

INTERNATIONAL LAW AND INTERNATIONAL RELATIONS

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ANNEXATION OF THE CRIMEAN PENINSULA BY THE RUSSIAN FEDERATION: IMPACT ON INTERNATIONAL LEGAL ORDER

The essay analyzes the effects of occupation and illegal annexation of the Crimea by the Russian Federation. Acts of the Russian Federation in Crimea were a flagrant violation of all basic principles of international law enshrined in the UN Charter, the Declaration on Principles of International Law in 1970, the CSCE Helsinki Final Act of 1975, on which the modern international legal order is based. It was determined that Russia's actions are a threat not only to the sovereignty and territorial integrity of Ukraine, but also to the foundations of the world legal order. Russian aggression against Ukraine, which began with the occupation and illegal annexation of the Crimea will have irreversible consequences for the entire international community. Russia has created a dangerous precedent in which disagreements can be resolved without taking into account justice and judgment, but on distorted legal norms and power. Overall, Russia's actions can not be ignored by the international community, and to prevent their recurrence and subsequent destruction of the foundations of the world order is the common task for the international community.

In February-March 2014 an unprecedented event for Ukrainian-Russian bilateral relations as well as for the post-war world as a whole took place, i.e. an occupation by the Russian Federation (a permanent member of the UN Security Council) of a part of the Ukrainian territory (an UN founding member) which was subsequently transformed into an unlawful annexation.

In order to annex Crimea Russia established a "puppet government". The same mechanism Russians previously applied in South Ossetia, Abkhazia and Transnistria. During the night of February 27, 2014 unidentifiable armed people took over the premises of the Parliament and Government of Autonomous Republic of Crimea (or "ARC") and set Russian

flags thereon¹. They informed a representative of the Crimean Council of Ministers that they represent the “organization of Russian-speaking people self-defense”.

It turned out that on 27 February the Crimean Parliament adopted a decision to hold a referendum on 25 May 2014 to broaden the autonomy powers (the Central Election Commission of Ukraine declared the arrangement of any referendum impossible since it was not compatible with domestic legislation of Ukraine that provides for no referendums other than all-Ukrainian). Moreover, during its session, the Parliament of Crimean Autonomy voted for the dismissal of the Council of Ministers and nominated a new Chairman of the Crimean Council of Ministers. Mr. Konstantinov, speaker of the Parliament, submitted to the Parliament a candidature of Mr. Aksyonov, leader of Russian Unity Party. His candidature was subsequently approved. On the very same day, an open external interference in the internal events in Crimea was demonstrated. A group of deputies of the State Duma of the Russian Federation arrived to Sevastopol headed by the vice-speaker V. Vasilyev² with a view to observe the seizure of power on the peninsula.

Since 27 February, the whole world had been watching the seizure by Russian servicemen without nationality marks of a number of military and civilian objects, namely the Belbek Airport, Crimea-Caucasus ferry crossing, office building of Ukrtelecom operator, TV and Radio Company Crimea, etc.³ At that time actions of occupier already breached the fundamental principles of international law, which serve as a basis for the whole international legal order, as well as rules of international humanitarian law.

Since 1 March 2014, the self-declared leadership of Crimea and government of the Russian Federation launched a series of processes aimed at providing legal justification for the annexation of the peninsula by the Russian Federation. Mr. Aksyonov declared temporary placing of security agencies under his direct supervision and addressed Russian President Mr. V. Putin asking for assistance in “securing peace and calm on the territory of Autonomous Republic of Crimea”⁴. On the very same

¹ In Crimea due to the alarm local armed forces and police personnel are being used. *Тиждень*. 27.02.2014.

¹ The Crimean Parliament voted for the referendum and dismissal of the Government. *Дзеркало тижня*. 27.02.2014.

² People of Crimea intend to protect the ATR TV-channel of the Crimean Tatars from seizure. *Ipress*. 28.02.2014.

