independent commodity trading companies involved in the oil and energy markets. Timchenko’s activities in the energy sector have been directly linked to Putin. Putin has investments in Gunvor and may have access to Gunvor funds. |
| Russia | Totoonov Aleksandr Borisovich | | ✓ | ✓ | Member of the Committee on culture, science, and information of the Federation Council of the Russian Federation. On March 1, 2014 Totoonov publicly supported in the Federation Council the deployment of Russian forces in Ukraine. |
| Crimea (Ukraine) | Tsekov Sergey Pavlovych | | ✓ | | Vice Speaker of the Verkhovna Rada; Tsekov initiated together with Sergey Aksyonov the unlawful dismissal of the government of the Autonomous Republic of Crimea (ARC). He drew into this endeavor Vladimir Konstantinov, threatening him with his dismissal. He publicly recognized that the MPs from Crimea were the initiators of inviting Russian soldiers to take over Verkhovna Rada of Crimea. He was one of the first Crimean Leaders to ask in public for annexation of Crimea to Russia. |
| Russia | Turchenyuk Igor | | ✓ | | The de-facto Commander of Russian troops deployed on the ground in Crimea (whom Russia continues to refer to officially as “local self-defense militias”). |
| Russia | Vitko Aleksandr Viktorovich | | ✓ | | Commander of the Black Sea Fleet, Vice-Admiral. Responsible for commanding Russian forces that have occupied Ukrainian sovereign territory. |
| Russia | Yakunin Vladimir | | | ✓ | Appointed as chairman of the board of the Russian state-owned company Russian Railways on June 15, 2005; he has remained as head of the company ever since. Yakunin is being designated because of his official position in the Russian government, but he is also a close confidant of Putin. Yakunin regularly consults with Putin on issues regarding the Russian Railways company. In addition, Yakunin accompanies Putin on many domestic and international visits. Yakunin met Putin while both were working in St. Petersburg. Yakunin decided to create a business center in the city and contacted Putin for his support. In addition, Yakunin became a member of the board of the Baltic Maritime Steamship Company on Putin’s instructions. Yakunin and Putin were also neighbors in the elite dacha community on the shore of Lake Komsomolsk and they served as cofounders of the Ozero Dacha Cooperative in November 1996. |

| Country | Name | Sanctioned by | | | Reasons |
|------------------|----------------------------------|---------------|----|----|---|
| | | CA | EU | US | |
| Ukraine | Yakymenko Oleksandr Hryhorovych | ✓ | | | Former Head of the Security Service of Ukraine (SBU) |
| Ukraine | Yanukovych Oleksandr Viktorovych | ✓ | | | Son of former President of Ukraine Viktor Fedorovych YANUKOVYCH |
| Ukraine | Yanukovych Viktor Fedorovych | | | ✓ | Ousted-President of Ukraine |
| Ukraine | Yanukovych Viktor Viktorovych | ✓ | | | Son of former President of Ukraine Viktor Fedorovych YANUKOVYCH, Member of the Verkhovna Rada of Ukraine |
| Ukraine | Zakharchenko Vitalii Yuriyovych | ✓ | | | Former Minister of Internal Affairs of Ukraine |
| Russia | Zheleznyak Sergey Vladimirovich | | ✓ | | Deputy Speaker of the State Duma of the Russian Federation Actively supporting use of Russian Armed Forces in Ukraine and annexation of Crimea. He led personally the demonstration in support of the use of Russian Armed Forces in Ukraine. |
| Crimea (Ukraine) | Zherebtsov Yuriy | | ✓ | | Counselor of the Speaker of the Verkhovna Rada of Crimea, one of the leading organizers on March 16, 2014 “referendum” against Ukraine’s territorial integrity. |
| Crimea (Ukraine) | Zima Pyotr Anatoliyovych | | ✓ | | Zima was appointed as the new head of the Crimean Security Service (SBU) on March 3, 2014 by “Prime Minister” Aksyonov and accepted this appointment. He has given relevant information including a database to the Russian Intelligence Service (SBU). This included information on Euro-Maidan activists and human rights defenders of Crimea. He played a relevant role in preventing Ukraine’s authorities from controlling the territory of Crimea. On March 11, 2014 the formation of an independent Security Service of Crimea has been proclaimed by former SBU officers of Crimea. |

The following table summarizes information on sanctions available as of May 2, 2014.

