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## THE NEWEST “FROZEN” CONFLICT IN EUROPE – OVER CRIMEA

### Abstract

*In this paper author deals with the newest “frozen” conflict in Europe – over Crimea. For the last four decades security on our continent has been burdened by armed violence and wars and has accompanied the disintegration of a number of states in the Eastern Mediterranean, the Western Balkans and the former Soviet Union. These developments resulted in the appearance on the political map of Europe of more than a dozen new and internationally recognized states. The mostly successful secessions of these new states paralleled the development of a group of parastates unrecognized or less than universally recognized by the international community.*

**Key words:** Europe, conflict, “frozen” conflict, NATO, Crimea, Soviet Union, Ukraine.

### 1. INTRODUCTION

Northern Cyprus, Transnistria, Abkhazia, Southern Ossetia, Nagorno Karabakh and later also Kosovo came to be treated in international relations literature as so-called “frozen” conflicts. With Kosovo moving out of this group a newcomer appeared in spring 2014: the Russian-Ukrainian conflict over Crimea.

Like the four “frozen” conflicts mentioned above, Crimea is geographically located on the Southern periphery of the former Soviet Union. Substantively, the newest conflict bears a number of similarities with the four other ex-Soviet cases.

The ex-Soviet entities involved in these conflicts share up to a two centuries-long history of Russian imperialism and, subsequently, of Soviet communist rule. The Russian rule of these entities was preceded by up to three centuries of direct Ottoman rule or of strong dependency on the Sublime Porte. In the XVIIIth and XIXth centuries, following Russian victories in several wars against the Ottomans the five lands were militarily conquered by or ceded to and then annexed by the Russian Empire. Russian expansion in the Black Sea region and in the Caucasus had been opposed by the Western powers – Great Britain, France and Austria/Austro-Hungary. This opposition began in the mid-XIX century and resulted in a direct military confrontation, fought mostly on Crimea.

The immediate pretext for the Crimean War was the Russian occupation of two Danubian principalities Wallachia and Moldavia. In January 1854 the British and French fleets demonstratively sailed into the Black Sea. Following a Russian rejection of the British ultimatum to withdraw Russian troops from the principalities (territory that is today's Romania and Moldova), Great Britain and France declared war on Russia. In September 1854 almost one million Ottoman, French and British troops landed on Crimea and started a yearlong siege of the Russian stronghold Sevastopol. In January 1855 the Kingdom of Sardinia joined the coalition. The anti-Russian coalition suffered staggering losses of over 300 thousand dead soldiers, due mostly to disease. The Western powers and the Ottomans won the war against the Russian Army (which lost about 400 thousand soldiers) achieved the destruction of the Russian Black Sea Fleet and of the fortress Sevastopol, as well as the military neutralization of the Black Sea. Austria's threat to join the coalition forced nevertheless the Russian government to withdraw its troops from the Danubian principalities. The Russian Empire lost its hegemonic role in the defunct "Holy Alliance" but the Western powers failed, to dislodge Russia from Crimea. All of this happened in a geostrategic environment very different from the present one. Almost 160 years later no one in the West even thought of undertaking a similar operation against the Russian Federation.

The newest conflict in and over Crimea has developed since 1991 along the porous ethnic, linguistic and cultural line within a young successor state of the Soviet Union, other than the Russian Federation. In Ukraine this line has separated a majority within the titular nation, on the one hand, and a considerable part of the strong Russian-speaking minority, on the other hand. This "Russian" population has constituted however a strong local minority or a regional majority in parts of that successor state – in Eastern and Southern Ukraine and on Crimea.

This particularity explains why the conflict in Ukraine bears resemblance with the Serbian armed secessions in Croatia and Bosnia & Herzegovina in 1991-1995. In two other ex-Soviet cases – in Abkhazia and Southern Ossetia – the political divide has separated a titular majority non-Russian nation (the Georgians) from two non-Russian minorities living in provinces bordering the Russian Federation, whose members were massively given Russian passports. In four out of the five cases considered, the presence of the Russian Armed Forces on the territory of a legally independent successor state offered not only psychological comfort but also, when needed or feared, physical protection to separatists. This protection allowed the parastates to carry out illegal referenda, to proclaim and subsequently defend the secession. In four cases, the separatists pleaded for and received the Russian Federation’s protection.

Crimea became legally an exception. Unlike in three other cases, it was promptly admitted and became reunited with the Russian Federation. This exception can be chiefly explained by Russia’s wider geostrategic interests. Also historically, for about 168 years, Crimea had been an integral part of imperial Russia and, after 1921, of the Russian Soviet Federation. Psychologically, Crimea is much closer to the hearts of many Russians and particularly of the Russian military than any of the four other ex-Soviet territories. Transnistria’s additional drawbacks are related to its territorial discontinuity with the Russian Federation, to the landlocked position and awkward configuration of its narrow strip of land on the left bank of the River Dnester. The main reasons for not also annexing Abkhazia and Southern Ossetia seem to be primarily diplomatic ones, the desire of the Russian government to mend its relations with Georgia and the fact that neither of the two populations belongs ethnically or culturally to the Russian diaspora.

## **2. THE HISTORIC BACKGROUND OF THE CONFLICT**

Since antiquity and until 2014, the entire territory of Crimea or its parts were ruled by many other states and empires, by the Greeks, Bulgars, Scythians, Romans, Gots, Huns, Khazars, Kievan Rus, the Byzantine Empire, Venice, Genoa, Kipchaks, the Mongol Golden Horde, the Ottoman Empire, the Russian Empire, Soviet Russia, the Soviet Union, Germany, the Soviet Union again and Ukraine. In its long history, Crimea has only been an independent state for less than four decades.