³ The Crimean Prime-Minister placed security agencies under his direct supervision and asked Putin for assistance // *Ліній безпеки*. 01.03.2014.

day, the Russian President submitted a request to the Federal Council to use the armed forces on the territory of Ukraine “in connection with the extraordinary situation that has arisen in Ukraine, given the threat to the lives of citizens of the Russian Federation, our fellow countrymen and the personnel of the military contingent of the Armed Forces of the Russian Federation deployed on the territory of Ukraine (the Autonomous Republic of the Crimea) in accordance with an international agreement”¹. The Federal Council of the Federal Assembly of the Russian Federation approved the above request of Mr. V. Putin unanimously². By the end of March Russians seized most of the vessels of the Ukrainian Black Sea Fleet and all military units of Ukrainian Armed Forces located in Crimea. Servicemen who refused to swear allegiance to Russia were withdrawn from the peninsula, while others began to serve in the Russian Army.

On 6 March 2014 the Parliament of ARC at its session voted for joining of the region to Russia and addressed the Russian President and Parliament demanding to provide Crimea with the status of constituent member of the Russian Federation. The decision was allegedly supported by 78 out of 81 deputies present and voting for such proposal. Moreover, the Crimean Parliament adopted a decision to change the date of referendum on the status of Crimea to March 16, 2014 and set the following questions:

– Are you in favour of the reunification of Crimea with Russia as a part of the Russian Federation?

– Are you in favour of restoring the 1992 Constitution and the status of Crimea as a part of Ukraine?

An identical decision on becoming part of Russia as a separate member of federation was adopted by the Sevastopol City Council. The latter also decided to participate in the Crimean referendum on 16 March 2014. They added to the Crimean referendum the following question:

– Should the City of Sevastopol become part of Russian Federation as a constituent member?

On 11 March 2014, the Parliament of ARC and the Sevastopol City Council at their sessions adopted a Declaration of Independence of Autonomous republic of Crimea and City of Sevastopol³.

On 16 March 2014, a hastily organized referendum on the status of Crimea was held. Virtually no international observers were present since

¹ Putin requested the Federation Council to grant the use of Russian Armed Forces in Crimea. *Российская газета*. 01.03.2014.

² Federation Council granted use of troops in Ukraine. *Ведомости*. 01.03.2014.

³ The Crimean Parliament adopted an “independence declaration”. *BBC Ukraine*. 11.03.2014.

international community refused to recognize it. The self-declared Crimean authorities stated that 81,4 % of citizens entitled to vote participated in the referendum. According to them, 96,77 % of those participating in Crimean referendum and 95,6 % in the one held in Sevastopol voted for Crimea becoming part of the Russian Federation¹. However, according to leader of the Crimean Tatars Mustafa Dzhemilev only 32,4 % of residents of the peninsula took part in the referendum².

On 17 March 2014, the Russian President Mr. Putin signed the law *On the Admission of the Republic Crimea to the Russian Federation*³. Previously this decision had been approved by the State Duma of the Russian Federation by its statement on the situation in the Republic of Crimea, submitted by speaker Mr. Narishkin and leaders of all parliamentary groups of the Russian Parliament. The statement, inter alia, read as follows: “Welcoming the expression of will made by the people of Crimea at a referendum on March 16, 2014 for accession of the Republic of Crimea and the city of Sevastopol to the Russian Federation, the State Duma is assured that the state authorities acting in Crimea will support peace, inter-ethnic and inter-confessional accord and language diversity existing in its territory. ... The State Duma will assist in ensuring security of all people staying in Crimea regardless of their citizenship, nationality, language and religious identity as well as observance of their legitimate rights and freedoms”⁴. Moreover, they tried to explain by and base the accession of Crimea to Russia on the *Treaty on the Admission of Crimea and City of Sevastopol to the Russian Federation* and on the adoption of the Constitutional Law *On the Accession of Two New Subjects to the Russian Federation*. The Treaty was signed by the President of Russia Mr. V. Putin, Speaker of the Crimean Parliament Mr. V. Konstantinov, Prime-Minister of Crimea Mr. Aksyonov and Sevastopol City Mayor Mr. A. Chaly⁵.

Nonetheless, it is obvious that from the point of international law Crimea in general had no legal grounds to sign any treaty on behalf of its own.

¹ Turnout at the referendum in Sevastopol was 89,5 %, in Autonomous Republic of Crimea – 81,36 %. *Crimea-Inform*. 16.03.2014.

² UNSC Discusses Human Rights Violations And Freedom Of Press In Crimea. *Haberler*. 01.04.2014.

