



**Department of Political Science – International Relations
Chair of Geopolitical Scenarios and Political Risk**

The Crimean Crisis: Russia - European Union Relations

SUPERVISOR

Prof. Giuseppe Scognamiglio

CANDIDATE

Alberto Matteoda

Student ID: 636362

CO-SUPERVISOR

Prof. Igor Pellicciari

Academic Year 2019/2020

Index

Introduction	5
Chapter I: A Historical Briefing.....	7
1.1 Collapse of the Soviet Union and Relations with the Newborn Ukrainian State	7
1.2 The Eastern Enlargement of NATO and the European Union	13
1.3 Ukraine’s Policy in the 21 st Century: from the Orange Revolution to the Euromaidan	18
1.4 The Annexation of Crimea: Crisis and Escalation in the Donbass Region	24
Chapter II: The Annexation of Crimea under International Law	32
2.1 Ukraine as Independent State and the Legitimacy of Territorial Sovereignty in Crimea	32
2.2 Analysis of the Use of Force	35
2.3 The Referendum and the Self-Determination Matter	38
2.3.1 The Matter of the Application of the Principle of the Self-Determination of Peoples and the Remedial Recession.....	39
2.3.2 Kosovo: Why it Cannot be Considered as a Precedent	41
2.4 The Principle of Territorial Integrity	43
2.4.1 The Statute of the Council of Europe and the Helsinki Accords.....	45
2.5 The Referendum and its Formal Validity	47
Chapter III: EU Sanctions to the Russian Federation ..	50
3.1 Definition of Sanctions and Theoretic Aspects	50
3.1.1 Aims of International Sanctions	52
3.1.2 The Cost of Economic Sanctions	54
3.1.3 Negative Sanctions	55
3.1.4 Smart Sanctions.....	57
3.1.5 Responses to Negative Sanctions	57
3.2 EU Sanctions to the Russian Federation.....	58
3.2.1 European Road to Imposing Sanctions.....	60
3.2.2 Sanctions by Other International Subjects	69
3.2.3 Comparison Between EU and US Sanctions.....	72
Chapter IV: Consequences of Sanctions	74
4.1 The Energy Issue	74

4.1.1 Relations with the EU and Supply Routes	75
4.1.2 Energy Resources as Tool of Russian Foreign Policy	77
4.1.3 The Mutual Dependence between Russia and the European Union.....	79
4.1.4 Russia’s Projects for Energetic Diversification.....	80
4.2 EU Relations with Crimea.....	83
4.2.1 Appeal of Individual Sanctions	85
4.3 Russian Response to Sanctions.....	86
4.3.1 Food Import.....	88
4.3.2 The Consequences on Russian Ruble.....	89
4.4 Economic Consequences of Sanctions	91
Conclusions.....	93
Bibliography	95

Introduction

The Crimean Peninsula has been the theatre of the only border shift happened in Europe in the last decade, an occurrence that set in motion political, economic, and social consequences. The implications of this event have deep roots tied to the main characters of this paper: the Russian Federation, Ukraine, and the European Union. This subject was chosen because of the different fields of application that can be analyzed, given the geopolitical importance of all the circumstances that were caused from it, ranging from history and economy to international law. This dissertation will be composed of four chapters.

The first chapter will analyze what happened from a historical perspective. The history of the Russian ambitions in Crimea spans for centuries, and it would have been far too lengthy to evaluate it in its entirety. Therefore, the demise of the Soviet Union was chosen as starting point for this thesis, an event that led to the birth of the Ukrainian State. Its relations with the Russian Federation will be considered, together with the eastern Enlargement of NATO and the European Union, and Russia's reaction to these happenings. Subsequently, the Orange Revolution will be evaluated, and the Euromaidan movement that began the Crimean matter. Lastly, the annexation itself will be dealt with, and the innovative ways of hybrid warfare that brought Russia to control the zone, when the focus will shift on the Donbass region, which saw the beginning of a military conflict between pro-Russian rebels and the Ukrainian regular troops that, at the time this paper is being written, is still ongoing.

In the second chapter will be dealt the annexation of Crimea and the 2014 Referendum from the viewpoint of international law. The great majority of international Governments continue to regard Crimea as an integral part of Ukraine, and they refuse to recognize the results of the 2014 Referendum. A research on the definition of the use of force into the Charter of the United Nations will show the reason why Russia's operations are deemed as illegal. The motivations that Russia used to explain its actions will be analyzed, studying into the principle of self-determination of peoples and why it cannot be considered valid in this case, comparing the situation in Crimea to the possible precedent of Kosovo. Lastly, the spotlight will move to the statute of two international organizations, the Council of Europe and the OSCE, of which Russia is a member-State, and why its actions collide with the principles enshrined in those documents.

The third chapter will analyze the tool of sanctions, or restrictive measures, in its entirety. The different methods in which sanctions are carried out will be covered, together with their aims, their costs, and the way in which they evolved to become the most used method by the European Union to try solving international controversies. The legal process that lead to the implementation of sanctions will be followed in its wholeness, also looking into other international subjects that enforced their own measures, such as the United States or NATO.

The fourth and final chapter will debate on the consequences of these sanctions, above all from the point of view of the energy industry. The energy policy is of great relevance, for energy is one of the largest sectors of the Russian economy, and most of the gas that is sent to Europe passes through pipelines in Ukraine. After looking into the mutual dependence between Russia and the European Union on this matter, and the former's projects to diversify the supply routes, the focus will move to the relations that currently occur between the EU and Crimea. After analyzing in detail the process that lead to the countersanctions being implemented by Russia towards the EU, the economic consequences of sanctions will be investigated. While the Russian GDP shrank by a certain amount in the years following the implementation sanctions, and the Russian ruble saw its value collapse, it is still not clear how much of this was the result of sanctions, if not of the failing in oil prices of those years.

Chapter I: A Historical Briefing

1.1 Collapse of the Soviet Union and Relations with the Newborn Ukrainian State

The second post-war world was characterized by the rivalry between the United States and the Soviet Union in the political, economic, and military fields. The Western World found its counterpart to the Bloc composed by the Warsaw Pact, under the sphere of influence of the Soviet Union, who wanted to offer a different view of the world, to that of the European Countries and the United States. For almost 40 years there was little between these two powers in terms of economic prowess, but during the 1980s some objective weaknesses of the Soviet system began to appear¹.

The oil crisis of the second half of the 20th century had seen the Western World innovate its industrial tools, with a fast implementation of new technologies to the manufacturing process. The Soviet Union, while staying the second most industrialized State in the world after the United States, started showing the age and insufficiency of its production system, compared to its adversary on the other side of the Iron Curtain. The old problems that had already afflicted the production system for a long time, like its infrastructural poverty, the mediocrity of much of its services and the predominance of heavy industry at the expenses of the light one, were joined by the evidence that many technical components and facilities were now obsolete. The long series of accidents that stroke the sectors of transports, construction, the mineral and energy industries, found its climax in the facts of Chernobyl of 1986.

It seemed evident that a radical turn of events was necessary. In 1985, at the proposal of the General Secretary of the Communist Party of the Soviet Union (CPSU) Mikhail Gorbachev, the party launched the *perestroika*, a series of economic, politic and administrative reforms that were supposed to awake the Soviet State from the slumber it found itself in. He also began to increase openness and transparency in the actions of the government, allowing the Soviet citizens to openly discuss the problems of their system and eventual solutions to them,

¹ N. V. Riasanovsky, *Storia della Russia dalle origini ai giorni nostri*, Bompiani/ Rizzoli Libri S.p.A., Milano, 2001, p. 596.

in a measure called *glasnost*. The real beginning of the proposal arrived in February 1986. They began with a great reorganization of the agricultural institutions, through the suppression of some ministerial organs and the creation of a new one, the Gosagroprom². It was clear from the beginning, that the campaign of reforms Gorbachev had the purpose of simplifying the bureaucratic apparatus, in order to stimulate and give a better guidance to the production. Even the industrial sector was the subject of reforms. A new inspective service was established to supervise the quality of the production, with fees to imply wherever sufficient standards were not met. While this was a simple aspect of the reform, a more pragmatic way had begun, to launch the “socialist market”. Between 1986 and 1988 many laws were adopted that allowed the formation of family-run economical units, and the obligation for them to be administrated by the criterium of economic calculus, and to provide to the management of them through their own income. On the commercial field, trade with the Western States was encouraged, to revive the economy of the socialist States and to start an approach to the European Community.

However, these new reforms immediately showed some limits. Even if *perestroika* was supposed to simplify Soviet bureaucracy, the dismantling of some administrative organs were followed by the birth of new ones. There was still a prevalence of centralization, and the basic principles of Soviet economy remained untouched, like the social propriety of the productive means or the programming of the quotes of production. It was not easy to modify a way of thinking that had become radicalized in both the common folk and the high ranks of the CPSU through the decades. Despite the efforts to experiment a new type of economy, the limits caused by the unfamiliarity with a market economy remained, together with a distrust in the process of reducing the absolute control of the central organs in favour of decentralization³.

Although *perestroika* passed to history as a radical shifting on the economic field within the USSR, it also touched other areas of the Soviet State. Gorbachev’s aim was also to bring substantial adjustments to the management of the country. He directed his political maneuvering within the CPSU to reduce its importance. Because the party had taken a great number of administrative roles in the decades it had lived, he wanted to convert it to a more reflexive role. The administration of the country would be assigned to the Soviets, which were supposed to assume their role as representatives of the people’s will again, allowing

² The *Gosagroprom* is the Ministry of Agriculture of Russian Federation established in 1990.

³ N. V. Riasanovsky, *op. cit.*, pp. 595-599.

the population to choose among different candidates. This caused general discomfort in the State leadership, given to both the distaste on the reform and to the struggle to maintain power. The electoral reform that followed brought in additional problems, for it allowed citizens to vote candidates that had not been proposed by the party, which would be included in a Supreme Soviet of 600 members. The nationalistic impulses of the various nationalities within the USSR influenced these decisions, especially the Baltic states, that had a strong anti-Soviet feeling. In this, a first tendency to disaggregate the Union can be sensed, which would have greatly influenced its definitive break down.

1989 was the focal year for this process. In the March elections Boris Yeltsin was elected deputy of the Congress of Deputies of the People of the Soviet Union. This was considered as the first democratic choice of the people, because its election represented the will of the country. Despite power staying firmly in the hands of the Central Committee, debates in Parliament followed, a sign of a growing democracy. Liberty of expression seemed to increase, even if structural norms for a truly democratic confront were still lacking. The other countries of the Soviet Bloc witnessed a pressure for reform, and it can be said that the history of the Bloc itself, in that year, was the history of what was happening beyond its own frontiers. The June elections in Poland saw the emergence of the Solidarność⁴ movement, and it grew to be the strongest force in the Country. In their recent history, Poland and Hungary had already observed some movements directed to democratic ways, but now, thanks to an increase in freedom of speech, some changes were also happening at the institutional level.

In the German Democratic Republic, that had become a symbol the Eastern Bloc, in the summer of 1989 a number of manifestations began against the regime. Several citizens that were spending their holidays in Hungary and Czechoslovakia were allowed to emigrate to the Federal Republic of Germany, and the public discrediting of the German leader Honecker by Gorbachev made him lose its grasp on the citizens. The people of Eastern Berlin were allowed to cross the Iron Curtain at the beginning of November. A great manifestation in the night between the 4th and 5th of November was considered as a moral reunification of the German capital. Some days later, the 9th of November, the checkpoints were lifted, with a subsequent fall of the Wall, symbol of both the Cold War and the division of the world in

⁴ This syndicate was created in 1980 by Lech Walesa. It became a mass movement able to unify the Catholic and anti-communist oppositions, not only in Poland, but in the entire Soviet space.

two Blocs. This led to a growing disobedience of the communist regimes in the following weeks, until the effective reunification of Germany on 12th September 1990.

Between the end of 1989 and the beginning of 1990, the Red Army retreated its forces from those countries that had seen the help of the Soviet military in creating pro-Soviet governments in the past decades. From that moment, the USSR would have renounced to the ideological implications of its foreign policy and its hegemony in the area. If 1989 is considered the year of the crisis of the Soviet Empire, 1990 is considered the year of the crisis of the Soviet Union itself. Changes were seen both in the external front, through the greater autonomy that the Republics of the Union started experiencing, and in the internal one. Gorbachev implemented another point of its constitutional program, and on 14th March he gave up the title of President of the Supreme Soviet Presidium, to take the one of President of the Union. This meant that the country was changed to a presidential republic and that the CPSU lost much of its power to the state leadership.

On 5th March, Yeltsin was elected president of the Supreme Soviet of the Russian Republic, and he proclaimed the superiority of the laws of the Russian Soviet Republic to the laws of the Soviet Union. His intention in doing this was not to split down the Union itself, but to clean it out of its powers in order to inherit them. A crisis within the party ensued, that saw Gorbachev against the conservative portion of the Party, and Yeltsin against the great majority of the party. The crisis of the party-state had then begun. The ethnic and religious divisions of those people that had been under control of the Union made the situation even more problematic.

The most conservative members of the party, that belonged to the *nomenklatura* and occupied the most prestigious positions within the state, such as the Vice President, the Prime Minister, the high rankings members of the secret service, the ministers of the Interior and of Defense, were the most intolerant about these changes. They organized, in August 1991, a “committee of emergency” to assume control of the Union, trying to incriminate Yeltsin and take the presidential power away from Gorbachev. This was not a true coup d'état, for these figures did not try to illegitimately obtain power, but merely to start to exercise it again, for they were the formal holders of it. Therefore, they did not act through aggressive methods, but rather they were limited to give orders in respect of their functions, convinced of the automatic execution of their commands. The facts of the precedent years

and the widespread confusion of the bureaucratic and political class that ruled the country highlighted their loss of control.

The authoritarian maneuver failed, in part because of Yeltsin's exhortation to resist, that manifested itself with the immobility of the *nomenklatura* and some popular manifestations in the main squares of Moscow and Leningrad. Victory was in Yeltsin's hands, and he used it to suspend the activities of the party, close its seats and force Gorbachev to resign. The struggle for the state-party was concluded with the eradication of the high-ranking members of the party itself. On 29th August 1991, the CPSU was dissolved, and that can be considered the demise of the Soviet Union Itself⁵.

The reasons that moved the States to distance themselves from this were variegated. The Baltic Countries wished to restore their national and cultural identity, while the other countries needed to take away their resources from the chaos in Moscow. The Ukrainian case is a peculiar one, therefore it is necessary to explore its path to independence and its departure from the Soviet Union first, and second from its natural heir, the Russian Federation. On 16th July 1990, the Declaration of Ukraine's sovereignty was issued⁶. It was founded on numerous principles, among which the principles of self-determination, of democracy, and the predominance of Ukrainian Law on Soviet Law. This was inspired in its principles and its implementing rules by the declaration of the newly born Russian Socialist Federative Soviet Republic.

A bitter confrontation ensued between the Soviet authorities and the new Ukrainian ones, that was resolved after the failed coup in August 1991. This led to the Act of Independence of Ukraine, that made it a free and democratic State⁷. In December 1991, a formal referendum was held, that confirmed the independence of the country. The first president elected by the Parliament was Leonid Kravchuk, member of what was later described as the reformative *nomenklatura*, which however did not truly push Ukraine away from the other newly born States. He had also an important role in the destiny of the Soviet Union. Aware

⁵ N. V. Riasanovsky, *Storia della Russia dalle origini ai giorni nostri*, pp. 615 – 623.

⁶ The Ukrainian Sovereignty Declaration was adopted on 16th July 1990 by the Supreme Soviet of Soviet Socialist Republic of Ukraine. It established the principles of self-determination of the Nation, the role of people, institutions, territory, economic independence, cultural development, security, and international relations.

⁷ *Verkhovna Rada of Ukraine Resolution on Declaration of Independence of Ukraine*, Verkhovna Rada of Ukraine, 24th August 1991.

https://web.archive.org/web/20070930203430/http://gska2.rada.gov.ua:7777/site/postanova_eng/Rres_Declaration_Independence_rev12.htm.

of the importance of his country in the region, he gave support in moving the threads that brought to the formal ending of the Soviet State and the stipulation of the successive agreements. The dissolution of the Soviet Union brought a significant innovation on the world stage. Despite the initial tensions with the neighbouring states, the necessity to not let the newborn Ukrainian state alone in the diplomatic field was evident.

The meeting in the *Bialowieza* forest established the definitive dissolution of the USSR and the foundation of the Commonwealth of Independent States (CIS). A mere shadow of the former Warsaw Pact, its geopolitical aim was to build an alliance capable of being NATO's or European Community's counterpart. Even with this tentative to keep up the two-worlds setting, it was clear that the breakup of the Soviet Union was the event that would have put an end to the Cold War beyond any reasonable doubt. The CIS in fact, was not as stable as the old alliance that, since 1955, had made the Eastern Bloc a realistic military, political, economic, and ideological threat to the Western World. The relationships between Russia and some of its allies, like Ukraine, were very tense.

The dispute for the Soviet Fleet anchored in the Black Sea was not only about the partition of the military assets, but also about the role of influence on an area of strategic value for several States in the region. Russia, a young State that was still living its first crisis, could not afford a conflict that would have surely alerted the western powers. The situation was resolved through diplomacy, but still, it perfectly describes the tension that was in the air at that time; still, none of the former Eastern Bloc countries would have taken advantage from an aggressive foreign policy. The search for diplomatic dialogue would have allowed an easier access to western assets and technologies, and the ex-adversaries could have become partners. Ukraine, in particular, went through a deep energy crisis, which was followed by an economic crisis and a raising inflation, with more political instability⁸.

A partial turning point happened in 1994. In the elections of the summer of that year, President Karvchuk was defeated, and the pro-Russian Leonid Kuchma took the leadership of the country; he would be reelected in the following elections, maintaining his position until 2005.

⁸ N. V. Riasanovsky, *Storia della Russia dalle origini ai giorni nostri*, p. 640.

On the front of relationships with the western world, new tension ensued in the region. The first years of the new millennium saw several crises, and the Eastern Expansion of NATO and the European Union, that greatly influenced the foreign policy of the Ukrainian State.

1.2 The Eastern Enlargement of NATO and the European Union

The end of bipolarism brought multiple consequences in regards to alliances. The first organization to take the initiative was NATO, that saw in the dissolution of the “Soviet Empire” a chance to expand eastward. This would have brought profit in both the internal and external level. Firstly, it would have been a way to appease the minorities of immigrants from the Eastern European states. The inclusion in the Alliance would have meant a greater evidence of the Soviet “defeat”, resulting in a not insignificant demonstration of strength. Lastly, moving eastward, NATO would have gained allies and, consequently, an additional security against Russia.

On the other hand, the enlargement of the political and military organization led by the United States was seen as an act of imperialistic force by that share of Russian population that still believed in the ideals of Communism and nationalism. In this context, the Russian president Yeltsin acted as moderator. Aware that the widespread nationalistic feeling in his country refused to see such a large downsizing of its ambitions, given the fact that until not long ago the nation represented the greatest threat for the Western World, while also being aware that it was necessary to not let the situation escalate dangerously, he decided to act through diplomacy. In 1997 Russia and NATO signed the “Founding Act on Mutual Relations, Cooperation and Security”. The agreements included that the two parts would collaborate to build a long-lasting peace in Europe, based on democratic principles. The fact that Russia was the only speaker in the diplomatic meetings with the West was a clear sign of its permanent influence on the former republics of the Eastern Bloc, even though it could no longer be described as a true hegemony.

The NATO military intervention in Kosovo was considered by many Russians as a serious non-compliance of the clauses of the 1997 agreement. Not only the Alliance acted through a military intervention in the Balkan region, that used to be part of the Eastern Bloc, thus representing a concrete threat for Western Europe, but it also did not consult Russia on the matter. Despite the indignation of the Russian public opinion, diplomacy was once more chosen as the way to interact. Once the main operations ended, Russia could partake in the military occupation of the region of Kosovo with a military contingent⁹.

Even if the Kosovo intervention was the only NATO military intervention on European soil, its importance is undeniable. NATO could afford such a decisive action because of the lack of a concrete and plausible threat in response to these actions from Russia. Its aim was to elevate itself as guardian of Peace and political balance.

The first Country to join NATO in its eastern enlargement was Eastern Germany, as soon as it was rejoined to its western counterpart. Poland, Czech Republic, and Hungary followed in 1999, angering Russia¹⁰. In March 2004, the Baltic republics of Estonia, Lithuania and Latvia followed, creating a shared border between NATO and Russia. Later in the same year, Romania and Bulgaria also became members.

NATO's purpose was evident: to launch a program of quick annexations including simultaneously targeting numerous states of the same geographical area. With the first annexations the message was only symbolic, even with its growing borders; however, with the inclusion of the Baltic Republics, a clear resizing of the hegemonic prospects of Russia in Europe was now evident. The direct loss of influence on large part of the Baltic region and the Black Sea represented, and still does, a concrete threat for Russia, that saw itself cut almost completely out from those waters that had always had great strategic value. In the same year, Slovakia and Slovenia also joined NATO. These additions signed the western frontier stretching its borders from the Northern Sea to the Mediterranean Sea.

An inclusion of Belarus is still highly unlikely, for its regime is firmly linked to Russia, its eastern ally. On the other hand, an inclusion of Ukraine and Georgia would bring great advantages to the Alliance; the negotiations are in stalemate because of Russia's strong

⁹ T. German, *A legacy of conflict: Kosovo, Russia, and the West*, in *Comparative Strategy*, 30th September 2019, pp.426-438.

¹⁰ J. Wade, *The Enlargement of the European Union and NATO: Ordering from the Menu in Central Europe*, Cambridge University Press, New York, 2004, chapter II.

opposition. Their joining NATO would mean for Russia to lose even more influence on the Black Sea region, but also a beginning of an encirclement in the Caucasus area.

While the Ukrainian matter will be analyzed in greater detail later in this elaborate, a review of the Georgian conflict is necessary to better comprehend some basic recurring happenings. The Caucasian State had always been under Russian influence, firstly in the form of the Russian Empire, then the Soviet Union, and today the Federation. It is rich in resources, is home to a sizeable Russian minority and it represents a “buffer state” for its border with Turkey. As soon as the negotiations for the admission of Georgia to NATO in 2004, Russia reacted aggressively, using its larger economy to implement a trading block to the Caucasic country, also interrupting the delivery of energy, and realizing a large propaganda campaign. The conflict that ensued started in Southern Ossetia, but it was toned down thanks to the mediation of the European Union, that invited the two parts to collaborate¹¹. It is not surprising that Russia decided to intervene. For many decades, the Caucasus region had been source of numerous problems for Russia, because of the separatists in the region and some groups linked to Islamic fundamentalism¹².

Even though the eastern enlargement policy had been regarded as a success, since 2003 Washington formed the US Adriatic Charter, a bilateral plan made to facilitate the access of the Balkan countries to NATO. This coalition unites Croatia, Albania, and Macedonia; these countries carry out military trainings on the Adriatic coasts¹³. It is a sort of “pre-NATO”, integrated to Eastern NATO, based on the *Atlantic Partnership for Peace*. This operation can be linked to the *Black Sea Force*, its counterpart in the Black Sea, consisting of the US, Romania, Bulgaria, Turkey, and Georgia. This shows how NATO is not the only assurance for some States. For them, participating in a political and military organization like NATO would be preferable, but the inclusion to these military exercise of a regional kind shows a message to possible adversaries in the zone, and helps in keeping up good relations with the countries in the area and discourage foreign interventions. Small isolated States would not

¹¹F. Novella, *Abkazia: la conflittualità interna e l'ombra lunga della Russia*, in *Geopolitica.info*, 15th June 2010. <http://www.geopolitica.info/abkazia-la-conflittualita-interna-e-lombra-lunga-della-russia/>.

¹² L. Gudkov and V. Zaslavsky, *La Russia da Gorbaciov a Putin*, Il Mulino, Bologna, 2010, pp. 130-133.

¹³ F. Tarifa, *The Adriatic Europe: Albania, Croatia, and Macedonia*, in *Mediterranean Quarterly*, Volume 16, Number 4, Autumn 2005, pp. 8-19.

be able to make a stand, but the participation to a growing alliance would mean a great assurance of security¹⁴

NATO's eastern enlargement came with a deep desire to renovate the organization itself. The new frontiers of the alliance seemed to anticipate the same ones that another large international organization desired: the European Union. The inclusion of Eastern Europe could be interpreted as the expansion, at European level, of that process of westernization that the United States and NATO had started on a global scale. The entrance to NATO has usually been an anticipation of the entrance to the EU. The military links with the United States and the western world in general could be seen as more relevant compared to a political link with Europe. Brussels had been seen as a source of status and funding, rather than a guarantor of geopolitical security¹⁵.

As it was for NATO, the fall of the Berlin Wall was a significant turn of events for the European Union. All those states East of the "Iron Curtain" saw in the European Union a stable solution, seeing their hopes of a long-term stability shattered were they to remain in their old system of alliances. The first enlargement happened in 1995¹⁶ with the inclusion of Austria, Finland, and Sweden¹⁷. The second large expansion happened in 2004, after single separate negotiations with each State initiated in 1997. Cyprus and Malta were among these states, with numerous other states of Eastern Europe: the three Baltic Republics of Estonia, Latvia and Lithuania, the Czech Republic, Poland, Slovakia, Hungary, and Slovenia¹⁸.

Romania and Bulgaria joined at the same time in 2007, as they had for NATO. Croatia's entry in 2013 was subjected to more strict conditions given from the "renewed consensus on the enlargement" of 2006 of the European Council.

The entrance of Croatia to the EU has represented an important stimulus for the other countries in the region. The experience that came with this new membership has led to the Commission putting more emphasis on the question of the "Rule of Law". As part of the strategy for enlargement, it has been decided to pay more attention to the reforms of the justice sector and fundamental rights, and also to internal security. With this new approach

¹⁴ M. Paolini, *La Nato dell'Est*, in *Limes Online*, 20th December 2004.

<https://www.limesonline.com/cartaceo/la-nato-dellest?prv=true>.

¹⁵ L. Canali, *L'espansione verso Est della NATO*, in *Limes Online*, 4th December 2019.

<https://www.limesonline.com/lespansione-verso-est-della-nato-2/115632>.

¹⁶ R. Dannrheuter, *European Union Foreign and Security Policy*, Routledge, New York, 2004 p.13.

¹⁷ It is worth remembering that these States are not part of NATO, but only of the European Union.

¹⁸ J.O'Brennan, *The Eastern Enlargement of the European Union*, Routledge, New York, 2006, pp. 116-117.

the Commission in 2018 published the “Strategy for the Western Balkans”¹⁹, in which it identifies Montenegro and Serbia as the next candidates for joining the Union, even if the deadline set for 2025 seems too ambitious²⁰.

It is necessary to clarify that not all countries in the Union are unanimously on the same page for what regards the Eastern Enlargement. In 2007 for example, France expressed skepticism on this regard. The Balkan area in particular seems to be not of great interest for France’s economic interests. In general, doubts persist on consequences for the credibility of European Institutions, if unstable regions should be included in the treaties²¹.

As showed, the Eastern expansion of both NATO and the European Union represents one of the most important situations for the foreign policy of the two institutions. With the growing strategic significance of the Pacific theatre, the United States have proposed a reduction of the costs of contribution to NATO. The United States are responsible for 22% of the total NATO expenditure. While the contribute of other Countries should be in proportion to their GDP, this is not always respected²². These elements could be considered as factors of disaggregation within the Atlantic Pact, opening to questions on how the relations with the European institutions could evolve. The cooperation between the two organizations is on different fields, and it seemed to have strengthened in these years, especially for what regards foreign policy. Brexit has resulted in an additional upheaval especially in regards to funding, however this has not affected other areas, which continue to proceed at normal.

Considering these developments in the political scope, the contexts of defense and public security could become one of the main areas of collaboration between the two organizations²³

¹⁹ From the official site of the European Council, February 2018.

https://ec.europa.eu/commission/news/strategy-western-balkans-2018-feb-06_en.

²⁰ M. Serra, *UE in progress: un nuovo grande allargamento a Est nel mirino?*, in *Ispionline*, 24th October 2013. <https://www.ispionline.it/it/pubblicazione/ue-progress-un-nuovo-grande-allargamento-est-nel-mirino-9289>.

²¹ G. Fruscione, *Allargamento UE: la Francia spegne le speranze dei Balcani*, in *Ispionline*, 19th October 2019. <https://www.ispionline.it/it/pubblicazione/allargamento-ue-la-francia-spegne-le-speranze-dei-balcani-24205>.