The two leaders involved in the newest conflict over Crimea— Ukrainian President Petro Poroshenko and Russian President Vladimir Putin – both represent Slavic nations. However, the present dispute is about the territory of the peninsula bearing the name Krim or Krym, which in their closely related Eastern Slavic languages was derived from the Turkic word *qirim*. In the XIII century this name was given initially to the capital of a province ruled by the Tatar-Mongol Golden Horde. The more ancient Greek name of that land *Tauris/Taurica*, as well as the Hellenic names of Sevastopol, Simferopol, Feodosia and other towns remind of the most ancient recorded inhabitants of Crimea – the Tauris and the Greeks.

Crimea became a colony of the Russian Empire in the late XVIIIth century as a result of Russian victories in wars with the Ottoman Empire. After its outright annexation by Russia in April 1783 Crimea was given a new name—the Taurida governorate. To the official title of the Russian Empress Catherine the Second a new title was added – “Empress of Tauridian Hersonis,” with a new, Tauridian coat of arms. The renaming of the peninsula and of the main towns into former or entirely new Hellenic designations had an important political meaning. The eradication of the Tatar-Mongol, Ottoman and Islamic heritage expressed also symbolically a Christian *Reconquista* of the lands occupied by the Moslems. In this endeavour Russia was then supported by Austria. On her first and triumphant trip to Crimea in spring 1787 the German-born Catherine the Second was accompanied by the Austrian Emperor Joseph the Second. Giving the peninsula a Hellenic name expressed the Russian Empire’s intention of liberating all Greeks of Ottoman rule, of reconquering Constantinople (renamed by the Turks in 1930 into Istanbul) and restoring the Byzantine Empire with Catherine’s younger grandson, unaccidentally named by her Konstantin as Emperor. The new, additional imperial title reflected Catherine’s grand geopolitical objective of claiming for Russia the Byzantine heritage in the Balkans and Eastern Mediterranean.

The Russian conquest was followed by mass summary executions, the exodus and expulsion of Muslim Tatars and Turks, the demolition or conversion of most mosques and other Islamic monuments and the disbanding of all Islamic institutions. Numerous wars, the Russian imperial and later Soviet rule have dramatically changed Crimea - demographically, culturally, economically and politically. In the XIXth and XXth centuries, the Russification of the Crimean population has been carried out through massive resettlement of ethnic Russians and of already Russified subjects from central and northern Russia, through public schools and administration, obligatory military service, Orthodox Christianization and later-

through Russian mass media controlled by the Soviet communist regime etc. By 1945 the entire Tatar, Greek and Bulgarian minorities were, often brutally, deported and Crimea's population almost fully Slavified and mostly Russified. It is estimated that nearly a half of the deported Crimean Tatars died during and immediately following the deportation to Central Asia. Unlike other deported minorities, the Tatars were for several decades banned from Crimea. Although legally rehabilitated in 1967 and since December 1991 allowed to return to their homeland, they still have not been compensated for the losses of life and property.

### 3. THE LEGAL STATUS OF CRIMEA FROM 1917 TO 2014

Since the collapse of the Russian Empire, two revolutions in 1917 and the end of the Russian Civil War, the official name and the legal status of the peninsula has changed many times. The Russian *Bosheviki* replaced many of the previously official imperial names of provinces and cities with new ones. As an expression of the new nationality policy and a friendly gesture towards Kemal Atatürk's Turkey, the previous official designation of the peninsula Taurida was replaced with a Turkic name, Krym. In October 1921, the Crimean Autonomous Soviet Socialist Republic was proclaimed as a unit of the Russian SFSR. The new name and autonomous status were related to the presence of the then still sizeable non-Russian minorities. In 1922, Crimea became incorporated into the Soviet Union and remained within the USSR until its dissolution in December 1991. The only exception was the period from late summer 1941 until spring 1944. Most of Crimea had been then occupied by the Third *Reich* and from September 1, 1942 the territory administered as the *Generalbezirk Krim* and *Teilbezirk Taurien*. In 1945, following the radical ethnic cleansing, Crimea was stripped of its pre-war autonomy status and became an ordinary *oblast* of the Russian SFSR.

In February 1954 the Praesidium of the Supreme Soviet of the USSR issued a decree transferring the Crimean *Oblast* from the Russian Soviet Federative Socialist Republic to the Ukrainian SSR. The transfer had been described by official communist propaganda as a symbolic brotherly gesture marking the 300<sup>th</sup> anniversary of Ukraine joining the Russian Empire. This momentous decree by the Presidium (and not a federal law and a constitutional amendment passed by the entire Supreme Soviet of the USSR) gave a very dubious legal cover to a decision actually made by the Politburo of the Communist Party of the Soviet Union (CPSU).

The transfer of Crimea was said to have been prompted by the need to bring from Ukraine a large labor force and also water for irrigation. The decree however clearly violated Art. 14 and 18 of the then valid “Stalin’s” constitution of the Soviet Union, which required a formal agreement between Soviet Socialist Republics to border changes. The Supreme Soviet of the USSR (and not the Presidium) could only confirm such an agreement, but not by itself pass a federal law and a constitutional amendment to this effect. In the case of Crimea no such parliamentary procedure was initiated and duly carried out in the two parliaments, no relevant parliamentary sessions were held, no debates took place, no votes were taken and no agreement was adopted and signed. Moreover, the Crimean population was deprived of its right to give or deny its consent to the major status change. The transfer of Crimea to Ukraine was thus illegal even in Soviet terms, unconstitutional and clearly illegitimate.

The next status change of Crimea occurred during the process of dissolution of the Soviet Union in 1990-1991. After an all-Ukrainian referendum in February 1991, the Crimean *Oblast* was upgraded again to the status of an autonomous republic, this time within Ukraine. In summer 1991, an attempted coup against Michail Gorbachov took place in Crimea, where the then President of the Soviet Union was vacationing. The coup, its aftermath and the referendum on Ukraine’s independence on December 2, 1991 actually sealed the fate of the USSR. At the latter referendum the population of the Autonomous Republic of Crimea was not consulted on whether it desired to remain in Ukraine after the dissolution of the USSR or alternatively to rejoin the Russian Federation. The Soviet Union was dissolved on December 8, 1991 at a meeting of the heads of the Russian Federation, Ukraine and Belarus. At that gathering in the hunting reserve Belovezhska Pushcha, the Russian leader Boris Yeltsin failed to request from his Ukrainian colleague, Leonid Kravchuk, Crimea’s return to “mother” Russia.