³ Подписан Указ о признании Республики Крым. *Президент России*. <<http://www.kremlin.ru/news/20596>>.

⁴ Заявление Государственной Думы о ситуации в Республике Крым. *Российская Федерация сегодня*. <http://www.russia-today.ru/new.php?i=400&priz_vozvr=1>.

⁵ Церемония подписания законов о принятии Крыма и Севастополя в состав России. *Президент России*. <<http://www.kremlin.ru/news/20626#sel=>>>.

The abovementioned Treaty is regarded as a final step in the annexation of Crimea. Given that the territory is still considered by most of the actors of international community as part of Ukraine (such approach is in conformity with principles of international law), the territory was illegally placed under Russian control¹.

Later on, the Russian Federation with its military units took control over the Crimean Peninsula, which advanced the process of its integration within Russia.

Annexation of Crimea gives ground to a number of consequences that are highly negative for the contemporary system of international law and for international relations in the European region as well as in the whole world.

1. The acts of Russian Federation constituted a gross violation of all fundamental principles of international law embodied in the UN Charter², 1970 Declaration on Principles of International Law³, 1975 Helsinki Final Act of the OSCE⁴, on which the contemporary world order is based on. These principles are the following:

- the principle of prohibition of threat or use of force (the annexation of Crimea was carried out with the use of armed forces, the above having been stated by Mr. Putin himself);

- the principle of peaceful settlement of international disputes (the Russian Federation while claiming that Ukraine had allegedly harassed Russian-speaking people did nothing to settle the issues by even alleged peaceful means; there also were no international dispute regarding the status of the Crimean Peninsula prior to its annexation);

- the principle of non-interference with the domestic affairs of States (Russia interfered arrogantly with the relations between the central Government of Ukraine and the authorities as well as the people of Crimea;

- the principle of co-operation (the Russian Federation refused to co-operate with regard to any issue of its alleged concern);

- the principle of the equal rights and self-determination of peoples (military occupation of the peninsula and organization of the so-called

¹ Gregory, H. *Fox Guest Post: The Russia-Crimea Treaty*. <<http://opiniojuris.org/2014/03/20/guest-post-russia-crimea-treaty/>>.

² Charter of the United Nations and ICJ. *UN official site*. <<http://treaties.un.org/doc/Publication/CTC/uncharter.pdf>>.

³ The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations 1970. *UN official site*. <<http://untreaty.un.org/cod/avl/ha/dpilfrscun/dpilfrscun.html>>.

⁴ Conference on Security and Co-operation in Europe (1975). *OSCE*.

referendum in the conditions described above were in direct breach of this principle);

– the principle of the sovereign equality of States (annexation of part of the territory of a sovereign State constitutes a grave violation of this principle);

– the principle *pacta sunt servanda* (annexation of Crimea was in violation of obligations before Ukraine under 1994 Budapest Memorandum on Security Assurances in Connection with Ukraine's Accession to the Treaty on the Non-Proliferation of Nuclear Weapons¹, Treaty on Friendship, Cooperation, and Partnership between Ukraine and the Russian Federation², 1997 Agreements on Presence of the Russian Black Sea Fleet in the Territory of Ukraine³ and 2003 Agreement on the State Border between Ukraine and Russia⁴);

– the principle of the territorial integrity of States (with its aggression having resulted in the occupation and annexation of part of the territory of a sovereign State, Russia violated the territorial integrity of Ukraine and juxtaposed the latter to its own geopolitical interests);

– the principle of the respect for human rights and fundamental freedoms (numerous violations of human rights and freedoms in Crimea having occurred pending and subsequent to the annexation, the most prominent thereof being the harassment of the Crimean Tatars and other nationals of Ukraine not supporting the Russian occupation and annexation).

The abovementioned violations of the rules of international law committed by the Russian Federation are of particular importance not only because Russia is a nuclear State. It is vital since Russia playing an important role in the work of the UN Security Council and more importantly being its permanent member shall bear the responsibility for the maintenance of international peace and security. Breaching of all fundamental

¹ Меморандум про гарантії безпеки у зв'язку з приєднанням України до Договору про нерозповсюдження ядерної зброї 1994. *Офіційний вісник України* (2007), 13, 123.

