



The Legal Aspects of Crimea's Independence Referendum of 2014 With the Subsequent Annexation of the Peninsula by Russia.

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The Legal Aspects of Crimea's Independence Referendum of 2014 with the
Subsequent Annexation of the Peninsula by Russia

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Abstract

This thesis examines Crimea's 2014 unilateral declaration of independence and subsequent absorption by Russia. It examines the region's volatile history and attempts to present a balanced view of the positions of the main actors involved: Crimeans, Ukraine, Russia, Crimea's Tatar minority, and the international community. It presents a host of legal opinions on the issue, trying to answer whether Russia's annexation of the peninsula can be considered legal under international law.

Virtually all Western (or at least English-speaking) analysts declare the 2014 referendum illegal under international law, even though most of them also admit that there is no legal precedent to support or overturn such a verdict. This admission brings us to the ultimate answer – without a clear legal precedent in international law, Crimea's independence from Ukraine was no more or no less legal than Ukraine's own independence from the Soviet Union twenty-three years prior.

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I.

Introduction

On February 27, 2014, a group of gunmen seized the parliament building of Crimea in Simferopol, the capital of the then still autonomous republic of Ukraine, and raised a Russian flag. Thus began a series of events culminating in the still-simmering war in the East of the country and widespread outrage over the invasion and annexation of this Ukrainian territory by Russia.

In this thesis, I examine the volatile history of the Crimean peninsula, the numerous transfers of power it has experienced, the similar precedents of territorial changes around the world, and whether the annexation of Crimea by Russia truly represented the will of the Crimean population, and whether such annexation can be legal under international law.

My hypothesis is that such “land transfers” do in fact have a precedent in recent history and they may be considered legal in international norms. On the other hand, many a land-grab in history has been carried out “in the name of the people,” and this particular transfer, even if desired by the majority of the peninsula’s population, does not easily pass the test of legality under any norms.

In order to comprehend the legality of what has transpired in Crimea, we must examine the legal history of events that led to the Russian takeover. During the two decades prior to 2014, the peninsula has experienced an arduous struggle for a degree of autonomy from Ukraine. Several legal precedents have among other things shed light on

the political opinions of the Crimean population. In fact, between 1991 and 1994, Crimeans voted in no fewer than *four* referendums on the political status of their land, namely:

1991 Autonomy Referendum, January 20

1991 Referendum on the preservation of the USSR, March 17

1991 Ukrainian Independence Referendum, December 1

1994 Referendum on Crimean autonomy, March 27

At least some of the above contradicted each other, because within the span of one year – 1991, the majority of people in Crimea managed to: first demand an autonomy within Ukraine, then vote for the preservation of the Soviet Union (which Ukraine was still part of), then declare independence from it together with the rest of Ukraine. In addition, these votes were eventually followed by:

2014 Crimean Status Referendum, March 16

2014 Crimean Application to join Russia, March 17 (next day)

There have also been several (contradictory) legal agreements that had set the stage for the current conflict:

1954 Transfer of the peninsula from Russia to Ukraine (within USSR),

February 19

1993 Russian Parliament law declaring Sevastopol a Russian city, July 9

1994 Budapest Memorandum with the subsequent removal of nuclear

weapons from the Ukrainian territory, December 5

The present thesis explains the sources of the present conflict over the peninsula. I find that the history surrounding the sovereignty status of this region indicates that the

eruption of this conflict should not have been a surprise to anyone who has studied the motivations of the people living there. In fact, Crimea, as a prescient analysis suggested in 1994, has been a “pot ready to boil”¹ and “a political tinderbox”² for quite some time now, ever since Ukraine became independent, to be exact.

Can a territory of a sovereign nation democratically vote to become independent from the host nation? History is replete with examples of both successes and failures of regions trying to gain independence either diplomatically or, more often than not, by force.

On the other hand, there have been examples of countries breaking up without much violence. For example, Czechoslovakia broke in two through a “Velvet Divorce” in 1993 without conflict. Norway and Sweden parted ways in 1905 without any violence, albeit after a period of saber-rattling on both sides. Lastly, it must be mentioned that Ukraine itself became independent from Moscow’s rule in 1991, after the USSR dissolved without a shot fired (and without its own population consenting to the matter). The last case especially highlights the perceived hypocrisy of the Ukrainian position in the eyes of Crimeans: having received its own independence from the USSR, Ukraine was not willing to grant it to those seeking independence from it.

The purpose of this thesis is to examine the legal aspects of the Crimean Peninsula’s annexation by Russia in March of 2014. It will try to examine the agreements

¹ N. A. Kellett and Ben Lombardi, *Crimea: A Pot Simmering or at the Boil?* (Ottawa, Canada: Dept. of National Defence Canada, Operational Research and Analysis, Directorate of Strategic Analysis, 1994).

² Paula J. Dobriansky, “Ukraine: A Question of Survival,” *National Interest*, no. 36 (Summer 1994): 65-72.

that led to the breakup of the Soviet Union, independence of Ukraine, the subsequent struggle of Crimeans for their own autonomy, then independence, and the eventual takeover of the peninsula by Putin's government. I intend to present a non-partisan take on the topic. In light of the still ongoing struggle within Ukraine itself, it may be useful to examine both sides of the issue in order to understand the motivations of the participants and examine the possible outcomes of the conflict.

II.

Historical Background

The Crimean Peninsula has an area of 10,000 square miles (roughly the size of the state of Massachusetts), and occupies a commanding position on the Black Sea. It is this position that has drawn so many powers to control it throughout the millennia: the Scythians, the Greeks, the Venetians, the Ottoman Turks, the Crimean Tatars, and the Russians. Russia came to the possession of the peninsula in 1783, after a series of wars with the Ottoman Empire, of which the Crimean Khanate had heretofore been a nominal (with a great degree of independence) vassal. The naval base of Sevastopol, which the Russians established on the southwestern shore of Crimea, had a dominating position on the sea, and was to be fought over in several wars since then. This city, and the naval base within it, has held a particularly sensitive significance to the Russians – it is a place in which they have invested too much blood and history to give it up easily.

Under the Russian rule in the nineteenth century, a steady stream of new settlers arrived on the peninsula, and they slowly displaced the Tatar population. In the Russian Civil War of 1917-1920, Crimea was one of the last strongholds of the anti-Bolshevik forces before they were defeated in 1920. Following the war, the Crimean Autonomous Soviet Socialist Republic was created in 1921, and the peninsula remained part of Soviet Russia until 1954, while Soviet Ukraine was created as a separate republic within USSR. World War Two saw some of the bloodiest battles on the Eastern Front taking place in

Crimea. Sevastopol in particular endured a bloody siege in 1941-1942, during which the city was virtually destroyed. Following the liberation of the peninsula in 1944, the Soviet government accused the Tatar population of having collaborated with the Nazis, and deported the entire Tatar population to Central Asia. The Crimean Autonomous Republic existed until 1945, when its status was changed to a mere oblast.

As for Ukraine, its cultural identity has been shaped by the two powerful neighbors that had fought each other to control it: Poland and Russia. These two identities are the key to understanding the divide between the East and the West of the country. Both sides of the conflict are right in their own way (or at least have a valid point), but that is not the real source of tension. The real problem is that Ukraine is for many intents and purposes two nations in one: one pro-Western and anti-Russian, the other pro-Russian and anti-Western. Both sides claim to be “true” Ukrainians, with Westerners often calling the eastern half of Ukraine “Russian” – which is simplistic and incorrect. It is true that Easterners are tied to Russia by centuries of common history and identity, but they are not “Russians” – they are Russian-speaking Ukrainians with historic ties to Moscow. By 2001, according to the Ukrainian Census, ethnic Russians comprised only 17.3% of Ukraine’s population,³ and since a significant proportion of those resided in Crimea, that percentage has dwindled with the separation of the peninsula from the country.

Ukraine, like Ireland, has had such a difficult, convoluted history, full of wars, famines, and occupations by various foreign powers, and especially partitions, that if one

³ 2001 Ukrainian Population Census.
<http://2001.ukrcensus.gov.ua/eng/results/general/nationality/>.

were to drive from the West of the country to the East, the traveler would be seriously wondering if he or she is still in the same country. In the West, Greek Catholic churches predominate, Ukrainian is widely spoken, and architecture is often Baroque. In the east, Russian Orthodoxy dominates religious life, onion-domed churches and log huts dot the landscape, and most people speak either Russian or Ukrainian dialects similar to Russian.

An oft-quoted perception in the West of the country is that the East is so pro-Russian because it has been settled by ethnic Russians under Imperial Russian, and later Soviet rule. This narrative does not stand the test of serious historical research. The Eastern, or Left-Bank, Ukraine as it was historically known (because the country's biggest river, Dnieper, which flows south, roughly divides the land along linguistic and political preferences) began drifting into the Muscovite orbit in the mid-seventeenth century during the Khmelnytsky Uprising, when the rebellious Cossacks enlisted the help of the Russian tsar in their fight with Poland.

III.

The Transfer of Crimea to Ukraine

In 1954, ostensibly to commemorate the three hundredth anniversary of the union of the core Ukrainian land with Russia, Nikita Khrushchev, then the leader of the USSR, arranged the transfer of the peninsula from the authority of the Russian Federation to the Ukrainian Soviet Republic. Since both were part of the Soviet Union at the time, it meant little, in practical terms. For average Crimeans, nothing changed, apart from Ukrainian becoming mandatory in the school curriculum overnight.

The transfer was obviously not done with the acquiescence of Crimea's population, this being the Soviet Union, run as a one-party dictatorship. As Putin pointed out in March of 2014, the opinion of the people who lived there did not factor much into this act. Moreover, and this would later become a point of contention between Moscow and independent Ukraine, the transfer might or might not have affected the port of Sevastopol, the most populous city on the peninsula and a major naval base because:

The city had a republican subordination (to Moscow), not regional (to Simferopol), and was not a part of the Crimean region of Ukraine and was not transferred together with the Crimean region. In this regard it should be pointed out that the decree of the Presidium of the Supreme Soviet of Russia from October 29, 1948 separated the city of Sevastopol in a single administrative center and classified it as a city of republican subordination. Issuing a resolution № 1082 on October 29, 1948, the Council of Ministers of the [RSFSR] adopted a series of administrative decisions on financial security of Sevastopol (it is recognized repealed in accordance with the Resolution of the Council of Ministers of the [RSFSR] of April 25, 1968 № 264).⁴

⁴ Transfer of the Crimean region to Ukraine in 1954: Legal aspects. http://www.smucc.us/uploads/3/3/6/8/3368062/_angl_pravovy_aspekt.pdf.

Ukrainian sources contend that the 1978 Constitution of Ukraine lists the city among the republic's administrative units, and its financing came out of Ukrainian budget. In reality, the city and the naval base within it remained what was called a "closed city" administered by the Ministry of Defense. Whether it was part of Ukraine on paper, for all practical purposes it did not fall under the administration of the regional government in Simferopol, and thus not under the authority of Ukraine's communist leadership in Kiev.

The transfer of the peninsula created several problems that would come to the fore later on. The political status of Sevastopol was ambiguous from the start. It was what they called a "closed city" – a military base with strictly controlled territory and population, subject more to the command of the navy than civilian authorities. Because it did not fall under the authority of the regional government, the question of whether it fell under the authority of Ukraine's Soviet government was left in a limbo.

IV.

Legal Events

Between the end of the Soviet rule in Ukraine and the return of the Crimean Peninsula to Moscow's control, several legal events stand out that shaped the political arena for the current crisis. They were: the all-Soviet referendum in which the people voted for the preservation of USSR; the Ukrainian independence referendum where the majority of Ukraine's population voted for independence; the Crimean referendum for an autonomy within Ukraine; and the Budapest Memorandum, which removed nuclear weapons from the Ukrainian territory on the condition of its sovereignty.

To the outside observers, the peninsula's quickie declaration of independence and a similarly fast absorption into Russia in 2014 appears as a clear-cut case of a land-grab. The crux of the controversy lies in the fact that while much of the world considers the 2014 Crimean referendum invalid, it was preceded by two others, in 1991 and 1994, in which a clear majority of the peninsula's residents voted for greater autonomy from Ukraine, and which the world opinion has not cared to remember, and the Kiev government has chosen to ignore.

V.

1991 Crimean Autonomy Referendum

Crimea's drive to distance itself from Ukraine began while Ukraine itself was not even independent. In the last years of USSR's existence, ethnic conflicts were breaking out throughout the country, in some cases leading to civil wars that would eventually cost thousands of lives. Ukraine was spared such tragedy at the time, but did not escape separatist sentiment. After four decades of being part of Ukraine, the majority of Crimea's population never identified itself as Ukrainian, Kremlin's directives notwithstanding, so the drive began to organize a referendum and vote on a measure of autonomy from Kiev.

