

THE REUNIFICATION OF CRIMEA AND THE CITY OF SEVASTOPOL WITH THE RUSSIAN FEDERATION

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Crimea and the City of Sevastopol justifiably separated from Ukraine and reunified with the Russian Federation in 2014. Support for this proposition is found in historic, economic, and political reasoning. Extant principles of public international law, derived from the Treaty of Westphalia, and subsequently developed by Great Powers to facilitate their strategic interests, when applied to the Crimean/Russian reunification, produce absurd results: nailing a population to a cross of misery, oppression, and poverty. In addition, the principles invoked are underdeveloped, prejudiced toward Nation States holding the imprimatur of "Great Powers," and ignore individual and population preferences. Moreover, scholarly and jurist analyses repose upon an edifice of incomplete facts, and ignore the 1991 illegal annexation of Crimea by Ukraine. Crimea suffered twenty-three years of economic rot under Ukrainian rule. Under the Russian Federation, economic conditions in the peninsula are improving, despite the US/EU sanctions imposed upon the Crimean population, a cruelty that the Great Powers cannot justify. Exceptional circumstances that took place in Ukraine in 2013/14 permitted scheduling a referendum to seek independence from Ukraine. Polls taken after the 2014 referendum unanimously demonstrate that the population of Crimea and the City of Sevastopol prefer reunification with the Russian Federation, as opposed to going back and becoming a subject of Ukraine rule and exploitation under a US installed right wing regime. Repeated calls to "give back" Crimea to Ukraine are based on twisted historical narratives, solely designed to weaken the Russian Federation.

Keywords: Crimea; Russian Federation; secession; annexation; economic sanctions.

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Introduction

Part One of this article sets forth a chronology of events that took place in Ukraine and the Crimean Peninsula, after the collapse of the Soviet Union and prior to Crimea's reunification with the Russian Federation. This Part is divided into three sections: (1) the period between 1991 and 2000, (2) the period between 2013 and 2014, and (3) the period in Crimea in 2014. Two preceding events merit mention: Catherine the Great's 1793 integration of Crimea within the Russian empire, and Khrushchev's transfer of the peninsula to the Ukrainian SSR in 1954.¹ The chronology corrects misstatements of fact found in the scholarly literature and popular press, both of which portray an abbreviated version of facts, and a piecemeal application of public international law, to maintain that: (1) Crimea seceded from Ukraine, (2) the purported "secession" was illegal under extant principles of public international law² and, (3) the Russian Federation illegally "annexed" Crimea in 2014.

¹ In context, Crimea was part of Russia for 161 years, prior to its transfer to Ukraine during the existence of the USSR, when the transfer had no practical significance. Tacking on the period from 1954 to 1991, then Crimea was part of Russia for an additional 37 years. Mark Kramer, *Why Did Russia Give Away Crimea Sixty Years Ago?*, Wilson Center, CWIHP e-Dossier No. 47, 19 March 2014 (May 27, 2017), available at <https://www.wilsoncenter.org/publication/why-did-russia-give-away-crimea-sixty-years-ago> [noting that the two official rationales published in 1954: "noble act on the Part of the Russian people" and "territorial proximity of Crimea to Ukraine, commonalities of their economies, and the close agricultural and cultural ties between the Crimean oblast and the UkrSSS" do not hold up to scrutiny]. The document "February 19, 1954, Meeting of the Presidium of the Supreme Soviet of the Union of Soviet Socialist Republics" containing a transcript of the meeting at which Crimea was transferred to Ukraine is full of platitudes and devoid of argument is available at <http://digitalarchive.wilsoncenter.org/document/119638>.

² "There is no generally accepted definition of secession as a form of State creation." Peter Radan, *The Definition of "Secession"*, Macquarie Law Working Paper No. 2007-3 (August 2007), at p. iii. Professor Macquarie proposes the following definition: "Secession is the creation of a new State upon territory previously forming part of, or being a colonial entity of, an existing State." *Id.* at 2. In addition, Professor Radan emphasises the importance of "recognition" of a State produced by secession, at least as a foreign policy goal. *Id.* at 3. The closely related concept of "irredentism" is defined as "attempts by existing states

Part Two of this article distils key conclusions drawn from the comprehensive factual chronology found in Part One. Conventional interpretations of the Crimean crisis repose upon faulty factual premises thereby undercutting their profoundly misguided conclusions. Without an accurate statement of facts, the precise legal question to be answered cannot be drawn. In the absence of fully developed facts, the media spreads an unsustainable mythology of Euromaidan shaping public opinion. Part Two also argues that public international law sanctions a monopoly of power by States and lacks rules to resolve matters such as the Crimean case.

Part Three of this article constructs the argument from pragmatism to support the reunification of Crimea with the Russian Federation and to legitimate the redrawn borders of the Republic of Crimea. The pragmatist argument relies upon multiple disciplines: history, economic analysis, and political reasoning; posits that facts drive the application of “international law,” and, asserts that principles of “economic analysis,” exceptionally well-developed within municipal law, have the capacity to reshape public international law to improve an understanding of State behaviour. The redrawn border of the Crimean Peninsula is consistent with logic and what must constitute the ultimate objective of public international law: the end of human suffering.

1. Part One: History (1991–2000)

1.1. The story of Crimea’s separation from Ukraine and re-unification with the Russian Federation begins in 1991, when the Soviet Union was disintegrating, but prior to its formal dissolution.³ The declarations first of sovereignty and second of independence of the individual republics of the USSR, were acts of secession, as the Union of Soviet Socialist Republics, at that time, remained in existence and constituted the highest organ of power. These secessions have generated no legal analysis as to their validity under public international law, as the Great Powers of that epoch: the United States and Europe, did not object, as it was in their geo-political interest.⁴

to annex territory of another state that their co-nationals inhabit.” *Id.* at 6. Further elaborations of the term “secession” are found: *e.g.*, Susanna Mancini, *Secession and Self-Determination* (M. Rosenfeld & A. Sajo (eds.), Oxford: Oxford University Press, 2012), at Ch. 23 [asking ultimately “whether the constitutionalization of the right to secede can, in particular context, be regarded as a constructive response to secessionist challenges and what its implications are for constitutional law”]; and Emanuelle Dalle Mulle, *Secessionism and Separatism Monthly Series: “Secession and International Law”* by Peter Radan, HNationalism, 20 November 2015 (May 27, 2017), available at <https://networks.h-net.org/node/3911/discussions/97535/secessionism-and-separatism-monthly-sries-%E2%80%9Csecession-and>.

³ The Soviet Union was formed in December 1922 “by four Soviet Socialist Republics: Russia, Ukraine, Belarus, and the Transcaucasian Federation.” Serhii Plokhyy, *The Last Empire: The Final Days of the Soviet Union* 309 (London: Oneworld, 2014). Arguably, the Soviet Union was destroyed by acts of treason, violation of Soviet internal law, political ambitions of select leaders of individual Republics, and the role of the United States.

⁴ Malcolm N. Shaw, *International Law* 500 (6th ed., Cambridge: Cambridge University Press, 2008) states concisely the status of secession, “International law has sometimes to modify its reactions to the consequences of successful violation its rules to take into account the exigencies of reality.”

