

Russia's Resurgence

***An international legal analysis of Russia's intervention in
Ukraine***

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*To my family and friends for their unwavering support;
and to Professor Kevin Dawkins for his generosity of time and insightful guidance.*

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Geographical Overview



Figure 1: Map of Ukraine modified from *The World Factbook 2013-2014* Central Intelligence Agency (2013).



Figure 2: Map of Georgia modified from *The World Factbook 2013-2014* Central Intelligence Agency (2013).

Introduction

Ukraine is a state without a unified national identity. Its citizens are divided between forging economic and security alliances with the West on the one hand and retaining a close relationship with Russia on the other. This political division culminated in the Euromaidan protests in Kiev in 2013-2014, where Ukrainian citizens demonstrated against President Viktor Yanukovich's decision to abandon an agreement with the European Union (EU). For many Ukrainian citizens, this announcement was seen as a sudden policy change which favoured the re-establishment of closer economic ties with Russia, at the expense of relations with the West. The protests escalated into violent clashes and Yanukovich fled from office in February 2014.

It was during this political collapse that the Russian Federation (Russia) militarily intervened in Crimea, a strategically positioned peninsula within the inviolable territory of Ukraine. Russia's intervention led to its annexation of Crimea, undermining Ukraine's sovereignty and in gross violation of international law. In the wake of the annexation, rebel separatist movements broke out in eastern Ukraine with the backing of Russian support. Russia's continual support of rebels and failure to return Crimea to Ukraine has led to the imposition of targeted sanctions, condemning Russia's breaches of international law. Russia has maintained de facto control of Crimea since the annexation and considers both Crimea and its port city of Sevastopol to be incorporated regions of Russia. Moscow's role in the Ukraine crisis revealed a geopolitical agenda which caught the international community by surprise. Its use of force to change political order within Ukraine exposed Russia's resurgence, posing a threat to the entire post-Soviet Cold War security order.

This dissertation considers the international legality of Russia's annexation of Crimea and its military intervention in eastern Ukraine. The first chapter will examine the events leading up to Russia's recent intervention in Ukraine, focusing on the cultural and historical relationship between the two states. The shared history between the states accounts for Ukraine's struggle to develop a unified national identity and the eventual collapse of its central government.

The second chapter will assess the legality of Russia's forcible annexation of Crimea and its support of pro-separatist rebels in eastern Ukraine. These actions have been in gross violation of international law. Russia's involvement in Ukraine's sovereign territory has been in clear breach of the United Nations (UN) Charter and the peremptory norm of customary international law against the use of force. Accordingly, Russia has also violated several multilateral agreements and bilateral agreements with Ukraine, defying general principles of international

law. In response to Russia's flagrant breaches, the international community has imposed targeted sanctions which has crippled its economy. Sanctions and travel bans are currently in place and are likely to remain enforced until Russia initiates de-escalatory measures and lessens its support for separatist rebels.

Since the annexation of Crimea, Ukraine has remained determined to pursue stronger relationships with Western organisations, signing agreements with both the EU and the North Atlantic Treaty Organisation (NATO). Russia considers this to be a direct threat to its security interests, as encirclement by NATO members would prevent Russia from being a dominant influence in the region. The third chapter will therefore examine possible implications for neighbouring states if Russia begins to exercise revisionist power. Russia has a history of intervening in former Soviet Republics and supporting pro-Russia separatist regions. Its irredentist support for rebels has created frozen conflicts in these regions, enabling the territories to act outside the sovereign control of their parent state. The continued Russian presence in eastern Ukraine has sparked concern that it will become another frozen conflict in the region. Moreover, with Russia's outright annexation of Crimea, the international community fears that Russia may be embarking upon a form of neo-imperial expansionism. As many states in the region are already members of NATO, the third chapter will also examine the possibility of intervention by NATO. Unless the conflict escalates and threatens a member state, NATO will not become involved in the crisis. However, to allay concerns from members NATO has reinforced its collective defence strategy in the region, initiating the most significant reinforcement of its defence strategies since the end of the Cold War.

The international community's only effective means to prevent an escalation of the crisis is through the use of sanctions. These targeted sanctions aim to facilitate a resolution to the crisis before NATO is compelled to intervene. Powerful international organs like the UN or the International Court of Justice (ICJ) remain unable assist Ukraine, largely due to Russia's permanent membership on the UN Security Council. It is currently unclear whether Russia's resurgence of dominance will persist, or if it will collapse under punitive sanctions. However, it is clear that the longer it takes for a resolution to be found, the more at risk the stability of the world order becomes.

Chapter 1: The Collapse of Ukraine-Russia Relations

This chapter traces Ukrainian history to reveal the long-standing interconnection between Russia and Ukraine. The shared history between the two states is instrumental in understanding the motives behind Russia's annexation of Crimea and continued intervention in eastern Ukraine. Sharing a long geographic border and Slavic culture,¹ the histories of Russia and Ukraine have been intimately linked ever since Russia first asserted control over Ukraine in the 17th century. Despite gaining independence from Russia in 1991, Ukraine has remained affiliated both economically and politically with Russia, while a significant ethnic Russian population lives in Ukraine today.² Two regions which are heavily populated by ethnic Russians and Russian speakers are the Crimean peninsula in southern Ukraine and the Donbas region in eastern Ukraine.³ These regions are at the centre of the Ukrainian crisis.

Relations between Ukraine and Russian came under significant strain during Viktor Yushchenko's Presidential term from 2005-2010. Yushchenko made several policy decisions which moved Ukraine's alliance towards Western organisations at the expense of Russia. Russia considered this policy shift to be counter to its economic and security interests. Although Ukraine subsequently appeared to strengthen its ties with Russia during Yanukovich's Presidential term, Yanukovich was forced from office amidst the Euromaidan protests. Russia used Ukraine's political instability to its advantage by striking and annexing Crimea while Ukraine was without a central government. This ensured Russia's protection of its security interests through safeguarding its access to the Black Sea. As a result, Ukraine lost its sovereign control over Crimea. In addition, eastern Ukraine has also become subjected to Russian intervention as pro-separatist rebels have been supported by Russia.

¹ Slavic denotes a branch of the Indo-European ethno-linguistic group whose peoples share cultural traits and historical backgrounds.

² Note that this dissertation considers developments up until 1 October 2015.

³ The Donbas is a region in eastern Ukraine which comprises of the Donetsk and Luhansk provinces.

A. Ukrainian Identity and Demography

As a borderland state which was historically controlled by neighbouring powers, Ukraine inherited an equivocal sense of national identity and diverse demographic.⁴ The high proportion of ethnic Russians living in Ukraine reflects Ukraine's history as a Republic within the Soviet Union and demonstrates how Ukraine has become politically divided. Ukraine is split between citizens who want to forge an independent Ukrainian identity and those who want to pursue a closer relationship with Russia. Although an independent Ukrainian identity has been evolving since the state gained independence, Russian influence has endured and sought to control economic, political and military aspects of Ukraine's policies. Strong support for Russia is found in both Crimea and eastern Ukraine, which are populated by an ethnic Russian majority. The lack of political consensus within Ukraine has led to an unstable internal political situation which has been exacerbated by Ukraine's tense relationship with Russia.⁵

1. The Emergence of Ukraine

The word Ukraine translates to "on the edge" or "borderland", accurately depicting Ukraine's geographic position in Eastern Europe. Wedged between neighbouring powers, the territory of modern Ukraine has been inhabited since 32,000 BC, with the powerful federation of Kievan Rus' forming the basis of Ukrainian identity.⁶ Following Kievan Rus's fragmentation in the 13th century, the territory was violently contested by neighbouring powers. The region was split between Russia and Poland from the mid-17th century to the end of the 18th century, between Russia and Austria through the 19th century, and divided amongst Russia, Poland, Czechoslovakia and Romania between the two World Wars.⁷ Throughout Ukraine's tumultuous history, Russian influence and domination has been unflinching.

Following the collapse of the Russian Empire in 1917, Ukraine was incorporated into the Union of Soviet Socialist Republics (Soviet Union)⁸ in 1922 where it remained under Soviet control

⁴ Anna Reid *Borderland: A Journey Through the History of Ukraine* (Weidenfeld & Nicolson, London, 1997) at 1.

⁵ Andrei Tsygankov "Vladimir Putin's last stand: the sources of Russia's Ukraine policy" (2015) 31 *Post-Soviet Affairs* 279 at 281.

⁶ Kievan Rus' was an association of East Slavic tribes present in Europe between the 9th and 13th Century. See Orest Subtely *Ukraine: A History* (2nd ed, University of Toronto Press, Toronto, 1994) at 52.

⁷ Reid, above n 4, at 1.

⁸ Also known as the USSR, the Soviet Union existed from 1922-1991 as a single-party state governed by the Communist Party in Moscow.

until its dissolution in late 1991.⁹ It was during this 70 year period that large demographic shifts occurred between the Republics in the Soviet Union, causing an intermingling of populations. The growth of a common identity was encouraged and citizens moved freely within the Soviet Union to pursue employment opportunities wherever they arose.¹⁰ Russians had historically been enthusiastic about immigrating to Ukraine due to its temperate climate and high level of socioeconomic and cultural development compared to the other Republics. Moreover, Ukraine was culturally and linguistically familiar, making for an easier transition. Predictably, these migration processes led to a dramatic increase in the number of Russians living in Ukraine.¹¹ Russian migrants have tended to concentrate in large cities, particularly in the popular Donbas region which borders on western Russia, and in southern Ukraine which leads down to the Crimean peninsula.¹² These areas remain heavily populated by ethnic Russians today and are at the centre of the current crisis.

2. Independent Ukraine Looks to the West

It was not until the dissolution of the Soviet Union in 1991 that Ukraine gained independent statehood. On 8 October 1991 the leaders of Russia, Belarus and Ukraine agreed to dissolve the Soviet Union and to establish the Commonwealth of Independent States (CIS)¹³ as a successor entity.¹⁴ A fundamental principle established in the wake of the Soviet Union's disintegration was that the existing Soviet borders between Republics were inviolable.¹⁵ The dissolution was then formally enacted on 26 December 1991.¹⁶

Despite Ukraine's newly-gained independence, Russia continued to assert a strong political and economic influence, ensuring that Ukraine's policies remained favourable to its security interests. In 2004, Russian influence over Ukraine suffered when the Orange Revolution broke out. In November 2004 the victory of the Kremlin's favoured candidate in the Ukraine

⁹ Richard Sakwa *Frontline Ukraine* (I.B. Tauris & Co, London, 2015) at 7.

¹⁰ Subtelny, above n 6, at 525.

¹¹ *Ibid.*

¹² *Ibid.* See Figure 1 at vi, which indicates the cities of Luhansk and Donetsk, situated in the Donbas region.

¹³ The CIS is a regional organisation for former Soviet Republics, which was formed during the breakup of the Soviet Union. See Sakwa, above n 9, at 9-10.

¹⁴ See Agreement Establishing the Commonwealth of Independent States 31 ILM 143 (signed 8 December 1991) and Protocol to the Agreement Establishing the Commonwealth of Independent States 31 ILM 147 (signed 21 December 1991).

¹⁵ Sakwa, above n 9, at 67.

¹⁶ *Declaration on the occasion of the creation of the Commonwealth of the Independent States* The Supreme Soviet of the Soviet Union, no 142-H (26 December 1991).

Presidential elections, Yanukovych, was challenged on allegations of fraud. On a revote declared to be fair and free the results were reversed and Viktor Yushchenko was announced as the clear winner. During his term in office Yushchenko moved away from strengthening Ukraine's connection with Russia and looked towards building stronger relationships with Western alliances and organisations. This policy change increased political tensions between the two states, as Russia considered Ukraine's actions to jeopardise its security interests.

Russia considers Ukraine to be vitally important for geopolitical reasons. Ukraine connects Russia with Europe economically as most Russian energy pipelines traverse Ukrainian territory to supply EU customers.¹⁷ Ukraine also protects Russia from potential military intervention by Western powers by acting as a buffer zone between Russia and the West. Growing tensions between the states culminated in two energy disputes.¹⁸ In December 2005 and December 2008 Gazprom terminated gas deliveries to Ukraine.¹⁹ The termination also left millions of Eastern Europeans without gas as the gas pipelines running through Ukraine could not be used.²⁰ Yushchenko's commitment to gaining Ukraine's membership in NATO and the EU also led to relations between Ukraine and Russia becoming increasingly strained, with Russia failing to develop a relationship with Yushchenko.²¹

In 2010 Russia's favoured candidate, Yanukovych, was elected into office in Ukraine. Relations between the two states seemed to improve as Yanukovych's policy decisions renounced Ukraine's earlier aspirations to join NATO, renewed Russia's long-term lease on stationing its Black Sea Fleet in Crimea and passed a new law on the status of the Russian language. For the Kremlin this signalled an opportunity to promote Ukraine's incorporation into Russia's sphere of influence in Eurasia, at the expense of Ukraine's relations with the West.²²

3. The Strategic Significance of Crimea

One of the main incentives for Russia to continue developing a relationship with Ukraine has been to ensure lasting Russian use of Ukraine naval posts in the Crimean city of Sevastopol. Crimea is a peninsula in southern Ukraine which has long been of strategic importance to

¹⁷ Tsygankov, above n 5, at 288.