² Договір про дружбу, співробітництво і партнерство між Україною і Російською Федерацією 1997. *Офіційний вісник України* (1999), 20, 518.

³ Agreement between Ukraine and the Russian Federation on the Status and Conditions of Presence of the Black Sea Fleet of the Russian Federation in the Territory of Ukraine (1997). *Diplomatic Herald of the Ministry of Foreign Affairs of the Russian Federation*, 8; Partition Treaty between Ukraine and the Russian Federation on the Status and Conditions of the Black Sea Fleet dated May 28, 1997. *Diplomatic Herald of the Ministry of Foreign Affairs of the Russian Federation*, 8.

⁴ Договір між Україною і Російською Федерацією про українсько-російський державний кордон 2003 *Офіційний вісник України* (2004), 22, 293.

principles of international law by such State leads to their devaluation and, what is more important, becomes a starting point for other States, which may invoke the Russian example to commit acts of aggression, while taking into consideration solely their own convictions that a particular part of territory of a sovereign State should belong to them.

The most powerful actors of international law (equally States, *e.g.* the USA, and international organizations, primarily the UN, and unions, in particular the European Union), notwithstanding their joint efforts, were not in a position to resist the aggressor which will definitely encourage other potential offenders. Thus, the aggression of the Russian Federation leads to dissolution of the grounds of legal order, which may lead to grave consequences, primarily such consequences will relate to armed conflicts.

Undoubtedly, such actions of the Russian Federation have been criticized by international community, and its responsibility for the aggression is unavoidable. At the same time, there was a dangerous precedent created which may be used against Russia in future. In fact, every, without any exception, actor of international law, is interested in maintaining the stability of the world order and inviolability of its grounds, and the one who neglects such principles, takes a risk of losing legal arguments to defend its position in future.

The uncontroversial fact is that the Russian Federation is rather powerful and influential subject of international relations, which allows it to pursue its own national interests, notwithstanding any circumstances and generally accepted rules; it often does not require the consistent legal grounds for its actions. Any explanation, provided it is not completely absurd, even if it is controversial, is already sufficient for the Russian Federation¹. However, this approach is self-destructive, in particular as far as it concerns the violation of the principles of international law, which are of peremptory nature.

2. Actions of the Russian Federation have in fact become a statement that it professes the primacy of the use force in international relations (declaring that the opposite does not matter, because it contradicts the actual actions). Again, this is destructive to the system of international security and comes as an extremely negative example which can affect all states without any exception, namely those being the most powerful ones and able to dictate their wills primarily to their neighbor states, and weaker ones, the rights of which are primarily protected by international

¹ Marxsen, C. *Crimea's Declaration of Independence*. <<http://www.ejiltalk.org/crimeas-declaration-of-independence/>>.

rules. The restrictions imposed by international law are being lifted in order to regulate the behavior of its subjects with all the consequences that come with it.

3. After the annexation of Crimea, the Russian Federation grossly violated the provisions of the Budapest Memorandum on Security Assurances in Connection with Ukraine's Accession to the Treaty on the Non-Proliferation of Nuclear Weapons 1994. The Russian Federation, the United Kingdom of Great Britain and Northern Ireland and the United States reaffirmed to Ukraine their commitment to respect its independence and sovereignty and the existing borders of Ukraine in accordance with the principles of the OSCE Final Act (Section 1 of the Memorandum).

In particular, the abovementioned states reaffirmed their obligation to refrain from threat or use of force against the territorial integrity or political independence of Ukraine, and that none of their weapons would ever be used against Ukraine except in self-defense or otherwise in accordance with the Charter of the United Nations (Section 2)¹.