| Country | Name | Sanctioned by | | | Reasons |
|---------|--------------------------------|---------------|----|----|---|
| | | Switzerland | EU | US | |
| Russia | Aquanika (Russkoye Vremya LLC) | | | ✓ | A Russia-based mineral water and soft drink company. Aquanika is being designated because it is owned or controlled by the Volga Group and Timchenko. Aquanika produces drinks under several trade names including Aquanika. |
| Russia | Avia Group LLC | | | ✓ | Avia Group LLC is involved in ground infrastructure for the Business Aviation Center at Sheremetyevo International Airport in Moscow offering aircraft maintenance services, including aircraft storage and organization support services for flight operations. Avia Group LLC is designated for being owned or controlled by the Volga Group and Timchenko. |
| Russia | Avia Group Nord LLC | | | ✓ | Provides management services for corporate aviation at Pulkovo International Airport in Saint Petersburg, Russia. Avia Group Nord LLC is designated for being owned or controlled by the Volga Group and Timchenko. |

| Country | Name | Sanctioned by | | | Reasons |
|---------|-------------------------------|---------------|----|----|--|
| | | Switzerland | EU | US | |
| Russia | Belavantsev Oleg Yevgenyevich | ✓ | ✓ | ✓ | Belavantsev was appointed Russia's Presidential Envoy to Crimea on March 21, 2014, by President Putin. Plenipotentiary Representative of the President of the Russian Federation into the so called "Crimean Federal District", Non-permanent member of the Russian Security Council. Responsible for the implementation of the constitutional prerogatives of the Russian Head of State on the territory of the annexed Autonomous Republic of Crimea. |
| Ukraine | Bolotov Valeriy | ✓ | ✓ | | One of the leaders of the separatist group 'Army of the South-East' which occupied the building of the Security Service in the Lugansk region. Retired officer. Before seizing the building he and other accomplices possessed arms apparently supplied illegally from Russia and from local criminal groups. |
| Russia | Chemezov Sergei | | | ✓ | Chemezov was appointed by a presidential decree on November 26, 2007 as the Director General of the State Corporation for Promoting Development, Manufacturing and Export of Russian Technologies High-Tech Industrial Products, also known as Rostec. Rostec is a Russian state-owned holding company and has not been sanctioned. Chemezov is a trusted ally of President Putin, whom he has known since the 1980s when they lived in the same apartment complex in East Germany. Sergei Chemezov was one of the Russian Government's nominees for the Board of Directors of Rosneft, a Russian state-owned oil company. He was selected for the Rosneft Board on June 20, 2013. |
| Russia | CJSC Zest | | | ✓ | CJSC Zest is being designated for being owned or controlled by Bank Rossiya. |
| Russia | Gerasimov Valery Vasilevich | ✓ | ✓ | | Chief of the General Staff of the Armed Forces of the Russian Federation, First Deputy Minister of Defence of the Russian Federation, General of the Army. Responsible for the massive deployment of Russian troops along the border with Ukraine and lack of de-escalation of the situation. |
| Russia | InvestCapitalBank | | | ✓ | Controlled by Arkady and Boris Rotenberg who were designated on March 20, 2014 pursuant to E.O. 13661 for acting for or on behalf of or materially assisting, sponsoring, or providing financial, material, or technological support for, or goods and services to or in support of, a senior official of the Government of the Russian Federation. |
| Russia | JSB Sobinbank | | | ✓ | JSB Sobinbank is being designated for being owned or controlled by Bank Rossiya. |
| Russia | Kozak Dmitry Nikolayevich | ✓ | ✓ | ✓ | Kozak is a Deputy Prime Minister of the Russian Federation, a position that he has held since October 2008, and to which he was reappointed by presidential decree in May 2012. Kozak has served in a number of capacities in the Russian Federation since 1999, including as Chief of the Government Staff and Minister of Regional Development. Responsible for overseeing the integration of the annexed Autonomous Republic of Crimean into the Russian Federation. |
| Russia | Kovatidi Olga Fedorovna | ✓ | ✓ | | Member of the Russian Federation Council from the annexed Autonomous Republic of Crimea. |
| Russia | Menyailo Sergei Ivanovich | ✓ | ✓ | | Acting governor of the Ukrainian annexed city of Sevastopol. |
| Russia | Neverov Sergei Ivanovich | ✓ | ✓ | | Deputy Chairman of State Duma, United Russia. Responsible for initiating legislation to integrate the annexed Autonomous Republic of Crimea into the Russian Federation. |