¹⁸ At 282.

¹⁹ Gazprom is a large Russian energy company.

²⁰ Tsygankov, above n 5, at 283.

²¹ *Ibid.*

²² The term Kremlin used to refer to the Russian government.

Russia. Incorporated into the Russian Empire in 1783, Crimea was built and perceived as a regional military base and outpost for Russia.²³ The Crimean Tatars, a Turkic ethnic group in the peninsula, were a comfortable majority at the time of Russian annexation in 1783, but their numbers fell sharply with successive waves of outmigration to the Ottoman Empire.²⁴

Crimea's historical association with Russia and the establishment of a Russian naval port in Sevastopol for its Black Sea Fleet led to an ethnic Russian majority populating the region.²⁵ Despite Crimea's history with Russia, in 1954 the Crimean peninsula was made a part of Ukraine by an arbitrary decision of the Soviet leadership. This cemented the region as an inviolable part of Ukraine's territory. Russia also formally relinquished all claims to Crimea before the breakup of the Soviet Union, when the Russian Soviet Federative Socialist Republic and the Ukrainian Soviet Socialist Republic signed a Treaty of Friendship on 19 November 1990.²⁶

Following the collapse of the Soviet Union in 1991, the first years of Ukrainian independence were marked by extreme tensions in Crimea.²⁷ Significant separatist and pro-Russian movements in the region occurred²⁸ and the citizens petitioned to restore the previously existing self-administering Autonomous Region of Crimea.²⁹ In 1996 the Ukrainian Parliament incorporated the Crimean Peninsula as an Autonomous Republic within Ukraine, granting the

²³ Tetyana Malyarenko and David J Galbreath "Crimea: Competing Self-Determination Movements and the Politics at the Centre" (2013) 65 *Europe-Asia Studies* 912 at 915.

²⁴ Andrew Wilson *Ukraine Crisis: What it Means for the West* (Yale University Press, New Haven, 2014) at 103.

²⁵ The latest census conducted in 2001 found that 58 per cent of the Crimean population considered themselves ethnically Russian, while only 24 per cent identified as Ukrainian. See also John Biersack and Shannon O'Lear "The geopolitics of Russia's annexation of Crimea: narratives, identity, silences, and energy" (2015) 55 *Eurasian Geography and Economics* 247 at 250.

²⁶ Treaty between the Ukrainian Soviet Socialist Republic and the Russian Soviet Federative Socialist Republic on friendship, good neighbourliness and co-operation 1641 UNTS 219 (signed 19 November 1990, entered into force 14 June 1991) (The 1990 Friendship Treaty) was later surpassed by the Treaty on friendship, cooperation and partnership between the Russian Federation and Ukraine (signed 31 May 1997, entered into force 2 March 1999) (The 1997 Friendship Treaty). See also Constitution of Ukraine (28 June 1996), art 134 which affirms that Crimea is an inseparable constituent part of Ukraine and Vasiliy Kashin "Khrushchev's Gift: The Questionable Ownership of Crimea" in Colby Howard and Ruslan Pukhov (ed) *Brothers Armed: Military Aspects of the Crisis in Ukraine* (East View Press, Minneapolis, 2014) 1 at 4 and 19.

²⁷ Sakwa, above n 9, at 102.

²⁸ Biersack and O'Lear, above n 25, at 250.

²⁹ Self-governance of the region had been established by the Bolsheviks in the wake of the 1917 Russian Revolution, with the Autonomous Region existing from 1921-1945. See Malyarenko and Galbreath, above n 23, at 919.

region extensive devolved powers.³⁰ However, the final version of the Crimean Constitution which entered into force a few years later in 1999 turned Crimea's autonomy into a mere formality.³¹ The Crimean Constitution emphasised that the peninsula was an inalienable part of Ukraine and stipulated that the Ukrainian Constitution and its laws had absolute priority over Crimea.³² This is supported by the principle of *uti possidetis* which holds that only former constituent republics like Ukraine, but not territorial sub-units such as Crimea, are to be granted independence in the case of dismemberment of a large entity such as the former Soviet Union.³³ The Crimean city of Sevastopol was also granted special political status in the Ukrainian Constitution. Sevastopol was vested with its own form of self-government³⁴ and executive power in the city was able to be exercised by local state administrators.³⁵

Russia's access to the Black Sea Fleet's port in Sevastopol is crucial to its security interests. It enables Russia to be able to assert dominance in the region by gaining access to the Mediterranean Sea, the Persian Gulf and the Indian and Atlantic Oceans.³⁶ In 1997 agreements between Russia and Ukraine were negotiated, allowing Russia use of the ports and the continued presence of 25,000 Russian military personnel on site.³⁷ With Russia's annexation of the region in early 2014 Russia was able to secure the strategic significance of the region.

B. Russia's Annexation of Crimea

Russia's annexation of Crimea in March 2014 came as a complete surprise to the international community as the annexation was not the result of any lengthy legal, diplomatic, or political process. Until the political crisis in Ukraine in 2014, Russia had made no attempts to question Ukraine's rights to Crimea and had taken no serious measures to support separatist movements

³⁰ Sakwa, above n 9, at 102.

³¹ Constitution of the Autonomous Republic of Crimea (entered into force 12 January 1999). Under article 135 of the Constitution of Ukraine, above n 26, the Constitution of Crimea must be approved by the Ukrainian Parliament.

³² Constitution of Crimea, art 1(1). See also Kashin, above n 26, at 13-14.

³³ See Malcolm N Shaw "Peoples, Territorialism and Boundaries" (1997) 8 EJIL 478 at 482 where Shaw holds that it is well established that the right to self-determination must not involve changes to existing frontiers at the time of independence.

³⁴ Constitution of Ukraine, art 133.

³⁵ However, Constitution of Ukraine, art 118 holds that decisions which contravene Ukrainian laws may be revoked.

³⁶ Dmitry Boltnev "Home of the Black Sea Fleet" in Colby Howard and Ruslan Pukhov (ed) *Brothers Armed: Military Aspects of the Crisis in Ukraine* (East View Press, Minneapolis, 2014) 135 at 151.

³⁷ See 1997 Friendship Treaty which encompassed a bundle of agreements relating to the division of the Black Sea Fleet. The agreements were renegotiated in Kharkov Accords, Russia-Ukraine (entered into force 27 April 2010).

in the region.³⁸ Crimean and Russian authorities used Ukraine's preoccupation with its internal political conflict in Kiev as the moment to strike and deprive the Ukrainian government of its control over Crimea.³⁹ Russia's surprise advantage was instrumental to its success in taking control of the peninsula and a population of almost 2.5 million people.⁴⁰ Russia's forcible intervention in Crimea was an acknowledgement by Vladimir Putin⁴¹ that his leverage against Ukraine, largely based upon natural gas supplies, was insufficient to ensure Ukraine's neutral status and preserve Russia's stationing of its Black Sea Fleet.⁴²

1. The 2013-2014 Euromaidan Protests

The lead up to Russia's annexation of Crimea was marked by political unrest throughout central Ukraine in what has become known as the Euromaidan Protests.⁴³ The protests stemmed from Yanukovich's announcement in November 2013 that Ukraine would not be signing an Association Agreement with the EU, which had been negotiated over multiple years.⁴⁴ For many Ukrainian citizens, this announcement was seen as a sudden policy change which favoured the re-establishment of closer economic ties with Russia, at the expense of relations with the West.⁴⁵ Frustrated and disillusioned with the direction their state was taking, citizens in Kiev protested against Yanukovich's decision. The protesters' demands included constitutional reform, a stronger role for the Ukrainian Parliament and an end to corruption and violence.⁴⁶

With the protests continuing into the new year, violent clashes erupted in Kiev between pro-separatist rebels and nationalist Ukrainians. On 20 February 2014 alone, more than 100 people were killed in the riots.⁴⁷ In response to the upheaval, Russia amassed around 30,000 troops on

³⁸ Kashin, above n 26, at 20.

³⁹ Christian Marxsen "The Crimea Crisis: An International Law Perspective" (2014) 74 Heidelberg Journal of International Law 367 at 367.

⁴⁰ Anton Lavrov "Russia Again: The Military Operation for Crimea" in Colby Howard and Ruslan Pukhov (ed) *Brothers Armed: Military Aspects of the Crisis in Ukraine* (East View Press, Minneapolis, 2014) 157 at 157.

⁴¹ Putin is the incumbent President of Russia.

⁴² Tsygankov, above n 5, at 292.

⁴³ The main public square in Kiev where protests took place is known as the Maidan, while Euro refers to the disbandment of Ukraine's agreement with the European Union.

⁴⁴ Biersack and O'Lear, above n 25, at 248.

⁴⁵ Tsygankov, above n 5, at 284.

⁴⁶ NATO "NATO-Russia relations: the facts" (12 June 2015) <www.nato.int>.

⁴⁷ Lavrov "Russia Again", above n 40, at 159.

Ukraine's border⁴⁸ and Yanukovich fled from office just days later on 22 February 2014, leaving Ukraine without a central government.⁴⁹

2. The Takeover of Crimea

On the morning of 27 February 2014 soldiers without insignia and possessing advanced weaponry appeared throughout the peninsula, surrounding Ukrainian military installations and key governmental buildings.⁵⁰ After initially denying Russian involvement in the takeover of Crimea, Putin later admitted that Russian servicemen had supported the Crimean-based forces.⁵¹ The newly formed Special Operations Forces within the Russian Armed Forces was the Russian military unit charged with seizing the most important targets in Crimea.⁵² It took only 60 men from the unit armed with Kalashnikovs to successfully seize control of Crimea.⁵³ To prevent the intervention from escalating into a full-scale war, the Ukrainian navy stayed at their berths, the Ukrainian air force remained on the ground, and the Ukrainian marines and assault troops kept to their compounds during Russia's invasion.⁵⁴ This allowed for a swift annexation of Crimea, which took place without any bloodshed.⁵⁵

On the same day as Russian forces invaded, the Crimean Parliament voted to hold a referendum on the issue of enlarging Crimean autonomy. A subsequent Declaration of Independence was adopted on 11 March 2014 and the referendum on Crimea's status was held on 16 March 2014.⁵⁶ The results of the referendum endorsed Crimea's integration as a part of Russia.⁵⁷ The day after the announcement of the results, Putin signed a decree recognising the Republic of Crimea as an independent state and an Accession Treaty was ultimately signed, incorporating

⁴⁸ Tsygankov, above n 5, at 285.

⁴⁹ Lavrov "Russia Again", above n 40, at 159.

⁵⁰ Biersack and O'Lear, above n 25, at 249.

⁵¹ Roy Allison "Russian 'deniable' intervention in Ukraine: how and why Russia broke the rules" (2014) 90 *International Affairs* 1255 at 1257.

⁵² See Alexey Nikolsky "Little, Green and Polite: The Creation of Russian Special Operations Forces" in Colby Howard and Ruslan Pukhov (ed) *Brothers Armed: Military Aspects of the Crisis in Ukraine* (East View Press, Minneapolis, 2014) 124 at 124.

⁵³ Wilson, above n 24, at 110.

⁵⁴ Anton Lavrov and Alexey Nikolsky "Neglect and Rot: Degradation of Ukraine's Military" in Colby Howard and Ruslan Pukhov (ed) *Brothers Armed: Military Aspects of the Crisis in Ukraine* (East View Press, Minneapolis, 2014) 57 at 69.

⁵⁵ See Nikolsky "Little, Green and Polite", above n 52, at 124. It is important to note that although there were no fatalities during the Russian invasion of Crimea, there were casualties from the political protests in Kiev and Eastern Ukraine.

⁵⁶ Allison, above n 51, at 1260.

