

LUISS



Department of
Political Science

Chair in
International Law

Russia's Annexation of Crimea:
violations of international law,
reactions of the international
community, and legal consequences.

Sergio Marchisio

SUPERVISOR

Tommaso Baiocco

CANDIDATE 087332

Academic Year 2019/2020

Table of contents

<i>LIST OF ABBREVIATIONS.....</i>	<i>3</i>
<i>INTRODUCTION.....</i>	<i>4</i>
<i>CHAPTER ONE: THE CRIMEA CRISIS.....</i>	<i>6</i>
1.1 Crimea Geo-historical Background.....	6
1.2 Ukrainian Crisis	9
1.3 Russian Intervention.....	12
1.4 2014 Referendum in Crimea	15
<i>CHAPTER TWO: VIOLATIONS OF INTERNATIONAL LAW.....</i>	<i>18</i>
2.1 Russia-Ukraine agreements and their violations.....	18
2.2 Legality of Secession.....	23
2.3 Legality of Referendum	29
2.4 Legality of Annexation.....	33
2.5 Human rights violations in Crimea.....	39
<i>CHAPTER THREE: INTERNATIONAL REACTIONS TO ANNEXATION..</i>	<i>44</i>
3.1 General Consequences under International law of wrongful conducts	44
3.2 United Nations and Security Council	49
3.3 Sanctions	52
3.4 International non-recognition.....	59
3.5 Current Situation and possible future scenarios.....	64
<i>CONCLUSION.....</i>	<i>69</i>
<i>BIBLIOGRAPHY</i>	<i>72</i>

LIST OF ABBREVIATIONS

- ASSR → Autonomous Socialist Soviet Republic
- DARS → Draft Articles on the Responsibility of States for internationally wrongful acts
- ECB → European Central Bank
- EIB → European Investment bank
- ERBD → European Bank for Reconstruction and Development
- EU → European Union
- EUCH → European Convention Human Rights
- FSB → *Federal'naja služba bezopasnosti Rossijskoj Federacii* (Федеральная служба безопасности Российской Федерации) Russian Federation Secret Services
- IAI → Istituto Affari Internazionali
- ICJ → International Court of Justice
- IEA → International Energy Agency
- IL → International Law
- ILA → International Law Association
- ILC → International law Commission
- NATO → North Atlantic Treaty Organization
- OECD → Organization for Economic Co-operation and Development
- OHCHR → Office of the United Nation High Commissioner for Human Rights
- OSCE → Organization for security and Cooperation in Europe
- PACE → Parliamentary Assembly of the Council of Europe
- RSFSR → Russian Soviet Federative Socialist Republic
- SOFA → Status of Force agreement
- UN → United Nations
- UNSC → United Nations Security Council
- USSR → Union of Soviet Socialist Republics

INTRODUCTION

The annexation of Crimea by the Russian federation has been one of the most complicated and relevant events of the last decade in the European political scene. It created irremediable fractures in the geopolitical framework of eastern Europe and it has contributed to worsen the already tense situation between Russia and the other western countries.

The fractures generated by this crisis in Crimea would have resulted in other conflicts, as for example the one in Donbas.

The purpose of my entire analysis will be to examine whether this process of annexation was compliant with international law and can therefore be considered lawful.

In the first chapter I will proceed in chronological order to understand what events in the course of history made Crimea such a disputed region and whether this crisis could have been predicted or not. Starting from the 17th century with the wars that Peter the Great initiated against the Ottoman Empire to gain control of the area, following with the first annexation to the Russian empire in 1783 under the reign of Catherine the Great. The much contested and discussed transfer of Crimea to Ukraine operated by USSR leader Nikita Krushchev in 1954 also represents an important part of my historical analysis.

I will then take a look at the 2014 Ukrainian crisis. A nation which since the end of the USSR has always been contended between two spheres of influence: the Russian Federation and the European Union. The fact that in November 2013 President Yanukovich suspended the preparations for the association agreements with the European Union just made the situation more tense than it was before.

There will be a look at the modalities of the Russian intervention in the region with their military forces. It will be addressed the way Russia tried to justify its actions relying on several different principles of international law.

To conclude the chapter there will be an examination of the referendum in Crimea, the modalities in which it took place, the question that people were asked to answer, to discover whether it followed the norms prescribed by the Ukrainian Constitution and was also compliant with international law.

The second chapter will be more focused on the legal aspects of the event. I will explore in depth the norms of international law that is possible to apply to the case at stake and I will separately take into account the processes of secession and annexation.

I will start by examining those international agreements Russia and Ukraine have signed that could have an influence on the case. The Minsk Agreements, The Final act of the Helsinki Conference and the Black Sea Fleet Agreement are only some examples.

The procedure of secession, referendum and annexation will be analyzed separately to determine the legality of each. The last paragraph of this second chapter will address the human rights violation that have allegedly been committed in Crimea. I will take a look at the most important conventions in this regard.

In chapter 3, the analysis continues, taking into account the general consequences under international law of wrongful conduct and how they apply to the case at stake.

I will also talk about the role the UN could play in the matter, to discover whether it managed to achieve considerable results or not. It will then be analyzed how organs of EU institutions reacted to the fact. They used the means at their disposal to adopt different type of sanctions against Russia. I will explain which sanctions can be adopted, in what they differ from each other and what they entail.

The following paragraph will be dedicated to analyze the concept of non-recognition, and more specifically the non-recognition of illegitimate territory acquisition. It will be showed how states reacted to this entire process and whether all UN members shared the same reaction or not.

To conclude my work I will report how the situation is in today's Crimea in the last paragraph. Account will be given to what has changed and if these changes have been viewed as positive or negative by the population. I will then analyze what are some possible scenarios to the situation and what the future holds for Crimea and its people.

In the conclusion of my work I will sum up all the findings that I have done during my research and assess whether Russia violated international law or not during the process of annexation of Crimea.

CHAPTER ONE: THE CRIMEA CRISIS

1.1 Crimea Geo-historical Background

Crimea is a peninsula with a very long and disputed history. Due to its geographical features it has always been the desire of many different populations. It is a peninsula stretching out from Southern Ukraine between the Black Sea and the sea of Azov «connected on the northwest to the mainland by the Perekop Isthmus, a 5 mile wide strip of land that has been the site of numerous battles for the control of Crimea».¹

Without talking too much about its geographical partition, the most important thing to say is that Crimea is divided into three regions. What matters the most, instead, is its history. Crimea has been a contended region since the time of the Ancient Greeks and Romans, but the century that is fundamental for my research is the 17th, because in this time Peter the Great challenged the Ottoman empire supremacy in the region causing several wars between these two super powers. In 1783, during the reign of Catherine the Great, Crimea was officially annexed to Russia.

The regional rivalry between Russia and Turkey developed and expanded to a broader conflict with the Crimea war (1853-1856). In the mid 19th Century Britain and France were suspicious of Russian ambitions in the Balkans as the Ottoman Empire was steadily declining, therefore they sent their troops as well. This war was a disaster for Russia. «British and French forces demanded Russian evacuation of the Danubian Principalities[...] and laid siege of the city of Sevastopol in 1854».² The war came to an end when Russia had to agree to the terms of the Paris Treaty in 1856. Britain and France were involved in this war for different reasons: Britain had commercial and strategic interests in the area, while France intervened to «cement its alliance with Britain and to reassert its military power».³

Russia had disastrous results, «it had lost 500,000 troops, mostly to disease, malnutrition and exposure; its economy was ruined and its primitive industries were incapable of producing

¹ RAY, M., *Crimea*, Encyclopaedia Britannica.com, <https://www.britannica.com/place/Crimea>, 2020 (accessed 27/02/2020).

² LAMBERT A. D., *Crimea war*, History.com, <https://www.history.com/topics/british-history/crimean-war>, 9/11/2009 (accessed 25/02/2020).

³ *Ivi.*

modern weapons».⁴ The Ottoman empire achieved the results it wanted with the peace treaty, indeed it provided the preservation of power in Turkey.

The revolution of 1917 that led to the collapse of the Russian Empire, had some serious consequences for the Crimean peninsula as well. It was denominated 'The Crimean Autonomous Soviet Socialist Republic' and the majority of Tatars who lived in the area were suppressed during Stalin's regime as they were considered an ethnic minority. The remaining ones, which amounted to around 200,000 were «forcibly deported to Siberia and Central Asia for allegedly having collaborated with the Nazis during WWII».⁵ This is one of the main reasons why today 58% of the population in the Crimean peninsula is of Russian ethnicity, the rest is Ukrainian and a very low percentage of Tatars. The role of Tatars, though, is still important, because, as I will explain later in this work⁶, they boycotted the vote in the referendum concerning the independence of Crimea, as they do not have a good memory of Russia. 1954 is the key year when talking about history of Crimea. In this year Nikita Khrushchev, at the time leader of the Soviet Union transferred the territory to Ukraine.

The reason why it happened is disputed still today and there are multiple theories behind it. The official newspaper of the regime, the 'Pravda' devoted only one paragraph to the event in February 27 1954. The article said «Decree of the Presidium of the USSR Supreme Soviet transferring Crimea province from the Russian republic to the Ukraine republic, taking into account the integral character of the economy, the territorial proximity and the close economic ties between the Crimea province and the Ukraine republic, and approving the joint presentation of the Presidium of the Russian Republic Supreme Soviet and the presidium of the Ukraine Republic Supreme Soviet on the transfer of Crimea province from the Russian Republic to the Ukraine Republic».⁷ Lewis Siegelbaum, a historian at Michigan State University, sustains that the whole idea that Crimea and Ukraine had links is «a stretch, since the peninsula was mostly a tourist destination for the rest of the Soviet Union».⁸

Other reasons for the handover seem to be much more symbolic, as for example that the handover was to mark the 300th anniversary of Ukraine's merger with the Russian empire.

⁴ *Ivi.*

⁵ RAY M., *Crimea...*cit., note 1.

⁶ See *infra* 1.4.

⁷ CALAMUR, K., *Crimea: A gift to Ukraine becomes a political flashpoint*, in NPR.org <https://www.npr.org/sections/parallels/2014/02/27/283481587/crimea-a-gift-to-ukraine-becomes-a-political-flash-point?t=1582711983485>, 2014. (accessed 26/02/2020).

⁸ *Ivi.*

Khrushchev was of Russian ethnicity, but felt great affinity with Ukraine, also because he married an Ukrainian woman and wanted to do a personal gesture towards one of his favorite lands. He was born in an area «that later fell within the Soviet Kursk oblast in Russia, but was brought up in what became the Soviet Donetsk oblast in eastern Ukraine»⁹, so these personal links might make sense. His exceptional career is also due to the working relationship with Lazar Kaganovich, former 'First secretary' of the Communist party and when he was later moved to leading positions in the party apparatus in Moscow he let Khrushchev to take his spot, as he later became first secretary in 1935. In 1938, Khrushchev was appointed by Stalin as general secretary of the Communist Party of Ukraine, and was presented as a true and authentic Ukrainian. When he finally took the leading position in place of Stalin, he also felt that taking over the power after Stalin, there was the need to democratize the system and centralize it less. The strange thing that poses a veil of mystery on this transfer is the fact that no protocols, nor stenographic records of the three presidia of the Central Committee of the Communist party of the Soviet Union, nor even the records of the party conferences of the period refer the transfer.

Still today there is complete silence about this transfer in many contemporary soviet accounts, and the fact that Soviet leaders were used to report every meeting they attended and every event of relevant importance, contributes to make the argument even more puzzling. Some hypotheses are that Khrushchev did not want to be associated with the fact, and furthermore the matter had become extremely delicate because of the Tatars, so he publicly had to distance from it. Recently, as the book 'The Crimea question: Identity, transition and Conflict' by Gwendolyn Sasse reports, «a collection of official documents about the transfer of Crimea was published in the Russian historical journal *Istoricheskii arkhiv* in 1992, at a politically sensitive time when the mobilization of Russian history was underway».¹⁰

This archive explains that the typical soviet procedure of the time was characterized by a specific decision making process. Clearly the decision was always taken from above, but everything always had to look like as if it came from below, and this situation isn't different. The transfer was a very complex procedure and had to follow several steps, but «the ultimate decision to transfer Crimea was made in Moscow and formally accepted in Kiev. Confining the decision to the Presidia of the Supreme Soviets limited the discussion and made for a quick passage of the decree. In the end, a total of just over thirty people attended the final

⁹ SASSE, G., *The Crimea question: Identity, transition and Conflict*, Cambridge, Massachussets, 2007, p. 114.

¹⁰ *Ibidem*, p. 118.

praesidium».¹¹ These ‘newly’ discovered documents may also support the claims of those who think this transfer was not completely legal.

Evgenii Ambartsumov, former deputy head of the Russian Supreme Soviet Committee on International affairs sustains that «the decision to transfer Crimea was illegal, since the Russian Soviet federative Socialist Republic (RSFSR) Constitution at the time required that any decision on territorial change had to be taken by the highest organ, namely the entire RSFSR Supreme Soviet, and not only its presidium».¹²

This is because the Constitution of the Soviet Union of 1936 provided that when discussing about alteration of boundaries, the Supreme Soviet was the organ having jurisdiction and not the presidium. The RSFSR Constitution of 1948 and 1952 «declares that the establishment of new ASSRs, oblasts and krais, within the RSFSR must be confirmed not only by the highest state organs of the RSFSR, but also by the Supreme Soviet of the USSR».¹³ According to some records published by Lavrentii Pogrebnoi, an apparatchik close to Nikolai Shvernik, the first secretary of the All-Union Central Council of Trade Unions and head of the presidium of the Supreme Soviet of the RSFSR in the 1940s, «Khrushchev had first voiced the idea of transfer some years before in 1944...because Stalin at the time, had ordered Khrushchev to relocate on hundred thousand Ukrainians to Russia to help with the post war reconstruction».¹⁴

1.2 Ukrainian Crisis

In 2014 Ukraine faced probably the most threatful crisis of its history since the collapse of the Soviet Union. Since the end of the Cold War, the European Union and Russia have always tried to include Ukraine in their sphere of influence. To truly understand the roots of this crisis we have to go back to 1991 and the declaration of independence of Ukraine from the Soviet Union. Since then Ukraine has been independent, but yet internally divided. The clearest division is for what concerns language. Two thirds of the population, mainly those who live in the western areas, speak Ukrainian as their native language, while the remaining one third has Russian as its mother tongue. The division is much more complicated than that, but this language divide reflects itself almost perfectly into the voting

¹¹ *Ibidem*, p. 124.

¹² *Ibidem*, pp. 124-125.

¹³ *Ibidem*, p. 125.

¹⁴ *Ibidem*, p. 127.

pattern. In the elections of 2010, Tymoshenko was mostly voted in the areas of Ukrainian speakers, while Yanukovych in those with Russian speakers. This happens fundamentally because western Ukrainians «tend to see Russia with suspicion, see themselves as Europeans, and want to break away from Russia's orbit to join Europe... The eastern half of Ukraine, on the other hand has voted overwhelmingly in favor of political candidates who are more sympathetic to Russia».¹⁵

The crisis happened when, in November 2013 President Yanukovych suspended preparations for the implementations of an association agreement with the European Union.¹⁶ This caused the arising of mass protests from those who had proposed the agreement. These protests precipitated into a revolution that led to the removal of Yanukovych from power, and he was substituted with a pro-west interim government. While this government was trying to revitalize a stagnant economy, Russians special forces, with the help of «heavily armed pro-Russian separatists, seized government buildings in Crimea and declared independence from the central government in Kiev».¹⁷ Crimea was formally annexed by Russia in March 2014 and this event inspired my work. While focusing in a more detailed way on international law in Chapter 2, in this paragraph I will continue to examine the Ukrainian revolution. This revolution is extremely important for the purpose of my analysis, because it can be considered as the spark that led to the consequent annexation process of Crimea.

This crisis started when Yanukovych «mismanaged the budget and forced Ukraine to ask for financial help, it appealed first to Europe, then to Russia, causing some political unrest».¹⁸ The political and economic reason behind this fact, that in my opinion, is much more important, is that Ukraine had been planning for several years to develop its natural gas reserves, with the help of some US companies. Doing this would have caused a huge damage to Russia, because it would have lost one of its biggest and most loyal partners, and moreover it would have had some big US companies' establishments near to the border. Since Russia had already lost an 'asset' as Yanukovych, it could not afford to lose more

¹⁵ FISHER, M., *Everything you need to know about the Ukraine Crisis*, Vox.com. <https://www.vox.com/2014/9/3/18088560/ukraine-everything-you-need-to-know>, 2014. (accessed 2/3/2020).

¹⁶ VAN DER LOO G., *The EU-Ukraine Association Agreement and Deep and Comprehensive Free Trade Area: A New Legal instrument for EU Integration without membership*, The Hague, 2016.

¹⁷ RAY, M., *Ukraine Crisis*, Encyclopedia Britannica.com <https://www.britannica.com/topic/Ukraine-crisis>, 2017. (accessed 2/03/2020).

¹⁸ AMADEO, K., *Ukraine Crisis Summary and Explanation*, thebalance.com. <https://www.thebalance.com/ukraine-crisis-summary-and-explanation-3970462>, 2020 (accessed 2/03/2020).

influence, on a country which historically has always been subject. 2014 is a pivotal year, because it marks as well the beginning of the eastern Ukraine conflict. It began «in April 2014 with low-level fighting between the Ukrainian military and Russian-backed separatist rebels who seized some towns in predominantly Russian speaking eastern Ukraine. It has since escalated to outright-if-undeclared war between Russia and Ukraine».¹⁹ In early July 2014 the Ukrainian government started to launch offensives to push back the rebels to the border. Things started to get complex and extremely dangerous for the civilians as Russia begun to arm the rebels with high tech surface to air-missiles. The rebels, maybe accidentally or maybe not..., with this equipment shot down a civilian airliner of Malaysia Airlines killing the 298 people on board and putting the conflict on the map. Ukraine then «redoubled its offensive, the rebels looked on the verge of getting overrun, and in Mid-August Russia escalated from covertly supporting the rebels to overtly invading with Russian military troops».²⁰

It is still not clear why Putin did this invasion, and this article on Vox made two hypothesis: «Putin is trying to overturn to the rebel's losses because he wants something from Ukraine[...]Putin has been backing the rebels for months and fomenting violence in Eastern Ukraine and he is doing this either because he wants to maintain a perpetual separatist crisis[...]or because he wanted to give himself an excuse to invade on the premise of saving eastern Ukrainians».²¹ This theory is pretty probable and in my opinion is the most likely option, as something always happens for a precise reason and I believe that President Putin had in his mind clear objectives when the invasion started, also because everything is connected, as I will show later, to the annexation of Crimea. The second option is that Putin was «sucked into an irrational invasion he did not want by his own rhetoric and propaganda».²²

Personally, I struggle to believe that Russia didn't plan this invasion and that it has gone beyond Putin's control. Rather I believe that everything was planned to raise his public consent and make the people shift their attention away from the internal financial problems. Therefore, the question to understand is 'Why Ukraine is so important to Putin?'

Data show that consent among people raised to 80%, so Putin «to maintain this popularity, he will continue to hold onto Ukraine despite the cost. Putin knows that NATO

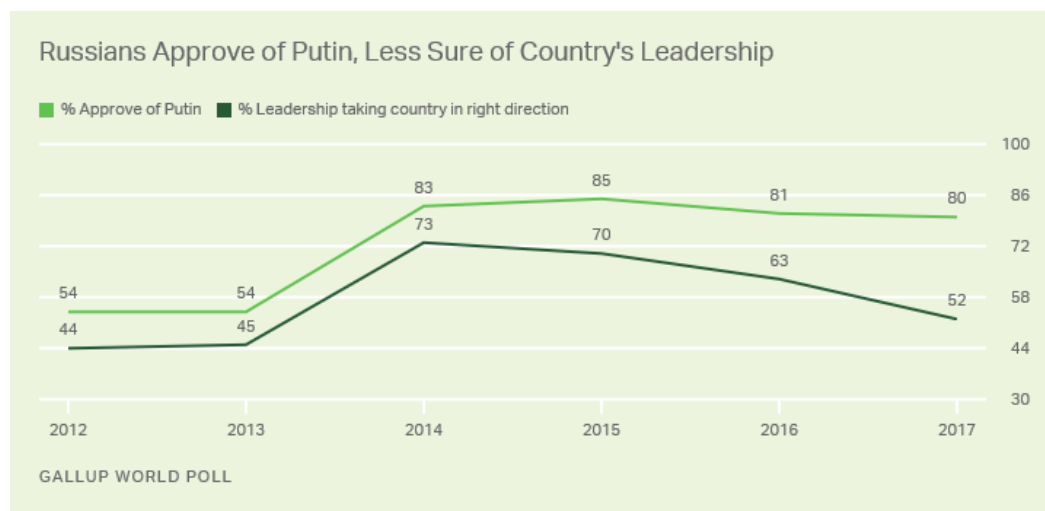
¹⁹ FISHER, M., *Everything you...*cit., note 14.