As a result of the referendum, the Supreme Soviet of Ukraine recognized the peninsula as being an autonomous republic. "In February 1991 Crimea was granted autonomous republic status by the government in Kiev after more than 93% of voters in a local referendum held in January 1991 had cast their ballots in favour of autonomy."⁵ By becoming an "autonomous republic" instead of an "oblast," a status it held in RSFSR before WWII, Crimea acquired (at least on paper) a legal right to choose whether to secede from USSR together with the rest of Ukraine, but when Ukrainian independence came, it did not exercise this option. This fact adds more weight to the later Ukrainian

⁵ Vicki L. Hesli, "Public Support for the Devolution of Power in Ukraine: Regional Patterns," *Europe-Asia Studies* 47, no. 1 (1995): 98.

claims that had Crimeans desired independence from the start, they should have used this instrument to try to achieve it.

VI.

1991 USSR Referendum

Meanwhile, the Soviet Union itself was on the path to its breakup. The Soviet government proposed a referendum on whether the country should be kept whole. This referendum, held on March 17, 1991, was to affirm the existence of USSR less than a year before it ceased to exist. It was probably the only truly democratic vote in the history of a state known from its creation to be undemocratic. It posed a single question before the voters: “Do you consider necessary the preservation of the Union of Soviet Socialist Republics as a renewed federation of equal sovereign republics in which the rights and freedom of an individual of any nationality will be fully guaranteed?” Several republics chose to boycott the referendum (perhaps out of fear of revealing that their populations were not as independence-minded as their elites.) In those areas of USSR where the vote was held however, the clear majority everywhere voted to stay with the union.

VII.

The Breakup of the USSR

Entirely contradicting the above, Ukraine's population voted to become independent of USSR on 1 December 1991. In every single region of the country, including Crimea, the overwhelming majority (90%) cast their ballot in favor of independence. This vote, which seemed to go against the established views of the Crimean population, has been a source of puzzle for political analysts ever since. It has also presented a powerful argument to the opponents of Crimea's autonomy – since the majority voted for independence from Moscow, they had no business to vote for a “re-attachment” later on. That the Western part of the country would prefer immediate independence from Moscow's control was not surprising, since these regions were forcibly attached to USSR during World War II and had no prior history of living under the Kremlin rule. But the support for independence in the Eastern regions of the country, where the pro-Russian sentiment ran high, including Crimea, was more puzzling.⁶ Ian Brzezinski suggests that it had an economic explanation.

Support for independence was strongest in the western provinces, where Ukrainian nationalism has its deepest roots. In the more Russified districts in the east, the republic's industrial heartland, support for independence was based more on economic calculation – there is more food available in Ukraine than in Russia – than on nationalism.⁷

⁶ Paul Kubicek, “Regional Polarisation in Ukraine: Public Opinion, Voting and Legislative Behaviour,” *Europe-Asia Studies* 52, no. 2 (March 2000): 283.

⁷ Ian Brzezinski, “Geopolitical Dimension,” *National Interest*, no. 27 (Spring 1992): 49.

According to Lawrence Howard of the *New English Review*, the real reasons for independence had little to do with people's will. Rather, it came about because the Soviet Union itself ended in a political and economic collapse:

As the 1980s ended, polling in Ukraine did not indicate an overwhelming desire in the population to secede from the Soviet Union, with only 20% favoring independence. Ukrainian independence came about not because of Ukrainian nationalism and a cohesive popular consciousness and struggle leading to revolution, but because of the unexpectedly swift economic and political collapse of the USSR, the specter of Soviet revanchism as exemplified by the August 1991 coup attempt, and the political opportunism of consequential personalities.⁸

On December 1, 1991, Ukrainians went to the polls to vote on the independence of their nation from the USSR. The clear majority in all twenty-five constituent regions of the country, including Crimea, voted to go with an independent Ukraine, although in Crimea the majority margin was the smallest of twenty-five. This vote would haunt all future attempts by Crimeans to distance themselves from Kiev with some measure of autonomy. Although Crimea was the least supportive of Ukrainian independence, a majority, 54%, voted in favor. In Sevastopol, the "Russian Hero City" on the peninsula, it is surprising to hear in retrospect that support for Ukrainian independence was even higher – 57%.⁹

Thus, in 1991, the Soviet Union dissolved into fifteen newly independent nations, and with its dissolution communism and the Cold War came to the end. Outside the new sovereign borders of Russia remained some 25 million ethnic Russians, whose treatment

⁸ Lawrence A. Howard, "The Historical, Legal, and Political Contexts of the Russian Annexation of Crimea," *New English Review*, March 2015.

⁹ Serhii Plokhy, "The City of Glory: Sevastopol in Russian Historical Mythology," *Journal of Contemporary History* 35 (July 2000): 371.

by the native governments varied considerably. Ukraine inherited by far the largest Russian diaspora in absolute numbers – eleven and a half million (22% of the population in 1993.)¹⁰ Opinion polls suggested most of them had no plans to return to Russia.

¹⁰ Anthony Hyman, “Russians outside Russia,” *World Today* 49, no. 11 (November 1993): 206.

VIII.

1992

Barely did the newly sovereign Ukraine start celebrating its independence, as the post-Soviet Russian legislature began raising the question about its exact borders.

In late January [of 1992] it voted 166 to 13 to examine the legality of Khrushchev's transfer of Crimea to Ukrainian jurisdiction, thereby setting a legislative precedent for reviewing the status of western Ukraine (acquired in 1939) and portions of Ukraine's northeastern frontier with Russia (drawn in the 1920s).

Russia was hardly alone in questioning the newly-independent Ukraine's borders.

According to Marc Weller of the University of Cambridge, "When Hungary sought to strengthen its ties with ethnic Hungarian minorities living in neighbouring states, this was strongly resisted by the Council of Europe and other legal bodies."¹¹

Crimeans' drive to distance the peninsula from Kiev began immediately after independence. "Respondents in Crimea, who (...) were initially positive in 1992, have also become more displeased and more disposed toward Russia."¹² With Ukraine independent, and pro-Moscow sentiment on the peninsula running strong, the Crimean Supreme Council decided to put the political future of their land to a vote yet again. In March of 1992, the "Republican Movement of Crimea" collected over 200,000 signatures in support of an independence referendum. (By law, 180,000 was enough.) Still,

¹¹ BBC, "Analysis: Why Russia's Crimea Move Fails Legal Test," March 7, 2014.

¹² Paul Kubicek, "Regional Polarisation in Ukraine: Public Opinion, Voting and Legislative Behaviour," *Europe-Asia Studies* 52, no. 2 (March 2000): 283.

politicians chose to pursue a negotiated compromise, a Bill on the Separation of Powers between Ukraine and Crimea, to be approved by parliaments on both sides, and which effectively granted these parliaments equal status. This Crimea's Verkhovna Rada (Parliament) quickly approved it before submitting to the Parliament of Ukraine.¹³ Now came Ukraine's turn to debate the issue. Hence the dilemma. Agreeing to grant Crimean politicians more power would surely put the peninsula on the path of outright independence, but ignoring the wishes of hundreds of thousands of independence-minded Crimeans living there was risking another sectarian conflict. Politicians witnessed the current ethnic wars throughout the former Soviet Union, such as Karabakh and Transdnistria, with thousands of people dead or displaced. They did not wish the same fate on Ukraine. According to one lawmaker: "the Crimean issue has been the chief concern of the Ukrainian politicians within the last few months. On the one hand, there exist no legal grounds for independence of the Crimea, on the other hand, it is hard to ignore 300,000 signatures collected to support the referendum for independence."¹⁴

Political opinions seemed to advance in two different directions in Kiev and on the peninsula. On one hand, Crimeans were emboldened by Ukraine's conciliatory approach to the Bill, and saw it as a green light on the path to outright independence. On the other hand, the Ukrainian side believed that granting generous autonomy to the peninsula was a compromise that would prevent Crimea's alienation and separation. The Parliament of Ukraine hotly debated every article of the Bill in detail in April of 1992

¹³ *The Crimea: Chronicle of Separatism (1992-1995)* (Kyiv: Ukrainian Center for Independent Political Research, 1996), 8.

¹⁴ *The Crimea*, 10.

with President Kravchuk quickly blocking the issue. Any talk of independence was contrary to Ukrainian constitution, which declared the country's borders to be inviolable. Besides, he stated: "There exists yet another important aspect of this problem: on December 1, 1991 the majority of electors in Crimea voted for independence of Ukraine as a unitary state thus confirming their will to live in Ukraine."¹⁵

The Verkhovna Rada of Crimea declared formal independence on May 5 1992, conditional on the majority of voters supporting it in a later referendum. Ukraine monitored the developing situation closely, and declared the proposed vote (whenever it might take place) to be illegal. President Kravchuk said as much to the Crimean leaders about it.

The Crimean Supreme Soviet adopted a declaration of independence in early May 1992, subject to approval through referendum. In turn, the Presidium of the Ukrainian Supreme Soviet declared Crimea's actions unconstitutional, a resolution was later adopted (13 May 1992) by the full body reaffirming the unconstitutionality of the actions from Crimea, and the administrative powers of Kravchuk's presidential envoy in Simferopol were enhanced with a new law "On the Representation of the President of Ukraine in the Republic of Crimea,"¹⁶

At the time, the issue led to a standoff that threatened to escalate into a full-scale conflict between the locals and the Kiev authorities, but it was resolved peacefully at the last moment. The Bill on the Separation of Powers was renamed "On the Status of Autonomous Republic of Crimea" to make it sound less ambiguous. The Ukrainian Parliament approved it at the end of April. Crimeans consoled themselves with a policy of generous autonomy granted by the central government, while the rest of Ukraine chose

¹⁵ *The Crimea*, 12.

¹⁶ Hesli, "Public Support," 98.

to ignore the people for full independence. In the end, both sides chose to exercise sober judgment, and preferred a variation on the status quo to acting on extremist impulses and escalating the conflict. However, in the long run, this simply meant putting the issue on the back burner, and pushing the problem further away into the future.

IX.

The Tatars' Position

Caught in the middle of two countries' territorial dispute was the Tatar minority, which inhabited and ruled Crimea for centuries. Theirs was a difficult situation, because they were a minority within the region's population, and had a history of conflict with both Ukraine and Russia. Invaded and annexed by the Russian Empire in 1783, the Tatars saw their ancestral land steadily settled by the newcomers from both Russia and abroad, to the point where their majority status eroded to the point of being a minority. Accused of collaboration with the invading Germans during the Second World War, in 1944 the Tatar population was rounded up *en masse* and resettled in Central Asia on the orders of Stalin. Although Khrushchev eventually issued amnesty to many victims of Stalin's terror, the Tatars were not included in this policy. They were not able to return to their historic homeland until the Soviet Union started breaking up in the late eighties. Given such a history of conflicts with both the Russian government and ethnic Russians, Tatars tended to side with independent Ukraine, if only by default. When the split between Crimea and Ukraine appeared, the Mejlis (Tatar Council) was quick to announce that it would not recognize any legislature separating the peninsula from Kiev's authority.¹⁷

¹⁷ *The Crimea*, 9.

X.

1994

Meanwhile, within Crimea itself, vocal activists from the pro-Russian population embarked on a series of political maneuvers to distance themselves from Kiev, battling for greater autonomy of the peninsula. The widening gap should not have come as a surprise to those who cared to monitor this situation. Already in 1994, (just three years after Ukraine's independence) analyst Eugene B. Rumer warned in *Foreign Policy* magazine that:

The election of secessionist Yuri Meshkov in the presidential election in Crimea demonstrated the erosion of popular support for Ukrainian independence in one of the country's crucial regions. Crimea's complex history and politics make it the region most likely to secede from Ukraine.¹⁸

The idea was revived two years later, when a pro-Russian official Yuriy Meshkov was elected President of Crimea. A new referendum took place March 27, 1994. Despite explicit warnings from Kiev that the Ukrainian government would not recognize the results of any such vote, Crimeans went to the polls to decide the political future of their land. The ballot offered three questions:

1. Are you for the restoration of the provision of the Constitution of the Republic of Crimea of 6 May 1992 which determines the regulation of mutual relations

¹⁸ Eugene B. Rumer, "Eurasia Letter: Will Ukraine Return to Russia?" *Foreign Policy*, no. 96 (Autumn 1994): 134.

between the Republic of Crimea and Ukraine on the basis of a Treaty of Agreements?

2. Are you for the restoration of the provision of the Constitution of the Republic of Crimea of 6 May 1992 that proclaimed the right of citizens of the Republic of Crimea to dual citizenship?
3. Are you for conceding the force of laws to the edicts of the president of the Republic of Crimea on questions that are temporarily not regulated by legislation of the Republic of Crimea?

On all three questions, the overwhelming majority (well over 70%) voted “yes.” Facing the threat that no independence of Crimea would ever be recognized by Ukraine, the option to vote for actual sovereignty was dropped from the ballot shortly before the referendum. However, the drive to *de facto* separate itself from Ukraine was obvious.