²² A. Perteghella, G. Fruscione, *70 anni di NATO: sfide e prospettive dell’Alleanza Atlantica*, in *Ispionline*, 4th April 2019. <https://www.ispionline.it/it/pubblicazione/70-anni-di-nato-sfide-e-prospettive-dellalleanza-atlantica-22739>.

²³ C. Polito, A. Aversano Stabile, E. Cesca, *Quale futuro per la cooperazione Nato – Ue?*, in *Istituto Affari Internazionali*, 18th December 2017. <https://www.iai.it/sites/default/files/iai1721.pdf>.

The trickiest subject with respect to the new memberships regards Ukraine. The first relations between NATO and Ukraine began in 1994, and the State presented an application membership in 2008. The election of President Viktor Yanukovich²⁴ in 2010 halted the procedure, that has gained importance after the facts of 2014, when surveys highlighted that an always growing part of the Ukrainian population was favorable to the adhesion²⁵.

If the agreement with NATO can be attributed to interests in the defense sector, the matter of the relations with the European Union has different roots. After the fall of the Soviet Union, Ukraine has kept strong ties with Russia, while at the same time it grew closer to the Western World. It is estimated that Ukraine's trade with the European Union has grown considerably during the 1990s, becoming one third of all the commercial activities of the country²⁶. In 2008 it was deemed possible to bring Ukraine into the Union through an agreement of stabilization and association. The negotiations kept going well, until in 2011 the High Representative of the Union for Foreign Affairs and Security Policy Catherine Ashton²⁷ declared that the trial of Julia Timoshenko, the former Ukrainian Prime Minister, would have influenced the negotiations negatively. These facts underline how the difficulties for Ukraine's joining the Union were mostly regarding justice and democracy²⁸.

1.3 Ukraine's Policy in the 21st Century: from the Orange Revolution to the Euromaidan

The breakdown of the Warsaw Pact started a process that brought numerous post-Soviet states to move away from Russia and heading towards a more independent policy, often linked to the Western World. At the beginning of the new millennium a few of these states have experienced some generally non-violent movements of civil disobedience towards the

²⁴ Viktor Fedorovych Yanukovich was active in Ukrainian politics since 1996. He occupied the role of Prime Minister three times, before he became President in 2010, holding the place until 2014.

²⁵ *New Ukraine Coalition Agreed, Sets NATO As Priority*, in *Radio Free Europe*, Radio Liberty, 22th November 2014,. <https://www.rferl.org/a/ukraine-parliament-coalition-agreement/26703123.html>.

²⁶ L. Peter, *Guide to the EU deals with Georgia, Moldova and Ukraine*, in *BBC News*, 27th June 2014. <https://www.bbc.com/news/world-europe-28038725>.

²⁷ Catherine Margaret Ashton is a British politician. She held her role from 2009 to 2014.

²⁸ *Interfax-Ukraine, EU-Ukraine Association Deal Might Hit Ratification Problems if Tymoshenko Situation Remains Unchanged*, in *Kyiv Post*, 5th September 2011. <https://www.kyivpost.com/article/content/ukraine-politics/eu-ukraine-association-deal-might-hit-ratification-112197.html>.

governmental institutions, considered corrupt, excessively authoritarian and having too strong ties with Moscow. These “Coloured Revolutions”²⁹ usually came after elections results, which were accused of being rigged. The elected figures were often associated with pro-Russian trends and were led to resign or to defeat in a second round of voting. The new governments resulting from this had usually been open to the West, even if facing some difficulties. These facts were usually associated with a true wish to make this Country democratic, that would have led to a westernization of their lifestyle and an easier entrance in market economy. It is hard to determine how much this process had been spontaneous and how much it was influenced by the new elites close to the West.

In this thesis the “Orange Revolution”³⁰, that took place in Ukraine between December 2004 and January 2005, will be the only one of these revolutions to be analyzed. The Ukrainian presidential elections of November 2004 were won by Viktor Yanukovich, notoriously pro-Russian. His adversary, Viktor Yushenko, accused him of having rigged the elections, encouraging his voters to manifest and ask for new elections. Indeed, Yushenko’s campaign had been attacked on more than one front. Initially, Yushenko’s public image was damaged, when the opposition painted him as a puppet of the West, especially of the United States, and saying that he would have made the interests of his western backers³¹. On the other hand, the accusation of an excessive Russian influence on Yanukovich’s campaign was based on the affinity of the high-ranking members of the Ukrainian government to Putin’s administration, that promised numerous financial aids to the Ukrainian citizens. In exchange for that, the Russian language would have been made an official language of the country and Ukraine would give up its process of joining NATO.

During the first round of elections, on October 31st, the first accusations of rigging emerged, saying that fake voting ballots had been printed³². On the second turn, on November the 21st, came more accusations of rigging, characterized by a falsification of the surveys in favour of Yanukovich. The influence of the manifestations, often led by groups of students through the use of non-violence, brought the Supreme Court of the State to invalidate the results, that

²⁹ This name comes from the symbols chosen by protester, who adopted a specific colour or flower. Among the countries that witnessed these events: Kirghizstan (tulip revolution, 2005), Georgia (roses revolution, 2003), Lebanon (cedars revolution, 2005) and Myanmar (saffron revolution, 2007). Other States such as, Azerbaijan, Iran and Mongolia faced similar events inspired by those movements.

³⁰ The orange color had been chosen to renew the opposition and as reminder to other movements in post-Soviet States. The choose of orange was also justified by the characteristic autumn colors in the streets of Kiev during the period of elections.

³¹ A. Wilson, *Ukraine's Orange Revolution*, Yale University Press, Filey, 2005, pp. 1-6.

³² *Ibid.*, pp. 114 – 115.

had seen Yanukovich emerge victorious. The new elections, having taken place on December the 26th, saw Yushenko's victory, that obtained 52% of the popular vote. It is interesting to show the differences in voting according to geography: in Eastern Ukraine, historically and geographically closer to Russia, Yanukovich got the majority of votes in both elections; on the other hand, Yushenko decisively got the majority in Western Ukraine³³.

Yushenko took office on 23rd January 2005. His victory was of particular importance. The high-ranking members of the Ukrainian State were under the monopoly of certain groups of oligarchs, that based their power on the privatization of some industrial areas of Eastern Ukraine that had happened after the fall of the Soviet Union. The opposition had risen with the help of the middle class, born from the processes of political and economic liberalization of the precedent years³⁴. This revolution can be set out as nationalistic and democratic, because it can be linked to the desire for a democratic change in the country, tied to a renewed affirmation of national interests. The popular will was to give more independence to the State, reducing the Russian influence on it³⁵. It can be said that these events were a protest against an old administration that was accused of being not transparent and heavily influenced by Russia. The desire to move Ukraine away from the Russian sphere of influence can be traced back to the will of the people to move closer to the Western World, as it actually happened, for in May 2004 the European Union added the inclusion of Ukraine to its agenda.

The result of the elections was not followed by a time of stability. The new majority faced some problems³⁶, that weakened it more when Yanukovich was named Prime Minister in August 2006. The hopes of the Ukrainian people for democracy were hit hard with the 2010 elections, that saw Yanukovich's legal victory.

Under his government Ukraine suspended its Association Agreement with the European Union. The requests from the EU to free some members of the opposition, like Timoshenko herself, and the customs policy with Russia slowed down the process. Every import from Ukraine to Russia would have seen an increase in costs, and this was interpreted as a way to

³³ M. Kalb, *Imperial Gamble: Putin, Ukraine, and the New Cold War*, The Brookings Institution, New York, 2015, pp. 130-132.

³⁴ Goujon, *La Révolution Orange en Ukraine: Enquête sur une Mobilisation Postsoviétique*, in *Critique Internationale*, n.27, February 2005, pp. 110 - 113.

³⁵ T. Kuzio, *Nationalism, Identity and Civil Society in Ukraine: Understanding the Orange Revolution*, in *Communist and Post-Communist Studies*, no 43, 2010, p.292.

³⁶ Already in September 2005 some disagreements between President Yushenko and Prime Minister Julia Timoshenko, one of the leaders of the revolution, led to her resignation.

avoid Ukraine from signing trade agreements with the EU. Russia claimed that Ukrainian products were “not compliant with Russia’s standards of security”. A complication on trade agreements with Russia would have severely damaged Ukraine’s economy, for 25% of the total export was to Russia. The economic condition of the Country, worsened in the last years, was given as a justification for the postponement of the signing of the treaties. Within Europe, two different ideas were present. While some thought to initiate informal diplomatic ties, some were resigned about the fact that Ukraine should still be considered under Russian rule. Only the 2015 elections could have represented a turning point in the negotiations with the European Union³⁷.

The general discontent about these situations flowed into the Euromaidan³⁸ movement. This movement proposed the formation of special committee that would have the role of directly communicating with European Union, claiming that the politicians were not able to implement an effective development policy. This led to asking President Yanukovich and other ministers to resign, among which the Interior Minister and the Minister of Public Instruction.

The first manifestation happened at the end of November 2013, mainly from students of the Taras Shevchenko University of Kyiv³⁹. They adopted the flags of Ukraine and the European Union as symbols of the movement, a clear reference to the purposes of this manifestation. One side of the protesters saw in Europe a concrete chance of economic development, and an alternative to the oligarch centre of power that based their strength in the Eastern side of the country; the other side based their purposes on the principle of nationality, in order to oust an omnipresent Russia from Ukraine’s internal matters. Several statues of Lenin in Western and Central Ukraine were torn down, to symbolize this will. The dynamics of the Cold War saw a resurgence in this situation: two Blocs counterposed, and a country choosing where to stand between them⁴⁰.

The manifestations soon saw an escalation of violence. The government deployed anti-riot police, while protesters from Eastern Ukraine intervened against the Maidan. During the

³⁷ S. Cantone, O. Moscatelli, *Ucraina, Anatomia di un Terremoto*, GoWare, Firenze, 2014, pp.14 – 18.

³⁸ The term can be translated as "Europe Square" and was widely used on digital platforms to spread news about events. The expression derives from the first demonstrations held in Independence Square (*Majdán Nezaležnosti*)

³⁹ “Kyiv” is the transliteration of the capital’s name from the Ukrainian language, as opposed to the Russian “Kiev”. In the years following the Crimean crisis, this way of spelling the name has spread, trying to emancipate Ukraine from Russia’s influence by reaffirming the Ukrainian language.

⁴⁰ S. Cantone, O. Moscatelli, *Ucraina, Anatomia di un Terremoto*, p. 18.

clashes, there were victims in both sides, while the rest of the world observed as the situation turned more and more violent, as the political institutions were unable of mediating between the parts. More manifestations erupted in other cities of the country, followed by more acts of violence from both sides. The protests lasted for three months, until in February 2014 the clashes became so violent that the firsts human deaths were recorded. Both sides blamed the other of having opened fire.

The repression of the manifestations caused indignation at the international level. The manifestation and the clashes of the preceding months culminated on 21st February, with the impeachment of President Yanukovich⁴¹. The former President fled from Kiev and found asylum in Russia. He was considered responsible of these tragic happenings, and an arrest warrant was issued against him. His extradition was also immediately asked to Russia. He was tried *in absentia*, with a trial begun in 2017; 89 hearings were held, and it was concluded in January 2019, with a sentence of High Treason and 13 years of jail. During the trial it was showed how the former President had perpetrated unlawful acts, as asking Russia for military intervention, and trying to halt the manifestations, undermining the Country's stability⁴².

As a result of these events, a debate was opened to try to interpret these facts. A comparison was immediately made with the Orange Revolution: the requests of the protestors were of the same kind, despite the differences in their beginning. In the most recent protests, the use of social media has had a larger importance and there have been controversies about the involvement of foreign actors that have encouraged the use of digital platforms to move and coordinate the protests. The debate has also been about the very interests of the Euromaidan movement, its consequences and its modality, trying to verify whether it was the case of naming it a revolution, a protest or even a coup. The first ones to call these events a revolution were some leaders of the protests themselves, but also numerous national Ukrainian media and outlets. The former President of Georgia, Mikheil Saakashvili, said that the Euromaidan movement can be considered as a geopolitical revolution of the new century, while many western medias called it an "Eurorevolution". This term mostly refers to some of the motivations that ignited the protests, and to the requests of the protestors. Russian media defined the happenings as a true coup d'état, referring to the modality with

⁴¹ S. Cantone, O. Moscatelli, *Ucraina, Anatomia di un Terremoto*, pp. 8 – 10.

⁴² *Ucraina, l'ex presidente Yanukovich condannato per tradimento*, in *Euronews.com*, 24th January 2019. <https://it.euronews.com/2019/01/24/ucraina-l-ex-presidente-yanukovich-condannato-per-tradimento>.

which Yanukovich was removed from office. The Ukrainian Constitution would agree with such a statement because the procedures adopted by the new government in taking office after the deposition did not come after an impeachment, observant of the formal procedures⁴³.

The power vacuum that followed the escape of the former President needed to be filled. After the Parliament was dissolved on 26th February, the leaders of the Euromaidan movement occupied the halls of power, nominating Arsenij Jacenjuk as Prime Minister d Interim, waiting for the presidential elections that would have taken place in May. Petro Poroshenko was elected president on May 25th 2014, defeating candidate Julia Timoshenko, released from prison after the downfall of the old government. The new President had been physically present at the Euromaidan protests, and for this reason he enjoyed much popularity. He shaped his policy to be pro-European, but also at a distension of the relations with Russia. This element can be linked both to the necessity of mitigating conflicts with such a powerful and influential neighbour, and to the will of the people, that preferred to end the crisis⁴⁴.

Aware of the fact that the Country could not be left in political and economic isolation, the new Ukrainian leadership signed the Association Process with the European Union on 27th June. It was ratified in 2017, representing the first and decisive step towards Ukraine's entrance to the Union⁴⁵. The cause that had generated numerous clashes, and the main reason behind the Euromaidan movement has finally seen its official beginning, signing an important moment in the history of Ukraine and the whole region.

Other than the internal policy matters, other elements came out from the protests, making the country a true setting of a crisis of international relevance. The events of the Euromaidan were only the incipit of the destabilization in the zone, that was going to bring ulterior upsets and a growing escalation of tensions.

⁴³ R. Alison, *Russian 'Deniable' Intervention in Ukraine: how and why Russia Broke the Rules*, in *The Royal Institute of International Affairs*, June 2014.

⁴⁴ S. Cantone, O. Moscatelli, *Ucraina, anatomia di un terremoto*, pp. 36 – 38.

⁴⁵ A. Higgins, D. Herszenhorn, *Defying Russia, Ukraine Signs E.U. Trade Pact*, in *Ney York Times*, 27th June 2014. <https://www.nytimes.com/2014/06/28/world/europe/ukraine-signs-trade-agreement-with-european-union.html>.

1.4 The Annexation of Crimea: Crisis and Escalation in the Donbass Region

The political crisis of the beginning of 2014 increased to an international level. The Peninsula of Crimea, a region of Ukraine where ethnic Russians were the majority of the population, was deeply shocked by the ousting of President Yanukovich. The government of the peninsula had refused to recognize the legitimacy of the new leadership of the State, claiming the unconstitutionality of the decisions. The new government was recognised as legitimate by most international States, but the people and the authorities of Crimea expressed their will of holding a referendum regarding the self-determination of the peninsula. Initially set for 25th May, on the same day of the Presidential elections of Ukraine, the date was anticipated to 30th March, and then even sooner, to the 16th. Before the referendum took place, on 11th March the Parliament of Crimea declared its own independence, after having asked, on the 4th, to become part of the Russian Federation. On March 21st, the Russian Duma proposed a draft law for the annexation of Crimea to the Russian Federation. Despite the protests, the referendum took place on the established date, in the presence of international observatories. The OSCE did not send any observer, believing such an act to be illegitimate⁴⁶.

In 2013, only 35.9% of the population of Crimea expressed a favourable opinion about a reunification with Russia. In February 2014, that number had grown to 41%, while in the days preceding the referendum, surveys found out that more than 75% of people were in favour of such a proposition⁴⁷. The referendum reached the quorum of 50%, and showed an affirmative response from 97% of the voters. On 15th May a second referendum took place, proposing the annexation of the Peninsula to the Russian Federation.

The legitimacy of the referendum will be discussed in-depth later during this work, but it is appropriate to shortly introduce the topic. The Parliament of Crimea, drafting its declaration

⁴⁶ OSCE Chair Says Crimean Referendum in its Current Form is Illegal and Calls for Alternative Ways to Address the Crimean Issue, in *Osce.org*, 11th March 2014, <https://www.osce.org/cio/116313>.

⁴⁷ *How relations between Ukraine and Russia Should Look Like? Public Opinion Polls' Results*, in *Kiev International Institute of Sociology*, 4th March 2014. www.kiis.com.ua/?lang=eng&cat=reports&id=236&page=1.

of Independence, used the 2010 sentence of the International Court of Justice for the Kosovo matter as a reference. In this document, the independence of Kosovo was considered in accordance to international law and to the resolution 1244 (1999) of the United Nations Security Council, that authorized a military and civilian presence that put the region under the temporary administration of the United Nations⁴⁸. Such a comparison was called inappropriate, because the referendum held in Crimea did not ask for the independence of the region, but rather the option of being annexed to Russia or staying with Ukraine.

The alleged presence of Russian military units in the peninsula in those days was interpreted as a coercive act from Russia itself, that would have influenced the results with the use of strength⁴⁹. The debate on the legitimacy of the referendum consequently also included Russia⁵⁰. A first possible answer to this matter could be found in Ukraine's constitution, that affirming the principles of sovereignty and territorial integrity of the country⁵¹. Moreover, the United States, the United Kingdom, and Canada, supporters of the central government of Ukraine, cited the *Memorandum on Security Assurance* of Budapest of 1994, in which Ukraine pledged to dismantle the soviet nuclear arsenal still present in its territory, in exchange for the recognition of independence and sovereignty on its territory.

Russia's response was focused on the fact that this document was not legally binding, for it had not been ratified, resulting in a simple informal diplomatic document. Furthermore, at the time of the matter, the document had lost its validity⁵². Some supranational organizations expressed their opinion regarding this matter. The United Nations opinion was generally negative with resolution 68/262 of 27th March 2014, regarding the shift in the juridical status of Crimea⁵³, while the leadership of the European Council spoke decisively of the illegitimacy of the act. This short excursus is not sufficient to explain the situation, but it can

⁴⁸ *Accordance with international law of the unilateral declaration of independence in respect of Kosovo (Request for Advisory Opinion)*, International Court of Justice, 22nd July 2010.

⁴⁹ M. Pedrazzi, *Falsi Miti/3: la Liceità delle Operazioni Russe in Ucraina*, in *Ispionline.it*, 10th October 2014. <https://www.ispionline.it/it/pubblicazione/falsi-miti3-la-liceita-delle-operazioni-russe-ucraina-11364>.

⁵⁰ S. Kimball, *Bound by Treaty: Russia, Ukraine and Crimea*, in *DW*, 11th March 2014. <https://www.dw.com/en/bound-by-treaty-russia-ukraine-and-crimea/a-17487632>.

⁵¹ Art. 2; art. 17, Constitution of Ukraine, Verkhovna Rada of Ukraine, 28 June 1996. <https://www.refworld.org/pdfid/44a280124.pdf>.

⁵² General Assembly Forty-ninth session, *Memorandum on Security Assurance*, General Assembly Security Council, United Nations, 19th December 1994. https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_1994_1399.pdf.

⁵³ General Assembly Sixty-eighth session, *General Assembly Adopts Resolution Calling upon States Not to Recognize Changes in Status of Crimea Region*, United Nations, Meetings Coverage and Press Releases, 27th March 2014, <https://www.un.org/press/en/2014/ga11493.doc.htm>.

be useful to highlight how the events of a single country in Eastern Europe inflamed the debate among jurists and supporters of both factions.

The legal legitimacy of the referendum was only one aspect of the crisis. The events that followed brought to an escalation of tensions that undermined the stability of the region. The protests in Kiev and the uncertainty of the Ukrainian institutions undermined the economy of the nation. This was aggravated after the referendum of Crimea, that crashed some of the main indexes of the stock markets of Russia and Ukraine itself⁵⁴. The damages increased when the United States and the European Union threatened financial sanctions, and some western multinational companies abandoned the country, feeling that their investment had become too risky. There were also concerns about the energy supply to Europe, for it imports 30% of its gas from Russia, gas that passes through Ukraine and other countries of Eastern Europe. Finally, there were also alarms regarding food products, of which Ukraine is a large exporter.

Crimea thus became a disputed territory, *de facto* administered by Russia, that was accused of a military occupation of the zone, since *de iure* it is still part of Ukraine.

The causes of the crisis require an analysis on different levels. The history of the Country could make it appear as an appendix to the Russian State, that through a *nomenklatura* with which it shares its interests has kept exercising a very strong influence on the country. The desire of a large share of the population, mainly centred in the Western and Central parts of the country, has led to a progressive departure from Russian control, to move closer to the political organizations of Western Europe. Since all the northern shore of the Black Sea is within the official borders of Ukraine, to lose such an ally would have seen Russian ambitions in the zone greatly reduced, losing access to the “warm Seas”.

The threat of the use of force and the local conflict of the Donbass area that came from this have made it possible to compare the crisis to the tension of the post-World War II world, so much that the conflict has been described as a *proxy war* between the United States, the European Union and Russia. The Euromaidan movement and the end of Yanukovich’s administration are events that are considered responsible for accelerating the process of integration of Ukraine with NATO and the European Union. Its strongest instruments were the use of social network, through which western ideas have been spread. If the alleged

⁵⁴ The MICEX 10 index of the Moscow Stock Exchange on March 3 recorded a collapse of 10.79%, which amounted to a capital loss of around 60 billion dollars, while the RTS index dropped by 12.01%.

“mediatic war” has contributed to the events of Winter 2014, influencing the public opinion, the same modalities have been used by Russia. The campaign of alarmistic contents conducted by Russian informatic channels had as target mostly that percentage of Ukrainian citizens that still felt strong ties with Russia. In the region of Crimea, around 77% of population has always denied to feel European, keeping speaking only Russian as their mother tongue⁵⁵.

The population of Crimea had economic reasons, other than the cultural ones, to desire the split from Kiev: in 2014, the GDP of Russia was almost 4 times as big as Ukraine’s one. Joining a richer country would have allowed a general rising in salaries⁵⁶. Picturing the protesters in Kiev as “fascists and extremists” manoeuvred by the old Western enemy, Russia emphasized the possible risks worrying its own citizens. Though this work of *Info Ops* Putin aimed at dividing the international public opinion installing doubts on the spontaneity of the protests, and also discrediting the new Ukrainian government and trying to justify an intervention for the defence of the ethnic Russians in Ukraine. Russian intervention eventually did happen. It is confirmed that Russian military units were present in Crimea already from February 2014.

Having already explained in the last paragraphs the reason behind a similar intervention, the question arises as to how the Kremlin could have justified to the Russian public opinion such unscrupulous actions. An answer could be found in the policy of President Putin, in the changes he brought once he gained power. Intolerant of the new order that came into existence with the downfall of the Soviet Union, tried to create a policy of “exclusive protection” of its neighbour States, loosely reminding of the American “Monroe Doctrine”. The interventions in cases like Georgia in 2008, Syria in 2015 and Ukraine in 2014 are a direct consequence of this, taking advantage of the power vacuum left in those States. This and other indicators, that will only be shortly analysed in this elaborate in order to not lose sight of the focus of this thesis, are contained in an official document written by the Russian leadership: the *Russian National Security Concept*. In this document the very concept of Security is comprehends the economy, the internal politics, the relations with foreign countries and the military. This can be linked to the matters of this thesis if we recognise that the ideal of Russian *grandeur* attributes a significant weight to the identification of real and

⁵⁵ M. Kofman & M. Rojansky, *A Closer Look at Russia’s “Hybrid War”*, in *Kennan Cable*, 2015, p. 4. <https://www.files.ethz.ch/isn/190090/5-KENNAN%20CABLE-ROJANSKY%20KOFMAN.pdf>.

⁵⁶ M. Kofman, K. Migakeva, B. Nichiporuk, A. Radin, O. Tkacheva & J. Oberoltzer, *Lessons from Russia’s Operations in Crimea and Eastern Ukraine*, RAND Corporation, Santa Monica, 2017, p. 1617.

potential threats on a global and regional scale, especially of a subversive nature against Russia. These strategic guidelines justify Russia's assertive foreign policy, especially in the old area of the Soviet Union, in order to safeguard their economy, their stability and their authority.

Moscow openly declares to pursue their interests using a *comprehensive approach* that integrates political and economic instruments. In order to do so it is specified that the defence of national interests is inseparable from an adequate military apparatus⁵⁷. The end of the Cold War made a massive nuclear arsenal obsolete, downsizing the policy of Mutual Assured Destruction (MAD) and of nuclear deterrence⁵⁸. This has led to choosing a military approach that was more based on a non-nuclear deterrence, able to integrate strategic assets and activities of *infowar*, a combination of hard and soft power, that was considered a better deterrent than a nuclear arsenal. Coercive instruments like the interruption of the energy supplies, management of the news, and influence on internal and external public opinion are the means of the new Russian strategic doctrine. This came after the realization that in the current international setting the conventional armed conflict between States has become obsolete, making way to regional crisis, in which the interests of the major powers lead to an indirect clash between them, that is composed of civilian conflict, and humanitarian emergence.

It can be seen how these doctrinal elements of Russian strategic policy were put into practice in the subject under discussion. The Russian intervention in Ukraine began on February the 23rd, with military units *VDV* and *Spetsnaz*, the country's special forces, arriving in the territory. These units entered the region of Sevastopol, joining the Russian troops already in the zone. Such an act can be interpreted as aimed to alter the decision-making process of Ukraine, inhibiting its chances to respond⁵⁹. Another threat came from Putin himself, when on 26th February he carried out an inspection to a contingent of 150.000 soldiers to verify their readiness to fight, but also as a diversion, placing the contingent near the Ukrainian border, a clear sign of deterrence. On 27th and 28th February, Russian armed personnel, bearing no official insignia, raised the Russian flag on Crimea's parliament. The lack of

⁵⁷ V. Putin, *Russian National Security Concept*, Moscow, January 2000, p.3.

⁵⁸ These expressions are represented by the strategic and Soviet political-military thought, according to which there was the need to have an adequate nuclear instrument to dissuade the opponent from using their arsenal, since this provided a proportionate and equally devastating answer.

⁵⁹ N. Cristadoro, *La Dottrina Gerasimov e la Filosofia della Guerra non Convenzionale nella Strategia Russa Contemporanea*, Libellula Edizioni, Tricase (LE), 2018, p. 147.

official insignia made it difficult to determine whether this was an illegitimate act of the Russian forces, or a spontaneous act of the local citizens. This was followed by several actions on the first days of March, that isolated the airports and naval bases of the peninsula, leaving the Ukrainian military forces in the region outnumbered. When the Russian military units reached the settlements of Armyansk and Chonhar, the peninsula was effectively isolated, its accesses being sealed. These acts, that were acclaimed by the local population, have seen the participation of irregular forces that can be linked to the aforementioned doctrine, finalised to the capture of key structures and communication lines in order to jeopardise the responsiveness of the adversary.

The Ukrainian institutions found themselves in a condition of “inducted powerlessness”, in which they were found attacked by their powerful neighbour, that was using unconventional methods and therefore it could not be directly accused. The anticipation of the referendum can be interpreted as a way of putting pressure from Russia, in order to legitimise a large-scale intervention⁶⁰. The use of personnel that was prepared to manage such situations highlighted how Putin was managing a conflict of *hybrid warfare*, a method of conducting modern conflicts that integrates regular warfare with extensive use of informatic devices and propaganda tools. The presence of military units not directly traceable to Russian military can be interpreted as a wish to prepare an eventual *exit strategy*, providing Putin with a chance to deny a direct involvement⁶¹.

The Crimean Crisis showed the unscrupulousness of Russia, that is re-emerging from the social, political, and economic decline of the past two decades. These operating methods would be hard to duplicate, even in the former soviet countries, but they highlight this innovative way of managing the relations in their area of interests. The popular will of secession from Ukraine of the people of Crimea, and the consequent annexation to Russia, influenced the facts that happened, and it was sustained by the benefits that the Kremlin had in the region, especially their military bases. The power vacuum and the general weakness caused by the Euromaidan protests have been contributing factors in making a reaction from Ukraine impossible. It could be said that Crimea has not been “gained” by Russia, but rather “lost” by Ukraine.