²⁰ *Ivi.*

²¹ *Ivi.*

²² *Ivi.*

won't protect Ukraine since it is not a member, and that encourages him to continue the attack».²³



This graph shows that «Russians' support for their president remains undiminished from the high ratings they have given him since Crimea became part of Russia in 2014. His personal brand since then has been immune».²⁴

1.3 Russian Intervention

«Russia has a key interest in Ukrainian territory, since it relies on access to Crimea as basis for its Black sea fleet».²⁵ This is the reason why Russia used all the soft power, and later on not much 'soft', it had to prevent the adoption of the association agreement that had to be signed between Ukraine and the EU, because it did not want one of its closest countries to become aligned with an opposing organization.

Russia's bargaining power consist in the fact that Ukraine is completely dependent on Russia for what concerns gas supplies and they are also good trading partners. As I briefly mentioned earlier, in February 2014 Russian military troops invaded Crimea. This invasion

²³ AMADEO, K., *Ukraine Crisis...*cit., note 17.

²⁴ ESIPOVA, J., RAY AND NELL. *Russians happier with Putin than with Country's direction*, Gallup.com. <https://news.gallup.com/poll/223382/russians-happier-putin-country-direction.aspx>, 2017. (accessed 3/03/2020).

²⁵ MARXSEN, C., *The Crimea Crisis – An International Law Perspective*, Heidelberg Journal of International Law 74/2, 2014, pp. 367-391.

could be considered the smoothest of modern times as «until Tuesday 18 March, when a group of pro-Russian gunmen attacked a small Ukrainian army base in Simferopol, killing one officer and injuring another, it was entirely bloodless».²⁶ Actually the plan was kept secret and it was completed even before the outside world had realized what was happening. Russia took advantage of the bases it was allowed to retain by treaty in Crimea, to quietly send soldiers in the territory. This military intervention has always been considered legal by Russians themselves, as they use mainly two concepts of international law to justify the event: protection of nationals abroad and intervention upon invitation.

The first argument used, then, is the one that the intervention was necessary to protect the Russian minority that lived in the territory. Putin's chairperson, Valentina Matviyenko has stated that existed «a real threat to the life and security of Russian citizens living in Ukraine. There is a threat to our military in Sevastopol and the Black sea fleet and I think that Russia should not be a bystander».²⁷

Moreover, the issue of the right of every state to carry out military interventions, in accordance with international law, to rescue its nationals in danger on the territory of another state, has been justified either as a form of self-defence under article 51 of the UN Charter²⁸ or as “an unwritten customary exemption of the prohibition of the use of force”²⁹ as provided by article 2 (4) UN Charter

To this purpose, Natalino Ronzitti, professor emeritus of International law at LUISS University and scientific counselor of the IAI, published an article regarding the violations of Russia in annexing Crimea. He stated that the motivations proposed by Russia don't hold up. Russia invoked the right to intervene in defense of its own nationals who were stationing in the bases in Crimea. But this right, which once was claimed only by western powers, either wasn't used in this concrete case or it was used in an abnormal way. Indeed, the doctrine of intervention in a foreign country to rescue your own nationals entails that their life must be in danger and the sovereign foreign country officially refuses to defend them. The situation in Crimea wasn't of this kind. Moreover the intervention should have saved the nationals and brought them back to Russia, not produced an invasion of a foreign country. Therefore the actions of these soldiers without tags, who surrounded Ukrainian bases in Crimea, were

²⁶ SIMPSON, J., *Russia's Crimea plan detailed, secret and successful*, bbc.com. <https://www.bbc.com/news/world-europe-26644082/>, 2014 (accessed 4/03/2020).

²⁷ MATVIYENKO, V., *Putin's letter on use of Russian army in Ukraine*, 2014.

²⁸ Article 51, Chapter VII, UN Charter. <https://www.un.org/en/sections/un-charter/chapter-vii/index.html>

²⁹ *Ibidem*, Article 2 (4), Chapter I.

clearly attributable to the Russian Federation and not to rebel local forces. Neither it could have been invoked the consent of local authority to proceed with the intervention, because Crimea is not a nation, but only a province, even though with great autonomy.³⁰

The problem is that in order to be able to appeal to the right to self-defense there must be an armed attack going on against a state, or at least the imminent threat of it. In this case there wasn't any attack going on directly against the state of Russia.

The other issue with this large interpretation is that a wide reading of the right to self-defense like this cannot be justified, as self-defense can be referred to when the existence or security of a state is under an imminent attack and threat.

It must be remembered that the notion of 'self-defense' is a pretty recent one in the international legal framework and it arose in order to allow states to «safeguard their rights and interests»³¹. Roberto Ago, the eminent Italian international lawyer, former judge of the ICJ, and Special Rapporteur of the International Law Commission (ILC) on 'the internationally wrongful act of the state, source of international responsibility', in one of his reports on state responsibility, underlined that «the only recourse to war compatible with the law is that which takes place as a defense against an attack by another subject»,³² and in the event I am analyzing, there wasn't any clear attack to Russia by Ukraine.

Self-defence should be regarded as the only form of armed self-protection that a state should have at its disposal. According to Ago, it would be wrong «to treat self-defence as a 'right', and hence to speak of a 'right of self-defence', even though the expression is a current one, which is used in the Charter of the United Nations[...] self-defence connotes a situation of *de facto* conditions and not a subjective right»³³. Another point made by Mr. Ago is of fundamental importance, namely the fact that «the action taken in self-defence must have been preceded by an international wrong committed, or at least planned, by the subject against which this action is taken»³⁴ and as I will show throughout my work, Ukraine hasn't officially committed any international wrong, worth of receiving such a response by Russia.

³⁰ RONZITTI, N., *Russia in Crimea contro il diritto Internazionale*, affarinternazionali.it, <https://www.affarinternazionali.it/2014/03/russia-in-crimea-contro-il-diritto-internazionale/>, 2014 (accessed 14/05/2020).

³¹ AGO, R., *Special rapporteur- the internationally wrongful act of the State, source of international responsibility (part 1)*, Yearbook of the International Law Commission, vol. II, 1980, p. 52.

³² *Ibidem*, pp. 53-54.

³³ *Ibidem*, p. 57.

³⁴ *Ivi*.

It is made clear by Ago, however, that it must be remembered the difference between a sanction and self-defence, because they are distinct in logic.

«Action in a situation of self-defence is, as its name indicates, action taken by a State in order to defend its territorial integrity or its independence against violent attack; it is action whereby ‘defensive’ use of force is opposed to ‘offensive’ use of comparable force, with the object of preventing another’s wrongful action from proceeding, succeeding and achieving its purpose. Action taking the form of a sanction, on the other hand involves the application of ex post facto to the State committing the international wrong or one of the possible consequences that international law attaches to the commission of an act of this nature»³⁵.

1.4 2014 Referendum in Crimea

February 27th 2014, after institutional turmoil and changes in the leadership, the autonomous parliament of Crimea decided to call a referendum with the objective of acquiring more autonomy from Ukraine, with the Ukrainian parliament already contesting this request. Sunday 16th of March, residents in Crimea were called to vote in a referendum that would have decided the future for their own region, but with a different object: no more an increase of autonomy from Ukraine, but a real adhesion to Russia. The referendum was initially planned to be held May 25th 2014, the same day of presidential elections in Ukraine, but was anticipated. Before the referendum, there has been an official vote in the Ukrainian parliament, which obtained 78 positive votes out of 81 total, that if the republic of Crimea would have become independent as the result of the referendum, it could have become a member of the Russian Federation. Because, it must be recalled that it is true that Crimea is an *oblast* with a certain degree of autonomy, but it is also true that every law approved by the Supreme Council of the autonomous republic of Crimea can be vetoed by the national parliament. Not every Ukrainian could vote for this referendum, obviously, but only adults over 18 years old with Ukrainian citizenship and residents in Crimea, and all Russian citizens with a residence permit in the Crimean peninsula.

The Tatars community, though, decided to boycott the vote. As many local newspapers reported, it appears that «all Crimean Tatars leaders had called on all crimeans to boycott the elections[...] Boycotting them would be a way of showing support for political

³⁵ *Ibidem*, p. 60.

prisoners and their families».³⁶ March 21st Russian Duma started discussing a bill regarding Crimea's adhesion to Russian Federation. 70 international observers were sent from 23 different countries, 54 of them came from EU countries and among them there were members of the EU parliament and national parliaments as well. This referendum was held based on data that showed that in 2013, 36% of Crimean resident were in favor of a unification between Ukraine and Russia. The results of this referendum were predictable, as according to the Crimean Institute for political and social studies, almost 77% of the population would have voted for a return to the Russia federation and only 8% for the restoration of the 1992 constitution.

David Herszenhorn, a reporter of the New York Times wrote: «The outcome, in a region that shares a language and centuries of history with Russia, was a foregone conclusion even before exit polls showed more than 93% of voters favoring secession. Still, the results deepened the conflict over Ukraine, forcing the United States and its European allies to decide how swiftly and forcefully to levy threatened sanctions against Russians officials including top aides to President Vladimir Putin».³⁷

The text of the referendum was basic. People were asked to choose among two options: reunification of Crimea with Russia or return to the 1992 Constitutions. Following this event the UN Security Council called by Ukraine, discussed a resolution draft, presented by around 30 states, where among other statements it said «This referendum can have no validity and cannot form the basis for any alteration of the status of Crimea; and calls upon all States, international organizations and specialized agencies not to recognize any alteration of the status of Crimea on the basis of this referendum and to refrain from any action or dealing that might be interpreted as recognizing any such altered status».³⁸

This resolution, which gained 13 votes in favor, and one abstention, clearly was not adopted because Russia, which is a permanent member decided to veto it. According to the official records of the Autonomous Republic of Crimea, 1.274.096 people participated, which accounts for around 83,1% of those who could have voted and the option regarding reunification with Russia was preferred by 97% of the voters. The following day, the Supreme Council of the Autonomous Republic of Crimea declared independence from

³⁶COYNASH, H., *Crimean Tatars boycott Russia's illegitimate elections in occupied Crimea*, khpg.org. <http://khpg.org/en/index.php?id=1474246406>, 2016(accessed 11/3/2020).

³⁷ HERSZENHORN, D., *Crimea Votes to Secede From Ukraine as Russian Troops Keep Watch*, NY Times, 16/03/2014.

³⁸ UNSC Resolution S/2014/189. 15/03/2014. https://www.un.org/en/ga/search/view_doc.asp?symbol=S/2014/189.

Ukraine and later on formalized the request of adhesion to Russia. It took a couple of hours to President Vladimir Putin to adopt a decree that recognized Crimea as a new sovereign state. Two days later Putin presented to the Russian council two important documents. The first document was a proposal of a new law to reform the constitution to allow the creation of two new entities inside Russian federation: the Republic of Crimea and the city of Sevastopol; the second document was an international treaty that signs the transition of Crimea inside the Russian federation. Clearly it took only a few days to the Russian parliament to accept these two new proposals. In this paragraph I have tried to explain the procedures of this referendum.

This first chapter had the role of introducing the topic, trying to give an historical background and explain what happened. Through an analysis of the political situation in Ukraine I have tried to show how such events brought to the Russian invasion and the following referendum . I started by analyzing how Russian intervention was organized and the legal norms on which the referendum is said to be based, according to the Russians and their justifications. In the next chapter, which will be more focused on the legal aspects concerning these events, I will try to analyze whether this referendum should be considered legal or not and what norms of international law have been violated. Not only the referendum will be analyzed, but also the secession and the following annexation would be meticulously examined to find out whether they were legal or violated international law.

CHAPTER TWO: VIOLATIONS OF INTERNATIONAL LAW

2.1 Russia-Ukraine agreements and their violations

Ukraine and Russia have always been two highly interdependent countries. Therefore, the crisis of relations among these two countries, which occurred because of Crimea, risked compromising the already tense situation. As both countries descend from the USSR, they have inherited many treaties signed by it. The succession of States³⁹ in respect of treaties is governed by the Vienna Convention of 1978.⁴⁰

In this paragraph the focus will be put on the most important treaties these countries have concluded, both bilaterally and with other countries, and the violations that the intervention in Crimea implied. I will proceed by analyzing these treaties in chronological order.

In the next paragraphs instead, the secession, the referendum and the annexation processes will be analyzed separately to discover if they violated international law or not, and to which degree. I will conclude the chapter analyzing the violations committed by Russia in Crime, in terms of human rights and international humanitarian law.

To start, Russia did not comply with the Final Act of the Helsinki Conference on Security and Cooperation in Europe (CSCE), concluded in 1975.

«It is common knowledge that in spite of the frequent use by laymen of terms such as ‘Helsinki accord’ or ‘Helsinki agreement’ the participating states apparently agreed not to confer upon the Final Act the legal character of an international treaty»⁴¹

³⁹ “When talking about succession of states the major instrument at disposal is the notion of ‘international agreement’, because the Vienna Convention contains norms which deviate from current practices of states and therefore it would result difficult to qualify them as non-written law. International agreements represent arrangements between successor states *inter se* and between successor states and other states to share burdens and advantages of succession. These agreements determine also which international treaties will be maintained into force after the succession. The succession notifications, with which the successor States declare which treaties of their predecessors intend to keep in force towards States at whom these notifications are addressed (with the realization of a new conventional relationship)” MARCHISIO, S., *Corso di Diritto Internazionale*, Torino, 2013, pp. 198-199.

⁴⁰ “Which was adopted considering the profound transformation of the international community brought about by the decolonization” Vienna Convention on Succession of States in respect of Treaties, concluded in Vienna on 22nd August 1978 and entered into force 6th November 1996.

⁴¹ ARANGIO-RUIZ, G., *Human rights and non-intervention in the Helsinki Final Act*, 1977, p. 213.

It is, though, a very important declaration of principles, which constituted an important step in the consolidation of some general international law principles, including those on protection of fundamental human rights. «The United Nations General Assembly has adopted numerous 'declarations of principles' that codify general principles of international law [...] they constitute authoritative manifestations of the *opinio iuris* of the states and trigger the formation of new customary rules. [...] often they contain a mix of rules *de lege lata* and *de lege ferenda*. As the International Court of Justice noted in the opinion of 8 July 1996 on the Legality of the Threat or Use of Nuclear Weapons, the resolutions of the General Assembly, even if they do not have mandatory force, can sometimes have regulatory value and provide important evidence to establish the existence of a general standard or the 'emerging' *opinio iuris*. In order to know whether this effect is admissible in the case of a given declaration of principles, it is necessary to check its content, the circumstances of its adoption and the practice prior to and after its adoption. The 1970 Declaration on the 'principles of international law' that govern friendly relations and cooperation between states in accordance with the UN Charter repeats fundamental principles and obligations contained in the UN Charter, but specifies its content. In this instrument, the term principles is used with clear reference to international law, in the sense of general precepts that form the basis of the legislation applicable to those areas of international law and are distinguished from the rules concrete measures adopted to regulate specific aspects».⁴²

When the meeting in Helsinki took place in 1975, principles and rules of distension and peaceful coexistence had already been codified at universal level in the UN. Years of negotiations had induced the General Assembly to adopt, with resolution 2625⁴³ (XXV) October 24th 1970, the Declaration on friendly relationships and cooperation between States in conformity with UN Charter. USSR policy was that of initiating the codification of rules about the peaceful coexistence at two levels: first at UN level, with the Declaration on friendly relations, and then at pan-European level, with the CSCE.

In Helsinki, though, also human rights were inserted and according to Arangio-Ruiz «the Helsinki formulation on human rights is one of the most significant, if not the most significant[...] of the ten principles in the declaration»⁴⁴. Those remarked in Helsinki, are

⁴² MARCHISIO, S., *Corso di diritto internazionale*, Torino, 2013, pp. 134-135.

⁴³ United Nations General Assembly, Resolution 2625(XXV), 24 October 1970, A/RES/2625(XXV).

⁴⁴ ARANGIO-RUIZ, G., *Human rights...* cit, note 41, p. 221.

principles which were already present in the UN Charter and in the Declaration on friendly relations of 1970. The innovative part is the one regarding human rights and «the fact of having obtained the inclusion in the declaration, on an equal plane with the others, of the principle of respect for human rights, constitutes a fundamental element in support of the Western view, according to which security and détente depend, *inter alia*, on the way in which this respect is ensured and promoted in all countries»⁴⁵

In the Final Act the signing states agree to avoid invading frontiers of other states: «The participating States regard as inviolable all one another's frontiers as well as the frontiers of all States in Europe and therefore they will refrain now and in the future from assaulting these frontiers. Accordingly, they will also refrain from any demand for, or act of, seizure and usurpation of part or all of the territory of any participating State.»⁴⁶

In chapter 1, paragraph II is dedicated to the willingness of states to refrain from the threat or the use of force. It set out that «the participating states will refrain in their mutual relations [...] from the threat or use of force against the territorial integrity or political independence of any state.[...] Accordingly, the participating states will refrain from any acts constituting a threat of force or direct or indirect use of force against another participating state».⁴⁷

Paragraph IV discusses about territorial integrity of states, that must be respected «The participating states will respect the territorial integrity of each of the participating states[...] the participating states will likewise refrain from making each other's territory the object of military occupation or other direct or indirect measures of force in contravention of international law, or the object of acquisition by means of such measures or the threat of them. No such occupation or acquisition will be recognized as legal».⁴⁸

Paragraph V is dedicated, almost entirely, to human rights. In the meeting it was convened that «respect for human rights and fundamental freedoms is an essential factor for the peace, justice and well-being necessary to ensure the development of friendly relations and co-operation among the participating states».⁴⁹ Arangio-Ruiz, in his analysis of this act, sustained that «this link between respect for human rights and détente[...] under which the

⁴⁵ *Ibid.*

⁴⁶ Final Act, Helsinki Conference, concluded in Helsinki on 1st August 1975 <https://www.osce.org/helsinki-final-act?download=true>.

⁴⁷ *Ibidem*, Chapter 1, paragraph II.

⁴⁸ *Ibidem*, paragraph IV.

⁴⁹ *Ibidem*, paragraph V.

participating states undertake to co-operate within and without the United Nations- obviously at international level- in the field of human rights»⁵⁰ is of fundamental importance.

Paragraph VI, instead, highlights the non-intervention in internal affairs of other states: «the participating states will refrain from any intervention, direct or indirect, individual or collective, in the internal or external affairs falling within the domestic jurisdiction of another participating states[...]from any form of armed intervention or threat of such intervention against any other participating state. [...] refrain from any act of military, or of political, economic or other coercion».⁵¹

Having explained the most important principles contained in this Act, it seems rather obvious that Russia didn't comply with it through its actions, that included the use of force, the intervention in internal affairs of another state and the failure to respect the territorial integrity and sovereignty of another country.

The Treaty of Minsk signed in December 1991 has not been respected as well. This Treaty was signed by the Republic of Belarus, the Russian federation and the Republic of Ukraine. These countries were the founders of USSR and signed this agreement to state that USSR officially ceased to exist and based on their common history and ties that ineluctably linked these nations, affirmed some principles in 14 articles.

Article 5 states that «the high contracting parties recognize and respect one another's territorial integrity and the inviolability of existing borders within the Commonwealth».⁵² When Russia invaded Crimea, it violated this article of the treaty.

Another similar treaty, that basically stated the same principles of inviolability of the existing borders and that Russia violated in the same way, is the bilateral Treaty on Friendship, Cooperation and Partnership between Ukraine and the Russian Federation. It was signed in 1997 and apart from the inviolability of borders provided for respect for territorial integrity and commitment to not harm the security of each other. The treaty prevents Ukraine and Russia from invading one another's country respectively and declaring war at each other.

⁵⁰ ARANGIO-RUIZ, G., *Human rights*...cit., note 40, p. 221.

⁵¹ *Ibid.*

⁵² The Minsk agreement, concluded in Minsk, Belarus on 9 December 1991 and entered into force on 12th December 1991. <http://soviethistory.msu.edu/1991-2/the-end-of-the-soviet-union/the-end-of-the-soviet-union-texts/minsk-agreement/>.