On February 26, 1992, the Supreme Soviet of the Crimean ASSR, without the consent of Ukrainian authorities, changed the official name of the land into the Republic of Crimea. On May 5, 1992, the Crimean parliament proclaimed Crimea’s independence and passed its first constitution. Under pressure from Kyiv the latter was amended on May 6, 1992 with a sentence on Crimea as part of Ukraine. On May 19, 1992, the proclamation of Crimean independence was annulled by the Ukrainian Supreme *Rada* (parliament). As a *quid pro quo* Kyiv agreed to strengthen Crimea’s autonomous status. Exploiting these increased legal prerogatives, the Crimean parliament established on October 14, 1993 the post of President of

Crimea and granted the Crimean Tatars regular representation in the consultative Council of Fourteen. On March 17, 1995, Ukrainian parliament annulled Crimea's constitution, removed President Yuriy Meshkov and abolished his office. The President was charged with anti-state activities and with promoting Crimea's secession from Ukraine and its integration with the Russian Federation.

#### **4. CRIMEA'S SECESSION FROM UKRAINE AND ITS ANNEXATION BY THE RUSSIAN FEDERATION**

Since the breakup of the USSR, political tensions between the two neighbouring states - Ukraine and Russia - have continued on many issues. These included also those related to the status of Crimea, to the division of the Soviet Black Sea Fleet between the two states, to the basing rights of the Russian Black Sea Fleet in Sevastopol, to the Russian use of military facilities on Crimea, and to the number and status of the Russian military personnel on Ukrainian territory, etc. Since 1991, Moscow has covertly controlled and mostly restrained the actions of Russian separatists on Crimea considering friendly relations with Ukraine more important than the wish of a majority among the Crimean Russians for reunification. Moscow has also maintained on Crimea a sizeable contingent of its own civilian (FSB) and military intelligence (GRU) agents.

Russian contingency plans for annexation of Crimea have likely been prepared and regularly updated since, at least, two decades ago. In June 1993 the Russian State *Duma* adopted a resolution designating Sevastopol as a Russian city. In 1996 a prominent Russian geostrategist, Sergei Karaganov, wrote about a possible disintegration of Ukraine and the absorption of its parts by Russia.<sup>1</sup> Yulia Timoshenko, the former Prime Minister of Ukraine, publicly warned the West in 2007 of Russia's policy of destabilizing the Ukrainian government, particularly in Crimea.<sup>2</sup> In 2008, the Ukrainian Foreign Ministry protested against the mass distribution of Russian passports on Crimea as a "real problem" in conjunction with Russia's declared policy of possible military interventions to protect Russian citizens living abroad.<sup>3</sup> In August 2009, anti-Ukrainian demonstrations broke out on Crimea

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1 Karaganov, Sergei, *Russia and the Slav vicinity* in Baranovsky, V. 1997, p. 300.

2 *Foreign Affairs*, no. 3, 2007 and in *Rossia v globalnoy politike*, vol. 5, no. 3, 2007, pp. 104-105.

3 »Federal Law on the State Policy in Regard to the Fellow Citizens Residing Abroad« 1999.

calling on Russia to act in the same way as it did in Southern Ossetia and Abkhazia during the war with Georgia in 2008.

The decision to annex Crimea at an opportune moment was probably made in 2008, soon after NATO at its Bucharest summit promised Ukraine (and Georgia) future membership in the Alliance. After Victor Yanukovich was elected President of Ukraine the subsequent penetration of high governmental offices by Russian citizens, the increased financial dependence of Ukraine on Russia and the expanded cooperation between the two military-industrial complexes reduced the need for annexation. The situation changed abruptly on February 22, 2014 when President Yanukovich with a group of high Ukrainian officials closely connected to the Russian security services unexpectedly fled the capital and via Crimea to Russia. In violation of the procedure of impeachment stipulated in Art. 111 of the Ukrainian Constitution the Supreme Rada (parliament) swiftly dismissed President Yanukovich and appointed a temporary President. The state takeover by groups of anti-Russian nationalists, openly supported by the West and the general confusion offered an almost ideal opportunity for the Kremlin to carry out the latest version of its contingency plans for annexing Crimea.

These plans were exceptionally well executed on the military side and less so on the political side. Clashes between pro-Russian and pro-Ukrainian protesters broke out on February 26, 2014 in front of the parliament building in Simferopol. During these clashes and at other rallies, the pro-Russian protesters were demanding the secession from Ukraine and asking for assistance from Moscow. In the early hours of February 27, masked armed groups seized and locked up government buildings in Simferopol, including the building of the Supreme Council of Crimea. At a behind-doors emergency session of the Supreme Council, Sergey Aksyonov of the hitherto marginal Party of Russian Unity and himself a Russian from Moldova was appointed the new Prime Minister of Crimea. The Supreme Council also voted to hold a referendum on the status of Crimea. On February 28, 2014, a group of over 20 deputies submitted to the Speaker of the Russian State Duma a draft amendment to the constitutional law on admitting new subjects to the Russian Federation. The draft specifically justified the incorporation of parts of Ukraine into the Russian Federation on the grounds of alleged Ukrainian discrimination of national minorities. A day later, the *Qurultay* (Assembly) of the Crimean Tatars voted on the “Implementation of the Right of Crimean Tatar People to Self-Determination in Their Historical Territory-Crimea”. With 212 votes for, one against



and four abstained, it was decided to start political and legal procedures to restore the national-territorial autonomy of the Tatars on Crimea.