The Ukraine's nuclear disarmament in exchange for guarantees from the leading states to ensure its independence, sovereignty and existing borders and their obligations to refrain from threat or use of force against the territorial integrity or political independence of Ukraine was an important step in the international community's pursuit to stop dissemination of nuclear weapons (the "NW"). In this context, the Russian military aggression against Ukraine, occupation and annexation of the Crimean Peninsula are challenges for the international community since they demonstrate that the voluntary renunciation of nuclear weapons is not a step towards safety, but on the contrary, such a failure makes the state defenseless. The fact that Ukraine faced not only foreign aggression but also aggression of the state, which is one of the guarantors of its security and territorial integrity in accordance with a special international legal instrument, is particularly significant in this respect. Despite their efforts other guarantors were not able to make the Russian Federation refuse from the annexation of the part of the Ukrainian territory. Actually, it defeats the purpose of the nuclear distraction process; moreover it induces some states to implement their nuclear programs, and a number of other states – to begin the development of such programs. There is a danger of a new armaments race. That is, the Russian aggression against Ukraine eliminates long-term efforts of the world community towards disarmament.

¹ Меморандум про гарантії безпеки у зв'язку з приєднанням України до Договору про нерозповсюдження ядерної зброї 1994. *Офіційний вісник України* (2007), 13, 123.

4. Article 2 of the Treaty on Friendship, Cooperation and Partnership between the Russian Federation and Ukraine 1997 provides for the Parties pursuant to the provisions of the UN Charter and obligations contained in the Final Act of the Conference on Security and Cooperation in Europe to respect territorial integrity of each other and confirm inviolability of their existing borders.

According to Article 3 of the Treaty the Parties have to build the relations with each other on the basis of principles of mutual respect, sovereign equality, territorial integrity, inviolability of borders, peaceful settlement of disputes, the non-use of force or threat of force, including economic and other ways of pressure, the rights of the people to determine their destiny freely, non-interference with internal affairs, observance of human rights and fundamental freedoms, cooperation between states, fair accomplishment of the international obligations undertaken (*pacta sunt servanda*), and also other universally recognized norms of international law¹. Similar provisions are contained in the Agreement on the State Border between Ukraine and the Russian Federation 2003².

Gross violations of the respective provisions by the Russian Federation and its persistent proclamation of the annexation of the territory of another sovereign state to be fully consistent with international law, imperil the security, territorial integrity, inviolability of all the states bordering with the Russian Federation. Having invoked different grounds (not necessarily alleged violations of the rights of Russian-speaking citizens, as in the case of the Crimean Peninsula) it may carry out military aggression against another state, followed by the occupation of its territory.

5. Russian disrespect of the rules of international law and law as a whole in course of its annexation of the Crimean Peninsula give the internal instability, and efferent trends in Russia itself may lead to the threat of its territorial integrity. The above may occur due to separatist movements by means of the notorious referendum mechanism used by Russian authorities in Crimea or of outside interference. At the same time, the State concerned may either nurture those separatist movements or carry out military aggression against Russia itself. These acts may turn out not to be based on “reasonable grounds” since the example of disregard of the rules of international law has already been demonstrated by the Russian federation itself. Given the nuclear and many other weapons

¹ Договір про дружбу, співробітництво і партнерство між Україною і Російською Федерацією 1997. *Офіційний вісник України* (1999), 20, 518.

² Договір між Україною і Російською Федерацією про українсько-російський державний кордон 2003 *Офіційний вісник України* (2004), 22, 293.

that State will be sure to possess, the events described may lead to the gravest outcomes possible for the whole world.

6. The aggression of the Russian Federation against Ukraine endangers the functioning of the UN Security Council – the organ bearing primary responsibility for the maintenance of international peace and security. In the event of an aggressor State being a permanent member of the UN Security Council and having a right to veto its every decision the meaning and sense of the Security Council is definitely undermined, while in practice its efficient functioning, performance of obligations of the highest importance to the whole world become virtually impossible.

Given the foregoing, it appears as highly desirable to reform the UN Security Council in such a manner as to deprive aggressor State of the capacity to hinder the work of the organ. There are reasonable things voiced regarding the lack of grounds under international law for the Russian Federation to participate in work of the UN Security Council. The above stems from the Charter of the UN providing for the USSR membership in the organ concerned¹. The Russian Federation could have “taken place” of the USSR in the Security Council relatively lawfully only in case where all Soviet republics had separated from the Union except from the Russia itself – that is the way to invoke “continuity” of Russia regarding the USSR. However, that is not what happened. The USSR ceased to exist as a state and as a subject of international law.