| Country | Name | Sanctioned by | | | Reasons |
|---------|--------------------------------|---------------|----|----|---|
| | | Switzerland | EU | US | |
| Russia | Murov Evgeniy | | | ✓ | Murov is the Director of Russia's Federal Protective Service and an Army General. Murov has worked in Russian state security services since 1971 and became Head and Director of the Federal Protective Service in May 2000. |
| Ukraine | Prokopiv German | ✓ | ✓ | | Active leader of the 'Lugansk Guard'. Took part in the seizure of the building of the Lugansk regional office of the Security Service, recorded a video address to President Putin and Russia from the occupied building. Close links with the 'Army of the South-East'. |
| Ukraine | Purgin Andriy | ✓ | ✓ | | Head of the 'Donetsk Republic', active participant and organizer of separatist actions, coordinator of actions of the 'Russian tourists' in Donetsk. Co-founder of a 'Civic Initiative of Donbass for the Eurasian Union'. |
| Russia | Pushkov Aleksei | | | ✓ | Pushkov has been a Deputy of the State Duma since December 4, 2011. He is also the Chairman of the State Duma Committee on International Affairs. |
| Ukraine | Pushylin Denys | ✓ | ✓ | | One of the leaders of the Donetsk People's Republic. Participated in the seizure and occupation of the regional administration. Active spokesperson for the separatists. |
| Russia | Sakhatrans LLC | | | ✓ | A transportation company engaged in the construction of the bulk terminal for coal and iron ore exports in Muchka Bay near Vanino in Russia's far east. Sakhatrans LLC is designated for being owned or controlled by the Volga Group and Timchenko. |
| Russia | Savelyev Oleg Genrikhovich | ✓ | ✓ | | Minister for Crimean Affairs. Responsible for the integration of the annexed Autonomous Republic of Crimea into the Russian Federation. |
| Russia | Sechin Igor | | | ✓ | Sechin is the President and Chairman of the Management Board for Rosneft, Russia's leading petroleum company, and one of the world's largest publicly-traded oil companies. Rosneft is a state-owned company and has not been sanctioned. Sechin was formerly the Deputy Prime Minister of the Russian Federation from 2008 until 2012. Additionally, from 2004 until 2008, Sechin was the Deputy Chief of Staff for President Putin. Sechin has shown utter loyalty to Vladimir Putin - a key component to his current standing. |
| Russia | Sergun Igor Dmitrievich | ✓ | ✓ | | Director of GRU (Main Intelligence Directorate), Deputy Chief of the General Staff of the Armed Forces of the Russian Federation, Lieutenant-General. Responsible for the activity of GRU officers in Eastern Ukraine. |
| Russia | Shvetsova Ludmila Ivanovna | ✓ | ✓ | | Deputy Chairman of State Duma, United Russia. Responsible for initiating legislation to integrate the annexed Autonomous Republic of Crimea into the Russian Federation. |
| Russia | SMP Bank | | | ✓ | Controlled by Arkady and Boris Rotenberg who were designated on March 20, 2014 pursuant to E.O. 13661 for acting for or on behalf of or materially assisting, sponsoring, or providing financial, material, or technological support for, or goods and services to or in support of, a senior official of the Government of the Russian Federation. |
| Russia | Strelkov Igor (Strielkov Ihor) | ✓ | ✓ | | Identified as staff of Main Intelligence Directorate of the General Staff of the Armed Forces of the Russian Federation (GRU). He was involved in incidents in Sloviansk. He is an assistant on security issues to Sergey Aksionov, self-proclaimed prime-minister of Crimea. |