The Ukrainian government saw the referendum for what it was – a vote on *de facto*, if not *de jure*, independence. Realizing that Crimea was on the path to formal sovereignty, the Kiev powers boldly stepped in just two weeks later, on April 11, and simply overturned the results of the referendum by fiat. They abolished both the peninsula’s constitution and the post of the Crimean president. The local authorities were powerless to do something about it; Meshkov subsequently fled to Russia. The Crimean legislature had no choice but to write a new constitution, more amenable to Kiev, which the Ukrainian government ratified in 1998. Because the issue of independence was not voted on, it created confusion in the later interpretation of the 2014 referendum vote. Nevertheless, at the time, this act of the Ukrainian government turned the issue into a political time bomb. All of the above referendums are used by both sides of the conflict

as justification of their actions, even though the results of these referendums are contradictory.

XI.

The Run Up to Crimean Independence

As Ukrainian living standards steadily declined throughout the two decades, many Crimeans looked to Russia where life was not as bad and the economic decline of the nineties reversed during Putin's presidency. At the same time, among the older generation, there remained a nostalgia for the Soviet past. On the peninsula, anti-Ukrainian sentiments reached the point where even speaking Ukrainian in public was unacceptable to some.

Despite this pro-Russian sentiment, political drive to re-join Russia lay dormant. Parties espousing such view won a handful of votes, even though there is no evidence that local elections were tampered with by the Kiev government. The electoral history of Crimea during twenty-three years as part of Ukraine shows that political forces demanding outright independence had minimal success. Pro-independence parties and candidates never scored more than a few percent of the vote in the region, and their influence on the politics of the peninsula was always marginal. Political elements demanding unification with Russia had even less electoral success, even though there is zero evidence of Ukrainian government tampering with the vote. The performance of pro-Russian political parties was poor.¹⁹

¹⁹ Ostap Odushkin, "Political Subcultures in Ukraine: Historical Legacy and Contemporary Divides, Extreme Movements and Ideological Preferences of Eastern and

Thus, political developments on the peninsula in the two decades prior to independence suggest strong pro-Russian bias but no significant legal drive to reunite with Russia. The Parliamentary Assembly of the Council of Europe (PACE) notes that “neither secessionism, nor integration with the Russian Federation, was prevalent on the agenda of the Crimean population, or widely supported, prior to Russian military intervention”²⁰ Whether these issues were not widely supported because of fear of Ukrainian reprisals or were they not prevalent because Kiev would not allow for such opinions to surface, remains a subject of debate. Perhaps no one was willing to risk violence to advance the Crimean cause, and nobody believed Russia would actively and strongly back them up. As for the Crimean Tatars, they had to choose between the two sides, and tentatively chose to support Ukraine.

A subset of the Crimea issue is the status of Sevastopol. The question of Crimea’s status within Ukraine was one thing, but what was the status of Sevastopol itself as part of Crimea, and by extension, of the Ukrainian state? In 1948, Sevastopol was given the status of "city of republican subordination" which later on, under the Ukrainian rule, began to be called “City with special status.” From that point on, the city was effectively subordinate to the Soviet, Ministry of Defense, with little interference from the local civilian authorities. Although Russia recognized Ukraine’s independence in 1991, Sevastopol continued housing scores of Black Sea fleet ships and thousands of Russian

Western Ukrainians as Indicators of Hidden Antagonism,” *Polish Sociological Review*, no. 132 (2000): 417.

²⁰ Olexandr Zadorozhny, “Comparative Characteristic of the Crimea and Kosovo Cases: International Law Analysis,” *Evropský Politický a Právní Diskurz* 1, no. 3 (2014): 7. <http://eppd13.cz/wp-content/uploads/2014/2014-1-3/03.pdf>.

servicemen whose loyalty lay with Moscow. The issue of what to do with them was debated until 1997, when the two countries signed a Friendship Treaty, dividing the fleet and leasing the naval base to Russia for twenty years to be used jointly by the navies of both nations. It thus enjoyed the status similar to that of Guantanamo – part of Cuba in name only, but for all practical purposes, a US territory. Notably, the treaty allowed Russia to keep up to 25,000 troops there, which would play a role in the 2014 Russian takeover.

XII.

The Budapest Memorandum

The cornerstone treaty by which Russia, together with other countries, recognized Ukraine's post-Soviet borders and promised to honor them was the 1994 Budapest Memorandum on Security Assurances, signed in Hungary on December 5, 1994 by the United States, Russia, and the United Kingdom. The Memorandum, a 1994 agreement between the three nuclear powers, stipulated that the signatories would respect Ukrainian sovereignty and borders in exchange for the country giving up the Soviet-era nuclear weapons then stationed on its territory. Unfortunately, the document was more of an "executive agreement" between the leaders of the four nations, rather than a binding treaty, meaning it does not specify how to enforce it. The main problem with the Memorandum was that the signatories had no obligations vis-à-vis one another to respect the sovereignty of Ukraine. One party could violate the provisions, which Russia did in 2014, without anyone else being required to respond. In the most extreme case, it promised that the parties would seek UN mediation. The document stated that the signatories agreed to recognize the existing borders of Ukraine in return for Ukraine giving up its nuclear stockpile. The three powers agreed to the following:

1. Respect Ukrainian independence and sovereignty within its existing borders.
2. Refrain from the threat or use of force against Ukraine.

3. Refrain from using economic pressure on Ukraine in order to influence its politics.
4. Seek immediate United Nations Security Council action to provide assistance to Ukraine, “if Ukraine should become a victim of an act of aggression or an object of a threat of aggression in which nuclear weapons are used.”
5. Refrain from the use of nuclear arms against Ukraine.
6. Consult with one another if questions arise regarding these commitments.

There are several problems with this strange and contradictory document. It was not supposed to be ratified by any of the signatories, meaning it does not obligate them to do anything about it. It does not specify the “assurances” it provides, yet clearly states that they fall short of providing military intervention to ensure the integrity of Ukraine’s borders.

The very fact of Ukraine ever being a nuclear power in the first place is questionable. It is true that Ukraine had (ex-Soviet) nuclear silos on its territory, but the Ukrainian authorities had neither operational control over them, nor the capability to launch the missiles inside those silos. These weapons were operated by Russian (ex-Soviet) military personnel answerable to Moscow, who did not take orders from the newly minted Kiev government. “And when Ukraine publicly suggested it might seek operational control, Russia made clear this would constitute an act of war.”²¹

The Budapest Memorandum is now frequently cited throughout as a proof of Russia’s duplicity and untrustworthiness. Except Ukraine, together with Belarus and

²¹ Philipp C. Bleek, “Security Guarantees and Allied Nuclear Proliferation,” *Journal of Conflict Resolution* 58, no. 3 (April 2014): 429.

Kazakhstan, really had little choice in signing the paper. The problem is that this agreement was preceded by a far more important document, which much of the world agreed to abide by: the 1968 Treaty on the Non-Proliferation of Nuclear Weapons, to which 189 countries acceded. To muscle one's way into the "Nuclear Club" would be extremely difficult for the newly independent Ukraine seeking friendship with the West. Evidently, the West not only did not want a nuclear Ukraine, but did everything to bring her into the non-proliferation fold. In fact, the Memorandum itself was devised as a fast track political solution to remove these weapons from Ukrainian territory as quickly as possible. However, Ukraine was never a nuclear power because it never had possessed operational control (launch codes) over the nuclear weapons stationed on its territory.

It's imperative was how best to pressure Ukraine into prompt ratification of the START I Treaty, with the dismantling of all remaining Ukrainian nuclear weapons and an accession to the Nonproliferation Treaty soon to follow.²²

As with the Treaty of Versailles, although President Clinton himself signed the Budapest Memorandum,²³ the United States Congress never ratified it, therefore the United States does not feel obligated to do anything about it. In that sense, the Memorandum was more of a cover for the obvious reality that no new members of the "nuclear club" would be welcomed.

Yet all this does not change the fact that Russia signed the agreement and then broke it. The Budapest Memorandum might not specify how to enforce it, but it is still a legal document that the signatories have agreed to adhere to. If Russia did not see

²² Dobriansky, "Ukraine," 71.

²³ Joshua Keating, "So Much for the Budapest Memorandum," *Slate*, March 19, 2014.

Ukraine's borders as settled back in the 1990s, then Moscow had no business promising to recognize them back then.

XIII.

The Economic Split

After over two decades of independence, Ukraine remained deeply divided; it was a nation with substantial cultural, linguistic, and religious differences between East and West,²⁴ which created differences in the politics of the two halves of the country. Not only had the two parts spoken different languages, they also voted differently. In the East, communists and the pro-Russian Party of Regions, representing interests of the heavy industry dominated. Monuments to Lenin and the Red Army remained, Soviet holidays still celebrated. In the West, the pro-EU, pro-NATO sentiment was predominant. Monuments to the anti-Soviet resistance were being built, and ultra-nationalist rallies held. So big was the divide that some extreme voices on both sides were calling for splitting the country.²⁵ Adding to the problem was the poor performance of Ukrainian economy, which made the two parts drift apart politically even further:

That the economic crisis has contributed to growing regionalism and polarization is clear from the preliminary composition of the new Rada. The center-right Ukraina Democratic Coalition, predominantly Kiev- and Western-based, favors Ukraine's integration into European economic structures and the maintenance of a unitary state; the center-left Interregional Bloc for Reforms, mostly based in south and eastern Ukraine, advocates

²⁴ Gwendolyn Sasse, "The New Ukraine: A State of Regions," *Regional & Federal Studies* 11, no. 3 (2001): 69. Taylor and Francis Online. Published online 8 September 2010.
<http://www.tandfonline.com/doi/abs/10.1080/714004704?journalCode=frfs20#preview>.

²⁵ Rudling, "Memories," 254, Uilleam Blacker, "One Country?" *Times Literary Supplement*, May 9, 2014, 14.

Ukraine's full entry into the CIS' economic union and supports federal restructuring. The results of the referenda held in both Eastern Ukraine (on integration in the CIS economic union) and in Crimea (on autonomy from Kiev) flow largely from the population's discontent with current economic conditions and the Ukrainian leadership's inaction.²⁶

Compounding the problem of the East/West split is the economic division, not unlike the one facing the United States in the run-up to the Civil War, with half the country having a predominantly agricultural economy which favored free trade with Europe, and the other half with a predominantly industrial economy demanding protectionism. The coal-rich Eastern Ukraine began industrializing in the nineteenth century and even more rapidly in the 1930s, while the economy of the Western part, as part of Poland, remained predominantly agricultural. Because of this discrepancy, the industrialized regions contributed disproportionately to the country's GDP since independence, so that the industrial pro-Russian East of the country has been effectively subsidizing the agricultural anti-Russian West.

The oft-repeated stereotype is that Ukraine, like much of Europe is heavily dependent on Russia for its supply of natural gas. What is rarely mentioned is the fact that Ukraine does in fact produce some gas and oil of its own. The problem is that much of the energy supplied by Russia is in fact used for *industrial* purposes by the factories in the East, which then sell their products back to Russia. "Another key Soviet legacy was the extreme interdependence between Ukrainian-based enterprises and factories spread throughout the former Soviet Union."²⁷ Eastern industries were thus more economically integrated into Russia than Ukraine's own Western half. In this economic loop, the

²⁶ Dobriansky, "Ukraine," 70.

²⁷ Ibid., 70.

Western part of the country, with its European aspirations, was seen as a nuisance.²⁸

These discrepancies caused not only economic “regionalism” which deepened the split between different parts of the country, but threatened to distance them from the center:

“Each region now seeks its economic fortune independently and threatens to marginalize the role of the central government in Kiev.”²⁹ And politics was the product of economics.

Ukrainian factories are long accustomed to subsidized energy supplies. Politically, it has been difficult for [then president] Kravchuk and his Kiev-based colleagues to move against powerful regional economic interests, especially in Russian-speaking eastern Ukraine which has traditionally enjoyed a close relationship with the neighboring Russian provinces.³⁰

In late 2013, probably hoping to repeat the success of the 2004 Orange Revolution, which had resulted in a pro-Western president, Victor Yushchenko, elected in a close election marred by widespread vote-rigging and fraud, crowds of protesters came together on the Independence Square (Maidan) of Ukraine’s capital, Kiev, and began a series of protests opposing what the protesters believed were pro-Russian policies of the current Ukrainian administration. The president of Ukraine, Victor Yanukovich, was a leader by this time deeply unpopular with the people, yet democratically elected.

The economic dilemma was this: if Ukraine were to enter some sort of free-trade agreement with Europe, the factories in the East of the country would go bankrupt,

²⁸ Richard Connolly, “A Divided Ukraine Could See Two Radically Different States Emerge” *The Conversation*. March 3, 2014. <http://theconversation.com/a-divided-ukraine-could-see-two-radically-different-states-emerge-23946>.

²⁹ Rumer, “Eurasia Letter,” 132.