⁶⁰ Ibid., p. 172.

⁶¹ N. Cristadoro, *La Dottrina Gerasimov e la Filosofia della Guerra non Convenzionale nella Strategia Russa Contemporanea*, p. 169.

At the same time, the industrial region of Donbass witnessed a new crisis, broken out after protests in the provinces of Donetsk and Luhansk. The pro-Western path of the Country raised concerns in the protesters. They presented a proposal of a referendum for federalization, the acknowledgement of the Russian language as second national language and a request for a custom union with Russia⁶². Even in this case, Kiev and the Western world accused the Kremlin, which was considered responsible of having acted through agitators and secret agents.

Moscow's support to characters like Denis Pushilin, the first leader of the self-proclaimed Donetsk People's Republic, Vyacheslav Ponomarev, Mayor of Slovyansk, and Vladimir Varshavskiy, -proclaimed Mayor of Kharkiv, can be linked to the *political warfare* and the subversive policy put into place to obstruct the passage of Ukraine to the western sphere of influence. Despite the fact that it would be unlikely that the emergence of these pro-Russian figures from this crisis was the result of a long term operation, it is evident that the rise these people make the involvement of Moscow in 2014 highly likely⁶³. The historical value of the area that stretches from the Donbass to Odessa can justify the Russian strategic interest.

This interest is of an ethnic and linguistic kind, but also economic. This area has strong industrial activities and exports a large amount of minerals, metallurgic resources and chemical products, with a strong integration with the economy of Russia just beyond the border. The religion matter is also not indifferent. The integration of the Orthodox Church of the two countries could be used as a motivation to legitimize the action of the rebels and of Moscow.

The response of the Ukrainian authorities was mostly oriented to the reconquest of the public structures occupied by the rebels since 6th April 2014, the date when this new crisis had begun. Simultaneously they tried to remove the new leaders that had been proclaimed in the region, especially because of their alleged support from Moscow. After removing the aforementioned leaders, Kiev tried to install some oligarchs tied to the region with economic and political links, hoping it would have made it easy to reacquire control on the area⁶⁴. Kiev's plan, while potentially advantageous, did not obtain the hoped results. The new

⁶² Kofman & others, *Lessons from Russia's Operations in Crimea and Eastern Ukraine*, p. 36.

⁶³ Ibid., p. 37.

⁶⁴ Kofman & others, *Lessons from Russia's Operations in Crimea and Eastern Ukraine*, p. 37.

administrative gap was filled by other figures, effectively linked to the Russian secret services.

Chapter II: The Annexation of Crimea under International Law

2.1 Ukraine as Independent State and the Legitimacy of Territorial Sovereignty in Crimea

The annexation of Crimea is probably the most significant historical event that has occurred in Europe in the recent past⁶⁵. The significance is due to its creation of an unprecedented controversy in International Law, being the first military action caused border shift in Europe since the end of the second world war.

It would have been difficult to disagree with Russia's president Vladimir Putin, when he stated: "They (Europe and the United States) keep talking of some Russian intervention in Crimea, some sort of aggression. This is strange to hear. I cannot recall a single case in history of an intervention without a single shot being fired and without human casualties"⁶⁶. Never in history there had been such a case, such a peaceful annexation, especially considering the massive deployment of military forces on the Crimean territory, whether they could be identified by their military insignia or not.

The first of the most debated elements of this border shift was that the Russian troops that occupied the most strategic points in the peninsula during the crisis were called by the media "little green men", or rather, well-armed soldiers in military uniforms that had no signs of recognition who could link them to the regular army of the Russian Federation. This allowed to formally classify those soldiers as "militia"; on account of this, among other reasons, the events in Crimea and the following ones in the Donbass Region, have been called "hybrid warfare": because of its difficult definition in a humanitarian setting.

⁶⁵ M. B. Bagnoli, *La penisola che non c'è: Crimea*, in *Ansa Magazine*, 18th May 2017.

http://www.ansa.it/sito/notizie/magazine/numeri/2017/05/16/crimea-penisola-che-non-ce_1d943c88-73d2-42ea-b905-2d8e49681c4d.html.

⁶⁶ United Nations General Assembly, *Letter Dated 19th March 2014 from the Permanent Representative of the Russian Federation to the United Nations Addressed to the Secretary-General*, UN Doc. A/68/803-S/2014/202, 20th March 2014. <https://undocs.org/pdf?symbol=en/S/2014/202>.

The second most debated element, especially by the European Union and the United Nations, was the referendum for Crimea's Independence. The two institutions believed that the referendum had been used to legitimize the military occupation.

Among all the regions of Ukraine, Crimea was the only one with the title of Republic, having its own Parliament and Constitution. The Parliament called the referendum under pressure from Prime Minister Sergej Asenkov⁶⁷, that was initially scheduled to be held on 24th May 2014, concurrently with the Presidential elections. However it was anticipated to 16th March, and the object of the referendum itself was changed, from asking more autonomy from Ukraine to the reunification with the Russian Federation.

Every international player, but also all the parts directly involved in this matter, have always referred to International Law to justify their respective positions and decisions. The purpose of this chapter will therefore be to evaluate what happened under the point of view of International Law, considering the perspective of the supranational organizations that spoke about the matter⁶⁸.

Ukraine became independent on 16th July 1990, with the "Declaration on Ukraine's Sovereignty"⁶⁹, that the newly elected Ukrainian Parliament adopted, still under the name of "Parliament of the Socialist Soviet Republic of Ukraine". Six months later, a national referendum was called, which asserted an approval rate of 90,32% to the question: "Do you approve the Act of Unilateral Declaration of Independence of Ukraine?", with an 84,18% turnout. An interesting data is that the region with the lowest percentage of "yes" in the country was Crimea, with a rate of 54,19%, the only one below the 83% in the whole country. This can be considered a direct consequence of the internal problems of the Soviet Union, that had already started its process of dissolution⁷⁰. The Referendum allowed the Rada to adopt the Act of Independence of Ukraine on August the 24th 1991⁷¹, authorizing Ukraine to acquire a legal status under international law.

⁶⁷ Sergej Valer'evič Aksënov, leader of the pro-Russian party "Russkoje Jedinstvo" (Russian Union), that got a 4% share of the votes on the 2010 regional elections, was elected Prime Minister of the autonomous republic after a secret vote in the night of February the 28th, with military forces from the Russian Federation garrisoning the Parliament.

⁶⁸ A. De Guttry, *Crisi Ucraina: Quel Referendum è Illegittimo*, in *ISPI Online*, 7th April 2014. <http://www.ispionline.it/it/pubblicazione/crimea-quel-referendum-e-illegittimo-10164>.

⁶⁹ Verkhovna Rada of Ukraine, 16th July 1990. https://web.archive.org/web/20100111101705/http://gska2.rada.gov.ua:7777/site/postanova_eng/Declaration_of_State_Sovereignty_of_Ukraine_rev1.htm.

⁷⁰ R. Bartlett, *Storia della Russia, dalle Origini agli Anni di Putin*, Milano, 2014, pp.279-288.

⁷¹ S. A. Bellezza, *Ucraina, Insorgere per la Democrazia*, Milano, 2014, pp.19-23.

Even though the Ukrainian case cannot be qualified as a case of decolonization, the acquisition of the legal status happened following the so-called rule of “uti possidetis iuris”. According to this principle of International Law, the territory of a State is delimited by the national borders existing when it acquires independence, including the administrative boundaries established in colonial times among the different territories under the jurisdiction of the same State; after independence, the frontiers become international borders⁷². Going into detail, in the case of Ukraine the borders were the administrative divisions among the Socialist Soviet Republics within the Soviet Union. According to Customary International Law, this rule also can also be applied during the dissolution of a Federal State, provided that the birth of this new state happens through peaceful means, as it was for this case⁷³.

In this sense, the Crimean Peninsula, which was yielded in 1954 through a decree⁷⁴ of the Supreme Soviet of the Soviet Union from the RSFSR to the Ukrainian Socialist Soviet Republic, was found to be an integral part (even with the role of “autonomous Republic”, with its own Government and Constitution) of the newly born Ukrainian State, despite the fact that it had stronger links with Russia: according to the 1959 Soviet Census, at the time in Crimea lived 268000 Ukrainians and 858000 Russians⁷⁵, a majority more than a minority.

If the 2014 Crimean Referendum is to be considered unlawful, as stated by the Resolution 68/262 (2014) of the UN General Assembly, it could be argued that in a retroactive point of view of International Law, the unilateral and personal decision by Nikita Khrushchev to donate Crimea to Ukraine could be deemed just as unlawful⁷⁶. But because of the fact that it was a decision taken in aspect to the Internal Law of a sovereign country, the matter cannot be linked to International Law, although it can surely be called an “historical mistake”, as

⁷² W. Christian and Others, *Self-Determination and Secession in International Law*, Oxford University Press, Oxford, 2014, pp. 310-311.

⁷³ A. Gioia, *Diritto Internazionale*, Dott. A. Giuffrè Editore, Milano, 2015, pp. 170-171.

⁷⁴ Protocol No 41 of the Presidium of the Supreme Soviet, 26th April 1954.

<https://constitution.garant.ru/history/ussr-rsfsr/1936/zakony/3946680/>.

⁷⁵ L. Siegelbaum, *1954: The Gift of Crimea*, in *SovietHistory*, 10th March 2014.

<https://web.archive.org/web/20140310012536/http://www.soviethistory.org/index.php?page=subject&SubjectID=1954crimea&Year=1954>.

⁷⁶ K. Calamur, *Crimea: A Gift to Ukraine Becomes A Political Flash Point*, in *NPR*, 27th February 2014.

<https://www.npr.org/sections/parallels/2014/02/27/283481587/crimea-a-gift-to-ukraine-becomes-a-political-flash-point>.

said by Gorbachev in a recent interview to the Russian state television; a mistake, to which Russia tried to remedy⁷⁷.

2.2 Analysis of the Use of Force

Currently, one of the corollaries of the norm that prohibits the use of force in international relations results in the invalidity of the territorial annexations deriving from its usage. However, it cannot be considered acceptable that the will of the population of an interested territory, would it be freely or otherwise, could be enough to legitimize the incorporation of a territory that belongs to another State that has not ceased to exist or that has not renounced to the territorial sovereignty on the territory itself, even in absence of a true armed invasion. The self-determination principle does not legitimize the secession of a territory inhabited by an ethnic or linguistic minority that intends to build a new independent State. Regardless of the historical mistakes made, the right to self-determination of peoples cannot be considered enough to legitimize the shift of borders of a preexisting country, especially in the presence of a violation of a mandatory norm such as the prohibition of the use of force in international relations, as stated by the UN Charter⁷⁸.

This norm (art. 2 par. 4) affirms that member states must abstain in their international relations from the threat and use of force, will it be against the legal status or political independence of any country, and also in any other manner that does not comply to the ends of the United Nations. Therefore, there is no doubt that in view of the facts that happened in Crimea, there has been a violation of the aforementioned article.

The International Community has taken a decisive and homogeneous stand regarding this matter, agreeing that the act was a violation of the legal sovereignty of Ukraine⁷⁹. The

⁷⁷ Editorial, *Crimea, Gorbaciov Difende l'Annessione alla Russia: "Corregge errore storico"*, in *Blitz Quotidiano*, 19th March 2018. <https://www.blitzquotidiano.it/politica-europea/crimea-gorbaciov-difende-lannessione-1818006/>.

⁷⁸ Art.2 Par4. Of the UN Charter states that: "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations." <http://www.un.org/en/sections/un-charter/chapter-i/index.html>.

⁷⁹ M. Arcari, *Violazione del Divieto di Uso della Forza, Aggressione o Attacco Armato in Relazione all'Intervento Militare della Russia in Crimea?*, in *Diritti Umani e Diritto Internazionale*, May-August 2014.

Russian actions have been stigmatized as an act of aggression: the UK, the US, Jordan⁸⁰, Lithuania⁸¹ and France⁸² have spoken about it in these terms, within the Security Council of the UN (whereas China abstained⁸³), while Liechtenstein and Canada spoke about it in the General Assembly⁸⁴. The Council of the European Union has condemned the plain violation of the legal and territorial sovereignty of Ukraine by acts of aggression from the Russian armed forces, and the authorization by the Federation Council of Russia on 1st March to use military forces on Ukrainian soil⁸⁵. Furthermore, an important event was the appeal by the Ukrainian parliament on 13th March 2014, that, while denouncing to be a victim of an unprovoked act of aggression, claimed the right of self-defense recognized by the art 51 of the UN charter, getting the right to ask other States help in reestablishing their sovereignty and legal status⁸⁶.

Unfortunately, neither the UN Charter gives us other ways to clearly distinguish between an hypothesis of aggression from one of armed attack on a formal basis, nor other formal sources of International Law that came after that, such as the resolutions of the General Assembly 2625 (XXV) of 24th October 1970, containing the Declaration of principles of International Law about the friendly relations and cooperation between States accordant to the UN Charter, and 3314 (XXIX) of 14th December 1974, containing the Definition of Aggression⁸⁷, recalled by the sentence of the International Court of Justice of 27th June 1986 on “Military and Paramilitary Actions in and against Nicaragua⁸⁸”.

There are in facts differences in levels of seriousness that separate an aggression, the most severe form of the use of force, from other modalities considered less grave, and it depends on what the scale and effects that this use of force have led to⁸⁹. In the case of Crimea, for

⁸⁰ Security Council, 7125th meeting, *UN Doc. S/PV.7125* (p. 7 for the United Kingdom, p. 5 for the United States, p. 9 for Jordan).

⁸¹ For Lithuania, *UN Doc. S/PV.7134* del 13 marzo 2014, p. 16.

⁸² For France, *UN Doc. S/PV.7138* del 15 marzo 2013, p. 5.

⁸³ A. De Guttry, *ivi*.

⁸⁴ General Assembly, 80th plenary meeting, *UN Doc. A/68/PV.80* of 27th March 2014, New York, pp. 7-9.

⁸⁵ Submissions of the EU Council of “Foreign Affairs” of March 3rd, 2014.

<http://www.consilium.europa.eu/it/meetings/fac/2014/03/03/>.

⁸⁶ Ukrainian’s Parliament Declaration: *UN Doc. S/2014/186*, 13th March 2014, p. 2.

<https://undocs.org/S/2014/186>.

⁸⁷ E. Wilmshurst, *Definition of Aggression*, 1974. From the official site of the United Nations:

<https://legal.un.org/avl/ha/da/da.html>.

⁸⁸ International Court of Justice, *Case Concerning Military and Paramilitary Activities in and Against Nicaragua*, (*Nicaragua v. United states of America*), 27th June 1986. <http://www.icj-cij.org/files/case-related/70/070-19860627-JUD-01-00-EN.pdf>.

⁸⁹ International Court of Justice, *ibidem*, pp. 191-195.

example, “scale” could mean the large entity of the military operation during the occupation of the peninsula (estimations indicated between twenty-thousand and thirty-thousand armed men⁹⁰), that went way beyond the terms defined by the “Agreement between the Russian Federation and Ukraine on the Parameters of the Division of the Black Sea Fleet”⁹¹. “Effects” could be everything that this occupation has led to, like the Declaration of Independence, the referendum and, in the end, the annexation of Crimea to the Russian Federation, with all its geopolitical, economic, and social implications.

It seems evident that, substantially, an aggression and a military attack share many similarities⁹²; even if in the preamble of the resolution n.3314 of the General Assembly of 14th December 1974, an aggression is clearly determined as “the most serious and dangerous form of the illegal use of force”⁹³.

The legal consequences, therefore, are the only dividing line between the two scenarios. In both cases, they imply a duty for all States to not recognize the unlawful situation created by the aggression, to not help the maintenance of this situation, and to cooperate with all the lawful means to put an end on it, for the reason that it is a serious infraction of the legal binding norm on the use of force. On the other hand, the possibility for an assaulted State to rely on the use of force to repel the attack of which it is victim, according to the principle of self-defense, only applies when the State declares itself to be a victim of an armed attack, thus invoking the article 51 of the UN Charter.

In this perspective, Ukraine’s appeal to the aforementioned article sent by the Rada on 13th March 2014 appears more important than what it seemed like, because it is linked to the very essence of the definition of “armed attack”. From a substantial point of view, the legal category of the armed attack in the UN Charter is associated to the position of the assaulted State and its pursuit to the right of self-defense. As stated by the ICJ in the case of Nicaragua, it is the State which is the victim of an armed attack which must form and declare the view that it has been so attacked⁹⁴.

⁹⁰ E. Karagiannis, *The Russian Interventions in South Ossetia and Crimea Compared: Military Performance, Legitimacy and Goals*, in *Contemporary Security Policy*, 35:3, 2014, pp. 410-411.

⁹¹ Partition Treaty on the Status and Conditions of the Black Sea Fleet, 28th May 1997. https://en.wikisource.org/wiki/Partition_Treaty_on_the_Status_and_Conditions_of_the_Black_Sea_Fleet.

⁹² T. Ruys, *‘Armed Attack’ and Article 51 of the UN Charter: Evolutions in Customary Law and Practice*, Cambridge, 2010, pp. 127-129.

⁹³ United Nations General Assembly, Resolution N. 3314, *Definition of Aggression*, 2319th Plenary Meeting, 14th December 1974. Preamble, p. 1. <http://hrlibrary.umn.edu/instreet/GAres3314.html>.

⁹⁴ M. Arcari, *ivi*, p. 411.

From this point of view, it is clear that the grounds on which the consequences of qualifying Russia's actions as an aggression have found application in a concrete way. In addition, it is also the motivation for which, as opposed to the other States members of the UN, Ukraine has been the only one to invoke article 51. Even clearer are the reasons for which the hypothesis of application of self-defense has only been nominated in a declaration of Ukraine's Parliament, without finding further responses, because this offset in the legal consequences linked to the Russian armed intervention is not tied to a real difference in content between the categories of armed attack and aggression, but is imputable to political reasons, more than to legal ones.

2.3 The Referendum and the Self-Determination Matter

In order to justify the military intervention in Crimea, Russia often invoked the self-determination right to the United Nations' organs. Vitaly Churkin, then-Permanent Representative of Russia to the UN, has often quoted President Putin in both the General Assembly and the Security Council, saying: "Russia created conditions [...] only for the free expression of the will of the people living in Crimea and Sevastopol"⁹⁵. It is safe to imply that with this expression, Churkin meant the application of this principle, in virtue of which all the people have the right to autonomously decide their political, economic, and social framework. The referendum was then chosen as the best way to implement this principle, as opposed to the declaration of independence, which is a political act to which the juridical effects that belong to International Law are not always granted, not only because of the absence of a juridical subject to name, but also for the lack of an international norm that would link it to an actual independence. The referendum is an act that has led to juridical effects in International Law (i.e. the imperative to respect its outcome), because of the customary norms regarding the self-determination of peoples. In this point of view, the

⁹⁵ United Nations General Assembly Security Council, *Letter dated 19 March 2014 from the Permanent Representative, UN Doc. A/68/803-S/2014/202, March 20th 2014, p. 5. of the Russian Federation to the United Nations addressed to the Secretary-General.* <https://undocs.org/pdf?symbol=en/S/2014/202>.

referendum has proven itself to be the best way for the application of the self-determination, even if it has not been the only instrument use in customary International law.

2.3.1 The Matter of the Application of the Principle of the Self-Determination of Peoples and the Remedial Recession

In International Law, the self-determination right is limited to 3 specific cases, qualified as international crimes: colonial domination, foreign occupation, and societies in which episodes of racial segregation are present. The Russian claim was instead based on the “remedial secession” thesis, founded on the principle of external self-determination. This thesis has found new application in General International Law even beyond the context of decolonization, particularly in the case that a people that could belong to more than one state would persistently be deprived of its right to internal self-determination, and would be found to be victim of a brutal persecution, implying severe violations of human rights against them by the authorities of the State to which it intends to secede⁹⁶. Indeed, in favor of his claims, Churkin said, about the events happened in Ukraine in the months preceding the referendum, that: “the State coup in Kiev was a result of the armed takeover by radical extremists, which have caused a situation of ongoing threats and violence by ultranationalists against the security, lives and legitimate interests of Russians and all Russian-speaking people”⁹⁷.

However, as stated by Russia itself on the occasion of the advisory opinion of the International Court of Justice regarding the independence of Kosovo, this right can be applied “only in extreme circumstances, when the population concerned is continuously subjected to the most severe forms of oppression that endanger the very existence of the people”⁹⁸. Furthermore, the High Commissioner of the United Nations for Human Rights

⁹⁶ S. Van Den Driest, *Crimea’s Separation from Ukraine: An Analysis of the Right to Self-Determination and Remedial Secession in International Law*, in *Netherlands international Law Review*, Vol.62, 30th November 2015, p.329-363. <https://link.springer.com/content/pdf/10.1007/s40802-015-0043-9.pdf>.

⁹⁷ United Nations Security Council, 7125th meeting, UN Doc. S/PV.7125, New York, March 3rd 2014, p. 3. http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_pv_7125.pdf.

⁹⁸ International Court of Justice, *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, *Written Statement by the Russian Federation*, April 16th 2009, pp. 39-40. <http://www.icj-cij.org/files/case-related/141/15628.pdf>.

said in a report filed on April 2014 that “between the end of February and the beginning of March 2014 there had been no severe threats of a nationalistic type to the Russian speaking people of Crimea”⁹⁹. The Organization for Security and Co-operation in Europe (OSCE) High Commissioner on National Minorities confirmed this opinion¹⁰⁰. According to these sources, the Russian speaking people in Ukraine lived with an abstract danger, that could manifest itself in the form of threats, but never lead to concrete brutal oppression. In reaction to the Russian military intervention, the representative of the United States to the Security Council stated: “so many of the assertions made by the representative of the Russian Federation are without basis in reality”¹⁰¹.

Even regarding internal self-determination, the remedial secession right is found to be difficult to apply. In the first place because, as observed by the Supreme Court of Canada in the advisory opinion of 1998 on Quebec’s secession: “peoples are expected to achieve self-determination within the framework of their existing state. A state whose government respects the principles of self-determination in its internal arrangements, is entitled to maintain its territorial integrity under international law”¹⁰². The self-determination right does not necessarily imply secession. On the contrary, from the perspective of the United Nations’ aims and principles, included in the 1st chapter of the UN Charter, the States should try to promote peaceful cohabitation of different identities within their territory, and to promote the observance of human rights and the political, social and economic choices of all of them. In the second place, the Autonomous Republic of Crimea, as a Republic, already had its own constitution and governing bodies, freedoms and autonomies that no State of the United States, nor any Parliament of any Land in the German Federative Republic can claim to have¹⁰³. Therefore, it seems hard to assert that there had not been respect for the self-determination of the peoples of Crimea.

⁹⁹ Office of the United Nations High Commissioner for Human Rights, *Report on the human rights situation in Ukraine*, 15th April 2014. http://www.ohchr.org/_layouts/15/WopiFrame.aspx?sourcedoc=/Documents/Countries/UA/Ukraine_Report_15April2014.doc&action=default&DefaultItemOpen=1.

¹⁰⁰ Press release, *Developing Situation in Crimea Alarming, says OSCE High Commissioner on National Minorities Astrid Thors*, OSCE, March 6th, 2014. <https://www.osce.org/hcnm/116180>.

¹⁰¹ UN Doc. S/PV.7125 op. cit., p.4

¹⁰² *Re Reference by the Governor in Council concerning Certain Questions relating to the Secession of Quebec from Canada*, in *International Law Reports*, vol. 115, 1999, p. 536 ss., p. 594.

¹⁰³ R. Yakemtchouk, *Les Conflits de Territoire et de Frontière Dans les États de l’ex-URSS*, in *Annuaire Français de Droit International*, 1993, p. 393 ss., p. 404.

2.3.2 Kosovo: Why it Cannot be Considered as a Precedent

Studying the self-determination subject, regarding the unilateral declaration of Independence of Crimea, the governments of Russia and of the newly formed Autonomous Republic of Crimea tried to make a comparison with the case of Kosovo, in order to legitimize the events of 2014.

On 18th March 2014, Russian President Vladimir Putin submitted to the Duma and the Federation Council of Russia a Constitutional Reform Act , containing the creation of two new entities within the Russian Federation: the Crimean Republic and the Federal City of Sevastopol, while also fielding an international treaty that established the transition of Crimea to the Russian Federation¹⁰⁴. On the same day, addressing the country in a famous speech, Putin affirmed that: “The Crimean authorities referred to the well-known Kosovo precedent – a precedent our western colleagues created with their own hands in a very similar situation, when they agreed that the unilateral separation of Kosovo from Serbia, exactly what Crimea is doing now, was legitimate and did not require any permission from the Country’s central authorities”¹⁰⁵. He referred to the advisory opinion of the International Court of Justice of 22nd July 2010 on Kosovo’s declaration of independence, that stated that “No general prohibition may be inferred from the practice of the Security Council with regard to declarations of independence,” and that “General international law contains no prohibition on declarations of independence”¹⁰⁶. On the second hand, he referred to the Written Declaration of the United States on 19th April 2009, subjected to the ICJ with the advisory opinion that stated: “Declarations of independence may, and often do, violate

¹⁰⁴ S. Salushev, *Annexation of Crimea: Causes, Analysis and Global Implications*, in *Global Societies Journal*, 2, 2014. <https://escholarship.org/uc/item/5vb3n9tc>.

¹⁰⁵ V. Putin, *Address by President of the Russian Federation: Vladimir Putin addressed State Duma deputies, Federation Council members, heads of Russian regions and civil society representatives in the Kremlin*, Moscow, Kremlin, March 18th, 2014. <http://en.kremlin.ru/events/president/news/20603>.

¹⁰⁶ International Court of Justice, *Accordance With the International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory opinion, July 22nd, 2010. Par. 81. <https://www.icj-cij.org/files/case-related/141/141-20100722-ADV-01-00-EN.pdf>.

domestic legislation. However, this does not make them violations of international law”¹⁰⁷ concluding that the only plausible reason for which the unilateral declaration of independence of Kosovo had this kind of special treatment compared to the Crimean one is because “it turns out that it is the fact that the conflict in Kosovo resulted in so many human casualties”¹⁰⁸.

According to Putin, the Kosovo issue not only constitutes the only valid precedent to value the situation of Crimea under International Law, but it also appears as the only historical precedent available in itself.

Nevertheless, he did not consider that in the advisory opinion of the ICJ, referring to some precedents where unilateral declarations of independence had been condemned by the Security Council (like South Rhodesia in 1965 or the Turkish Republic of Northern Cyprus in 1983), remarked the strong differences between these declarations and the one concerning the independence of Kosovo, consisting in the fact that the firsts, but not the second, had been the result of an illicit use of strength or other severe violations of imperative rules of General Public Law.¹⁰⁹ The circumstance in Crimea’s case is that “the illegality attached to the declarations of independence thus stemmed not from the unilateral character of these declarations as such, but from the fact that they were, or would have been, connected with the unlawful use of force or other egregious violations of norms of general international law, in particular those of a peremptory character (*jus cogens*)”¹¹⁰. The Russian intervention in Crimea falls perfectly under the definition of aggression included in art.3 of the Resolution n. 3114 of the General Assembly: “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”¹¹¹. In conclusion, since the unilateral declaration of independence of the Autonomous Republic of Crimea is a direct consequence

¹⁰⁷ International Court of Justice, *Accordance with the international law of the unilateral declaration of independence by the provisional institutions of self-government of Kosovo (Request for an advisory opinion)*, Written Statement of the United States of America, April 2009.

¹⁰⁸V. Putin, *ibidem*.

¹⁰⁹ W. Burke-White, *Crimea and the International Legal Order*, in *Survival: Global Politics and Strategy*, 56:4, July 23rd, 2014, pp. 65-80.

<https://www.tandfonline.com/doi/pdf/10.1080/00396338.2014.941548?needAccess=true>.

¹¹⁰ International Court of Justice, *Accordance with the international law of the unilateral declaration of independence in respect of Kosovo*, Advisory opinion, 22 July 2010. Par. 81.

¹¹¹ United Nations General Assembly, resolution n. 3314, *Definition of Aggression*, 2319th plenary meeting, 14th December 1974. Art. 3 (e).

of the use of force by Russia, qualified as an aggression from most States of the International Community, the declaration results invalid and should be considered lacking of any legal effect¹¹².