1.2. On 26 April 1990, the USSR enacted a law identifying competences of the USSR as a federation and competences held by the Republics. Under the law, autonomous republics had rights of full governance over their territory without direct control of the USSR.⁵ Earlier, in 1990, the second phase of foreign investment reform took place, as Gorbachev tried to jump-start the economy.⁶ On 3 November 1990, a special commission of the Crimean government announced a project to formulate a temporary decree concerning the procedure of how to conduct a referendum on the territory of the Crimean oblast to permit a vote on re-establishing Crimea as an Autonomous Soviet Socialist Republic.⁷ Subsequently, on 12 November 1990, the Crimean government held a special session, at which President Kravchuk was present, and found that the USSR decree of 30 June 1945 and law of the RSSR of 25 June 1946, abolishing the Crimean ASSR was unlawful, and that the Crimean population has the right to re-establish the Crimean ASSR as a subject of the USSR, and participant of the Union Agreement.⁸ Simultaneously, the Crimean government decided to hold a referendum, scheduled for 20 January 1991, to decide the legal status of Crimea.⁹

1.3. In response to Gorbachev's planned reforms, in January 1991, prior to the Alma-Ata accords, Crimea held a referendum (the Crimean Sovereignty Referendum) where voters were asked whether they wanted to re-establish the Crimean Autonomous Soviet Socialist Republic, that had been abolished in 1954.¹⁰ Specifically,

⁵ Constitution Writing and Conflict Resolution, Soviet Union 1990 (May 27, 2017), available at <https://www.princeton.edu/~pcwcr/reports/sovietunion1990.html>.

⁶ See William G. Frenkel and Michael Y. Sukham, *New Foreign Investment Regimes of Russia and Other Republics of the Former U.S.S.R.: A Legislative Analysis and Historical Perspective*, 16(2) *Boston College International and Comparative Law Review* 321, 325 (1993) (noting "the Union republics increasingly began to assert political sovereignty and economic independence"). See also Randy Bregman & Dorothy C. Lawrence, *New Developments in Soviet Property Law*, 28 *Columbia Journal of Transnational Law* 189 (1990).

⁷ Временное положение о референдуме и порядке его проведения на территории Крымской обл. УССР (Проект), Крымская правда, 3 ноября 1990 г., № 253 (20168), с. 1–2 [Temporary Provision on the Referendum and the Procedure of Its Conduct on the Territory of the Crimean Oblast (Region) Ukr. SSR (Draft), Crimean Truth, 3 November 1990, No. 253 (20168), p. 1–2].

⁸ Декларация о государственном и правовом статусе Крыма, Крымская правда, 14 ноября 1990 г., № 260 (20175), с. 1. [Declaration on the State and Legal Status of the Crimea, Crimean Truth, 14 November 1990, No. 260 (20175), p. 1].

⁹ Временное положение о референдуме и порядке его проведения на территории Крымской обл. УССР, Крымская правда, 13 ноября 1990 г., № 259 (20174), с. 1–2; 16 ноября 1990 г., № 262 (20177), с. 1–2 [Temporary Provision on the Referendum and the Procedure of Its Conduct on the Territory of the Crimean Oblast (Region) Ukr. SSR, Crimean Truth, 13 November 1990, No. 259 (20174), p. 1–2; 16 November 1990, No. 262 (20177), p. 1–2].

¹⁰ Crimean sovereignty referendum, 1991, where voters were asked whether they wanted to re-establish the Crimean Autonomous Soviet Socialist Republic as a subject of the USSR. 94.3% of voters cast ballots in favour of the referendum (May 6, 2017), available at https://en.wikipedia.org/wiki/Crimean_sovereignty_referendum,_1991. Note that the referendum did not involve any reference to joining Ukraine, that while in the process of unlawfully terminating the USSR, had not yet held its own referendum on sovereignty, not to mention independence (authors' emphasis). See also Plokyh 2014, at 281.

the referendum asked whether Crimea wanted to become an Autonomous Soviet Socialist Republic *as a subject of the USSR*, not a subject of Ukraine.¹¹ Approximately, ninety-four percent (93.26%) of voters approved the referendum. On 25 January 1991, the Crimean government reported the results of the referendum to Kiev, asked for freedom from Ukraine to enable integration within the USSR. The request also asked Kiev to modify its constitution and to approve the drafting of a new constitution for Crimea as an ASSR.¹²

1.4. However, Kravchuk, committed to prevent Crimea from seceding from Ukraine, visited Crimea “on the day when its parliament was scheduled to vote on the law regulating the local referendum that was to put the question of the Crimea’s secession to a popular vote.”¹³ He “convinced” the “former communist elite, who had worked with Kyiv since 1954, to postpone the vote on the law.”¹⁴ “Their opponents in parliament, represented by the Republican Movement of the Crimea, were outvoted.”¹⁵ On 12 February 1991, President Kravchuk issued a law composed of two articles. Art. 1 re-established the Crimean Autonomous Soviet Socialist Republic on the territory of the Crimean oblast within the Ukr. SSR.¹⁶ Art. 2 appointed the interim government of Crimean ASSR.¹⁷ Consequently, Kravchuk ignored the results of the referendum and cemented Crimea to Ukraine contrary to the will of the population of Crimea.¹⁸

1.5. On 17 March 1991, the USSR, acting in its federal capacity, held a union-wide referendum asking whether citizens wanted the USSR to continue to exist as a new federation comprised of equal sovereign republics.¹⁹ In Ukraine, 70.5% of those who voted expressed a preference to remain in the revised USSR; noteworthy

¹¹ Arina Tsukanova, *How Ukraine Annexed Crimea: A Frank Conversation with Nikki Haley*, Strategic-Culture Foundation, 8 February 2017 (May 5, 2017), available at <https://www.strategic-culture.org/news/2017/02/08/how-ukraine-annexed-crimea-frank-conversation-with-nikki-haley.html>.

¹² Крымская правда, 25 января 1991 г., № 18 (20233), с. 1 [Crimean Truth, 25 January 1991, No. 18 (20233), p. 1].

¹³ Plokyh 2014, at 281.

¹⁴ *Id.* at 281–282.

¹⁵ *Id.* See also Arina Tsukanova, *So Who Annexed the Crimean Peninsula Then?*, Strategic Culture Foundation, 30 March 2017 (May 5, 2017), available at <http://www.strategic-culture.org/news/2017/03/28/so-who-annexed-crimea-peninsular-then.html>.

¹⁶ Ведомости Верховного Совета УССР, 26 февраля 1991 г., № 9, с. 84, № 712-XII [Law Digest Ukr. SSR, 26 February 1991, No. 9, p. 84, No. 712-XII].

¹⁷ *Id.*

¹⁸ Inexplicably, despite the clarity of the referendum outcome, the Crimean government unilaterally began to discuss the creation of an Autonomous Republic within Ukraine. Правовой путь к государственности, Крымская правда, 26 января 1991 г., № 19 (20234), с. 1–2 [The Legal Path to Statehood, Crimean Truth, 26 January 1991, No. 19 (20234), p. 1–2].

¹⁹ Бюллетень для голосования на Референдуме СССР, Керченский рабочий, 14 марта 1991 г., № 51 (18244), с. 1 [A Voting Ballot for the Referendum of the USSR, Kerch Worker, 14 March 1991, No. 51 (18244), p. 1].

is that western regions of Ukraine rejected the proposal.²⁰ Despite this expressed preference, political officials opposed to reform programmes and opposed to the Gorbachev Presidency planned to disintegrate the USSR.