⁵⁷ Lavrov "Russia Again", above n 40, at 172.

both the Republic and the city of Sevastopol into Russia.⁵⁸ By 25 March 2014 Russia was in full military control of the peninsula and Russian flags were raised over all 193 military bases, compounds and ships in Crimea.⁵⁹

This political process has been used by Russia as a justificatory smokescreen for its absorption of Crimea.⁶⁰ The political procedures cannot be regarded as having any legally binding effect. The Crimean referendum was contrary to Ukrainian law as it was only conducted within Crimea itself. Under article 73 of the Constitution of Ukraine any changes made to alter Ukraine's territory must be made by an all-Ukrainian referendum. While an internal referendum cannot constitute a violation of international law, there are international standards informing how states ought to hold referendums, which were clearly disregarded.⁶¹ General principles on fair and free voting are expressed in the First Protocol to the European Convention on Human Rights⁶² and in the International Covenant on Civil and Political Rights⁶³. The Venice Commission Code of Good Practice on Referendums was also developed to substantiate these principles.⁶⁴ The Venice Commission Code, although not constituting binding international law, expresses international standards and reflects widely accepted state practice in the holding of referendums.⁶⁵ The Code stresses that a referendum must be free, requiring the absence, or at least restraint, of the opposing parties' military forces and for public authorities to be neutral.⁶⁶ These procedural requirements were not met in Crimea. The Crimean government was changed at gunpoint, a motion on secession was passed at gunpoint and a motion organising a referendum to confirm the decision was passed at gunpoint.⁶⁷ Accordingly the referendum cannot be seen as complying with international standards.

Ahead of the referendum the Supreme Council of Crimea had declared the region to be an independent Republic. In making this announcement the Crimean Parliament had regard to

⁵⁸ At 173.

⁵⁹ At 178.

⁶⁰ Allison, above n 51, at 1259.

⁶¹ Marxsen, above n 39, at 381.

⁶² The right to free elections are stated in Protocol 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms ETS 9 (signed 20 March 1952, entered into force 18 May 1954), art 3.

⁶³ *International Covenant on Civil and Political Rights* GA Res 2200A, XXI (1966), art 25.

⁶⁴ Venice Commission *Code of Good Practice on Referendums* CDL-AD(2007)008 (16 December 2006).

⁶⁵ Marxsen, above n 39, at 381.

⁶⁶ *Code of Good Practice*, above n 64, I.2.2 and I.3.

⁶⁷ Wilson, above n 24, at 110.

international documents. Notably, the announcement referred to the ICJ's advisory opinion on Kosovo's declaration of independence, which held that Kosovo's unilateral declaration of independence, in itself, did not violate norms of international law.⁶⁸ In reaching this conclusion the ICJ acknowledged in its judgment international practice where states and the UN Security Council had declared unilateral declarations of independence to be invalid.⁶⁹ In such cases the ICJ had held that the invalidity of the declaration did not follow from the unilateral character as such, but from its close link to serious violations of international law.⁷⁰ The referendum in Crimea was militarily backed by Russian troops which disempowered the Ukrainian-run public infrastructure and therefore the referendum fundamentally relied on Russia's illegal intervention. Thus, the subsequent declaration of independence in Crimea cannot be regarded as legal.⁷¹ At the very least, the referendum relied on Russia's threat to use force, expressed by the Russian Council's authorisation to use armed forces on the territory of Ukraine on 1 March 2014.⁷² Accordingly, Crimea's declaration cannot be recognised as a valid declaration of independence.

3. The Expansion of Russian Involvement in Ukraine

Inspired by Russia's annexation of Crimea, pro-separatist Ukrainian rebels in eastern Ukraine asserted control in the Donbas. The dissidents took control of government buildings and refused to cooperate with the government in Kiev, appointing their own governors in several regions.⁷³ The Ukrainian rebels have been continually supported and armed by Russia and the situation remains volatile. In March 2015 the United States (US) military estimated that around 12,000 Russian soldiers were supporting separatists in eastern Ukraine, while a further 29,000 soldiers were stationed in Crimea.⁷⁴ In addition, 50,000 Russian troops were positioned on their

⁶⁸ *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo (Advisory Opinion)* [2010] ICJ Rep 403 at 452. See also RT "Crimea parliament declares independence from Ukraine ahead of referendum" (13 March 2014) <www.rt.com>.

⁶⁹ See *Southern Rhodesia* SC Res 217, S/Res/217 (1965).

⁷⁰ *Kosovo (Advisory Opinion)*, above n 68, at 437. See also Marxsen, above n 39, at 384.

⁷¹ Marxsen, above n 39, at 384.

⁷² On 24 June 2014 Putin suggested that the Federation Council cancel its resolution authorising the use of Russian armed forces in Ukraine. See *Resolution on the use of the Armed Forces of Russia on the territory of Ukraine* 48-FZ Federation Council (Russia) (1 March 2014). See also ITAR-TASS "FC consent to use of RF army in Ukraine means no immediate implementation" (1 March 2014) TASS Russian News Agency <www.tass.ru>.

⁷³ Tsygankov, above n 5, at 285.

⁷⁴ Caroline Copley "Some 12,000 Russian soldiers in Ukraine supporting rebels: U.S. commander (3 March 2015) Reuters <www.reuters.com>.

side of the border with Ukraine. Although there has been a reduction in military conflict since February 2015, no lasting solution has yet been found.

The crisis in Ukraine has led to Ukraine being on the verge of an economic crisis. It is heavily in debt to overseas lenders and is struggling to afford the price of natural gas from Russia. With Ukraine's currency, the Ukrainian hryvnia, having lost half of its value in the past 12 months there are concerns that Ukraine may not be able to continue making its loan repayments.⁷⁵ In addition, the volatility of the crisis has resulted in severe loss of life and has given rise to an unstable state. Ukraine is currently on the brink of a collapse.

⁷⁵ David Stern "Ukraine struggles on brink of economic crisis" (17 January 2015) BBC News <www.bbc.com>.

Chapter 2: Russia's Breaches of International Law

Russia's annexation of Crimea and support of rebels in eastern Ukraine has been in gross violation of international law. Russia's forcible involvement in Ukraine's sovereign territory has been in clear breach of the UN Charter and the peremptory norm against the use of force.⁷⁶ In addition, Russia has violated several multilateral agreements and defied general principles of international law. Russia has contravened the customary principle of non-intervention and the principle of respect for the independence and territorial integrity of states, resulting in the UN General Assembly's assertion of the principle of non-recognition of territorial acquisition in resolution 262.⁷⁷ In addition, Russia's intervention of Ukraine has been in flagrant disregard of its bilateral agreements with Ukraine.

In response to Russia's violations of international law the international community has imposed targeted sanctions, which have crippled Russia's economy. Punitive sanctions and travel bans remain in place and will continue to impinge upon Russia's economy until Russia embarks upon de-escalatory measures and lessens its support for separatists in Ukraine.

A. Russia's Forcible Intervention in Crimea

To legitimise its annexation of Crimea, Russia has asserted that Crimean citizens have claimed their right of self-determination in international law to unilaterally secede from Ukraine. The Russian contention is that Crimea then subsequently voted independently in a referendum to become incorporated into Russia. This contention is flawed and invalid under international law.

The right of self-determination is the ability of a people to pursue their own political, economic, social and cultural development. Primarily established to assist colonial or dependent territories, this right has become enshrined as a principle of customary international law, recognised in key international instruments.⁷⁸ In practice, the right to self-determination is

⁷⁶ Charter of the United Nations (opened for signature 26 June 1945, entered into force 24 October 1945)

⁷⁷ *Territorial integrity of Ukraine* GA Res 68/262, A/Res/68/262 (2014).

⁷⁸ See Charter of the United Nations, art 1(2) which states that the UN's purpose is "to develop friendly international relations based on respect for the principle of equal rights and self-determination of peoples", *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations* GA Res 2625, A/Res/25/2625 (1970) (*Friendly Relations Declaration*), *International Covenant on Civil and Political Rights*, above n 63 and *International Covenant on Economic, Social and Cultural Rights* GA Res 2200A, XXI (1966) which both affirm a people's right of self-determination. See also *Reference re*

almost exclusively fulfilled through internal self-determination, occurring within the political framework and territorial integrity of an existing state.⁷⁹ A more robust right of self-determination in international law may include the right for a people to secede from their existing state, however this right is heavily constrained.⁸⁰ As a part of Ukraine, Crimean citizens are not being denied their right to self-determination. The existence of a democratic Crimean Parliament empowers citizens to be able influence their own future politically, socially and economically. In addition, as recognised by the 1920 decision of the Council of the League of Nations on the sovereignty of the Aaland Islands, the preference of the people asserting their right to external self-determination is irrelevant.⁸¹ In this decision the inviolability of the existing territorial sovereignty of the Aaland Islands was held to supersede the wishes of its inhabitants, with the Islands deemed to unequivocally belong to Finland.⁸² In a subsequent report on the issue,⁸³ the Commission of Rapporteurs held that secession may be available to the citizens as a last resort to effect guarantees of minority rights.⁸⁴ This decision does not support Russia's contention as article 10 of the Constitution of Ukraine protects minority language rights in Ukraine and Crimea.⁸⁵

Secession is the creation of a new state by the unilateral withdrawal of a territory and its population from its existing state.⁸⁶ A right to external self-determination through secession has been recognised, but arises in only the most extreme circumstances.⁸⁷ Alongside the denial

Secession of Quebec 1998 2 SCR 217 at [114] and *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion)* [2004] ICJ Rep 136 at 39.

⁷⁹ *Quebec*, above n 78, at [126].

⁸⁰ See *Quebec*, above n 78, at [126] and Malcolm N Shaw *International Law* (7th ed, Cambridge University Press, Cambridge, 2014) at 187.

⁸¹ The League of Nations was founded on 10 January 1920 and lasted until 1946 where it was replaced by the UN.

⁸² The Islands were historically a part of Sweden but were later gifted to Finland. The inhabitants overwhelmingly spoke Swedish and petitioned to be returned to Swedish sovereignty, but Finland resisted the cession. See "Aaland Islands Question" (1921) 2 League of Nations Official Journal 691 at 699 and Wade Mansell and Karen Openshaw *International Law: A Critical Introduction* (Hart Publishing, Oxford, 2013) at 53.

⁸³ *Report presented to the Council of the League of Nations by the Commission of Rapporteurs The Aaland Island Question (On the Merits)*, League of Nations Council Document B7 21/68/106 (1921).

⁸⁴ Daniel H Meester "The International Court of Justice's Kosovo Case: Assessing the Current State of International Legal Opinion on Remedial Secession" (2010) 48 Can. Yb. Int'l 215 at 219.

⁸⁵ Constitution of Ukraine, art 10 holds that the free development, use and protection of Russian and other languages of national minorities of Ukraine is guaranteed.

⁸⁶ Aleksandar Pavković with Peter Radan *Creating New States: Theory and Practice of Secession* (Ashgate, Hampshire, 2007) at 5.

⁸⁷ *Quebec*, above n 78, at [126].

of a people to exercise self-determination, one form of external self-determination which has gained a certain degree of recognition in international law is the exercise of remedial secession.⁸⁸ This right accrues when a people is subject to alien subjugation, domination or exploitation outside a colonial context.⁸⁹ While there has been no practice demonstrating an unequivocal acceptance of this right, the creation of Bangladesh, and possibly that of Kosovo, demonstrate instances of remedial secession as an exception to the general rule against external self-determination. The independent state of Bangladesh was created in 1971, when East Pakistan successfully broke away from West Pakistan after suffering from years of wide-spread human rights abuses.⁹⁰ Crimea, although having an ethnic Russian majority within Ukraine, has not been subject to widespread human rights abuses by the state. Accordingly, the Bangladesh precedent does not support any claim by Russia or Crimea that Crimea has exercised a right to remedially secede from Ukraine.

The Serbian province of Kosovo declared independence in 2008 and it has since become a partially-recognised state by the international community. Kosovo's declaration stemmed from years of human rights atrocities, war crimes, crimes against humanity and ethnic cleansing in the region, as well as almost a decade of failed UN administration.⁹¹ In contrast to Kosovo, social tensions in Crimea are resulting consequences of the complex political situation in Ukraine and inefficient public policy towards the autonomous region. They are not as a result of deeply rooted ethnic hatreds or social inequality between two ethnic groups.⁹² Moreover, Crimea is unlikely to achieve the same recognition as Kosovo due to the resolution adopted by the UN General Assembly, which affirmed the territorial integrity of Ukraine and condemned the annexation of the Crimean peninsula.⁹³ Only 11 states voted against the resolution, a clear

⁸⁸ While Cassese has recognised remedial secession as a context where self-determination can be exercised as a last resort, see Antonio Cassese *Self-determination of peoples: a legal reappraisal* (Cambridge University Press, New York, 1995) at 334, Shaw has refuted any acceptance in international law of such a right in Shaw "International Law", above n 80, at 188.

⁸⁹ Cassese, above n 88, at 334 and *Quebec*, above n 78, at [133].