³⁰ Dobriansky, “Ukraine,” 70.

effectively ceasing the need for Russian energy sources (and hitting Russian energy-exporting giants below the belt.) This would be a perfect solution to the country's problems of energy dependence on Russia, that is, if one does not mind millions of people in East Ukraine losing their livelihood, which depends on these factories.³¹

The president's alleged Russian sympathies triggered the reaction of some Ukrainians who saw this as betrayal and contrary to Ukraine's economic interests. An initially peaceful protest soon turned violent, with both the protesters and the government accusing each other of using snipers. Scores of people were killed on both sides. In February 2014, after the discontent welled up and casualties grew, Yanukovich fled the country, and soon after, the Parliamentary majority voted for his removal (bypassing the constitutional impeachment procedures).³² Replacing the former president was a provisional government whose members were heavily representative of the western, Ukrainian-speaking regions of the country.³³ After seizing power, the radicals in the Rada influenced the parliament to overturn the 2012 Law on Regional Languages, which had granted Russian, together with other minority languages (Hungarian, Moldovan, Romanian) regional status in the areas where such languages were in use up to a specified level. This the parliament duly revoked, albeit with a slim majority (232 votes against the

³¹ Shaun Walker, "Ukraine: Tale of Two Nations for Country Locked in Struggle over Whether to Face East or West," *The Guardian*, December 14, 2013.

³² William E. Pomeranz, "The Best Role for Kiev Provisional Government? Exiting," Reuters. May 19, 2014.

³³ Greg Rose, "Ukrainian Ultra-Rightists Given Major Cabinet Posts in Government," *People's World*, February 28, 2014.

required minimum of 226.)³⁴ In fact, this was the very first action of the parliament under the new administration.

Revocation of the law resulted in a backlash. Seeing this as an encroachment on their liberties, the Russian-speaking eastern and southern areas of the country erupted in a series of their own, often violent protests against the new government. Mindful of the danger of the brewing conflict, the acting President Oleksandr Turchynov vetoed the action just five days later, but it was too late. In Crimea, a cascade of events culminated in the outright declaration of independence from Ukraine.

³⁴ *ITAR-TASS*, “Ukraine’s Parliament-Appointed Acting President Says Language Law to Stay Effective,” March 1, 2014.

XIV.

2014

With the political chaos in Kiev following the Maidan Revolution, the pro-Russian forces in Crimea decided to act, and organized a third referendum. The full content of the ballots was publicized just ten days before the actual referendum, although details had been discussed earlier. The ballot gave the voters two options:

Choice 1: Do you support the reunification of Crimea with Russia with all the rights of the federal subject of the Russian Federation?

Choice 2: Do you support the restoration of the Constitution of the Republic of Crimea in 1992 and the status of the Crimea as part of Ukraine?

Notably, the ballot did not offer the choice of staying part of Ukraine without an autonomy. From the Crimean point of view, the second option did not question Ukraine's sovereignty over the peninsula, but rather would overturn the earlier decision of the Kiev government to squash the autonomous republic's constitution – the vote simply restored what the people had already voted for two decades prior. Thus, contrary to the established view in the West, the 2014 referendum clearly allowed the voters a choice to remain part of Ukraine. Some observers questioned whether voting for the second option in fact meant remaining with Ukraine, since the original version of the 1992 constitution granted the “Crimean Autonomous Republic” such options as the right to establish diplomatic relations with other countries – a privilege usually exercised by sovereign nations. If so,

the referendum was meaningless, because it did not offer voters any real choice in remaining with Ukraine. According to John Balouziyeh “the only available choices to those who participated in the referendum were to either join Russia as a federal subject or restore the 1992 Crimean constitution, which would grant greater powers to the Crimean parliament including the power to establish relations with other states.”³⁵

The majority chose union with Russia, although with numerous reports of vote falsification. The question remains as to how fair the referendum really was. “The referendum was rushed and conducted under great pressure, having been concluded in two weeks’ time. In addition, there is evidence that the 97.5% of voters that Russia initially claimed opted for secession did not accurately reflect voter turnout. Besides irregularities such as a 123% turnout in Sevastopol, a sizeable Crimean Tatar minority boycotted the vote.

Sevastopol City Council decided to participate in the March 16 referendum with an extra question added to the ballot:

“Shall the city of Sevastopol join the Russian Federation as a subject of the Russian Federation?”

Earlier, the City Council had declared the city to be independent of Ukraine in a joint resolution with the Supreme Council of Crimea on March 11, 2014.³⁶

As for the Tatar minority, the leaders of their organizations were quick to side with Ukraine. “The spokespersons of the Crimean Tatars declared that their ethnic group

³⁵ John Balouziyeh. “Russia’s Annexation of Crimea: An Analysis under the Principles of Jus ad Bellum.” *LexusNexus*, 14 April 2014.

³⁶ Zadorozhny, “Comparative Characteristic,” 4.

had boycotted the referendum of 16 March, and announced that they sought to hold a referendum on their ‘political autonomy’ within Crimea.”³⁷ Thus the Tatars’ position could be described as cautiously pro-Ukrainian.

The Independent Republic of Crimea existed for only one day. On March 17, the “republic” appealed to become part of the Russian Federation. Apart from the cultural affinity, there was also a clear economic benefit – with the per capita income in Russia being three times higher than in Ukraine,³⁸ switching loyalty would boost the region financially. Still, behind the application were not only the ethnic or economic reasons; there was also a security concern about Ukraine trying to reattach the peninsula by force if Crimeans did not immediately appeal to Russian protection. Had they not, they surely would have experienced the fate of Donetsk and Luhansk regions in Eastern Ukraine, which also declared their independence, but never applied to join Russia. In the case of the Donbas regions, the Kiev government responded with force and the result was a still-ongoing war that devastated the area and cost thousands of lives.

Most available media sources suggest that the vast majority of people living in Crimea itself are supportive of the Russian annexation. Notably, an anonymous telephone survey conducted in January of 2015 by a Ukrainian political scientist Taras Berezovets with the help of a German market research group GfK, found that “Eighty-two percent of

³⁷ Anne Peters. “The Crimean Vote of March 2014 as an Abuse of the Institution of the Territorial Referendum.” Social Science Research Project. July 8, 2014. http://papers.ssrn.com/sol3/Papers.cfm?abstract_id=2463536.

³⁸ World Bank. GDP Per Capita (Current US\$.) <http://data.worldbank.org/indicator/NY.GDP.PCAP.CD>.

those polled said they fully supported Crimea's inclusion in Russia, and another 11 percent expressed partial support. Only 4 percent spoke out against it.”³⁹

³⁹ Leonid Bershidsky, “One Year Later, Crimeans Prefer Russia,” *Bloomberg View*. February 6, 2015. <http://www.bloombergtview.com/articles/2015-02-06/one-year-later-crimeans-prefer-russia?cmpid=yhoo>.

XV.

Timeline of Events

The timeline of events in the twenty-three years leading to the peninsula's annexation by Russia is as follows:

Date	Action	Notes
February 19, 1954	Presidium of the Supreme Soviet issued a decree that transferred the Crimean Oblast from the Russian Soviet Federative Socialist Republic to the Ukrainian Soviet Socialist Republic.	The reason for the transfer, as stated in the decree, was "the integral character of the economy, the territorial proximity and the close economic and cultural ties between the Crimea Province and the Ukrainian SSR."
January 20, 1991	Referendum to become autonomous republic	
February 12, 1991	Crimean Autonomous republic (ASSR) created	Autonomous status allowed independence from Ukraine.
December 26, 1991	USSR dissolves	Ukraine becomes independent
February 26, 1992	Crimean parliament renamed the ASSR the Republic of Crimea	
May 5, 1992	Supreme Soviet of Crimea declares independence, conditional depending on the results of a later referendum	Ukraine's parliament issues Crimea a deadline until May 20 to rescind independence
May 19, 1992	Crimea agreed to remain part of Ukraine and annulled its proclamation of self-government	"Independence" option dropped from the referendum ballot three days later
October 14, 1993	Post of the President of Crimea established	
January 30, 1994	Yuriy Meshkov elected President of Crimea	Assumes office February 16
March 27, 1994	Crimean autonomy referendum proceeds (without the "independence" option)	Voters were asked whether they were in favor of greater autonomy within Ukraine, whether residents should have

		dual Russian and Ukrainian citizenship, and whether presidential decrees should have the status of laws. All three proposals were approved.
December 5, 1994	Russia, US, and the UK sign the Budapest Memorandum on Security Assurances	The signatories agreed to recognize the existing borders of Ukraine in return for Ukraine giving up its nuclear stockpile.
March 17, 1995	Ukraine's Verkhovna Rada abolishes the May 1992 Crimean Constitution (and the post of President of Crimea)	Meshkov flees to Russia
June – September, 1995	Ukrainian President Leonid Kuchma governs Crimea under a direct presidential administration decree	
October 1995	The Crimean parliament adopts a new Constitution	Not recognized by the national (Ukrainian) authorities until April 1996 when significant amendments were suggested
May 28, 1997	Russia and Ukraine reach an agreement on dividing the Black Sea Fleet between the two countries	The agreement includes a provision on Russia recognizing Ukraine's existing borders
October 21, 1998	A fifth draft law of the October 1995 constitution was ratified at the second session of the Crimean parliament	Constitution confirmed December 23, 1998
March 16, 2014	Crimean independence referendum is held; results in the unilateral secession the next day	Crimean parliament requests to join Russia March 17. Request approved the next day.

XVI.

Opinions on Crimean Independence

From the Crimeans' point of view, if Ukraine itself could legally secede from the Soviet Union twenty four years ago, why cannot a territory secede from Ukraine itself? Crimeans are also mindful of the fact that the West has dismembered Serbia by force two decades ago, guaranteeing an ethnic Albanian minority its own state in Kosovo (which achieved actual independence in 2008.)

The Ukrainian side of the argument is clear: Crimea's independence and subsequent annexation by Russia was a case of conquest, pure and simple, a blatant violation of international norms. Although pro-Russian elements have always had a strong presence in Ukrainian politics since independence, they were never dominant enough to split the country, at least until recently. It is worth noting that the referendums of 1991 and 1994 in Crimea demanded a greater autonomy from Kiev, rather than outright independence. The clear majority of Crimeans voted for Ukraine's independence from USSR in the 1991 referendum (albeit with the smallest margin among the country's twenty-five regions). This fact means that Crimea willingly joined Ukraine in becoming independent from the Soviet Union.

Brookings Senior Fellow Fiona Hill argued that Putin's current policies toward Ukraine were really a continuation of those of his predecessor, Boris Yeltsin, who had proclaimed the right of Russia to influence the internal politics of the former Soviet

republics (what Moscow has termed “the Near Abroad”) – the claim which Putin’s administration often continues to repeat. “Yeltsin was hobbled by economic crisis, domestic political turmoil, and secessionist conflicts at home, and never able to mount a major Russian military intervention.”⁴⁰ Putin does not face the same problems.

When the Soviet Union was falling apart because of sovereignty aspirations of its various ethnic groups, and the world recognized their right to self-determination, they let a very dangerous genie out of the bottle – ethnic nationalism. There were fifteen constituent republics, but over a hundred ethnic groups living in USSR. Who’s to decide which ethnic groups have a right to self-determination, and which ones don’t? There does not seem to be an objective answer to this question. In the midst of the Sudetenland Crisis in 1938, a Cambridge linguist and an ardent opponent of appeasement, F. L. Lucas, opined thus:

Many honest folk feel it hard to deny the Sudetens self-determination, if they want to belong to the Reich. But then, can we deny it to the Czech areas among the Sudetens? Then what about Sudeten pockets in the Czech areas? Self-determination must stop somewhere. In politics, as in physics, you come to a point where you cannot go on splitting things. You cannot have self-determination by villages.⁴¹

Lea Brilmayer of *the Guardian*, on the other hand, argues that Russia’s action regarding the peninsula is not so much in contradiction to the international law, but rather “is based on an outdated theory of secession.” Citing the example of Yugoslavia,

⁴⁰ Fiona Hill, “Back in the USSR: Past Russian Policies Provide Mr. Putin’s Playbook in Ukraine,” *News, Belfer Center for Science and International Affairs, Harvard Kennedy School*, March 18, 2014.

⁴¹ F. L. Lucas, A letter to the *Manchester Guardian*, September 15, 1938. <http://hccheungharold.wix.com/ahistoryofhistory#!The-limits-of-selfdetermination-for-racial-minorities/c2011/FADE7319-76D1-46FF-94CE-A171AAB3A9B5>.

Brilmayer presents national self-determination as a recipe for greater ethnic conflict rather than a solution to it: “Using principles of self-determination to justify imposing ethnic homogeneity has resulted in genocide and ethnic cleansing.”⁴²

Charles Krauthammer brings forth the argument that, whatever the desires of the people living in Crimea, they are not enough to re-arrange the borders of a sovereign state, i.e. Ukraine. Sovereignty trumps people’s aspirations, even if these people have become part of that state only recently and against their will.

It is not all that clear why Crimea should belong to Ukraine in the first place. The substantial majority of the population is ethnically, linguistically, and religiously Russian. The majority of its population probably prefers to be ruled from Moscow rather than Kiev. ...