2.4 The Principle of Territorial Integrity

Outside of the geopolitical context of the crisis, The European Commission for Democracy through Law has expressed two advisory opinions on the occurrence, taking the matter of the aggression only indirectly, namely with the aim of examining whether the referendum was taken in compliance with international standards¹¹³. On 21st March 2014 the commission issued two advisory opinions, the first on the legitimacy of the referendum taken in Crimea in view of the constitutional principles in force at the time, and the second on the accordance with International Law of the annexation of Crimea to the Russian Federation¹¹⁴.

In the first case, the Commission has expressed on the fact that the matter should be evaluated in view of the observance of Ukraine's territorial integrity, enshrined in articles 1, 2, 73, 157 of Ukraine's constitution, coupled with Chapter X, totally dedicated to the Autonomous Republic. It should also be evaluated in view of the principle of self-determination on the basis of the resolution on "Self-Determination and Secession in Constitutional Law" of the Commission itself, which confirms the unlawfulness of the

¹¹² M. McDougal, *A New Imperialism? Evaluating Russia's Acquisition of Crimea in the Context of National and International Law*, in *Brigham Young University law review*, June 2015, p. 1855.

¹¹³ Venice Commission, *Opinion on "whether the decision taken by the supreme council of the autonomous republic of Crimea in Ukraine to organize a referendum on becoming a constituent territory of the Russian federation or restoring Crimea's 1992 constitution is compatible with constitutional principles"*, Opinion no. 762 / 2014, CDL-AD (2014)002, Venice, 21-22 March 2014, par. 22.
[http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2014\)002-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)002-e).

¹¹⁴ M. Valenti, *Diritto della Comunità internazionale e dell'Unione europea. Casi e Materiali*, Torino, 2015. p. 30.

secession would it come into conflict with the principle of indivisibility of the national territory¹¹⁵ (the Italian constitution also states the same, on art.5¹¹⁶).

In the second case, more relevant to the themes of this dissertation, the commission has expressed its view on the legitimacy of what has happened in observance with the principles of territorial integrity and the self-determination of peoples¹¹⁷. In particular, recalling the Preamble of the Resolution 2625 of the General Assembly, that says that “any attempt aimed at the partial or total disruption of the national unity and territorial integrity of a State or country or at its political independence is incompatible with the purposes and principles of the Charter”¹¹⁸, the Court affirms that the inviolability of the territorial integrity and political independence is one of the expressions of the principle of equality among states, enshrined in art. 2(1) of the UN Charter. Furthermore, whenever a State was governed by a “*contested government*”, as the *ad interim* government of Ukraine in the period of crisis could have been considered by the Russian authorities, the Commission affirms that “any decision on the cession of a territory of a state with a contested government shall however again be postponed till this aim is reached and political stability in the country restored, as the same general principle requiring the valid consent of the two states as the only acceptable legal basis of the cession of the territory applies here as well”, and also “a transfer of territory from one state to the other without the valid consent of the government of the state whose territory is concerned is no lawful cession of territory, but rather amounts to an annexation of territory which is prohibited under international law”.

The Commission also highlighted how, regarding the principle of self-determination of peoples, the definition of “people” is usually described as “a separate, specific group of individuals sharing the same history, language, culture and the will to live together”; a

¹¹⁵ Venice Commission, *Self-Determination and Secession in Constitutional Law*, CDL-INF (2000) 2, Strasburg, 12th January 2000, chap I, par. 1.

[http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-INF\(2000\)002-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-INF(2000)002-e).

¹¹⁶ Art. 5 of the Italian Constitution: The Republic is one and indivisible. It recognizes and promotes local autonomies, and implements the fullest measure of administrative decentralization in those services which depend on the State. The Republic adapts the principles and methods of its legislation to the requirements of autonomy and decentralization.

https://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf.

¹¹⁷ M. Valenti, *op. cit.*, p.30.

¹¹⁸ UN Doc. A/RES/2625 (XXV), *Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations*, 24th October 1970. Par. 14. https://treaties.un.org/doc/source/docs/A_RES_2625-Eng.pdf.

requirement that could not be applied to the people living in the Peninsula, that could at most be considered as “minorities or other groups within a state”.

Of last instance, as mentioned in the previous paragraph, the Commission reaffirms that the right to secession can be applied in relation to the principle of self-determination only in the case in which a people is governed as part of a colonial empire; where a people is subject to alien subjugation, domination or exploitation; and possibly where a people is denied any meaningful exercise of its right to self-determination within the state of which it forms a part¹¹⁹. If the peculiar circumstances clarified by the Supreme Court of Canada could not be applied, on in the event in which the secession would not imply a deployment of military forces, and thus a violation on the prohibition of the use of strength, “a state that would unify with such an entity or would incorporate it into its territory, would however act in violation of several fundamental principles of international law, most notably the principle of non-intervention in internal affairs”.

The Court then summarizes, stating that the Russian activities in Ukraine violates the principle of territorial integrity, the principle of national sovereignty, the principle of non-intervention in the internal affairs of a foreign State, and the prohibition of the use of strength in the relations among States; therefore, these activities are not compatible with International Law¹²⁰.

2.4.1 The Statute of the Council of Europe and the Helsinki Accords

The Council of Europe, founded in 1949, is an international organization that aims to uphold human rights, democracy, and the rule of law, facilitate the cooperation among member States in the social sector, in that of economy, and culture. Currently 27 member States are

¹¹⁹ Supreme Court of Canada, *Re Secession of Québec*, [1998] 2 S.C.R. 217, p. 222. <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1643/index.do>.

¹²⁰ 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”*, CDL-AD (2014)004, Venice, 21st March 2014. [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2014\)004-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)004-e). (Refer to this note for the other quotes of the Venice Commission in the precedent pages).

part of the organization, signatories of a Statute¹²¹ come into effect on 5th May 1949. It is an organism based on the intergovernmental method of cooperation among sovereign States, devoid of legislative and sanctioning power towards its members; it sets itself as promoter of dialogue among States through its advisory and technical bodies, adopting advisory acts. Russia joined the Council on 28th February 1996, and consequently is required to respect the guiding principles of the organization.

Because of the violations to International Law to which it is responsible, the Russian delegation had been suspended from the Parliamentary Assembly and the various commissions of the organization in 2014. The suspension was renewed in the following years¹²², citing violations to articles 1a and 3 of the Statute of the Council of Europe. Furthermore, the Council has expressed its perplexity on the manner, in which the Russian Federation interprets International Law, mentioning the case of Georgia in 2008 in addition to the facts of 2014¹²³. Russia's participation and voting rights were restored in May 2019, after most foreign ministers of the member States of the organization voted in its favour¹²⁴.

For the same reasons, Russia also violated the Helsinki Accords¹²⁵, establishing the OSCE. This organization has the strengthening of military security and the promotion of co-operation and transparency among States as main objectives, through a system of arms control and increasing mutual trust. Its main areas of intervention are four: sovereignty, economy, human rights, and the fulfillment of international duties. Russia is one of the founding States of the organization (then as Soviet Union), and therefore it is obliged to the observance of its Statute. The Helsinki Conference of 1975 has established a duty to respect the borders of the European States. Other guiding principles of OSCE are the peaceful settlement of disputes, the principle of non-interference in the internal affairs of another State, the respect for human rights. Additionally, for the purpose of increasing the

¹²¹Statute of the Council of Europe, Treaty of London, 5th May 1949.

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680935bd0>.

¹²² Resolution 2034 (2015) Final version of the Parliamentary Assembly, 28th January 2015.

<http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=21538&lang=en#>.

¹²³ J. Giuliani, *Russia, Ukraine and International Law*, in *European Issues*, No 344, 17th February 2015, p.3.

<https://www.robert-schuman.eu/en/doc/questions-d-europe/qe-344-en.pdf>.

¹²⁴ Z. Weise, *Council of Europe Restores Russia's Voting Rights*, in *Politico*, 17th May 2019.

<https://www.politico.eu/article/council-of-europe-restores-russias-voting-rights/>.

¹²⁵ Helsinki Accords, OSCE, 1st August 1975.

<https://web.archive.org/web/20160525015726/http://www1.umn.edu/humanrts/osce/basics/finact75.htm>.

cooperation and military security, member States are expected to notify the potential use of their military resources in any situation.

The Russian intervention in Crimea and Eastern Ukraine has repeatedly violated all the elements of the Statute, especially in point II “Refraining from the threat or use of force”, which stipulates that “the participating States will refrain in their mutual relations, as well as in their international relations in general, from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations and with the present Declaration[...] Likewise they will refrain from any manifestation of force for the purpose of inducing another participating State to renounce the full exercise of its sovereign rights. Likewise, they will also refrain in their mutual relations from any act of reprisal by force”¹²⁶.

Also point III, on the “Inviolability of frontiers”, which imposes to member States that: “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”¹²⁷.

The Russian Federation has violated the Ukrainian Constitution, inducing Crimea, an Autonomous region constitutionally part of Ukraine, to the unilateral declaration of its independence.

2.5 The Referendum and its Formal Validity

It seems opportune, at last, to analyze the possibility for which the Crimean Referendum of 16th March 2014 could be considered as a free and true manifestation of the will of the Crimean people, from which they could take at least some effect of political legitimation of the territorial change that happened in Ukraine.

¹²⁶ *Conference on Security and Co-operation in Europe Final Act, 1975, 1,a), II.*

¹²⁷ *Conference on Security and Co-operation in Europe Final Act, 1975, 1,a), III.*

It has been provided that under no circumstances a referendum can legitimize the process of self-determination of a people, but rather it is only an instrument for its practice; it is not the self-determination that follows the referendum, but the contrary: the referendum is allowed to produce legal effects in International Law in the circumstances in which the norm on self-determination is employed, to the degree in which it is in compliance to this norm. Given the fact that, even for what regards the Internal Law of Ukraine, the referendum was determined to be invalid because of unconstitutionality, as stated by Ukraine's Supreme Court¹²⁸, there are still some international standards that verify the legitimacy of a referendum. These standards, listed exhaustively by Costa Rica to the General Assembly as part of the Resolution n.68/262, require that the referendum must be preceded by an open debate based on clear rules accepted by all parties, impartial authorities, and the presenting of real options to the people. Furthermore, self-determination must be exercised without exclusion, influence, or intimidation. These elements were absent in this case¹²⁹.

In this respect, the UN General Assembly has expressed itself with a resolution on 27th March 2014, with 100 votes for, 11 votes against, 58 abstained and 24 absent. It sided up with Ukraine's territorial integrity, highlighting that "the referendum held in the Autonomous Republic of Crimea and the city of Sevastopol on 16th March 2014, having no validity, cannot form the basis for any alteration of the status of the Autonomous Republic of Crimea or of the city of Sevastopol"¹³⁰. The Venice Commission stated that it was questionable whether the referendum could be held in compliance with international standards for a number of reasons, among which the massive presence of military and paramilitary forces in the region, the absence of a pre-existing law regulating the referendum, the violation of free speech, the very short period of time from the calling of the referendum and its execution (only ten days), the fact that the questions weren't formulated in the correct way and finally the lack of any effort done to reach a negotiated agreement before implementation of the referendum¹³¹.

¹²⁸ Constitutional Court of Ukraine, *Judgement of the Constitutional Court of Ukraine on all-Crimean Referendum*, 17th April 2014. <http://www.ccu.gov.ua/en/novina/constitutional-court-ukraine-adopted-decision-termination-effect-memorandum-development-co>.

¹²⁹ United Nations, General Assembly, UN Doc. A/68/PV.80, 27th March 2014. <http://undocs.org/A/68/PV.80>.

¹³⁰ United Nations General Assembly, resolution n. 68/262. *Territorial integrity of Ukraine*, 80th Plenary Meeting, 27th March 2014. https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/a_res_68_262.pdf.

¹³¹ Consiglio d'Europa, Commissione di Venezia, parere n. 762/2014, CDL-AD (2014)002 del 21 marzo 2014. Par. 22-25

For obvious reasons, the resolution of the Security Council of 15th March 2014, that among other things enshrined “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”¹³² was not enforced because of Russia’s veto.

¹³² United Nation Security Council, S/2014/189, draft resolution, 15th March 2014.
http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2014/189.

Chapter III: EU Sanctions to the Russian Federation

3.1 Definition of Sanctions and Theoretic Aspects

Economic sanctions have not found much success in political research, because of the difficulties in measuring their impact and effectiveness. Furthermore, there is no single definition of sanctions universally recognized as the correct one. Sanctions have been identified as “*economic measures directed to political objectives*”¹³³, or as “*actions initiated by one or more international actors (the senders) against one or more others (the receivers)*”¹³⁴. The second of these definitions goes more into detail, for it mentions one or more international actors that can both initiate and receive the sanctions. Another element that can be added to the definition is the disclosure of the sanctions. Interrupting the commercial and financial trades, or even the mere threat of interrupting them, can be considered as a definition of a sanction, even if they do not take into account those measures that go beyond economic effects, such as diplomatic sanctions¹³⁵.

A possible reason for implementing international sanctions could be that the target State could have violated the norms of International Law. In practice though, sanctions more often begin for a subjective evaluation by the sender State, rather than a rigorous application of International Law.

The elements that should compose the definition of sanctions are several. Firstly, the type of policy instrument has to be economic. It is generally assumed that where sanctions are concerned, trade and other financial measures are involved. Secondly, the sender of the sanctions is another international actor, or even more than one. While the nation-State is still widely considered as the primary unit of analysis in international politics, it is generally now taken for granted that significant non-State actors can also be the target of such actions.

¹³³ J. Barber, *Economic Sanctions as a Policy Instrument*, in *International Affairs*, Vol. 55 n. 3, July 1979, p. 367.

¹³⁴ J. Galtung, *On the Effects of International Economic Sanctions: With Examples from the Case of Rhodesia*, in *World Politics*, Vol. 19 No 3, April 1967, p. 379.

¹³⁵ G. C. Hufbauer, J. J. Schott, K. A. Elliott e B. Oegg, *Economic Sanctions Reconsidered*, Washington, D. C. 2007, chapter I.

Following this approach, a sanction will be defined as an economic instrument which is employed by one or more international actors against another, ostensibly with a view to influencing that entity's foreign and security policy behaviour. This definition includes the long series of actions that the States have utilized in time in order to modify the behaviour of other international actors, with all the numerous purposes that variate with each case. It can safely be said that sanctions have an application that can be placed halfway through soft and hard power, between actions of diplomatic protests and declarations of war. In the international system, which is becoming increasingly more reluctant to the use of force (and the expenses that come from it), the application of the sanctioning instrument has become more and more common. This idea is especially applied to the current geopolitical configuration of the European Union, which uses sanctions to project its own vision of the world on the international field¹³⁶.

The difficulty in choosing an unambiguous definition of sanctions can be found in the fact that the research in the political field on the subject is divided in three parts. Currently, none of these different schools of thought has prevailed on the others, and this element creates the vagueness around this topic. The always more frequent application of sanctions is a circumstance of the present day; therefore, the case-studies necessary to find an answer are still lacking.

Fundamentally, three different approaches have emerged, which try to explain the status of sanctions as a tool of foreign policy. The first one is adopted by scholars who think that sanctions do not produce useful effects.; there are then those who attribute to sanctions a merely symbolic effectiveness; lastly, there are researchers who think that sanctions can work, if tied to a series of circumstances and in a certain context.

The first school of thought is the one to which most scholars agree with. These authors, such as Norwegian sociologist Johann Galtung, have explained the effectiveness of sanctions by studying some cases, and have determined that sanctions have not been able to change the behaviour of the targeted State, the primary aim of these measures; therefore, they are deemed as inefficient. The main reason behind this is the possibility of the "rally around the flag" effect: the leaders of the targeted State can channel the popular malcontent produced by sanctions to the sending actors; in addition, the targeted state can also answer back with its own sanction. Another problem is that some mechanisms do not allow sanctions to obtain

¹³⁶ B. Taylor, *Sanctions as Grand Strategy*, Routledge, Abingdon, 2010, p. 10.

a universal application. The argument is that economic sanctions have failed because they were not universal; some countries did not participate, or some other way of circumventing the sanctions was found (smuggling, use of third parties, and so on)¹³⁷.

The second line of thought explores the reasons why the policymakers keep using sanctions even though they seem not to work. Some scholars believe that the leaders of a Country exploit the range of useful symbolic or expressive function that comes with sanctions, when the public opinion expects an intervention following an international upheaval¹³⁸.

Lastly, there are those who consider sanctions to work. This line of thought can be traced to the apparition of the contemporary concept of sanction, matured after the First World War. During the course of the 20th century the areas of research have focused on which conditions were necessary in order for sanctions to function optimally. From the beginning of the 21st century, the focus was moved to one specific aspect of sanctions that many were starting to denounce: after the 1990 Gulf War, it became clear that the sanctions imposed to Iraq had not impacted much the leadership of the country, but rather its population, that was already in a precarious situation. These measures adopt particular kinds of economic sanctions, that try to inflict the consequences of these measures to the leadership of the State, and not its population: it is the case of “Targeted Sanctions”, mostly consisting of financial sanctions and embargos on some categories of goods.

3.1.1 Aims of International Sanctions

These three school of thoughts diverge on the specific theme of the effectiveness of sanctions. Effectiveness can be only measured in respect of a determined target; however, there is not a single vision agreeing on the target of sanctions.

Another important aspect to consider which has found unanimous accord, contrary to the other arguments dealt with so far, is that the more ambitious the aim of sanctions is, the less likely it is that they are effective. Furthermore, there can be more than one goal, and consequently some might succeed while others might fail.

¹³⁷ J. Galtung, *op. cit.*, p. 411.

¹³⁸ C. Jing, W. Kaempfer, A. Lowenberg, *Instrument Choice and the Effectiveness of International Sanctions: a Simultaneous Equations Approach*, in *Journal of Peace Research*, vol. 40, No. 5, 2003, pp- 520-521.

It seems necessary to list the most important targets that have been entrusted to sanctions in recent history. According to Galtung, sanctions could have two purposes: the first one is to punish the sanctioned State depriving it of something it considers of value. The second is to obtain from the State a certain behaviour regarding the norms considered important from the sanctioning State. These objectives can be present at the same time in the same sanctioning measure.

A more elaborate plot could be developed on objectives of sanctions. According to American political scientist James Barber, objectives which could be considered primary are those concerned with the actions and behaviour of the state or regime against whom sanctions are directed. Secondary objectives could be related to the status, behaviour and expectations of the government imposing the sanctions. Tertiary objectives are concerned with more wide-ranging international considerations, related to the operation or structure of the international system, or parts of it regarded as important by the imposing States.

Primary objectives can be found, for example, in the sanctions imposed by the Society of Nations to Italy after the invasion of Ethiopia, where the main objective was to stop the negligent behaviour of Italy regarding another sovereign State¹³⁹, while secondary objectives could be analyzed in the American embargo on Cuba, with which the American Government tried to rally support from within the Sanctioned State. Regarding this example, tertiary objectives could be for the US to avoid the spread of Communism in the Western World.¹⁴⁰

Another study, led by American scholar James Lindsay, tried to analyze sanctions not through the reaching of an objective, but by evaluating their impact to some specific goals, identifying five: Obedience, overthrowing the incumbent government, deterrence, international symbolism, internal symbolism. Fundamentally, we can link this to Barber's view of the aforementioned primary objectives, which in this opinion would be the merging of overthrowing and deterrence¹⁴¹.

A different research conducted by Gary Hulfbauer, Jeffrey Schot and Kimberly Elliott proposed to reevaluate the economic sanctions after their supposed inefficiency, numbering five possible aims. The first one is to conduct the targeted State to a change in its policies,

¹³⁹ G. Reti, *The European Consequences of the Italian Aggression against Ethiopia*, in *Rivista di Studi Politici Internazionali*, Vol. 74, No. 3, July-September 2007, p. 249.

¹⁴⁰ J. Gordon, *Economic Sanctions as "Negative Development": the Case of Cuba*, in *Journal of International Development*, 8th February 2015.

¹⁴¹ J. M. Lindsay, *Trade Sanctions as Policy Instruments: a Re-Examination*, in *International Studies Quarterly*, Vol. 30, No. 2, June 1986, pp 153-173.

however in a simple way (like the freeing of a political prisoner); the second one is to change the current regime of the sanctioned State; the third is to discourage a possible military intervention; the fourth one, to militarily weaken the adversary; and lastly, to heavily influence the policies and behaviours of a State¹⁴².

An analysis by Elisabeth Rogers introduces a new target that sanctions could aspire to reach: the prevention of armed conflicts. The reasons why this objective is not always pursued is often the problem of identity and isolation of the targeted States, and the difficulties in preventing an armed conflict. The first problem could be softened from using economic sanctions and a conditionality to concede helps from international financial institutions to bring the States that depend on them to issue better policies in the fields of human rights, democracy and security¹⁴³.

3.1.2 The Cost of Economic Sanctions

As all foreign policy tools, sanctions have a cost. The importance in this aspect is crucial in evaluating the instrument itself: the purpose is always to reach the best result with the least effort. Costs are linked to targets: the smaller and more insignificant the object of sanctions, the less disruption will be caused by a ban on economic intercourse. Some authors have focused on the fact that, in addition to the costs imposed to the target State, the tolls that the sender States must sustain should also be considered. These expenses do not belong only to the State promoting the sanctions, but also to its allies. Furthermore, producers and exporters that are particularly linked to the international market could be unhappy of the sanctions, for they could result in less income, and losing markets to rivals in their field.

The democratic factor can influence the choices of the leaders. In a democratic Country, where public opinion is important, it is necessary to obtain its consensus, not so much for imposing sanctions, but for being able to keep them until the target State concedes. In a period of electoral campaign for example, it could be hard for a State to accept imposing sanctions that could impact its own economy. There are many more political costs that would fall on the sending State. The first undesired effect could be the aforementioned *rally*

¹⁴² G. C. Hufbauer, J. J. Schott, K. A. Elliott e B. Oegg, *Economic Sanctions*, cit, Chapter II.

¹⁴³ E. S. Rogers, *Using Economic Sanctions to Prevent Deadly Conflict*, in *Center for Science and International Affairs*, 1996.

around the flag effect. Moreover, sanctions could move the State to draw closer to international actors that go against the sanctioning State, a fact that could change the entire international scenario. An attack from the sanctioned State could be a cost that the sanctioning State should consider when it prepares to impose sanctions. A possible answer to sanctions is often that of diversifying the economy of the Country, in order to avoid being subjected to targeted sanctions on some particular goods¹⁴⁴.

From these reasonings, a general framework emerges: sanctions impose costs to both the sending and receiving States. In addition, these are not simply economic costs, but also political ones. There are in fact some researchers that think that sanctions should not be used, for their costs often exceed their benefits. Most other scholars, such as Clara Portela and Francesco Giumelli, propose different argumentations better explaining these costs¹⁴⁵.

In the first place, some types of sanctions do not impose any costs to the sending State, such as financial sanctions and the withdrawal of economic aids or loans previously agreed on.

If a sanctioning measure is universally applied, the internal enterprises of the sanctioning State will not have to bear the loss of markets at the expenses of other States, for they too will be participating at the embargo. Obviously, universality is hard to reach, but there have been cases in which a joint effort has provided satisfactory results. Lastly, it is necessary to compare the costs of sanctions with other tools of foreign policy. The use of force has an enormous cost, especially if compared to the price of sanctions, and its effectiveness is all but guaranteed¹⁴⁶

3.1.3 Negative Sanctions

The frequent use of sanctions in the last century has shaped this instrument according to the targets chosen in each case. The different categories of negative sanctions have the function of adapting to the target and context in which they will operate. For this reason, the implementers of sanctions have a particular interest in identifying elements such as the

¹⁴⁴ M. P. Doxey, *Economic Sanctions and International Enforcement*, MacMillan, London, 1980, p. 93.

¹⁴⁵ F. Giumelli, *How EU Sanctions Work: a New Narrative*, in *Chaillot Papers*, No. 129, March 2013, pp. 40-41.

¹⁴⁶ V. Veebel, R. Markus, *Lessons From the EU-Russia Sanctions 2014-2015*, in *Baltic Journal of Law and Politics*, 2015, pp. 173-175.

economic structure and the economic relations of the target State, in order to understand the vulnerable sectors and their respective importance in its economic system¹⁴⁷.

From these data and from the analysis of the sanctions implemented, the nature of the main sanctions of recent history can be extracted:

a) Diplomatic Sanctions;

- Refusal to recognize;
- Interruption of diplomatic relations;
- No direct contact between leaders;
- No cooperation in international organizations;

b) Sanctions to Communication;

- Interruption of telecommunications;
- Interruption of postal contacts;
- Interruption of transportation (by sea, plane, road and trains);
- Interruption of the new media of communication (radio, newspapers, news agencies);

c) Economic Sanctions;

- Economic sabotage;
- Interruption of trade (stopping imports from the sanctioned State and exports to it)¹⁴⁸.

Among these, financial sanctions and the freezing of assets are the ones of most recent introduction. The freezing especially is often used together with economic sanctions, and has seen a sharp rise in usage in the last years for their efficiency in targeting particular subjects, without creating problems to the innocent part of the population of the target State.

¹⁴⁷ M. P. Doxey, *ivi*.

¹⁴⁸ J. Galtung, *ivi*, p. 383.

3.1.4 Smart Sanctions

During the 1990s the application and the study of sanctions have increased. Their flaws have been highlighted, and studies began looking for methods to prevent them. With this aim in mind, specific kinds of sanctions have been identified, and have replaced the more common embargos, in order to avoid their biggest flaw: affecting civilian populations.

These have been called “smart sanctions”. Gary Hufbauer and his associates defined them as sanctions that could be aimed at specific officials or government functions without damaging the overall economy and imposing exceptional hardship on the general public. The idea is to target governments and leaders responsible of the behaviours that caused the sanctions in the fastest and most precise way¹⁴⁹.

According to Clara Portela, there are three different kinds of smart sanctions that can be identified. The first are “personal sanctions”, which aim particular individuals that are placed in lists containing their details; usually, they get a travel ban through a blockage of visas and freezing their properties abroad. There are then the “selective sanctions”: these measures are not directed to particular individuals but aim at strategic economic sectors. Partial embargos, interdiction of import and export of some goods and financial sanctions are part of this. Lastly, there are “diplomatic sanctions”, which regard all those measures involving traditional diplomacy: withdrawing the ambassadors, expelling military personnel, formal protests within international organizations¹⁵⁰.

3.1.5 Responses to Negative Sanctions

There are a number of measures which a sanctioned State can adopt to limit damages caused by sanctions. Other than the already mentioned *rally around the flag*, given the long time often necessary to implement sanctions, the target States may have some time to adopt effective countermeasures. The first one is to stock up on products that would be object of sanctions, unavailable within the state and only obtainable through import. This measure is

¹⁴⁹ G. C. Hufbauer, J. J. Schott, K. A. Elliott e B. Oegg, *Economic Sanctions*, cit, pp. 138-141.

¹⁵⁰ C. Portela, *The EU's Use of 'Targeted' Sanctions; Evaluating Effectiveness*, in *CEPS Working Document*, No 391, March 2014.

useful in the short-term, but in the case of prolonged embargos these reserves would not mitigate the impact of sanctions. A more advanced measure is the diversification of the suppliers, as a way of preventing a total embargo. Creating commercial ties with Countries out from the influence of the sanctioning States can make it possible to keep trading even during sanctions.

The sanctioned State can also adopt countersanctions, the most common of which being financial countersanctions, the expropriation of properties of enterprises or citizens of the sanctioning State from within the territory. Lastly, there is the option of external propaganda, with which the sanctioned State tries to obtain support from outside, in order to weaken the sanctioning front from within.

3.2 EU Sanctions to the Russian Federation

“We are committed to the effective use of sanctions as an important way to maintain and restore international peace and security in accordance with the principles of the UN Charter and of our common foreign and security policy. In this context, the Council will work continuously to support the UN and fulfil our obligations under the UN Charter”¹⁵¹. This is the official definition of sanctions issued by the Council of the European Union.

Three different kinds of sanctions can be applied by the EU, in close collaboration with the sanctioning regimes of the United Nations. A first typology are those sanctions aimed at strengthening the restrictive measures adopted by the Security Council, that UN member States are bound to enforce¹⁵²; this causes them to be legitimized under the criteria of the UN.

A second category is represented by sanctions autonomously applied by the EU, that go beyond those chosen by the Security Council and therefore consist in a kind of overcoming of the UN Organs. They often refer to particular requests made by the Security Council to

¹⁵¹ *Basic Principles on the Use of Restrictive Measures (Sanctions)*, Council of the European Union, 7th June 2004, doc. 10198/1/04, p. 2.