Launched into action on February 28, 2014 regular Russian forces, assisted by local “self-defense” militias swiftly seized the strategically important Perekop Isthmus, blocked or cut off most land, sea and air connections between Crimea and mainland Ukraine, took over all Crimean ports and airports, radio and TV stations, blocked and occupied all installations of the Ukrainian Army and Navy, and expropriated practically all of their stocks of arms and ammunition. They also assisted and protected unlawful actions by Russian separatists and thus enabled Crimea’s amputation from the Republic of Ukraine. The military take-over of Crimea was obviously well-prepared, rehearsed in advance and professionally executed. Assembled for this operation were about 2,000 naval infantrymen (marines), stationed in and around Sevastopol, about 7,000 special troops brought to Crimea in early March mostly by air as well as about 15,000 troops transported by ferries to Kerch across the straits. These additional units came mainly from the Russian Southern Military District. At the time of occupation, the Russian operational headquarters, probably located in Rostov, had on its disposal on Crimea about 30,000 troops.<sup>4</sup> The forces participating in the Crimean operation were much better organized, trained and armed than the Russian units engaged in the war with Georgia were in 2008. This time they also used a novel tactic with an emphasis on the economy of effort. The Russian command actively engaged fewer than 10,000 assault troops, mostly on wheeled BTR-80 armoured personnel carriers. The masked “green men” were a hybrid between regular infantry and anti-terrorist police units having a secret chain of command and bearing no insignia or visible rank on their combat fatigues. All this was clearly designed to conceal the state identity of the invading force.

The easy success of the three week-long operation was to a large extent facilitated by several factors. The takeover was warmly greeted by a good part of the Crimean population. The Russian marines were already legally stationed at Sevastopol, could well in advance reconnoitre the field and acted unopposed by Ukrainian forces. The Ukrainian security agencies had totally failed to detect these preparations, to warn the Kyiv authorities and to take precautionary measures. The short distances to the most important strategic locations on Crimea, including Simferopol international airport, allowed for the quick insertion of air-transported special

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<sup>4</sup> Hannes, Adomeit (2014), p. 7.

troops from Russia and easy acquisition of all targets. Ukrainian military personnel stationed in Crimea were not given orders to resist with arms and thus all 190 military installations and practically all weapons were simply surrendered. About 22,000 Ukrainian military personnel capitulated without a shot fired. Moreover, a majority of them switched their loyalty. Most of the Ukrainian Navy was also captured by the Russian military without resistance. The Ukrainian commanding officers did not even try to sail off with their ships and crews in order to reach Ukrainian mainland ports. Only a few of the serviceable aircraft of the Ukrainian Navy escaped the capture. The Crimean police personnel either failed to act or cooperated with the Russian Special Forces and Crimean separatists. Although the Russian Armed Forces *de facto* occupied Crimea, they did not establish a military occupation regime. International law namely prohibits an occupying power to create another state on the occupied territory or to annex it.

The referendum on Crimea's reuniting with the Russian Federation was called on February 27, 2014, on too short a notice. The time pressure very probably did not allow for and, more importantly, the Crimean secessionist authorities were not interested in updating the voters' registers and in preventing multiple voting, obviously by the proponents of secession. The referendum on March 16, 2014 reportedly passed peacefully and orderly but in several important respects did not conform to high democratic standards. The ballot contained two questions and only one positive response was considered valid:

Do you support rejoining Crimea with Russia as a subject of the Russian Federation?

Do you support restoration of the 1992 Constitution of the Republic of Crimea and Crimea's status as a part of Ukraine?

The ballot omitted two other possible choices – remaining part of Ukraine under the current constitutional structure or Crimea's independent statehood. The time shortage did not allow for a real and substantive public debate on such a momentous issue. The referendum was held under the irregular conditions of Russian military occupation. The presence in public places of armed local Russian irregulars, of Russian Cossacks and even Serbian "Chetniks", as well as of masked "little green men" undoubtedly belonging to the Russian Armed Forces, certainly had an intimidating effect on the opponents of Crimea's secession.

According to the Crimean authorities, 81.36 percent of the registered voters took part in Crimea's referendum and 96.77 percent of them voted for its separation

from Ukraine and for reuniting with Russia. The official figures of the voters' participation and on the approval rate however could not be verified by impartial international observers and were probably artificially inflated in order to legitimize Crimea's incorporation into the Russian Federation. The OSCE Chairperson-in-Office, Didier Burkhalter, did not accept an invitation by Crimea's authorities to send ODIHR observers, citing the unconstitutional nature of the referendum. In addition, the invitation did not come from an OSCE participating state. Individually and selectively invited European observers stated that the referendum was carried out without violence and visible irregularities. The representatives of the Crimean Tatars denied the official results reflecting the position of a presumed majority among Crimea's indigenous minority population who opposed the separation from Ukraine and boycotted the referendum. The main reason for this attitude was the painful collective memory of Russian colonialism and of the terror, deportation, harsh exile and collective discrimination in the XXth century, which were for many decades carried out by the Russian-speaking Soviet authorities. A good number of Crimean Ukrainians probably departed before the vote, abstained, or voted against the secession. The Ukrainian authorities refused to recognize the legality of the referendum and its outcome on constitutional grounds. This opinion was shared by the Council of Europe's Venice Commission and by a number of EU and NATO member states.