⁹⁰ Lea Brilmayer "Secession and Self-Determination: A Territorial Interpretation" (1991) 16 *Yale J. Int'l L.* 177 at 196-197.

⁹¹ Stefan Wolff and Annemarie Peen Rodt "Self-determination After Kosovo" (2013) 65 *Europe-Asia Studies* 799 at 803 and 807.

⁹² Malyarenko and Galbreath, above n 23, at 927.

⁹³ *Territorial integrity of Ukraine*, above n 77.

indication that the international community will not recognise Crimea's assertion of independence.⁹⁴

B. Russia's Use of Force in Ukraine

Russia's use and threat of force in Ukraine is contrary to international law and threatens the entire framework of the international system.⁹⁵ Russia's annexation of Crimea was in clear violation of international law. Russia militarily interfered in the sovereign territory of Ukraine through forcibly acquiring the Crimean peninsula and incorporating it into Russia. In addition, Russia has continued to intervene in Ukraine by inciting, arming and training pro-separatist Ukrainian rebels in eastern Ukraine, as well as supplying forces to assist the rebels. This support of separatists is also in violation of prohibition on the use of force. The prohibition is enshrined in article 2(4) of the UN Charter and regarded as the cornerstone of the UN Charter. By breaching this provision Russia is in flagrant violation of a multilateral treaty, which serves as the backbone of the international system.⁹⁶ This section will assess the current prohibition of the use of force at customary international law and under the UN Charter, concluding that Russia's resort to force cannot be justified under any exceptions in international law.

1. The Prohibition on the Use of Force

The UN Charter is the foundational treaty of the UN, with all members of the UN bound by its provisions.⁹⁷ Article 2(4) of the UN Charter expresses the prohibition on the use of force:

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.

This provision is also regarded as a peremptory norm of customary international law, binding all states in the world regardless of their UN membership.⁹⁸ Peremptory norms are norms from which no derogation is permitted and which can only be modified by a subsequent norm of

⁹⁴ Ibid.

⁹⁵ Shaw "International Law", above n 80, at 811.

⁹⁶ Nico Schrijber "Secession and the Ban on the use of Force: Some Reflections" in Julie Dahlitz (ed) *Secession and International Law: Conflict Avoidance – Regional Appraisals* (The Hague, T.M.C. Asser Press, 2003) at 97.

⁹⁷ Under Charter of the UN, art 4 all new members admitted to the UN agree to be bound by the UN Charter.

⁹⁸ *Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Treat or Use of Force in International Relations* GA Res 42/2, A/Res/42/22 (1987). Peremptory norms are also referred to by the Latin term *jus cogens*.

general international law having the same peremptory character.⁹⁹ As recognised by the ICJ in *Nicaragua*, the prohibition on the use of force in customary international law applies separately from international treaty law even where the two sources of law contain identical content.¹⁰⁰ Consequently, Russia's military intervention in Ukraine has been in violation of both article 2(4) of the UN Charter and the corresponding peremptory norm of customary international law.

Use of force in international law is commonly understood to denote an armed attack by an organised military, navy or air force.¹⁰¹ Russia's forcible intervention in Crimea and military involvement in eastern Ukraine is in violation of the prohibition on the use of force. Deployment of Russian Special Operations Forces in the annexation of Crimea and their seizure of key Crimean buildings at gunpoint is a clear example of the use of force in the sovereign territory of another state. In addition, there are an estimated 12,000 Russian soldiers currently stationed in eastern Ukraine, supporting pro-separatist rebels. This Russian military involvement also constitutes a breach of the use of force in violation of article 2(4) of the UN Charter and the corresponding peremptory norm.¹⁰²

Although Putin has denied the direct involvement of Russian troops, it has been well-established that a significant number of Russian soldiers are fighting alongside Ukrainian separatist rebels. Even if the extent of Russian military personnel could not be substantiated, Russia would still be in breach of the threat of force, contrary to article 2(4) of the UN Charter. Russia is inciting, training and arming pro-separatists with weapons. The ICJ's examination of the prohibition on the threat of force in *Nicaragua* concluded that such assistance and support constituted a clear threat of force.¹⁰³ A threat of force in international law is broader than simply a direct communication of intent to use force from one state to another. A threat of force can include an indirect threat. In *Nicaragua* the ICJ recognised that indirect action through the use of rebel forces in another state, constitutes a clear threat of force in international law.¹⁰⁴ This

⁹⁹ Vienna Convention on the Law of Treaties 1155 UNTS 331 (opened for signature 23 May 1969, entered into force 27 January 1980), arts 53 and 64.

¹⁰⁰ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America) (Merits)* [1986] ICJ Rep 14 at 96.

¹⁰¹ See Ian Brownlie *International Law and the Use of Force by States* (Oxford, Oxford University Press, 1963) at 361 and Yoram Dinstein *War, Aggression and Self-Defence* (5th ed, Cambridge University Press, Cambridge, 2011) at 87.

¹⁰² Copley, above n 74.

¹⁰³ See *Nicaragua*, above n 100, at 119 and Francis Grimal *Threats of Force: International Law and Strategy* (Hoboken, Taylor and Francis, 2012) at 58.

¹⁰⁴ *Nicaragua*, above n 100, at 119. See also Grimal, above n 103, at 59.

conclusion was also reached in the 1948 UN General Assembly Resolution on the Threats to the Political Independence and Territorial Integrity of Greece.¹⁰⁵ The resolution held that logistical assistance support by Albania, Bulgaria and Yugoslavia to Greek guerrilla forces could constitute an unlawful threat of force by proxy. The UN General Assembly held that assistance included “arms, ammunition and other military stores”.¹⁰⁶ By analogy, Russia’s support of pro-Russia Ukrainian separatists in eastern Ukraine would, at the very least, also be in clear breach of the threat of force in international law.

2. Exceptions to the Prohibition on the Use of Force

As Ukraine did not consent to the deployment of Russian troops on its sovereign territory or to the annexation of Crimea, Russia’s actions are contrary to international law unless they fall under an exception to the prohibition on the use of force. International law recognises limited exceptions based on the notion of self-defence.¹⁰⁷ Article 51 of the UN Charter retains the inherent right of states to use force in collective and individual self-defence. The recognition of an inherent right of self-defence has been interpreted as also preserving a pre-UN Charter customary international law right of self-defence.¹⁰⁸ For Russia to be able to claim that its use of force in Ukraine ought to be authorised under self-defence, Russia would need to have been subjected to an individual armed attack from Ukraine.¹⁰⁹ No such attack against Russia has occurred, nor has there been an imminent threat of an attack.¹¹⁰ Therefore there is no plausible basis for justifying resort to self-defence under article 51 and the corresponding right under customary international law.

Commentators have argued that the right to anticipatory self-defence could be expanded to encompass a right to pre-emptive self-defence, sanctioning the use of force in defending against or preventing possible attacks.¹¹¹ The doctrine of pre-emption has been laid down in former

¹⁰⁵ *Threats to the Political Independence and Territorial Integrity of Greece* GA Res 193, III (1948).

¹⁰⁶ Grimal, above n 103, at 74.

¹⁰⁷ Charter of the UN, art 42 also provides a separate exception, permitting the UN Security Council to sanction the use of armed force if it is necessary to maintain or restore international peace and security.

¹⁰⁸ Shaw "International Law", above n 80, at 820.

¹⁰⁹ If such an armed attack had been made, Russia’s use of force in self-defence must also meet the requirements of necessity and proportionality.

¹¹⁰ The use of force against imminent threats of armed attacks has been recognised under a right of anticipatory self-defence at customary international law and possibly under Charter of the UN, art 51. See Christine Gray *International Law and the Use of Force* (3rd ed, Oxford University Press, Oxford, 2008) at 117-118.

¹¹¹ Shaw "International Law", above n 80, at 826.

National Security Strategies of the US,¹¹² but it must be seen as going beyond what is currently acceptable in international law.¹¹³ Moreover, without any threat by Ukraine to justify Russia's use of force, Russia cannot assert a right of pre-emptive self-defence as an exception to the prohibition on the use of force.

Russia's intervention in Ukraine also cannot be justified as an assertion of the right to protect nationals abroad. The right to protect nationals abroad is considered a subset of self-defence in article 51 of the UN Charter and at customary international law. Thus, as Russia has not been subjected to an ongoing armed attack or the threat of an imminent attack, it cannot claim that its forcible intervention in Ukraine ought to be permitted under this right. Although both Crimea and the Donbas are regions in Ukraine which are populated by ethnic Russian majorities, ethnic Russian citizens in Ukraine are still Ukrainian nationals. As such they do not fall under a Russian right to protect nationals abroad. Ukraine has claimed that Russia has distributed Russian passports to Ukrainian citizens in Crimea in the past¹¹⁴ and following the annexation of Crimea, Russia has also been found to have circulated passports to Crimean residents.¹¹⁵ However, the mere possession of Russian passports does not establish a real and effective link of nationality.¹¹⁶ Accordingly, Russia's use of force cannot plausibly come within any exceptions under international law.

C. Further Violations of Multilateral Agreements

Alongside the UN Charter, Russia is a party to a number of multilateral agreements which recognise the prohibition on the use of force and the inviolability of states' territorial integrity.¹¹⁷ These additional multilateral agreements are not binding in international law but

¹¹² The approach was formally laid down in *The National Security Strategy of the United States of America* (The White House, September 2002), reaffirmed in *The National Security Strategy of the United States of America* (The White House, March 2006). However subsequent National Security Strategies, including the most recent in February 2015 have not recognised pre-emptive actions. See *The National Security Strategy of the United States of America* (The White House, February 2015).

¹¹³ Shaw "International Law", above n 80, at 827.

¹¹⁴ Adrian Blomfield "Russia 'distributing passports in the Crimea'" (17 August 2008) *The Telegraph* <www.telegraph.co.uk>.

¹¹⁵ UNHCR "Russia hands out first passports to Crimean residents" (19 March 2014) *The UN Refugee Agency* <www.unhcr.org>.

¹¹⁶ See *Nottebohm Case (Liechtenstein v Guatemala) (Second Phase)* [1955] ICJ Rep 4 at 26 where the ICJ held that Guatemala was not obliged to recognise Nottebohm's Liechtenstein nationality because Nottebohm had no real prior connection to Liechtenstein sufficient to establish effective nationality.

¹¹⁷ Marxsen, above n 39, at 370.

they all reflect basic principles recognised in customary international law which Russia has breached.

1. The Helsinki Final Act

The Helsinki Final Act is a declaration which was signed during the 1975 Conference on Security and Cooperation in Europe and as successor states of the Soviet Union, both Ukraine and Russia are signatories to it.¹¹⁸ The aim of the Conference was to improve global relations and in 1995 the Conference was renamed the Organisation for Security and Cooperation in Europe (OSCE). It is currently one of the world's largest security-oriented intergovernmental organisations. The Helsinki Final Act requires its signatories to refrain from the threat or use of force against one another and to respect the territorial integrity of each participating state. Although not a binding treaty, it represents a political commitment by the heads of government of all signatories to build security and cooperation in Europe on the basis of its provisions. Furthermore, the Helsinki Final Act reflects longstanding principles of customary international law of respect for the sovereign and territorial integrity of states. Russia's forcible intervention in Crimea and eastern Ukraine has been in clear violation of the principles in the Helsinki Final Act.

2. The Commonwealth of Independent States

On 8 December 1991 the leaders of Russia, Ukraine and Belarus signed an agreement to dissolve the Soviet Union and form a regional organisation for former Republics of the Soviet Union.¹¹⁹ On 21 December 1991 a further 11 former Soviet Republics agreed to the Alma-Ata Protocols and joined the CIS.¹²⁰ The Alma-Ata Protocols constitute the founding declaration and principles of the CIS. The CIS coordinates trade and security measures between members and is based upon respect for the territorial integrity of each member state and the equality of all members.

Ukraine's membership in the CIS is disputed as, although Ukraine ratified the Creation Agreement of 1991, it chose not to ratify the subsequent CIS Charter which became the

¹¹⁸ The Final Act of the Conference on Security and Cooperation in Europe 14 ILM 1292 (signed 1 August 1975).

¹¹⁹ The Belavezha Accords (signed 8 December 1991, entered into force 12 December 1991).

¹²⁰ Alma-Ata Declaration 31 ILM 148. The additional signatories were Armenia, Azerbaijan, Kazakhstan, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan and Uzbekistan.

organisation's main constituent document.¹²¹ Under section 2(7) of the CIS Charter member states are defined as those who have ratified the Charter. As Ukraine has not ratified the CIS Charter it can only be regarded as an associate member. Regardless of Ukraine's limited membership, the CIS Charter and Creation Agreement both include basic principles at customary international law recognising the territorial sovereignty of states, which Russia has breached.