1.6. Ignoring legal niceties, on 8 December 1991, Boris Yeltsin (then President of Russia), Leonid Kravchuk (then President of Ukraine), and Stanislav Shushkevich (then President of Belarus), at a meeting in Viskuli, Belarus, close to the Belavezha forest, dissolved the Soviet Union when they signed “The Agreement on the Establishment of a Commonwealth of Independent States,” explicitly stating that “the USSR as a subject of international law and a geopolitical reality ceases its existence.”²¹ The Agreement was signed despite the fact that Mikhail Gorbachev was still President of the Soviet Union, and the laws of the individual republics were subordinate to the Union’s laws. At Belavezha, the Head of the Belarusian KGB, Eduard Shirkovsky, in reply to a question posed by Prime Minister Kebich, said: “Of course! We are faced with high treason, betrayal, if we are to call things by their right names. Don’t misunderstand me: I could not help reacting. I swore an oath.”²² Shortly after signing the “Agreement”, and behind the back of President Gorbachev, Yeltsin called then President George H.W. Bush to inform of the *fait accompli*: the Soviet Union no longer exists. The *coup de grace*, then took place on 21 December 1991, in Almaty (then Alma-Ata), Kazakhstan, when representatives of eleven republics signed an Agreement dissolving the USSR and creating the Commonwealth of Independent States, even though Gorbachev still was President of the USSR.²³

1.7. Subsequently, on 24 August 1991, the Supreme Court of Ukr. SSR declared the independence of Ukraine, arbitrarily identifying the Crimean ASSR as a territory of a newly established State, a *de facto* illegal annexation of Crimea.²⁴ By doing so,

²⁰ Референдум, опрос: предварительные итоги, Керченский рабочий, 22 марта 1991 г., № 57 (18250), с. 1 [Referendum, Poll: Preliminary Results, Kerch Worker, 22 March 1991, No. 57 (18250), p. 1].

²¹ Plokyh 2014, at 309.

²² *Id.* at 312.

²³ *Id.* at 361–365. No attempt is made to elaborate the complex process of the disintegration of the USSR. Salient points are made to demonstrate that, if public international law takes seriously its rules governing secession and creation of new states, then the breakaway of the eleven republics and their unilateral declaration that the USSR no longer existed is inconsistent with relevant public international law, and Russian internal law as no Republic followed the 1990 Law on Secession. See Закон СССР от 3 апреля 1990 г. № 1409-1 «О порядке решения вопросов, связанных с выходом союзной республики из СССР», Ведомости Съезда народных депутатов СССР и Верховного Совета СССР, 1990, № 15, с. 252 [The Law of the USSR No. 1409-1 of 3 April 1990. On the Procedure for Addressing Issues Related to the Secession of a Union Republic from the USSR, Law Digest of the Congress of People’s Deputies of the USSR and the Supreme Soviet of the USSR, 1990, No. 15, p. 252]. When President Bush refused to arrange a 15 billion USD loan for Gorbachev, and climbed aboard the Yeltsin bandwagon, the US sealed the demise of Gorbachev and the USSR.

²⁴ Union of Sovereign States, Wikipedia (May 5, 2017), available at https://en.wikipedia.org/wiki/Union_of_Sovereign_States, demonstrating that the 1991 Crimean sovereignty referendum referred to joining a Gorbachev initiated revised USSR.

the founders of Ukraine ignored a law requiring a separate referendum to be held in Crimea on the Crimean ASSR's status within Ukraine.²⁵ This action was taken deliberately, since Kiev knew perfectly well that the people of Crimea would never vote in favour of becoming part of Ukraine.²⁶ Since 1991, Crimea and Ukraine have engaged in a continuous struggle and irreconcilable conflict: Crimea's unambiguous goal of independence as an Autonomous Republic, and Ukraine's forced subjugation of Crimea.²⁷

1.8. Acts of defiance followed. In February 1992, the Crimean Parliament transformed Crimea into the "Republic of Crimea," and on 5 May 1992, declared Crimea independent, a decision to be approved by a referendum scheduled for 2 August 1992.²⁸ In January 1992, the Russian Foreign Ministry and parliament condemned the transfer of Crimea to Ukraine in 1954. In April 1992, Russian Vice President Ruskoï visited Crimea and called for secession from Ukraine. In response, the Ukrainian parliament, on 15 May 1992, annulled the Crimean declaration of independence and ordered the Crimean parliament to cancel the referendum within one week. Ukraine's actions contradicted the results of the 1991 referendum whereby Crimea expressed its choice to become part of the Russian Federation, and dissolve any relationship with Ukraine.

1.9. On 25 September 1992, the Republic of Crimea adopted its first post-Soviet constitution. The preamble states:

We, the People of Crimea, are free and equal in their rights and dignity of citizens of the Republic of Crimea of all nationalities that make up the people of Crimea, connected to the centuries-old ties of a common historical destiny, unequivocally condemned as criminal and inhuman acts committed by the totalitarian regime against the people of Crimea, recognizing the Universal Declaration of Human Rights based on the desire to ensure social, economic and civil rights of the individual and a decent standard of life for all, affirm

²⁵ This conclusion is consistent with practices within the Republics during this period of profound change of government.

²⁶ Arina Tsukanova, *What America Should Know about "Annexed Crimea": We the People of Crimea...*, Global Research, 9 February 2017 (May 5, 2017), available at <http://www.globalresearch.ca/what-america-should-know-about-annexed-crimea-we-the-people-of-crimea/5573750>.

²⁷ *E.g.*, Minorities at Risk Project, Chronology for Crimean Russians in Ukraine (2004) (May 5, 2017), available at <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=printdoc&docid=469f38ec2>. Prior to its own independence, Ukraine demonstrated its presumptive control of Crimea when, on 30 March 1990, Ukraine required Crimean Russians to set their clocks to the same time as the rest of Ukraine, rather than align their time with Moscow. Data elaborating events that took place between 1991 and 2014 is difficult to stitch together due to inconsistent accounts in the media, the literature, and the efforts of foreign States to vindicate their political agenda.

²⁸ Wikipedia, *supra* note 24.

the Constitution and declare that the Constitution is the basic law of legal, democratic, secular State of Crimea.²⁹

1.10. Art. I of Chapter I (General Provisions) provides: the “Republic of Crimea is a legal, democratic, secular *state* in part of Ukraine” (authors’ emphasis).³⁰ Sec. I, Ch. 3, Art. 9 sets forth that all relationships between Crimea and Ukraine were to be governed by treaties between representatives of the respective governments. Art. 9 further provides that amendments to the constitution were within the sole province of Crimea, and Art. 9 lists explicitly matters under control of Crimea. Art. 107 lists the organs of Crimean government: Parliament, President, Executive government, Constitutional Court and High Court. Other key provisions include:

- Official Government Language (Russian) (Sec. I, Ch. 1, Art. 6);
- Right to hold referenda on matters within its jurisdiction (Sec. I, Ch. 3, Art. 9(2)(6));
- Can change government deputies within own framework (Sec. I, Ch. 3, Art. 9(2)(5));
- Own budget (Sec. I, Ch. 3, Art. 9(2)(13));
- Military bases of Ukraine need approval of Crimean Government (Sec. I, Ch. 3, Art. 10(1) and (2));
- National Guard drawn from population of Crimea (Sec. I, Ch. 3, Art. 11);
- Crimea has a Permanent Representative of the State in the capitol of Ukraine (Sec. I, Ch. 3, Art. 12(3));
- Can enter agreements with other States, international organisations; economy, culture, science, health, education, protection of environment and other (Sec. I, Ch. 4, Art. 14), and
- Own flag, symbol and anthem (Sec. II, Art. 15(1)).

In short, excepting the reference to Ukraine, the 1992 constitution established Crimea as a State virtually equal in legal status as Ukraine, with the legal personality to conclude accords with Third States.