Despite numerous shortcomings of the referendum, it seems reasonable to assume that the Russian-speaking majority among the Crimean population generally favoured Crimea's secession from Ukraine and its rejoining Russia. Their attitudes probably reflected the deep dissatisfaction with the dismal state of economic and political affairs in Ukraine and with the widespread incompetence and rampant corruption in Kyiv and also in Eastern Ukraine. In these respects the feelings of the Crimean Russian speakers largely coincided with the feelings of many ethnic Ukrainians, and also those of the *Maidan* protesters. The very unwise bill - hastily passed by the Ukrainian parliament - abolishing the official status of the Russian language was also aptly used by the separatists and Russian mass media to scare off Russian speakers in Ukraine (N.B. The law was vetoed by the interim President and never went into effect). Most Russians on Crimea apparently did not want any longer to be a national minority in Ukraine, forced to learn and use another official language, Moreover, they were promised by the separatists, and indeed expected, a tangible improvement of their standard of living, including, at

least, twice as high Russian wages and retirement benefits, etc. These factors help to explain to a great extent the outcome of Crimea's referendum.

On March 17, 2014, Crimea declared its independence and asked the Russian Federation to join it. The Sevastopol City Council requested the port's separate admission as a federal city. On March 18, 2014, a treaty on incorporating Crimea and Sevastopol was signed in Moscow. In only five days the "Constitutional Law on admitting to the Russian Federation the Republic of Crimea and Establishing within the Russian Federation the New Constituent Entities the Republic of Crimea and the City of Federal Importance Sevastopol" was quickly railroaded through the Russian Federal Assembly, signed by the Russian President and entered into force.

The Ukrainian government accused the Russian Federation of committing a blatant aggression and of violating the UN Charter, Helsinki Final Act and numerous international treaties and agreements. On the other hand, President Vladimir Putin used the right of the Crimean people to self-determination in the form of secession as the chief argument to justify and legitimize the annexation.<sup>5</sup> Russia's much stronger historic claim to Crimea was also stated. Russia conquered Crimea and *de facto* possessed it much longer than Ukraine (for around 168 years vs. 60 years). In his Presidential address to the Federal Assembly on December 4, 2014, Vladimir Putin stressed the strategic importance of the peninsula also as "the spiritual source" of the Russian nation and state. He added a religious argument erroneously claiming that Grand Prince Vladimir of Kyiv was baptized on Crimea. According to V. Putin, Crimea has had "invaluable civilizational and even sacral importance for Russia, like the Temple Mount in Jerusalem for the followers of Islam and Judaism".<sup>6</sup> Moreover, the reunification in 2014 was said to undo the unconstitutional and unjust separation of Crimea from Russia sixty years earlier and was achieved without known victims.

In the framework of Ukrainian constitutional and legal order the holding of the referendum on March 16, 2014 and the declaration of independence were clearly illegal and unconstitutional. Article 73 of the Constitution of Ukraine namely effectively bars secessions by prescribing: "Alterations to the territory of Ukraine shall be resolved exclusively by the all-Ukrainian referendum". However, most declarations of independence have been unconstitutional, including the declaration of USA in

5 N.B. Art. 5 of the Russian Constitution contains a provision for the right of the peoples to self-determination but, likewise, does not confer to them the right to secede from the Russian Federation.

6 Presidential Address to the Federal Assembly, <http://eng.kremlin.ru/transcripts/23341>, (12.12.2014).

1776 and, more recently, Kosovo’s declaration in 2008. The International Court of Justice, in its opinion issued in July 2013, concluded that the Kosovo declaration did not violate the norms of international public law.

President Vladimir Putin and the leaders of Russian separatists in Crimea and Eastern Ukraine used the Kosovo example to justify their actions. There have been indeed several similarities between the Kosovo and Crimea cases. A forceful separation from Serbia and Ukraine were achieved through military interventions unauthorized by the UN Security Council and thus violated international law. Russian officials and propaganda have however consistently omitted very important differences. The Russian-speaking population of Crimea has not experienced anything similar to the protracted repression by central authorities, massive and grave violations of human rights and fundamental freedoms, the *de facto* abolition of Crimea’s autonomous status, massive discrimination and firing of Russians from the public sector, mass displacement and expulsion of several hundred thousand Russians and several thousand deaths. Prior to its separation from Ukraine, Crimea and the ethnic Russians, as no other Russian minority in ex-Soviet republics, had enjoyed in Ukraine very considerable autonomy and protection of human rights and fundamental freedoms. Although there was no need, unlike in Kosovo, to apply on humanitarian grounds the “responsibility to protect”, the majority among the population of the Autonomous Republic of Crimea nevertheless claimed and, with decisive outside military assistance realized its right to self-determination. Whether it was entitled to exercise this right is a debatable legal proposition.<sup>7</sup> This right was flatly denied to it by the Soviet Communist authorities in 1954 and ignored by the Russian and Ukrainian leaders in 1991. Moreover, the Russian-speaking majority in Crimea has relatively peacefully expressed and exercised this right, in conformity with principle 8 of the Helsinki Final Act. The two sizeable minority communities (Ukrainians and Tatars) apparently acquiesced to the desire of the Russian-speaking majority. These facts confer a measure of legitimacy to Crimea’s secession and to its reunification with the Russian Federation.

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7 Burke-White, William, “Crimea and the International Legal Order”, In *Survival*, vol. 56, no. 4, August-September 2014, pp. 65-80.

## 5. CRIMEA, THE WAR IN MAINLAND UKRAINE AND THE INTERNATIONAL COMMUNITY

The annexation of Crimea encouraged the Russian-speaking separatists in Eastern and Southern Ukraine who apparently hoped that Moscow will repeat the same scenario. The mass unrest, anti-Kyiv demonstrations, tearing down Ukrainian state symbols and hoisting up Russian national flags, breaking-in and occupying numerous official buildings took place in April 2014 in a number of Ukrainian cities. In Kharkov, Donetsk, Lugansk and Odessa “People’s Republics” were proclaimed. Numerous Crimean Russians have presumably also participated in these events.