3. The Budapest Memorandum

The Budapest Memorandum on Security Assurances in connection with Ukraine's accession to the Treaty on the Non-Proliferation of Nuclear weapons is an agreement between Ukraine, Russia, the United Kingdom (UK) and the US which was signed on 5 December 1994.¹²² The aim of the agreement was to ensure Ukraine relinquished its stockpile of nuclear weapons and acceded to the Non-Proliferation Treaty.¹²³ In return for Ukraine's concession, the signatories provided Ukraine with security assurances. The Budapest Memorandum reiterates the signatories' respect for Ukraine's independence and sovereignty within its existing borders and reaffirms their obligation to refrain from the threat or use of force against the territorial integrity or political independence of Ukraine.¹²⁴ Russia clearly remains in breach of Memorandum through its annexation of Crimea and continued military involvement in eastern Ukraine.

Almost 20 years later, on 2 October 2014 Ukraine registered the Budapest Memorandum with the UN Secretariat. Although a certificate of registration was recorded on 25 March 2015 the Budapest Memorandum has not yet been assigned a UN Treaty Series volume number. Accordingly, it is unclear if Ukraine would be able to invoke the Memorandum before any organ of the UN under article 102(2) of the UN Charter. Article 102(2) provides that an international agreement registered in accordance with the provisions of article 102(1) of the UN Charter may be invoked before an organ of the UN. Article 102(1) holds that every treaty and international agreement entered into "shall as soon as possible be registered with the UN Secretariat and published by it". Thus, article 102(2) is ambiguous and can be read in two

¹²¹ Charter of the Commonwealth of Independent States (with declaration and decisions) 1819 UNTS 57 (opened for signature 22 January 1993, entered into force 22 January 1994).

¹²² Memorandum on security assurances in connection with Ukraine's accession to the Treaty on the Non-Proliferation of Nuclear Weapons (signed 5 December 1994) (Budapest Memorandum).

¹²³ Treaty on the Non-Proliferation of Nuclear Weapons 729 UNTS 161 (opened for signature 1 July 1968, entered into force 5 March 1970).

¹²⁴ See Budapest Memorandum, above 122, arts 1 and 2.

different ways. On the one hand an agreement may be invoked if it is simply registered with the UN Secretariat, or on the other hand the agreement may need to be registered and published by the UN Secretariat in order to be invoked. Depending on the interpretation given to article 102(2) Ukraine may be able to invoke the Budapest Memorandum as a certificate of registration has been recorded. However, if this is unsuccessful Ukraine may be able to retrospectively invoke the Budapest Memorandum before an organ of the UN if it is later assigned a UN Treaty Series volume number.

4. The Friendly Relations Declaration

The Friendly Relations Declaration was approved in a resolution adopted by the UN General Assembly in 1970, outlining key principles of international law.¹²⁵ One of the principles which the Friendly Relations Declaration affirms is that states must refrain 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 UN. This is identical wording to the prohibition on the use of force in article 2(4) of the UN Charter. The Friendly Relations Declaration therefore emphasises the primacy of refraining from the use of force in international law and exposes Russia's flagrant disregard of international law principles.

5. The NATO-Russia Founding Act

One of the key motives behind NATO's establishment in 1949 was to deter Soviet expansionism. Thus, building a relationship between Russia and NATO was considered crucial to maintaining international peace and security. After the end of the Cold War in 1991, a Founding Act between NATO and Russia was finally reached in 1997.¹²⁶ The agreement outlined key international law obligations and instruments which both parties agreed to observe. Notably, the parties undertook to refrain from the threat or use of force against one another, as well as against any other state in any manner inconsistent with the UN Charter or the Helsinki Final Act. The Founding Act also emphasised respect for sovereignty, political independence and territorial integrity of all states. Russia's support of violent separatists in eastern Ukraine, annexation of Crimea and insistence that Ukraine be barred from joining NATO has been in violation of the Founding Act.¹²⁷

¹²⁵ *Friendly Relations Declaration*, above n 78.

¹²⁶ Founding Act on Mutual Relations, Cooperation and Security between NATO and the Russian Federation (signed 27 May 1997).

¹²⁷ NATO "NATO-Russia relations: the facts", above n 46.

D. Contravention of Principles of International Law

Russia's actions have demonstrated a flagrant disregard for principles of international law. Its annexation of Crimea and military involvement in eastern Ukraine has violated not only the principle against the use of force but also the customary principle of non-intervention and the principle of respect for the independence and territorial integrity of states. In response to Russia's breaches of international law, the UN General Assembly adopted resolution 262 calling upon states not to recognise any changes to Ukraine's sovereign territory.¹²⁸

1. Customary Principle of Non-Intervention

The principle of non-intervention is a part of customary international law and involves the right of every sovereign state to conduct its affairs without outside interference.¹²⁹ The principle forbids all states from intervening either directly or indirectly in the internal or external affairs of other states.¹³⁰ In *Nicaragua* the support given by the US to the military and paramilitary activities of the Contras,¹³¹ through training, supply of weapons, financial, intelligence and logistic support, was held to constitute a clear breach of the principle of non-intervention.¹³² By analogy, Russia's direct involvement in Crimea and support of pro-separatist Ukrainians in eastern Ukraine is in blatant violation of this principle of customary international law.

2. Respect for the Independence and Territorial Integrity of States

The principle of respect for the territorial sovereignty of states inevitably overlaps with the principles of the prohibition of the use of force and of non-intervention.¹³³ Territorial sovereignty is a foundational and clear principle of international order under the UN Charter and at customary international law.¹³⁴ In *Nicaragua*, assistance to the Contras as well as direct attacks on Nicaraguan ports not only amounted to an unlawful use of force but also constituted

¹²⁸ *Territorial integrity of Ukraine*, above n 77.

¹²⁹ *Nicaragua*, above n 100, at 105. See *Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty* GA Res 2131, A/Res/20/2131 (1965) which was repeated and approved in *Friendly Relations Declaration*, above n 78.

¹³⁰ *Friendly Relations Declaration*, above n 78.

¹³¹ The contras was the label give to rebel groups in opposition to the government in Nicaragua, active between 1979 to early 1990s.

¹³² *Nicaragua*, above n 100, at 114.

¹³³ At 128.

¹³⁴ Charter of the UN, art 2(1) holds that the UN is based on the principle of sovereign equality of all its members.

infringements of the territorial sovereignty of Nicaragua.¹³⁵ Russia's intervention in Ukraine undoubtedly breaches this principle. The annexation of Ukraine's sovereign territory directly contradicts any respect for Ukraine's territorial integrity, while Russia's support of pro-separatist rebels in eastern Ukraine likewise infringes upon Ukraine's territorial sovereignty.

3. The Principle of Non-Recognition of Territorial Acquisition

The principle of non-recognition of title to territory acquired through force may be invoked when existing and generally accepted norms have been violated or when regional treaty obligations have been disregarded.¹³⁶ This principle is reinforced by the doctrine *ex injuria jus non oritur* which holds that legal rights cannot derive from an illegal situation¹³⁷ and it has been reaffirmed on various occasions.¹³⁸ In response to the annexation of Crimea and the subsequent referendum held in the peninsula, the UN General Assembly passed a resolution which called upon all states not to recognise any alteration of the status of Crimea and the city of Sevastopol.¹³⁹ Such resolutions have also been passed, albeit by the UN Security Council, in response to the 1990 Iraqi annexation of Kuwait¹⁴⁰ and Rhodesia's unilateral declaration of independence in 1965.¹⁴¹

An issue which arises with the principle of non-recognition is that it may only work well for a limited time span.¹⁴² Historically, the international community has accepted the results of many cases of illegal aggression by virtue of recognition.¹⁴³ If de facto control of Crimea by Russia continues uninterrupted for generations, the principle of non-recognition may have to give way eventually, as new rights arise. New rights may form even though they flow from a violation

¹³⁵ *Nicaragua*, above n 100, at 118.

¹³⁶ Brownlie, above n 101, at 423.

¹³⁷ Shaw "International Law", above n 80, at 338.

¹³⁸ Montevideo Convention on the Rights and Duties of States 165 LNTS 20 (opened for signature 26 December 1933, entered into force 26 December 1934) is an early example of an instrument which created obligations of non-recognition. See also *Draft Declaration on Rights and Duties of States* GA Res 375, (IV) (1949), art 11 which emphasise that territorial acquisitions by states achieved through the threat or use of force, or in any other manner inconsistent with international law, were not to be recognised by other states and Brownlie, above n 101, at 418.

¹³⁹ *Territorial integrity of Ukraine*, above n 77.

¹⁴⁰ *Iraq-Kuwait* SC Res 662, S/Res/662 (1990).

¹⁴¹ See *Southern Rhodesia* SC Res 216, S/Res/216 (1965), *Southern Rhodesia* SC Res 217, S/Res/217 (1965), *Southern Rhodesia* SC Res 277, S/Res/277 (1970), and *Southern Rhodesia* SC Res 288, S/Res/288 (1970).

¹⁴² Dinstein, above n 100, at 183.

¹⁴³ The de jure recognition of Italian sovereignty over Ethiopia by Great Britain, and the Munich Agreement which sanctioned Nazi Germany's annexation of portions of Czechoslovakia are significant instances of a failure to observe legal standards. See also Brownlie, above n 101, at 420.

of international law in the remote past.¹⁴⁴ It is clear that Russia's annexation of Crimea by force was in violation of international law and, under this principle, states have been called upon not to recognise any alteration to the status of Crimea.

E. Breach of Bilateral Agreements with Ukraine

Russia's annexation of Crimea was in clear violation of its bilateral agreements with Ukraine. These agreements affirmed the inviolability of one another's territory as well as sanctioning specific allowances for Russia to be able to access the Black Sea ports in Sevastopol.

1. The Friendship Treaty

The 1997 Friendship Treaty between Russia and Ukraine terminated the earlier 1990 Friendship Treaty which was established before the formal dissolution of the Soviet Union.¹⁴⁵ The 1997 Treaty reaffirms article 2(4) of the UN Charter and the Helsinki Final Act, recognising key principles of international law.¹⁴⁶ These principles are developed in article 3 of the Friendship Treaty which holds that relations between Russia and Ukraine shall be based upon the principles of mutual respect for their sovereign equality, territorial integrity and inviolability of borders, peaceful resolution of disputes, and the non-use of force or the threat or force. Russia's annexation of Crimea and intervention in eastern Ukraine in early 2014 was in clear violation of the 1997 Friendship Treaty.

Article 41 of the 1997 Treaty holds that the Treaty shall be subject to registration with the UN Secretariat in accordance with article 102 of the UN Charter. On 2 October 2014 the Treaty was registered with the UN Secretariat and a certificate of registration was recorded on 25 March 2015. As with the Budapest Memorandum, a certificate of registration for the Treaty has been recorded by the UN Secretariat. Accordingly, Ukraine may be able to invoke the Treaty before an organ of the UN, depending upon which interpretation of article 102(2) is taken. Alternatively, if the Treaty is later assigned a UN Treaty Series volume number it may be retrospectively invoked against Russia.

¹⁴⁴ Dinstein, above n 101, at 183.

¹⁴⁵ The 1997 Friendship Treaty, above n 26, superseded the 1990 Friendship Treaty, above n 26.

¹⁴⁶ Friendship Treaty 1997, art 2

2. Agreements Permitting Access to the Black Sea

Alongside the 1997 Friendship Treaty, Russia and Ukraine also signed a Partition Agreement on the Status and Conditions of the Black Sea Fleet which established two independent national fleets and divided armaments and bases between Russia and Ukraine.¹⁴⁷ The Partition Agreement sanctioned the stationing of the Russian Black Sea Fleet in Ukraine for a 20-year term which was due to expire on 28 May 2017¹⁴⁸ and also introduced a limit of 25,000 Russian service personnel able to be stationed in Crimea.¹⁴⁹ In April 2010 the states renegotiated aspects of the Partition Agreement in the Kharkov Accords.¹⁵⁰ In the Kharkov Accords, Ukraine extended the lease of the Black Sea Fleet's bases in Crimea by another 25 years in return for a 30 per cent discount on the price of Russian gas supplies to Ukraine. Russia also agreed to continue paying \$US 100 million per annum for the lease.¹⁵¹

Russia's military intervention in Ukraine during its annexation of Crimea was in gross violation of these bilateral agreements. Russia's military moved outside of its assigned areas, interfering with Ukraine's internal affairs.¹⁵² Military aircraft also flew in Ukrainian airspace and used airfields in Crimea without permission.¹⁵³ Despite Ukraine's condemnation of these actions, Russia has continued its occupation of Crimea, in flagrant disregard of Ukraine's sovereignty.¹⁵⁴ Russia's renouncement of its bilateral agreements has been detrimental to Ukraine's economy. Not only has Ukraine stopped receiving payment from Russia's lease of Crimean ports, it is no longer enjoying the benefit of discounted gas supplies.