So why Ukrainian sovereignty over Crimea? The answer: Nikita Khrushchev’s caprice. In 1954, the first secretary of the Central Committee detached Crimea from the Russian Soviet Socialist Republic and gave it to the Ukrainian Soviet Socialist Republic. He did not consult the Crimeans, but it did not much matter, as everyone was ruled from the Kremlin anyway. From that moment on, official internal Soviet borders included Crimea in Ukraine.

Thus, all Ukraine has for its claim of title to Crimea is a dead dictator’s whim. But for international law, that is more than enough.⁴³

Thus, even a democratic vote is not enough to reverse the decision of a bygone authoritarian government.

The chorus of condemnation was far from unanimous, however.⁴⁴ Notably, the

⁴² Lea Brilmayer, “Why the Crimean Referendum Is Illegal,” *The Guardian*. March 14, 2014.

⁴³ Eugene Kontorovich, “Crimea, International Law, and the West Bank,” *Commentary*, June 1, 2014.

⁴⁴ John J. Mearsheimer, “Why the Ukraine Crisis Is the West’s Fault: The Liberal Delusions That Provoked Putin,” *Foreign Affairs* 93, no. 5 (September/October 2014): 77–93, <https://www.foreignaffairs.com/articles/russia-fsu/2014-08-18/why-ukraine-crisis-west-s-fault>.

older veterans of US foreign policy, like Henry Kissinger⁴⁵ and Zbigniew Brzezinski,⁴⁶ were more reserved in their judgment on Ukraine, with the latter suggesting “Finlandization” of the country as a neutral alternative between Russia and NATO.⁴⁷ Jack Matlock, who had served as the American ambassador to the Soviet Union in 1987-1991 was even more blunt in his assessment, calling US a “bully” in its treatment of Russia.⁴⁸ Not that Russia’s recent actions regarding it’s “near abroad” could not be predicted. The millions of Russians who ended up living in foreign countries overnight were not only a cause of ethnic tensions, and as Eugene Rumer had predicted, they were bound to emerge as a political card within Russia itself, becoming the “determining factor in any decisions by Moscow on a military intervention.” “Even if it wanted to, Russia cannot simply shake off responsibility for their welfare, *whatever the position may be in international law* [emphasis is mine.]”⁴⁹ And in the Crimea case, some in the West warned over twenty

⁴⁵ Henry A. Kissinger, “Henry Kissinger: To Settle the Ukraine Crisis, Start at the End,” *Washington Post*, March 5, 2014.

⁴⁶ Zbigniew Brzezinski, “Zbigniew Brzezinski on ISIS, Ukraine, and the Future of American Power,” *MSNBC*, September 10, 2014. <http://www.msnbc.com/msnbc/zbigniew-brzezinski-isis-ukraine-and-the-future-american-power>.

⁴⁷ Terry Atlas, “Brzezinski Sees Finlandization of Ukraine as Deal Maker,” *Bloomberg*, April 12, 2014.

⁴⁸ Jack F. Matlock Jr., “Who Is the Bully? The U.S. Has Treated Russia Like a Loser since the End of the Cold War,” *Washington Post*, March 14, 2014.

⁴⁹ Hyman, “Russians Outside Russia,” 205.

years prior, that the conflict in this land was almost inevitable: “there may be no alternative to Russian intervention in the event of a conflict in Crimea.”⁵⁰

⁵⁰ Rumer, “Eurasia Letter,” 144.

XVII.

Precedents

The incident that may have very well set the legal confusion in motion toward Crimea was the separation of the province of Kosovo, populated mainly by Kosovar Albanians, from effective Serbian control in 1999, and its subsequent declaration of independence in 2008. The separation was achieved only after a prolonged bombing of Serbia by NATO air forces. The action did not receive UN approval; it was effectively carried out at gunpoint by Western governments. The region's early years of independence were largely guaranteed through the presence of the Kosovo Force (KFOR) on its territory – consisting of NATO and EU troops.

According to Chrizella Herzog of the *Diplomatic Courier*, “at the heart of this question over Russia's actions is a conflict between two of some of the most important tenets of international law in the modern era: the right of self-determination, and the protection of territorial integrity:

In 1998, NATO forces, led by the U.S., intervened in the former Yugoslavia to save Kosovo from ethnic cleansing by Serbian troops and paramilitaries. NATO did not have UN authorization for the intervention, nor for a while did it have any kind of justification under international law for its actions. Only later was a justification named, stating that the action was “illegal but legitimate” because of its urgent humanitarian purpose. This led to the creation of an exception to the use-of-force restrictions under the UN Charter that permits humanitarian military interventions without UN authorization in cases of urgent and mass human rights violations.⁵¹

⁵¹ Chrisella Herzog, “Political Legitimacy and International Law in Crimea: Pushing the U.S. and Russia Apart,” *Diplomatic Courier*, May 8, 2014.

And it was Putin who called the action “illegal, ill-conceived and immoral” while Sergei Ivanov, Russia’s first deputy prime minister at the time, warned that recognition of an independent Kosovo by European governments would open a “Pandora's box” of hundreds of territories throughout the world seeking independence. According to Putin, “Kosovo precedent was a terrible precedent, and that, in fact, it broke the whole system of international relations, developed not even during a decade, but over the centuries.”⁵²

The document has been passed over the heads of the UN Security Council and contrary to our persistent recommendations to have it discussed at the Security Council and approved by relevant resolutions. We have repeatedly expressed our opposition to the holding of the general elections in Kosovo scheduled for November 17 this year. With more than 300,000 non-Albanian citizens expelled from the province their outcome may be practically annulled. In practice, it would lead to legalisation of ethnic cleansing. Let me stress that Russia does not object to elections in general. We favour elections. But we favour fair elections with the participation of all the groups of the population living in this area.⁵³

The question remains, is the Kosovo “precedent” valid in the case of Crimea, as well as in other cases of regions striving for independence, and whether it is even a precedent. The answer, again, depends on how you look at it, and who does the looking. Given that there are literally hundreds of regions, tribes, and ethnic and religious groups on the planet aspiring to sovereign statehood, the question looms large, but there is no clear-cut solution. Taiwan, for example, has enjoyed a *de facto* sovereign status for

<http://www.diplomaticourier.com/political-legitimacy-and-international-law-in-crimea-pushing-the-u-s-and-russia-apart/>

⁵² Zadorozhny, “Comparative Characteristic,” 8.

⁵³ Vladimir Putin, “Speech to the Russian Military Contingent of the International Peace-Keeping Force in Kosovo” President of Russia. Last modified June 17, 2001. Accessed May 31, 2016. <http://eng.kremlin.ru/transcripts/9004>.

decades and diplomatic relations with twenty-three nations, yet it's not a member of the UN and not an independent nation in the full meaning of the term. According to Judy Fu of the *New Statesman*:

All in all, did Kosovo open a Pandora's Box of unilateral declarations of independence? All things considered, no. However, if the international community intends to keep the floodgates of secessionist movements closed, it would do well to learn from Abkhazia and South Ossetia. The international community must move away from black-and-white conceptions of statehood – the choice is not between independence and territorial integrity. Dare we say, the choice should be to think a little outside the box.⁵⁴

René Värk argues that, again, although Russia's actions in Crimea stretch the norms of international law, the ghost of Kosovo has come to haunt Western policy makers:

Is Kosovo a precedent? The Western States tried to argue that Kosovo is a special case and does not count as a precedent. But this is a fragile and dangerous argument, both politically and legally. What makes the Kosovo case so special that it is not usable as a guiding example vis-à-vis other people? What is the message to Kurds, Tibetans and Western Saharans? That you are not special enough, you are ordinary and do not deserve self-determination? Let us say that Kosovo is not a problem-free case, including the NATO bombing campaign in spring 1999.⁵⁵

William W. Burke-White of the University of Pennsylvania Law School adds that:

while in 1999 the US was able to control the interpretation and enforcement of international law to secure Kosovo's independence without legal consequence, Washington finds itself in 2014 unable to fully counteract Moscow's legal argument that its support for, and ultimate annexation of, Crimea is equally grounded in international law. Russia's ability to exploit the legal ambiguities shared by Crimea and Kosovo arises in large part because of the inherent tension between two oft conflicting principles that have been at the heart of the international legal and political systems since 1945. The first

⁵⁴ Judy Fu, "Did Kosovo Open Up a Pandora's Box?" *New Statesman*, September 15, 2008.

⁵⁵ René Värk, "The Incorporation of Crimea into Russia: Legal Perspective," *Diplomaatia*. No. 128 (April 2014). <http://www.diplomaatia.ee/en/article/the-incorporation-of-crimea-into-russia-legal-perspective/>.

of these principles is that countries cannot use force against one another and, particularly, cannot secure territorial gains through the use of force.⁵⁶

Lawrence A. Howard of *The New English Review* compares the Russian intervention in Crimea to US interventions in both Kosovo and Bosnia, and argues that the latter two involved much more tampering with the local politics and elections by outside force.

At this writing, the best authority on whether a group or province within an existing state has a right under international law to self-determine it is the advisory opinion of the International Court of Justice as to the *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*. In that opinion, the court evaded the issue of whether the right of self-determination confers upon a population of an existing state the right to secede. It however found that international law did not generally prohibit declarations of independence.⁵⁷

No matter how one looks at the Crimean situation, the parallels with Kosovo are inescapable. By citing the independence of Kosovo, Putin and his diplomats, rightly or wrongly, have managed to turn the tables on the West and come up with a convincing legal explanation for Russia's own foreign policies. Howard argues that actually, America's own position until February 1992 was to support other states' territorial integrity, but this view changed 180 degrees when Yugoslavia broke up, and supporting "self-determination" came into vogue. As for Russia's recognition of Crimean independence being too hasty, "The quick time recognition by the United States of Kosovo's independence within 24 hours of that secessionist move doesn't support the

⁵⁶ William W. Burke-White, "Crimea and the International Legal Order," University of Pennsylvania Law School (2014). Faculty Scholarship. Paper 1360.

⁵⁷ Howard, "The Historical, Legal, and Political Contexts."

spirit of the Helsinki Final Act, and conjures up the similarly quick recognition of the new state of Panama by the administration of Theodore Roosevelt.”⁵⁸

Can a region of one country peacefully and legally secede and become part of another country? The answer is, it depends. Just what are the examples of such land transfers? In the case of the dissolution of Czechoslovakia (The “Velvet Divorce”) – the split was accomplished without consent of the people of either country; no referendum of any kind on this issue was ever held.⁵⁹ “According to polls, the majority did not want to split up, and also did want a referendum on this question.”⁶⁰ According to contemporary polls, only about a third of the people in either republic favored dissolution. In the end, many experienced the “phantom limb effect.”

A much more bloody and drawn out affair was the breakup of Yugoslavia in the early nineteen nineties. Perhaps the bloodiest breakup of them all – the partitioning of India in the last days of the British rule, and the creation of Pakistan (which itself would later get partitioned to give birth to Bangladesh) involved borders drawn at at neck-breaking speed, and ethnic strife that caused millions of deaths. To the above examples may be added several other, still ongoing debates over the Catalan independence in Spain, or the division of Belgium into the Dutch- and French-speaking halves, or

⁵⁸ Howard, “The Historical, Legal, and Political Contexts.”

⁵⁹ Baogang He, “Referenda as a Solution to the National-Identity/Boundary Question: An Empirical Critique of the Theoretical Literature,” *Alternatives: Global, Local, Political* 27, no. 1 (January-March 2002): 80.

⁶⁰ Peters, “The Crimean Vote.”

independence of Scotland from the United Kingdom, but they are beyond the scope of this research.

XVIII.

The Legal Aspects

One could find a list of peaceful land transfers throughout recent history, some peaceful, some not, yet conducted with the will of the majority of people living on that land. After all of the above examples of independence achieved, we come to the the most telling example of all – namely, Ukraine itself becoming independent from USSR in 1991. Which brings us to the crux of the current problem: having voted for its own independence from Moscow’s rule back in 1991, and given an opportunity to become independent without a shot fired, Ukraine has no moral right to prevent others from seeking independence from itself. “For example, if Crimea successfully gained independence from Ukraine, which originally separated from Russia, this can be seen as an example of second-order secession.”⁶¹

After examining these aspects, a conclusion may be drawn that, as far as the international law goes, Ukraine may be in the right *legally*, or at least has more rights to Crimea than Russia. As far as the will of the people actually living there is concerned, it came into the Russian possession *because the overwhelming majority of Crimeans wanted so*. Every opinion poll conducted on the peninsula supports this. Unfortunately for “overwhelming majorities,” they do not constitute the United Nations and do not have authority to draw nations’ borders.

⁶¹ He, “Referenda as a Solution,” 89.

Losers do not have the chance to win back through election. And a minority has no chance to rule in a multinational state. People have no right to “renew” their contract with the constitution, nor do they have the right to redefine national boundaries.⁶²

All of which raises a question: was the Crimean referendum on independence legal? The answer is again: it depends.