Finally, it is important to analyze the Black Sea Fleet Stationing Agreement, which is a Status Of Force Agreement (SOFA).⁵³ This Agreement goes back to 1997, when Russian Prime minister Viktor S Chernomyrdin and his Ukrainian counterpart Pavlo Lazarenko ended the tug of war between Russia and Ukraine over the Black sea and signed this Agreement. It provided that «under the accord Russia will be able to keep its portion of the former Soviet fleet for 20 years at the port of Sevastopol».⁵⁴ With this accord Russia could place its Black sea fleet and 15000 personnel in several bays at Sevastopol, but also the Ukrainian navy had some spots. Viktor Yanukovich, Ukraine's President, in 2010 decided to extend the Agreement, that was supposed to expire in 2010, at least up to 2042. He did it in order to regain popularity among the public, because Russia, in exchange, would have offered a 30% discount to Siberian gas⁵⁵.

This deal made clear that Ukraine was returning under Russian influence, and destroyed all the efforts made by «Yanukovich's predecessor, Yushchenko, who had vowed to eject Russia's Black sea fleet from the port of Sevastopol, arguing that its presence was an affront to Ukraine's sovereignty and a destabilizing factor in Crimea, a majority ethnic Russian region with a strong pro-soviet mood».⁵⁶

Article 15.5 of this agreement was violated. It stipulated that Russian forces in order to be allowed to travel outside of the areas of stationing had to consult prior with the Ukrainian authorities, that had to give them their consent. This consent has never arrived, as it wouldn't have been compliant with the agreement. It is so because, as Aurel Sari believes, all these breaches have in common that «they contravene the restrictions placed on the freedom of movement of the Russian forces and the nature and the purpose of their activities in Ukraine. Both of these aspects may reasonably be described not only as 'essential to the effective execution of the treaty', but as elements touching upon the central purposes of the SOFA. Indeed, one of the main purposes of Status of Forces Agreements as a specialized instrument of international law is to define the terms and conditions under which foreign forces may operate in the territory of the host State».⁵⁷

⁵³ Agreement between the Russian Federation and Ukraine on the parameters of the Division of the Black Sea Fleet, concluded on 28 May 1997, and entered into force on 12 July 1999.

⁵⁴ GORDON, MICHAEL R., *Russia and Ukraine Finally Reach Accord on Black Sea Fleet*, NY Times, pag.9. 29/05/1997.

⁵⁵ HARDING, L., *Ukraine extends lease for Russia's Black Sea Fleet*, The Guardian, 21/04/2010.

⁵⁶ *Ivi*.

⁵⁷ SARI, A., *Ukraine Insta-symposium: When does the breach of a status of forces agreement amount to an act of aggression? The case of Ukraine and the Black sea fleet SOFA*, opiniojuris.org. <http://opiniojuris.org/2014/03/06/ukraine-insta->

2.2 Legality of Secession

Continuing my analysis I will now start to focus mainly on the legal aspects of the Crimean question. I will start by examining whether the secession proclaimed by Crimea was compliant with the requirements of international law, and my analysis will continue with the examination of the referendum and the annexation as well. The first thing to say is that in general, international law has always been pretty neutral on the cases of secession, to analyze every situation on a case by case basis.

According to Milena Sterio, professor at the Cleveland-Marshall College of Law, Cleveland State University, «While international law embraces the right to self-determination for all people...international law positively allows for this outcome only in the case of decolonization and occupation...Secession inherently undermines the territorial integrity of the mother state and international law has for centuries espoused the principles of state sovereignty and territorial integrity».⁵⁸ Moreover, talking about people under foreign domination, «the right of self-determination of people was remarked in the two ‘Pacts of the United Nations’ concluded in December 16th 1966, both these pacts recognize the right of self-determination of peoples»⁵⁹

The ICJ was indirectly addressing this issue when requested for an advisory opinion by the UN General Assembly regarding the unilateral declaration of independence of Kosovo in 2008. It was the first time that a unilateral declaration of independence was brought in front of the ICJ. The Court sustained that «Kosovo’s unilateral secession from Serbia did not violate international law».⁶⁰

Two analysts for reuters.com, in their commentary to the sentence added that «the non-binding, but clear-cut ruling by the ICJ is a major blow to Serbia and will complicate efforts to draw the former pariah ex-Yugoslav republic into the EU».⁶¹

symposium-breach-status-forces-agreement-amount-act-aggression-case-ukraine-black-sea-fleet-sofa/, 2014 (accessed 21/3/2020).

⁵⁸ STERIO, MILENA. *Self-determination and secession under International law: The new Framework*, 2015 https://engagedscholarship.csuohio.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1858&context=fac_articles.

⁵⁹ MARCHISIO, S., *L'ONU, il diritto delle nazioni unite*, Bologna, 2012, p. 305.

⁶⁰ ICJ, 22 July 2010, N.997, The Hague.

⁶¹ TANNER, A., STEVENSON, R., *Kosovo independence declaration deemed legal*, 2010, <https://www.reuters.com/article/us-serbia-kosovo/kosovo-independence-declaration-deemed-legal-idUSTRE66L01720100722> (accessed on 19/05/2020)

Moreover the President of the ICJ, Judge Hisashi Owada, observed that «the Court considers that general international law contains no applicable prohibition of declaration of independence».⁶²

The Court, indeed, just wanted to say that if there are some favorable historical and political conditions and an entity gains the prerequisite for independence, international law acknowledges the fact and therefore the declaration of independence is not forbidden. International law does not regulate the formation of States, but it rather limits itself to acknowledge their formation.

Continuing with Marxsen «Initially there was some uncertainty about how Crimea and Russia would design the accession of Crimea to Russia and different routes were explored».⁶³ As stated in Russian constitutional law, an accession to the Russian federation of Crimea would be possible only in the case Ukraine had concluded a deal with Russia first.⁶⁴

For this purpose an ad-hoc draft law, then approved, was introduced in the federal constitutional law framework, namely law on amending the Federal Constitutional Law on the procedure of admission to the Russian Federation and creation of a new subject within the Russian Federation (No. 462741-6), which would have allowed an admission where an efficient government of the third state was absent and where a referendum had voted in favor of accession to Russia.⁶⁵

What is important to understand is, if this federal constitutional law was compliant with international law, and the Venice Commission issued an official opinion about it March 21, 2014.⁶⁶

⁶² ICJ, 22 July 2010, N.997, The Hague.

⁶³ MARXSEN, C., *The Crimea Crisis...* cit., note 25.

⁶⁴ Russian Federal Constitutional Law No. 6-FKZ on the Procedure of Admission to the Russian Federation and the Creation of a New Subject within the Russian Federation, Articles 4.2 and 4.4. (<https://cis-legislation.com/document.fwx?rgn=66256>).

⁶⁵ Law on amending the Federal Constitutional Law on the procedure of admission to the Russian Federation and creation of a new subject within the Russian Federation (462741-6) “This law amends law No. 6-FKZ in several aspects [...] it removes the requirement of the mutual accord between the Russian Federation and the foreign state and the conclusion of an international treaty between the two states. Article 4 stipulates that when it is not possible to conclude an international treaty because of the absence of efficient sovereign state [...] the admission to the Russian Federation of a part of a foreign state in the capacity of a new subject may take place on the basis of a referendum conducted in accordance with the legislation of the foreign state in the territory of the relevant part of the foreign state” Law 462741-6.

⁶⁶ Venice Commission, Opinion on “Whether Draft Federal Constitutional law No. 462741-6 on ‘amending the Federal Constitutional law of the Russian Federation on the procedure of admission to the Russian Federation and creation of a new subject within the Russian Federation’ is compatible with International law”, Opinion No. 763/2014, 21.3.2014, CDL-AD(2014)004.

Law no. 462741-6 amends Law on the procedure of admission to the Russian Federation and creation of a new subject within the Russian Federation (no. 6-FKZ), in several aspects. It removed the requirement of the mutual accord between the Russian federation and the foreign state and the conclusion of an international treaty between the two states. «Besides, the request for the admission shall be submitted by state authorities of the part of the foreign state[...] and the assessment of the inefficiency of the foreign sovereign government is attributed to the Russian federation and possibly also the constitutionality of the referendum[...] in sum, the draft disregards the essential need for the foreseen procedures to comply with all the constitutional rules of the foreign states, including the mechanism of control by the central authorities over the local ones».⁶⁷

The opinion given by the Venice Commission remarked also that the fact of wanting to protect the Russian minority living in Ukraine does not allow the use of force, even more if in the attempt to safeguard the right of its own citizens, other minority groups, such as the Tatar community are denied some fundamental human rights guaranteed under the European Convention. «The draft is clearly not in compliance with several fundamental international law principles, especially the principle of territorial integrity of states, the principle of sovereign equality, the principle of non-intervention in the internal affairs of a state, and potentially, the prohibition of the threat of force».⁶⁸

In the end, the Venice Commission came to the conclusion that the federal constitutional Law no. 462741-6 was not compatible with international law. This is so because it violated the principles of territorial integrity, national sovereignty, non-intervention in the internal affairs of another state and *pacta sunt servanda*. So, according to this opinion, the secession should not have been recognized as legal, because it clearly was in violation of international law, but there is another side of the story.

Russian separatists, Russian Federation as a nation, and some other states, as Armenia and the Democratic People's republic of North Korea have appealed to the existence of «a right to 'external self-determination' for the population of Crimea and eastern

⁶⁷ *Ibidem*, pp. 8-10.

⁶⁸ *Ibidem*, p. 9.

Ukraine»,⁶⁹ namely the fact that «each people has the right to constitute itself a nation-state or to integrate into, or federate with, another state».⁷⁰

This right has to be found in the General Assembly resolution 1514, which recognizes independence to three categories of peoples: those subject to a colonial rule, a foreign domination, or systematic racial discrimination.⁷¹ The problem with this argumentation is that the case in analysis is not included in one of these three cases.

Quoting from Marchisio's 'Corso di diritto internazionale' «With the movements of national liberation we enter the field of the right of self-determination of peoples, which has been established within the framework of the United Nations and whose Charter includes among the purposes of the Organization together with the development of friendly relations between Nations based on the principle of equality of peoples' rights and their right to self-determination (Article 1 par. 2). Self-determination was not originally considered by the Charter to be an operational legal principle, to avoid legitimizing the right of colonial peoples to claim independence. The Charter instead set up two different regimes: one for populations subject to colonial domination and the other for those to be submitted to trusteeship administration (former mandates of the League of Nations)[...] The principle of self-determination has evolved over time to indicate the broader right of each people to determine their own status, free from any external interference. On 14 December 1960, the UN called upon to combat colonialism for the independence to colonial countries and people, since foreign domination was regarded as a denial of the fundamental rights of the human person. Colonialism was described as incompatible with the Charter because it prevents the promotion of international peace and cooperation. It was qualified as an international crime.

According to the Declaration and the practice of the Organization, the principle of self-determination is applicable to three categories of people namely a) under colonial rule, b) or foreign domination, or c) systematic racial discrimination.... ».⁷²

Therefore self-determination is the one of peoples under colonial rules and the same concept cannot be applied to the recent cases such as Catalonia, Scotland and Crimea itself.

⁶⁹ PASCARELLA, M., *Crimean secession and International law*, Notizie Geopolitiche.net, (Accessed 20/04/2020), <https://www.notiziegeopolitiche.net/crimean-secession-and-international-law/>, 2016.

⁷⁰ SENESE, S., *Social Justice Vol. 16*, San Francisco, 1989, pp. 19-25, www.jstor.org/stable/29766439, (Accessed 20/05/2020)

⁷¹ General Assembly Resolution 1514 (XV), 14 December 1960, A/RES/1514 (XV).

⁷² MARCHISIO, S., *Corso di...*cit., note 42, pp. 220-221.

Even the theory of ‘remedial secession’ could not be of any help. This theory provides that a «sub state community suffering oppression and massive violations of human rights by the central government and unable to exercise its right to internal self-determination may have recourse to secession under certain conditions at last resort».⁷³ This theory cannot be applied to the Crimea case, mostly for two reasons: 1) the first is because it is still very controversial and not yet accepted by positive international law. Indeed the ‘Declaration on principles of International law friendly relations and cooperation among states in accordance with the charter of the United Nations’ given by Resolution 2625(7) (1970) of the United Nations General Assembly, stated that outside of decolonization processes, self-determination must not endanger the territorial integrity of independent states, and I have explained earlier, also making reference to the opinion given by the Venice Commission, that this secession had damaged territorial integrity of a sovereign state, namely Ukraine. 2) The second reason why this theory results to be not applicable is because it is still not certain and verified that there have been severe human rights violation in Crimea.

Indeed, «Russia tried to bring up proofs to show that the requirements necessary for a remedial secession were present in the case of Crimea[...] prior Russia had admitted the existence of such a right to secede “as a matter of self-determination of people, only in extreme circumstances, when the people concerned is continuously subjected to most severe forms of oppression that endangers the very existence of the people”».⁷⁴ During the meeting of the UNSC, though, the representative of Russia, did not provide evidence of ‘a severe oppression’, instead he remarked that remedial secession is an extraordinary measure, applied when further coexistence within a single state becomes impossible, but referring to Crimea he said, “that case resulted from a legal vacuum generated by an unconstitutional *coup d’etat* carried out in Kyiv by radical nationalists[...] as well as by their direct threats to impose their order throughout Ukraine”.⁷⁵ Therefore it would have been the case of threats, and not ‘severe oppression’».⁷⁶

⁷³ VIDMAR, J., *Remedial Secession in International Law: Theory and (Lack of) Practice*, 2010, <https://ssrn.com/abstract=2060318> (accessed 20/05/2020).

⁷⁴ ICJ, Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, written statement by the Russian Federation of 16th April 2009, pp.39-40, www.icj-cij.org/docket/files/141/15628.pdf

⁷⁵ UNSC S/PV.7138, 15 March 2014, New York, USA.

⁷⁶ *La crisi in Crimea*, <http://www.sidi-isil.org/wp-content/uploads/2014/05/SIDI-Osservatorio-Tancredi.doc.pdf>, 2014 (accessed 20/05/2020).

International law and therefore the international community do not look so much at the immediate success of the secession, but they rather look «at its ultimate success, its ability to succeed and create a seemingly irreversible solution».⁷⁷

In conclusion, it is possible to state that the norm of the prohibition of aggression was clearly violated by the Russian Federation.⁷⁸ It is so because, article 2(4) of the UN Charter prohibits the threat or use of force inter alia against the territorial integrity of states, so that territorial acquisitions by states were not to be recognised by other states where achieved by means of the threat or use of force or in any other manner inconsistent with international law and order. Moreover, the Declaration on Principles of International Law, 1970, also included a provision to the effect that no territorial acquisition resulting from the threat or use of force shall be recognised as legal, and Security Council resolution 242⁷⁹ (1967) on the solution to the Middle East conflict emphasised ‘the inadmissibility of the acquisition of territory by war’.

No matter of the results achieved, the UN refuses to recognize as such these newly created states. Two examples are given by South Rhodesia, that despite its effectiveness in creating a new state has never been officially recognized and the Turkish Republic of Northern Cyprus, that tried to impose Turkey’s rules but met the opposition of the UNSC⁸⁰.

To conclude I would refer to the words of Harold Koh, professor of International Law at Yale law school. He suggests a reform in international law stating that «international law is manifestly outmoded, because it does not address secession outside the context of decolonization or foreign occupation, and most secessions in the modern day era occur outside these two paradigms, and it would be preferable to develop an international law framework to apply to such secessions, instead of letting politics dominate and determine secessionist outcomes».⁸¹

⁷⁷ MARXSEN, C., *The Crimea Crisis...*cit., note 25.

⁷⁸ This norm is considered a ‘peremptory norm’ or jus cogens rule. It is a non derogable law and introduces a vertical element to the global legal order.

⁷⁹ United Nations Security Council, Resolution 242, 22 November 1967, S/RES/242.

⁸⁰ “In 1983, after Turks in Northern Cyprus declared independence from Cyprus and created the Turkish Republic of Northern Cyprus, the Security Council passed two resolutions calling the declaration illegal and requesting that no other states should recognize it. That effectively isolated the north and deprived it of international legitimacy, as well as much needed foreign investment. To this day, Turkey remains the only country to have recognized Northern Cyprus”. STERIO, M., *Self Determination...*cit., note 58.

⁸¹ STERIO, M., *Self-determination...*cit., note 58.

2.3 Legality of Referendum

As I mentioned in the previous chapter, the referendum was organized very quickly, and in this paragraph I will examine whether the referendum actually had legal validity or not.

Firstly, I believe is important to say that this referendum was in violation of the Ukrainian Constitution. Article 2 of the Constitution determines that Ukraine is a unitary state and also that «the territory of Ukraine within its present border is indivisible and inviolable».⁸² Therefore all Ukrainians should have been able to vote in this referendum and not only inhabitants of Crimea.

In chapter X, article 134, of the Ukrainian Constitution there is a special provision regarding the autonomous region of Crimea stating that «Crimea is an inseparable constituent part of Ukraine».⁸³

Crimea had the right to legitimately hold referendums, but they had to be on local matters, because every problem regarding an alteration to the territory of Ukraine must be dealt with in an all-Ukraine referendum. Therefore, the fact of holding the referendum violated Ukraine Constitution, but did not constitute per se a violation of international law, since it is an internal affair and international law does not apply directly to it. There are however some international standards that states have to follow when holding referendums, and the requirement⁸⁴ in the Ukrainian constitution «is consistent with general principles of international law, which respects the territorial integrity of states and does not recognize a right of secession by a group or region in a country unless the group or region has been denied a right to internal self-determination by the central government or has been subject to grave human violations by the central government. These facts...are not present in Crimea».⁸⁵

Article 25 of the International Covenant on civil and political rights contains the general principles on fair voting, such as secrecy, universality of elections, and freedom. Freedom may be the most important one for what concerns my analysis because it seems

⁸² Ukraine Constitution, Chapter 1, Article 2, 1996. <https://www.wipo.int/edocs/lexdocs/laws/en/ua/ua013en.pdf>.

⁸³ *Ibidem*, Chapter 10, Article 134.

⁸⁴ Requirement that according to the Ukrainian Constitution any changes to the territory of Ukraine must be dealt with and approved in a referendum of all Ukrainian people.

⁸⁵ BELLINGER, JOHN B III, *Why the Crimean Referendum Is Illegitimate*, Council on foreign relations.com, 2014 <https://www.cfr.org/interview/why-crimean-referendum-illegitimate> (accessed 22/03/2020).

that the freedom of the referendum could not be guaranteed. This mainly because it appears evident that there were Russian soldiers who had taken control of Crimea and then of the public infrastructure where people were supposed to vote. «This is problematic, because the freedom of a referendum requires the absence or at least restraint of military forces of the opposing parties and a neutrality of public authorities. Both elements do not seem to have been secured in Crimea».⁸⁶ This presence would have made the referendum invalid, as the troops could have pressured the population to vote in a certain direction.

Professor L.I. Volovova recognizes the following features as fundamental and characteristic of a plebiscite: «it must be held under the supervision of the UN or the international commission; the term of preparation for holding a plebiscite should be no less than three months;[...] the evacuation of all foreign troops from the territory where the plebiscite will take place should be completed.».⁸⁷

These criteria mentioned by the Professor are taken by the ‘Code of Good Practice on Referendums’ adopted by the Council for Democratic Elections at its 19th meeting and the Venice Commission at its 70th plenary session.⁸⁸ Russia did not follow these criteria.

Another requirement, outlined in the ‘Code of Good Practice on Referendums’ regards the question asked.

It must be clear and not misleading, it should be phrased in a way that requires a yes or no answer, and that could be understood also by those with the lowest level of scholarization. This second principle was completely ignored in the Crimean referendum as voters could not answer yes or no, but rather had to choose among two options that were presented to them as questions.

The text of the referendum was what follows: «1. Are you in favor of the Autonomous Republic of Crimea reuniting with Russia as a constituent part of the Russian Federation? Or 2. Are you in favor of restoring the Constitution of the Republic of Crimea of 1992 and of Crimea’s status as part of Ukraine?».⁸⁹ «The wording ‘restoring the 1992

⁸⁶ MARXSEN, C., *The Crimea Crisis...* cit., note 25.

⁸⁷ L. I. VOLOVOVA, *Plebistsit v mezhdunarodnom prave*, “Mezhdunarodnye otnoshenia”, Moskva 1971, 38.

⁸⁸ European Commission for Democracy through law (Venice Commission), Code on Good Practice on Referendums adopted by the Council for Democratic Elections at its 19th meeting, Venice, 16 December 2006 and the Venice Commission at its 70th plenary session, Venice, 16-17 March 2007.

⁸⁹ *Sevastopol and Crimean Parliament vote to join Russia, referendum to be held in 10 days*, rt.com, 2014. <https://www.rt.com/news/crimea-referendum-status-ukraine-154/> (accessed 22/03/2020).

constitution' does not make it clear whether it refers to the original version of the constitution, declaring Crimea a state or the later amended version, in which Crimea was an autonomous Republic within Ukraine». ⁹⁰ This second alternative may result ambiguous as the two different versions of the constitution state different messages: one states that Crimea formed a part of Ukraine, the other did not.