1.11. Following the adoption of the 1992 Constitution, Ukraine mounted a persistent campaign of interference in Crimean self-rule, with a primary aim to obtain a new constitution under which Crimea would be “under the thumb” of Ukraine. In addition, during the 1990’s, disputes arose over the division of the Black Sea Fleet, frequent anti-Ukraine protests took place, and Ukraine periodically enacted legislation to eliminate the Russian language.³¹ In 1993 alone, there were three major protests opposing

²⁹ Конституция Республики Крым от 6 мая 1992 г. (1-я версия), от 25 сентября 1992 г. (измененная версия, утвержденная на IX сессии ВС Крыма) [The Constitution of the Republic of Crimea (1st version was 6 May 1992; amended version was adopted by the 9th session 25 September 1992)].

³⁰ The original text did not include a reference to Ukraine. It may be inferred that Kiev managed to produce this result by undue political influence. Ukraine President Kravchuck had no intention of losing Crimea to Russia. See Chronology for Crimean Russians in Ukraine, *supra* note 27, at 3.

³¹ Steven Erlanger, *Russia and Ukraine Settle Dispute Over Black Sea Fleet*, The New York Times, 10 June 1995 (May 6, 2017), available at <http://www.nytimes.com/1995/06/10/world/russia-and-ukraine-settle-dispute-over-black-sea-fleet.html>.

Ukraine rule.³² On 10 January 1993, more than 2,000 protestors in the City of Sevastopol called for separation from Ukraine. During 18–20 January 1993, anti-Ukrainian demonstrations took place in Sevastopol and Simferopol. These demonstrations were organised by political groups. Their demands included the transfer of Crimea to Russia and the holding of new elections for all government institutions.³³ Meshkov, the future president of Crimea, led the demonstration in Simferopol supported by 5,000 sympathisers. On 26 July 1993, approximately 2,000 demonstrators demanded the transfer of the Black Sea Fleet from Ukraine to Russia.

1.12. Concurrent protests took place regarding the division of the Black Sea Fleet. On 24 May 1993, 115 ships of the Black Sea Fleet raised the Russian flag based on discrepancies between pay received by Russian and Ukrainian sailors.³⁴ On 1 June 1993, more than 200 ships of the Black Sea Fleet raised the Russian flag. On 29 July 1993, the Conference of Black Sea Fleet Officers protested the proposed division of the fleet. On 5 July 1993, 220 ships out of 223 flew the Russian flag.³⁵ Disputes regarding the division of the Black Sea Fleet continued until Russia and Ukraine entered the 1997 Partition Treaty on the Status and Conditions of the Black Sea Fleet.³⁶ Nevertheless, the Black Sea Fleet disputes demonstrate deep divisions between Crimea and Ukraine, and opposition to Ukraine rule over the territory of Crimea.

1.13. With unprecedented regularity, discord between Ukraine and Crimea continued during the decade of the 1990's. In March 1995, the Ukrainian parliament rescinded Crimea's 1992 constitution and abolished the post of Crimean President.³⁷ Ukrainian president Kuchma said the region's parliament could be dissolved if it

³² 1993 Documentary: Crimeans Protest Forced Ukrainianization, Demand Equality for All, New Cold War: Ukraine and Beyond, 27 February 2015 (May 6, 2017), available at <https://www.newcoldwar.org/1993-documentary-crimeans-protest-forced-ukrainianization-demand-equality-for-all/>, reinforcing the claim that in 1991 Kiev blocked Crimea from holding a referendum on its political future. The summary of the documentary notes that, "The city residents [of Sevastopol] are outraged by the attempts of Kiev officials to impose new national heroes, like Stephan Bandera, and to root out any reminder of Russia and Russian history in Crimea."

³³ Chronology for Crimean Russians in Ukraine, *supra* note 27, at 3, noting that the 18–20 January 1993 anti-Ukrainian demonstrations demanded the transfer of Crimea back to Russia and the holding of new elections for all government bodies.

³⁴ Black Sea Navy Fight Spreads to Politicians, UPI, 27 May 1993 (May 22, 2017), available at <http://www.upi.com/Archives/1993/05/27/Black-Sea-navy-fight-spreads-to-politicians/4670738475200/>.

³⁵ Ustina Markus, *The Ukrainian Navy and the Black Sea Fleet*, 3(18) RFE/RL Research Report 32, 35 (1994).

³⁶ Partition Treaty on the Status and Conditions of the Black Sea Fleet (1997) (May 22, 2017), available at https://en.wikisource.org/wiki/Partition_Treaty_on_the_Status_and_Conditions_of_the_Black_Sea_Fleet. Art. 6(1) provides: "Military units operate in places of deployment in accordance with the legislation of the Russian Federation, respect the sovereignty of Ukraine, observe its legislation and do not allow interference in the internal affairs Ukraine." The provision does not prohibit explicitly that Russian military must be confined to specific deployment centres.

³⁷ See The Crimean Referendums of 1991 and 1994, at 4 for a detailed explanation of these events (May 22, 2017), available at <http://culturedarm.com/the-crimean-referendums-of-1991-and-1994/>.

continued to violate Ukraine's Constitution.³⁸ By abolishing the presidency, Ukraine left regional power in Crimea in the hands of its Prime Minister Anatoliy Franchuk.³⁹ Officials said Ukrainian state ministries, including the military and police, would enforce Ukrainian laws and would dismantle the office of the Crimean president. As a result, unrest continued through May. Contrary to the will of Crimean authorities, Ukraine also recognized the Mejlis as the representative body of the Crimean Tatar people. On 18 March 1997, riot police in Crimea prevented about 1000 protestors from storming the parliament building in Simferopol during a demonstration calling for the return of the peninsula to Russia. Pro-Russian communist groups organized the demonstration attended by about 5000 people.⁴⁰

1.14. In 1998, Ukraine finally achieved its goal of effacing Crimean independence, with the adoption of the 23 December 1998 Constitution of the Autonomous Republic of Crimea.⁴¹ Sec. I, Ch. 1, Art. 1(1) states that the Autonomous Republic of Crimea "is an integral part of Ukraine and, within the limits of the powers defined by the Constitution of Ukraine, it decides issues that are related to its jurisdiction." However, the 1998 Constitution left nothing to be decided by Crimea without approval by Ukraine. The lack of independence of Crimea is exemplified by the following Constitutional provision: "Acts of the Council of Ministers of the Crimea are abolished by the President of Ukraine," when opposed by the President.⁴² In addition, rights and freedoms of Crimean citizens derived from and were guaranteed by the Constitution and law of Ukraine.⁴³ The 1998 Constitution also changed the official language of government from Russian to Ukraine.⁴⁴ Consequently, the autonomy of the Republic of Crimea was left only in name, and turned the 1992 Constitution on its head. It may be inferred, based on the relentless interference of Kiev in Crimean politics, that the 1998 Constitution was the product of coercion.

1.15. In a parallel development, Ukraine unleashed its campaign to eradicate the Russian language.⁴⁵ Kuchma initiated a policy to assert control over media using

³⁸ Mary Mycio, *Ukraine Abolishes Crimea Constitution, Presidency: Black Sea: Measures Taken by Kiev Leadership Give It Broad Powers Over the Violence-Ridden Peninsula*, L.A. Times, 18 March 1995 (May 22, 2017), available at http://articles.latimes.com/1995-03-18/news/mn-44129_1_black-sea.

³⁹ Franchuk was a Kuchma appointee. Franchuk's son is married to Kuchma's daughter. *Id.*

⁴⁰ Chronology for Crimean Russians in Ukraine, *supra* note 27.