| Country | Name | Sanctioned by | | | Reasons |
|-------------------|--|---------------|----|----|--|
| | | Switzerland | EU | US | |
| Russia | Stroygazmontazh (SGM Group) | | | ✓ | A gas pipeline construction company owned or controlled by Arkady Rotenberg. Rotenberg created SGM Group in 2008 after acquiring multiple Gazprom contractors. |
| Russia | Stroytransgaz Group | | | ✓ | A Russian construction group, comprising a number of business entities that specialize in different aspects of the construction industry. Stroytransgaz Group is designated for being owned or controlled by the Volga Group and Timchenko. |
| Russia | Stroytransgaz Holding | | | ✓ | A holding company for construction assets. Stroytransgaz Holding is designated for being owned or controlled by the Volga Group and Timchenko. |
| Russia | Stroytransgaz LLC | | | ✓ | An infrastructure construction company. Stroytransgaz LLC is designated for being owned or controlled by the Stroytransgaz Group, the Volga Group, and Timchenko. |
| Russia | Stroytransgaz-M LLC | | | ✓ | An industrial construction company focused on oil, gas, petrochemical, and other civil engineering projects. Stroytransgaz-M LLC is designated for being owned or controlled by the Stroytransgaz Group, the Volga Group, and Timchenko. |
| Russia | Stroytransgaz OJSC | | | ✓ | An electricity construction company. Stroytransgaz OJSC is designated for being owned or controlled by the Stroytransgaz Group, the Volga Group, and Timchenko. |
| Russia | The Limited Liability Company Investment Company Abros | | | ✓ | Owned or controlled by Bank Rossiya. Bank Rossiya was designated on March 20, 2014 pursuant to E.O. 13661 for acting for or on behalf of or materially assisting, sponsoring, or providing financial, material, or technological support for, or goods and services to or in support of, a senior official of the Government of the Russian Federation. Bank Rossiya was also designated for being owned or controlled by Yuri Kovalchuk, who was designated on March 20, 2014 pursuant to E.O. 13661. |
| Russia | Transoil | | | ✓ | A Russia-based rail freight operator that specializes in the transportation of oil and oil products. Transoil is designated for being owned or controlled by the Volga Group and Timchenko. |
| Ukraine | Tsyplakov Sergey Gennadevich | ✓ | ✓ | | One of the leaders of ideologically radical organization People's Militia of Donbas. He took active part in the seizure of a number of state buildings in Donetsk region. |
| Russia, Luxemburg | Volga Group | | | ✓ | The Volga Group is being designated for being owned or controlled by Gennaddy Timchenko. Timchenko was designated on March 20, 2014 pursuant to E.O. 13661 for acting for or on behalf of or materially assisting, sponsoring, or providing financial, material, or technological support for, or goods and services to or in support of, a senior official of the Government of the Russian Federation. Timchenko is the sole shareholder of the Volga Group, an investment strategy group that holds interest in a variety of assets on behalf of Timchenko. |
| Russia | Volodin Vyacheslav | | | ✓ | Volodin is the First Deputy Chief of Staff of the Presidential Executive Office. Russian President Vladimir Putin's decision to move into Crimea is believed to have been based on consultations with his closest advisors, including Volodin. |

RECOMMENDATIONS

In light of the legal analysis above, we make the following recommendations.

For the Ukrainian Government:

1. We recommend that Ukraine continue to work closely with the UN and the international community to ensure Russia's troop withdrawal from Crimea and from the Eastern Ukrainian border.
2. We recommend that Ukraine bring claims against Russia in the European Court of Human Rights on a wide range of human rights violations, including unauthorized use of force; unauthorized annexation of Crimea; violation of indigenous people's rights; and Ukrainian citizens' voting rights.
3. We recommend that Ukraine consider bringing a claim to the International Court of Justice seeking an advisory opinion on Russia's annexation of Crimea.
4. We recommend that Ukraine ask Russia to extradite President Yanukovich and other high-ranking officials for the crimes for which they face charges. We also recommend that Ukraine continue to work with Interpol to bring Ukrainian former officials to justice.
5. We recommend that Ukraine minimize its dependence on Russian energy supplies through reverse gas flows from Europe and the development of alternative energy sources.
6. We recommend that Ukraine continue to consider all potential countermeasures during this crisis.
7. We urge Ukraine to step up to increase its efforts to increase and prosecute crimes committed since November 2013.
8. We recommend Ukraine to enhance its national security by all available legal means.

For Russia:

9. We recommend that Russia pursue negotiations directly with Ukraine to find a political, non-violent resolution to the current crisis.
10. We recommend that Russia withdraw its troops from Crimea and from the border with Eastern Ukraine, and that it prevent the creation of any new "frozen conflicts."

For the International Community:

11. We recommend that the international community refrain from recognizing Crimea as a part of Russia.
12. We recommend that the international community uphold the sanctions that it has imposed to date on Russian and former Ukrainian officials and that it consider new and harsher sanctions if Russia further violates international law.
13. If Russian troops cross into Eastern Ukraine, we recommend that the international community condemn such action and consider appropriate countermeasures.
14. We recommend that the international community provide as much technical assistance to the Ukrainian government, including training, capacity building and other civilian support, as reasonably possible.