¹⁴⁷ 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 (signed 28 May 1997, entered into force 7 December 1999) (Partition Agreement).

¹⁴⁸ Partition Agreement, art 25.

¹⁴⁹ Boltenkov, above n 36, at 137.

¹⁵⁰ Kharkov Accords, n 37, are also referred to as the Kharkiv Accords.

¹⁵¹ Kashin, above n 26, at 19.

¹⁵² In breach of the Partition Agreement, above n 147, arts 6(1) and 15(5).

¹⁵³ In breach of the Partition Agreement, above n 147, art 9(1) and also in breach of Agreement between the Cabinet of Ministers of Ukraine and the Government of the Russian Federation on the Use of Airspace of Ukraine and of Airspace Over the Black Sea (signed 16 July 1999), art 2.

¹⁵⁴ Ministry of Foreign Affairs of Ukraine "On Violations of Ukraine's Laws in Force and of Ukrainian-Russia Agreements by Military Units of the Black Sea Fleet of the Russian Federation in the Territory of Ukraine" (3 March 2014) <www.mfa.gov.ua>.

F. International Response to the Crisis

In response to Russia's violations of international law, the international community has imposed multiple targeted sanctions on Russia.¹⁵⁵ On 17 March 2014, in reaction to Russia's illegal annexation of Crimea and deliberate destabilisation of Ukraine, a number of states including Canada, the EU and the US introduced the first round of specifically targeted sanctions against Russian and Ukrainian officials.¹⁵⁶ These sanctions froze the assets of individuals linked to the unrest in Crimea or who had supported the region's vote to secede from Ukraine. The EU imposed travel bans and asset freezes on 151 persons and 37 entities responsible for acting in violation of Ukraine's territorial integrity.¹⁵⁷

Soon after this initial wave of sanctions, on 19 March 2014, Australia also announced they would impose financial sanctions and travel bans on officials who had been instrumental in supporting the crisis.¹⁵⁸ These sanctions were expanded on 21 May 2014 to reaffirm Australia's support for the territorial integrity and sovereignty of Ukraine. This increased the total number of Australian financial sanctions and travel bans to 50 individuals and 11 entities.¹⁵⁹ Japan also imposed modest sanctions against Russia, suspending planned talks between the two countries on investment, space and military negotiations, and on relaxing visa requirements.¹⁶⁰

The following day, on 20 March 2014, the US reaffirmed its support for Ukraine through imposing a second wave of sanctions. These targeted 20 members of Putin's inner circle as well as Bank Rossiya, an entity which supports officials with interests in Crimea.¹⁶¹ This was

¹⁵⁵ BBC News "Ukraine crisis: Rebel election decisions 'great danger' to peace" (17 September 2015) <www.bbc.com>.

¹⁵⁶ Council Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine [2014] OJ L78/16 identifies 21 individuals. See also Prime Minister of Canada, Stephen Harper "Sanctions List" (17 March 2014) <www.pm.gc.ca> which imposed economic sanctions on seven Russian officials and three Ukrainian officials and Steven Lee Myers and Peter Baker "Putin Recognizes Crimea Secession" *The New York Times* (online ed, New York, 18 March 2014) at A1.

¹⁵⁷ European Union "EU Sanctions against Russia over Ukraine crisis" (23 September 2015) <www.europa.eu>.

¹⁵⁸ ABC "Australian imposes sanctions on Russians after annexation of Crimea from Ukraine" ABC (19 March 2014) <www.abc.net.au>.

¹⁵⁹ Hon Julie Bishop MP, Minister for Foreign Affairs (Australia) "Further sanctions to support Ukraine" (press release, 21 May 2014).

¹⁶⁰ Fox News "Japan imposes sanctions against Russia over Crimea independence" (18 March 2014) <www.foxnews.com>.

¹⁶¹ Samantha Beattie "US imposes second wave of sanctions on Russia" JNM Journal (20 March 2014) <www.jnmjournal.com>.

later extended to include two major Russian energy firms, Rosneft and Novatek, and two banks, Gazprombank and Vneshekonombank.¹⁶² The latest US Executive Order on Russian sanctions was reported on 19 December 2014 and blocked access to property and prohibited certain transactions.¹⁶³

Montenegro, Iceland, Albania, Norway and Ukraine all aligned themselves with the EU's Council Decision on 11 April 2014.¹⁶⁴ Moldova also joined the sanctions imposed by the EU, which imposed restrictions on former Ukrainian officials.¹⁶⁵ On 28 April 2014 the EU issued a press release, expanding the list of persons subject to targeted sanctions.¹⁶⁶ The latest EU regulations were established on 29 January 2015 and they have been extended until the end of January 2016.

Russia has retaliated against the sanctions by banning a range of EU agricultural exports, causing European entities financial loss of around €5 billion over the last 18 months.¹⁶⁷ In addition, Russia also adopted a total ban on food imports from the US, Norway, Canada and Australia. Despite Russia's reactions, states have not lessened the pressure of their sanctions. This has resulting in an ongoing financial crisis in Russia. The combination of a 49 per cent plunge in oil prices and punitive sanctions has left Russia grappling with its worst economic crisis since 1998.¹⁶⁸ Over the past 18 months alone the Russian ruble has lost 50 per cent of its value against the US dollar.¹⁶⁹ The Obama administration has stated that it will not let up the financial pressure on Russia and that sanctions will continue to squeeze Russia's economy even

¹⁶² The Moscow Times "Third Wave of Sanctions Slams Russian Stocks" (17 July 2014) <www.themoscowtimes.com>.

¹⁶³ "Blocking Property of Certain Persons and Prohibiting Certain Transactions With Respect to the Crimea Region of Ukraine" 79 Federal Register 247 (19 December 2014), 77357-77359.

¹⁶⁴ Declaration by the High Representative on behalf of the European Union on the alignment of certain third countries with the Council Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine [2014] OJ L78/16.

¹⁶⁵ TRM "Moldova joined EU sanctions against former Ukrainian officials" The National Public Broadcaster "Teleradio-Moldova" (20 March 2014) <www.trm.md>.

¹⁶⁶ Council Decision 2014/238/CFSP implementing Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine [2014] OJ L126/55 which details the names, identifying information and the reasons for listing the additional 15 persons.

¹⁶⁷ Laurence Norman "EU Extends Economic Sanctions on Russia Until End of January" (22 June 2015) The Wall Street Journal <www.wsj.com>.

¹⁶⁸ Mike Dornig and Ian Katz "U.S. Won't Ease Sanctions to Stem Russia's Economic Crisis" Bloomberg (17 December 2014) <www.bloomberg.com>.

¹⁶⁹ Christian Dreger and others *The Ruble between the Hammer and the Anvil: Oil Prices and Economic Sanctions* (DIW Berlin Discussion Paper, 1488, June 2015) at 2.

harder in the months ahead. Similarly, EU officials have asserted that its sanctions on Russia's banking, technology and defence industries have had a significant impact in weakening its economy, pushing the state further into recession.¹⁷⁰ Some critics assert that the sanctions have had no effect in forcing Moscow to re-examine its policies, but instead are sowing a deepening division between the West and Russia.¹⁷¹ While sanctions undeniably foster tensions between Russia and the West, there is no doubt that the sanctions have had a debilitating effect on Russia's economy and have restricted Russia from acting on multiple fronts.¹⁷² The sanctions seek to induce Russia into lessening its support for separatists in eastern Ukraine and to facilitate a resolution to the conflict.

¹⁷⁰ Norman, above n 167.

¹⁷¹ Ibid.

¹⁷² Russia is currently preoccupied with supporting President Assad's regime in the Syrian crisis in the Middle East.

Chapter 3: Escalation of the Crisis

Russia's forcible intervention in Ukraine stemmed from its loss of influence in the region and the ensuing security threat that it posed. As a result, Russia sought to reassert dominance by annexing Crimea and cementing its access to the Black Sea. Russia fears that with the loss of its influence over Ukraine it will become surrounded by countries aligned economically and militarily with Western powers. Since the annexation of Crimea, Ukraine has announced that it is working towards joining the EU and NATO. Faced with encirclement by NATO members, Russia may begin to embark upon a policy change to ensure its security interests. As such, the international community is uncertain what Russia's next move may be. Russia may engage in an irredentist political policy, aimed at incorporating former Soviet Republics into Russia. Alternatively, Russia may assert a neo-imperial form of expansionism, looking to develop a new world order. Although it is uncertain if there will be an escalation of the current crisis, it is clear that the number of non-NATO and non-EU states in Eastern Europe has significantly declined over the last two decades, despite Russia's explicit attempts to prevent neighbouring states from aligning themselves with Western organisations.¹⁷³ This tension poses a threat to the region and to the entire post-Cold War security order.

A. Russia's Regional Ambitions

In the wake of the dissolution of the Soviet Union, several former Soviet republics, like Ukraine, were left with embedded ethnic Russian minority populations.¹⁷⁴ Historically, Russia has supported separatist Russian groups in these states which has led to frozen conflicts or de facto states emerging within the parent states. The splinter territories of Abkhazia and South Ossetia in Georgia and Transnistria in Moldova are examples of these separatist regions.¹⁷⁵ These territories enjoy Russian protection and influence and remain beyond the control of their parent state's central governance.¹⁷⁶ Russia's financial support is vital to the survival of the de

¹⁷³ Marxsen, above n 39, at 368.

¹⁷⁴ Former Soviet states with an embedded Russian minority population include Ukraine, Georgia, Moldova, Lithuania, Latvia and Estonia. See also Ralph S Clem "Dynamics of the Ukrainian state-territory nexus" (2013) 55 *Eurasian Geography and Economics* 219 at 230.

¹⁷⁵ See Figure 2 at vi. To a lesser extent this has also occurred in Nagorny-Karabakh in Azerbaijan, but the separatist region is more aligned with Armenia than with Russia.

¹⁷⁶ Jeffrey Mankoff "Russia's Latest Land Grab" (2014) 93(3) *Foreign Affairs* 60 at 60.

facto authorities, and the regions persist as unresolved conflicts today.¹⁷⁷ The separatist movements in the Donbas look as though they may become the newest frozen conflicts to emerge in a former Soviet Republic. Concerned by the possibility of Russia's rising regional ambitions, neighbouring states fear that Russia's intervention in Ukraine may be an indication of Russia's plan to further its support for separatist groups within their states.

1. Frozen Conflicts in Former Soviet Republics

The notion of protecting ethnic Russians who were once all a part of the Soviet Union has become a recurring theme in Russian public diplomacy.¹⁷⁸ Russia's recent interventions in Ukraine has generated trepidation that it may be embarking upon an irredentist political policy. Irredentism is a political movement intended to reclaim and reoccupy a lost homeland, based upon historic or ethnic affiliations. Russia's support for ethnic Russian minority groups in former Soviet Republics could be interpreted as implementing such a policy. Accordingly, all former Republics may be at risk of Russian interference in their territorial sovereignty.

a. Georgia

As a former Soviet Union republic, Georgia inherited areas of ethnic separatism.¹⁷⁹ South Ossetia and Abkhazia are regions within the sovereign territory of Georgia which share a border with Russia and are densely populated by ethnic Russians.¹⁸⁰ With Russian support, these regions have sought to establish separate de facto governments and independence from Georgia.¹⁸¹ Fighting between Georgia and South Ossetia occurred sporadically from January 1991 to March 1992, while conflicts between Georgia and Abkhazia lasted from August 1992 to July 1993. Both wars ended with a ceasefire, but without any political resolution regarding the proper status of the regions as either part of Georgian territory or as sovereign states. This

¹⁷⁷ John O'Loughlin, Vladimir Kolossov and Gerard Toal "Inside the post-Soviet de facto states: a comparison of attitudes in Abkhazia, Nagorny Karabakh, South Ossetia, and Transnistria" (2015) 55 *Eurasian Geography and Economics* 423 at 427.

¹⁷⁸ This concept is known as Novorossiia. See also Chris Borgen "Kosovo, South Ossetia, and Crimea: the Legal Rhetoric of Intervention, Recognition, and Annexation" (2 April 2014) *Opinio Juris* <www.opiniojuris.org>.

¹⁷⁹ Julia A George *The Politic of Ethnic Separatism in Russia and Georgia* (Palgrave Macmillan, New York, 2009) at 17.