⁴¹ Закон Украины от 23 декабря 1998 г. № 350-XIV «Об утверждении Конституции Автономной Республики Крым» [The Law of Ukraine No. 350-XIV of 23 December 1998. On the Approval of the Constitution of the Autonomous Republic of Crimea]; Конституция Автономной Республики Крым от 21 октября 1998 г. [Constitution of the Autonomous Republic of Crimea of 21 October 1998].

⁴² Sec. I, Ch. 1, Art. 5(3) of the Constitution of the Autonomous Republic of Crimea.

⁴³ *Id.* Sec. I, Ch. 3, Art. 1.

⁴⁴ *Id.* Sec. I, Ch. 3, Art. 12.

⁴⁵ Chronology for Crimean Russians in Ukraine, *supra* note 27, at 9.

Russian as its language. Kiev ultimately reduced the amount of Russian-language broadcasting to four hours per week.⁴⁶ On 15 January 1997, leaders of the Russian community in Crimea responded by claiming that the initiative amounted to a policy of “language aggression” aimed at driving the Russian language out of Ukraine. Subsequently, on 15 October 1997, the Crimean parliament voted to make Russian the official language in place of Ukraine.⁴⁷ On 5 November 1997, Kuchma issued a statement: Ukrainian is the only official language in Ukraine. On 4 February 1998, the Crimean parliament voted overwhelmingly to propose a referendum to include the following questions: (1) the peninsula’s return to Russia, (2) restoration of the 1992 Constitution, and (3) the adoption of Russian language as the official language of Crimea. The ratification of the European Charter on Local Languages and the Language of Minorities failed to settle the language dispute, as the Constitutional Court of Ukraine held that in all spheres of public life and activity, the Ukrainian language was compulsory.

1.16. In conclusion, the Autonomous Republic of Crimea never recognised the legitimacy of government by Ukraine. The events of 2013–2014 were the logical result of preceding historical circumstances.

2. History of Ukraine and Crimea (2013–2014)

2.1. A chronicle of events in Kiev and in Crimea is required to establish the context of the decision of Crimea to separate from Ukraine and request integration to the Russian Federation. During the period 2013–2014, events in Crimea did not occur in isolation, but were responses to the *coup d’état* that took place in Ukraine. The Euromaidan Revolution, supported by external forces, opened systemic conflicts within Ukraine, and unleashed dormant and ultra-national extreme groups, with the imprimatur of the United States, revealing a vein of ultra-nationalism running the course of Ukraine history.⁴⁸ Words cannot replace the filmography and first-hand accounts found in two documentaries filmed during and after the Euromaidan Revolution. Hence, Part Two recounts only the most salient points of the

⁴⁶ Chronology for Crimean Russians in Ukraine, *supra* note 27, at 10.

⁴⁷ *Id.* at 12.

⁴⁸ The chronology of the intertwined events is based mainly on four sources: official news publications of Crimea, the documentary entitled “Ukraine on Fire” June 16, 2016 (Director, Igor Lopatonok; Screenplay, Tommy Reid; Cinematography, Anthony Dod Mantle; Music, John Beck Hofmann; and Producers, Oliver Stone, Igor Lopatonok, Tommy Reid) (Oliver Stone, “Ukraine on Fire”) (May 22, 2017), available at <https://www.youtube.com/watch?v=-xJLfwikaH8&t=2s> (access now requires registration); the documentary entitled “Crimea: The Way Home”, March 15, 2015 (Director, Sergey Kraus; Screenplay, Olga Dyomina; Program Creator, Andrey Kondrashov) (Andrey Kondrashov, “Crimea: The Way Home”) (May 22, 2017), available at <https://www.youtube.com/watch?v=t42-71RpRgl&t=1235s>, and the scholarly writings of Ivan Katchanovski. Citations to individual scenes in the documentaries follow the format: hours, minutes, seconds.

documentaries and draws upon other sources to reconstruct accurately the 2013–2014 “happenings” on Maidan Square.

2.2. Preliminarily, relevant Ukrainian history is required to understand the “fascist” roots of Euromaidan. The Organisation of Ukrainian Nationalists (OUN) was established in 1929 in Western Ukraine. Stepan Bandera established and developed the ideology of OUN, and its military arm. Bandera’s aim was to purge all non-Ukrainians from the new State of Ukraine. His ideology spread quickly throughout Ukraine. The symbol of the group is a black and red flag. Ukraine openly collaborated with Nazi Germany during World War Two.⁴⁹ During WWII, the OUN killed 80,000 Jews in Galicia. In 1941, in collaboration with Nazi Germany, the OUN was responsible for the deaths of 100,000 to 200,000 Jews. OUN also participated in the infamous “Babi-Yar” incident when Ukraine militia killed 33,771 Jews. Bandera did not limit his ethnic cleansing to Jews. The Ukrainian Insurgent Army, the military arm of OUN, massacred 35,000 to 60,000 Polish victims in Volhynia, and 25,000 to 40,000 in Eastern Galicia during the period 1943–1944.⁵⁰ “Declassified CIA documents and other sources show that the OUN and UPA after the war were used by the US and British intelligence services against the Soviet Union,” until Bandera’s death in Munich in 1959. Ukrainian Nazi’s were not subject to the Nuremberg trials; the CIA granted Bandera and other members of OUN amnesty for their actions, citing “necessity” as the legal justification.⁵¹

2.3. After the USSR collapsed, Ukrainian nationalist and Neo-Nazi organisations proliferated. In 1991, consistent with OUN’s radical nationalism, Oleh Tyahnybok established the Social-National Party (SNP) of Ukraine. The Party’s symbol is the neo-Nazi “Wolfsangel.” In 1994, SNP was renamed “Svoboda” (“Freedom” in Ukrainian). Other major far right organisations that were formed and played key roles in the Maidan Revolution were: the Right Sector, the Social National Assembly, Trident, the White Hammer, the UNA-UNSO, Bratstvo, and C-14.⁵² Paramilitary factions provided military support for each group.⁵³ All major far right organisations participated in Euromaidan with one common goal: conduct a national revolution to overthrow the pro-Russian Yanukovich government and to forge a Ukrainian nation in their image.⁵⁴

⁴⁹ Oliver Stone, *supra* note 48, at 00:07:26.

⁵⁰ See Massacres of Poles in Volhynia and Eastern Galicia, Wikipedia (Apr. 7, 2017), at https://en.wikipedia.org/wiki/Massacres_of_Poles_in_Volhynia_and_Eastern_Galicia.

⁵¹ Per Anders Rudling, *The Return of the Ukrainian Far Right: The Case of VO Svoboda in Analyzing Fascist Discourse: European Fascism in Talk and Text* 228 (R. Wodak & J.E. Richardson (eds.), London and New York: Routledge, 2013). Oliver Stone, *supra* note 48, at 00:13:47.

⁵² Ivan Katchanovski, *The Far Right in Ukraine During the “Euromaidan” and the War in Donbas* (2016), at 2 (Jun. 2, 2017), available at <http://ssrn.com/abstract=2832203>. The Right Sector, formed at the beginning of Euromaidan, comprised an alliance of far-right groups, including Trident (named after Bandera), the Social National Assembly and its military arm called Patriot of Ukraine. The Right Sector is a fascist or semi-fascist organisation. *Id.* at 15.

⁵³ *Id.*

⁵⁴ *Id.* at 14.