ENDNOTES

1. Ms. Bilych is a recent graduate of the NYU School of Law; the other authors are current NYU LL.M. or J.D. students. They are grateful to Mary Holland, Director of the Graduate Lawyering Program, and Amy Heading, Assistant Director of the Public Interest Law Center, for guidance and support of this *pro bono* project. They also thank Matthew Mosner, Gerald Lebovits, Stephen Holmes, Ethan Burger and Patrician Rawlinson for thoughtful comments and suggestions on earlier drafts.
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- (a) The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof;
 - (b) Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State;
 - (c) The blockade of the ports or coasts of a State by the armed forces of another State;
 - (d) An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State;
 - (e) The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement;
 - (f) The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State;
 - (g) The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.
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218. General Assembly Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty GAOR, 20th Sess., Supp. No. 12, at 107–08, U.N. Doc. A/6012 (1965); see also Charter of the Organization of the American States, 2 U.S.T. 2394, 119 U.N.T.S. 3, as amended Feb. 27, 1967, 21 U.S.T. 607, art. 18 (providing “no State or group of states has the right to intervene directly or indirectly, for any reason whatever, in the internal and external affairs of any other [s]tate”).
219. See *Military and Paramilitary Activities (Nicar. v. U.S.)*, 1986 I.C.J. 14 (June 27), at 106 (emphasis added).

220. T. Modibo Ocran, “*The Doctrine of Humanitarian Intervention in Light of Robust Peacekeeping*”, available at http://www.bc.edu/dam/files/schools/law/lawreviews/journals/bciclr/25_1/01_FMS.htm.
221. *Id.* at 239-45.
222. Andrew Higgins & Peter Baker, “*Russia Claims U.S. Is Meddling Over Ukraine*”, to New York Times in Feb. 03, 2014. Available at <http://www.nytimes.com/2014/02/07/world/europe/ukraine.html>; “UK aid helped train soldiers in Ukraine: Did cash fund troops who shot protesters?”, Tim Shipman, to Daily Mail, Mar. 06, 2014. Available at <http://www.dailymail.co.uk/news/article-2577965/UK-aid-helped-train-soldiers-Ukraine-Did-cash-fund-troops-shot-protesters.html#ixzz2xftp4F9E>.
223. “Ukraine Insta-Symposium: Ukraine Under International Law”, Mary Ellen O’Connell, at *Opinio Juris*, March 7, 2014, available at <http://opiniojuris.org/2014/03/07/ukraine-insta-symposium-ukraine-international-law/>.
224. See <http://www.cfr.org/arms-control-disarmament-and-nonproliferation/budapest-memorandums-security-assurances-1994/p32484>.
225. See <http://unterm.un.org/DGAACS/unterm.nsf/8fa942046ff7601c85256983007ca4d8/fa03e45d114224af85257b64007687e0?OpenDocument>.
226. *Id.*
227. See <http://unterm.un.org/DGAACS/unterm.nsf/WebView/4FE5EA3E98FBFF4E852569FA00008AAE?OpenDocument>.
228. “1. The Russian Federation, the United Kingdom of Great Britain and Northern Ireland and the United States of America reaffirm their commitment to Ukraine, in accordance with the principles of the Final Act of the Conference on Security and Cooperation in Europe, to respect the independence and sovereignty and the existing borders of Ukraine;
2. The Russian Federation, the United Kingdom of Great Britain and Northern Ireland and the United States of America reaffirm their obligation to refrain from the threat or use of force against the territorial integrity or political independence of Ukraine, and that none of their weapons will ever be used against Ukraine except in self-defense or otherwise in accordance with the Charter of the United Nations.”
229. According to Barry Kellman, professor of law and director of the International Weapons Control Center at DePaul University’s College of Law: “It is binding in international law, but that doesn’t mean it has any means of enforcement,” available at <http://www.dailymail.co.uk/news/article-2570335/Former-British-Ambassador-Moscow-warns-Russia-invaded-Ukraine-difficult-avoid-going-war.html>.
230. Steven Blockmans, Professor of EU External Relations Law and Governance at the University of Amsterdam, in ‘Russia and the Budapest memorandum’, available at <http://euob-server.com/opinion/123375>.
231. Julian Ku, Professor of Law and Faculty Director of International Programs of Hofstra University Law School: “[The Budapest Memorandum] it is not a security guarantee, like the kind that the US has with Japan. It is also not a formal treaty which, at least under US law, would have more binding impact,” available at <http://opiniojuris.org/2014/02/28/russians-coming-russians-coming/>.
232. Stephen MacFarlane, professor of international relations specialized on the former Soviet Union at St Anne’s College, available at <http://www.france24.com/en/20140303-ukraine-us-uk-diplomacy-russia-budapest-memorandum>.
233. United Nations International Law Commission: ‘Guiding Principles applicable to unilateral declarations of States capable of creating legal obligations’ (2006), available at http://legal.un.org/ilc/texts/instruments/english/draft%20articles/9_9_2006.pdf.
234. United Nations International Law Commission: Principle 1 of the ‘Guiding Principles applicable to unilateral declarations of States capable of creating legal obligations’ (2006), available at http://legal.un.org/ilc/texts/instruments/english/draft%20articles/9_9_2006.pdf.
235. Article 7(2), 46 Vienna Convention on the Law of Treaties; Article 3 of the ILC Draft Articles on State responsibility. ILC, ‘Guiding Principles’, Principle 4: ‘(...) Other persons representing the State in specified areas may be authorized to bind it, through their declarations, in areas falling within their competence.’
236. Thus, the Commentary to Principle 4 observes that in the case of a declaration by the Colombian Foreign Minister about Venezuelan sovereignty over the Los Monjes archipelago, “the note itself was set aside in domestic law because its author had no authority to make such a commitment, yet the Colombian authorities did not challenge the validity of the commitment at the international level.” Principle 3 of the ‘Guiding Principles applicable to unilateral declarations of States capable of creating legal obligations’ (2006), available at http://legal.un.org/ilc/texts/instruments/english/draft%20articles/9_9_2006.pdf.
237. “To determine the Legal effects of such declarations, it is necessary to take account of their content, of all the factual circumstances in which they were made, and of the reactions to which they gave rise.” Principle 5 of the ‘Guiding Principles applicable to unilateral declarations of States capable of creating legal obligations’ (2006), available at http://legal.un.org/ilc/texts/instruments/english/draft%20articles/9_9_2006.pdf.
238. “Unilateral declarations may be formulated orally or in writing.” Principle 7 of the ‘Guiding Principles applicable to unilateral declarations of States capable of creating legal