“The answer depends on what your perspective is,” said David Rothkopf, editor of *Foreign Policy* magazine. “The U.S. is buying into the argument of the Ukraine government, which is that the secession of Crimea from Ukraine is not constitutional under the terms of the Ukrainian constitution,” Rothkopf said. “The alternative argument is that all peoples have a right of self-determination and that if the people of Crimea choose not to be part of Ukraine, that is their prerogative in the same way that it was the choice of colonial powers to break away from the imperial powers that claimed them or parts of the former Yugoslavia were free to head off on their own,” he added.⁶³

To begin with, for a secession to be legal, the laws of the mother country must allow it. Most countries’ laws do not permit it. Natalia Cwicinskaja of the Adam Mickiewicz University notes that “the prohibition in the Constitution of Ukraine against holding a referendum on secession is not contrary to international law. The majority of the world’s sovereign states do not recognize any right of secession in their constitutions.”⁶⁴ Even in those states that allow it, becoming independent is normally held to legally require the consent of the parent state. John Balouziyeh argues that “the Ukrainian Constitution does not contemplate the secession of territories, and where referendums are contemplated, they must be organized on a national, not regional, level.

⁶² He, “Referenda as a Solution,” 89.

⁶³ Halimah Abdullah. “Crimea’s Vote: Was It legal?” *CNN*. March 19, 2014. <http://www.cnn.com/2014/03/17/world/europe/ukraine-vote-legality/>.

⁶⁴ Natalia Cwicinskaja, “The Legality and Certain Legal Consequences of the ‘Accession’ of Crimea to the Russian Federation,” *Polish Yearbook of International Law* 34 (2014): 67.

The Crimea referendum therefore lacks a proper Ukrainian legal basis.”⁶⁵ Meaning, even legally, Crimea could never hope to separate itself from Ukraine as long as the majority of Ukrainians voted against such action. America’s own Revolutionary and Civil War experience proves that a drive for independence can be a bloody affair without a guarantee of success, even though in the latter case, US constitution neither allows nor prohibits secession, therefore making the legal aspect of that issue moot. In Ukraine’s case, any threat to the country’s territorial integrity was met with government’s disapproval and hostility, and it acted again and again against the wishes of those who questioned it.

The opinion of legal experts on the issue varies. The *Cambridge Journal of International and Comparative Law* dances around the issue by stating that there is no *legal precedent* for a unilateral independence, such as with cases of Kosovo (successfully) separating itself from Serbia or Quebec (unsuccessfully) attempting to separate itself from Canada:

A right to unilateral secession can be defined as a right of a minority-people to separate a part of the territory of the parent State on the basis of that people’s right to self-determination. However, as it follows from the Declaration on Principles of International Law, the Kosovo Advisory Opinion (International Court of Justice) and the Quebec case (Supreme Court of Canada), in modern international law unilateral secession of “sub-states” is neither prohibited nor allowed.⁶⁶

⁶⁵ Balouziyeh, “Russia’s Annexation of Crimea.”

⁶⁶ Anna Stepanowa, “International Law and Legality of Secession in Crimea,” *Cambridge Journal of International and Comparative Law* 20 (April 2014). <http://cjl.org.uk/2014/04/20/international-law-legality-secession-crimea/>.

The author, a Ukrainian jurist Anna Stepanowa quotes the following circumstances in which a unilateral secession may be considered legal under the international law:

(1) it shall concern people in territories that are subject to decolonization; (2) it shall be envisaged by the national legislation of the parent state concerned; (3) the territory inhabited by a certain people should be occupied or annexed after 1945; (4) the secessionists shall be “a people”; (5) their parent state shall flagrantly violate their human rights and (6) no other effective remedies under national or international law may exist, if any of these conditions are met.⁶⁷

Although the author claims that none of the above apply in Crimea’s case, this is debatable. Crimea may not be a “colony” in the usual sense of the word, but it was conquered and “colonized” by the Russian Empire in the 1700s, just as the rest of the world was being colonized by European powers. Its territory is inhabited by “a certain people” whose land was transferred from Russia to Ukraine in 1954 without their assent, and then became part of an independent state in 1991. These “people” have no history of being part of Ukraine (itself a largely notional entity before 1991) before 1954 and repeatedly displayed their displeasure with being such. As for the issue of “human rights,” a lot depends on the question of the language laws mandated by the Ukrainian government.

Marc Weller of the University of Cambridge argues that the “international practice generally seeks to accommodate separatist demands within the existing territorial boundaries.”⁶⁸ The problem of course is that Crimea was not governed by “international practice” but by the Ukrainian government, which did not accommodate any “separatist

⁶⁷ Stepanowa, “International Law and Legality.”

⁶⁸ *BBC*, “Analysis.”

demands” of the people who live there. Anne Peters adds that even Ukraine’s own constitution is irrelevant in this case because “from an international law perspective, the constitutional admissibility or inadmissibility of the referendum is irrelevant.”⁶⁹ Meaning, even if secession were legal under Ukrainian law, it would still not be guaranteed.

Unlike many comparing the Crimea situation to that of Kosovo, Jure Vidmar of the *European Journal Cyprus* argues that it actually has more in common with Cyprus. The problem is not so much with a territory demanding independence, but with an outside power (Turkey in Northern Cyprus’ case, or Russia in Crimea’s) *assisting* with independence. The international law itself is actually neither here nor there of the subject. It falls on the other countries to recognize a newly independent land as a “nation” – which most countries are reluctant to do not to damage relations with the parent state and for fear of their own secessionist movements. Vidmar wrote:

Groups seeking independence usually present self-determination as an absolute entitlement. Conversely, states countering secession usually present territorial integrity as an absolute entitlement of states. Neither camp is right. As follows from the General Assembly’s Declaration on Principles of International Law (GA Res 2625), the Quebec case (Supreme Court of Canada) and partly also from the Kosovo Advisory Opinion (ICJ), international law is actually neutral on the question of unilateral secession.⁷⁰

James Crawford adds that “the position is that secession is neither legal nor illegal in international law, but a legally neutral act the consequences of which are regulated

⁶⁹ Peters, “The Crimean Vote.”

⁷⁰ Jure Vidmar, “Crimea’s Referendum and Secession: Why It Resembles Northern Cyprus More than Kosovo,” *European Journal Cyprus*, March 20, 2014. <http://www.ejiltalk.org/crimeas-referendum-and-secession-why-it-resembles-northern-cyprus-more-than-kosovo/>.

internationally”⁷¹ – meaning, international law may not have an opinion, but nations do. As Cwicinskaja puts it: “to take effect in international law, secession should be recognized by the international community.”⁷²

On the other hand, even where the right of secession is recognized by the mother country, it is not a given, even if the majority has voted for it in a democratic referendum. In case of Quebec, the Supreme Court of Canada ruled that a vote in favor simply compels the two sides to “negotiate” on the future status of the country; independence for separatists is not guaranteed. And the Canadian Parliament then adopted a “clarity bill” further constraining future referenda. Thus, even if every single person in the land voted to secede, it would still be illegal. Rebecca Lowe of the International Bar Association went as far as stating that the result of *any* referendum or the will of the Crimean people “doesn’t matter.”⁷³ Brilmayer adds that independence and annexation “cannot be justified by a referendum about the preferences of those who live in Crimea today.”⁷⁴

It’s a matter of international law: territory cannot be annexed simply because the people who happen to be living there today want to secede. If that were the case, then under international law, any geographically cohesive group could vote on independence. That would mean the Basques should be free from Spain and France, and the Kurds would have an independent nation; the large community of Cubans living in Miami could vote to separate from the United States.

If a referendum were the right way to decide these issues, Russia ought to be holding a referendum to determine the future of Chechnya. Of course, it isn’t.

⁷¹ James Crawford, *Creation of States in International Law*, 2nd ed. (Oxford: Clarendon Press, 2007), 140.

⁷² Cwicinskaja, “The Legality,” 71.

⁷³ Rebecca Lowe, “Ukraine: Clear Breaches of International Law in Crimea,” *International Bar Association*. 20 February 2015.

⁷⁴ Brilmayer, “Why the Crimean Referendum Is Illegal.”

International law is unambiguous on how countries should decide the fate of disputed territories like Crimea. Countries can acquire territory by discovering uninhabited land, signing a treaty – as with Khrushchev’s transfer of Crimea to Ukraine in 1954 – or occupying an area peacefully over a long period of time. The legal methods for resolving questions of sovereignty are founded on widely recognized principles of international law. These do not include, and have never included, a simple referendum of people living in a contested territory. That is why every successful secessionist movement has founded its claim on legal entitlement to the territory that they seek to “liberate”.

The fact that the Kurds have lived in a *de facto* independent nation since 1991 (regardless of what the Baker Commission has decreed on this subject) seems of no concern to Brilmayer. Or the fact that, unlike the 2014 Referendum, however flawed, Khrushchev’s transfer of Crimea from Russia to Ukraine was not a “treaty” in any normal sense of the word, but a decree of the communist government without any regard to the wishes of the people who lived there, and was not a “transfer” of the territory between two sovereign states, but rather two constituent regions of the same nation (the Soviet Union.)

The legal opinions can be summed up thus:

Source	Opinion on the referendum
Anna Stepanowa, <i>Cambridge Journal of International and Comparative Law</i>	Illegal although there is no precedent either way ⁷⁵
Marc Weller, University of Cambridge	Illegal because previously “Russia has clearly and unambiguously recognised [sic] Ukraine and its present borders” Crimean legislature has no authority to undermine Ukrainian law. ⁷⁶
David Rothkopf, <i>Foreign</i>	“Depends on your perspective” ⁷⁷

⁷⁵ Stepanowa, “International Law and Legality.”

⁷⁶ BBC, “Analysis.”

⁷⁷ Abdullah, “Crimea’s Vote.”

<i>Policy Magazine</i>	
Chrisella Herzog, <i>Diplomatic Courier</i>	Political legitimacy is in the eye of the beholder ⁷⁸
Stefan Soesanto, Center for Strategic and International Studies	May be legal because Ukraine’s interim government itself is illegitimate ⁷⁹
John Balouziyeh, <i>Lexis Nexis</i>	“arguably illegitimate” “lacks a proper Ukrainian legal basis” “international law has little to say as to the legality of political referendums for independence. The International Court of Justice, in its 2010 Advisory opinion on Kosovo’s declaration of independence, held that a unilateral declaration of independence is not a per se violation of international law.” ⁸⁰
OSCE High Commissioner on National Minorities	No opinion. “All decisions on essential issues, such as the status of Crimea, language policy or national minority policy, must be taken in dialogue with all parties and be consistent with international law” ⁸¹
William W. Burke- White, University of Pennsylvania Law School	“Russia is taking a card straight from America’s playbook.” “while in 1999 the US was able to control the interpretation and enforcement of international law to secure Kosovo’s independence without legal consequence, Washington finds itself in 2014 unable to fully counteract Moscow’s legal argument that its support for, and ultimate annexation of, Crimea is equally grounded in international law.” ⁸²
Euan Murray, <i>Academia.edu</i>	“a matter for debate” “even if Russia was advocating humanitarian intervention, it has no basis in either the United Nations Charter or customary international law, which would render the use of force incompatible with the UN Charter” “Although not expressly made legal by the UN Charter, it has come to be accepted that States may, in principle, use force within the territory of another State if they have received an invitation to do so.” “the Russian use of force in Crimea, although potentially legitimate, will not be in accordance

⁷⁸ Herzog, “Political Legitimacy.”

⁷⁹ Ibid.

⁸⁰ Balouziyeh, “Russia’s Annexation of Crimea.”

⁸¹ “Developing situation in Crimea alarming, says OSCE High Commissioner on National Minorities.” March 6, 2014.

⁸² Burke-White, “Crimea and the International Legal Order.”

	with self-defence and the UN Charter.” “whether Russia’s part in the Crimean Crisis actually constitutes aggression is questionable” ⁸³
<i>The Economist</i>	Neither here nor there. “International law does not recognise a right to secede per se, but it also steers clear of prohibiting unilateral declarations of independence. International legal bodies regard the result of successful break-ups the way friends see a separating couple: as two newly unlinked individuals, like it or not.” ⁸⁴
Lea Brilmayer, <i>The Guardian</i>	Illegal. “the referendum seems inconsistent with the Ukrainian constitution, which says all Ukrainians would have to vote on Crimea’s secession” “the Russian proposal is based on an outdated theory of secession” “Using principles of self-determination to justify imposing ethnic homogeneity has resulted in genocide and ethnic cleansing.” ⁸⁵
Rebecca Lowe, International Bar Association	Illegal. “no justification for the annexation of the province under international law” “It doesn’t matter what the result of the so-called referendum was, or what the will of the Crimean people may have been.” “Under the Ukraine Constitution it is possible for a region to seek self-determination, but only through a national referendum.” ⁸⁶
Himanil Raina, <i>International Policy Digest</i>	May be legal. “Article 12 of the Ukraine-Russia Friendship Treaty which specifically requires the protection of Russian origin ethnic minorities provides Moscow with some legal cover for its actions. Ukraine can block Crimean actions if they contravene Ukrainian law.” However, the legitimacy of Ukraine’s current authorities itself is in question. “There is no prohibition on unilateral declarations of independence as made clear by the International Court of Justice in its advisory opinion on Kosovo’s declaration of independence.” ⁸⁷

⁸³ Euan Murray, Academia.edu

⁸⁴ “Whither Secession in Crimea Would Be Legal,” *The Economist*, March 12, 2014.