¹⁸⁰ See Figure 2 at vi.

¹⁸¹ Shaw "International Law", above n 79, at 175. See also George, above n 179, at 1.

ambiguous condition has persisted and the conflicts have been regarded by the international community as frozen.¹⁸²

On 8 August 2008 violence broke out again in South Ossetia, in the town of Tskhinvali, when Georgia attempted to retake the splinter territory by force. Russia temporarily occupied the region, militarily intervening to obstruct the Georgian forces.¹⁸³ Russia's broad military presence extended into several key Georgian cities including the secessionist region, Abkhazia.¹⁸⁴ After five days of fighting, a ceasefire agreement between Georgia and Russia was negotiated by French President Nicolas Sarkozy on 12 August 2008, who acted on behalf of the EU.¹⁸⁵ Despite the ceasefire agreement, the regions have remained frozen conflict zones outside of Georgia's sovereign control. Russia has persistently influenced the regions and on 17 September 2008 it signed agreements with both South Ossetia and Abkhazia, setting out long term objectives to facilitate strategic partnerships.¹⁸⁶

Partnerships between Russia and the splinter territories in Georgia were recently reinforced through the creation of new treaties. On 24 November 2014 Putin signed a Treaty on Alliance and Strategic Partnership with Abkhazia to expand Russia's authority over the region. The agreement was condemned by the Georgian Foreign Minister who called it a "deliberate move by Russia in reaction to Georgia's European and Euro-Atlantic aspirations".¹⁸⁷ A similar Treaty on Alliance and Integration between Russia and South Ossetia was signed this year on 18 March 2015, incorporating South Ossetia's military and economy into Russia's.¹⁸⁸ Georgia declared that it would appeal to the UN, NATO and other international organisations to denounce the accords. In response, the EU has reiterated its firm support for the sovereignty and territorial integrity of Georgia within its internationally recognised borders.¹⁸⁹

¹⁸² George, above n 179, at 95.

¹⁸³ Sakwa, above n 9, at 40.

¹⁸⁴ George, above n 179, at 1.

¹⁸⁵ See *Report of the Independent Fact-Finding Mission on the Conflict in Georgia* (European Union, September 2009) vol 2, ch 3, 135-141 at [2].

¹⁸⁶ The New York Times "Russia signs pacts committing itself to defense of South Ossetia and Abkhazia" (17 September 2008) <www.nytimes.com>.

¹⁸⁷ Georgian Foreign Minister Tamar Beruchashvili as recorded in David M Herszenhorn "Pact Tightens Russian Ties with Abkhazia" The New York Times (online ed, New York, 25 November 2014) at A11.

¹⁸⁸ Aljazeera "Putin signs treaty integrating South Ossetia into Russia" (18 March 2015) <www.amercia.aljazeera.com>.

¹⁸⁹ See European Union External Action "Statement by High Representative/Vice-President Federica Mogherini on the announced signature of a "Treaty on Alliance and Integration" between the Russian Federation and Georgia's breakaway region of South Ossetia" (17 March 2015) <www.eeas.europa.eu>

These agreements are not governed by international law as under article 2(1) of the Vienna Convention on the Law of Treaties 1969 a treaty is an international agreement which has been concluded between states.¹⁹⁰ As such, the creation of these treaties contravene fundamental rules of international law. South Ossetia and Abkhazia are integral parts of Georgia and the agreements breach Georgia's independence, sovereignty and territorial integrity. Russia's formation of these treaties is in disregard of its international commitments and bilateral agreements with Georgia.¹⁹¹ To prevent further Russian expansion in Georgia, Georgia is working towards joining the NATO alliance. At the Wales Summit in September 2014, a package of measures was launched to strengthen Georgia's ability to defend itself and advance its preparations for membership.¹⁹² While Georgia's membership is only in early stages of development, NATO membership would prevent Russia from continuing to interfere in violation of Georgia's sovereign rights.

b. Moldova

Moldova is another former Soviet Republic vulnerable to further Russian intervention. Transnistria is a separatist territory in Moldova which, with the aid of Russian military units, has been governed independently as the Pridnestrovian Moldavian Republic. Before the dissolution of the Soviet Union, Transnistria declared its independence from Moldova and asserted itself as a separate Republic within the Soviet Union on 2 September 1990.¹⁹³ Conflicts between the territory and Moldova simmered until late 1991 when Russian troops intervened in support of the Moldovan separatist forces. The separatist movement, led by a pro-Soviet group, entered negotiations with the Moldavian government based on the possibility of a special political status for the region. However, progress was blocked by the separatists' demands for statehood.¹⁹⁴ Moldova has remained a divided state with pro-Russian separatists controlling the frozen Transnistrian region. Moldova is particularly vulnerable to Russian

and European Union External Action "Statement by High Representative/Vice-President Federica Mogherini on the signature of a 'Treaty on Alliance and Strategic Partnership' between the Russian Federation and Georgia's breakaway region of Abkhazia" (24 November 2014) <www.eeas.europa.eu>.

¹⁹⁰ Vienna Convention, above n 99.

¹⁹¹ Aljazeera "Putin signs treaty", above n 188.

¹⁹² NATO "NATO's relations with Georgia" (7 September 2015) <www.nato.int>.

¹⁹³ Christopher Borgen "Thawing a Frozen Conflict: Legal Aspects of the Separatist Crisis in Moldova" (2006) 61 *The Record of the Association of the Bar of the City of New York* 1 at 15.

¹⁹⁴ Borgen "Thawing a Frozen Conflict", above n 193, at 17-18.

pressure as it relies heavily on energy and trade agreements with Russia and its security and intelligence forces are weak.¹⁹⁵

Moldova and Georgia are former Soviet Republics which have been plagued by ethnic separatism and continuous Russian intervention and influence. Russia's move to tighten its grip on these regions underscores the extent to which it has capitalised on regional territorial disputes, often driven by ethnic, national or religious divisions. This irredentist action has enabled Russia to retain influence throughout the old Soviet system.¹⁹⁶ However, since its annexation of Crimean, fears have arisen that Russia could initiate a process towards the outright annexation of Abkhazia and South Ossetia in Georgia.¹⁹⁷ To prevent further Russian domination Moldova and Georgia, alongside Ukraine, each signed an association agreement with the EU in June 2014, signalling a policy shift towards establishing alliances with the West.¹⁹⁸

2. Russian Presence in eastern Ukraine

Russia's presence in eastern Ukraine has persisted since its annexation of Crimea. With the continuation of separatist movements in the Donbas region, Ukraine's territorial integrity remains threatened by Russia. The Donbas is formally divided into the Donetsk and Luhansk provinces¹⁹⁹ and includes the second largest proportion of ethnic Russians and Russian-speakers in Ukraine.²⁰⁰ Russia exerts both direct and indirect influence on the crises in the Donbas. It remains directly involved through supporting, arming and inciting rebels in the Donbas, while its indirect involvement can be seen as the continued threat of a Russian invasion of mainland Ukraine. This not only ties up significant Ukrainian forces in protecting the border with Russia but also limits Ukraine's ability to support antiterrorism operations.²⁰¹

Unlike Crimea which was annexed in a single day, the violent conflict in the Donbas has dragged on for months, leading to the creation of the Minsk Protocol on 5 September 2014. The Minsk Protocol was an attempt to stop the conflict in the Donbas, however the ceasefire

¹⁹⁵ Wilson, above n 24, at 171.

¹⁹⁶ Herszenhorn, above n 187.

¹⁹⁷ Allison, above n 51, at 1276.

¹⁹⁸ Wilson, above n 24, at 162.

¹⁹⁹ Provinces in Ukraine are commonly referred to as oblasts.

²⁰⁰ Figure 1 at vi. See Wilson, above n 24, at 118.

²⁰¹ Vyacheslav Tseluyko "Rebuilding Refocusing the Force: Reform and Modernization of the Ukrainian Armed Forces" in Colby Howard and Ruslan Pukhov (ed) *Brothers Armed: Military Aspects of the Crisis in Ukraine* (East View Press, Minneapolis, 2014) 187 at 200.

deal collapsed within days after multiple breaches by both sides.²⁰² The agreement failed primarily because it did not give the separatists any effective means to achieve their objectives or redress their concerns within the Ukrainian political system.²⁰³ On 12 February 2015 an agreement was reached to establish a second Minsk agreement. The key points of the new agreement were for an immediate and full bilateral ceasefire, withdrawal of foreign armed groups and heavy weapons by both sides, amnesty for all persons involved in the conflict, release of hostages, restoration of full Ukrainian government control in the conflict zone and constitutional reform in Ukraine.²⁰⁴

On 17 February 2015 the UN Security Council adopted resolution 2205, endorsing the “Package of measures for the Implementation of the Minsk Agreements”, adopted and signed in Minsk on 12 February 2015.²⁰⁵ The resolution also reaffirmed resolution 2166 which stressed the need for a full and thorough independent international investigation into the downing of Malaysia Airlines flight MH17 over the Donbas.²⁰⁶ The monitoring of the Minsk Agreement was assigned to the OSCE’s Special Monitoring Mission to Ukraine. Following a request from Ukraine, the Special Monitoring Mission was deployed on 21 March 2014, consisting of around 500 unarmed civilian observers.²⁰⁷ In total, from mid-April 2014 to 15 August 2015 there have been at least 25,493 casualties, including 7,883 fatalities and at least 17,610 people injured.²⁰⁸ The second Minsk agreement has been successful in stopping a further escalation of the military conflict in the Donbas, with only one non-training ceasefire violation recorded by the Special Monitoring Mission. However, the political and economic problems in Ukraine remain, with Russia continuing to support rebels in eastern Ukraine and remaining in control of Crimea.²⁰⁹

²⁰² BBC News “Ukraine ceasefire: New Minsk agreement key points” (12 February 2015) <www.bbc.com>.

²⁰³ Julia Embody “Here’s How to Save the Minsk II Agreement” (10 July 2015) The National Interest <www.nationalinterest.org>.

²⁰⁴ BBC News “Ukraine ceasefire”, above n 202.

²⁰⁵ *Letter from the Permanent Representative of the Russian Federation (Ukraine)* SC Res 2202, S/Res/2202 (2015).

²⁰⁶ *Letter from the Permanent Representative of Ukraine* SC Res 2166, S/Res/2166 (2014).

²⁰⁷ OSCE “OSCE Special Monitoring Mission to Ukraine: Fact Sheet” (23 March 2015) <www.osce.org>.

²⁰⁸ Office of the United Nations High Commissioner for Human Rights *Report on the human rights situation in Ukraine* (16 May to 15 August 2015) at [34].

²⁰⁹ Dreger and others, above n 169, at 5.

B. Involvement by NATO

The annexation of Crimea was a departure from Russia's usual actions of military intervention, as it ensured that Crimea did not become another frozen conflict.²¹⁰ This change of policy has sparked concern among neighbouring states that they may be the next victims of Russia's resurgence. The three Baltic States and Poland each share a border with Russia and historically have been subjected to Russian influence. As members of NATO, if Russia were to intervene in their sovereign affairs, NATO would be obliged to intervene under article 5 of the Washington Treaty.²¹¹ NATO has not yet become directly involved in the crisis, but it has strengthened its strategy of collective self-defence in response to Russia's breaches of international law.

The increased size and scope of military exercises conducted by both Russia and NATO are sustaining the current climate of tensions in Europe. These tensions have been further aggravated and elevated into a sense of unpredictability, as not all exercises have been publicly announced beforehand.²¹² Although there has been an increased focus on NATO since Russia's annexation of Crimea, the international community is relying primarily upon diplomacy and sanctions to readdress Putin's policies and assist the crisis. Through these measures it is hoped that the crisis will not escalate and NATO will not be obliged to intervene.

1. NATO-Russia Relations

In the post-Cold War international system, securing a relationship between NATO and Russia was considered vital to international peace and security. However, NATO and the process of NATO expansion is viewed by Russia as a threat to its own security interests.²¹³ To establish a relationship with Russia, a Founding Act between NATO and Russia was negotiated in 1997. The Founding Act emphasised a shared commitment to refrain from the threat or use of force against one another, as well as against any other state, its sovereignty, territorial integrity or

²¹⁰ Mankoff, above n 176, at 60.

²¹¹ North Atlantic Treaty 34 UNTS 243 (opened for signature 4 April 1949, entered into force 24 August 1949) (Washington Treaty).

²¹² Ian Kearns, Lukasz Kulesa and Thomas Frear "Preparing for the Worst: Are Russian and NATO Military Exercises Making War in Europe more Likely?" European Leadership Network <www.europeanleadershipnetwork.org>.