Right-wing political parties played key and violent roles in the Maidan Revolution. Though members of organised far-right political groups comprised a minority of protesters during the 2013–2014 Euromaidan Revolution, they nevertheless conducted violent attacks, such as the “Snipers’ Massacre” necessary to overthrow the government of Yanukovich.

2.4. US meddling in the internal affairs of Ukraine appeared as early as 1983 with the foundation of the National Endowment for Democracy (NED). According to then Ukraine Minister of Internal Affairs Zaharchenko, the NED was a CIA entity. The NED pushed US interests, and trained activists and journalists, especially in the art of using social media to advocate political position and to manipulate information and images to go “viral” in support of their cause. The use of NGO’s and other foundations as CIA instruments had its roots in the Reagan era. Foreign journalists, including those in Ukraine, received US grants to encourage and support protests.⁵⁵ The US also issued manuals entitled “How to Counter Berkut,” instructing how to pull off helmets, and providing instruction on a tactical manoeuvre entitled “Carpathian Beech” to disarm, defeat, and kill Berkut.⁵⁶ Early in November 2013, three new broadcasting channels emerged: hromadsk.tv, spilno.tv, and ecpredo.tv, each broadcasting support for the opposition.⁵⁷

2.5. In November 2013, President Yanukovich declined to sign an association agreement with the EU, primarily on economic grounds, and after the IMF proposed unacceptable terms for a loan. The President signed an alternative agreement with the Russian Federation providing for greater integration of Ukraine and Russian markets. On 17 December 2013, on the basis of a Russian-Ukraine inter-governmental committee, President Yanukovich and President Putin held a meeting and signed agreements specifying, for example, that Ukraine would construct equipment, commercial vessels, airplanes, and the Kerch Strait bridge.⁵⁸ The value of these agreements exceeded billions of dollars of Russian investment in Ukraine. In addition, Ukraine would receive 30% discount on the price of gas. In contrast, the EU did not make any concrete proposals for investment.

2.6. In response, on 21 November 2013, the first mass protests took place on Maidan Square.⁵⁹ Police, deployed to the square, were unarmed and did not use any force against the protesters. However, radicals representing far right national

⁵⁵ Oliver Stone, *supra* note 48, at 00:31:30 to 00:33:00, interviewing Vitaliy Zaharchenko, then Minister of Internal Affairs, Ukraine.

⁵⁶ Andrey Kondrashov, *supra* note 48, at 00:29:01 to 00:31:06, quoting Sergei Marchenko, Commander of Omon Berkut of Republic of Crimea, physically present on Maidan Square during attacks on Berkut.

⁵⁷ *Id.* at 00:34:00.

⁵⁸ Голос Крыма, 27 декабря 2013 г., № 52 (1042), с. 3 [The Voice of Crimea, 27 December 2013, No. 52 (1042), p. 3].

⁵⁹ Minister of Internal Affairs Zaharchenko, interviewed by Oliver Stone, *supra* note 48, at 00:34:44. According to Minister of Internal Affairs Vitaliy Zaharchenko, protests were planned to begin in 2015, but Yanukovich’s failure to sign the EU Agreement served as an excuse to protest immediately.

parties were spotted in the crowd.⁶⁰ On 24 November 2013, protesters engaged in the first aggressive action when they attacked a government office and attacked police guarding the building. On 25 November 2013, protesters attacked security officers.⁶¹ Arseniy Yatsenyuk, leader of the Fatherland Party, Oleh Tyahnybok, leader of the Svoboda Party, and Vitaliy Klitschko, leader of the Udar Party, were already present on the square to organise protesters and to incite the crowd to pressure the government.⁶²

2.7. On 30 November 2013, the first key turning point of Euromaidan, Minister of Internal Affairs Vitaliy Zaharchenko received a telephone call from Aleksandr Popov, Head of Kiev Administration seeking permission to install the annual Christmas tree on Maidan Square. Zaharchenko refused the request, stating that no action should be taken while protesters were on the Square. In addition, President Yanukovich explicitly refused to authorise the police to use force to disperse the protesters.⁶³ Although initial reports indicated that the crowd began to disperse at approximately 1 a.m., protesters attacked the police and the police used rubber bats against them. Best evidence shows that Serhiy Lyovchki, Head of Presidential Administration, and a close associate of Victoria Nuland and Geoffrey Pyatt, ordered the use of force.⁶⁴ Further, the protesters were expecting the police, and groups of well-trained men arrived on the Square at the same time as police. The trained individuals, members of the Right Sector shipped to Kiev as muscle for the protesters, spread within the crowd and provoked police with insults, stones, and torches.⁶⁵ Violence erupted, news of events spread, and the next day more people gathered on the Square.

2.8. Subsequently, in December 2013, following a well-known pattern of “Colour Revolutions,” the Euromaidan protest turned from a peaceful demonstration to a violent uprising. According to President Yanukovich, members of neo-Nazi organisations, armed with iron bars, bats, tractors, and Molotov cocktails, arrived on the Square and, with these weapons, attacked the police thereby escalating the violence. Concurrently, during this period, several US officials visited Kiev. Victoria Nuland, Assistant Secretary of State for European and Eurasian Affairs, went to the Maidan, condemned the actions of police, and voiced support for the protesters.⁶⁶

⁶⁰ Oliver Stone, *supra* note 48, at 00:35:21.

⁶¹ *Id.* at 00:36:06.

⁶² *Id.* at 00:29:30 to 00:30:11, interview with Minister Zaharchenko.

⁶³ *Id.* at 00:38:05, interviewed by Oliver Stone.

⁶⁴ *Id.* at 00:38:23 to 00:38:34.

⁶⁵ *Id.* at 00:39:27 to 00:40:07

⁶⁶ *Id.* at 44:23 where, in film footage, Nuland is seen engaging the crowd and shaking hands with protesters. “During her December 2013 visit to Ukraine, US diplomat Nuland officially endorsed and encouraged protesters in Maidan square, including the National Socialist Svoboda party’s protesters who honor former Ukrainian SS troops who carried out massacres in the country as ‘liberators.’ She

The US Senator from Connecticut, Chris Murphy, also stood on a stage telling the crowd present on Maidan Square that the US and EU jointly supported opposition to the Ukraine government.⁶⁷ Moreover, Senator John McCain, a former US presidential candidate, addressed the Maidan crowd, telling them, “[W]e will come here at this square to celebrate with you. Ukraine stands together with the EU and US.”⁶⁸ President Yanukovich correctly observed that McCain, and his supporting cast of US officials, openly told the crowd to act against a democratically elected government.⁶⁹

2.9. The Euromaidan Revolution did not “happen”; Euromaidan was made, principally by US government foreign policy. On 17 February 2014, BBC News published an article entitled, “Transcript of Leaked Nuland-Pyatt Call.”⁷⁰ At the time of the conversation, Victoria Nuland was US Assistant Secretary of State and Geoffrey Pyatt was the US Ambassador to Ukraine.

Early in the conversation, Pyatt states, “I think we’re in play. The Klitschko... piece is obviously the complicated electron here”. Reference is made to an announcement that Klitschko, a former World Champion boxer, would serve as Deputy Prime Minister in the new government, a development objected to both by Nuland and Pyatt. Nuland states, “I don’t think Klitschko should go into government. I don’t think it’s necessary. I don’t think it is a good idea.”