The only thing that was apparently lawful, is that the referendum itself was in all the three official languages (Russian, Ukrainian and Crimean Tatar) and that also the warning that choosing both options makes your vote invalidated was displayed in all the languages. According to the European Commission for democracy through law⁹¹ that adopted the 'Code of Good Practice in electoral matters' 18-19 October of 2002, «the referendum could have only been held on one of the questions, which would then have been answerable with yes or no. Here, in contrast, voters were forced to choose between two courses of action without having the chance to opt for the status quo in which Crimea formed part of Ukraine under the current Ukrainian constitution». ⁹²

Also for what concerns the presence of both national and international observers, in the Code of Good practice on Referendums, chapter 2, paragraph 3.2, it is stated that «a: both national and international observers should be given the widest possible opportunity to participate in a referendum observation exercise. b: observation must not be confined to election day itself, but must include the referendum campaign and, where appropriate, the voter registration period and the signature collection period. It must make it possible to determine whether irregularities occurred before, during or after the vote. It must always be possible during vote counting. c: observers should be able to go everywhere where operations connected with the referendum are taking place. The places where observers are not entitled to be present should be clearly specified by law, with the reasons for their being banned. d: Observation should cover respect by the authorities of their duty of neutrality». ⁹³

The fact is that many international observers were present during the vote, making the referendum lawful under this aspect, but the problem comes when analyzing point “b”

⁹⁰ *Crimea Referendum, What does the ballot paper say?*, bbc.com, 2014. <https://www.bbc.com/news/world-europe-26514797> (accessed 23/03/2020).

⁹¹ Venice Commission, *Opinion on...cit.*, note 66.

⁹² MARXSEN, C., *The Crimea Crisis...cit.*, note 25.

⁹³ Venice Commission, *Code of good practice...cit.*, note 88.

as it is uncertain whether the observers were present also during the campaign. Moreover, the presence of a referendum law was not fulfilled.⁹⁴

According to Lea Brilmayer, who is a professor of International law at Yale law school, the problem is that the referendum «is based on an outdated theory of secession. Once upon a time, the right to secede was analyzed in terms of nationalist, linguistic, ethnic or religious homogeneity».⁹⁵ Right now is no more possible to adopt such a way of reasoning, because there are precise rules of international law to follow. «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».⁹⁶ With the development of certain international standards and a body of rules states had to attain to international law. This is also in the interest of the states themselves, because «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

Bellinger III, who was a former legal counselor of the State Department of the USA, added that «Russia may find that its support for Crimea's independence might trigger referenda or secession movements that it opposes, such as in Chechnya».⁹⁸ This is because as he said when interviewed by Jonathan Masters, he is concerned that this episode might set a precedent that other secessionist movements could use, as what happened in Kosovo, but the United States regard that episode as unique and unrepeatable. Therefore «holding the referendum as such did not violate international law, but it did not comply with international standards in regard to its modalities».⁹⁹

⁹⁴ «The code of Good Practice on Referendums also provides for a number of general procedural requirements. The code requires the existence of a referendum law that regulates the procedure of the vote, and demands the presence of domestic and international observers. While observers of largely unknown affiliation were present, a referendum law did not exist». MARXSEN, C., *The Crimea Crisis...*cit., note 25.

⁹⁵ BRILMAYER, LEA, *Why the Crimean referendum is illegal?*, The Guardian, 14/03/2014.

⁹⁶ *Ivi.*

⁹⁷ BELLINGER, JOHN B III. *Why the Crimean...*cit., note 85.

⁹⁸ *Ivi.*

⁹⁹ MARXSEN, C., *The Crimea Crisis...*cit., note 25.

2.4 Legality of Annexation

Chronologically speaking, after the referendum and the secession there has been the annexation operation by Russia. In this paragraph my aim would be to understand whether during this process, norms of international law have been violated.

The most important and clearest violation, is the one concerning the fundamental Charter of the UN, in particular article 2, paragraph 4. Use of force is prohibited by Article 2, paragraph 4 of the UN Charter, that says «All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state or in any other manner inconsistent with the purpose of the United Nations».¹⁰⁰ The following acts «can be considered a ‘threat’ to use force: military exercises on the border and hostile statements of future invasion. Use of force can be seen in: direct force, cross border shooting or military incursions; or indirect force, states are prohibited from organizing, assisting, instigating and participating in civil strife or terrorist acts against another state or acquiescing in organized activities are threaten to use force against another state. For example, arming and training of rebels amount to use of force».¹⁰¹ The actions of Russia, which transferred its armed forces into another state, surely fall under this article. «Russia seems to have sent at minimum a hundred troops, ten troop trucks, and five armored vehicles»¹⁰² and Russian troops «swarmed the major thoroughfares of Crimea on Saturday, encircled government buildings, closed the main airport and seized communication hubs, solidifying what began on Friday as a covert action to control the largely pro-Russian region».¹⁰³ The only fact that Russia violated article 2, paragraph 4 of the UN Charter would be sufficient to assert that the annexation does not comply with international law, because the use of force is not permitted in the annexation process.

Since some years, though, we can talk of the creation of a norm of customary international law, according to A. Randelzhofer and O.Dörr «Given the regular State practice for more than fifty years now, the positive *opinio juris* of the intervening and many third States,

¹⁰⁰ UN Charter, 26/06/1945. San Francisco, USA.

¹⁰¹ Lesson 5.2., Article 2(4) of the UN Charter , <https://ruwanthikagunaratne.wordpress.com/tag/article-24-of-the-un-charter/>, 2011 (accessed 21/05/2020).

¹⁰² DEEKS, A., *Here's what International Law says about Russia's intervention in Ukraine*, <https://newrepublic.com/article/116819/international-law-russias-ukraine-intervention>, 2014 (accessed 21/05/2020).

¹⁰³ SMALE, A., ERLANGER, S., *Ukraine mobilizes reserve troops, threatening war*, https://www.nytimes.com/2014/03/02/world/europe/ukraine.html?hp&_r=0, 2014 (accessed 21/05/2020).

and a considerable reluctance on the part of other States to qualify forcible rescue operations as unlawful, the argument can be made that a rule of customary international law is by now established allowing limited forcible action with the legitimate aim to rescue a State's own nationals [...].¹⁰⁴

This supposed customary exception and interpretation of international law offers some justification for the use of force, but still some conditions must be met: « there must be evidence that the life of a state's citizen is in danger on the territory of another state... the other state must be unwilling or unable to offer sufficient protection; and generally intervention is a means of *ultima ratio*.».¹⁰⁵

In this particular case I am currently analyzing, it is Russia that must provide proof of threat to the life of its citizens, and for now it hasn't provided any evidence that supports the use of force. Therefore, any intervention aimed to the protection of the Russian minority in Ukraine cannot be justified, because to activate any measure of the responsibility to protect, UN the Security Council should allow it.

The general norm, provides that states are called upon to refrain from the use of force, but there is one particular requirement that applies more specifically to Russia, it says «Every State has the duty to refrain from organizing or encouraging the organization of irregular forces or armed bands including mercenaries, for incursion into the territory of another State».¹⁰⁶

The general assembly of the United Nations, December 14 1974 adopted Resolution number 3314 (XXIX) where it gave a definition of the concept of aggression. Article 3 is the

¹⁰⁴ RANDELZHOFFER, ALBRECHT ET DÖRR, OLIVER. *The charter of the United Nations: A commentary*, Volume I, Oxford, UK, 2012.

¹⁰⁵ MARXSEN, C., *The Crimea Crisis*...cit, note 25.

¹⁰⁶ Declaration on principles of international friendly relations and co-operation among states in accordance with the charter of the United Nations, adopted by General Assembly Resolution No. 26/25 (XXV) on 24 October 1970.

In this situation it is useful to make reference to the Nicaragua Case of the ICJ. In this sentence of 1986, the ICJ held that the United States had violated international law backing the 'Contras', a right wing rebel group, against the Sandinistas, a socialist political movement. The sentence represents a stalemate in the use of customary international law, because the Court found the US "in breach of its obligations under international customary law not to use force against another state,[...] not to intervene in the affairs of another state,[...], not to violate the sovereignty of another state." The court also rejected the claim of the United States to have acted in collective self-defense. This ruling is extremely important in the history of international law because it is thought to have clarified in many ways, issues surrounding prohibition of the use of force and the right to self-defense.

ICJ, 27/6/1986, No. 520, The Hague.

most important for my analysis as it sanctions actions very similar to those perpetrated by Russia. I will report this article, citing only the points of interest for my research. It states that «any of the following acts, regardless of a declaration of war, shall, subject to and in accordance with the provision of article 2 qualify as an act of aggression: the blockade of the ports or coasts of a state by the armed forces of another state; The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein; The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement».¹⁰⁷ Russia clearly violated multiple provisions contained in this article of the resolution, with the invasion and following annexation of Crimea.

After the dissolution of the USSR, Ukraine lost territories with 1.2 million inhabitants, that were transferred to Russia and also some territories were transferred to Moldavia. Despite that, Ukraine has never raised territorial claims to Russia. On the other side when Estonia was incorporated into USSR, many territories were therefore passed to Russia according to the existing Soviet legislative act, but when Estonia became independent and wanted these territories back, Russia appealed to the principle *uti possidetis iuris*. This principle «has acquired the status of a general norm of international law, and it has the aim of avoiding that the independence of new states could represent the occasion for the insurgence of conflicts linked with border's disputes».¹⁰⁸ The main new element introduced by this principle is that the borders as they were drawn previously, continue to exist.

After having described these cases the author affirms that Russia's inconsistency and breach of the principle of estoppel stands in the fact that when it is in its interest it appeals to the *uti possidetis* principle, instead when this principle would damage its interests Russia rejects it.¹⁰⁹

Another argument widely used by Russian lawyers to justify the intervention and the consequent annexation of Crimea, is that of self-determination of the people of Crimea.

¹⁰⁷ United Nations Resolution 3314, 14/12/1974. <http://hrlibrary.umn.edu/instree/GAres3314.html>.

¹⁰⁸ Marchisio, S., *Corso di...*cit., note 42, pp. 17-18.

¹⁰⁹ MEREZHKO, O., *Crimea's Annexation by Russia – Contradictions of the New Russian Doctrine of International Law*, 2015.

Putin himself in a renowned public speech stated «I would like to remind you that when Ukraine seceded from the USSR it did exactly the same thing, almost word for word. Ukraine used this right (of self-determination, *ED*), yet the residents of Crimea are denied it. Why is that?». ¹¹⁰

Apparently Putin did not take into account the fact that Ukraine is a sovereign state and as such had a sovereign right to withdraw from the USSR, while Crimea even though was recognized as an autonomous republic, it still was legally part of Ukraine and therefore didn't have any right to secede. Also, President Putin mentions in his speech 'the right of nations to self-determination', but «the population living in Crimea can hardly be considered to be a nation[...] Officially the population of Crimea has never been considered a separate people, neither by Ukraine or by Russia. Legally, the Crimean population is an integral part of the people of Ukraine which has the right to self-determination as a totality». ¹¹¹

There would be other two principles, which are the principle of intervention by invitation and the principle of humanitarian intervention. I will proceed by analyzing the former, while the latter will be discussed in next paragraph. ¹¹²

Russia, indeed, uses another argument to justify its actions, which is the concept of intervention upon invitation. This invitation, according to what Russian authorities have stated, comes directly from Yanukovych, who before leaving the country «had issued a letter in which he invited Russia to intervene on Ukraine territory as a countermeasure against what Russia perceives as the takeover by nationalists and anti-Semite Maidan protesters». ¹¹³

Yanukovych has never denied these declarations, but later on, in a rare public appearance in Rostov on Don, he expressed regret and admitted he was wrong to act on his emotions. «My main mistake was that I was not resolute enough to sign an order» ¹¹⁴ were the words pronounced by him, referring to the fact that he did not impose martial law and order troops to disperse the mass protests that toppled his government and forced him into Russia. The situation that led to the removal from power of Yanukovych was in violation of several articles of the Ukrainian constitution, but what matters the most for the sake of this analysis

¹¹⁰ *Ivi.*

¹¹¹ *Ivi.*

¹¹² See *infra* 2.5.

¹¹³ MEREZHKO, O., *Crimea's...*cit., note 109.

¹¹⁴ NECHEPURENKO, IVAN. *Ukraine's Ex-Leader Regrets Not Breaking Up Protests That Led to His Fall*, NY Times, 25/11/2015.

is to understand whether he had the right, under international law, to invite Russia to intervene.

Generally, under international law, any state can call any other foreign state to send their troops inside its territory, but normally, only official governments are entitled to do so, while it is less clear whether this rule applies also to revolutionary opposition groups. Any invitation with clear expression of consent from the “host” state, excludes «the wrongfulness of a military presence that would otherwise constitute an illegal use of force».¹¹⁵ Analyzing the concept from an international law perspective, it becomes difficult to discern when such consent should be considered valid. The International Law Commission has elaborated a commentary on the draft articles on state responsibility, where general requirements on the validity of states’ consent are described.

Firstly, I would start by analyzing what Article 29 of the draft articles states: «1. The consent validly given by a State to the commission by another State of a specified act not in conformity with an obligation of the latter State towards the former State precludes the wrongfulness of the act in relation to that State to the extent that the act remains within the limits of that consent.

2. Paragraph 1 does not apply if the obligation arises out of a peremptory norm of general international law. For the purposes of the present draft articles, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character»¹¹⁶ This is what the draft article states, and basically any state intervention would be justified by the consent of the other state, with the condition that the violation of the obligation stays within the boundaries of the given consent.

The ILC, in its commentary to this article has highlighted 5 main points. A state’s consent «1. Has to be valid in international law, but it may not be based on error, fraud, corruption or coercion; 2. Needs to be clearly established and really expressed, which excludes a merely presumed consent; 3. Must be given to the otherwise wrongful act; 4. Must be attributable to the state; 5. Is void if it relates to acts whose commission would violate an

¹¹⁵ MARXSEN, C. *The Crimea Crisis...*cit., note 25.

¹¹⁶ The International law Commission’s draft articles on state responsibility, Dordrecht, The Netherlands, 1991.

obligation of states under a peremptory norm of international law, such as the consent for another state to newly establish a protectorate over its territory».¹¹⁷

As Marxsen explains in his article, as long as the state's consent fulfills these criteria, it excludes the wrongfulness of the intervention.

Going back to the specific situation that is interesting to analyze for the purpose of my research, namely Yanukovych's letter of consent, it is impossible to analyze whether it fulfills the first 3 criteria or not, because the letter still hasn't been made public, but it is possible to discuss about the 4th criterion. The 4th criterion states that the consent must be attributable to the state, and it is not clear if in this specific case Yanukovych could still be attributable to Ukraine.

Legally speaking (*de lege lata*) he could still be considered the President of Ukraine, but practically speaking (*de facto*) he did not have any power on the government when he asked for Russian troops to intervene. Since in Ukraine, at that time there was an internal conflict, it is complicated to determine who should have been regarded the legitimate government.

Generally, the rule used to individualize the legitimate government was to recognize who detained effective control in that moment. In this case it must be asserted how much control Yanukovych had left, and most importantly «how much control over a state's territory has to remain in order to ascertain effective control?».¹¹⁸

Clearly there is much debate about the issue, demonstrating that objectivity regarding the notion of effective control is impossible to reach, but considerations may be taken into account. For example G.Nolte argues that «Governments which have been freely and fairly elected under international supervision, or which are universally recognized as having been freely and fairly elected, can arguably preserve their status for the purpose of inviting foreign troops even after having lost almost all effective control».¹¹⁹

Moreover «Russia's intervention has not even aimed at the reestablishment of Yanukovych's government and at ousting the interim administration. It obviously pursued national interests that are independent from that. Russia's intervention was primarily directed at preparing the secession of a part of the state's territory».¹²⁰ Therefore, it is possible to state that there is no justification under international law to the presence of Russian troops in

¹¹⁷MARXSEN, C., *The Crimea Crisis...*cit., note 25.

¹¹⁸ *Ivi.*

¹¹⁹ *Ivi.*

¹²⁰ *Ivi.*

Crimea and that all the procedures adopted by Russian troops, starting from the blocking of Ukrainian military forces to the seizure of military infrastructure constitutes a use of force and violation of international law and also of Ukraine's territorial integrity.

To conclude my analysis on whether the annexation of Crimea was lawful or not, I would use the words of Oleksandr Merezhko himself. He concludes his work saying that «Crimea's annexation by Russia is an obvious and flagrant violation of a whole range of norms and principles of international law, beginning with the UN charter and concluding with bilateral international treaties concluded between them. This annexation stands in sharp contrast to the Russian doctrine of International Law with respect to such principles as territorial integrity and self-determination. The arguments which were put forward by Russian politicians and legal scholars in an attempt to justify Russia's annexation do not look convincing in the light of the whole previous argumentation of Russia».¹²¹

2.5 Human rights violations in Crimea

The Ukrainian government and the Russian Federation government, after Crimea's annexation by the latter, have had many disputes regarding whether human rights have been violated or not during the process of invasion. In terms of human rights, it is important to say that even though theoretically speaking, their application should be universal and absolute, the reality is often rather different. Moreover, another distinction that has to be made is the one between human rights and humanitarian law. Human rights, at the EU level, are regulated by the European Convention on Human Rights (ECHR), while international humanitarian law is regulated by the four Geneva Conventions of 1949.

Starting with human rights, many international newspapers, also Russian ones, have reported accusations to Moscow of multiple human rights violations during its military operations in the Crimean territory, both at the time of the annexation and more recently.

The Moscow Times, for example, September 30th 2019, reported a speech given by the UN Deputy High Commissioner for human rights, Kate Gilmore. She accused Russia of

¹²¹ MEREZHKO, O., *Crimea's Annexation by Russia*...cit., note 109.

«deportations of protected persons, forced conscription and restrictions on freedom of expression[...] we also recorded an increased number of house searches and raids, which disproportionately affected Crimean Tatars».¹²²

During the Crimean occupation, «Since Russia seized and began occupying the peninsula in 2014, Crimean Tatars have been disproportionately affected by law enforcement action. From January 2017 through August 2018, 90 out of a documented 102 property searches or raids in Crimea affected Crimean Tatars, according to the United Nations. In 2016, a Russian Supreme Court order forced the Mejlis, the elected self-governing body of the Crimean Tatars, to disband. Crimean Tatars have also been victims of enforced disappearances and arbitrary arrests and prosecution».¹²³

‘Human rights watch’ a website specialized in human rights violations, reported these facts and the Deputy Europe and Central Asia director Rachel Denber, affirmed that «the sweeping arrests in Crimea aim to portray politically active Crimean Tatars as terrorists as a way to silence them. This has been their approach for several years and it should stop. These man should be released at once».¹²⁴

A fundamental landmark report has been published in September 2017 by the Office of the United Nation High Commissioner for Human Rights (OHCHR). It is a 30 pages long and detailed document entitled ‘Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine)’. The report makes it clear that «both the Russian Federation and Ukraine are parties to the 1907 Hague regulations, the European Convention of Human Rights, the four Geneva conventions of 1949, and 1977 Additional protocol I to the Geneva Conventions. This body of international law provides the primary basis for rules governing occupation. The legal regime of an occupied territory is also regulated by international customary law».¹²⁵

This is important to remark, because since the occupation of March 15th 2014, the government of Ukraine has denied any human right obligation in Crimea since it had lost effective control on the peninsula. It has to be said, though, that norms concerning human

¹²² UN slams human rights violations in Crimea, 2019. The Moscow Times. <https://www.themoscowtimes.com/2019/09/30/un-slams-human-rights-violations-in-crimea-a67498>.

¹²³ *Ukraine. Escalating pressure on Crimean Tatars*, Hrw.org, 2019 <https://www.hrw.org/news/2019/04/02/ukraine-escalating-pressure-crimean-tatars> (accessed 9/04/2020).

¹²⁴ *Ivi*.

¹²⁵ Situation of human rights in temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine), 2017. Office of the United Nations of the High Commissioner on Human Rights.

rights must be respected by every state, toward every citizen, independently from their citizenship, but according to Art. 1 of the ECHR it belonged to Russia to make sure that citizens under its jurisdiction had their rights guaranteed.