¹⁵² T. Biersteker, C. Portela, *EU Sanctions in Context: Three Types*, in *Report of the European Union Institute for Security Studies*, July 2015, p.1.

member States of the UN and can be described as “supplementary”. These sanctions can be simultaneous to the mandates of the UN, but they can also be implemented years after the United Nations’ measures. It can also be that EU sanctions are implemented to targets already sanctioned by the UN, as it has often happened in case of crisis aggravated at a later stage compared to the restrictive measures of the Security Council.

The third type of sanctions adopted by the EU consists in restrictive measures taken in the absence of other measures ruled by the UN; they often inhere about controversies on which the Security Council does not manage to take a decision because of a lack of agreement, as a result of the opposition of at least one of its permanent members. They have become one of the most used foreign policy tools by the EU¹⁵³.

In the 2004 document the Council has established the cases in which the Union should adopt economic sanctions: to fight terrorism, the proliferation of weapons of mass destruction, defense of human rights, democracy, rule of law and good governance. Various kind of sanctions can be obtained from this:

- Weapons embargo;
- Ban on visas;
- Financial sanctions;
- Sanctions on import;
- Targeted sanctions;
- Diplomatic sanctions;
- Termination of development aids.

From 1980 on, there have been more than one-hundred economic sanctions imposed by the EU¹⁵⁴; more than 20 countries are currently under sanctions¹⁵⁵. The goals of the EU sanctions are divided among those related to security (especially peacekeeping targets, stabilization missions and counterterrorism, while it is not so important for peacekeeping) and those tied to security only indirectly, like promotion of democratic processes and the defence of human rights. Sanctions occur in regions with prolonged armed conflicts, on proven support to

¹⁵³ T. Biersteker, C. Portela, *ivi*.

¹⁵⁴ C. Hörbelt, *A Comparative Study: Where and Why does the EU Impose Sanctions*, in *UNISCI Journal*, n 43, January 2017. <https://www.ucm.es/data/cont/media/www/pag-91857/UNISCIDP43-3H%C3%B6RBELT.pdf>.

¹⁵⁵ For more informations: <https://www.sanctionsmap.eu>.

terrorism, proliferation of weapons of mass destruction and on violations of democratic regimes. Additionally, the EU is more prone to sanction the geographic areas closer to its borders, with sanctions mostly aimed to matters related to security, while sanctions to countries far from the European borders tend to be aimed at matters not related to security¹⁵⁶.

3.2.1 European Road to Imposing Sanctions

The restrictive measures adopted by the European Union following the Ukrainian crisis are part of the decisions of Common Foreign and Security Policy (CFSP). The CFSP, the former second pillar of the EU before the Treaty of Lisbon, is regulated by Title V of the Treaty on the European Union (TEU): “General provisions on the Union’s external action and specific provisions on the common foreign and security Policy”. These subjects are specifically excluded from the Treaty on the Functioning of the European Union (TFEU) so that the CFSP became separate from the other policies of the Union¹⁵⁷. The action of the member States is implemented using the “intergovernmental” method, highlighting that in this field the member States prefer to keep a certain amount of control, yielding only part of their sovereignty to the institutions. The intergovernmental method differs from the “communitarian” decision method mainly for the fact that, in order for the decisions to be adopted, it is necessary for unanimity to be reached, “except where the Treaties provide otherwise”¹⁵⁸. The intergovernmental method provides that the Commission’s right of initiative is shared with the member States or limited to specific areas, that the European Council is equipped with deliberative power, contrary to the Parliament, which holds a consultative role, and that the Council, as stated, decides unanimously¹⁵⁹.

The CFSP “shall be defined and implemented by the European Council and the Council”, as established by Art. 24, par. 1 of the TEU, leaving only a marginal role to the Parliament, the Commission, and the Court of Justice. In Art. 21 of the TEU the objectives to be pursued are defined; these include the consolidation and support of Rule of Law, the universality of

¹⁵⁶ C. Hörbelt, *ivi*.

¹⁵⁷ D. Luigi, *Diritto dell’Unione Europea*, Giuffrè Editore, Milano, 2014, pp. 131-132.

¹⁵⁸ Art. 24, par. 1, TEU. https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_1&format=PDF.

¹⁵⁹ https://eur-lex.europa.eu/summary/glossary/community_intergovernmental_methods.html?locale=en.

human rights, the respect human dignity, the principles of equality and solidarity, and respect for the principles of the UN Charter and international law¹⁶⁰.

A relevant figure is the High Representative of the Union for Foreign Affairs and Security Policy. In addition to holding the position of Vice President of the Commission, the High Representative also presides over the Foreign Affairs Council, and carries out the CFSP “which he shall carry out as mandated by the Council”¹⁶¹. The Policies are conducted by the Union adopting two kinds of legal acts: decisions and general guidance¹⁶². General guidance is issued by the European Council, defining the guidelines on which the CFSP navigates. The decisions are acts of the Council which establish the actions that the Union must engage and the positions it has to assume, encouraging cooperation among States.

The acts are not adopted at the initiative of the Commission, instead they are commissioned by the member States or the High Representative. An integral part of the CFSP is the Common Security and Defence Policy (CSDP), which establishes how many and which are the means necessary for peacekeeping, the prevention of armed conflicts and the strengthening of international security. The acts adopted as part of CFSP do not hold legal value in line with Art. 24 of the TEU, but they bind the member States “in the positions they adopt and in the conduct of their activity”¹⁶³. Moreover, par.1 of Art 24 of the TEU points out that “The common foreign and security policy is subject to specific rules and procedures”.

On the basis of the CFSP Decisions taken with reference to the violations of International Law from the Russian Federation, a great number of Regulations and Implementing Regulations have been carried out, to fully enact the legislative nature of the taken measures. It can be noted that the European Union has chosen to act in a pervasive way, in order to give a decisive answer in sustaining the customary principles violated by the Russian Federation.

Following the condemnation of the acts of violence carried out in Ukraine from the Russian Federation, in the extraordinary meeting of 20th February 2014 of the Foreign Affairs Council of the European Union, it was decided to implement sanctions against the assaults,

¹⁶⁰ Art. 21 of TEU.

¹⁶¹ Art. 18, subpar. 2, TEU.

¹⁶² D. Luigi, *ivi*, pp. 235-236.

¹⁶³ Art. 28, par. 2, TEU.

the excessive use of force, and violation of the territorial sovereignty of Ukraine¹⁶⁴. These measures are part of the *targeted sanctions*, those interventions specifically targeted to particular individuals or entities, in order to limit any collateral damage on the civilian population of the targeted State. In the following extraordinary meeting, which took place on 3rd March 2014, the evident violation of Ukraine's sovereignty through acts of aggression from the armed forces of Russia was severely condemned.

While searching for a peaceful resolution, the Council determined the launching of a monitoring mission by OSCE, and temporarily suspended the participation of the EU to the preparations of the G8 Summit that would have taken place in Sochi, Southern Russia, in June of that year. The measures that were speculated those days, which would have eventually taken effect, also included a possible interruption of the bilateral relations on visas between European Union and Russia. As stated in the Decision 2014/119/CFSP of the Council taken on 5th March 2014: “the Council agreed to focus restrictive measures on the freezing and recovery of assets of persons identified as responsible for the misappropriation of Ukrainian State funds and persons responsible for human rights violations, with a view to consolidating and supporting the rule of law and respect for human rights in Ukraine”¹⁶⁵. These restrictive measures consisted in freezing all the funds and economic resources belonging to or controlled by any of the natural or legal persons, entities or bodies found responsible of these unlawful seizing. In Annex I of the EU Regulation No 208/2014 is contained a first list of the subjects in question, comprising of 18 natural and legal persons, entities, and bodies, with identifying information attached and the reason of the restrictive measure. This first Regulation, taken at the same time with Decision 2014/119/CFSP was published in the Official Journal of the European Union, and came into force on 6th March 2014, with the purpose of guaranteeing the homogeneous application of the sanctions from the economic players of all member States.

The restrictive measures provided by the Regulation include both the “freezing of funds”, i.e. “preventing any move, transfer, alteration, use of, access to, or dealing with funds in any way that would result in any change in their volume, amount, location, ownership, possession, character, destination or other change that would enable the funds to be used,

¹⁶⁴ M. Lenzu, *Foreign Affairs Council*, 20 February 2014.

<https://www.consilium.europa.eu/en/meetings/fac/2014/02/20/>.

¹⁶⁵ Decision 2014/119/CFSP of the Council of the European Union.

<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2014:066:0026:0030:EN:PDF>.

including portfolio management”, and the “freezing of economic resources”, the prohibition of “the use of economic resources to obtain funds, goods or services in any way, including, but not limited to, by selling, hiring or mortgaging them”¹⁶⁶.

As laid down by Art. 215 of the TFEU, that set up the legal base of the restrictive actions adopted by the Union, the Regulation provides the “necessary dispositions on legal guarantees”, such as the possibility of modifying the list in Annex I and the eventual exceptions to Art. 2¹⁶⁷. The Council wields the power of modifying the annex, coherently with the procedure for amending and revising of the Decision CFSP 2014/119; exceptions to the freezing of funds and economic resources granted by competent bodies belonging to member States are allowed in articles 4, 5, and 6 of the Regulation. In particular, Art. 4 provides the possibility of authorizing the release of funds and economic resources in case these were necessary to satisfy “necessary to satisfy the basic needs of the natural or legal persons, entities or bodies” listed and their families, namely for “payment of reasonable professional fees” or for the “reimbursement of incurred expenses associated with the provision of legal services” linked to the managing or keeping of the frozen funds and economic resources, or, lastly, in order to cover for “necessary or extraordinary expenses”, prior communication of the reasons to the other member States and the Commission by the competent Authority involved.

According to articles 5 and 6, special derogations can be allowed even in the case when the frozen funds or economic resources would be utilized to answer legal situations, in the hands of natural or legal persons present in Annex I, preceding the implementation of the Regulation. The considered articles provide that in all cases the interested member States inform other member States and the Commission of possible conceded authorizations. Art. 7 includes the possibility that financial institutions accredit funds moved by third parties on the frozen accounts as long as they are also frozen. Art. 8 individuates and defines the behaviours to which the natural or legal persons, entities and bodies must abide to. The Regulation was later modified by the Regulation (EU) 2015/138 of 29th January 2015, that inserts in Art. 3 the paragraph 1 *a*, adding to the persons identified as responsible of

¹⁶⁶ Regulation (EU) No 208/2014 of the Council of 5th March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine. <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2014:066:0001:0010:EN:PDF>.

¹⁶⁷ Art. 2 of the Regulation (EU) No 208/2014 is the article that explains the freezing of funds and economic resources and the prohibition of make these resources available to any of the subjects in the list.

embezzlement of Ukrainian State funds those that were subject of investigations by the Ukrainian authorities¹⁶⁸.

On 6th March 2014, an extraordinary meeting of the Head of State and Government was taken in Brussels, to which the Ukrainian Prime Minister Arseniy Yatsenyuk participated. The meeting was concluded by a statement in which the violation of the sovereignty and territorial integrity of Ukraine from the Russian Federation was reaffirmed, and the adoption of the measures taken by the Council was ratified; furthermore, the meeting decided to suspend the bilateral relations with Russia regarding visas, and the suspension of the preparatory works for the G8 Summit. The European Union opened the possibility to adopt additional restrictive measures regarding the travel ban, freezing of goods and the annulment of the Eu-Russia Summit¹⁶⁹. By analyzing this declaration in its entirety, it appears clear that the will of the EU was to search for a pacific solution through dialogue, establishing a relation with Russia based on mutual interest and international obligations. There was also a declaration of commitment in sustaining financially Ukraine, coupled with an invite to hasten the necessary structural reforms.

The Regulation 208/2014 was carried out with Implementing Regulation (EU) No 381/2014 of the Council of 14th April 2014, that added four more subject to the list and modified three items already present in the list, and later with Implementing Regulation (EU) 2015/357 of 5th March 2015, that definitely replaced Annex I after a review by the Council.

On 17th March 2014, the Foreign Affairs Council strongly condemned the referendum for self-determination of Crimea and the city of Sevastopol taken on 16th March, for the violation of the Ukrainian constitution, not acknowledging its result. The Council has also decided to adopt additional restrictive measures through Decision 2014/145/CFSP in which they confirmed that “travel restrictions and an asset freeze should be imposed against persons responsible for actions which undermine or threaten the territorial integrity, sovereignty and independence of Ukraine, including actions on the future status of any part of the territory which are contrary to the Ukrainian Constitution, and persons, entities or bodies associated with them”¹⁷⁰. Thus, more restrictive measures were adopted towards officials, persons, and

¹⁶⁸ Art. 1 of the Council Regulation (EU) 2015/138 of 29th January 2015. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015R0138>.

¹⁶⁹ Statement of the Heads of State or Government on Ukraine. Brussels, 6th March 2014. <https://www.consilium.europa.eu/media/29285/141372.pdf>.

¹⁷⁰ Council Decision 2014/145/CFSP of 17th March 2014. <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2014:078:0016:0021:EN:PDF>.

entities associated with them for the role they covered in operations that constituted a real threat to the territorial integrity and sovereignty of Ukraine. The Decision was firstly adopted with the Implementing Decision CFSP 2014/151 of 21st March 2014 and later with Implementing Decision CFSP 2014/138 of 28th April 2014, that added respectively twelve and fifteen among subjects, entities and bodies to the Annex of the Decision 2014/145 “due to the seriousness of the situation”.

In addition, the Council has instituted an international presence in place, and has asked OSCE for a monitoring mission in Ukraine. It was then asked to the Commission to evaluate the legal consequences of the annexation of Crimea and the city of Sevastopol, an act that was deemed illegal, and to propose economic, commercial, and financial measures to rapidly enact.

The Decision 2014/145/CFSP was supported by the Regulation (EU) No 269/2014 of 17th March 2014, similar in its formulation to Regulation 208/2014, later modified by five Regulations between 21st March 2014 and 25th September 2015. The amendments substantially regarded Art. 3, consequently to the adjustments brought to Decision 2014/145/CFSP, to which this Regulation refers to, and they integrate the criteria provided for the inclusion of natural or legal persons, entities. and bodies in Annex I. Thereby, there was the inclusion of all the subjects that “obstruct the work of international organizations in Ukraine, and natural or legal persons, entities or bodies associated with them”, and “legal persons, entities or bodies supporting, materially or financially, actions which undermine or threaten the territorial integrity, sovereignty and independence of Ukraine; or legal persons, entities or bodies in Crimea or Sevastopol whose ownership has been transferred contrary to Ukrainian law, or legal persons, entities or bodies which have benefited from such a transfer” namely “the natural or legal persons who actively provide material or financial support to, or are benefiting from, the Russian decision-makers responsible for the annexation of Crimea or the destabilization of Eastern-Ukraine”¹⁷¹.

The measures taken by the European Union and the member States have escalated as the crisis worsened, especially following some key events. On 14th and 15th April 2014, the Foreign Affairs Council has strongly condemned the armed attacks by the pro-Russian separatists in the regions of Eastern Ukraine, strengthening the sanctions. During the same

¹⁷¹ Council Regulation (EU) No 811/2014 of 25th July 2014. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0811&from=GA>.

meeting essential measures were taken in favour of Ukraine, thus supporting Kiev's government: firstly, a provision of macro-financial aid for the stabilization of the Country; secondly, the institution of unilateral trade preferences through a reduction, or temporary cancellation, of customs duties.

On 17th April in Geneva was held a meeting among the European Union and the ministries of Foreign Affairs of Russia, Ukraine and United States, to initiate a dialogue on how to deescalate the situation in Ukraine and to ensure that peace and stability could return to the State¹⁷². At the end of the meeting, a joint statement was signed by the four participants: this could be considered as a success, given that, for the first time since the beginning of the tensions, Russia agreed to seating at a negotiating table together with the representatives from Ukraine, and that, at the very least, an agreement was reached. Even if in the declaration a clear path through which reduce tensions and restore security for all the citizens was not found, it was established that: “all illegal armed groups must be disarmed; all illegally seized buildings must be returned to legitimate owners; all illegally occupied streets, squares and other public places in Ukrainian cities and towns must be vacated”¹⁷³. As a matter of fact, the Declaration was followed by amendments, by the Ukrainian Minister of Foreign Affairs and by President Putin.

On 12th May 2014, following the Foreign Affairs Council of the European Union, a number of acts were implemented, among which were Decisions, Regulation, Implemented Regulations, in support of what decided in the Declaration of Geneva, also inviting the member States of the United Nations to evaluate the adoption of similar measures. Secondly, there was an immediate condemnation of the violation of human rights in Crimea and Ukraine during the clashes in the eastern regions of the country.

On 23rd June 2014, the Decision 2014/386/CFSP was adopted, concerning restrictions on goods originating from Crimea and the city of Sevastopol, in response of the unlawful annexation of the two territories. For the first time sanctions were applied in the field of trade, with the aim of emphasizing even more the invalidity of the referendum taken in Crimea, in accordance with the Resolution 68/262 adopted by the General Assembly of the

¹⁷² *Joint Geneva Statement on Ukraine from April 17: The full text*, in *The Washington Post*, 17th April 2014. https://www.washingtonpost.com/world/joint-geneva-statement-on-ukraine-from-april-17-the-full-text/2014/04/17/89bd0ac2-c654-11e3-9f37-7ce307c56815_story.html.

¹⁷³ *Geneva Statement on Ukraine*, 17th April 2014. <https://nato.mfa.gov.ua/en/news/1067-zhenevskyka-zajava-vid-17-kvitnya-2014-rokuukrros>.

United Nations. In order to implement the Decision and ensure its homogenous application in all the member States, the Regulation (EU) No 692/2014 was issued, containing the list of competent authorities. A following Decision, 2014/933/CFSP of 18th December 2014, includes further restrictions to investments in Crimea and Sevastopol. This Decision ordered a ban on foreign investments, and “services in the sectors of transport, telecommunications, energy or the prospection, exploration and production of oil, gas and mineral resources, as well as services related to tourism activities in Crimea or Sevastopol, including in the maritime sector should be prohibited”¹⁷⁴. In this way the precedent ban on export of these goods was extended. However, a derogation and momentary lifting of these condition is possible, to reduce the effect of these restrictive measures on the civilian population of Crimea and Sevastopol.

Another Decision was adopted on 31st July 2014, because of the prolonging of the serious situation in Ukraine, and following the destruction of the passenger plane MH17 Malaysia Airlines of 17th July, caused by a missile while the airplane was flying on Eastern Ukraine. Under solicitation of the Council of the European Union, further restrictions were decided, that included entities, included the ones of the Russian Federation, that materially or financially sustained actions that threaten the sovereignty and territorial integrity of Ukraine¹⁷⁵. It is interesting to notice that among the entities nominated in the Decision stood out Sberbank, the largest bank of the Russian Federation. Following an assessment of the situation, which on 30th August 2014 was still critic because of the prolonged supply of Russian weapons and military forces, new amendments were made, prolonging the sanctions. The Regulations that enshrined these decisions were similar in form to the preceding ones.

The first of them is Regulation (EU) No 833/2014 of the Council, where it is explained that the additional measures are taken “with a view to increasing the costs of Russia's actions to undermine Ukraine's territorial integrity, sovereignty and independence and to promoting a peaceful settlement of the crisis. These measures will be kept under review and may be suspended or withdrawn, or be supplemented by other restrictive measures, in light of

¹⁷⁴ Council Decision 2014/933/CFSP of 18th December 2014. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014D0933&from=IT>.

¹⁷⁵ Council Decision 2014/512/CFSP of 31st July 2014. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014D0512&from=IT>.

developments on the ground”¹⁷⁶. This was accompanied by three Annexes in which are found the competent authorities and the technologies for which an authorization was necessary in order to sell, furnish, transfer, or export them and finally the entities from which it was forbidden to “purchase, sell, provide brokering or assistance in the issuance of, or otherwise deal with transferable securities and money-market instruments with a maturity exceeding 90 days, issued after 1 August 2014”¹⁷⁷.

On 5th September 2014, the *Minsk Protocol* was signed in the Belarusian capital, in order to put an end to the clashes in Eastern Ukraine. The document was based on fifteen points presented by the then Ukrainian President Petro Poroshenko, and it was redacted by the *Trilateral Contact Group on Ukraine*, composed by representatives of Russia, Ukraine and OSCE. This first agreement was repeatedly violated, and in February 2015 a new agreement consisting of thirteen points was signed, called *Minsk II*¹⁷⁸, signed by representatives from OSCE, Ukraine, Russia and the leaders of the Luhansk People’s Republic and Donetsk People’s Republic.

The measures adopted by the European Union have been of various kind, diversified according to the field on which they intervened, but always having as reason the violation of the sovereignty and territorial integrity of Ukraine. Firstly, the Union adopted diplomatic measures, as annulling the EU-Russia summit and the G8 Summit in Sochi, successively taken as G7 in Brussels. Other measures have been the *targeted sanctions*, the individual provisions that have targeted 177 people and 44 entities responsible of actions that undermined Ukraine's territorial integrity, sovereignty, and independence. Such entities are subjected to an asset freeze and a travel ban. These measures were last extended in September 2019 until 15th September 2020.

The economic sanctions targeting exchanges with Russia in specific economic sectors have been extended until the complete implementation of the Minsk agreements has not been reached. Since this did not happen, the Council extended the sanctions every six months; they are currently in force until 31st July 2020.

¹⁷⁶ Regulation (EU) No 833/2014 of 31st July 2014. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0833&from=GA>.

¹⁷⁷ *Ibidem*, Art. 5.

¹⁷⁸ Full Text of the Minsk II agreement in Russian language: <https://www.osce.org/files/f/documents/5/b/140221.pdf>.

Other measures have been implemented in the sector of economic cooperation, as the suspension of the signing of new financing transactions to the Russian Federation and the suspension of some bilateral and regional agreements of cooperation between Russia and the Union.

3.2.2 Sanctions by Other International Subjects

Other than the member States of the European Union, other Countries have taken action against the Russian Federation. Among them, the United States are the main protagonists, for the number and scope of the implemented measures. In March 2014, then-President Barack Obama signed the *Executive Order 13660*, authorizing *targeted sanctions* towards persons and entities “that undermine democratic processes and institutions in Ukraine; threaten its peace, security, stability, sovereignty, and territorial integrity; and contribute to the misappropriation of its assets”¹⁷⁹.

The actions and policies pursued by the Russian government have been judged by the United States to be dangerous for the democratic coexistence in the zone. Also in this case, the sanctions included freezing of assets, restrictions on the issuing of visas, and restrictions on the import of specific sectors. The freezing regards the illicit economic institutions founded in Crimea and Eastern Ukraine, and apply not only to the people present in the list, but also to all the subjects that could represent or could mediate on the behalf of the sanctioned people. In the case of sanctioned entities, the restrictions also include limitations to the entrance in the United States of their employees.

The sanctioning mechanism provides different methods of application the restrictions for different entities. Banks are subject of restrictions regarding the possibility of borrowing, but not in relation to other activities. The limitations regarding the oil extraction do not harm the rights of the owners on the exploitation of mineral resources.

The sector-specific sanctions are constantly evolving, and they vary depending on the object: banks, for example, cannot make commitments for a period of time longer than 30 days,

¹⁷⁹ Executive Order 13660, 6th March 2014. https://www.treasury.gov/resource-center/sanctions/Programs/Documents/ukraine_eo.pdf.

while societies energy sector are authorized to keep debts for no longer than 90 days. For the restrictions in the sectors of military equipment and technology, the United States allow anyone to apply for a license, but the acceptance of the appliance is not guaranteed. The sanctions regarding technology for oil and gas exploration consist in a list of devices and materials that are not allowed to be exported to the Russian Federation. From these prohibitions are excluded the financial services relative to the extraction of gas and oil, the granting of the rights to extraction and provision of means to be used with the purpose of extraction.

The sanctions are aimed to the people closest to President Putin, advisors and collaborators, and the officers involved in the military operations in Ukrainian soil; there is the possibility for an enlargement of this list. The sanctions are also aimed at entities in the sectors of finance, energy, and the military industry, which, according to American assessments, are involved in the economic and military aggression of Ukraine.

As it has been for the European Union, the bilateral consultations and negotiations between Russia and United States have been reduced, including the ones concerning economic cooperation and investments.

On 20th March 2014, given the protracted threat to Ukraine, then-President Obama issued the *Executive Order* “Blocking Property of Additional Persons Contributing to the Situation in Ukraine”¹⁸⁰, which expands the scope of the preceding *Executive Order* 13660 and 13661. The *Executive Orders* allowed the US to constantly increase the diplomatic and financial costs of the Russian intervention in Ukraine, and, at the same time, in line with the simultaneous actions of the European Union, has also allowed to send a strong warning sign to the Russian Federation.

The sanctions by the US are based mainly on the Executive Orders that then-President Obama issued in 2014, but have been modified in the following years after some significative events, such as the destruction of the Malaysian airplane in the Summer of 2014.

¹⁸⁰ *Executive Order* “Blocking Property of Additional Persons Contributing to the Situation in Ukraine”, 20th March 2014. <https://obamawhitehouse.archives.gov/the-press-office/2014/03/17/executive-order-blocking-property-additional-persons-contributing-situat>.

Other Countries such as Canada, Australia, Japan, Iceland, Norway, and Switzerland have also adopted sanctions towards the Russian Federation, inspired by the same motivations and utilizing the same form as the EU sanctions¹⁸¹.

NATO has also taken a stand following the Russian intervention in Crimea, condemning the intervention and strengthening the defensive measures of the Baltic States and the Eastern Europe States members of the Alliance. NATO's action is motivated by the fact that "an independent, sovereign, and stable Ukraine, firmly committed to democracy and the rule of law, is key to Euro-Atlantic security"¹⁸². Relations with Russia were suspended, and the plans for a joint training were cancelled. Russia and NATO based their relations on the NATO-Russia Council (NRC) founded in 2002. All military and civilian cooperation were suspended in April 2014, while keeping intact the diplomatic channels, allowing both parts to compare the respective points of view on the crisis.

In September 2014 a Summit was held in Newport, Wales, resulting in *The Wales Declaration on the Transatlantic Bond*¹⁸³, a document in which the leaders of NATO member States strongly condemned the Russian intervention in Ukraine, asking for the immediate withdrawal of Russian forces from Ukraine's territory and the border zones, demanding to cease the illegal occupation. They affirmed the fact that: "Russia must use its influence with the separatists to de-escalate the situation and take concrete steps to allow for a political and a diplomatic solution which respects Ukraine's sovereignty, territorial integrity, and internationally recognised borders"¹⁸⁴.

The member States gave a favourable opinion with regard to the restrictive measures already taken by the UE member States and other international subjects, as stated in the Declaration: "we support the sanctions imposed by the European Union (EU), the G7, and others, which are an essential part of the overall international effort to address the destabilizing behaviour of Russia, bring it to deescalate, and arrive at a political solution to the crisis created by its actions. Amongst these are measures taken by Allies including Canada, Norway and the United States, as well as the EU decisions to limit access to capital markets for Russian state-owned financial institutions, restrict trade in arms, establish restrictions for export of dual

¹⁸¹ <https://www.riskadvisory.com/sanctions/russia-sanctions-list/>.

¹⁸² *The Wales Declaration on the Transatlantic Bond*, Wales, 4th-5th September 2014. https://www.nato.int/cps/en/natohq/official_texts_112985.htm.

¹⁸³ *Wales Summit Declaration*.

https://www.nato.int/cps/en/natohq/official_texts_112964.htm?selectedLocale=en.

¹⁸⁴ *Ibidem*, item 16.

use goods for military end uses, curtail Russian access to sensitive defence and energy sector technologies, and other measures”¹⁸⁵.

The resolutions taken by NATO are largely diplomatic measures, which express the support and approval about the US and EU sanctions, as they align to the declarations of the United Nations. Even so, the Alliance has expressed its will to begin the cooperation with Russia again: “For more than two decades, NATO has worked to build a partnership with Russia, developing dialogue and practical cooperation in areas of common interest. Cooperation has been suspended since 2014 in response to Russia’s military intervention in Ukraine but political and military channels of communication remain open.”¹⁸⁶. To prove this, bilateral meetings started again in 2016, having been held at least twice a year up to 2019¹⁸⁷.

3.2.3 Comparison Between EU and US Sanctions

All the measures taken into account so far virtually share the same purposes. Coherently with the evolution that sanctions have undertaken in recent history, they were not focused on punishing the sanctioned target, but rather they were used as tool to induce the Russian Federation to cease its illicit behaviour. Likewise, under the point of view of International Law, the reaffirmation of the correct interpretation of the violated legal rules was pursued, confirming the importance of the *erga omnes* principles that were not respected.