⁸⁵ Brilmayer, “Why the Crimean Referendum is Illegal.”

⁸⁶ Rebecca Lowe, “Ukraine: Clear Breaches of International Law in Crimea,” *International Bar Association*, 20 February 2015.

⁸⁷ Himanil Raina, “Legal Questions of Russia’s Intervention in Ukraine,” *International Policy Digest*, 21 April 2014.

Ashley Deeks, <i>New Republic</i>	May be legal. “two recurrent themes in ‘use of force’ law: That many of its concepts remain malleable on paper, and that certain forcible actions fall within the core understandings of those concepts, such that most credible observers would agree that those actions violate international law.” ⁸⁸ Russia used force, but “using force” is not the same as “armed attack” – therefore Ukraine cannot play victim.
Anton Moiseienko, <i>Opinio Juris</i>	Illegal. “Russia’s annexation of Crimea raises serious questions of compliance with international law” ⁸⁹
Julian Ku, <i>Opinio Juris</i>	Neutral. “the ICJ found (among other things) that general international law does not prohibit unilateral declarations of independence” ⁹⁰
Robert McCorquodale, <i>Opinio Juris</i>	Illegal. “It is not unlawful for it to have a referendum and declare itself independent (or that it wishes to merge with Russia), as this was allowed by the International Court of Justice in its (poorly reasoned) advisory opinion on the declaration of independence by Kosovo. However, such a declaration of independence or merging is not effective in international law by itself.” “there can be no international legal effect of any independence or merger declaration that might arise from a referendum” ⁹¹
Benjamin J. Rhodes, President Obama’s deputy national security adviser	Probably illegal. “apples and oranges” “You can’t ignore the context that this is taking place days after the violation of Ukrainian sovereignty and territorial integrity. It’s not a permissive environment for people to make up their own minds.” ⁹²
Dimitri K. Simes, president of the Center for the National Interest	May be legal. “Kosovo is very much a legitimate precedent” “Independence was accomplished despite strong opposition by a legitimate, democratic and basically Western-oriented

⁸⁸ Ashley Deeks, “Here’s What International Law Says about Russia’s Intervention in Ukraine,” *New Republic*, March 2, 2014.

⁸⁹ Anton Moiseienko, “Guest Post: What Do Russian Lawyers Say about Crimea?” *Opinio Juris*.

⁹⁰ Julian Ku, “Does It Really Violate International Law for Crimea to Hold a Referendum on Secession?” *Opinio Juris*.

⁹¹ Robert McCorquodale, “Ukraine Insta-Symposium: Crimea, Ukraine and Russia: Self-Determination, Intervention and International Law,” *Opinio Juris*.

⁹² Peter Baker, “Sovereignty vs. Self-Rule: Crimea Reignites Battle,” *New York Times*, March 8, 2014.

	government of Serbia.” By contrast, the new Kiev government “lacks legitimacy” ⁹³
Samuel Charap, International Institute for Strategic Studies	Neither here nor there. “No state has been consistent in its application of this” [views on independence] ⁹⁴
Anne Peters, Social Science Research Project	Illegal. “the referendum was not free and fair, and could not form a basis for the alteration of Crimea’s territorial status.” “What happened with Crimea is probably best qualified as a seizure of territory under threat of force, i.e. as an unlawful annexation.” “holding a free and fair referendum is only a necessary, but not a sufficient condition for a territorial realignment to be accepted as lawful by international law.” ⁹⁵
Chris Borgen, <i>Opinio Juris</i>	Illegal. “The legal issue here is really one of Ukrainian Constitutional law more than of international law, because, as it is generally understood, there is no right to secede under international law. Under international law, a secession is neither a right nor necessarily illegal. It is treated as a fact: a secession either was successful, it was not, or it is still being contested.” “The only place that could confer a right to Crimea to leave by referendum is the Ukrainian Constitution.” “there is no mention of secession” ⁹⁶
John B. Bellinger III, Council on Foreign Relations	Illegal. “the March 16 vote violates both the Ukrainian constitution and general principles of international law, which respect the territorial integrity of states” “Russia may find that its support for Crimea's independence might trigger referenda or secession movements that it opposes, such as in Chechnya” “International law prefers to preserve the territorial integrity of states and limit the right of popular self-determination because minority secession movements, if allowed to proceed without limits, do not reflect the views of the majority in a state and could lead to the breakdown of the international system” ⁹⁷
Charles Krauthammer,	Illegal. “Russia cannot rewrite Ukraine’s frontiers at will”

⁹³ Ibid.

⁹⁴ Ibid.

⁹⁵ Peters, “The Crimean Vote.”

⁹⁶ Chris Borgen, “Can Crimea Secede by Referendum?” *Opinio Juris*.

⁹⁷ John B. Bellinger III, “Why the Crimean Referendum Is Illegitimate,” Council on Foreign Relations, March 16, 2014.

<i>Commentary</i>	“the last official international borders constitute the new boundary lines” “this principle applies in full when the old borders were colonial or otherwise undemocratically imposed. If it were not so, new countries would be born with all their borders in dispute, and endless frontier conflicts between neighbors would ensue” ⁹⁸
René Värk, <i>Diplomaatia</i>	Illegal because outside force was used. “The right of self-determination has conditions and most certainly does not represent an absolute entitlement, permitting the people to unilaterally secede from the “parent State” at any time and without paying attention to the interest of the parent State. (...) Secession is neither a right nor necessarily a breach under international law. It is treated as a fact, i.e. secession is successful or fails. The success depends of political recognition by States — if the seceding State gains enough international recognition, it gains gradually legitimacy and finally statehood. In practice, secession is generally disfavoured. (...) [The] declaration of independence does not violate international law. [But] the referendum and declaration of independence in Crimea would have been impossible without the support from Russian forces.” ⁹⁹
Olexandr Zadorozhny, <i>European Political and Law Discourse</i>	Illegal. “clear violation of international law” “the events of the Crimea crisis cannot be justified by international law” “the Russian actions in Crimea constitute a breach of international law and cannot be justified” ¹⁰⁰
Jure Vidmar, <i>European Journal of International Law</i>	“while the referendum itself was not illegal in international law, the shift of territorial sovereignty would be illegal” ¹⁰¹
Natalia Cwicinskaja, <i>Polish Yearbook of International Law</i>	Illegal if only because too hasty. “inconsistent with international law” “under international law, when a state recognizes the seceding unit prematurely such recognition has been considered to constitute an illegal act” “International law does not provide any legal definition of ‘secession’” “the concept of secession is not a subject of agreement among legal scholars” “international law neither authorizes nor prohibits secession” “to take effect in

⁹⁸ Kontorovich, “Crimea.”

⁹⁹ Vark, “The Incorporation.”

¹⁰⁰ Zadorozhny, “Comparative Characteristic,” 7, 14, 17.

¹⁰¹ Vidmar, “Crimea’s Referendum.”

	international law, secession should be recognized by the international community” “the principle of territorial integrity is the overriding principle, and secession without the consent of the “home” state remains illegal” ¹⁰²
Robin Geiss, <i>International Law Studies</i>	Illegal. “wholly inconceivable” “even if there had been a legal basis for a territorial status alteration of Crimea, the fact that it was brought about by, and is inseparably linked to, an unlawful use of force renders it null and void” ¹⁰³
Roy Allison, Thomas Grant, Philip Leach, and Elizabeth Wilmschurst, Chatham House	Illegal. “difficult to find a legal basis justifying Russia’s actions in Crimea” “even if it were to be assumed that the intervention in Kosovo was a breach of international law, the argument that Russia could therefore commit such a breach was not a legal argument, but a political one” ¹⁰⁴
Wendy Zeldin, <i>Global Legal Monitor</i>	No opinion, just a re-statement of UN resolutions. ¹⁰⁵
Zhandos Kuderin, <i>Michigan Journal of International Law</i>	Neutral. “the Crimean situation seems to present a different beast: a clear-cut geopolitical interest. Any action by the Security Council would be compromised by Russian interests. Thus, even if the Security Council does take measures in relation to Crimea, can Ukraine refuse to abide by them and continue exercising self-defense? The Charter suggests that it would be a violation of international law and Ukraine might get labeled as an aggressor and subject to sanctions.” “a dangerous reversion to a realist thinking in international law” ¹⁰⁶
Lawrence A. Howard, <i>New English Review</i>	“the Ukrainian Constitution recognized that the people were sovereign” “therefore if the people of Crimea overwhelmingly support merger with Russia, that is their legitimate right” “Neither the G-7 statement nor official US

¹⁰² Cwicinskaja, “The Legality,” 86, 69, 70-71.

¹⁰³ Robin Geiss, “Russia’s Annexation of Crimea: The Mills of International Law Grind Slowly but They Do Grind,” *International Law Studies* 91 (2015): 425.

¹⁰⁴ Roy Allison, Thomas Grant, Philip Leach, and Elizabeth Wilmschurst, “The Ukraine Crisis: An International Law Perspective,” Chatham House. July 11, 2014.

¹⁰⁵ Wendy Zeldin, “United Nations: Resolution Declares Crimea Referendum Invalid,” *Global Legal Monitor*, April 2, 2014.

¹⁰⁶ Zhandos Kuderin, “The Fog of Law: Crimean Annexation and Lessons on the Boundaries of Self-Defense,” *Michigan Journal of International Law*. November 22, 2014.

	objections have dealt directly with the Crimean electorate’s right to self-determination except to reject the legitimacy of the referendum.” “Compared with the two American “humanitarian” interventions, there is nothing remarkable or notably illegal about Russian President Vladimir Putin’s annexation of Crimea.” ¹⁰⁷
Barry Kellman, DePaul University	Illegal. “The problem, from Russia's standpoint, is with recognition.” “any arguments emerging from Moscow about Russian law in the days ahead are irrelevant under international law” ¹⁰⁸
Yuval Shany, <i>Brown Journal of World Affairs</i>	Uncertain. “the combined effect of the international response to Crimea and Kosovo throws international law on self-determination into a state of uncertainty, threatening the stability of the existing state system” “the legal relationship between the right to self-determination and the principle of territorial integrity of existing states is in flux” ¹⁰⁹
Milena Sterio, <i>IntLawGrrls</i>	Probably illegal. “international law does not positively recognize the right for groups to separate from their mother states” “no positive right to secession exists within international law” “we need to step back and analyze the region’s history, as well as to take into account its population’s true desires” ¹¹⁰
OSCE Permanent Council	“illegal and illegitimate” “subsequent illegal annexation” “act of violation of international law” ¹¹¹
UN Security Council resolution	Illegal. “having no legal validity” ¹¹² “failed to adopt any decision due to Russia’s veto” ¹¹³

¹⁰⁷ Howard, “The Historical, Legal, and Political Contexts.”

¹⁰⁸ Ron Synovitz, “Crimea: Annexation and Recognition – The Legal Battles Ahead,” Radio Liberty, March 16, 2014.

¹⁰⁹ Yuval Shany, “Does International Law Grant the People of Crimea and Donetsk a Right to Secede? Revisiting Self-Determination in Light of the 2014 Events in Ukraine,” *Brown Journal of World Affairs*.

¹¹⁰ Milena Sterio, *On Crimean Secession, Fairness, and Self-Determination*. IntLawGrrls.

¹¹¹ OSCE Permanent Council No 1045, Vienna, 19 March 2015. <http://www.osce.org/pc/147796?download=true>

¹¹² Vidmar; Peters.

¹¹³ Zadorozhny, “Comparative Characteristic,” 6.

UN General Assembly	Illegal. UN Member States “not recognise any alteration in the status of the Autonomous Republic of Crimea.” ¹¹⁴ “the referendum and the subsequent decisions of the self-proclaimed Crimean authorities and the decision-makers of the Russian Federation are illegal” ¹¹⁵
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From analyzing the above opinions, a curious consensus emerges, consisting of the following points:

1. The referendum is clearly illegal, because
2. There is no legal precedent in international law supporting unilateral secession, although
3. There is no legal precedent prohibiting it either, but
4. The referendum is illegal anyway.

Virtually all Western (or at least English-speaking) analysts declare the 2014 referendum illegal under international law, even though most of them also admit that there is no legal precedent to support or overturn such a verdict. This admission brings us to the ultimate answer – without a clear legal precedent in international law, Crimea’s independence from Ukraine was no more or no less legal than Ukraine’s own independence from the Soviet Union twenty-three years prior. According to the US Written Statement on Kosovo submitted to the UN International Court: “Declarations of independence may, and often do, violate domestic legislation. However, this does not make them violations of international law.” The Crimean referendum and the subsequent annexation of the peninsula by Russia was perhaps “illegal but legitimate.” As *the*

¹¹⁴ Murray, “Russia’s Annexation of Crimea.”