obligations' (2006), available at http://legal.un.org/ilc/texts/instruments/english/draft%20articles/9_9_2006.pdf.

239. "A unilateral declaration entails obligations for the formulating State only if it is stated in clear and specific terms. In the case of doubt as to the scope of the obligations resulting from such a declaration, such obligations must be interpreted in a restrictive manner. In interpreting the content of such obligations, weight shall be given first and foremost to the text of the declaration, together with the context and the circumstances in which it was formulated."
240. Frontier Dispute (*Burkina Faso v. Republic of Mali*), I.C.J. Reports 1986.
241. As recognized in Principle 9, unilateral declarations cannot result in obligations for other States. By analogy: Articles 34-5 Vienna Convention on the Law of Treaties (on the impossibility for treaties to entail obligations for third parties).
242. Principle 10 of the 'Guiding Principles applicable to unilateral declarations of States capable of creating legal obligations' (2006), available at http://legal.un.org/ilc/texts/instruments/english/draft%20articles/9_9_2006.pdf.
243. ILC, "Guiding Principles." For an extensive analysis, see: "ILC, Eighth Report on unilateral acts of States: consideration of certain acts", 26 May 2005, Doc. A/CN.4/557, available at http://untreaty.un.org/ilc/guide/9_9.htm; see also Benito Müller, Wouter Geldhof and Tom Ruys, Unilateral Declarations: The Missing Legal Link in the Bali Action Plan, ECBI Policy Report (May 2010), pp. 24-25, available at <http://www.law.kuleuven.be/iir/nl/onderzoek/opinies/ecbiUDsfinal.pdf>; In the same way those authors defend the Unilateral Acts of the States are binding to themselves: Víctor Rodríguez Cedeño & Maria Isabel Torres Cazorla: 'Unilateral Acts of States in International Law', Max Planck Encyclopedia of Public International Law [MPEPIL 1496] (2013), available at <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1496>. Camille Goodman, ACTA SUNT SERVANDA? A Regime for the Unilateral Acts Of States at International Law. Presented as a paper at the 2005 ANZSIL Conference (2005), available at http://150.203.86.5/cipl/Conferences_SawerLecture/05-ANZSIL-Papers/Goodman.pdf.
244. Charter of United Nations: Article 2: "The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles.... 4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations." available at: <http://www.un.org/en/documents/charter/chapter1.shtml>
245. Based on the Declaration of State Sovereignty Ukraine on July 16, 1990 (55-12) Applications of the Verkhovna Rada Ukraine "On the non-nuclear status of Ukraine " (1697-12) of 24 October 1991, the Verkhovna Rada of Ukraine "On Additional Measures to ensure Ukraine's non-nuclear