Indeed, if Crimea had been annexed by Russia, «Russia would be presumed to exercise jurisdiction over this region for the purposes of article 1 of the ECHR.¹²⁶[...] If Crimea is genuinely part of the Russian Federation now, the issues of jurisdiction and attribution concerning that State are relatively clear cut».¹²⁷

There is also some pretty clear evidence that Art. 3 of the ECHR was violated by Russia. It provides that «No one shall be subjected to torture or to inhuman or degrading treatment or punishment».¹²⁸ Josep Borrell, current High Representative for foreign affairs and security policy, in a declaration, asked for more detailed investigations regarding «forced disappearances, tortures and killings, violence, politically motivated criminal actions and discriminations».¹²⁹

Also the web portal ‘Open democracy’ denounced the situation in an article in February 2017. The article is entitled ‘Crimea, peninsula of torture’. It denounced that «three years on from Crimea’s annexation by Russia, brutal torture is being used to scare the peninsula into silence and submission[...] Torture has come to Crimea too, the Russian security services’ favorite method-electric shock. Ukrainian film director Oleg Sentsov and those arrested with him in 2014 have revealed the brutal torture they faced as part of an ‘anti-terrorism’ investigation after the annexation of Crimea».¹³⁰

There is actually a testimony by Evgeny Panov, another man of those arrested by the FSB in Crimea. He sustained, in a statement that was afterwards sent to Russia’s investigative Committee, that «they beat my head with an iron pipe, my back, my kidneys, my arms, my

¹²⁶ Obligation to respect human rights: The High Contracting Parties shall secure to everyone within their jurisdiction the rights and the freedoms defined in Section I of the Convention, Article 1 ECHR, concluded in Rome on 4th November 1950 and entered into force 3rd September 1953.

¹²⁷ WALLACE, S., MALLORY, C., *Applying the European Convention on Human Rights to the conflict in Ukraine*, in Russian Law Journal, Vol.VI (2018), p.19.

¹²⁸ Article 3 ECHR, concluded in Rome on 4th November 1950 and entered into force 3rd September 1953.

¹²⁹ *Crimea: Borrell (EU) Russian annexation is illegal. Increasing militarization of the Ukrainian peninsula, limitations to liberty, torture and violence*. <https://www.agensir.it/quotidiano/2020/3/16/crimea-borrell-ue-annessione-russa-e-illegale-crescente-militarizzazione-della-penisola-ucraina-limitazioni-alle-liberta-torture-e-violenze/>, 2020 (accessed 21/05/2020).

¹³⁰ SKOVORODA, Y., *Crimea: peninsula of torture*, <https://www.opendemocracy.net/en/odr/crimea-peninsula-of-torture/>, 2017, (accessed 22/05/2020).

legs[...] they attached some electrodes to my right knee, left leg and hip with tape, and turned the electricity on. I lost consciousness several times».¹³¹

So far as this situation would be confirmed, there would have been a severe violation of a peremptory norm.

Talking instead of international humanitarian law, the fourth Geneva Convention relative to the protection of civilian persons in time of war, is the most relevant for this analysis. Continuing to focus on the alleged tortures perpetrated by Russian officials, also the Geneva Convention prohibits it, more specifically at Art. 32.

This article deals with the general prohibitions of corporal punishment and torture. It says that «[...] each of them is prohibited from taking any measure of such a character as to cause the physical suffering or extermination of protected people in their hands. This prohibition applies not only to murder, torture, corporal punishment, mutilation and medical or scientific experiments not necessitated by the medical treatment of a protected person, but also to any other measures of brutality whether applied by civilian or military agents».¹³²

In a document published by OHCHR regarding the ‘human rights violations and abuses and international humanitarian law violations committed in the context of the Ilovaik events in August 2014’, in a part where it is referred to the facts happened in Crimea some months earlier, it is stated that «on 9 March 2014, two members of a pro-Ukrainian organization were abducted by the Crimean self-defense, detained in a secret location without the presence of a lawyer for 11 days and one of them was tortured before being released».¹³³ The OHCHR report published September 25th 2017 also documented two cases of «pro-Ukrainian supporters being electrocuted through electric wires placed on their genitals, and threatened with rape with a soldering iron and a wooden stick».¹³⁴ These procedures are in clear violation of article 32, section I, part III of the fourth Geneva Convention of 1949.

¹³¹ *Ivi.*

¹³² Article 42, The Geneva Conventions of 12 August 1949, International Committee of the Red Cross, p. 162, <https://www.icrc.org/en/doc/assets/files/publications/icrc-002-0173.pdf> (accessed 20/05/2020).

¹³³ Human rights violations and abuses and international humanitarian law violations committed in the context of the Ilovaik event in August 2014, 20/10/2014. Office of the United Nations of the High Commissioner on Human Rights.

¹³⁴ Situation of human rights...cit., note 125.

The OHCHR has gathered many claims of violations of the right to liberty. These violations would have been perpetrated by agents of the Russian Federation authorities present in Crimea at the time. The majority of them is said to have taken place during the operation of annexation in 2014, but many cases have been reported even in more recent times. The operations of arbitrary arrests and detentions can be performed in several different forms and have various objectives, such as extortion of information, instilling fear or even a physical punishment. «In the most egregious cases, unlawful detentions were accompanied by physical or psychological abuse amounting to torture. Many of the victims were people accused of spying and planning terrorists acts, as well as political and civic activists supporting the Maidan protests and pro-Ukrainian demonstrations in Crimea or seeking to assist Ukrainian soldiers stationed in Crimea».¹³⁵

In the summary of the convention it is stated that «in an occupied territory, a civilian may only be interned or placed in assigned residence for ‘imperative reasons of security’. Arbitrary detention is prohibited under customary international humanitarian law and international human rights law protect individuals from arbitrary arrest and detention by the state, as well as by private individuals or entities empowered or authorized by the state to exercise powers of arrest and detention».¹³⁶

¹³⁵ *Ivi.*

¹³⁶ *Rule 99. Arbitrary deprivation of liberty is prohibited*, IHL Database, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule99 (accessed 23/05/2020).

CHAPTER THREE: INTERNATIONAL REACTIONS TO ANNEXATION

In this chapter I continue my research, by taking a wider approach to the topic. To start, I will dedicate a paragraph to analyze what the general consequences under international law of wrongful conducts are. I will then put specific emphasis on the role played by the United Nations and in particular by the UNSC, analyzing its limits. European sanctions had a major impact on Russian economy and also on its relations with the EU, so I will try to make a distinction among the different types of sanctions that have been implemented and the entity of the damages they created. In the 4th paragraph I will discuss about the notion of recognition and non-recognition in international law of the legitimacy of the annexation, analyze the international reactions and how states addressed the issue in different manners. I will conclude examining the current situation in Crimea to discover whether Russia has kept its promises or not and analyze some possible future scenarios.

3.1 General Consequences under International law of wrongful conducts

To start my analysis I decided to focus my attention in this first paragraph on international law of wrongful conduct and in particular on the Draft Articles on Responsibility of States for Internationally wrongful acts (DARS)¹³⁷, with its own commentaries. In order to look over this topic I will often make reference to the commentaries and to the jurisprudence, which is rich in examples of application of such norms.

In the general commentary of the DARS, it is written that «the articles deal only with the responsibility for conduct which is internationally wrongful. There may be cases where States incur obligations to compensate for the injurious consequences of conduct which is not prohibited[...] there may also be cases where a State is obliged to restore the status quo ante, after some lawful activity has been completed. These requirements of compensation or restoration would involve primary obligations; it would be the failure to pay compensation or to restore the status quo which would engage the international responsibility of the State

¹³⁷ Draft articles on Responsibility of States for Internationally wrongful acts, International Law Commission, 2001.

concerned. Thus for the purposes of these articles, international responsibility results exclusively from a wrongful act contrary to international law».¹³⁸

Part two of the DARS regards the content of the International Responsibility of States. Article 30, indeed, provides the cessation and non-repetition and states that «the state responsible for the internationally wrongful act is under an obligation: a. To cease that act, if it is continuing; b. to offer appropriate assurances and guarantees of non-repetition».¹³⁹ Cessation aims at the re-establishment of the original legal relationship with the other state, before the internationally wrongful act occurred. Cessation of a particular conduct which is in breach «of a particular obligation is the first requirement in eliminating the consequences of wrongful conduct[...] Cessation is always the main focus of the controversy produced by conduct in breach of an international obligation. It is frequently demanded not only by States but also by the organs of the international organizations such as the General Assembly and Security Council in the face of serious breaches of International law».¹⁴⁰ The question of cessation very often comes together with the concept of reparation. Reparation is addressed specifically in article 31, while Chapter II deals with reparation for injury.

Article 31 provides for reparation, it states that «1. The responsible state is under an obligation to make full reparation for the injury caused by the internationally wrongful act. 2. Injury includes any damage, whether material or moral, caused by the internationally wrongful act of a state».¹⁴¹

The first thing that has to be remarked is that «the term reparation is generally used in a very extensive meaning, covering cessation, *restitutio in integrum*, pecuniary compensation, punitive damages, and various forms of satisfaction[...] Like cessation, the right to obtain reparation by means of self-help is the corollary of the duty to provide reparation by the wrongful state. The recognition of the duty to repair the wrong done as such raises little problems [...] The debate concerns the various forms: (1) *restitutio in integrum* or in kind, (2) compensation and (3) punitive damages».¹⁴² In the judgement pronounced by the Permanent Court of International Justice (PCIJ) regarding the ‘factory at Chorzow’, the court declared

¹³⁸ Draft articles on Responsibility of States for Internationally wrongful acts with commentaries, International Law Commission, 2001, pp. 31-32.

¹³⁹ Draft articles...cit., note 137, art. 30.

¹⁴⁰ Draft articles...cit., note 138.

¹⁴¹ *Ibidem*, p. 91.

¹⁴² NOORTMANN, M., *Enforcing International law, from self-help to self-contained regimes*, New York, 2016, p. 21.

that “the responsible state must endeavor to wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed».¹⁴³

The body of the article talks about «injury caused by the internationally wrongful act»,¹⁴⁴ but the notion of injury has to be understood «as including any damage caused by that act. In particular, in accordance with paragraph 2, ‘injury’ includes any material or moral damage caused thereby».¹⁴⁵

Article 35, instead, provides for restitution, it states that «a state responsible for an internationally wrongful act is under an obligation to make restitution, that is to re-establish the situation which existed before the wrongful act was committed, provided and to the extent that restitution: a. is not materially impossible; b. Does not involve a burden out of all proportion to the benefit deriving from restitution instead of compensation».¹⁴⁶

There is not a uniformly defined concept of restitution. «According to one definition, restitution consists in re-establishing the *status quo ante*, i.e. the situation that existed prior to the occurrence of the wrongful act. Under another definition, restitution is the establishment or re-establishment of the situation that would have existed if the wrongful act had not been committed. The former definition is the narrower one[...]but article 35 adopts the narrower definition which has the advantage of focusing on the assessment of an actual situation».¹⁴⁷ The fact that restitution is the form of reparation which comes first was also established by the PCIJ in the *Factory at Chorzow* case.¹⁴⁸

Restitution may take several different forms. It «may take the form of material restoration or return of territory, persons or property, or the reversal of some juridical act, or some combination of them. Examples of material restitution include the release of detained individuals, the handing over to a State of an individual arrested in its territory, the

¹⁴³ PCIJ, 26/07/1927, No. 9, The Hague.

¹⁴⁴ Draft articles...cit., note 137, art. 31.

¹⁴⁵ *Ivi*.

¹⁴⁶ *Ibidem*, art. 35.

¹⁴⁷ Draft articles...cit., note 138, p. 97.

¹⁴⁸ In this case the PCIJ said that “the state responsible was under the obligation to restore the undertaking and, if this be not possible, to pay its value at the time of the indemnification, which value is designed to take the place of restitution which has become impossible” *Factory at Chorzow*, PCIJ, 26/07/1927, No.9, The Hague, The Netherlands. “Despite the difficulties restitution may encounter in practice, States have often insisted upon claiming it in preference to compensation. Indeed, in certain cases, especially those involving the application of peremptory norms, restitution may be required as an aspect of compliance with the primary obligation” Draft articles...cit., note 138, p.98.

restitution of ships, or other types of property, including documents, works of art, share certificates, etc.».¹⁴⁹ It goes without saying that the type of restitution required «will often depend on the content of the primary obligation which has been breached. Restitution, as the first of the forms of reparation, is of particular importance where the obligation breached is of a continuing character, and even more so where it arises under a peremptory norm of general international law».¹⁵⁰ In the commentaries to the Draft articles, it is also made specific reference to unlawful annexation of a state. «In the case, for example, of unlawful annexation of a state, the withdrawal of the occupying state's forces and the annulment of any decree of annexation may be seen as involving cessation, rather than restitution».¹⁵¹ As explained in the article the obligation a wrongful state has to make restitution cannot be unlimited, because the text makes it clear that a restitution might also be partially executed, and in this case «the responsible state will be obliged to make a restitution to the extent that this is neither impossible nor disproportionate».¹⁵²

Keeping on my analysis I believe also article 36 and 37 of the DARS are worth of some attention. Article 36 deals with another form of reparation: compensation. This article deals with situations where restitution is not possible. It says, indeed, that «the state responsible for an internationally wrongful act is under an obligation to compensate for the damage caused thereby, insofar as such damage is not made good by restitution. 2. The compensation shall cover any financially assessable damage including loss of profits insofar as it is established».¹⁵³ It must be said that among all the various forms of reparation, compensation is «perhaps the most commonly sought in international practice».¹⁵⁴ The ICJ declared the importance of compensation in the *Gabčíkovo-Nagymaros Project* case¹⁵⁵.

The function of article 36 is entirely compensatory, as the title itself would suggest. «Compensation corresponds to the financially assessable damage suffered by the injured state or its nationals. It is not concerned to punish the responsible state, nor does compensation have an expressive or exemplary character. Thus, compensation generally consists of a

¹⁴⁹ Draft articles...cit., note 138, p.98.

¹⁵⁰ *Ivi.*

¹⁵¹ *Ivi.*

¹⁵² *Ivi.*

¹⁵³ *Ivi.*

¹⁵⁴ *Ibidem*, p. 99.

¹⁵⁵ «It is a well-established rule of international law that an injured state is entitled to obtain compensation from the state which has committed an internationally wrongful act for the damage caused by it». ICJ, 25/09/1997, N. 692, The Hague, The Netherlands.

monetary payment, though it may sometimes take the form, as agreed, of other forms of value».¹⁵⁶

The last article I believe is interesting to analyze for the purpose of this final work is Article 37, which deals with satisfaction. Satisfaction is the choice of last resort, as it plays a role only if restitution and compensation are not possible, «satisfaction is the third form of reparation which the responsible state may have to provide[...] to make full reparation for the injury caused».¹⁵⁷ The article, indeed, states that «The state[...] is under an obligation to give satisfaction for the injury caused by that act insofar as it cannot be made good by restitution or compensation».¹⁵⁸ Satisfaction therefore deals with violations of moral entity. The article has two other more paragraphs which deal with the modalities in which satisfaction may take place and its limitations.

Paragraph 2 provides that «satisfaction may consist in an acknowledgement of the breach, an expression of regret, a formal apology or another appropriate modality».¹⁵⁹ Clearly, the forms of satisfaction listed in the articles are only examples, because it will depend on the circumstances and be decided on a case by case basis. Other examples of behaviors provided by the need of satisfaction are «formal excuses, official salute to the flag of another state, involvement of the authorities of the responsible state to commemorative ceremonies, payment of a symbolic sum of money».¹⁶⁰

Paragraph 3, instead, denotes that «satisfaction shall not be out of proportion to the injury and may not take a form humiliating to the responsible state».¹⁶¹ These limitations on satisfaction specified by paragraph 3 became necessary «having regard to former practices in cases where unreasonable forms of satisfaction were sometimes demanded».¹⁶²

To sum up all these articles and norms, I would conclude this paragraph explaining how everything should have been applied to the case at stake. Russia, according to articles 30, 31 and 35 of the DARS cited earlier, ought to immediately stop the wrongful act and to guarantee Ukraine the non-repetition of such act. Moreover Russia should have restituted

¹⁵⁶ Draft articles...cit., note 138, p. 99.

¹⁵⁷ *Ibidem*, p. 105.

¹⁵⁸ *Ivi.*

¹⁵⁹ *Ivi.*

¹⁶⁰ MARCHISIO, S., *Corso*...cit., note 42, p. 325.

¹⁶¹ Draft articles...cit., note 142, p. 105.

¹⁶² *Ivi.*

the illegally annexed territory of Crimea to Ukraine and provided a reparation for all the damages caused, both material and moral.

3.2 United Nations and Security Council

In this second paragraph I would focus my analysis on the role played in this situation by the United Nations, to discover if it had considerable results or not. At the meeting of March 15th 2014, 41 countries presented draft resolution S/2014/189 for approval by the UNSC.¹⁶³ The point is that being Russia a permanent member of the UNSC, it was impossible for it to act because Russia vetoed that resolution, while China instead decided to abstain.

In the preamble of this draft resolution the UNSC recalled the obligations states have under the UN charter. It declared that «this referendum can have no validity, and cannot form the basis for any alteration of the status of Crimea; and calls upon all States, international organizations and specialized agencies not to recognize any alteration of the status of Crimea on the basis of this referendum and to refrain from any action or dealing that might be interpreted as recognizing any such altered status; 6) decides to remain actively seized of the matter».¹⁶⁴ Although the possibility of Russia, which is a permanent member, to veto a resolution is completely legal, it is interesting to note that Resolution S/2014/189 is of a kind mentioned in paragraph 3, article 27 of the UN Charter.

The paragraph says that «Decisions of the Security Council on all other matters shall be made by an affirmative vote of nine members including the concurring votes of the permanent members; provided that, in decisions under Chapter VI, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting».¹⁶⁵

Professor Milano, in his study about this matter has come to the conclusion that none of the countries «raised the issue of applicability of the obligation under the provision»¹⁶⁶ and that this obligation has fallen into *desuetudo*. The reason, according to him can be found in the «untold consensus that has crystallized in the Council in the last decades and, in particular, in the Post-Cold War period, namely that the P-5 should retain full political

¹⁶³ United Nations Security Council, Draft Resolution S/2014/189, 15 March 2014.

¹⁶⁴ UNSC Draft Resolution, UN Doc. S/2014/189. https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2014_189.pdf.

¹⁶⁵ Article 27, Chapter 5, UN Charter. <https://www.un.org/en/sections/un-charter/chapter-v/index.html>.

¹⁶⁶ MILANO, E., *Russia's veto in the security council: whither the duty to abstain under Art. 27(3) of the UN Charter?* 2015, https://www.zaoerv.de/75_2015/75_2015_1_a_215_232.pdf.

leverage over the decision-making process in the Council, even more so when the decisions directly “intersect” their rights and interests». ¹⁶⁷

On March 27th the UN General Assembly adopted resolution 68/262 titled ‘Territorial integrity of Ukraine’. ¹⁶⁸ It succeeded with 100 votes in favor, 11 and 58 abstentions. European countries referred expressly to «the need for non-recognition of the outcome of the referendum and of Russia’s annexation of Crimea». ¹⁶⁹ In resolution 68/262 it is specifically remarked that the true meaning of non-recognition must extend to multiple aspects of relations, namely economic, political and commercial and indeed multiple sanctions have been adopted towards Russia and Crimea in particular.

The resolution managed to be adopted because it achieved the 2/3 majority and the Permanent members of the UNSC do not have any veto power here. The countries that voted against the resolution are countries who heavily depend on Russia, as for example Armenia and Belarus, or strategically linked with it, as Syria, Cuba and North Korea. While also many other countries, 58 to be more precise, abstained from the vote. Russia, through its foreign minister expressed all its disappointment towards the adoption of this resolution. He said that «this counterproductive initiative only complicates efforts to resolve the domestic political crisis in Ukraine [...] it is well known what kind of shameless pressure, up to the point of political blackmail and economic threats, was brought to bear on a number of member states so they would vote ‘yes’». ¹⁷⁰

The problem is that a resolution from the General Assembly didn’t improve the situation, given its non-binding character, while a binding resolution adopted by the UNSC would have represented a fundamental step towards the resolution of this dispute.

To answer this open attack, it is reported that «several western diplomats, however, have said Russia’s U.N envoy led an aggressive lobbying campaign against the resolution in what they said showed how seriously Moscow took the U.N. vote condemning a referendum that led to its annexation of Crimea». ¹⁷¹ In more recent times, the General Assembly adopted another resolution. ‘Resolution urging Russian Federation to withdraw its armed forces from

¹⁶⁷ *Ibidem*, p. 230.

¹⁶⁸ United Nations General Assembly, Resolution 68/262, 27th March 2014.

¹⁶⁹ MILANO, E. *Reactions to Russia’s annexation of Crimea and the legal consequences deriving from grave breaches of peremptory norms*, Warsaw, 2017.