²¹³ Washington Treaty above n 211, art 10 holds that any other European state in a position to further the principles of this Treaty and to contribute to the security of the North Atlantic area may be invited as a member. See also Tsygankov, above n 5, at 288.

political independence.²¹⁴ The Founding Act also established mechanisms for a NATO-Russia Permanent Joint Council to increase consultation and cooperation.²¹⁵ Following Russia's illegal military intervention in Ukraine and its violation of Ukraine's sovereignty and territorial integrity, NATO has suspended all practical cooperation with Russia.²¹⁶

During Yushchenko's Presidential term Ukraine shifted its policies to build a closer relationship with the West, looking to join not only the EU but NATO as well. Although Europeans were divided on incorporating Ukraine into NATO, they were unanimous in supporting Ukraine's admission into the EU Eastern Partnership Programme.²¹⁷ As the EU Eastern Partnership Programme was initially proposed by Poland, Latvia and Sweden – states known to be especially critical of Russia – Russia was suspicious that rather than helping Ukraine to develop ties with the EU, the Partnership Programme was a Trojan horse to gain Ukraine's admission to NATO.²¹⁸ For Russia, this was seen as compromising its geopolitical power in Eastern Europe.²¹⁹ Russia's fear is that if Ukraine and Georgia both join NATO, its access to the Black Sea would be restricted and it would be encircled by a hostile military alliance.²²⁰ The US currently actively supports the eventual membership of Georgia and Ukraine in NATO, and this support is interpreted in Moscow as a major threat to Russia's national security.²²¹

The annexation of Crimea and Russia's use of military force in Ukraine has opened up the possibility of NATO intervention to protect NATO members from an armed attack by Russia. NATO is a political and military alliance which aims to safeguard the freedom and security of its members through collective self-defence.²²² The principle of collective self-defence, enshrined in article 5 of the 1949 Washington Treaty,²²³ considers an attack against one or several members as an attack against all.²²⁴ Russia's annexation of Crimea signals a new low

²¹⁴ Founding Act, above n 125.

²¹⁵ The NATO-Russian Council replaced the Permanent-Joint Council on 28 May 2002.

²¹⁶ NATO "NATO-Russian Council" (28 April 2014) <www.nato.int>.

²¹⁷ Tsygankov, above n 5, at 289.

²¹⁸ At 290.

²¹⁹ At 288.

²²⁰ Robert H Wade "Reinterpreting the Ukraine Conflict: The Drive for Ethnic Subordination and Existential Enemies" (2015) 58 *Challenge* 361 at 363.

²²¹ O'Loughlin, Kolossov and Toal above n 177, at 429 and 431.

²²² NATO "What is NATO" <www.nato.int>.

²²³ Washington Treaty, above n 211.

²²⁴ Article 5 has been invoked once, in response to the 11 September terrorist attacks in the US.

in relations not only between Russia and the West, but also in relations between Russia and NATO, threatening the stability of international order.²²⁵

2. Vulnerable NATO Members

NATO can only become involved in the crisis if Russian intervention is directed towards a member of the NATO alliance. In the wake of Russia's aggressive actions in Ukraine, NATO has reaffirmed its commitment to collective defence to provide assurance for its allies in the region.²²⁶ At the Wales Summit, NATO also approved the implementation of the Readiness Action Plan in order to strengthen its collective defence strategy.²²⁷ The Readiness Action Plan was established in response to the threat posed by Russia and signals the most significant reinforcement of NATO's collective defence strategy since the end of the Cold War.

a. The Baltic States

NATO would be compelled to act if Russia forcibly intervened in one of the three Baltic States, which are all members of NATO. Lithuania, Latvia and Estonia each share a border with Russia and were formerly incorporated as Republics within the Soviet Union.²²⁸ Latvia and Estonia both have significant Russian-speaking minorities in their states and, as such, are nervous about Russia's next moves.²²⁹ The presence of Russian speakers has been perceived as a political threat, as Russia has historically intervened in states with Russian-speaking regions and supported their separatist minorities.²³⁰ The Baltic States have continuously asserted that they require NATO support to help maintain their own identity and sovereignty in the face of perceived Russian aggression.²³¹ In addition, Lithuania has reintroduced conscription over security concerns about the current geopolitical environment in Eastern Europe.²³²

²²⁵ Michael Rühle, Head of Energy Security (NATO) "The Ukraine Crisis, Russia Resurgent and the West: A NATO Perspective" (Autumn Lecture Series 2014 "The Future of European Geostrategy", Institute for European Studies, Brussels, 15 October 2014).

²²⁶ North Atlantic Council "Wales Summit Declaration" (press release, 5 September 2014) at [3].

²²⁷ At [5].

²²⁸ Jeremy W Lamoreaux "Acting small in a large state's world: Russia and the Baltic states" (2014) 23 *European Security* 565 at 571.

²²⁹ Rühle, above n 225.

²³⁰ Lamoreaux, above n 228, at 573.

²³¹ At 572.

²³² BBC News "Lithuania to reintroduce conscription over security concerns" (24 February 2015) <www.bbc.com>.

b. Poland

As one of Ukraine's neighbours and a former Soviet satellite state,²³³ Poland also faces a threat by Russia's recent annexation of Crimea.²³⁴ Despite assertions by Polish President Bronislaw Komorowski that there is no direct Russian threat to Poland, Poland's shared history with Russia has generated a widespread mistrust of the state amongst Poles. After eastern Poland was annexed in the 18th century by Catherine the Great, it did not regain its independence until the end of World War One.²³⁵ The Soviet Union then invaded eastern Poland in 1939 and, after the end of World War Two, a Soviet-backed communist system was installed in Poland with the last Soviet troops only leaving in 1993.

After the annexation of Crimea, NATO strengthened its presence in Poland in order to allay fears along Ukraine's western border.²³⁶ Twelve US fighter jets and 300 US air force personnel were sent to Poland to show support for NATO allies in the region.²³⁷ Furthermore, to facilitate the Readiness Action Plan, six NATO Force Integration Units were established in Central and Eastern Europe, with the headquarters stationed in Poland.²³⁸ Poland has since begun to diversify its gas sources in order to lessen its dependence on Russian supplies.²³⁹ This enables Poland to be more resilient against Russian influence and pressure.

C. Limits of the International Community

The UN Charter places considerable emphasis on the duty of member states to resolve their disputes by peaceful means.²⁴⁰ A negotiated settlement would reduce the risks of a direct NATO-Russia conflict or an escalation of the crisis in eastern Ukraine.²⁴¹ However, negotiated settlements have been unsuccessful in returning Crimea to Ukraine and limited at best in

²³³ Despite being a formally independent state, Poland was under heavy political, economic and military control by the Soviet Union.

²³⁴ Interview with Konstanty Gebert, Polish columnist (Scott Simon, NPS, Weekend Edition Saturday, 22 March 2014).

²³⁵ Catherine the Great ruled Russia from 1762-1796.

²³⁶ Chris Stevenson "Ukraine crisis: Nato beefs up presence in Poland after Russia's annexation of Crimea" (6 April 2014) Independent <www.independent.co.uk>.

²³⁷ Jim Miklaszewski "U.S. Fighter Jets Arrive in Poland Amid Crimea Tensions" (14 March 2014) NBC News <www.nbcnews.com>.

²³⁸ NATO "The Readiness Action Plan" (1 September 2015) <www.nato.int>.

²³⁹ Adam Easton "Poland and Baltics feel heat from Crimea" (12 March 2014) BBC News <www.bbc.com>.

²⁴⁰ Charter of the UN, arts 1(1), 2(3) and 33(1). See also Mansell and Openshaw, above n 82, at 159.

²⁴¹ Michael O'Hanlon "How to Resolve the War in Ukraine" (16 September 2015) The National Interest <www.nationalinterest.org>.

resolving the conflict in the Donbas. The international community's only effective means to deter Russia is through the use of sanctions. Powerful international organisations like the UN or the ICJ are limited in their actions, largely due to Russia's permanent membership on the UN Security Council.

1. Paralysis of the UN

Russia, alongside China, France, the UK and the US make up the five permanent members of the UN Security Council. The UN Security Council is the main decision-making organ of the UN, responsible for maintaining international peace and security. Russia's permanent membership on the Security Council renders the UN essentially useless in condemning Russia's violations of the UN Charter and international law. This is because each permanent member of the UN Security Council has the power to veto the adoption of any substantive resolution. Accordingly, the UN is paralysed and cannot take measures under articles 39, 41 or 42 of the UN Charter to help restore international peace and security.²⁴²

Article 6 of the UN Charter holds that a member which has persistently violated the principles contained in UN Charter may be expelled from the organisation upon recommendation of the Security Council.²⁴³ Although an expulsion would enable the UN to respond to Russia's violations of the UN Charter, this would not substantially increase the punitive economic sanctions and travel bans which Russia currently faces. It could also antagonise Russia, destabilising the current international order and spark a worldwide security crisis.

2. The International Court of Justice

The ICJ was intended to play a vital role in ensuring the peaceful resolution of interstate disputes.²⁴⁴ The ICJ has two main roles (1) to decide legal disputes between states that have accepted its jurisdiction; and (2) to provide advisory opinions in response to legal questions submitted to it by the UN General Assembly and other UN specialised agencies.²⁴⁵ Although all UN member states are parties to the Statute by virtue of their ratification of the UN Charter, being party to the Statute of the ICJ does not automatically mean that a state becomes subject

²⁴² Russia's actions in Ukraine have clearly met the threshold in Charter of the UN, art 39 as a threat to the peace and as a breach of the peace, and may also constitute an act of aggression.

²⁴³ Under Charter of the UN, art 27(2) this is a procedural matter and the concurring votes of the permanent members of the UN Security Council are not required. Only an affirmative vote of nine members of the UN Security Council would be needed.

²⁴⁴ Mansell and Openshaw, above n 82, at 161.

²⁴⁵ Charter of the UN, art 96(1). See also Mansell and Openshaw, above n 82, at 165.

to the ICJ's compulsory jurisdiction.²⁴⁶ The parties concerned must voluntarily submit to its jurisdiction. Such consent is normally indicated in one of the ways provided for under article 36 of the ICJ Statute.²⁴⁷ This severely limits the effectiveness of the ICJ and prohibits Ukraine from bringing the dispute before the ICJ without Russia's approval. The UN General Assembly could request an advisory opinion from the ICJ on the matter, but the process takes several years, running counter to the immediacy of the crisis Ukraine is currently facing. Moreover, while advisory opinions constitute a definitive statement of the position in international law, it would not practically assist Ukraine or compel Russia to withdraw from eastern Ukraine and return Crimea.²⁴⁸

²⁴⁶ Charter of the UN, art 93(1).

²⁴⁷ Mansell and Openshaw, above n 82, at 166.

²⁴⁸ At 169.

Conclusions

When Ukraine gained independence in 1991 the state was split between citizens who were unable to agree on the political direction of their state. This discord between pursuing political relations with the West or retaining closer links with Russia has remained in Ukraine and culminated in the Euromaidan protests in 2013-2014. Ukrainian citizens protested against the decision made by Yanukovych to cut ties with the West in favour of strengthening Ukraine's alignments with Russia. The protests escalated into violent clashes and Yanukovych fled from office. Russia reacted to its loss of influence in Ukraine by annexing the strategically-positioned Crimean peninsula. Russia used Ukraine's unstable political situation to its advantage and was able to appropriate Crimea in just one day. Inspired by Russia's annexation, pro-separatist rebels in the Donbas began to rebel against the government in Kiev. The separatists in the Donbas region are currently being supported by Russian troops and the area remains politically volatile, while Crimea remains under de facto Russian control.

Russia's intervention in Ukraine has been in gross violation of international law. Russia's use of force is contrary to article 2(4) of the UN Charter and the corresponding peremptory norm at customary international law. Russia has also breached various multilateral agreements and bilateral agreements with Ukraine. Russia has brazenly disregarded the independence of Ukraine and the inviolability of Ukraine's territorial sovereignty, defying a range of international principles and norms. In response to Russia's actions, the international community has imposed targeted economic sanctions and travel bans on Russian and Crimean citizens. These sanctions are punitive and are intended to compel a resurgent Russia to return Crimea to Ukraine and to withdraw support for dissidents in eastern Ukraine. The sanctions have had a debilitating effect on Russia's economy and will continue to push Russia further into recession until it begins to make concessions.

Russia has a history of intervening in former Soviet Union Republics, but its annexation of Crimea went beyond its previous support of separatists, stopping Crimea from becoming another frozen conflict. The international community, with NATO sitting in the wings, is currently anticipating Russia's next move. Its annexation of Crimea may be simply a strategic win or it may be the first step of a neo-imperial form of expansionism.

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