What differentiates the sanctions adopted by the various States is the impact that they had. The European Union focused on reducing contacts among the individuals linked to the Crimean situation, by limiting their travels and freezing their assets. Because of this, the number of individuals sanctioned varies among the sanctioning States. For instance, Japan has posed no restriction to natural persons belonging to the Russian Government, while Canada and Australia have sanctioned more than 40 among the representatives of the Kremlin.

The main difference between EU and US sanctions is the amount of time they stay in force. The goals of the EU sanctions and the measures the target State must take in order for the sanctions to be lifted are clearly stated when the provisions are implemented. Furthermore,

¹⁸⁵ *Ibidem*, item 19.

¹⁸⁶ *Relations with Russia*. https://www.nato.int/cps/en/natolive/topics_50090.htm.

¹⁸⁷ *NATO-Russia Council*. https://www.nato.int/cps/en/natolive/topics_50091.htm.

the EU institutions and member States periodically review the sanctions, lifting them as soon as progress is recognisable. On the contrary, the US sanctions are unrestricted, and continue as long as a decision is taken to lift them¹⁸⁸.

The EU and the US have employed different assessment criteria to choose the individuals to sanction: the EU has chosen to focus on those subjects who directly took part to the annexation of Crimea, such as the closest collaborators of President Putin, responsible of strong influence on the decisions sought by Russia. On the other hand, the US possesses less economic interdependence with Russia, and was thus able to implement harsher sanctions on different fields. Russia is the EU's fifth largest trading partner, while it is only the thirtieth for the US. In the financial sector, European banks account for about 75% of Russia's total foreign bank loans.

Contrary to the EU, that has shown to prefer targeted sanctions, the US sanctions are usually broader in scope. For Instance, 38 organisations related to the conflict in the Donbass region have been targeted by the EU sanctions, while the US's sanctions list consists of 428.

Regarding sanctions imposed to banks and enterprises, the gap results even wider. Contrary to the UE, the US have decided to focus on intervention aimed at reducing the possibility of economic affairs; furthermore, they decided to centre the restrictions on the energy sector.

There are some differences also in the sanctions regarding the military sector and armaments: the European States adopted an export ban on weapons starting from July 2014¹⁸⁹ from which contracts stipulated before that date were exempt; in the case of the US, given the lack of any derogation to the restrictions, licenses previously granted would also be subject to the restrictions.

¹⁸⁸ Y. Emre Ok, *The Difference Between the US and EU Sanctions Policy and the Updated EU Blocking Regulation*, in *IFAIR*, 1st January 2019.

¹⁸⁹ Council Decision 2014/512/CFSP of 31st July 2014. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014D0512&from=IT>.

Chapter IV: Consequences of Sanctions

4.1 The Energy Issue

The Russian Federation has the largest proven reserves of natural gas in the world, while also being the largest exporter, supplying around 20% of the global market. The enormous amount of natural resources allows Russia to play the role of global energy supplier, becoming a fundamental actor in the international stage. The main bulk of its reserves lies in deposits in Western Siberia and the Arctic Zone. The Russian export follows two main routes, the Western route (to Europe, Turkey and the former Soviet Countries) and the Eastern route (to China, Japan and South Korea). More than two thirds of the Russian energetic export is directed to Europe, mostly via pipelines¹⁹⁰.

The natural gas market in the country is controlled by *Gazprom*, a company founded in 1989, during the *perestroika*, when the Soviet Ministry of Gas Industry was converted into a corporation. In this way *Gazprom* was transformed in the Russian institution responsible for the production, distribution, and sale of gas. The firm holds nearly absolute control on the Russian energy market, exporting 75% of the gas produced, and detaining a monopoly on its transport, distribution and export via pipeline¹⁹¹. The other energy companies in Russia are called *Non-Gazprom Producers* (NGP): foreign firms that are usually *Gazprom*'s partners in joint projects, or small local producers

Gazprom possesses the Country's pipeline systems, controls the transports to the gas consumers and can greatly influence the annual Balance of gas: in Russia, the production level of gas is established by negotiations between the firm and the Russian State, usually during about one year.

¹⁹⁰ F. Indeo, *La Russia dopo la Crimea: la Fine di South Stream e la Proiezione verso l'Asia*, in *Ispionline*, 2014.

¹⁹¹ F. Dickel, J. Hassanzadeh and Others, *Reducing European Dependence on Russian Gas: Distinguishing Natural Gas Security from Geopolitics*, in *The Oxford Institute for Energy Studies*, 2014.

4.1.1 Relations with the EU and Supply Routes

The Soviet Union, and later the Russian Federation, have kept strong political and commercial links with several European States through the decades, but contacts with the EU as a global actor have been less impactful, both for number of agreements and for their political significance. Dialogue with the European Institutions holds a secondary role in the bilateral agreements between Russia and the main European customers.

In 1994 Russia and the EU signed the Partnership and Cooperation Agreement (PCA), based on cooperation on the fields of economy, culture, and social matters. This agreement expired in 2007, and negotiations for its renewal have been strongly opposed by the Baltic States. Russia has never approved the European Energy Charter, having signed the Treaty but having failed to ratify it, and it does not recognize it as legal basis to deal with the themes linked to the management of its resources¹⁹². At the same time, Moscow has not joined the European Neighborhood Policy, refusing to be considered by the EU as a mere State instead than a strategic partner¹⁹³.

Since 2000 both actors manage the “EU-Russia Energy Dialogue”, a political forum without binding legal engagements. In 2003, the two actors created the “Road Map of Common Economic Space”, composed of four areas in which bilateral dialogues are conducted. These areas, called “Space Activities” have been updated during a 2005 meeting in Moscow, consisting in:

- Common Economic Space, where are discussed economic subjects. Energy is included in this sector.
- Common Space on Freedom, Security and Justice
- Common Space of External Security
- Common Space of Research and Education, including Cultural Aspects¹⁹⁴.

¹⁹² From the Official Site of the European Energy Charter. <https://www.energycharter.org/who-we-are/members-observers/countries/russian-federation/>.

¹⁹³ H. Haukkala, *The Russian Challenge to EU Normative Power: The Case of European Neighbourhood Policy*, in *The International Spectator*, 21st May 2008.

¹⁹⁴ P. Van Elsuwege, *The Four Common Spaces: New Impetus to the EU-Russia Strategic Partnership?*, in *Cambridge Books Online*, 2009.

Neither the Energy Dialogues nor the Common Space carried out a decisive role during the 2005-2006 Russia- Ukraine gas dispute, where Russian gas supply through Ukraine was shut off for 4 days. Because of this, during the 2009 Russia-EU Summit in Khabarovsk new mechanism of crisis response were developed.

Russian gas supply to Europe follows four different routes, set up on the diplomatic relations with the different Countries in which the pipelines transit.

- Through Ukraine: eight pipelines cross the Country. The Urengoy-Pomary-Uzhgorod pipeline, also known as Trans-Siberian pipeline, is the major route in the Country. It was built between 1982 and 1984. This pipeline serves Czech Republic, Hungary, Slovenia, Croatia and Italy;
- Through the Baltic Countries and Finland: The Baltic States are not a high-priority market for Gazprom. Even though those states import the totality of their energy requirement from Russia, their small size makes it so that they represent only 2% of the gas sold by the firm. However, this represents an important tool of political pressure for Moscow. Estonia and Latvia get their gas directly from Russia, while Lithuania is served by a pipeline passing through Belarus;
- Through Belarus: two of the largest Russian pipelines cross Belarus. The *Druzhba*¹⁹⁵ is the largest oil pipeline in the world. It serves Poland and Germany. A split-off in its route allows it to supply Ukraine, Hungary, Slovakia, Czech Republic and Croatia. The Druzhba was devised in the 1960's to supply the States of the Eastern Bloc, which explains its name. It was built between 1960 and 1964. The Yamal-Europe pipeline is more than 4.000 kilometers long going from Siberia to Belarus and Poland;
- Another pipeline, the Nord Stream, will be analyzed later.

¹⁹⁵ Druzhba translates to "Friendship" in the Russian language.

The conflicts in Ukraine have become a serious threat for Russia, which is launching a strategy to diversify its flux of gas, in order to avoid possible dangerous situations, and as a tool of political pressure.

4.1.2 Energy Resources as Tool of Russian Foreign Policy

Russia's approach to the energy issue is different from the EU's, and it can be classified in the context of a global strategy of Russian policies.

As stated in the first chapter, the dissolution of the Soviet Union led to the creation of many new States. Some of them, such as the Baltic States, initiated a journey to democracy, moving closer to the European Union, limiting Russia's influence on them.

The Russian Federation is trying to find more efficient ways to allocate its energetic resources without giving up on its military and political influence in the zones of special political interest, such as the Black Sea. In this manner, it follows a sort of nationalism of resources, adopting unilateral strategies, using energy as a political tool, and refusing multilateral cooperation or appealing to International Law.

Some authors, such as the German professor Frank Umbach, believe that the Russian position was provoked by a lack of interest from the European States regarding the energy subject before of the first Russian-Ukrainian conflict of 2006. Gas and oil were considered simple economic goods, lacking any particular strategic value, and could therefore be managed by private agencies without control by the Governments. The mutual interdependence between Russia and Europe did not allow to overlook the possibility of a conflict. "For many years, these assumptions made it possible to ignore that Moscow has indeed used its energy exports and pipeline monopoly as an instrument of foreign policy to intimidate and blackmail neighbouring States since the demise of the Soviet Union"¹⁹⁶.

¹⁹⁶ F. Umbach, *Global Energy Security and the Implications for the EU*, in *Centre for European Security Strategies*, 6th March 2009, p.2.

The Russian tactic of cutting supplies has had as a primary objective vulnerable States not considered as key markets. Russia could not think to cut supplies to countries that share very strong ties with it, such as Germany¹⁹⁷. The variation of contract prices of energetic resources established between Eastern and Western Europe has offered Moscow the possibility of threatening the latter with a price raise: the Russian Parliament had approved in 2005 that the CIS Countries should begin paying the same prices established for the Western European States¹⁹⁸.

In the last years, relations between Russia and Ukraine have been characterized by a prolonged climate of conflict and distrust. After the demise of the Soviet Union, the greater part of the Russian pipelines meant for the European markets passed through Ukrainian soil. Energy producing Countries are greatly dependant of the Countries in which their pipelines pass, and these Countries have great incentives in interrupting, or merely threatening to interrupt the energy supplies, as a tool to reach political and economic objectives. In this case, on one side the Ukrainian economy needed to satisfy its large consumes at a lower price compared to the Western markets; on the other side, the Russian State could not allow to lose its European customers. The total dependency of Gazprom from the passage of the pipelines through Ukraine to export and the necessity of the Ukrainian economy to be sustained through a discount on the prices on the gas supply represented a potentially risky situation for the Russian firm.

The Ukrainian role of “transit State” is an unexpected consequence of the process of dissolution of the Soviet Union. In the Soviet era, pipelines were built without regard to internal borders. Moscow controlled the entire Soviet Union, and even where pipeline planners knew of possible long-term political risks, internal borders were not factors to be considered in the planning process. Invariably, pipelines followed straight-line routes. Thus the trunk line that carries gas from the Caucasus north to Moscow links several cities on straight-line patches that carry the line a few miles inside Ukraine’s territory an irrelevant fact in Soviet times and now a source of substantial transit revenues for Ukraine¹⁹⁹.

Ukraine is one of the main consumers of Russian gas, and up to 2011 it represented the first import market of Russian energy products. The energy matter was the basis for the

¹⁹⁷ B. Shaffer, *Natural Gas Supply Stability and Foreign Policy*, in *Energy Policy*, 24th January 2013, p.117.

¹⁹⁸ T. Mitrova, *Russia’s Gas Market and Export Strategy in a Low-Price Environment*, in *The Oxford Institute for Energy Studies*, 1st April 2020.

¹⁹⁹ E. Chow, *Russian Pipelines: Back to the Future?*, in *Georgetown Journal of International Affairs*, Winter/Spring 2004, pp.27-33.

diplomatic relations between the two States during the 1990's; in 1992, in exchange for the soviet atomic weapons remaining in Ukraine, Russia offered the cancellation of a large part of the Ukrainian debt and a supply of gas with a favourable price. The combination of high consumptions at low prices has been one of the causes for the outbreak of the conflict: the failures of the several negotiations to arrange a raise in prices brought to the critical moments of 2006 and 2009. The relationship between Gazprom and Naftogaz, the Ukrainian national oil and gas company, have been strongly politicized: both companies are state-owned, and in several cases the negotiations on discount for gas princes found solution through political concessions²⁰⁰.

4.1.3 The Mutual Dependence between Russia and the European Union

The aggressive behaviour of the Russian State in its foreign energy policy is at odds with the relative weakness of the Russian economy, symbolized by its dependency on revenues related to the energy resources.

40% of the European gas import comes from Russia, almost 20% of the total energy consumption in Europe. Russian dependence on gas revenues is not less important. 45% of the Russian export goes to the EU²⁰¹. The energy sector represents one fourth of the Russian GDP: some scholars affirm that Russia is the most dependent partner in this economic relation²⁰².

Key decisions in the energy sector are directly taken by President Putin, and Russian interference in the market are constant. As it was seen, there is not a true competition in the energy sector, due to the numerous privileges that Gazprom can count on. Foreign energy firms are not allowed to access the market, because by law the gas sector is an activity of strategic value sustaining the defence of the State and national security, and permission from the President is necessary to sign agreements with foreign firms²⁰³.

²⁰⁰ J. Sharples, A. Judge, *Russian Gas Supplies to Europe: the Likelihood, and Potential Impact, of an Interruption in Gas Transit via Ukraine*, in *The European Geopolitical Forum*, 20th March 2014.

²⁰¹ *EU Imports of Energy Products – Recent Developments*, Eurostat, November 2019.

https://ec.europa.eu/eurostat/statistics-explained/index.php/EU_imports_of_energy_products_-_recent_developments.

²⁰² P. Kratochvil, L. Tichy, *EU and Russian Discourse on Energy Relations*, in *Energy Policy*, 30th January 2013, p- 391.

²⁰³ T. Mitrova, *The Geopolitics of Russian Natural Gas*, in *Centre for Energy Studies*, 2014, p. 50.

4.1.4 Russia's Projects for Energetic Diversification

The EU conceive the energy diversification as a necessary strategy to cope with a potentially dangerous situation, the excessive dependency on producer countries. Russia on the other hand interprets diversification not as the research for new markets to sell its resources, but as a strategy of developments of additional supply channels to already established markets. Russia's aim is to minimize the influence of the transit States on its behaviour²⁰⁴.

In this point of view, the twin projects of Nord Stream and South Stream had the objective of directly link the two main European markets of Russian gas, Germany and Italy, with the Russian frontiers, or at least replace the classical routes that crossed States with which Russia shared conflicts in the last years.

Nord Stream

The Nord Stream pipeline transports natural gas from the Yuzhno-Russkoye field, in western Siberia, starting from the Russian city of Vyborg, arriving to the German town of Greifswald, crossing the seabed of the Baltic Sea. The project had an estimated cost of 15 billion €, being able to transport large quantities of gas. The project was developed by Gazprom, who also produces the natural gas that supplies the pipeline, together with a number of other European companies.

The pipeline consists in two parallel ways, built in two separate phases. The first one has been operative since November 2011, while the second line was finished in 2012. Once it reaches the European continent, the Nord Stream connects with other pipelines, which transport the Russian gas to different destinations within the European web of natural gas. A second branch of the Nord Stream, known as Nord Stream 2, is currently under construction.

The contrasts of the last decades between Moscow and Kiev have undermined Russia's trustworthiness as gas supplier, and therefore one of the major aims of the Russian energy policy has become to transport its gas to Europe bypassing the Ukrainian territory. With the exception of the aforementioned Nord Stream 1 and the Yamal-Europe pipeline, all the

²⁰⁴ P. Kratochvil, L. Tichy, *EU and Russian Discourse*, cit.

Russian gas passes through Ukraine; Nord Stream 2 would allow Russia to double the gas input sent to Europe not tied to Ukrainian territory.

The construction of the new pipeline has been halted by several factors. First of all, several European countries would not like to strengthen even more the energetic ties with Russia.

In December 2019 President Trump has set up a number of sanctions against societies engaged in the construction of the pipeline, effectively blocking its realization²⁰⁵. In addition, in recent years the US have tried to weaken Europe's energy ties with Russia by increasing the supply of shale gas, an unconventional form of source of natural gas that has been growing in importance in the US since the beginning of the millennium. Despite this, Russian President Putin has manifested its will to continue in building the project.

Within the EU, the Visegrad Group Countries (Czech Republic, Slovakia, Hungary and Poland) have opposed the construction of the new Nord Stream: with large part of the supply moving to the new pipeline, they would lose the significant revenue coming from transit taxes paid by Gazprom. The European Parliament has also expressed its negative opinion on the operation with a Resolution in 2016, in which it asks to abandon the project, calling it a "threat for European security"²⁰⁶. The European Commission has tried to stop the construction of the pipeline on the Legal Front, having failed in asking the Council of the European Union a mandate to negotiate the construction with Russia, transforming it in a real European project²⁰⁷.

In 2017 the European Commission has proposed the application of some dispositions of a 2009 Directive, to which the Nord Stream 2 would not comply²⁰⁸. According to the European *Third Energy Packages*, Gazprom cannot produce and sell gas and at the same time be the owner of the gas transmission system, and it cannot be the only producer to utilize the pipeline. A process known as *Unbundling* is necessary, which consists in: "the separation of energy supply and generation from the operation of transmission network; if a single company operates a transmission network and generates or sells energy at the same time, it

²⁰⁵ Congressional Research Service, *Russia's Nord Stream 2 Pipeline: a Push for the Finish Line*, 28th May 2020. <https://crsreports.congress.gov/product/pdf/IF/IF11138>.

²⁰⁶ European Parliament Resolution (2016/2059 INI) on EU Strategy for Liquefied Natural Gas and Gas Storage, 25th October 2016. https://www.europarl.europa.eu/doceo/document/TA-8-2016-0406_EN.pdf.

²⁰⁷ F. Anselmo, *Nord Stream 2: Opportunità e Rischi del Nuovo Gasdotto di Putin*, in *Ispionline*, 7th May 2020.

²⁰⁸ Regulation (EC) No 713/2009, *Establishing an Agency for the Cooperation of Energy Regulators*, 13th July 2009. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009R0713&from=EN>.

may have an incentive to obstruct competitors' access to infrastructure, preventing fair competition in the market and leading to higher prices for consumers"²⁰⁹.

A final agreement on the subject was reached, influenced by the direct intervention of France and Germany, asking to let third-party companies participate in the project, supervised by Germany, the first Country receiving the infrastructure. Regarding this, such an eventuality is not truly possible: as stated already, no third-party companies within Russia would be able to violate Gazprom's monopoly.

The decisions of Germany could make the realization of the pipeline even more complicated, for they would be added to the US sanctions forcing Moscow to slow the construction and increase the costs Nord Stream 2 was supposed to launch at the end of 2019; its delay has forced Moscow to find a new agreement with Naftogaz to continue using the infrastructures in Ukrainian soil²¹⁰.

South Stream

The South Stream pipeline, originally proposed in 2007, was supposed to connect Russia and Bulgaria by crossing the Black Sea, continuing into Serbia, Hungary, Slovenia, Austria and finally reaching Italy. Gazprom and Italian Eni were the main firms involved in the project, with an estimated cost of 23 billion euro²¹¹.

As it was for Nord Stream, the main element in the South Stream's route was to avoid passing through Countries that Russia could consider as adversary, such as Ukraine and Turkey, and crossing directly the Black Sea. It was also thought as a mean to contrast the *Nabucco* pipeline, another abandoned project that would have sent gas from Turkey to Austria.

Answering to the protests of some EU member-States, Russia reiterated that the EU had no competence on the project, for it was the result of bilateral agreements signed by Russia and the involved States. According to this interpretation, these trans-border projects between European and extra-European States were not based on EU legislation, but on International

²⁰⁹ European Commission, *Third Energy Package*, 21st May 2019.

https://ec.europa.eu/energy/topics/markets-and-consumers/market-legislation/third-energy-package_en#unbundling.

²¹⁰ N. Astrasheuskaya, *Russia and Ukraine Sign Deal to Secure European Gas Flows*, in *Financial Times*, 31st December 2019.

²¹¹ C. Kong Chyong, B. Hobbs, *Strategic Eurasian Natural Gas Market Model for Energy Security and Policy Analysis: Formulation and Application to South Stream*, in *Energy Economics*, 24th April 2014, pp. 203-205.

Law, making intergovernmental agreements invalid²¹². In December 2013, the then-European Commissioner for Energy, German politician Günther Oettinger, held a meeting with the seven ministers of Energy of the countries involved in the South Stream project, asking for adjustments on the bilateral agreements.

In May 2014, Gazprom announced the cancelation of the construction of the tranche of pipeline that would have linked it to Southern Italy, adducing the decision to economic and logistic reasons. In December 2014, President Putin announced the permanent suspension of the South Stream project. The enormous cost of production of the pipeline in a context of decline in natural gas consumption, tied with the prolonged conflict with European legislation put an end to the project. Putin protested the behaviour of the European Commission, which, according to him, had openly tried to stop the construction of the pipeline.

Consequences of the cancellation could be positive, for the EU could take advantage of it to diversify its gas suppliers; on the other hand, it increases the risks that the South-Eastern European States could see a reduction in their supplies crossing Ukrainian soil²¹³.

4.2 EU Relations with Crimea

The European Union does not recognize and continue to strongly condemn the annexation of Crimea, a great violation of International Law, considering it a challenge to the international security order. As stated in the second chapter of this work, this position stems from the UN Charter, and other international treaties.

The EU policy of non-recognition consists in a large number of measures, all with the same goal of demonstrating that the EU does not accept this illegal annexation, acting through tangible measures in addition to regular diplomatic and political action, lastly reaffirmed by the Council's Conclusions 789/18 of 14th December 2018²¹⁴.

²¹² A. Behrens, *The Declared End of South Stream and Why Nobody Seems to Care*, in *Ceps Commentary*, 5th December 2014.

²¹³ A. Behrens, *ivi*.

²¹⁴ European Council Conclusions 798/18, 14th December 2018.

<https://www.consilium.europa.eu/en/press/press-releases/2018/12/14/european-council-conclusions-13-14-december-2018/pdf>.

Other than the already mentioned smart sanctions consisting of asset freezes and visa bans, the EU has enforced substantial restrictions on economic exchanges with the zone, as part of its non-recognition policy. These measures include:

- A ban on imports of goods originating in Crimea or Sevastopol, with the exception of those bearing an Ukrainian certificate;
- A prohibition to invest in Crimea. EU-based companies and European individuals are not allowed to buy real estate or entities in the Crimean Peninsula, finance Crimean companies or fund related services. Furthermore, investments in infrastructure projects in the following sectors are not allowed: telecommunications, transport, energy, and the prospection, production and exploration of gas, oil and mineral resources;
- A ban on providing tourism services in Crimea or Sevastopol. All ships owned or controlled by a European or showing the flag of an EU member-State may not land in ports in the Crimean Peninsula, except in case of emergency. In addition, they are not allowed to make any payments to the Port Authorities of Kerch and Sevastopol;
- Goods and technology for the telecommunications, transport and energy sectors or the exploration of oil, gas and mineral resources cannot be exported to Crimean companies or for use in Crimea;
- Technical assistance and construction or engineering services related to these sectors must not be provided²¹⁵.

In addition to this, citizens and residents of Crimea and Sevastopol who wish to travel to the Schengen area should obtain their visas in Schengen consulates located in Ukraine, and not in Russia. From 2016 onward, the European Commission together with the European External Action Service issued guidelines recommending a common approach to be taken towards Russian passports issued in Crimea, even if the recognition of travel documents should be a national competence of the member-States. Russian ordinary international passports issued by the Russian authorities established in Crimea and Sevastopol after the illegal annexation of these territories should not be recognized as valid.

²¹⁵ European Commission, *Information Note to EU Business on Operating and/or Investing in Crimea*, 25th January 2018.
https://eeas.europa.eu/sites/eeas/files/information_note_to_eu_business_on_operating_and_or_investing_in_crimea-sevastopol.pdf.

The EU has officially notified Russia that the bilateral agreements between the EU and the Russian Federation are applicable only to the internationally recognized territory of Russia, and therefore not to Crimea and Sevastopol.

The non-recognition policy was publicly reconfirmed on several occasions. Furthermore, whenever Russia refers to Crimea and Sevastopol as part of the Russian Federation in multilateral arenas, such as the UN, the Council of Europe, or the OSCE, the EU makes a statement in response to remind the world that it does not recognize the illegal annexation²¹⁶.

4.2.1 Appeal of Individual Sanctions

The coming into force of the Treaty of Lisbon has introduced through article 275 of the TFEU the possibility of appealing the restrictive measures taken towards natural or legal persons²¹⁷. This article, while reiterating that the Court of Justice of the European Union does not have “jurisdiction with respect to the provisions relating to the common foreign and security policy nor with respects to acts adopted on the basis of those provisions”, declares its jurisdiction, in the second subparagraph, “to monitor compliance with Article 40 of the Treaty on European Union and to rule on proceedings [...] reviewing the legality of decisions providing for restrictive measures against natural or legal persons adopted by the Council on the basis of Chapter 2 of Title V of the Treaty on European Union”²¹⁸. In this way is affirmed the protection of fundamental rights of the single subjects targeted by the smart sanctions, which can address the Court filing complaints also regarding CFSP acts on the Union.

In regards to the restrictive measures adopted by the European Union following the Crimean Crisis, several citizens have asked the cancellation of their names from the list of natural and legal entities to which smart sanctions were applied.

²¹⁶ The EU Non-Recognition Policy for Crimea and Sevastopol: Fact Sheet, 12th March 2020. https://eeas.europa.eu/headquarters/headquarters-Homepage/37464/eu-non-recognition-policy-crimea-and-sevastopol-fact-sheet_en.

²¹⁷ Treaty on the Functioning of the European Union, 13th December 2007. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT&from=EN>.

²¹⁸ Article 275, TFEU.

The General Court of the European Union has pronounced on the matter for the first time on 26th October 2015²¹⁹, disposing the cancellation from the list of one of the sanctioned subjects, once his non-involvement in the illicit appropriation of Ukrainian state funds was proven²²⁰.

Several other cases were appealed in the following years, among which stands Mykola Azarov, the former Prime Minister of Ukraine under President Yanukovich, whose name was firstly removed from the list of sanctioned targets, then included again following a criminal trial in 2015, and finally cancelled in 2020²²¹.

These sentences are important not only because of their influence on other pending cases, but also for the Case-Law of the European Union in its entirety. Pronouncing these decisions, the European Court of Justice has the opportunity of clarifying some aspects of the CFSP of the Union, such as the legitimacy of its measures in the legal field related to CFSP Decisions.

4.3 Russian Response to Sanctions

Just days after the introduction of the first sanctions imposed to the Russian Federation, Foreign Minister Sergey Lavrov responded to such measures by releasing a number of restrictive measures that hit a list of ten American citizens, among them being figures close to then-President Obama. Afterward, thirteen Canadian citizens received the same treatment, being also denied entering the Russian Federation.

The most severe sanctions were those applied during summer 2014: on 6th August, President Putin signed a decree “on the application of certain special economic measures to ensure the security of the Russian Federation”, which established that “for a duration of one year following this Executive Order’s entry into force a ban or restriction on foreign economic operations involving the import to Russia of particular kinds of agricultural produce, raw

²¹⁹ Judgement of the General Court, Case T.290/14, 26th October 2015. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62014TJ0290&from=GA>.

²²⁰ M. Lester, *1st EU Judgement on Ukraine Sanctions*, in *EUSanctions*, 26th October 2015.

²²¹ Council Decision CFSP 2020/373, 5th March 2020. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32020D0373&from=EN>.

materials and foodstuffs originating in countries that have decided to impose economic sanctions on Russian legal entities and/or physical individuals, or have joined such decisions”²²².

The Presidential Decree was immediately applied thanks to the adoption of the Decree No 778 of 7th August 2014²²³ banning import of those products from the US, Eu member-States, Canada, Australia, and Norway. The country of origin was identified based on the fact that the goods were produced entirely or in part in the sanctioned States, in the case of the involvement in production of third-party States. The list of sanctioned products was expanded with the Decree of the Russian Federation No 830 of 20th August 2014²²⁴. The Russian embargo included exceptions on infant food and some specific types of fruit and vegetables. In the same days, the Russian Government decided to preclude the access to its airspace to Ukrainian aircrafts.