From legal point of view the membership of the Russian Federation in the UN Security Council is typically explained as follows: on 21 December 1991 Resolution of the CIS Council of Heads of State was adopted which laid out that “the States of Commonwealth support Russia in its continuing of the USSR membership in the UN, including the permanent membership in the UN Security Council, and in other international organisations”². However, it is obvious that after the Resolution had been adopted, a fundamental change of circumstances took place and the consent of Ukraine to the membership in the Security Council of a State carrying out an aggression against it (and in the meantime somehow bearing a responsibility to provide for the maintenance of international peace and security) lacks grounds. The Russian Federation itself poses perhaps the biggest threat to the world from among all members of the United Nations, which makes its membership in the UN Security Council simply absurd.

¹ Charter of the United Nations and ICJ. *UN official site*. <<http://treaties.un.org/doc/Publication/CTC/uncharter.pdf>>.

² Resolution of the CIS Council of Heads of State dated December 21, 1991.

The steps and acts of Russia in Crimea as well as the aggression against Ukraine as a whole are clearly in violation of theses and concepts the Russian government was attempting to develop to form the image of itself in the world. As the concept of external policy and other similar instruments reads, Russia is positioned as some sort of “defender” of international law and of its founding document, namely the UN Charter. At the same time, the acts of Russia with regard to Crimea prove the opposite. Such attitude of Russia towards the mandatory nature of international treaties and the *pacta sunt servanda* rule cannot leave indifferent other sovereign States in the neighborhood the territory of which may theoretically be of interest to the aggressor State given the geopolitical considerations¹.

7. The annexation committed by the Russian Federation of the Crimean Peninsula became a real challenge for the international community as a whole, however it is of major concern to the most influential security organization, i.e. the NATO. This is due to the changes in the security map of the region, rather than to the special relations between Ukraine and the Alliance. Nearly every State along the Black Sea is a Member of the NATO. Thus, the Russian occupation of the Crimean Peninsula poses a particular threat for this military-political bloc. Moreover, given the possible developments in the future, the Russian aggression against Ukraine is to be seen as the first step towards a bigger aim (similar to identical acts of the past known aggressors). The next steps may be various military provocations or aggression against the NATO, primarily against Baltic States. The factors named require appropriate transformation of the Alliance itself aimed at enhancing its efficiency.

8. The aggression of the Russian Federation against Ukraine became a challenge for the European Union as well. This is due to the Russian Federation being one of the most important economic partners of the European Union. The latter is highly dependent on energy supplies from the Russian Federation as well as on the Russian consumer market. On the other hand, the signing of Association Agreement between the European Union and Ukraine, which had been worked on for several years, was called off by Mr. Yanukovysh at the last moment in November 2013.

As a result, the annexation of the Crimean Peninsula by Russia turned out to be damaging for the European Union since it surfaced the disagreements existing between its Member States: those more dependent on Russia did not show appropriate support to Ukraine as a State facing

¹ Mälksoo, Lauri *Crimea and (the Lack of) Continuity in Russian Approaches to International Law*. <<http://www.ejiltalk.org/crimea-and-the-lack-of-continuity-in-russian-approaches-to-international-law/>>.

external aggression. Economic factors prevailed over the devotion to principles of international law and this may have a negative impact on the European Union itself. Finally, the acts of the Russian Federation with regard to Crimea received quite a weak response of first-level sanctions and that was sure to encourage to some extent Russia to continue its aggression in the Eastern Ukraine.

9. The annexation of Crimea has negative consequences not only for the practice, but for the science of international law as well. By its aggressive internal and external policies the government of the Russian Federation has in fact undermined the basis of Russian doctrine of international law. The latter took to cynical justification of any acts undertaken by the government in violation of principles of international law forming ground for contemporary legal order. Science turned into nothing more than an element of official propaganda mechanism. This propaganda nature of modern Russian science of international law unfortunately damages the development thereof in other states as well, in particular post-Soviet ones.

Thus, the aggression of the Russian Federation against Ukraine commencing from the occupation and unlawful annexation of Crimea will have irrevocable consequences for the whole international community. Russia has created a dangerous precedent providing for disagreements being settled without any regard to fairness and law but rather based on distorted legal rules and force. The actions of the Russian Federation must not be ignored by international community, and only the decisive response to those actions can prevent their occurrence as well as further distortion of grounds of international legal order.