2.10. Pyatt agrees, and remarks, “The problem is going to be Tyahnybok [Leader of Svoboda] and his guys [Parenthetically, the fact that Pyatt refers to Yanukovich as President evidences that the telephone conversation preceded 22 February 2014, when Yanukovich was overthrown].” Nuland then breaks in and says, “I think Yats is

hit the pages of world media outlets by handing-out of buns and cookies to protesters becoming a graphic illustration of the US ‘policy of non-interference.’ An odd bit of American largesse. She went to meet demonstrators before meeting the head of state to teach him on the ways to deal with the opposition. The interference was outright and ostentatious, but that’s the way Victoria Nuland promotes foreign policy goals. As confirmation of US neutrality, Senator McCain followed Nuland to Maidan Square.” Andrei Akulov, *Victoria Nuland: The Bride at Every Wedding*, Ron Paul Institute for Peace and Prosperity, 5 February 2014 (May 12, 2017), available at <http://www.ronpaulinstitute.org/archives/featured-articles/2014/february/05/victoria-nuland-the-bride-at-every-wedding/>.

⁶⁷ Ana Radelat, *Chris Murphy’s Winding Road to Kiev*, The Connecticut Mirror, 2 January 2014 (May 29, 2017), available at <https://ctmirror.org/2014/01/02/chris-murphys-winding-road-kiev/>.

⁶⁸ John McCain Tells Ukraine Protesters: “We are here to support your just cause,” The Guardian, 15 December 2013 (May 29, 2017), available at <https://www.theguardian.com/world/2013/dec/15/john-mccain-ukraine-protests-support-just-cause>.

⁶⁹ Oliver Stone, *supra* note 48, at 00:44:33 to 00:46:04. The appearance and actions of US officials on Maidan Square provide support for the position that the US, as demonstrated by the intercepted telephone call between Nuland and Pyatt, to be discussed later, planned the overthrow of the Yanukovich government, a clear violation of public international law.

⁷⁰ Ukraine Crisis: Transcript of Leaked Nuland-Pyatt Call, BBC News, 7 February 2014 (May 6, 2017), available at <http://www.bbc.com/news/world-europe-26079957>. Although the exact date of the intercepted call is unknown, the conversation obviously took place prior to 7 February 2014, the date of the BBC article publication. Given that President Yanukovich was overthrown on 22 February 2014, the US had plenty of time to coordinate with Ukraine opposition leaders the new Kiev regime.

the guy who's got the economic experience, the governing experience... what he needs is Klitschko and Tyahnybok on the outside," providing stealth-like support. Pyatt agrees unreservedly with her planned scenario. Anticipating resistance from Klitschko about his US designated role in the new regime, Pyatt tells Nuland to call him for purposes of "personality management," and to cut off problems before Yatsenyuk, Klitschko, and Tyahnybok hold a planned meeting.

2.11. The subject matter of the call then turns to a conversation between Nuland and Jeff Feltman, the United Nations Under-Secretary General for Political Affairs, referring to a new appointee, Robert Serry.⁷¹ Nuland states that, "Feltman has arranged, with the approval of UN Secretary General Ban Ki-moon, that Serry will visit Kiev on Monday or Tuesday," presumably the next week.⁷² Having obtained the support of the UN, Nuland states, "Fuck the EU." Pyatt states that US plans for Ukraine must proceed in haste as he fears "the Russians will be working behind the scenes to torpedo it." Pyatt mentions that he will work with Yanukovich, while Nuland focuses upon recruiting someone with an "international personality" to come to Kiev, and "help mid-wife this thing." That "international personality" was US Vice-President Joseph Biden, who already had agreed to visit Ukraine.⁷³

2.12. Simultaneously, the US opened its campaign to demonise neo-conservatives, identify "sacral victims," and create "martyrs," conventional "colour revolution" tactics.⁷⁴ These efforts partially were aimed at brainwashing the American public to secure popular support for US activity in Ukraine. The media portrayed Yanukovich in his worst light and blamed the ills of the region upon President Putin and the Russian Federation. In late 2013, there was no shortage of "sacral victims" to maintain protest momentum and to provide a trigger to set the planned chain of events in motion. One hundred victims of Euromaidan were mythologised as the "Heavenly Hundred,"⁷⁵ and on 30 November 2013, reports emerged of students being beaten, impliedly by improper police action.

⁷¹ Robert Serry served as the first Dutch Ambassador to Ukraine; see NATO, Conferences, North Atlantic Treaty Organization, Who is who? (May 6, 2017), available at http://www.nato.int/DOCU/conf/2003/031016_bxl/cv-serry.htm.

⁷² Robert Serry, the UN special envoy to Ukraine, visited Crimea on 4 March 2014. His visit was unwelcomed, and he was escorted to the business lounge of the Simferopol airport to fly back to Kiev. See Kashmira Gander, *Ukraine: UN Special Representative to "End Mission in Crimea" After He Was Stopped by Armed Men in a Coffee Shop*, Independent, 5 March 2014 (May 12, 2017), available at <http://www.independent.co.uk/news/world/europe/ukraine-un-special-representative-seized-by-armed-men-in-crimea-ukrainian-ministry-9171405.html>.

⁷³ Scott Wilson, *Biden Arrives in Ukraine to Show U.S. Support as Crisis with Russia Continues*, The Washington Post, 21 April 2014 (May 29, 2017), available at https://www.washingtonpost.com/politics/biden-arrives-in-ukraine-to-show-us-support-as-crisis-with-russia-continues/2014/04/21/e4a77800-c960-11e3-a75e-463587891b57_story.html?utm_term=.d5d4913dd225.

⁷⁴ Oliver Stone, *supra* note 48, at 00:49:15 to 00:50:08, interviewing Robert Parry, investigative journalist, who disclosed the Iran-Contra Affair, and founder of consortiumnews.com.

⁷⁵ *Id.* at 51:41.

2.13. On 25 December 2013, Tetiana Chornovol, a member of the Fatherland Party, and a journalist known for making, not reporting news, was found beaten. Images of her bloodied face quickly spread through social media and world media insisted that the beating was a political act.⁷⁶ She became a martyr of the Euromaidan revolution. Her heroic deeds include trespassing upon the President's summer residence and attacking the "Office of the Region's Party."⁷⁷ Claiming that the latter comprised a nest of criminals, Euromaidan death squads operated from the building during the "Snipers' Massacre" in 2014. On 22 January 2014, Sergei Nigoyan, an Armenian/Ukrainian protester, who recited poems on Maidan, was killed and, like Chornovol, became another martyr of the revolution. While police were blamed as his killers, Ukrainian prosecutors, after a two-year investigation, failed to confirm the claim and circumstances of his death remain unknown.⁷⁸

2.14. On 20 February 2014, mass killings of protesters took place, preceded by mass killings of police. The "Snipers' Massacre" arguably was the key turning point in Ukrainian politics.⁷⁹ Katchanovski, a political studies expert at Ottawa University, conducted the most extensive investigation of the "Snipers' Massacre". He states, "This academic investigation concludes that the massacre was a false flag operation which was rationally planned and carried out with the goal of the overthrow of the government and seizure of power."⁸⁰ He further concludes that "concealed shooters," most likely drawn from the Right Sector and Svoboda, "were located in at least 20 Maidan controlled buildings or areas."⁸¹ Quoting an interview given by a Maidan shooter to a Ukrainian newspaper, the Maidan shooter stated that "he was firing upon police from the Music Conservatory building for about 20 minutes around 6:00 a.m. and saw about 10 other Maidan shooters doing the same."⁸² "A BBC investigation includes photos showing Maidan shooters armed with hunting rifles

⁷⁶ *Ukraine Activist Chornovol's Beating Causes Outrage*, BBC News, 25 December 2013 (May 29, 2017), available at <http://www.bbc.com/news/world-europe-25515838>. See also US Condemns "Disturbing" Beating of Ukraine Opposition Journalist, Aljazeera America, 26 December 2013 (May 29, 2017), available at <http://america.aljazeera.com/articles/2013/12/26/us-condemns-disturbingbeatingofukraineoppositionjournalist.html>.