¹⁷⁰ DE CARBONNEL, A. *Russia criticizes UN’s resolution condemning Crimea’s secession*, Reuters.com <https://www.reuters.com/article/us-ukraine-crisis-un-russia/russia-criticizes-u-n-resolution-condemning-crimeas-secession-idUSBREA2R0DA20140328>, 2014. (accessed 2/04/2020).

¹⁷¹ *Ivi*.

Crimea, expressing grave concern about growing military presence' was adopted December 9th of 2019. The text was titled « 'Problem of the militarization of the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, as well as parts of the Black Sea and the Sea of Azov', adopted by a recorded vote of 63 in favor to 19 against with 66 abstentions, the Assembly expressed grave concerns about the Russian federation's militarization and reports of its continuing destabilization of Crimea through the transfer of weapons to Ukraine, urged it to stop such activity. Further calling on the Russian Federation to refrain from efforts to extend its jurisdiction over nuclear facilities and material in Crimea, the Assembly condemning the growing Russian military presence in parts of the Black Sea and the Sea of Azov, the harassment of commercial vessels and the construction and opening of the Kerch Strait bridge».¹⁷²

The most incoming issue was that since the annexation in 2014, Russia had proceeded uninterruptedly to militarize the region and this represented a threat for security in the region and a challenge to the non-proliferation treaty. Ukraine's representative at the assembly didn't hesitate to point this out: «what is more alarming is that the occupying power is taking steps to nuclearize Crimea, in particular by deploying nuclear infrastructure on the peninsula».¹⁷³

Even though the Russian Federation's delegate continued to state that the population of Crimea had made their choice in the referendum back in 2014 and that «there is no problem of militarization in Crimea»¹⁷⁴, the delegate of the European Union wasn't of the same idea as he «said that the increasing militarization of the peninsula continues to negatively impact security in the Black sea region. The Russian federation's violations of international law have led to a dangerous escalation of tensions at the Kerch Strait and the Sea of Azov, also condemning Moscow for imposing Russian citizenship on Crimean residents and conscripting them into the Russian armed forces».¹⁷⁵

In more recent times, the UNSC put the Crimean issue in its agenda. It held a meeting in New York, March 15th 2019 to discuss about Crimea. The date was symbolic as it represents the fifth anniversary of Crimea's occupation. The session could be visible to everybody as it have been broadcasted on the UNSC website and the message at the beginning said «This meeting will mark five years since the beginning of the occupation of

¹⁷² United Nations General Assembly, Resolution 12223, 9th December 2019, A/RES/12223.

¹⁷³ *Ivi.*

¹⁷⁴ *Ivi.*

¹⁷⁵ *Ivi.*

Crimea and the city of Sevastopol by the Russian Federation. It will provide an opportunity to hear first-hand accounts from civil society and experts on the latest developments. It is also a call on the international Community to take a stand for a rules-based international order and condemn the illegal occupation of Crimea by Russia».¹⁷⁶

The UNSC gathered to discuss some ways to prevent Russia from further breaching rules of international law. Few months ago, more precisely February 18th 2020 there was another meeting. Rosemary Di Carlo, Under-Secretary General for political and peace-keeping affairs, sustained that «the much needed and long awaited peace in eastern Ukraine can be achieved if there is sufficient political will, good faith negotiations and concrete supports for efforts to silence the guns».¹⁷⁷ During the meeting it was also discussed that liberation of eastern Ukraine would have been considered complete only when all Russian soldiers would have left.

To conclude, I can say that the UN has tried through its different organs to take resolute actions on this matter but much work still has to be done.

The UN in this situation has demonstrated all his limits, because the UNSC hasn't been able to adopt any significant measure, because of the presence of Russia as a permanent member which had the power to veto whatever measure it wanted. The General Assembly, instead, that needed a 2/3 majority to adopt the resolutions, managed to adopt multiple resolutions and it was important in showing cohesion among western powers in the condemnation of those acts.

3.3 Sanctions

Since March 2014, the European Union has gradually imposed restrictive measures towards Russia. These measures were adopted following the continuous tensions with Ukraine and in response to the illegal annexation of Crimea and the deliberate destabilization of the political atmosphere in Ukraine. The Council of the European Union and the Parliamentary Assembly of the Council of Europe also have put the Crimean issue in their agenda multiple times to implement and prolong these sanctions. In this paragraph,

¹⁷⁶ UN Security Council holds meeting on Crimea, 112.international <https://112.international/politics/un-security-council-holds-meeting-on-crimea-on-fifth-anniversary-of-annexation-37865.html>, 15/03/2019 (accessed on 5/4/2020).

¹⁷⁷ Upcoming period will be crucial to resolution of conflict in Ukraine, International officials tell Security Council, Un.org, <https://www.un.org/press/en/2020/sc14112.doc.htm>, 18/02/2020 (accessed 6/04/2020).

my aim will be to explain what kind of measures can be adopted and identify the most important meetings since March 2014 till today.

EU is able to adopt different kinds of measures: diplomatic; individual restrictive measures, such as freezing assets and travel ban; restrictions to the economic relations with Crimea and the city of Sevastopol; economic sanctions and restrictions to economic cooperation.¹⁷⁸

The measures started to be imposed right away after the referendum and continued till today. Before analyzing the various steps in adopting the sanctions and how they were prorogated I would like to analyze and explain what these different types of measures entailed. Diplomatic measures implied the suspension of every bilateral dialogue between Russia and EU countries on visa matters. The G8 meeting which was supposed to take place in Sochi, became a G7, as Russia was excluded, and it took place in Brussels. Since then, meetings have continued to take place in the G7 arrangement.

Individual restrictive measures, instead caused the freezing of assets and travel ban of more than 170 people and 44 'entities'. They were, according to the Council, responsible for the violations perpetrated in Ukraine. Restrictions on economic relations with Crimea and the city of Sevastopol «apply to EU persons and EU based companies and are limited to the territories of Crimea and Sevastopol».¹⁷⁹ These measures, which have been prolonged until June 23rd 2020 include: «an import ban on goods from Crimea and Sevastopol, restrictions on trade and investment related to certain economic sectors and infrastructure projects, a prohibition to supply tourism services in Crimea or Sevastopol, an export ban for certain goods and technologies».¹⁸⁰

Later on, in July and September of 2014, «the EU imposed economic sanctions targeting exchanges with Russia in specific sectors».¹⁸¹ On July 1st 2016, the Council decided that the sanctions would have been suspended if Russia had respected the Minsk

¹⁷⁸Council of the European Union, Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU common foreign and security policy, adopted in Brussels on 4th May 2018.

¹⁷⁹ Council Decision 2014/145/CFSP, concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, Official Journal of the European Union, 17 March 2014, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32014D0145> (accessed 30/05/2020).

¹⁸⁰ EU restrictive measures in response to the Crisis in Ukraine, <https://www.consilium.europa.eu/en/policies/sanctions/ukraine-crisis/> (accessed 3/04/2020).

¹⁸¹ *Ivi.*

agreements, whose content has been explained in the previous chapter, in section 2.1. Obviously it did not happen, and therefore since that moment on, these sanctions have been protracted for 6 months each time, and now the last date of expiry is 31/07/2020. These restrictive measures comprise: «limit access to EU primary and secondary capital markets for certain Russian banks and companies; impose an export and import ban on trade in arms; establish an export ban for dual-use goods for military use end users in Russia; curtail Russia access to certain sensitive technologies and services that can be used for oil production and exploration».¹⁸²

The last kind of measures are those adopted regarding economic cooperation. These measures provided that the «European Investment Bank (EIB) was requested to suspend the signature of new financing operations in the Russian Federation; EU member states agreed to coordinate their positions within the European Bank for Reconstruction and Development (EBRD) Board of directors with a view to also suspend the financing of new operations; the implementation of EU bilateral and regional cooperation programmes with Russia was re-assessed and certain programmes suspended».¹⁸³

The day after the referendum, the Foreign Affairs Council of the European Union met, and «EU ministers strongly condemned the referendum in Crimea and did not recognize its outcome».¹⁸⁴ Other than expressing their disappointment and repeating that the referendum violated the Ukrainian constitution, the Council decided to adopt restrictive measures towards 21 military personnel who were engaged in those actions that directly mined territorial integrity of Ukraine.¹⁸⁵

20th and 21st of March, the Council met once again, and decided to add 12 more names on the list of people who had to be sanctioned. Among these names it is possible to recognize Rogozin Dmitry Olegovich, the former deputy Prime Minister of the Russian Federation; Galzyev Sergey, adviser to the President of the Russian Federation; Matviyenko Valentina Ivanova, who at the time was «speaker of the Federation Council and on March 1st 2014, publicly supported in the Federation Council the deployment of Russian forces in

¹⁸² Council Decision 2014/145/ CFSP... cit., note 179.

¹⁸³ *Ivi.*

¹⁸⁴ Foreign Affairs Council of the European Union, <https://www.consilium.europa.eu/en/meetings/fac/2014/03/17/>, 17/03/2014 (accessed 5/04/2020).

¹⁸⁵ *Ivi.*

Ukraine»¹⁸⁶ and many other names of influential people in the State Duma and in the Black Fleet army.

On The 29th of July the Council decided to implement some additional restrictive measures regarding the economic sphere. These measures are the ones cited earlier, such as the limitation of access of Russian state owned financial entities into EU capital markets, embargo on arms and so on. This package «is meant as a strong warning: illegal annexation and deliberate destabilization of a neighboring sovereign country cannot be accepted in the 21st century Europe».¹⁸⁷

Moreover it is important to note the timing of this implementation. The Council met, some days after a disastrous accident occurred to a Malaysian airlines Boeing 777. The plane was flying from Amsterdam to Kuala Lumpur and was shot down by a Buk surface to air missile, that was launched from pro-Russian separatists in Ukraine.¹⁸⁸

The statement of Herman Von Rompuy, President of the European council, obviously, took into account those facts, as he said that «furthermore, when the violence created spirals out of control and leads to the killing of almost 300 innocent civilians in their flight from the Netherlands to Malaysia, the situation requires urgent and determined response. The European Union will fulfil its obligations to protect and ensure the security of its citizens. And the European Union will stand by its neighbors and partners».¹⁸⁹ On November 9th of 2016, 6 members of the Russian State Duma, who had been elected from the region of Crimea, have been added to the sanctions lists. Even the governor of the city of Sevastopol, Dmitry Vladimirovich Ovsyannikov, in November 2017, was added to «the list of those submitted to restrictive measures over actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine. The measures consist of asset freezes and travel ban».¹⁹⁰

¹⁸⁶ Council Implementing Decisions 2014/151/CFSP. 21/03/2014 https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:JOL_2014_086_R_0030_01 (accessed 5/04/2020).

¹⁸⁷Statement by President of the European council Herman Von Rompuy and the President of the European Commission in the name of the European Union on the agreed additional restrictive measures against Russia. 29/07/2014, Brussels.

¹⁸⁸ *MH17: Four charged with shooting down plane over Ukraine*, <https://www.bbc.com/news/world-europe-48691488>, 19/06/2019 (accessed 30/05/2020).

¹⁸⁹Statement by President...cit., note 187.

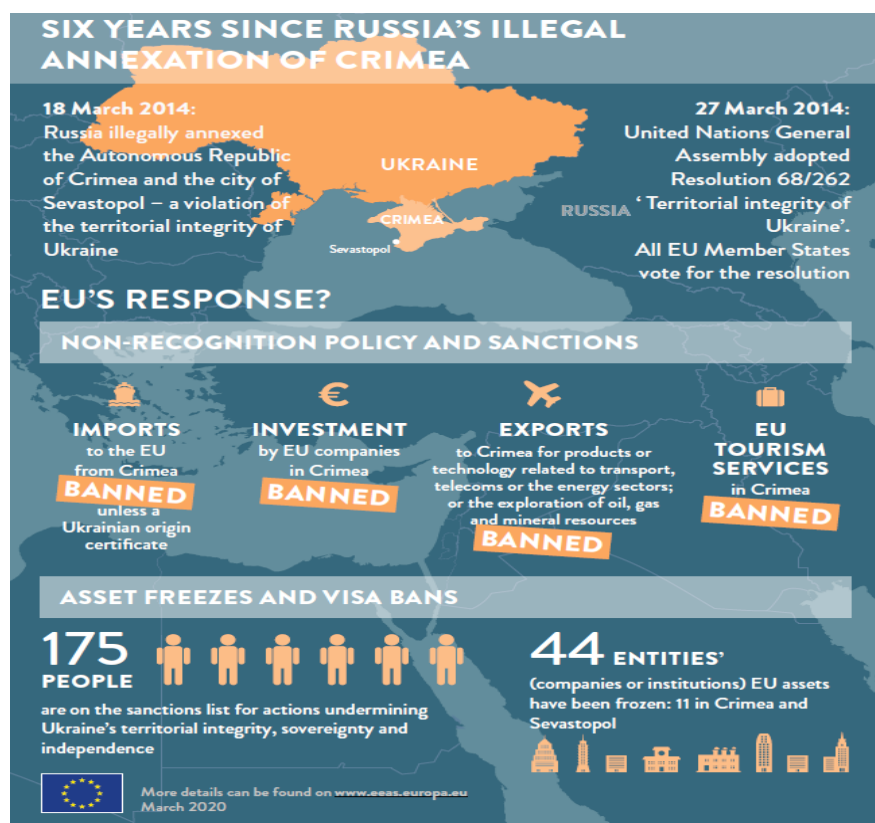
¹⁹⁰ EU adds the Governor of Sevastopol to its sanctions list over actions against Ukraine's territorial integrity, <https://www.consilium.europa.eu/en/press/press-releases/2017/11/21/eu-adds-the-governor-of-sevastopol-to-its-sanctions-list-over-actions-against-ukraine-s-territorial-integrity/>, 21/11/2017 (accessed 5/04/2020).

The Council of EU, July 31st of 2018 decided to add 6 entities to the sanctions list. These companies were guilty «of their involvement in the construction of the Kerch bridge, connecting Russia to the illegally annexed Crimean peninsula, which in turn further undermines the territorial integrity, sovereignty and independence of Ukraine».¹⁹¹ Kerch is the most eastern Ukrainian town in the peninsula of Crimea and therefore the construction of a bridge that linked it to the Russian town of Tamata in the Oblast of Krasnodar was a clear attempt to undermine Ukrainian territorial integrity. The last and most recent extension of the sanctions was implemented in the Council meeting of March 13th 2020 and will last until September 15th of 2020. The application of sanctions over Ukraine's territorial integrity at the moment of writing have reached 175 persons and 44 entities.

Recently the Parliamentary Assembly of the Council of Europe (PACE), issued a resolution to suspend the powers of the Russian delegation. Resolution 2290 was adopted by the Parliamentary Assembly on June 26 2019. The name of this resolution is 'Challenge, on substantive grounds, of the still unratified credentials of the parliamentary delegation of the Russian federation'. Russian intervention of Crimea was strongly condemned. Point 2 of the resolution says «the still unratified credentials of the Russian delegation were challenged on the basis of Rules 8.1 and 8.2 of the Rules of Procedure of the Assembly on the grounds that the military aggression by the Russian Federation in eastern Ukraine, as well as its continued illegal annexation of Crimea, are in contradiction with the Statute of the Council of Europe (ETS No. 1) and with the country's obligations and commitments».¹⁹²

¹⁹¹ EU adds six entities involved in the construction of the Kerch Bridge connecting the illegally annexed Crimea to Russia to sanctions list, <https://www.consilium.europa.eu/en/press/press-releases/2018/07/31/ukraine-eu-adds-six-entities-involved-in-the-construction-of-the-kerch-bridge-connecting-the-illegally-annexed-crimea-to-russia-to-sanctions-list/>, 31/7/2018 (accessed 6/04/2020).

¹⁹² Parliamentary Assembly, Challenge, on substantive grounds, of the still unratified credentials of the parliamentary delegation of the Russian federation. Adopted by the Assembly 26/06/2020. <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=28049&lang=en> (accessed 7/04/2020).



The Russian Federation could not accept the imposition of such sanctions from western powers, so it decided to respond with some countermeasures. The New York times reported the words of the Russian Federation's first minister Dmitri A. Medvedev when he decided to announce that Russia would have banned: fish, vegetables, fruit, pork, beef and dairy products coming from every country of the European Union, the United States, Canada, Australia and Norway for a year. He said that «we hoped until the very last that our foreign colleagues would realize that sanctions are a dead end and that nobody needs them. Things have turned out in such a way that we have to implement retaliatory measures».¹⁹³

Russia is the 2nd biggest market for European goods after the US. According to Eurostat it was worth almost 12 billions of euros in 2013. Losing it would have meant a lot for all European markets and Mario Draghi, at the time President of the ECB, «indicated that the greatest impact to Europe might be the atmosphere of uncertainty that the

¹⁹³ MACFARQUHAR, N. AND SMALE, A. *Russia responds to Western sanctions with Import ban of its own*, NY Times, <https://www.nytimes.com/2014/08/08/world/europe/russia-sanctions.html>, 7/8/2014.

tensions over Ukraine have generated”.¹⁹⁴ At a news conference in Berlin he added: “Our risks to recovery were on the downside to begin with, and certainly one of these risks will be the geopolitical developments, the recovery remains weak, fragile and uneven.”¹⁹⁵

To analyze whether the sanctions adopted by the European Union had the expected effect, I have found a study made by ISPI in January 2019 which analyzes just that.

The first thing to say is that at the moment of the study, it could have been affirmed that the sanctions didn’t achieve their objective from the political point of view. The goal was to made Russia respect the Minsk agreements, but it didn’t work out. But, if on one hand this goal failed, «many experts agree to suggest that actual sanctions and the threat of future sanctions may work as a deterrent for Russia to adopt a more cautious position towards Ukraine». ¹⁹⁶ Furthermore EU sanctions sent an important message of internal European cohesion in condemning Russian actions.

The second aspect that can be analyzed is whether these sanctions affected Russian exportations towards European countries. Russia has always been a supplier of natural gas and oil, to its neighboring European countries. Total exports registered a reduction of 12% in the first 12 months after the annexation of Crimea, while even a -43% in the following 12 months (e.d. from March 2015 to March 2016).

The point is that since 68% of Russian exports are made up by gas and oil, these two raw materials were affected by the energy price drops in June 2014. Therefore by looking at various graphs it is possible to observe how the decrease in exports concerned only natural gas and oil, while all other products registered a drop of 20% in the first year, but then in 2016 recorded a rebound of +20%. So, apart from raw materials, which were also affected by other independent factors, exportations of other supplies remained pretty much stable. The study also shows European dependence on Russia’s natural resources didn’t decrease with the sanctions, but rather it increased, because if in 2014 30% of gas imported came from Russia, in 2018 this percentage went up to 41%.

¹⁹⁴ *Ivi.*

¹⁹⁵ *Ivi.*

¹⁹⁶ TAFURO AMBROSETTI, E. VILLA, M. *Fact checking: Russia e sanzioni*, Ispionline.it. <https://www.ispionline.it/it/pubblicazione/fact-checking-russia-e-sanzioni-22134>, 31/1/2019 (accessed 5/4/2020).

Moreover, EU countries «also supported the suspensions of negotiations over Russia's joining the Organization for Economic Co-operation and Development (OECD) and International Energy Agency (IEA)»¹⁹⁷, as there weren't the necessary conditions for its accession.

For what concerns the OECD, according to an official document published in January 2014, «Russia and the OECD have been working together for over 20 years, with our relationship growing closer since 2007, when Russia embarked on the path towards becoming a full member of the organization. During this period, Russia [...] has signed on to some landmark OECD standards[...] recently we have observed an increased momentum to the accession process, helped by the Russian government's commitment to accelerate the technical reviews».¹⁹⁸

As it is possible to deduce from this extract, Russia was in a good position to be admitted among the OECD countries in 2014, but the invasion of Crimea demolished every previous effort. Admission of Russia into the IEA is just a consequence of the entrance among OECD countries, as only OECD member states can become members of the IEA

3.4 International non-recognition

In this paragraph my aim will be to analyze non-recognition under international law. To start it is important to remark that international law limits itself to acknowledge the existence of states. Also, I believe it would be useful to focus on the concept of effectiveness, which is the cornerstone of the existence of a state.

«International law does not create its subjects, nor it regulates or imposes procedures, condition or modalities to become a subject[...], but it acknowledges the historical and political existence of independent entities existing in a given historical moment».¹⁹⁹

¹⁹⁷ EU restrictive measures in response to the Crisis in Ukraine, <https://www.consilium.europa.eu/en/policies/sanctions/ukraine-crisis/> (accessed 3/04/2020).

¹⁹⁸ Russia on the way to the OECD, <https://www.oecd.org/about/secretary-general/russia-on-the-way-to-the-oecd.htm>, 2014.