There have been however considerable differences between Crimea and “Novorossia” as the South Eastern part of the Republic of Ukraine used to be called by the Russian imperial authorities in the past and recently again in the Russian mass media and occasionally also by Russian politicians. “Novorossia” and particularly the area of Donbass have been much more closely economically and energy-wise connected with and more important to the Russian Federation than Crimea. “Novorossia” contains a somewhat lower percentage of ethnic Russians but together with numerous other Russian-speakers (including many ethnic Ukrainians) they constitute a strong regional majority. Unlike Crimea “Novorossia” has been legally part of Ukraine since 1921, with only one exception during the Second World War. The flare-up of unrest and subsequently of violence in the Donbass area had however a somewhat different origin. It expressed regional grievances against Kyiv centralism, the defense of Russian language rights which were attacked by Ukrainian nationalists and the strong opposition to the “fascists” who “staged a coup” in the capital. The unrest in “Novorossia” has quickly deteriorated from peaceful demonstrations to seizures of state institutions and clashes with the Ukrainian security forces. In a stark contrast with the development in Crimea the unrest finally degenerated into a full-fledged civil war in which the insurgents had enjoyed the critically needed assistance from across the long and unmarked border with the Russian Federation. In the war heavy conventional weapons (tanks, armoured personnel carriers, artillery and rockets) had been used by both sides, while helicopters and fixed-wing aircraft by the Ukrainian Army only. Undiscriminate massive shelling and rocket attacks of Donetsk, other towns and settlements caused numerous deaths also among the civilian population. These attacks constituted grave violations of International humanitarian law, initially only and later more often by the Ukrainian side than by the insurgents.

The conflict over Crimea and the war in mainland Ukraine have developed in an international environment which, apart from the two directly involved states, included other important actors. These have been the European Union, NATO, OSCE, UN, USA, Germany, France, Poland et.al. The Russian leadership has for many years openly opposed Ukraine’s integration into the economic, and hence also political, “West” and in particular the possibility of its NATO membership. This Russian position has been well known but consistently ignored by Western leaders who insisted on every European state’s legal right to freely decide on its association with other states, including on membership either in EU or NATO. The high representatives of the Soviet Union and of its legal successor – the Russian Federation – officially recognized this right of all European states in several documents, including the “Charter of Paris for a new Europe” (1990). However, in practice the implementation of this abstract legal right depends on and is conditioned by a number of internal political and wider geopolitical, also constraining, considerations.

In his keynote speech at a joint session of the two chambers of the Russian parliament on March 18, 2014, President Vladimir Putin clearly stated the geopolitical rationale for the annexation of Crimea. NATO’s presence in close proximity to Russia’s Southern borders, “directly in front of the Russian house”, “on Russia’s historic territories” remains utterly unacceptable to President Putin and to the Russian elite. The sheer possibility of Ukraine’s membership in NATO and of Crimea’s and Sevastopol’s inclusion into the North Atlantic Treaty area have been viewed by Putin as an acute threat to the security of Southern Russia. The NATO plans to place US antiballistic missiles in Romania and Bulgaria have accentuated the threat perception. In order to not be “lost in the near future”, Crimea needed to be under “a strong and steady sovereignty...” which “could be only Russian”.<sup>8</sup> President Vladimir Putin’s statement expressed the primary motivation of the Russian leadership – the annexation prevented Crimea’s conceivable inclusion into the North Atlantic Treaty area and Sevastopol’s becoming a NATO naval base.

The Russian actions in 2014 related to Ukraine and Crimea were thus largely – if not primarily – provoked by the EU and NATO encroachment into the ex-Soviet space. To a considerable but critical extent, Crimea’s straightforward annexation was Moscow’s forceful reaction to the intention of the US administration under

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<sup>8</sup> Kremlin. *Address by President of the Russian Federation*, <http://eng.kremlin.ru/news/6889> (18.03.2014).

George W. Bush to bring Ukraine (and Georgia) into NATO. The key European members of NATO did not support the US proposal to issue a straightforward invitation to Ukraine but as a compromise agreed to include the promise of membership in the conclusions of the NATO Bucharest summit in 2008. This promise was not preceded by a careful examination of its medium and long-term security and political consequences and of the Alliance's ability to bear their burden. This unwise decision, despite having neither a date of admission nor the inclusion into the Membership Action Plan, was repeated in NATO's later documents. Although the promise did not entail an Art. 5 guarantee, it morally implied that the states promised membership would not be left "cold in the rain" if their territorial integrity and sovereignty were to be grossly violated. Yet, Ukraine in 2014 (and earlier Georgia in 2008) were in fact effectively punished by the Russian Federation while NATO basically stood by. These facts certainly has not increased the Alliance's credibility. The "misguided strategy" by the USA and NATO has been to a large extent responsible for the crisis in and partial disintegration of Ukraine.<sup>9</sup> In September 2014 NATO indirectly admitted the mistake when the Wales Summit Declaration did not repeat the promise to Ukraine.

Moscow's action on Crimea expressed its defiance of NATO's further enlargement into Russia's backyard. It could be more generally understood as its renunciation of the balance of power in the Euro-Atlantic area formed after the end of the "Cold War" and as a demand for a redefinition of legitimate "zones of interest" in Europe. It could be also taken as a stern warning to other ex-Soviet republics to behave, for instance, to Kazakhstan and Azerbaijan.