¹¹⁵ Zadorozhny, “Comparative Characteristic,” 12.

Economist put it shortly before the referendum: “if Russian-speakers in Crimea (which already has the status as an ‘autonomous republic’) vote to slice themselves off from Ukraine next week and throw themselves into the arms of the Russian Federation, no international court will raise much of a fuss—but neither would one take pains to defend the peninsula's right to secede.”¹¹⁶ Meaning, the “international law” everyone keeps referring to is neither here nor there on the issue.

This however does not address the issue of the referendum not having an option of staying within Ukraine without an autonomy. Yet the fact that the overwhelming majority chose independence makes this point somewhat, if not entirely, moot ex post facto, because few voters would choose such an option anyway.

Throughout the two decades following the dissolution of the Soviet Union, Kremlin authorities (and to an extent, Russian people in general) observed with worry the gradual movement of Eastern European states into the military orbit of the West, with the subsequent membership in NATO and EU. The first to go were the former members of the Warsaw Pact; three former republics of USSR itself, Estonia, Latvia, and Lithuania were soon to follow. From the strategic point of view, this eliminated the “buffer zone” between Moscow and the West, which the Soviets had acquired as a result of the Second World War. That Russia would not object to these countries becoming democracies was not in doubt, inasmuch as, Russia itself insisted it was on the road to democracy. However, facing a phalanx of nations whose military posture was not in tune with Moscow raised a specter of historic threats the West had posed over the centuries. With

¹¹⁶ “Whether Secession,” *The Economist*.

the three Baltic states: Estonia, Latvia, and Lithuania, already in NATO, there remained only three neutral nations between Russia and the West: Moldova, Belarus and Ukraine. Moldova was kept in check by the separatist enclave of Transnistria, whose independence no country in the world would recognize, but which housed a contingent of Russian troops, posed to protect it in case the frozen conflict were to flare up. This unsettled dispute effectively kept the otherwise pro-Western Moldova from joining NATO, because the alliance would not accept new members with unsettled borders. (Although it did not prevent the Moldovan elite from seeking the membership in the EU.) Belarus was kept in Moscow's orbit by Putin's support of its pro-Russian dictator, Lukashenko, thus making that country "the last dictatorship in Europe" in the words of many commentators. Ukraine, the biggest of the three, was left as the only viable battleground up for grabs.

Since its independence in 1991, the politics of Ukraine was characterized by the struggle between eastern and western halves voting to elect the central government representing their respective interests. The to-and-fro between pro-Russian and pro-Western parties continued for the first two decades after independence, with neither side managing to seize lasting control over the country's politics. Eventually, this struggle culminated in Ukrainians taking to the streets of Kiev in late 2013 in protests against the (then) pro-Russian president Yanukovich, over his refusal to sign an association agreement with the European Union. The original protest, which started over the issue of police brutality, soon evolved into a revolt against a corrupt administration. However, both the West and the pro-Western Ukrainians soon saw this protest as an opportunity to replace the pro-Russian administration with a pro-Western one. A new "Orange

Revolution” was too much for the Kremlin, but it in itself might have not been enough to cause Russia’s soon violent involvement in Ukraine. What finally pushed Putin over the edge was apparently the fear of a supposed US plan for the establishment of an American naval base in Crimea, a proposal that might have never been real,¹¹⁷ but the possibility of which, however remote, Putin could never risk to entertain. He said as much himself.¹¹⁸ Whether US was really planning to open a base on the peninsula is debatable, but the steady advance of NATO deployments in the last twenty five years closer to Russia’s borders is indisputable. Since the end of the Cold War and the dissolution of the Soviet Union in 1991, NATO has enlarged from sixteen members to twenty eight, with plans for more to join. Whereas twenty-five years ago, Kremlin had troops stationed on the Elbe in the middle of Europe, today the NATO borders have shifted four hundred miles to the East, some sixty miles away from St. Petersburg. Such strategic imbalance cannot but make a lot of people in Russia and its political establishment nervous.

On February 10, 2007, Putin gave a famous speech at the 43rd Munich Conference on Security Policy, where he reiterated Russia’s security concerns about NATO moving its bases up to Russian borders:

The so-called flexible frontline American bases with up to five thousand men in each. It turns out that NATO has put its frontline forces on our borders, and we continue to strictly fulfil the treaty obligations and do not react to these actions at all.

I think it is obvious that NATO expansion does not have any relation with the modernisation of the Alliance itself or with ensuring security in Europe. On the contrary, it represents a serious provocation that reduces the level of mutual trust. And we have the

¹¹⁷ Michelle Tan, “EUCOM Dismisses Reports of Secret U.S. Base in Crimea,” *Air Force Times*, April 25, 2014.

¹¹⁸ “Putin Says Annexation of Crimea Partly a Response to NATO Enlargement,” Reuters, April 17, 2014.

right to ask: against whom is this expansion intended? And what happened to the assurances our western partners made after the dissolution of the Warsaw Pact? Where are those declarations today? No one even remembers them. But I will allow myself to remind this audience what was said. I would like to quote the speech of NATO General Secretary Mr Woerner in Brussels on 17 May 1990. He said at the time that: "the fact that we are ready not to place a NATO army outside of German territory gives the Soviet Union a firm security guarantee". Where are these guarantees?¹¹⁹

Putin clearly understands that the European Union, long dependent on the US for its security and on Russia for its energy, is unwilling to engage in conflict with Moscow over what it considers a periphery of Europe, worthy of neither a security deal nor economic cooperation. He also knows that, after two inconclusive wars in Iraq and Afghanistan, the American public is weary of "foreign entanglements," and support for any new foreign involvement is low. Americans have long borne the lion's share of NATO defense spending, and have long been asking Europeans to increase their financial commitment to security, a request that, in view of the current economic recession, is only apt to grow louder in the near future.

Putin's policies in Ukraine and other countries surrounding Russia follow in the footsteps of his Soviet and Imperial Russian predecessors – not to allow unfriendly powers to emerge on the borders or, at least maintain a buffer zone between them and Russia. How can Putin contain the West? In the case of East Ukraine, he is attempting to salvage whatever minimum "buffer" he can. Giving Crimea back to Ukraine is politically impossible at this point. At the other extreme is the possibility of Putin ordering his troops to invade and take over the whole of Ukraine. This is dangerous, but not likely. He understands that much of Ukraine's population does not wish to go back under Moscow's

¹¹⁹ *Washington Post*. February 12, 20017. <http://www.washingtonpost.com/wp-dyn/content/article/2007/02/12/AR2007021200555.html>

rule, and doing so by force would only create armed resistance and swing the world opinion against Russia. In the end, his rule depends on his popularity at home, and this popularity at the moment depends on his foreign policy. It's likely that he will stand pat and support the insurgency in the Eastern Ukraine for as long as possible, while not resorting to open aggression. After a century of border changes, the demarcation line between the West and Russia may end up where it was a hundred years ago – between Minsk and Pinsk.

XIX.

Conclusion

What to do about Crimea? Various options have been proposed on what to do about the situation. All of them have one serious limitation – they presume a compromise (like “Finlandizing” the country) is possible. With war raging in the eastern regions of the country, and with both the West and Russian threatening each other with the ever-expanding list of economic sanctions, it is far from certain that both sides can sufficiently trust each other to agree on some kind of middle ground. More likely, Ukraine is doomed to be divided into “spheres of influence.” The much touted idea of bringing Ukraine into NATO is not feasible for a very simple reason – the organization has a strict rule not to accept new members with unsettled borders. Which presents the alliance with a dilemma: it cannot bring Ukraine into the fold as long as it recognizes Crimea as part of sovereign Ukrainian territory. But short of the Ukrainian army’s reconquering the peninsula by force, the only way for Ukraine to join NATO is, ironically, by acceding to the loss of Crimea, and thus consenting to Russia’s actions regarding it.

There appear to be four possible outcomes of the present situation. One is for the Kiev government, after securing foreign military aid, to mount a successful invasion of Crimea and take it back by force. This is the least likely scenario. Given that Ukrainian military currently struggles to contain the separatist rebellion in the two regions in the east of the country, it is doubtful any action will be taken against Crimea. If it does

happen, it would lead to an outright war between Russia and Ukraine, a war the latter side is unlikely to win, and a war that can only lead to a greater partitioning of Ukraine.

The second option is that Ukraine (and by extension, most of the rest of the world) accepts the loss of Crimea as a *fait accompli*, recognizes it as part of Russia, and moves on. Some argue that the European opinion has in fact already moved on.¹²⁰

However, this is also very unlikely because, with few exceptions, countries do not part with their constituent lands easily. And with the world opinion behind it, Kiev is not likely to budge, whatever the real situation on the ground.

A somewhat more likely scenario is both sides accepting the status quo, and accepting the situation as is without any diplomatic recognition. Both sides stop fighting, the ceasefire holds, and Ukraine will be effectively partitioned. In this case, Crimea is bound to be seen by the international community as part of Ukraine in all but a name for decades to come. How and when it may become part of Russia *de jure* is unknown. If the past is any indication, disputed national borders sometimes take decades to settle.

Germany's eastern border was not legally settled until 1990, forty-five years after the end of WWII. Six decades after the Korean War, that country continues to be divided. Taiwan exists in a political limbo with an ambiguous sovereign status. Such an outcome may be the lesser evil for everyone as long as peace holds.

A more dangerous, but also the most likely scenario is the conflict in Ukraine continuing for years. This is also not without precedent. Separatist conflicts have a tendency to simmer for decades, not just years. Civil wars in Sri Lanka and the

¹²⁰ Gwendolyn Sasse, "Remember Crimea? One Year Later," Carnegie Europe. March 27, 2015. <http://carnegieeurope.eu/strategieurope/?fa=59514>.

Philippines dragged on for the better part of the twentieth century. Russia's own protracted struggle with Muslim insurgency in Caucasus is a good example. The fear of losing more land is a good reason for Ukraine not to give up fighting, lest newer independent entities start emerging, threatening to destroy the country completely. Crimea will probably escape the carnage, but the two enclaves in the east of the country, Luhansk and Donetsk, will continue to suffer from the protracted conflict. The difference between the last two outcomes effectively means the difference between peace and war. Either way, Ukraine is bound to be a divided country for years to come.

There is an option of bringing Ukraine (whatever is left of it, that is) into the EU, but the EU is not a military alliance, and cannot protect it in case of war. As Eugene Rumer predicted over two decades ago:

If Russia becomes hostile to the West, Ukraine will probably fall back into Moscow's orbit; the task of propping up weak Ukraine against a hostile and xenophobic Russia will be beyond the military and financial capabilities of the Western alliance. (...) A Russian-Ukrainian conflict arising from a crisis in Crimea, such as the one that took place in May of 1994, would endanger Russia's already difficult reforms, destroy the weak remaining chances for the survival of independent Ukraine, and push Russia on the path of re-expansion in defense of an illegitimate secessionist movement created by domestic stagnation in Ukraine.

The choices facing Western policymakers in that case would be extraordinarily unpleasant.¹²¹

Graham Allison of the Harvard Kennedy School opines that the Ukraine scenario could replay in the other former Soviet republics that have sizeable ethnic Russian minorities, including the three Baltic nations that are members of NATO. If they get embroiled in a war with Russian separatists, Putin might send in his troops to protect them. Such a move would invoke the Article 5 of the North Atlantic Treaty, demanding

¹²¹ Rumer, "Eurasia Letter," 143.

US and other member states to come to the Baltics' defense, effectively starting a war with nuclear Russia. "But will German troops come to Latvia's rescue? And if they did, would a majority of Germans support that action? Would the French, or British? Would Americans?" But if the US does not come to help it would destroy the American credibility to the extent from which it would never recover. It would set off a chain reaction of distrust among the nations currently under the US "security umbrella" throughout the world: Japan, South Korea, etc. – a security pact that has been in place since the end of the Second World War. The most viable solution, Allison believes, is to find a compromise for Ukraine becoming a neutral state.

I have analyzed the political history of Crimea between the dissolution of USSR and its becoming independent from Ukraine, attempting to understand the opinions of the people living on the peninsula, and whether the electoral history of that region can explain and possibly justify its independence. The emphasis was made on the elections and referendums, as well as various legal agreements made by various powers. Although the Ukrainian conflict does not seem to be over, the extensive media coverage can give a relatively accurate picture of various parties' opinions and political aspirations.

Given the uncertainty of the still-ongoing war in Ukraine, it would be impossible to predict the course of the future events. However, significant body of research does exist to give a glimpse of public opinion in various parts of the country, which allows us to understand how different actors of this drama see the conflict, and how they may attempt to act in the near future.

XX.

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