¹⁹⁹ MARCHISIO, S., *Corso di...*cit., note 42, p. 174.

An entity exists as a state because it has some precise characteristics, which are not the 'typical material elements', as the people, the territory and a government. «These elements are not constitutive of the State, namely that, from them depends the international subjectivity. Rather, the theory of constitutive elements of the State is typical of constitutional law, and not of international law, which recognizes subjects without territory and people, as the international organizations».²⁰⁰

Under international law, instead, an entity exists as a state because has some other characteristics, as for example, it concludes treaties, it contributes to the formation of customary norms, it acts through its praxis and has a right of mediation, both active and passive. Moreover it has the capability of hosting ambassadors, and having ambassadors in another country.

State recognition can be described as the official acknowledgement of a new state as an international personality by the existing states of the international community. The fact that a state isn't recognized does not impede its existence. Recognition between states has merely a political value, and not a juridical one. If a state recognizes another one, it will be possible to have juridical relations with them, and for example host its ambassadors, otherwise it would not be possible.

Whenever there is «a regime's subversion in a state which had already been recognized, and it implies the acknowledgement of this new situation, and the ascertainment that there is a new government in a pre-existent state[...] if a state does not intend to maintain cooperative relationships with the new government, generally it refuses to recognize it».²⁰¹

It is possible to apply this concept to the case at stake, because there are 115 UN members which did not recognize Crimea as part of the Russian Federation, but 8 nations²⁰² officially recognized Crimea as a part of Russia, therefore violating article 41 of the DARS. These states all recognized as legitimate the referendum of 2014 and the decision of the people of Crimea to consider themselves as Russian.

²⁰⁰ *Ivi.*

²⁰¹ *Ibidem*, p. 210.

²⁰² Afghanistan, Armenia, Kyrgyzstan, Nicaragua, North Korea, Sudan, Venezuela, Zimbabwe.

It is, indeed, extremely interesting and profitable for the purpose of my research (and for what said earlier) to examine article 41, Chapter III of the DARS. Chapter III covers ‘serious breaches of obligations under peremptory norms of general international law’.²⁰³

Article 41, specifically addresses «particular consequences of a serious breach of an obligation under this chapter».²⁰⁴ It establishes that «states shall cooperate to bring to an end through lawful means any serious breach within the meaning of article 40. 2) No state shall recognize as lawful a situation created by a serious breach within the meaning of article 40, nor render aid or assistance in maintaining that situation. 3) This article is without prejudice to the other consequences referred to in this part and to such further consequences that a breach to which this chapter applies may entail under international law».²⁰⁵

March 12th 2014, the G7 leaders issued a statement declaring that their countries would not have recognized the outcome of the referendum: «We, the leaders of [...] call on the Russian Federation to cease all efforts to change the status of Crimea, contrary to Ukrainian law and in violation of international law. We call on the Russian federation to immediately halt actions supporting a referendum on the territory of Crimea regarding its status, in direct violation of the Constitution of Ukraine. Any such referendum would have no legal effect. Given the lack of adequate preparation and the intimidating presence of Russian troops, it would also be a deeply flawed process which would have no moral force. For all these reasons, we would not recognize the outcome».²⁰⁶ In this statement the leaders also require a de-escalation of the conflict, and a withdrawal of the military forces, in line with what is expressed in Article 41 of the DARS.

This statement is important, also because the leaders informed Russia about the decision to suspend «participation in any activities related to the preparation of a G-8 Sochi meeting until it changes course and the environment comes back to where the G-8 is able to have a meaningful discussion».²⁰⁷ The same day of the referendum, March 16th 2014, the president of the European commission, Josè Manuel Barroso, and the president of the

²⁰³ Draft Articles on the Responsibility of States for Internationally Wrongful acts. Yearbook of the International Law Commission, vol. II (Part two), Chapter III, 2001.

²⁰⁴ *Ibidem*, Article 41.

²⁰⁵ *Ivi*.

²⁰⁶ Statement of G-7 leaders on Ukraine, 12/03/2014.

https://www.esteri.it/mae/en/sala_stampa/archivionotizie/approfondimenti/20140312_dichiarazioneleader_sg7ucraina.html.

²⁰⁷ *Ivi*.

European council, Herman Van Rompuy, decided to issue a joint statement. They said «The European Union considers the holding of the referendum on the future status of the territory of Ukraine as contrary to the Ukrainian constitution and international law. the referendum is illegal and illegitimate and its results will not be recognized».²⁰⁸ In the speech it is remarked as well, the need to find a solution based on «territorial integrity, sovereignty and independence of Ukraine[...] we reiterate the strong condemnation of the unprovoked violation of Ukraine's sovereignty and territorial integrity».²⁰⁹

In the following days both the USA and the NATO supported these statements. The United States made it clear, through a statement by the US press secretary that «the referendum is contrary to Ukraine's constitution, and the international community will not recognize the results of a poll administered under threats of violence and intimidation from a Russian military intervention that violates international law».²¹⁰ The United States also made reference to the vote that had taken place the day before among UNSC members, pointing that only Russia opposed the resolution proposed. The US elected themselves as leaders of the international community, calling upon the other states to hardly condemn the facts and be ready to act accordingly.

NATO's Secretary General, Anders Rasmussen, openly condemned Vladimir Putin for his announcement of the new federal laws that would have allowed an incorporation of Crimea into the Russian Federation. In his speech he made reference to the violation of Ukraine's sovereignty and territorial integrity claiming that «there can be no justification to continue on this course of action that can only deepen Russia's international isolation. Crimea's annexation is illegal and illegitimate and NATO allies will not recognize it».²¹¹ In more recent days, more precisely March 12th 2019, the House of Representatives of the United States approved the Crimea non-annexation act. The date is symbolic, because it marks five years from the declaration of independence of Crimea from Ukraine.

²⁰⁸ Joint statement on Crimea by the President of the European council and the President of the European Commission, https://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/ec/141566.pdf, 16/03/2014, (accessed 12/04/2020).

²⁰⁹ *Ivi.*

²¹⁰ White House, Statement by the Press Secretary on Ukraine. Washington D.C. <https://obamawhitehouse.archives.gov/the-press-office/2014/03/16/statement-press-secretary-ukraine>, 16/03/2014, (accessed 12/04/2020).

²¹¹ Nato Secretary General condemns moves to incorporate Crimea into Russian federation, https://www.nato.int/cps/en/natolive/news_108100.htm, 18/03/2014, (accessed 13/04/2020).

The act provides that «it is the policy of the United States not to recognize the Russian Federation's claim of sovereignty over Crimea, its airspace or its territorial waters[...] no federal department or agency may take any action or extend any assistance that implies recognition of the Russian Federation's claim of sovereignty over Crimea, its airspace and territorial waters».²¹² Representative Gerry Connolly is the one who proposed this act. He was worried that «failure to stand up against Putin's illegal annexation will set a dangerous and irrevocable precedent[...] Acquiescence on the part of the United States threatens the security of all sovereign nations. Who's next? Moldova? Georgia? The Baltic states?[...] It is the longstanding policy of the United States to not recognize territorial changes elected by force, as dictated by the Stimson Doctrine».²¹³ The United States have had a long history of alliances with many former USSR countries, especially the Baltic republics which now are members of the NATO, so they could not allow such an event to have no consequences and go undisturbed.

To conclude this paragraph I would like to insert the words of Federica Mogherini, pronounced when she was High representative of foreign affairs for the EU. Following the Foreign Affairs Council in Bruxelles, March 14th 2016, a date close to the 2nd anniversary of the referendum of Crimea, she remarked the importance of non-recognition. She said «Let me stress that we had, among the 28, unanimity on five guiding principles of the European Union's policy towards Russia.[...] full implementation of the Minsk agreement as a key element for any substantial change in our relations. By the way, this is an important week, it is the week where two years ago the illegal annexation of Crimea took place and we restated our common strong position of non-recognition of the annexation of Crimea.[...] strengthening relations with our eastern partners and other neighbors[...] strengthening relations with our eastern partners and other neighbors».²¹⁴

Fredrik Wesslau, former director of the Wider Europe programme at the European Council of Foreign Relations, in his commentary about why non recognition matters in

²¹² H.R. 596, Crimea Annexation non-recognition act. House of Representatives. Washington D.C. <https://www.congress.gov/bill/116th-congress/house-bill/596/text>, 12/03/2019, (accessed 15/04/2020).

²¹³ House passes Crimea annexation non-recognition act, Connolly.house.gov <https://connolly.house.gov/news/documentsingle.aspx?DocumentID=1613>, 12/03/2019, (accessed 16/04/2020).

²¹⁴ MOGHERINI F., "Remarks by High Representative/Vice-President Federica Mogherini at the press conference following the Foreign Affairs Council", [eeas.europa.eu. https://eeas.europa.eu/headquarters/headquarters-homepage/5490_en](https://eeas.europa.eu/headquarters/headquarters-homepage/5490_en), 2016 (accessed 4/04/2020).

Crimea and it is important to stick with this strategy as F. Mogherini said, remarks that even though apparently this strategy hasn't worked out well, because right now it seems that Crimea is even more integrated in Russia, it «is worth recalling that the EU's policy is not just about Crimea but also about upholding international order[...] The policy is a way to defend the European security order, as set out in the Helsinki Accords. This order is built on the principles of the inviolability of international borders, the right of states to determine their political orientation, and the rejection of spheres of influence – all of which are principles that Russia challenged through the annexation. In this sense, the policy pushes back against Russia's revisionism and claim that it has the right to a sphere of influence over its neighbors. For Russia, the annexation of Crimea was not only about taking territory, but also about imposing a sphere of influence by destabilizing and punishing Kyiv for choosing the EU over Russia».²¹⁵

3.5 Current Situation and possible future scenarios

In this last and conclusive brief paragraph I will analyze what is happening in modern times in Crimea and what are the possible future scenarios. The first thing that must be remarked is that the Crimean issue is very far from an immediate resolution. More than 6 years have passed, and while at the moment the international attention is focused on the conflict in Donbass, the situation in Crimea preoccupies for its complexity. «Finding a settlement in Donbas has taken higher priority over resolving the status of Crimea, understandable given that some 13,000 have died and two million been displaced in the fighting in eastern Ukraine. Moscow seems to see the simmering conflict as a useful means to pressure and distract Kyiv, both to make instituting domestic reform more difficult and to hinder the deepening of ties between Ukraine and Europe».²¹⁶

Today the result of the operations conducted by Russian military forces in 2014 is a *de facto* annexation. The fact that doesn't allow to be optimistic is that the Kremlin has confirmed multiple times its willingness to keep the power in the Crimean peninsula, due to

²¹⁵ WESSLAU, F., *Why non recognition matters in Crimea*, Ecfr.eu.

https://www.ecfr.eu/article/commentary_why_non_recognition_matters_in_crimea6043, 2016 (accessed 1/04/2020).

²¹⁶ PIFER, S., *Five years after Crimea's illegal annexation, the issue is no closer to a resolution*, Brookings.edu, <https://www.brookings.edu/blog/order-from-chaos/2019/03/18/five-years-after-crimeas-illegal-annexation-the-issue-is-no-closer-to-resolution/>, 2019 (accessed 10/04/2020).

the extreme popularity among the general public. Also the sanctions that western powers have imposed on Russia because of the conflict in Donbas, are even sharper than those imposed because of Crimea, so at some point «the Kremlin may calculate that the costs outweigh the benefits and consent to a settlement that would allow restoration of Ukrainian sovereignty there».²¹⁷

Instead, it is rather difficult that Russian claims on Crimea will vanish, also given all the historical reasons I have explained earlier. The LA Times, in an article published in January 2019 analyzes how entering Crimea has changed after Russia's annexation. «Before the Kremlin annexed the Crimean peninsula in March 2014, entering was as easy as crossing a state line. Today it's an arduous journey across a 2.7 miles border strip that can take half a day [...] Ukraine had to bow to the superior power of its neighbor, which last year completed a 37-mile fence topped with barbed wire and motion sensors that runs the length of the border. Almost five years after the annexation, the consequences of Russia's land grab still reverberate in unsettling and often absurd ways. Ukrainians must pass through their own government's checkpoint to enter Crimea, even though most of the world considers it to be Ukrainian territory. They then carry bags and children on foot across a quarter-mile of no man's land. A shuttle bus plies the rest of the potholed road to the Russian checkpoint for 30 cents. There's another wait at Russian passport control».²¹⁸

Since March 2014 everything has changed. Today there is no public transportation crossing the border. Cars with Ukrainian plates can enter into Crimea, but those with a Russian plate cannot make it across the border and enter into Ukraine from Crimea. Also Ukrainian simcards do not work, but residents of Crimea must use a local Crimean number, provided by any Russian company.

At the time of annexation, Russian President Vladimir Putin promised numerous investments in the area and an increase of wealth for the inhabitants of the region. Indeed «The Kremlin has invested \$5.3 billion in infrastructure projects, including roads, hospitals and schools. Pensions and wages for government budget workers have increased, as Putin promised. But prices for goods and services, including electricity and water, have increased along with them».²¹⁹

²¹⁷ *Ivi.*

²¹⁸ AYRES, S., *Four years after Russia annexed Crimea, the peninsula remains in limbo*, latimes.com, <https://www.latimes.com/world/la-fg-crimea-20190128-story.html>, 2019 (accessed 10/04/2020).

²¹⁹ *Ivi.*

Therefore, the problem is not whether Russia kept their promises or not, but rather the huge inflation of prices that occurred. Because if it is true, as stated earlier, that Russia invested a considerable amount of money in the area, it is also true that general prices rose to the same degree. The economy did not grow according to plans, mainly because of sanctions from the western powers. Economic sanctions made illegal any foreign investment in the «peninsula's aging tourism infrastructure and deter non-Russian travelers from coming to see the breathtaking views or swim in the clear blue waters of the Black Sea.»²²⁰

So the only state with a considerable amount of resources, that can legally invest in Crimea is Russia itself. These considerations about foreign investments can be applied to every other aspect. For example, tourism is one of the aspects that was promoted the most by the Kremlin. In 2019 Crimea registered 6 millions of visitors, but they were prevalently Russian ones, approximately 85%. Another reason why tourism is extremely limited and disincentivized as well, is that getting cash at a local ATM is nearly impossible, because you must have an account at a local bank. Also for Crimea inhabitants travelling has become even more very problematic. Since international airlines are not allowed flying to and from Sebastopol or Simferopol, they must fly to Moscow first, and to their destination later, but while them as Ukrainians could have gone to any European country without a visa, travelling with a Russian passport now they must get the visa at the foreign embassy in Moscow, so the whole process has become much more complicated.

One thing that has gone exactly according to plans of Vladimir Putin is the enhanced focus on security. «Russia has imposed the same restrictions on political freedom as elsewhere in Putin's tightly controlled realm. The Kremlin's security services keep a watchful eye on dissenters and regularly conduct home searches of those who openly criticize the Kremlin's occupation. Russian authorities have persecuted pro-Ukraine activists, journalists and members of the Crimean Tatar community. Tens of thousands have fled the peninsula to avoid arrest or persecution».²²¹ So Crimea, willing to be considered equal to all other Russian oblasts, obtained also the same treatment for what concerned security.

Another recent problem that arose in Crimea is the shortage of water. Before Russian annexation, the peninsula used to get fresh water mainly from the Dnieper River through

²²⁰ *Ivi.*

²²¹ *Ivi.*

the North Crimea Canal that Ukraine decided to block in March 2014. 85% of the water resources came from that canal. After 6 years this has become such a significant problem that «Simferopol will introduce water restrictions on residents and business starting Feb. 10, Elena Protesenko, the head of the city administration wrote on her facebook page. Water will be turned on in the mornings and evenings, with hot water turned off every day except Saturday and Sunday».²²² The measures needed to be adopted because otherwise the authorities forecasted that the water supplies would have lasted only other 90 or 100 more days.

The website Euronews reports that «while the average income in Crimea is lower than that in Russia, prices for some goods and services on the peninsula are similar to those in Moscow. Pensioners in Crimea live on a pension of 12,000 rubles per month».²²³

More recently the General Assembly adopted resolution number 12241 regarding the general situation in Crimea and the ongoing conflict in eastern Ukraine. It is written that «A lasting and peaceful solution to the six-year conflict in the Ukraine can only be achieved through the full implementation of the Minsk agreements, delegates told the General Assembly today, as they discussed ongoing aggression and human rights violations by the occupying Power in Crimea and the city of Sevastopol».²²⁴ Vadym Pristaiko, Ukraine's foreign Minister, updated the delegates on the general situation in his country, talking both about Crimea and Donbas: «the occupied areas became a territory of fear and terror[...] Since 2014, the Russian Federation's illegal annexation has left 14,000 people dead and over 27,000 wounded, while 2 million residents of Crimea and Donbas have fled their homes and 3.4 million remaining are in desperate need of humanitarian assistance. Despite 20 recommitments for a comprehensive ceasefire, the Russian Federation has continued its attacks[...] such attacks have killed 11 Ukrainian servicemen and wounded 33 others».²²⁵ During the meeting Mr. Pristaiko confirmed what I wrote earlier²²⁶, so that the Russian Federation is committing large scale violations of human rights laws, that fundamental freedoms are being neglected and that particular minorities such as the Tatars are specifically

²²² *Crimea's capital faces water shortage, plans daily shutoff*, The Moscow Times, <https://www.themoscowtimes.com/2020/02/06/crimeas-capital-faces-water-shortage-plans-daily-shutoffs-a69186>, 2020 (accessed 11/04/2020).

²²³ *Has life improved for people living in Crimea since its annexation?*, euronews.com, <https://www.euronews.com/2019/03/18/has-life-improved-for-people-in-crimea-since-its-annexation>, 2019 (accessed 11/04/2020).

²²⁴ UN General Assembly Resolution 12241, 20/02/2020.

²²⁵ *Ivi*.

²²⁶ See *supra* 2.5.

addressed. The importance of the role of the General assembly was also remarked, because even though it must be said that most of its resolutions do not have a binding character «he stressed the vital importance of the General Assembly as a venue to discuss these violations of international law, given the ability of the Russian Federation to undermine the Security Council's capacities in the area (e.d. because a permanent member)[...] a strong voice of the United Nations General Assembly remains a crucial element of international pressure to make Russia abide by international law and stop its aggression against Ukraine».²²⁷ Russia, on its side, kept blocking every attempt of mediation made by western powers. It sustained that there were no occupied territories, but that rather Crimea is an official region of the Russian Federation, as their inhabitants decided their destiny in the 2014 Referendum. The only solution that was once again appelled to in order to resolve the dispute was the compliance with the Minsk agreements by the Russian Federation.

²²⁷ UN General Assembly Resolution 12241, 20/02/2020.

CONCLUSION

In the first chapter, I gave an historical background of this region and explained how the history of Crimea has always been troubled, and still today light hasn't been shed on some events, as for example the transfer of Crimea from the Russian Republic to the Ukrainian Republic by Krushev.

The Ukrainian crisis of 2014, occurred due to President Yanukovich's distancing from the European Union, might be considered the spark that ignited Russia's willingness to acquire Crimea once again. In the last two paragraphs of the chapter I briefly gave an account of how Russian troops proceeded in the invasion of Crimea and how the referendum was set up.

With the second chapter, it has been possible to observe how Russia violated several international agreements. Through my research I found out that Russia didn't comply with the Final act of the Helsinki Conference on Security and Cooperation in Europe, and violated the Treaty of Minsk, the Treaty on Friendship, Cooperation and Partnership signed in a bilateral way with Ukraine, and finally the Black Sea Fleet Stationing Agreement.

In the following paragraphs I focused separately on the secession, the referendum and the annexation to assess their legality. The secession process was not legal because of the modalities used by Russian troops. They, indeed, violated the peremptory norm which prohibits aggression, and the right of self-determination of people does not justify the events, because it applies to peoples under colonial rules and not to the case at stake.

The referendum deliberately violated the Ukrainian Constitution, and also did not follow the criteria prescribed by the 'Code of Good Practice on Referendums'.

After the secession and the referendum, annexation was analyzed. The whole process resulted to be in clear violation of Article 2(4) of the UN Charter, and therefore not compliant with international law. Russia tried to appeal to the principles of intervention by invitation and humanitarian intervention, but they both are not enough to justify such a violation of another country's sovereignty.

The last paragraph of this chapter was dedicated to human rights. In the chapter I made a distinction between human rights and humanitarian international law and analyze the two most important conventions on the matter. It was demonstrated that both the

ECHR and the fourth Geneva Convention of 1949 have been violated, because of the tortures perpetrated towards Ukrainian dissidents by the Russian security services.