The occupation and annexation of Crimea has generated a vivid reaction in the international community, in the form of diplomatic protests, declarations and resolutions passed by international organizations among other things. On March 15, 2014 the UN Security Council failed to adopt a draft resolution, sponsored by the United States, which urged the UN members not to recognize the results of the Crimean referendum. Thirteen of the Council's 15 members voted in favour, Russia voted against the draft while China abstained. On March 27, 2014 the UN General Assembly however adopted a resolution on Ukraine's territorial integrity. The resolution condemned the annexation of Crimea, declared the referendum "non-valid" and appealed to the international community not to recognize chang-

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<sup>9</sup> Mearsheimer, John J. Why the Ukraine Crisis is the West's Fault. In *Foreign Affairs*, September-October, 2014, <http://www.foreignaffairs.com/articles/141769/john-j-mearsheimer/why-the-ukraine-crisis-is-the-west-s-fault> (12.09.2014).



es in the status of Crimea. A majority of one hundred UN members supported the resolution while 11 voted against it. The vote showed the Russian Federation's considerable diplomatic isolation. Understanding and support for its action were expressed by states such as North Sudan, Syria, Zimbabwe, North Korea and by four Latin American countries. Among the ex-Soviet republics, only states highly dependent on Russia, namely Armenia and Belarus, voted with in Russia's favour, while Ukraine and Georgia understandably condemned the Russian action. The annexation put a large group of 58 states (including the BRICS members China, India, Brazil and South Africa) into a delicate situation. While supporting the principle of territorial integrity of member states they for various reasons did not want to condemn the Russian Federation and decided to abstain.

Active condemnation of Russia's action was expressed in the strongest terms by a number of EU and NATO members, including those from Eastern Europe. It was shared also by many non-aligned states who, as a matter of principle, oppose any infringement on the territorial integrity of member states. On April 1, 2014, the foreign ministers of NATO member states condemned the annexation of Crimea and qualified it as illegal and illegitimate. They also approved a number of measures negatively affecting NATO's relations with the Russian Federation. On September 5, 2014, leaders at the NATO Summit in Wales called on the Russian Federation to “reverse” the annexation of Crimea and declared the suspension of all practical, civilian and military cooperation and the freezing of the activities of the bilateral forum, the NATO-Russian Council. The ministers also decided to assist Ukraine with advisory teams, to support Ukraine's defence reforms and to boost NATO's collective defence posture by demonstrative deployments of its assets in land, air and sea configurations within the North Atlantic treaty area geographically close to Ukraine and the Russian Federation. The United States and later the European Union added to these measures economic and political sanctions targeting among others, a group of prominent Russian and Crimean personalities.

The conflict over Crimea and the related conflict in South Eastern Ukraine raised the fears of escalation to a hot war between Ukraine and the Russian Federation. The shooting down, of the Malaysia Airlines flight 017 on July 17, 2014, which killed three hundred innocent civilians, further sharpened the political confrontation between EU, USA and NATO, on the one hand, and the Russian Federation, on the other. The confrontation has worsened the general political climate in the Euro-Atlantic area. Some aspects of the confrontation and of the Western sanctions bore resemblance with the “Cold War” period. The conflict over Crimea and its

further ramifications have had a number of other negative international effects. The substantive breach by the Russian Federation of its obligations to Ukraine under the Budapest Memorandum (1994) certainly weakened the nuclear non-proliferation regime. The conflict also brought the US-Russia talks on anti-ballistic defence and on other strategic issues to an end, although they were already in deep troubles. Russian non-compliance with its obligations of notification and the international observation of large movements of troops in border areas harmed the system of Confidence and Security-Building Measures (CSBM) under the OSCE Vienna Documents (1990, 1994). The Crimean conflict heightened the sense of insecurity in states bordering on the Russian Federation, particularly those having within their borders Russian minorities. These states are most concerned with the possible resurrection of Russian neoimperialism, while the former Soviet republics with a new, narrower version of L. Brezhnev's doctrine of "limited sovereignty". All this resulted in increased defense appropriations and the reintroduction of military draft in Lithuania. The Crimean affair has also reduced the possibility of de-escalation in several "frozen" conflicts on the ex-Soviet periphery, e.g., over Transnistria.

The application of EU and US sanctions raised the question of their objectives, effectiveness and consequences. The true objectives of the sanctions have been never clearly stated. These could be: a) a restitution of Crimea to Ukraine, b) the termination of Moscow's support to the separatists in Eastern Ukraine and exerting pressure on them to desist and return to Kyiv's rule, c) to force Moscow to agree to further EU's and NATO's enlargement into the post-Soviet space, d) to effect a regime change in the Kremlin and "shackle" the disobedient Russian "bear".

President Vladimir Putin apparently firmly believes in the latter.<sup>10</sup> Washington's hostility to Russia has been evident, according to him, already earlier and Crimea and the Ukrainian crisis were used only as a pretext to mobilize its European allies for an anti-Russian action. It is an irony that US initiated and has pressed for sanctions against Russia while having openly admitted the failure of its own sanctions applied for 50 years against an incomparably smaller, weaker and much more vulnerable state - Cuba. The war of sanctions with the Russian Federation economically harm also Europe, but not US. Most importantly they are not likely to achieve any of the above-stated objectives. This is certainly true of the prohibition of military exports due to the near self-sufficiency in arms of the second largest exporter of weapons world-wide. In addition this ban is to be applied to new

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<sup>10</sup> News conference of Vladimir Putin, December 18, 2014.

contracts only. It is clear, that no kind and no intensity of international sanctions will ever return Crimea to Ukraine. In this particular sense, the application of economic sanctions by the European Union is pointless. They have had no educational or deterrent effect. Moscow politically cannot and will not allow a military defeat of the separatists - turned - autonomists in Eastern Ukraine. Generally, sanctions often provide results contrary to those intended. The war of sanctions already strengthened the autocratic elements of Vladimir Putin's regime and slowed down or stopped altogether internal political and economic reforms in Russia favoured by the West. The absence, so far, of a direct and massive military intervention by the Russian Army could be not attributed to the Western sanctions. The Crimean scenario has not been repeated for a number of other reasons. An open and massive Russian invasion would have caused an all-out war between Russia and Ukraine, with catastrophic consequences. Although quickly victorious on the battlefield, the Russian forces would face the prospect of waging for many years a bloody anti-guerrilla warfare, similar to that in Western Ukraine in 1945-1949. The human, political and economic costs of a massive invasion and of the protracted occupation of Eastern Ukraine would far outweigh any possible gains for Russia.