status " 9 April 1992, the Verkhovna Rada of Ukraine "On Ratification of the Agreement between the Union of Soviet Socialist Republics and the United States on the reduction and Limitation of Strategic Offensive Arms (840_050) signed in Moscow on 31 July 1991 and the Protocol thereto, signed at Lisbon on behalf of Ukraine on May 23 , 1992 " (3624-12) of 18 November 1993 and Resolution of the Verkhovna Rada Ukraine "On the performance of the President of Ukraine and the Government of Ukraine recommendations contained in paragraph 11 of the Resolution of the Verkhovna Rada Ukraine "On Ratification of the Agreement between the Union of Soviet Socialist Republics and the United States of America Reduction and Limitation of Strategic Offensive Arms, signed in Moscow on 31 July 1991 and the Protocol thereto, signed at Lisbon on behalf of Ukraine on May 23 , 1992 (3919-12) of 3 February 1994 , the Parliament of Ukraine REGULATION: "Join the Treaty on the Non-Proliferation of Nuclear Weapons on July 1, 1968 (995_098) with reservations:

1. The provisions of the Treaty do not cover fully the unique situation as a result of the collapse of nuclear power – Soviet Union.
2. Ukraine owns nuclear weapons inherited from the FSU. After the dismantling and destruction of weapons controlled Ukraine and procedures precluding ability to use nuclear materials that are components of these weapons, the preliminary designation, Ukraine has to apply the above materials exclusively for peaceful purposes.
3. Presence in the territory of Ukraine of nuclear weapons to full elimination and corresponding work on its content, maintenance, and elimination of not inconsistent with the provisions of Articles I and II of the Treaty.
4. The threat or use of force against the territorial integrity and inviolability of borders or political independence Ukraine from any nuclear power, as well as use economic pressure to ensure that subordinate their own interest the exercise by Ukraine of the rights inherent in its sovereignty, Ukraine considered as exceptional circumstances jeopardized its supreme interests.
5. Documents on Ukraine's accession to the Agreement shall be transferred Countries - Depository Agreement after its entry into force this Act.
6. This Act shall take effect after the Ukraine nuclear by the security guarantees issued by signature relevant international legal instrument"

246. The Treaty on the Non-Proliferation of Nuclear Weapons: article X: "1. Each Party shall in exercising its national sovereignty have the right to withdraw from the Treaty if it decides that extraordinary events, related to the subject matter of this Treaty, have jeopardized the supreme interests of its country. It shall give notice of such withdrawal to all other Parties to the Treaty and to the United Nations Security Council three months in advance. Such notice shall include a statement of the extraordinary events it regards as having jeopardized its supreme interests." available at <http://www.un.org/en/conf/npt/2005/npttreaty.html>.
247. "Rada registers bill suggesting denunciation of nuclear non-proliferation treaty by Ukraine", March 22, 2014, available at <http://www.kyivpost.com/content/ukraine/>

rada-registers-bill-suggesting-denunciation-of-nuclear-non-proliferation-treaty-by-ukraine-340347.html.