In the last chapter of my work I began by analyzing what are the general consequences under international law of wrongful conduct by looking at the DARS and applying it to the case at stake. The notions of cessation and non-repetition, reparation and restitution were examined in depth. I also explained why the UN didn't have a great role in this dispute, mainly because being Russia a permanent member of the UNSC, it can veto any decision concerning the issue that would have endangered its position. The UN, though, managed to adopt some resolutions through the General Assembly, that even though are not binding, had a certain role in defining other states' willingness.

The analysis of the sanctions adopted toward Russia served the purpose of showing how members of the European Union were united in condemning Russian actions.

These sanctions had the main goal to weaken Russia's economy to the point of making it 'surrender' and give Crimea back to Ukraine, but this moment hasn't arrived yet.

The last main concepts which were researched are non-recognition and effectiveness. Through the analysis of Article 41 of the DARS it is possible to show how states have the obligation not only of not recognizing the wrongful act, but must put their effort in bringing it to an end.

In the last paragraph I analyzed how the situation in Crimea is in modern times and what some possible future scenarios are.

Summing up all the findings discovered during my analysis and answering my research purpose, it is possible to state that Russia violated several international treaties and norms while performing the annexation of Crimea and therefore this act should not be recognized as lawful under international law.

Giving my personal opinion on the matter, I think that the future of Crimea is still unsure. The region is very unstable and even though the media are focused on other conflicts at the moment, as the one in eastern Ukraine for example, the situation is far from being resolved. I believe a possible solution will largely depend on the results of the pending case in front of the ICJ regarding the application of the International Convention for the suppression of the financing of terrorism and of the International Convention on the elimination of all forms of racial discrimination. This international question will probably be much clearer, when the ICJ will give its opinion.

This ruling by the ICJ would be relevant because if it decides that these two international conventions have been violated, the reactions of the EU and the international community as a whole, would take that into account, implementing the sanctions and widening the already existent fracture between the Russian Federation and the European Union.

BIBLIOGRAPHY

BOOKS

MARCHISIO, S., *L'ONU, il diritto delle nazioni unite*, Bologna, 2012.

MARCHISIO, S., *Corso di diritto internazionale*, Torino, 2013.

NOORTMANN, M., *Enforcing International law, from self-help to self-contained regimes*, New York, 2016.

RANDELZHOFFER, A., ET DÖRR, O., *The charter of the United Nations: A commentary*, Volume I. Oxford, UK, 2012

SASS, G., *The Crimea question: Identity, transition and Conflict*, Cambridge, Massachusetts, 2007.

VAN DER LOO G., *The EU-Ukraine Association Agreement and Deep and Comprehensive Free Trade Area: A New Legal instrument for EU Integration without membership*, The Hague, 2016.

EDITED BOOKS

ARANGIO-RUIZ, G., *Human rights and non-intervention in the Helsinki Final Act*, The Hague Academy of International Law, The Hague, 1977, pp. 200-331

MILANO, E., *Reactions to Russia's annexation of Crimea and the legal consequences deriving from grave breaches of peremptory norms*, in 'The case of Crimea's Annexation under International Law', Warsaw, 2017, pp. 201-221.

SENESE, S., *Human Rights and People's Rights : Views from North and South*, Social Justice: A Journal of Crime, Conflict & World Order, Vol. 16, No.1, San Francisco, 1989.

NEWSPAPERS and ARTICLES

BRILMAYER, LEA, *Why the Crimean referendum is illegal?*, in The Guardian, 14/03/2014

GORDON, MICHAEL R., *Russia and Ukraine Finally Reach Accord on Black Sea Fleet*, in NY Times, pag.9. 29/05/1997

HARDING, L., *Ukraine extends lease for Russia's Black Sea Fleet*, in The Guardian, 21/04/2010

HERSZENHORN, D., *Crimea Votes to Secede From Ukraine as Russian Troops Keep Watch*, NY Times, 16/03/2014

MACFARQUHAR, N. AND SMALE, A. *Russia responds to Western sanctions with Import ban of its own*, in NY Times, 7/8/2014

MARXSEN, C., *The Crimea Crisis – An International Law Perspective*, Heidelberg Journal of International Law 74/2, pp. 367-389.

NECHEPURENKO, IVAN. *Ukraine's Ex-Leader Regrets Not Breaking Up Protests That Led to His Fall*, in NY Times, 25/11/2015

SMALE, A., ERLANGER, S., *Ukraine mobilizes reserve troops, threatening war*, in NY Times, 1/03/2014.

STERIO, M., *Self-determination and secession under International law: The new Framework*, ILSA Journal of International and & Comparative law, 2015, pp. 293-305

VIDMAR, J., *Remedial Secession in International Law: Theory and (Lack of) Practice*, St Antony's International review 6, Maastricht, 2010

WALLACE, S., MALLORY, C., *Applying the European Convention on Human Rights to the conflict in Ukraine*, in Russian Law Journal, Vol.VI, 2018

WEB ARTICLES

AMADEO, K., *Ukraine Crisis Summary and Explanation*, in Thebalance.com, 2020

AYRES, S., *Four years after Russia annexed Crimea, the peninsula remains in limbo*, in Latimes.com, 28/01/2019

BALAYEV, R., *Crimea's capital faces water shortage, plans daily shutoff*, in The Moscow Times, 06/02/2020

BELLINGER, JOHN B III, *Why the Crimean Referendum Is Illegitimate*, in Council on foreign relations.com, 16/03/2014

BBC, *Crimea Referendum, What does the ballot paper say?*, 10/03/2014

BBC, *MH17: Four charged with shooting down plane over Ukraine*, 19/06/2019

- CALAMUR, K., *Crimea: A gift to Ukraine becomes a political flashpoint*, in NPR.org, 27/02/2014
- COYNASH, H., *Crimean Tatars boycott Russia's illegitimate elections in occupied Crimea*, in Khpg.org, 19/09/2016
- DE CARBONNEL, A., *Russia criticizes UN's resolution condemning Crimea's secession*, in Reuters.com, 28/03/2014.
- DEEKS, A., *Here's what International Law says about Russia's intervention in Ukraine*, in New Republic.org, 2/03/2014
- FISHER, M., *Everything you need to know about the Ukraine Crisis*, in Vox.com, 3/09/2014
- GORBUNOVA, Y., *Ukraine. Escalating pressure on Crimean Tatars*, in Hrw.org, 2/04/2019
- GURRÍA, A., *Russia on the way to the OECD*, in Oecd.org, 15/01/2014
- LAMBERT A. D., *Crimea war*, History.com, 9/11/2009
- L. I. VOLOVOVA, *Plebistsit v mezhdunarodnom prave*, "Mezhdunarodnye otnoshenia", Moskva 1971
- MEREZHKO, O., *Crimea's Annexation by Russia – Contradictions of the New Russian Doctrine of International Law*, in zaoerv.de, 2015
- MILANO, E., *Russia's veto in the security council: whither the duty to abstain under Art. 27(3) of the UN Charter?*, in zaoerv.de, 2015
- PASCARELLA, M., *Crimean secession and International law*, in Notizie Geopolitiche.net, 13/10/2016
- PIFER, S., *Five years after Crimea's illegal annexation, the issue is no closer to a resolution*, in Brookings.edu, 18/03/2019
- POLONSKAYA, G., *Has life improved for people living in Crimea since its annexation?*, in Euronews.com, 18/03/2019
- RAY, M., *Crimea*, in Encyclopaedia Britannica.com, 25/03/2020
- RAY, M., *Ukraine Crisis*, in Encyclopedia Britannica.com, 26/05/2017
- RAY, J., AND ESIPOVA, N., *Russians happier with Putin than with Country's direction*, in Gallup.com, 8/12/2017
- RONZITTI, N., *Russia in Crimea contro il diritto Internazionale*, in Affarinternazionali.it, 4/03/2014

RT.com, *Sevastopol and Crimean Parliament vote to join Russia, referendum to be held in 10 days*, 6/03/2014.

SARI, A., *Ukraine Insta-symposium: When does the breach of a status of forces agreement amount to an act of aggression? The case of Ukraine and the Black sea fleet SOFA*, in *Opiniojuris.org*, 6/03/2014

SIMPSON, J., *Russia's Crimea plan detailed, secret and successful*, in *Bbc.com*, 19/03/2014

SKOVORODA, Y., *Crimea: peninsula of torture*, in *Open democracy*, 27/02/2017

TAFURO AMBROSETTI, E. VILLA, M., *Fact checking: Russia e sanzioni*, in *Ispionline.it*, 31/01/2019

TANNER, A., STEVENSON, R., *Kosovo independence declaration deemed legal*, in *Reuters.com*, 21/07/2010

WESSLAU, F., *Why non recognition matters in Crimea*, in *Ecfr.eu*, 18/03/2016

TREATIES

Agreement between the Russian Federation and Ukraine on the parameters of the Division of the Black Sea Fleet, concluded on 28 May 1997, and entered into force on 12 July 1999.

European Convention on Human Rights, concluded in Rome on 4th November 1950 and entered into force 3rd September 1953.

Final act, Helsinki Conference, Helsinki, 1/08/1975.

The Minsk Agreement, concluded in Minsk, Belarus on 8th December 1991 and entered into force on 12th December 1991.

Vienna Convention on Succession of States in respect of Treaties, concluded in Vienna on 22nd August 1978 and entered into force 6th November 1996.

JURISPRUDENCE

ICJ, 27/6/1986, Case concerning military and paramilitary activities in and against Nicaragua (Nicaragua v. United States of America) No. 520, The Hague.

ICJ, 25/09/1997, Case concerning the Gabčíkovo-Nagymaros project (Hungary/Slovakia), N. 692, The Hague.

ICJ, 22/7/2010, Accordance with international law of the unilateral declaration of independence in respect of Kosovo, N.997, The Hague.

PCIJ, 26/07/1927, Case concerning the factory at Chorzow, No. 9, The Hague.

OTHER OFFICIAL DOCUMENTS

AGO, R., Special rapporteur- the internationally wrongful act of the State, source of international responsibility (part 1), Yearbook of the International Law Commission, vol. II, 1980,

Council Decision 2014/145/CFSP, concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, Official Journal of the European Union, 17/03/2014.

Council Implementing Decisions 2014/151/CFSP, 21/03/2014.

Council of Europe, Parliamentary Assembly, Challenge, on substantive grounds, of the still unratified credentials of the parliamentary delegation of the Russian federation. Adopted by the Assembly 26/06/2020.

Council of the European Union, Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU common foreign and security policy, adopted in Brussels on 4th May 2018.

Draft Articles on the Responsibility of States for Internationally Wrongful acts. Yearbook of the International Law Commission, 2001

EU Foreign Affairs Council, restrictive measures in response to the Crisis in Ukraine, 17/03/2014.

H.R. 596, Crimea Annexation non-recognition act. House of Representatives. Washington D.C., 12/03/2019.

ILA, Report on aggression and the use of force, Washington, USA, 7-11/11/2014.

Office of the United Nations of the High Commissioner on Human Rights, Human rights violations and abuses and international humanitarian law violations committed in the context of the Ilovaisk event in August 2014, 20/10/2014.

Office of the United Nations of the High Commissioner on Human Rights, Situation of human rights in temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine), 25/09/2017.

The Geneva Conventions of 12 August 1949, International Committee of the Red Cross, Geneva.

Ukraine Constitution, adopted in Kiev on 28th June 1996.

UN Charter, adopted in San Francisco, USA, on 26th June 1945.

United Nations General Assembly Resolution 1514 (XV), 14th December 1960, A/RES/1514 (XV).

United Nations General Assembly, Resolution 2625(XXV), 24th October 1970, A/RES/2625(XXV).

United Nations General Assembly, Resolution 68/262, 27th March 2014, A/RES/68/262.

United Nations General Assembly, Resolution 12223, 9th December 2019, A/RES/12223.

United Nations General Assembly Resolution 12241, 20th February 2020, A/RES/12241.

UNSC, Resolution S/RES/242, 22nd November 1967.

UNSC Resolution S/2014/189. 15th March 2014.

UNSC Resolution S/PV.7138, 15th March 2014.

Venice Commission, Opinion on “Whether Draft Federal Constitutional law No. 462741-6 on amending the Federal Constitutional law of the Russian Federation on the procedure of admission to the Russian Federation and creation of a new subject within the Russian Federation is compatible with International law”, Opinion No. 763/2014, 21.3.2014, CDL-AD(2014)004.

SPEECHES and STATEMENTS

EU adds six entities involved in the construction of the Kerch Bridge connecting the illegally annexed Crimea to Russia to sanctions list, 31/7/2018 in Consilium.europa.eu.

EU adds the Governor of Sevastopol to its sanctions list over actions against Ukraine's territorial integrity, 21/11/2017 in Consilium.europa.eu.

G-7 leaders Statement on Ukraine, Rome, 12/03/2014.

MOGHERINI F., Remarks by High Representative/Vice-President Federica Mogherini at the press conference following the Foreign Affairs Council, in Eeas.europa.eu, 14/03/2016

Joint statement on Crimea by the President of the European council and the President of the European Commission, 16/03/2014

MATVIYENKO, V., Putin's letter on use of Russian army in Ukraine, 1/03/2014

Nato Secretary General condemns moves to incorporate Crimea into Russian federation, 18/03/2014

Statement by UN Deputy High Commissioner for Human Rights KATE GILMORE ,Geneva, 24/09/2019

Statement by President of the European Council Herman Von Rompuy and the President of the European Commission in the name of the European Union on the agreed additional restrictive measures against Russia, Brussels, 29/07/2014.

UN.org, Upcoming period will be crucial to resolution of conflict in Ukraine, International officials tell Security Council, 18/02/2020

White House, Statement by the Press Secretary on Ukraine. Washington D.C., 16/03/2014.

SITOGRAPHY

<https://www.bbc.com/news>
<https://www.britannica.com>
<https://www.cfr.org>
<https://cis-legislation.com/index.fwx>
<https://www.coe.int/en/web/portal/home>
<https://www.congress.gov>
<https://connolly.house.gov>
<https://www.consilium.europa.eu/en/>
https://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/ec/141566.pdf
<https://www.ecfr.eu>
https://eeas.europa.eu/headquarters/headquarters-homepage_en
<http://ericposner.com>
<https://www.esteri.it/mae/en>
<http://www.fsb.ru>
<https://www.gallup.com/home.aspx>
<http://www.historychannel.it>
<https://www.hrw.org>
<https://www.icrc.org/en/doc/assets/files/publications/icrc-002-0173.pdf>
<https://www.ispionline.it>
<http://khpg.org/en/index.php>
<https://www.nato.int/cps/en/natohq/index.htm>
<https://www.notiziegeopolitiche.net>
<https://www.npr.org>
<https://obamawhitehouse.archives.gov>
<https://www.opendemocracy.net/en/odr/crimea-peninsula-of-torture>
<http://opiniojuris.org>
<https://npa2020.pdf>
<https://www.reuters.com>
<https://www.rt.com>
<https://www.thebalance.com>
<https://www.themoscowtimes.com>
<https://www.un.org/en/>
<https://www.un.org/press/en>
<https://www.vox.com>
https://www.zaoerv.de/75_2015/75_2015_1_a_215_232.pdf
<https://112.international>

ABSTRACT

L'annessione della Crimea da parte della Federazione Russa, avvenuta nel marzo del 2014 è stato un evento estremamente importante per la geopolitica europea e le relazioni dell'Unione Europea stessa con la Russia. In seguito alla dissoluzione dell'Unione Sovietica, avvenuta tra il 19 Gennaio del 1990 e il 26 Dicembre del 1991, sono state frequenti le crisi tra la Federazione Russa e la Repubblica Ucraina, e questo evento, avvenuto a ridosso della crisi in Ucraina del 2014, rappresenta l'inizio di una serie di conflitti nell'est Europa che sarebbero accaduti di lì a poco.

Lo scopo di questo elaborato è stato comprendere se la Russia durante il processo di annessione della Repubblica Autonoma di Crimea abbia/avesse violato le norme del diritto internazionale o meno. Il lavoro è stato suddiviso in tre capitoli principali.

Nel primo capitolo, che ha un carattere prettamente introduttivo, vi è una introduzione di natura storica della regione della Crimea. Viene analizzato come questa regione sia sempre stata contesa tra vari popoli, a partire dai Greci e i Romani. Parte importante di questa analisi storica è rappresentata dalla cessione della Crimea all'Ucraina per mano dell'allora Segretario Generale del Partito Comunista Nikita Krushev.

In seguito ho analizzato la crisi ucraina del 2014 e come il progressivo allontanamento dall'accordo di associazione tra Ucraina e Unione Europea, da parte del Presidente Yanukovich, abbia contribuito ad aggravare la già precaria situazione politica interna del paese. In seguito sono state analizzate separatamente le modalità di intervento usate dalle truppe russe per attuare l'azione militare nella regione e le modalità di svolgimento del referendum con il quale si è sancito definitivamente il volere degli abitanti della Crimea di diventare cittadini russi.

Nel secondo capitolo si entra nel vivo della questione giuridica e vi è una approfondita analisi delle violazioni del diritto internazionale. Nel primo paragrafo vengono analizzate le violazioni ad alcuni trattati internazionali conclusi da Russia e Ucraina. I successivi tre paragrafi hanno il compito di analizzare più specificatamente la legalità della secessione, del referendum e dell'annessione. Tramite l'analisi della giurisprudenza è stato possibile dimostrare come ognuno di questi processi non fosse compatibile con il diritto

internazionale. Il processo di annessione, in particolare, era in violazione della norma perentoria che proibisce l'aggressione, mentre l'annessione ha violato l'articolo 2, paragrafo 4, della Carta delle Nazioni Unite. I vari principi a cui la Russia ha fatto appello per giustificare le sue azioni, come il principio di auto-determinazione dei popoli e il principio di intervento umanitario, o ancora il principio di intervento su invito, sono sempre risultati piuttosto deboli e non consoni a giustificare violazioni di tale entità. L'ultimo paragrafo di questo capitolo è, infine, dedicato alle violazioni dei diritti umani e del diritto internazionale umanitario. Tramite l'analisi delle Convenzioni di Ginevra del 1949 e della Convenzione Europea dei Diritti dell'uomo è stato possibile rilevare delle violazioni, in seguito alle torture perpetrate dagli agenti dei servizi segreti russi ai danni dei dissidenti Ucraini.

Il terzo capitolo, invece, è dedicato in generale alle reazioni internazionali all'annessione. Comincia con una analisi delle conseguenze derivanti da un illecito internazionale. Tramite l'analisi degli articoli 30, 31, 35, 36 e 37 del DARS e dei relativi commentari, vengono esaminate le nozioni di cessazione e non ripetizione dell'illecito, riparazione e restituzione, che sono le più importanti e che soprattutto è possibile applicare al caso in analisi. Il secondo paragrafo è dedicato alle Nazioni Unite e al ruolo svolto in questa disputa. Il Consiglio di Sicurezza non è riuscito ad adottare nessuna misura, essendo la Russia uno dei suoi membri permanenti, e avendo, pertanto, il diritto di veto. L'Assemblea Generale, al contrario, è riuscita ad adottare alcune risoluzioni, come la 68/262 o la 12223, che però a causa del loro carattere non vincolante, non hanno dato un particolare contributo alla risoluzione della disputa.

In seguito vi è una analisi delle sanzioni che sono state adottate nel corso degli anni nei confronti della Federazione Russa da parte degli organi dell'Unione Europea. L'UE è in grado di adottare diversi tipi di sanzioni: diplomatiche, individuali, economiche e restrizioni alla cooperazione economica. Queste misure sono state imposte gradualmente sin dai primi giorni successivi al referendum fino a tempi più recenti e hanno avuto come principale scopo, quello di indebolire la Russia dal punto di vista economico e commerciale, e di mostrare coesione a livello europeo nel condannare fermamente l'annessione della Crimea. Successivamente viene analizzato il concetto di non-riconoscimento e di effettività. La maggior parte degli stati membri dell'ONU decise di non riconoscere come legale l'annessione, in conformità con l'articolo 41 del DARS che prevede che gli Stati terzi non solo abbiano l'obbligo di non riconoscere come legale un illecito, ma debbano impegnarsi a

porre fine all'illecito stesso. Il capitolo si conclude con una analisi della situazione attuale della Crimea e di come la Russia non si sia impegnata a mantenere tutte le promesse fatte, in particolar modo quelle legate agli ingenti investimenti nel settore turistico. Vi sono inoltre delle ipotesi riguardo i possibili scenari futuri di questa regione.

L'elaborato termina con le conclusioni, dove si attesta, ancora una volta, che l'annessione della Crimea non può essere considerata legale sul piano del diritto internazionale, per tutti i motivi esposti nei capitoli precedenti.