By February 15, 2015 the civil war in Ukraine affected more than five million of its inhabitants, caused about 6.700 dead (recorded by the UN and OSCE plus probably up to eight thousand unrecorded deaths), more than eleven thousand wounded, over a million and a half internally displaced persons and refugees and a huge economic damage. An agreement reached in Minsk by the highest representatives of the Russian Federation, Germany, France and Ukraine allowed for a ceasefire starting on February 18, 2015, the removal of heavily weapons from a wide tampon zone, exchange of prisoners and other measures of normalization. An associated protocol signed separately by the former President L. Kuchma, Russian Ambassador in Ukraine, two leaders of the insurgents and an OSCE mediator obliged Ukraine to implement by the end of 2015 a constitutional reform allowing for autonomy within Ukraine of parts of the Donetsk and Lugansk provinces. New local election are to be held according to Ukrainian law. If these and other measures are implemented. Ukraine would eventually reinstate its control over the entire interstate border with the Russian Federation etc. The very different course of events in territorially undefined "Novorossia" has led thus, so far, to an outcome of the conflict quite different than that in Crimea.

There have been many commentaries and a number of proposals on how to deal with the conflict related to Crimea and Ukraine. Some commentaries openly try

to revive the spirit of the “Cold War” depicting President Putin as a new Hitler and presenting Russia’s behaviour as a threat to the very foundations of international security, international law and even to the liberal West. More realistic commentaries, on the other hand, admit the mistake made by NATO and propose that the Alliance assures Moscow that it will not draw Ukraine into its membership (H. Kissinger, Z. Brzezinski). Some proposals demand that Russia, in exchange for normalisation of relations, recognizes Ukraine’s sovereignty over autonomous Crimea (i.a. H. Kissinger). Another suggestion was made by M. O’Hanlon and J. Shapiro requesting a repeated and binding referendum on Crimea, this time under international supervision.<sup>11</sup> The same authors propose as other conditions for gradual lifting of sanctions: a verifiable removal of Russian “volunteers” from Eastern Ukraine, Russia’s guarantees of mainland Ukraine’s territorial integrity, the termination of NATO’s enlargement and making Ukraine’s relations with EU compatible with its membership in the Eurasian Economic Union.

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Crimea covers 26,200 square kilometres and had in 2007 about 2,3 million inhabitants. In terms of its territory and/or population, Crimea is thus larger than each of the five small members of the European Union (Luxemburg, Estonia, Slovenia, Cyprus and Malta), not to mention the five internationally recognized mini-states (Liechtenstein, Monaco, San Marino, Holy See-Vatican, Andorra) and the five unrecognized or less than universally recognized but *de facto* existing states or state-like entities in Europe. According to the last Ukrainian census held in 2001, 58 percent of Crimea’s population were ethnic Russians, 24 percent ethnic Ukrainians and about 12 percent Crimean Tatars. The actual number and percentage of Russians were probably higher than was stated in the official Ukrainian count. There is no current data on the additional influx of Russian military, security and civilian personnel since March 2014 and on a considerable number of inhabitants (mostly Ukrainians and Tatars) who have reportedly left Crimea.

The Republic of Crimea and the federal city Sevastopol are today *de facto* parts of the Russian Federation constituting the Crimean Federal District and part of

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11N.B. A representative public opinion poll conducted by OSCE could be more palatable to Moscow. O’Hanlon, Michael, Shapiro, Jeremy. *Crafting a win-win-win for Russia, Ukraine and the West*. Washington Post. [http://www.washingtonpost.com/opinions/crafting-a-win-win-win-for-russia-ukraine-and-the-west/2014/12/05/727d6c92-7be1-11e4-9a27-6fdb612bff8\\_story.html](http://www.washingtonpost.com/opinions/crafting-a-win-win-win-for-russia-ukraine-and-the-west/2014/12/05/727d6c92-7be1-11e4-9a27-6fdb612bff8_story.html) (07.01.2015).

Russia’s Southern Military District. On April 11, 2014 a new constitution was adopted by the Republic of Crimea. A public opinion poll conducted in Crimea in January 2015 by a Canadian Berta Communication Company showed that a vast majority of respondents supported the reunification with the Russian Federation. The violence and destruction in the Donbass area have strongly confirmed this decision of Crimea Russians. Most of the international community, however, does not recognize the annexation by the Russian Federation and considers the Autonomous Republic of Crimea as still belonging to Ukraine. On April 15, 2014, the Ukrainian parliament declared Crimea and Sevastopol “occupied territories”. Dmitri Medvedev, Russian Prime Minister, on the other hand, declared that the present status of Crimea is a non-negotiable “closed chapter”.<sup>12</sup>The political and legal stand-off between Ukraine and the Russian Federation will undoubtedly continue indefinitely having created a new and long lasting “frozen” conflict in Europe.

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<sup>12</sup>Medvedev, Dmitri. Rossia i Ukraina. In *Nezavisimaya gazeta*, December 15, 2014.

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## NAJNOVIJI “ZAMRZNUTI” KONFLIKT U EVROPI - SLUČAJ KRIMA

### Apstrakt

*U ovom radu autor istražuje najnovije “zamrznute” konflikte u Evropi, sa posebnim osvrtom na slučaj Krima. Poslednjih decenija bezbednost našeg kontinenta je opterećena oružanim nasiljem i ratovima koji su korespondirali sa dezintegracijom brojnih država istočnog Mediterana, zapadnog Balkana i Sovjetskog Saveza. Ovakav razvoj situacije rezultovao je pojavljivanjem na desetine novih i internacionalno priznatih država na političkoj mapi Evrope. Najuspešnije secesije ovih novih država dogodile su se paralelno sa nastankom grupe para-država koje nisu priznate ili su manje nego univerzalno priznate od strane međunarodne zajednice.*

**Ključne reči:** Evropa, konflikt, “zamrznuti” konflikt, NATO, Krim, Sovjetski Savez, Ukrajina.