Previously, on 14th July 2014, a measure was adopted introducing the “prohibition of admission of certain engineering goods, originating from foreign States, for the purposes of central and local Government procurement” with no due date²²⁵. It established a ban on import of steelwork goods coming from foreign States, in order to protect the internal market. This ban was not imposed only on the States that had sanctioned the Russian Federation, but on all Countries with the exception of Belarus and Kazakhstan, members of the Eurasian Custom Union (ECU).

On 11th August 2014 the Decree No 791 was adopted, imposing a ban on the import of light industry goods of foreign production by public subjects for federal needs not related to the state defense order, since 1st September 2014²²⁶. It was thus prohibited the purchase of textile products, clothing, footwear, and leather goods not produced in the ECU. The Russian

²²² Decree No 560 of the President of the Russian Federation, 6th August 2014.

<https://www.government.ru/documents/letters/2014/08/13/decree-of-the-president-of-the-russian-federation-on-the-application-of-certain-special-economic-measures-to-ensure-the-securit>.

²²³ Decree No 778 of the Russian Federation, 7th August 2014.

<http://static.government.ru/media/files/41d4f8e16a0f70d2537c.pdf>.

²²⁴ Decree No 830 of the Russian Federation, 20th August 2014.

<http://ivo.garant.ru/#/document/70721348/paragraph/1:0>.

²²⁵ Regulation No 656 of the Government of the Russian Federation, 14th July 2014.

http://www.ccir.it/ccir/wp-content/uploads/2014/09/All.-3-Decreto-656-Gov-Rus_en.pdf.

²²⁶ Decree No 791 of the Russian Federation, 11th August 2014.

<http://pravo.gov.ru/proxy/ips/?docbody=&nd=102357331>.

government eased these sanctions with the Decree No 625 of 25th June 2015, removing a number of items from the list of sanctioned goods²²⁷.

Russian sanctions were prolonged with the Decree No 608 of 30th June 2016, setting the deadline until 31st December 2017; these sanctions have been prolonged every year since then. Most recently, on 24th June 2019, President Putin signed the Decree No 806, extending Russia's ban on imports until the end of 2020²²⁸.

4.3.1 Food Import

Before the implementation of sanctions, Russia was heavily dependent on food imports from the United States and the EU. In the pre-sanctions era, the EU counted for about 40% of the Russian agricultural market. The relations with the countries against which Russia had retaliated by imposing restrictions on the import had shown strong economic interdependence; therefore, even before sanctions were implemented, Russia's policies were focused on decreasing its dependence on foreign agricultural imports, and strengthening domestic producers²²⁹. Being highly dependent on food imports from the EU, the implementation of countersanctions on certain goods complies with Russia's long-term strategy of diversifying its sources of import by decreasing the amount of EU- products, preferring imports from countries such as Belarus, Brazil, China and Turkey, while at the same time strengthening its own production. The domestic production of food in Russia has increased in the years following sanctions²³⁰.

Overall, the countersanctions strengthened the Russian strategy of stopping to rely on imports in the food sector. Nevertheless, other factors facilitated this:

- The aids offered by the Russian Government;
- The superior quality of the domestic products compared to imported goods, bringing consumers to choose the former;

²²⁷ Resolution No 625 of the Russian Federation, 25th June 2015.

http://www.consultant.ru/cons/cgi/online.cgi?req=doc&base=LAW&n=217298&fld=134&dst=1000000001_0&rnd=0.22156407543914636#007589657988177845.

²²⁸ Decree No 806 of the Russian Federation, 25th June 2019. <http://base.garant.ru/72280096/>.

²²⁹ V. P. Obolenskij, *Эффекты продовольственного эмбарго (Effects of the Food Embargo)*, in *Внешнеторговая деятельность*, February 2019.

²³⁰ P. Pospieszna, Hitting Two Birds with One Stone: Russian Countersanctions Intertwined Political and Economic Goals, in *American Political Science Association*, April 2020.

- The decline in consumption of sanctioned goods due to price increases
- The fall in average household income and the reduced power of Russian consumers;
- The sharp devaluation of the ruble, which provided further advantages for Russian food producers for the imported products became too expensive for Russian consumers.²³¹

Substantially, choosing the food sector as the main target of countersanctions was convenient for Russia because Moscow had already undertaken some protectionist measures to improve production and consumption of domestic food products, trying to make Russia independent on Western Influence. Focusing on oil and gas would not have been a rational option, for, as stated previously, the Russian economy is too dependent on those sources of income.

However, the costs associated with the implementation of the countersanctions in the agricultural field are mainly borne by Russian consumers. The cost of food makes up a large share of the budget of the Russian families. As a result, any price rises resulted by the food embargo has had, and will continue to have harsh effects on Russian consumers.

4.3.2 The Consequences on Russian Ruble

Exchange rate fluctuations strongly affect the economy of the Russian Federation, because of its heavy dependence on foreign trade and investment. Following the 2014 Russo-Ukrainian conflict, the Russian ruble lost 50% of its value against the US dollar; the evolution of the exchange rate of the ruble with respect to the euro is similar. The exchange rate of the ruble with respect to the euro went from around 40 rubles for 1 euro in 2013 to 90 rubles for 1 euro in December 2015. Such a depreciation was unprecedented. Even the decline in the value of the Russian currency during the world economic crisis of 2008-2009 was less severe compared to the situation of 2014. Many CIS Countries saw the same decline in the value of their currencies happen to them, which can be explained by the strong linkages that these States share with the Russian Federation.

²³¹ D. V. Manushin, *Estimating Prospects of Russian Foreign Trade under Crisis: Sanctions and Countersanctions*, in *Eurasia: Sustainable Development, Security, Cooperation*, June 2019.

With the depreciation of the ruble, Russia's growth prospects worsened further, from the already dire situation it found itself in: in the years preceding the Crimean crisis, the lower prices for natural resources tied with the increasing difficulties to attract foreign direct investment, the GDP growth projections were low. The currency losses led to collapsing government revenues, a decrease in public spending and growing inflation spurred by higher import prices. Non-oil exports did not benefit from this situation, due to the relative low competitiveness of the sector in international markets. The sectorial sanctions could have accelerated this downturn, especially the measures that dry up Russian banks' ability to refinance external debt. This greatly affects the Russian State, which has already begun to tap the reserve funds built up during periods of resource price booms.

The impact of the conflict on Russia could have been amplified by sanctions imposed by Western Countries, tied with the sharp decline in oil prices starting in Summer 2014 for, as previously stated, Russian economy is heavily dependent on natural resources export. This strong reliance on commodity exports makes the country extremely vulnerable to shifts in global prices. If the oil price remains low, and sanctions are maintained, a severe erosion of reserves could happen, with additional consequences on the ability of the government to meet its obligation in a wide arrange of fields. Furthermore, restrictions on technology transfer in the energy sector have endangered the ability of Russian firms to explore new oil fields, and thus expanding production. The Russian central bank raised its policy rate a number of times to try fighting inflation and capital outflow, causing further pression on domestic consumption and investment. Confidence in the international field that the Russian Government could eventually repay its debts was eroded, pushing up the sovereign yields²³².

Russia's monetary policy is largely determined by revenues from the export of oil and gas resources. In order to minimize the budget deficit and stabilize the economic situation, the Government of Russia regularly increases the export of raw materials in order to obtain greater foreign exchange earnings in the short term. Even so, as the supply of oil in the market grows, demand decreases, tied to a reduction in the price of energy resources, which leads to a devaluation of the ruble. This vicious circle began in 2014, due to the pressure of the sanctions on the Russian Federation²³³.

²³² C. Dreger and Others, *Between the Hammer and the Anvil: The Impact of Economic Sanctions and Oil Prices on Russia's Ruble*, in *Journal of Comparative Economics*, 13th January 2016.

²³³ A. A. Ustiuzhanin and Others, *The Ruble Exchange Rate and the Price of Oil: Assessment of the Degree of Dependence, its Causes and Ways of Overcoming*, in *Entrepreneurship and Sustainability Issues*, Vol. 7, No 1, September 2019.

4.4 Economic Consequences of Sanctions

The economic fallout from sanctions and countersanctions regimes imposed by the EU, US, Russia and other countries is widely documented. While it is a matter of fact that Russia's economy has shrunk in the years following the annexation of Crimea, and the sanctions that followed, the actual impact of the restrictive measures is still debated.

Russian GDP growth had already started to decelerate in late 2012; by 2013, annual GDP growth was only 1.8%. Between 2014 and 2016 the overall GDP contracted approximately by 3%, and it slowly started growing since 2017²³⁴.

Researchers have attempted to separate the effects of sanctions from all the other factors of Russian GDP growth, despite the difficulties in doing so.

An annual study conducted by the International Monetary Fund in 2015 reported that Western sanctions and Russia's countersanctions reduced the real GDP of Russia by around 1-1.5%. It also suggested that in the medium-term Russia's loss might be as high as 9%. This large loss in GDP would assume that the level of investment and productivity growth would have decreased. The 2019 edition of the study affirmed that Russia's economy continues to show moderate signs of growth under their macroeconomic policies, but highlights a difficulty in doing so due to the structural constraints and the ongoing effects of sanctions²³⁵.

A large number of studies conducted between 2014 and 2016, such as the 2015 study by the financial services firm Citibank or the 2015 paper by Russian economists Evsey Gurvich and Ilya Prilepskiy, agree on the fact that the responsibility for the Russian GDP decline would be mostly attributed to the falling prices of oil, rather than to the effects of the economic sanctions. The Citibank study estimates that up to 90% of the decline could be explained by the oil prices²³⁶.

A different research conducted by American economists Daniel Ahn and Rodney Ludema examined the effect of sanctions at the level of Russian companies, resulting in the fact that

²³⁴ Russia on Tradingeconomics.com. <https://tradingeconomics.com/russia/gdp-growth-annual>.

²³⁵ IMF Executive Board Concludes 2019 Article IV Consultation with the Russian Federation, 16th July 2019. <https://www.imf.org/en/Publications/CR/Issues/2019/08/01/Russian-Federation-2019-Article-IV-Consultation-Press-Release-Staff-Report-48549>.

²³⁶ I. Korhonen and Others, *Sanctions, Countersanctions and Russia – Effects on Economy, Trade and Finance*, in *BOFIT – Institute for Economies in Transition*, 30th May 2018, pp.9-11.

sanctioned companies lost half of their market value and a quarter of their operating revenue in comparison to Russian companies not targeted by sanctions. They define these consequences to be of “second-order” impact, giving the largest part of the responsibility to the oil price fluctuations, but agreeing that sanctions worked as intended, for they have not caused collateral damage for other Russian companies and other parts of the Russian economy²³⁷.

Regarding foreign trade, it is estimated that Russian and Western sanctions united have reduced the EU exports to Russia by 11%. This loss is not homogenous for all the EU member-States: Germany bore the largest absolute loss of exports, while relative losses were also large in Poland, Hungary and Greece²³⁸.

While Russian imports from the EU have declined substantially in recent years, the main factor behind this is the weakening of the Russian economy. Russian imports trends are mainly defined by corporate demand and the ruble’s exchange rate. As previously stated, the ruble saw a sharp depreciation in the years following Crimea’s annexation. Russian import in those years declined notably from all countries, and not only the ones sending restrictive measures; as the Russian economy started to recover in 2017 and the ruble regained some value, Russian imports from all countries increased, including those that kept enforcing sanctions.

In the same years, EU exports declined to many countries whose economy was heavily reliant on income from oil or other energy resources, illustrating the important role played by the oil price drop²³⁹.

²³⁷ D. Ahn, R. Ludema, *Measuring Smartness: Understanding the Economic Impact of Targeted Sanctions*, in *US Department of State Office of the Chief Economist*, January 2017.

²³⁸ M. Crozet, J. Hinz, *Collateral Damage: The Impact of the Russian Sanctions on Sanctioning Countries’ Exports*, in *CEPII Working Paper*, 22nd June 2016.

²³⁹ I. Korhonen and Others, *Sanctions, Countersanctions and Russia*, cit., pp. 11-13.

Conclusions

During the last century, the international scenario witnessed an evolution in the ways in which States face the resolution of international controversies. Thanks to the apport of the United Nations, one of the elements that characterized the evolution of the international norms is surely represented by the sanctioning tool. In this way, States and International Organizations have tried to influence the events that violated the system of International Law without resorting to the use of force, as it has happened during the last conflict on European soil.

This study had as main focus the Crimean Crisis, under the different point of views of history, economy and international law.

Going through the analyzed facts, it can be said that the international sanctions imposed by the European Union and other allied States on the Russian Federation have failed to reach their primary objective, which was restoring the territorial integrity of Ukraine. Although the Russian economy has suffered, to a certain extent, the consequences of the restrictive measures imposed on it, the Republic of Crimea and the Federal City of Sevastopol remain the 84th and 85th federal subjects of the Russian Federation, notwithstanding the almost total unanimity with which the member states of the United Nations have condemned the annexation.

The reason why despite the economic consequences of sanctions, and the international backlash that followed the annexation, Russia firmly maintains its hold on those territories is that the Crimean Peninsula is a zone of enormous importance for Russia, and it has been so for centuries. This neck of land enclosed by the Black Sea and the Sea of Azov was first conquered at the end of the 18th century, and since then it has grown to play a very important role in the Russian social imaginary. The warm water ports of the region arouse significant interest for Russia, for they are the ideal places to allocate the Black Sea fleet, one of the major fleets of the Russian Navy.

There is a repeating pattern in the history of Russia. Since the very beginning of the State at the end of the first millennium, the people of Russia have always clung around a central commanding figure, the personification of the imperial spirit of the country, which is now incarnated in President Putin. Despite the almost thirty years since the demise of the Soviet Union, through Putin Russia maintains the same foreign policy ambitions of its predecessor,

and it is not willing to give up on them. The leadership of the state continues to believe Russia to be a superpower. With the annexation of Crimea, it launched a strong signal to all the States of the former Soviet Union: Russia still considers those territory as its sphere of influence, and it wishes these countries to accept this perspective.

This situation came at its own cost. In this post-imperial period of the history of Russia, the country did not take Ukraine very seriously, preferring to deal with a range of specific issue in their relations with the state, rather than acknowledging the country behind them. Ukraine was first reduced to the issue of the transfer of the Soviet nuclear weapons to Russia, then to the division of the Black Sea Fleet, and finally to the gas transit to Europe. While Russians kept seeing Ukraine as an extension of Russia itself, these past decades have seen Ukraine gradually detaching from its former ally, moving closer to the other protagonist of this work, the European Union. In this way, Russia lost an ally that many within the country considered as a true “brother” nation.

The European Union rejects Russia’s views. Since the fall of the Soviet Union, it began a policy of enlargement aimed at including the States of the former Eastern Bloc, arriving at welcoming the Baltic States within it, which used to be Republics within the Soviet Union. This clash is bound to continue in the near future. The EU and Ukraine have signed an Association Agreement, and it is possible that in the mid-term it will eventually become a candidate-member.

For what regards Crimea, the Ukrainian Government maintains its will to get the region back, although it seems difficult to see how Ukraine could gather the political, diplomatic, economic and military leverage needed to do so. However, even if it seems implausible in the near term, if the United States and the EU are willing to support Kiev’s position, the only way of doing is to maintain the sanctions on Russia and hold to the policy of non-recognition of Crimea’s annexation. And this not only as a deterrent for possible tentative by the Russian Federation to grab land elsewhere, but also remembering the case of the Baltic States, which managed to get their own independence and join the European Union after decades of direct Soviet control.

Bibliography

Ahn D., Ludema R., *Measuring Smartness: Understanding the Economic Impact of Targeted Sanctions*, in *US Department of State Office of the Chief Economist*, January 2017.

Alison, R., *Russian 'Deniable' Intervention in Ukraine: How and Why Russia Broke the Rules*, in *The Royal Institute of International Affairs*, June 2014.

Allison, R., *Russia and the Post-2014 International Legal Order: Revisionism and Realpolitik*, in *The Royal Institute of International Affairs*, March 2017.

Anselmo, F., *Nord Stream 2: Opportunità e Rischi del Nuovo Gasdotto di Putin*, in *Ispionline*.

Arcari, M., *Violazione del Divieto di Uso della Forza, Aggressione o Attacco Armato in Relazione all'Intervento Militare della Russia in Crimea?*, in *Diritti Umani e Diritto Internazionale*, May-August 2014.

Astrasheuskaya, N., *Russia and Ukraine Sign Deal to Secure European Gas Flows*, in *Financial Times*, 31st December 2019.

Auer, S., *The Ukraine Crisis and the Return of Geopolitics*, in *The Royal Institute of International Affairs*, 2015.

Averre, D., *The Ukraine Conflict: Russia's Challenge to European Security Governance*, *Europe-Asia Studies*, in *Europe-Asia Studies*, Vol. 68, No. 4, June 2016.

Bagnoli, M. B., *La Penisola che Non C'è: Crimea*, in *Ansa Magazine*, 18th May 2017.

Barber, J., *Economic Sanctions as a Policy Instrument*, in *International Affairs*, Vol. 55 n. 3, July 1979.

Bartlett, R., *Storia della Russia, dalle Origini agli Anni di Putin*, Milano, S. Cantone, O. Moscatelli, *Ucraina, Anatomia di un Terremoto*, in *GoWare*, 2014.

Behrens, A., *The Declared End of South Stream and Why Nobody Seems to Care*, in *Ceps Commentary*, 5th December 2014.

Bellezza, S. A., *Ucraina, Insorgere per la Democrazia*, Milano, 2014.

Burke-White, W., *Crimea and the International Legal Order*, in *Survival: Global Politics and Strategy*, 56:4, July 23rd, 2014.

Calamur, K., *Crimea: A Gift to Ukraine Becomes A Political Flash Point*, in *NPR*, 27th February 2014.

Canali, L., *L'Espansione Verso Est della NATO*, in *Limes Online*, 4th December 2019.

Cantone S., Moscatelli O., *Ucraina, Anatomia di un Terremoto*, in *GoWare*, 2014.

Christian, W., and Others, *Self-Determination and Secession in International Law*, Oxford University Press, Oxford, 2014.

Chow, E., *Russian Pipelines: Back to the Future?*, in *Georgetown Journal of International Affairs*, Winter/Spring 2004.

Cristadoro, N., *La Dottrina Gerasimov e la filosofia della guerra non convenzionale nella strategia russa contemporanea*, Libellula Edizioni, Tricase (LE), 2018.

Crozet M., Hinz J., *Collateral Damage: The Impact of the Russian Sanctions on Sanctioning Countries' Exports*, in *CEPII Working Paper*, 22nd June 2016.

Dannrheuter, R., *European Union Foreign and Security Policy*, Routledge, New York, 2004.

De Guttry, A., *Crisi Ucraina: Quel Referendum è Illegittimo*, in *ISPI Online*, 7th April 2014.

De Munter, A., *Allargamento dell'Unione*, Thematic Notes on European Union, European Parliament, December 2019.

Dickel F., Hassanzadeh J. and Others, *Reducing European Dependence on Russian Gas: Distinguishing Natural Gas Security from Geopolitics*, in *The Oxford Institute for Energy Studies*, 2014.

Doxey, M. P., *Economic Sanctions and International Enforcement*, MacMillan, London, 1980.

Dreger, C., and Others, *Between the Hammer and the Anvil: The Impact of Economic Sanctions and Oil Prices on Russia's Ruble*, in *Journal of Comparative Economics*, 13th January 2016.

Editorial, *Crimea, Gorbaciov Difende l'Annessione alla Russia: "Corregge Errore Storico"*, in *Blitz Quotidiano*, 19th March 2018.

Elliott K. A., Hufbauer G. C., Oegg B., Schott J. J., *Economic Sanctions Reconsidered*, Washington, D. C. 2007.

Emre Ok, Y., *The Difference Between the US and EU Sanctions Policy and the Updated EU Blocking Regulation*, in *IFAIR*, 1st January 2019.

Forsberg, v., *From Ostpolitik to 'Frostpolitik'? Merkel, Putin and German Foreign Policy Towards Russia*, The Royal Institute of International Affairs, January 2016.

Fruscione, G., *Allargamento UE: la Francia spegne le speranze dei Balcani*, in *Ispionline*, 19th October 2019.

Galtung, J., *On the Effects of International Economic Sanctions: With Examples from the Case of Rhodesia*, in *World Politics*, Vol. 19 n. 3, April 1967.

Gerasimov, V., *The Value of the Science in Foresight: New Challenges Demand Rethinking the Forms and Methods of Carrying out Combat Operations*, in *Military-Industrial Kurier*, 27th February 2013.

German, T., *A Legacy of Conflict: Kosovo, Russia, and the West*, in *Comparative Strategy*, 30th September 2019.

Gioia, A., *Diritto Internazionale*, Dott. A. Giuffrè Editore, Milano, 2015.

Giuliani, J., *Russia, Ukraine and International Law*, in *European Issues*, No 344, 17th February 2015.

Giumelli, F., *How EU Sanctions Work: a New Narrative*, in *Chaillot Papers*, No. 129, March 2013.

Giumelli, F., *Sanctioning Russia: The Right Questions*, in *European Union Institute for Security Studies*, 2015.

Gordon, J., *Economic Sanctions as “Negative Development”: the Case of Cuba*, in *Journal of International Development*, 8th February 2015.

Goujon, A., *La Révolution Orange en Ukraine: Enquête sur une Mobilisation Postsoviétique*, in *Critique Internationale*, no 27, February 2005.

Gutorov V., Shirinyants A., Shutov A., *Two Civilizations: The Relations of Russia and Western Europe at the Beginning of the 21st Century*, Immanuel Kant Baltic Federal University, 2018.

Higgins A., Herszenhorn D., *Defying Russia, Ukraine Signs E.U. Trade Pact*, in *Ney York Times*, 27th June 2014.

Hill, W., *No Place for Russia: European Security Institutions Since 1989*, New York Columbia University Press, New York, 2018.

Hörbelt, C., *A Comparative Study: Where and Why does the EU Impose Sanctions*, in *UNISCI Journal*, n 43, January 2017.

Haukkala, H., *The Russian Challenge to EU Normative Power: The Case of European Neighbourhood Policy*, in *The International Spectator*, 21st May 2008.

Indeo, F., *La Russia dopo la Crimea: la Fine di South Stream e la Proiezione verso l’Asia*, in *Ispionline*, 2014.

Ivanov, I., *Putin’s Brave New World*, in *EastWest Magazine*, May 2018.

Jing C., Kaempfer W., Lowenberg A., *Instrument Choice and the Effectiveness of International Sanctions: a Simultaneous Equations Approach*, in *Journal of Peace Research*, vol. 40, No. 5, 2003.

Kalb, M., *Imperial Gamble: Putin, Ukraine, and the New Cold War*, The Brookings Institution, New York, 2015.

Karagiannis, E., *The Russian Interventions in South Ossetia and Crimea Compared: Military Performance, Legitimacy and Goals*, in *Contemporary Security Policy*, 35:3, 2014.

Kimball, S., *Bound by Treaty: Russia, Ukraine and Crimea*, in *DW*, 11th March 2014.

Kofman M., Rojansky M., *A Closer Look at Russia's "Hybrid War"*, in *Wilson Center, Kennan Cable*, 2015.

Kofman M., Migakeva K., Nichiporuk B., Radin A., Tkacheva O., Oberoltzer J., *Lessons from Russia's Operations in Crimea and Eastern Ukraine*, RAND Corporation, Santa Monica, 2017.

Korhonen I. and Others, *Sanctions, Countersanctions and Russia – Effects on Economy, Trade and Finance*, in *BOFIT – Institute for Economies in Transition*, 30th May 2018.

Kong-Chyong C., Hobbs B., *Strategic Eurasian Natural Gas Market Model for Energy Security and Policy Analysis: Formulation and Application to South Stream*, in *Energy Economics*, 24th April 2014.

Korosteleva, E., *Putting the EU Global Security Strategy to Test: "Cooperative Orders" and Othering in EU – Russia Relations*, in *International Politics*, Volume 56, Issue 3, June 2019.

Kratochvil P., Tichy L., *EU and Russian Discourse on Energy Relations*, in *Energy Policy*, 30th January 2013.

Kuzio, T., *Nationalism, Identity and Civil Society in Ukraine: Understanding the Orange Revolution*, in *Communist and Post-Communist Studies*, no 43, 2010.

Le Gloannec, A. M., *Continent by Default: The European Union and the Demise of Regional Order*, Cornell University Press, London, 2017.

Lester, M., *1st EU Judgement on Ukraine Sanctions*, in *EUSanctions*, 26th October 2015.

Lieven, A., *Russian Opposition to NATO Expansion*, in *The World Today*, Vol. 51, No. 10, 1995.

Liik, K., *Russia-EU: Colliding Values*, in *EastWest Magazine*, May 2018.

Lindsay, J. M., *Trade Sanctions as Policy Instruments: a Re-Examination*, in *International Studies Quarterly*, Vol. 30, No. 2, June 1986.

Luigi, D., *Diritto dell'Unione Europea*, Giuffrè Editore, Milano, 2014.

Mankoff, J., *Russian Foreign Policy: the Return of Great Power Politics*, Rowman & Littlefield Publishers, New York, 2009.

Marson, J., *Putin to The West: Hands Off Ukraine*, in *Time*, 25th May 2009.

- Marten, K., *Putin's Choices: Explaining Russian Foreign Policy and Intervention in Ukraine*, in *The Washington Quarterly*, Volume 38, no. 2, 2015.
- McDougal, M., *A New Imperialism? Evaluating Russia's Acquisition of Crimea in the Context of National and International Law*, in *Brigham Young University Law Review*, June 2015.
- Merola, M. M., *Il Trattato di Maastricht*, in *Starting Finance*, 30th September 2018.
- Metreveli, T., *Near Abroad Putin, the West, and the Contest over Ukraine and the Caucasus*, in *Southeast European and Black Sea Studies*, July 2018.
- T. Mitrova, *The Geopolitics of Russian Natural Gas*, in *Centre for Energy Studies*, 2014.
- Mitrova, T. , *Russia's Gas Market and Export Strategy in a Low-Price Environment*, in *The Oxford Institute for Energy Studies*, 1st April 2020.
- Monfregola, L., *A Hopeless Triangle*, in *EastWest Magazine*, May 2018.
- Nielsen, E. F., *Moscow Overplays its Hand, Triggering Cold War II*, in *EastWest Magazine*, May 2018.
- Novella, F., *Abkazia: la conflittualità interna e l'ombra lunga della Russia*, in *Geopolitica.info*, 15th June 2010.
- Obolenskij, V. P., *Эффекты продовольственного эмбарго (Effects of the Food Embargo)*, in *Внешнеторговая деятельность*, February 2019.
- O'Brennan, J., *The Eastern Enlargement of the European Union*, Routledge, New York, 2006.
- Orlova, N. V., *Financial Sanctions*, in *Problems of Economic Transition*, Volume 58, 2016.
- Paolini, M., *La Nato dell'Est*, in *Limes Online*, 20th December 2004.
- Pedrazzi, M., *Falsi Miti/3: la Liceità delle Operazioni Russe in Ucraina*, in *Ispionline.it*, 10th October 2014.
- Perteghella A., Fruscione G., *70 anni di NATO: sfide e prospettive dell'Alleanza Atlantica*, in *Ispionline*, 4th April 2019.
- Peter, L., *Guide to the EU deals with Georgia, Moldova and Ukraine*, in *BBC News*, 27 June 2014.
- Polito C., Aversano Stabile A., Cesca E., *Quale Futuro per la Cooperazione Nato – Ue?*, in *Istituto Affari Internazionali*, 18th December 2017.
- Portela, C., *The EU's Use of 'Targeted' Sanctions; Evaluating Effectiveness*, in *CEPS Working Document*, N. 391, March 2014.

Portela C., Biersteker T., *EU Sanctions in Context: Three Types*, in *Report of the European Union Institute for Security Studies*, July 2015.

Putin, V., *Address by President of the Russian Federation: Vladimir Putin addressed State Duma deputies, Federation Council members, heads of Russian regions and civil society representatives in the Kremlin*, Moscow, Kremlin, March 18th, 2014.

Reti, G., *The European Consequences of the Italian Aggression against Ethiopia*, in *Rivista di Studi Politici Internazionali*, Vol. 74, No. 3, July-September 2007.

Riasanovsky, N. V., *Storia della Russia dalle Origini ai Giorni Nostri*, Bompiani/ Rizzoli Libri S.p.A., Milano, 2001.