248. Charter of United Nations: Article 27: “3. Decisions of the Security Council on all other matters shall be made by an affirmative vote of nine members including the concurring votes of the permanent members; provided that, in decisions under Chapter VI, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting.” available at <http://www.un.org/en/documents/charter/chapter5.shtml>.
249. Charter of United Nations: Article 11: “[...] The General Assembly may call the attention of the Security Council to situations which are likely to endanger international peace and security,” available at <http://www.un.org/en/documents/charter/chapter4.shtml>.
250. Conflict fears rise after pro-Russian gunmen seize Crimean parliament, *The Guardian*, Date: 27.02.2014, available at <http://www.theguardian.com/world/2014/feb/24/ukraine-crimea-russia-secession>.
251. Alberto Riva, “Russia’s use of unmarked troops in Simferopol, Crimea: Shady, But not Illegal, *International Business Times*, Date: 26.03.2014, available at <http://www.ibtimes.com/russias-use-unmarked-troops-simferopol-crimea-shady-not-illegal-1559425>.
252. Russian armed forces seize Crimea as Putin threatens wider military invasion of Ukraine, *Kyiv Post*, Date: 02.02.2014, available at <https://www.kyivpost.com/content/ukraine/tensions-rise-in-armed-standoff-in-crimea-between-ukrainian-and-russian-backed-forces-337942.html>.
253. Joel Greenberg, *Illegal Targeting of Civilians, Crimes of War*, available at <http://www.crimesofwar.org/a-z-guide/civilians-illegal-targeting-of/>.
254. Article 48 of the Additional Protocol I to the Geneva Conventions available at: <http://www.icrc.org/ihl/INTRO/470>
255. Article 1 provides that “[t]he laws, rights, and duties of war apply not only to armies, but also to militia and volunteer corps fulfilling the following conditions:
To be commanded by a person responsible for his subordinates;
To have a fixed distinctive emblem recognizable at a distance;
To carry arms openly; and
To conduct their operations in accordance with the laws and customs of war.
In countries where militia or volunteer corps constitute the army, or form part of it, they are included under the denomination ‘army.’”
256. Article 4 (2) provides that “Members of other militias and members of other volunteer corps, including those of organized resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps, including such organized resistance movements, fulfil the following conditions:
(a) that of being commanded by a person responsible for his subordinates;
(b) that of having a fixed distinctive sign recognizable at a distance;
(c) that of carrying arms openly;
(d) that of conducting their operations in accordance with the laws and customs of war.”
257. Pfanner, *Military uniforms and the law of war*, IRRC March 2004, available at http://www.icrc.org/eng/assets/files/other/irrc_853_pfaner.pdf.
258. Article 44(7) reads “7. This Article is not intended to change the generally accepted practice of States with respect to the wearing of the uniform by combatants assigned to the regular, uniformed armed units of a Party to the conflict.”
259. Toni Pfanner, *supra* note 254.
260. *Conflict fears rise after pro-Russian gunmen seize Crimean parliament*, *The Guardian*, Date: 27.02.2014, available at <http://www.theguardian.com/news/defence-and-security-blog/2014/mar/06/ukraine-gross-violation-russian-troops>.
261. Alberto Riva, *supra* note 248.
262. *Conflict fears, supra* note 257.
263. *Id.*
264. *Id.*
265. Alberto Riva, *supra* note 248.
266. *Conflict fears, supra* note 257.
267. Угода між Україною і Російською Федерацією про принципи формування ВМС України та ВМФ Росії на базі Чорноморського флоту колишнього СРСР, Ялта, 08.03.1992 [Agreement between Ukraine and the Russian Federation on principles of the formation of the Ukrainian Naval Forces and the Naval Fleet of the Russian Federation based on the Black Sea Fleet of former Soviet Union], available in Ukrainian at <http://zakon4.rada.gov.ua/laws>.
268. Угода між Україною та Російською Федерацією щодо Чорноморського флоту (укр/рос) від 09.06.1995 [Agreement between Ukraine and the Russian Federation on the Black Sea Fleet], available in Ukrainian at <http://zakon4.rada.gov.ua/laws>.
269. Угода між Україною і Російською Федерацією про статус та умови перебування Чорноморського флоту Російської Федерації на території України (укр/рос) від 28.05.1997 [Agreement between Ukraine and the Russian Federation on the status and terms of presence of the Black Sea Fleet of the Russian Federation on the territory

- of Ukraine], available in Ukrainian and Russian at <http://zakon4.rada.gov.ua/laws>.
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272. Black Sea Fleet (BSF), Global Security, available at <http://www.globalsecurity.org/military/world/russia/mf-black.htm>.
273. See David Marples, *Russia and Ukraine Dispute Over Sevastopol*, Current Politics in Ukraine, 13 July 2008, available at <http://ukraineanalysis.wordpress.com/2008/07/13/russia-and-ukraine-dispute-over-sevastopol/>.
274. Agreement between the Government of Ukraine and the Government of the Russian Federation on the mutual financial transactions with respect to division of the Black Sea Fleet and the presence of the Black Sea Fleet of the Russian Federation on the territory of Ukraine (Art. 2), available in Ukrainian and Russian at <http://zakon4.rada.gov.ua/laws>.
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292. See *Gabcikovo-Nagymaros Project* (Hungary/Slovakia), Summary of the ICJ Judgment of 25 September 1997, available at <http://www.icj-cij.org/docket/index.php?sum=483&code=hs&p1=3&p2=3&case=+92&k=8d&p3=5>.
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R A Z O M

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