Rogers, E. S., *Using Economic Sanctions to Prevent Deadly Conflict*, in *Center for Science and International Affairs*, 1996.

Ruys, T., *'Armed Attack' and Article 51 of the UN Charter: Evolutions in Customary Law and Practice*, Cambridge, 2010.

Ryzhkov, V., *Russia and the European Union: Crisis and Prospects*, Moscow Higher School of Economics, May 2019.

Sawka, R., *Frontline Ukraine: Crisis in the Borderlands*, I. B. Tauris, London, 2015.

Sawka, R., *Beyond the Involution of Europe? Monism and Relations with Russia*, Vestnik RUDN International Relations, 2018.

Salushev, S., *Annexation of Crimea: Causes, Analysis and Global Implications*, in *Global Societies Journal*, 2, 2014.

Shaffer, B., *Natural Gas Supply Stability and Foreign Policy*, in *Energy Policy*, 24th January 2013.

Serra, M., *UE in Progress: un Nuovo Grande Allargamento a Est nel Mirino?*, in *Ispionline*, 24th October 2013.

Sergounin, A. A., *Russian domestic debate on NATO enlargement: From Phobia to damage limitation*, in *European Security*, 6:4, 1997.

Scognamiglio, G., *Russia and Europe in the Time of Trump*, in *EastWest Magazine*, January 2017.

Sharples J., Judge A., *Russian Gas Supplies to Europe: the Likelihood, and Potential Impact, of an Interruption in Gas Transit via Ukraine*, in *The European Geopolitical Forum*, 20th March 2014.

Siegelbaum, L., *1954: The Gift of Crimea*, in *SovietHistory.com*, 10th March 2014.

Stefanini, S., *UK and Russia Face Off*, *EastWest Magazine*, July 2018.

Tarifa, F., *The Adriatic Europe: Albania, Croatia, and Macedonia*, in *Mediterranean Quarterly*, Volume 16, Number 4, Autumn 2005.

- Taylor, B., *Sanctions as Grand Strategy*, Routledge, Abingdon 2010.
- Torbakov, I., *Russia-Europe Relations in Historical Perspective: Investigating the Role of Ukraine*, in "Insight Turkey, Volume 19, 2017.
- Trenin, D., *Россия и Европа. Что возможно и невозможно в их отношениях*, in *Carnegie Russia*, October 2019.
- Tsygankov, A. P., *Russia's Foreign Policy*, Rowman & Littlefield Publishers, New York, 2006.
- Tsygankov, A. P., *Vladimir Putin's Last Stand: the Sources of Russia's Ukraine Policy*, in *Post-Soviet Affairs*, February 2015.
- Umbach, F., *Global Energy Security and the Implications for the EU*, in *Centre for European Security Strategies*, 6th March 2009.
- Ustiuzhanin A. A. and Others, *The Ruble Exchange Rate and the Price of Oil: Assessment of the Degree of Dependence, its Causes and Ways of Overcoming*, in *Entrepreneurship and Sustainability Issues*, Vol. 7, No 1, September 2019.
- Valenti, M., *Diritto della Comunità internazionale e dell'Unione europea. Casi e Materiali*, Torino, 2015.
- Van Den Driest, S., *Crimea's Separation from Ukraine: An Analysis of the Right to Self-Determination and Remedial Secession in International Law*, in *Netherlands international Law Review*, Vol.62, 30th November 2015.
- Van Elsuwege, P., *The Four Common Spaces: New Impetus to the EU-Russia Strategic Partnership?*, in *Cambridge Books Online*, 2009
- Veebel, V., R. Markus, *Lessons From the EU-Russia Sanctions 2014-2015*, in *Baltic Journal of Law and Politics*, 2015.
- Vitale A., Giuseppe R., *La Russia Postimperiale: la Tentazione di Potenza*, Soveria Mannelli, 2009.
- Wade, J., *The Enlargement of the European Union and NATO: Ordering from the Menu in Central Europe*, Cambridge University Press, New York, 2004.
- Weise, Z., *Council of Europe Restores Russia's Voting Rights*, in *Politico*, 17th May 2019.
- Wilson, A., *Ukraine's Orange Revolution*, Filey, Yale University Press, 2005.
- Wolff, A. T., *The Future of NATO Enlargement after the Ukraine Crisis*, in *The Royal Institute of International Affairs*, 2015.
- Yakemtchouk, R., *Les Conflits de Territoire et de Frontière Dans les États de l'ex-URSS*, in *Annuaire Français de Droit International* 1993

Documents

European Union

Treaty on the Functioning of the European Union, 13th December 2007.

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT&from=EN>.

Treaty on the European Union, 2009.

https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_1&format=PDF.

Regulation (EC) No 713/2009 of the European Commission, 13th July 2009.

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009R0713&from=EN>.

Submissions of the EU Council of “Foreign Affairs” of March 3rd, 2014.

<http://www.consilium.europa.eu/it/meetings/fac/2014/03/03/>.

Decision 2014/119/CFSP of the Council of the European Union, 5th March 2014.

<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2014:066:0026:0030:EN:PDF>.

Regulation (EU) No 208/2014 of the Council of 5th March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine.

<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2014:066:0001:0010:EN:PDF>.

Statement of the Heads of State or Government on Ukraine. Brussels, 6th March 2014.

<https://www.consilium.europa.eu/media/29285/141372.pdf>.

Council Decision 2014/145/CFSP of 17th March 2014.

<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2014:078:0016:0021:EN:PDF>.

Council Regulation (EU) No 811/2014 of 25th July 2014.

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0811&from=GA>.

Council Decision 2014/512/CFSP of 31st July 2014.

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014D0512&from=IT>.

Regulation (EU) No 833/2014 of 31st July 2014.

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0833&from=GA>.

Council Decision 2014/933/CFSP of 18th December 2014.

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014D0933&from=IT>.

Council Regulation (EU) 2015/138 of 29th January 2015.

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015R0138>.

Judgement of the General Court, Case T.290/14, 26th October 2015. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62014TJ0290&from=GA>.

European Parliament Resolution (2016/2059 INI) of 25th October 2016.

https://www.europarl.europa.eu/doceo/document/TA-8-2016-0406_EN.pdf.

European Commission, *Information Note to EU Business on Operating and/or Investing in Crimea*, 25th January 2018.

https://eeas.europa.eu/sites/eeas/files/information_note_to_eu_business_on_operating_and_or_investing_in_crimea-sevastopol.pdf.

European Council Conclusions 798/18, 14th December 2018.

<https://www.consilium.europa.eu/en/press/press-releases/2018/12/14/european-council-conclusions-13-14-december-2018/pdf>.

European Commission, *Third Energy Package*, 21st May 2019.

https://ec.europa.eu/energy/topics/markets-and-consumers/market-legislation/third-energy-package_en#unbundling.

EU Imports of Energy Products – Recent Developments, Eurostat, November 2019.

https://ec.europa.eu/eurostat/statistics-explained/index.php/EU_imports_of_energy_products_-_recent_developments.

The EU Non-Recognition Policy for Crimea and Sevastopol: Fact Sheet, 12th March 2020.

https://eeas.europa.eu/headquarters/headquarters-Homepage/37464/eu-non-recognition-policy-crimea-and-sevastopol-fact-sheet_en.

United Nations

Charter of the United Nations, 26th June 1945.

<https://treaties.un.org/doc/publication/ctc/uncharter.pdf>.

UN Doc. A/RES/2625 (XXV) 24th October 1970.

https://treaties.un.org/doc/source/docs/A_RES_2625-Eng.pdf.

United Nations General Assembly, Resolution N. 3314, 14th December 1974.

<http://hrlibrary.umn.edu/instree/GAres3314.html>.

International Court of Justice, *Case Concerning Military and Paramilitary Activities in and Against Nicaragua*, (*Nicaragua v. United States of America*), 27th June 1986.

<http://www.icj-cij.org/files/case-related/70/070-19860627-JUD-01-00-EN.pdf>.

International Court of Justice, *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, *Written Statement by the Russian Federation*, April 16th 2009.

<http://www.icj-cij.org/files/case-related/141/15628.pdf>.

International Court of Justice, *Accordance With the International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, *Advisory opinion*, July 22nd 2010.

<https://www.icj-cij.org/files/case-related/141/141-20100722-ADV-01-00-EN.pdf>.

United Nations Security Council, 7125th meeting, UN Doc. S/PV.7125, New York, March 3rd 2014.

http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_pv_7125.pdf.

UN Doc. S/2014/186, 13th March 2014.

<https://undocs.org/S/2014/186>.

United Nation Security Council, S/2014/189, draft resolution, 15th March 2014.

http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2014/189.

UN Doc. A/68/803-S/2014/202, 20th March 2014.

<https://undocs.org/pdf?symbol=en/S/2014/202>.

United Nations, General Assembly, UN Doc. A/68/PV.80, 27th March 2014.

<http://undocs.org/A/68/PV.80>.

United Nations General Assembly, resolution n. 68/262. 27th March 2014.

https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/a_res_68_262.pdf.

Office of the United Nations High Commissioner for Human Rights, *Report on the human rights situation in Ukraine*, 15th April 2014.

http://www.ohchr.org/_layouts/15/WopiFrame.aspx?sourcedoc=/Documents/Countries/UA/Ukraine_Report_15April2014.doc&action=default&DefaultItemOpen=1.

NATO

The Wales Declaration on the Transatlantic Bond, Wales, 4th-5th September 2014.

https://www.nato.int/cps/en/natohq/official_texts_112985.htm.

Wales Summit Declaration, 5th September 2014.

https://www.nato.int/cps/en/natohq/official_texts_112964.htm?selectedLocale=en.

Relations with Russia, 5th August 2019.

https://www.nato.int/cps/en/natolive/topics_50090.htm.

NATO-Russia Council, 23rd March 2020.

https://www.nato.int/cps/en/natolive/topics_50091.htm.

European Commission for Democracy through Law

Venice Commission, CDL-INF (2000) 2, Strasbourg, 12th January 2000.

[http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-INF\(2000\)002-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-INF(2000)002-e).

Venice Commission, Opinion no. 762 / 2014, CDL-AD (2014)002, Venice, 21st March

2014. [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2014\)002-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)002-e).

Venice Commission, CDL-AD (2014)004, Venice, 21st March 2014.

[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2014\)004-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)004-e).

Russian Federation

Decree No 560 of the President of the Russian Federation, 6th August 2014.

<https://www.government.nl/documents/letters/2014/08/13/decreed-of-the-president-of-the-russian-federation-on-the-application-of-certain-special-economic-measures-to-ensure-the-security>.

Regulation No 656 of the Government of the Russian Federation, 14th July 2014.

http://www.ccir.it/ccir/wp-content/uploads/2014/09/All.-3-Decreto-656-Gov-Rus_en.pdf.

Decree No 778 of the Russian Federation, 7th August 2014.

<http://static.government.ru/media/files/41d4f8e16a0f70d2537c.pdf>.

Decree No 791 of the Russian Federation, 11th August 2014.

<http://pravo.gov.ru/proxy/ips/?docbody=&nd=102357331>.

Decree No 830 of the Russian Federation, 20th August 2014.

<http://ivo.garant.ru/#/document/70721348/paragraph/1:0>.

Resolution No 625 of the Russian Federation, 25th June 2015.

<http://www.consultant.ru/cons/cgi/online.cgi?req=doc&base=LAW&n=217298&fld=134&dst=1000000001,0&rnd=0.22156407543914636#007589657988177845>.

Decree No 806 of the Russian Federation, 25th June 2019.

<http://base.garant.ru/72280096/>.

United States

Executive Order 13660 of the President of the United States, 6th March 2014.

https://www.treasury.gov/resource-center/sanctions/Programs/Documents/ukraine_eo.pdf.

Executive Order “Blocking Property of Additional Persons Contributing to the Situation in Ukraine”, 20th March 2014.

<https://obamawhitehouse.archives.gov/the-press-office/2014/03/17/executive-order-blocking-property-additional-persons-contributing-situat>.

Congressional Research Service, *Russia’s Nord Stream 2 Pipeline: a Push for the Finish Line*, 28th May 2020.

<https://crsreports.congress.gov/product/pdf/IF/IF11138>.

Miscellaneous

Italian Constitution, 22nd December 1947.

https://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf.

Treaty of London, 5th May 1949.

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680935bd0>.

Protocol No 41 of the Presidium of the Supreme Soviet, 26th April 1954.

<https://constitution.garant.ru/history/ussr-rsfsr/1936/zakony/3946680/>.

Helsinki Accords, 1st August 1975.

<https://web.archive.org/web/20160525015726/http://www1.umn.edu/humanrts/osce/basics/finact75.htm>.

Declaration on Ukraine's Sovereignty, 16th July 1990.

https://web.archive.org/web/20100111101705/http://gska2.rada.gov.ua:7777/site/postanov_a_eng/Declaration_of_State_Sovereignty_of_Ukraine_rev1.htm.

Partition Treaty on the Status and Conditions of the Black Sea Fleet, 28th May 1997.

https://en.wikisource.org/wiki/Partition_Treaty_on_the_Status_and_Conditions_of_the_Black_Sea_Fleet.

Supreme Court of Canada, *Re Secession of Québec*, 2 S.C.R. 217, 1998.

<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1643/index.do>.

Joint Geneva Statement on Ukraine from April 17: The full text, in The Washington Post,

17th April 2014. [https://www.washingtonpost.com/world/joint-geneva-statement-on-](https://www.washingtonpost.com/world/joint-geneva-statement-on-ukraine-from-april-17-the-full-text/2014/04/17/89bd0ac2-c654-11e3-9f37-7ce307c56815_story.html)

[ukraine-from-april-17-the-full-text/2014/04/17/89bd0ac2-c654-11e3-9f37-](https://www.washingtonpost.com/world/joint-geneva-statement-on-ukraine-from-april-17-the-full-text/2014/04/17/89bd0ac2-c654-11e3-9f37-7ce307c56815_story.html)

[7ce307c56815_story.html](https://www.washingtonpost.com/world/joint-geneva-statement-on-ukraine-from-april-17-the-full-text/2014/04/17/89bd0ac2-c654-11e3-9f37-7ce307c56815_story.html).

Geneva Statement on Ukraine, 17th April 2014.

<https://nato.mfa.gov.ua/en/news/1067-zhenevskyka-zajava-vid-17-kvitnya-2014-rokuukrros>.

Constitutional Court of Ukraine, *Judgement of the Constitutional Court of Ukraine on all-Crimean Referendum*, 17th April 2014.

[http://www.ccu.gov.ua/en/novina/constitutional-court-ukraine-adopted-decision-](http://www.ccu.gov.ua/en/novina/constitutional-court-ukraine-adopted-decision-termination-effect-memorandum-development-co)

[termination-effect-memorandum-development-co](http://www.ccu.gov.ua/en/novina/constitutional-court-ukraine-adopted-decision-termination-effect-memorandum-development-co).

Resolution 2034 of the Council of Europe, Final version of the Parliamentary Assembly, 28th January 2015.

<http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=21538&lang=en#>.

Minsk II Agreement, 12th February 2015.

<https://www.osce.org/files/f/documents/5/b/140221.pdf>.

Russia in the European Energy Charter, 11th February 2019.

[https://www.energycharter.org/who-we-are/members-observers/countries/russian-](https://www.energycharter.org/who-we-are/members-observers/countries/russian-federation/)

[federation/](https://www.energycharter.org/who-we-are/members-observers/countries/russian-federation/).

IMF Executive Board Concludes 2019 Article IV Consultation with the Russian Federation, 16th July 2019.

[https://www.imf.org/en/Publications/CR/Issues/2019/08/01/Russian-Federation-2019-](https://www.imf.org/en/Publications/CR/Issues/2019/08/01/Russian-Federation-2019-Article-IV-Consultation-Press-Release-Staff-Report-48549)

[Article-IV-Consultation-Press-Release-Staff-Report-48549](https://www.imf.org/en/Publications/CR/Issues/2019/08/01/Russian-Federation-2019-Article-IV-Consultation-Press-Release-Staff-Report-48549).

Countries Sanctioning Russia, 27th September 2019.

<https://www.riskadvisory.com/sanctions/russia-sanctions-list/>.

Summary

The first chapter of this paper will analyze the facts of the Crimean Crisis from a historical perspective. The second post-war world was characterized by the rivalry between the United States and the Soviet Union in the political, economic, and military fields. The Western World found its counterpart to the Bloc composed by the Warsaw Pact, under the sphere of influence of the Soviet Union.

This period ended with the dissolution of the Soviet Union in 1991, which came after a period of political innovations wanted by the last Secretary General of the CPSU Mikhail Gorbachev, implemented after a time of economic and social stagnation. After a failed coup d'état, the Union ceased to exist, and fifteen newborn States took its place, among which were Russia and Ukraine.

The end of bipolarism brought multiple consequences in regards to alliances. The first organization to take the initiative was NATO, that saw in the dissolution of the former "Soviet Empire" a chance to expand eastward, accepting many former-Eastern Bloc countries in the organization.

The European Union followed NATO's path, and began a number of processes to include new member-States during the 1990s and 2000s. Ukraine began its first relations with NATO in 1994, and had presented an application membership in 2008, which was halted by then-President Viktor Yanukovich in 2010.

Before being elected President in 2010, Yanukovich had run for President in 2004. While being initially considered the winner, the election was met with allegations of electoral fraud, causing widespread citizen protests known as the Orange Revolution. The Supreme Court of Ukraine invalidate the results, and in the next elections Viktor Yushenko took the lead of the State. The result of the elections was not followed by a time of stability. The new majority faced a number of problems, that weakened it more when Yanukovich was named Prime Minister in August 2006. The following elections of 2010 saw Yanukovich's legal victory.

Under his government Ukraine suspended its Association Agreement with the European Union, and the general discontent about this and the economic situation flowed into the Euromaidan movement. It proposed the formation of special committee that would have the

role of directly communicating with European Union, claiming that the politicians were not able to implement an effective development policy, asking President Yanukovich to resign. The first manifestation happened at the end of November 2013 and saw the adoption of the flags of Ukraine and the European Union as symbols of the movement, a clear reference to the purposes of this manifestation.

The manifestations soon saw an escalation of violence, and the Government tried to repress them with violence, which caused indignation at the international level. The manifestation and the clashes of the preceding months culminated on 21st February, with the impeachment of President Yanukovich, who fled to Russia.

In the following elections Petro Poroshenko was elected president on May 25th 2014, defeating candidate Julia Timoshenko. The new Ukrainian leadership signed the Association Process with the European Union on 27th June 2014, representing the first and decisive step towards Ukraine's entrance to the Union.

The events of the Euromaidan were only the incipit of the destabilization in the zone, that was going to bring ulterior upsets and a growing escalation of tensions.

The Peninsula of Crimea, a region of Ukraine where ethnic Russians were the majority of the population, was deeply shocked by the ousting of President Yanukovich, refusing to recognize the legitimacy of the new leadership of the State, claiming the unconstitutionality of the decisions. The people and the authorities of Crimea expressed their will of holding a referendum regarding the self-determination of the peninsula, which was held on 16th March 2014. Before the referendum took place, on 11th March the Parliament of Crimea declared its own independence, after having asked to become part of the Russian Federation. The Referendum resulted in Crimea's annexation to the Russian Federation, but was deemed as unlawful by most of the international community.

The alleged presence of Russian military units in the peninsula in those days was interpreted as a coercive act from Russia itself, that would have influenced the results with the use of strength. Still, Crimea became a disputed territory, *de facto* administered by Russia, that was accused of a military occupation of the zone, since *de iure* it is still part of Ukraine.

At the same time, the industrial region of Donbass witnessed a new crisis, broken out after protests in the provinces of Donetsk and Luhansk. Rebel forces unilaterally declared the

independence of the Donetsk People's Republic and the Luhansk People's Republic. The military conflict in the zone is still ongoing.

In the second chapter will be analyzed the annexation of Crimea and the 2014 Referendum from the viewpoint of international law. The annexation of Crimea is probably the most significant historical event that has occurred in Europe in the recent past, creating an unprecedented controversy in international law.

One of the corollaries of the norm that prohibits the use of force in international relations results in the invalidity of the territorial annexations deriving from its usage. However, it cannot be considered acceptable that the will of the population of an interested territory could be enough to legitimize the incorporation of a territory that belongs to another State that has not ceased to exist or that has not renounced to the territorial sovereignty on the territory itself. The self-determination principle does not legitimize the secession of a territory inhabited by an ethnic or linguistic minority that intends to build a new independent State. Regardless of the historical mistakes made, the right to self-determination of peoples cannot be considered enough to legitimize the shift of borders of a preexisting country, especially in the presence of a violation of a mandatory norm such as the prohibition of the use of force in international relations, as stated by the UN Charter.

The International Community has taken a decisive and homogeneous stand regarding this matter, agreeing that the act was a violation of the legal sovereignty of Ukraine, and the Russian actions have been stigmatized as an act of aggression.

In order to justify the military intervention in Crimea, Russia often invoked the self-determination right to the United Nations' organs. The Russian claim was based on the "remedial secession" thesis, founded on the principle of external self-determination. This thesis has found application in the case that a people that could belong to more than one state would persistently be deprived of its right to internal self-determination, and would be found to be victim of a brutal persecution, implying severe violations of human rights against them by the authorities of the State to which it intends to secede. However, as stated by international observers, none of these conditions were present in Crimea at the time of the Referendum.

Russia also tried to make a comparison with the case of Kosovo, in order to legitimize the events of 2014. According to Russian President Vladimir Putin, the Kosovo issue not only constitutes the only valid precedent to value the situation of Crimea under International Law,

but it also appears as the only historical precedent available in itself. However, the International Court of Justice agreed on the fact that since the unilateral declaration of independence of the Autonomous Republic of Crimea was a direct consequence of the use of force by Russia, qualified as an aggression from most States of the International Community, the declaration results invalid and should be considered lacking of any legal effect.

The third chapter will analyze the tool of sanctions, or restrictive measures, in its entirety. It is difficult to measure the impact and effectiveness of sanctions, and there is no single definition universally recognized as the correct one, although some common elements have been found. Firstly, the type of policy instrument has to be economic. Secondly, the sender of the sanctions is another international actor, or even more than one. Following this approach, a sanction will be defined as an economic instrument which is employed by one or more international actors against another, ostensibly with a view to influencing that entity's foreign and security policy behaviour.

Three different school of thought have emerged, which try to explain the status of sanctions as a tool of foreign policy. The first one is adopted by scholars who think that sanctions do not produce useful effects.; there are then those who attribute to sanctions a merely symbolic effectiveness; lastly, there are researchers who think that sanctions can work, if tied to a series of circumstances and in a certain context. Sanctions could have different objectives, and could succeed in some while failing in others.

As all foreign policy tools, sanctions have a cost. However, these costs are not only sustained by the sanctioned State, but also by the State that implements these measures. These expenses do not belong only to the State promoting the sanctions, but also to its allies.

The democratic factor can influence the choices of the leaders. In a democratic Country, where public opinion is important, it is necessary to obtain its consensus, not so much for imposing sanctions, but for being able to keep them until the target State concedes.

In the last years, new methods of imposing sanctions have emerged. Specific kinds of measures, known as *smart sanctions*, have been identified, and have replaced the more common embargos, in order to avoid affecting civilian populations. These sanctions could be aimed at specific officials or government functions without damaging the overall economy and imposing exceptional hardship on the general public. The idea is to target

governments and leaders responsible of the behaviours that caused the sanctions in the fastest and most precise way

The European Union can apply three different kinds of restrictive measures, in close collaboration with the sanctioning regimes of the United Nations. A first typology are those sanctions aimed at strengthening the restrictive measures adopted by the Security Council, that UN member States are bound to enforce. A second category is represented by sanctions autonomously applied by the EU, that go beyond those chosen by the Security Council and therefore consist in a kind of overcoming of the UN Organs. The third type of sanctions consists in restrictive measures taken in the absence of other measures ruled by the UN; they often inhere about controversies on which the Security Council does not manage to take a decision because of a lack of agreement, as a result of the opposition of at least one of its permanent members.

In 2004 the Council has established the cases in which the Union should adopt economic sanctions: to fight terrorism, the proliferation of weapons of mass destruction, defense of human rights, democracy, rule of law and good governance.

The restrictive measures adopted by the European Union following the Ukrainian crisis are part of the decisions of Common Foreign and Security Policy (CFSP). On the basis of the CFSP Decisions taken with reference to the violations of International Law from the Russian Federation, a great number of Regulations and Implementing Regulations have been carried out, to fully enact the legislative nature of the taken measures. The sanctions, implemented as soon as March 2014, are part of the *targeted sanctions*, those interventions specifically targeted to particular individuals or entities, in order to limit any collateral damage on the civilian population of the targeted State, including assets freeze and travel restrictions. Further measures were taken restricting economic relations with Crimea and Sevastopol, banning foreign investments in those territories, and import from them.

The United States also applied sanctions following the annexation of Crimea. Also in this case, the sanctions included freezing of assets, restrictions on the issuing of visas, and restrictions on the import of specific sectors. The sanctions are aimed to the people closest to President Putin, advisors and collaborators, and the officers involved in the military operations in Ukrainian soil.

NATO has also taken a stand following the Russian intervention in Crimea, condemning the intervention and strengthening the defensive measures of the Baltic States and the Eastern Europe States members of the Alliance.

The fourth and final chapter will debate on the consequences of these sanctions, above all from the point of view of the energy industry. The Russian Federation has the largest proven reserves of natural gas in the world, while also being the largest exporter. The natural gas market in the country is controlled by *Gazprom*, a company founded in 1989. The firm holds nearly absolute control on the Russian energy market, exporting 75% of the gas produced, and detaining a monopoly on its transport, distribution and export via pipeline.

Russian gas supply to Europe follows four different routes, set up on the diplomatic relations with the different Countries in which the pipelines transit: through Ukraine; through the Baltic States; through Belarus; and on the seabed of the Baltic Sea.

The conflicts in Ukraine have become a serious threat for Russia, which is launching a strategy to diversify its flux of gas, in order to avoid possible dangerous situations, and as a tool of political pressure. In the last years, relations between Russia and Ukraine have been characterized by a prolonged climate of conflict and distrust. After the demise of the Soviet Union, the greater part of the Russian pipelines meant for the European markets passed through Ukrainian soil. The total dependency of Gazprom from the passage of the pipelines through Ukraine to export and the necessity of the Ukrainian economy to be sustained through a discount on the prices on the gas supply represented a potentially risky situation for the Russian firm.

The Ukrainian role of “transit State” is an unexpected consequence of the process of dissolution of the Soviet Union. In the Soviet era, pipelines were built without regard to internal borders. Moscow controlled the entire Soviet Union, and even where pipeline planners knew of possible long-term political risks, internal borders were not factors to be considered in the planning process.

Russia is aiming at building new pipelines that avoid transit in potentially dangerous countries. The Nord Stream is an example of this, a pipeline connecting Germany directly from Russia, crossing the seabed of the Baltic Sea. Another pipeline, the Nord Stream 2, is currently under construction, but faces difficulties in the forms of sanctions by the US and the negative opinions of some member-States and organs of the EU.

Another project, the South Stream, was cancelled due to the prolonged conflict with European legislation.

Regarding the relations with Crimea, the European Union does not recognize and continue to strongly condemn the annexation of Crimea, a great violation of International Law, considering it a challenge to the international security order.

After the EU sanctions hit Russia in 2014, the Russian Government implemented a number of countersanctions, mainly aimed at the import of food from the EU, followed by bans on import of certain engineering and light industry goods.

Before the implementation of sanctions, Russia was heavily dependent on food imports from the United States and the EU. In the pre-sanctions era, the EU counted for about 40% of the Russian agricultural market. Given this dependence, the implementation of countersanctions on certain goods complies with Russia's long-term strategy of diversifying its sources of import by decreasing the amount of EU- products, preferring imports from other Countries while at the same time strengthening its own production.

Substantially, choosing the food sector as the main target of countersanctions was convenient for Russia because Moscow had already undertaken some protectionist measures to improve production and consumption of domestic food products, trying to make Russia independent on Western Influence. Focusing on oil and gas would not have been a rational option, for, as stated previously, the Russian economy is too dependent on those sources of income.

While it is a matter of fact that Russia's economy has shrank in the years following the annexation of Crimea, and the sanctions that followed, the actual impact of the restrictive measures is still debated. While Russian imports from the EU have declined substantially in recent years, the main factor behind this is the weakening of the Russian economy. Russian imports trends are mainly defined by corporate demand and the ruble's exchange rate, which dropped considerably in the last years.