⁷⁷ Oliver Stone, *supra* note 48, at 54:05 to 54:13 where Perry maintains that her heroic deeds amounted to minor crimes.

⁷⁸ *Id.* at 54:40 to 55:18.

⁷⁹ Ivan Katchanovski, *The "Snipers' Massacre" on the Maidan in Ukraine* (September 2015) (May 6, 2017), available at <http://ssrn.com/abstract=2658245>, providing an extensive analysis of the event. The vents of 20 February were used as a source of Maidan government legitimacy, and later President Poroshenko awarded the killed protesters "Hero of Ukraine" titles.

⁸⁰ *Id.* at 2.

⁸¹ *Id.*

⁸² *Id.* at 14. The shooters account was supported by interviews with armed Maidan activists also shooting at police from the conservatory building.

and a Kalashnikov assault rifle inside the Music Conservatory shortly after 8:00 am.”⁸³ In early morning, shooters from the Music Conservatory wounded at least 5 policemen on the Maidan, as a Berkut commander reported that “his unit’s casualties increased to 21 wounded and three killed within half an hour.”⁸⁴ Katchanovski concludes, “a rational explanation . . . is that the police retreated because of the use of live ammunition by small armed protestor units, who were using live ammunition against the police from concealed positions in these two buildings [the Music Conservatory and Trade Union Buildings].” Similarity of wounds found on protesters killed on Maidan indicate that they were equally victims of Maidan shooters.⁸⁵

2.15. Three European Ministers: Laurent Fabius, Frank-Walter Steinmeier, and Radoslaw Sikorski came to Kiev, ultimately in vain, to broker a truce between the government and protestors.⁸⁶ Opposition leaders clarified immediately that they were unwilling to negotiate with the Yanukovich government. Andriy Parubiy, the self-proclaimed Maidan Commandant and leader of the radical opposition, stated that, “If our demands are not fulfilled, Maidan intends to take more action.”⁸⁷ Klitschko informed the crowd “to be alert, to stay strong; we are not going anywhere.”⁸⁸ Dmitry Yorosh of the Right Sector stated that the Right Sector will not lower its arms, and will not leave occupied buildings until all demands are met: the primary demand being the resignation of President Yanukovich.⁸⁹ The overthrow of the Yanukovich government was sealed.

2.16. The next day, 22 February 2014, Yanukovich, without resigning his office, left Kiev for Kharkov. Shortly after, the opposition, armed with weapons, seized the presidential office. Yanukovich asked President Putin for help and Putin agreed.⁹⁰ On 23 February 2014, the Ukrainian Parliament announced the appointment of Oleksandr Turchynov as acting president.⁹¹ The removal of President Yanukovich did not follow the impeachment procedure, as impeachment required 338 positive votes out of 450

⁸³ *Katchanovski, supra* note 79, at 15.

⁸⁴ *Id.* at 17.

⁸⁵ *Id.* at 4. Katchanovski’s conclusions are consistent with Minister of Internal Affairs Zaharchenko’s statements provide in the Oliver Stone documentary, where the Minister stated that 67 police officers were declared missing, 14 officers were dead, and 43 wounded. In addition, another 20 people were killed and 150 wounded. Oliver Stone, *supra* note 48, at 00:58:40 to 00:58:48.

⁸⁶ *EU Foreign Ministers Agree Sanctions against Ukrainian Officials*, The Guardian, 21 February 2014 (May 29, 2017), available at <https://www.theguardian.com/world/2014/feb/20/ukraine-eu-foreign-ministers-agree-sanctions-officials>.

⁸⁷ Oliver Stone, *supra* note 48, at 00:58:00.

⁸⁸ *Id.* at 00:59:16.

⁸⁹ *Id.* at 1:01:03.

⁹⁰ *Id.* at 1:02:02 to 1:02:50.

⁹¹ *Id.* at 1:03:24.

members, while only 328 voted for impeachment.⁹² In spite of the illegal overthrow of the democratically elected Ukraine government, the United States immediately called the new Regime legitimate thereby closing any practical possibility to restore Yanukovich to power.⁹³ Paul Craig Roberts succinctly stated, “What... happened in Ukraine is the United States organised and financed a coup... the coup elements included ultra-right wing nationalists whose roots go back to organisations that fought for Hitler in the Second World War against the Soviet Union.”⁹⁴

2.17. The interim government, installed by the United States, consisted of: Interim President, Oleksandr Turchynov, the deputy leader of Fatherland; Prime Minister, Arseniy Yatsenyuk, also a member of the Fatherland Party⁹⁵; Deputy Prime Minister, Oleksandr Sych, a member of the far-right nationalist Svoboda [Freedom] Party; Interior Minister, Arsen Avolkov, a member of the Fatherland Party; Foreign Minister, Andriy Deshchitsya, a supporter of the Maidan movement; National Security Chief, Andriy Parubiy, a member of the Fatherland Party and the so-called Commander of the protest movement; Deputy National Security Leader, Dmitry Yarosh, leader of the militant ultra-right wing group [Right Sector]; Sports and Youth Minister, Dmytro Bulatov, a businessman and leader of Avtomaidan, a mobile patrol group using cars to protect Euromaidan protesters, and Tetiana Chornovol, exact role unknown, the journalist and activist infamous for her seizure of government buildings. This motley

⁹² Oliver Stone, *supra* note 48, at 1:03:45 to 1:04:11.

⁹³ *Id.* at 1:04:15 to 1:04:26. See also Ronan Keenan, *The US Should Stop Calling Ukraine's New Government "Legitimate,"* Geopolitical Monitor, 30 March 2014 (May 29, 2017), available at <https://www.geopoliticalmonitor.com/the-us-should-stop-calling-ukraines-new-government-legitimate-4955/> (noting “belligerent mobs of protesters continued to rout the city, effectively taking control of Kiev as police were forced into retreat. Yanukovich didn’t hang around and fled for Russia amid claims his car came under attack from gunfire, allowing the parliament to call the emergency session that resulted in the president’s removal. It was in nobody’s safety interest to oppose the motion”).

⁹⁴ Mike “Mish” Shedlock, *Was Russia's Annexation of Crimea Illegal? Who Has the Right to Decide? Transformation of Mainstream Media* (May 8, 2017), available at <http://globaleconomicanalysis.blogspot.fr/2014/03/was-russias-annexation-of-crimea.html>, interviewing Paul Craig Roberts, former assistant secretary of the treasury and associate editor of the Wall Street Journal.

⁹⁵ Yatsenyuk resigned from his position as Prime Minister in April 2016, at the request of President Poroshenko, due to Yatsenyuk’s failure to deliver “real change” and to curtail corruption. In Ukraine, the Prime Minister automatically holds the position of Head of Naftogaz, Ukraine’s national gas company. “If Yats is behind the scenes, then that makes Naftogaz even more of a political tool. Naftogaz did not return requests for comments on the former Prime Minister’s involvement with the company.” Kenneth Rapoza, *Three Years after Euromaidan, Naftogaz Remains Hostage to Ukrainian Politics*, Forbes, 28 December 2016 (May 8, 2017), available at <https://www.forbes.com/sites/kenrapoza/2016/12/28/naftogaz-ukraine-euromaidan-russia-poroshenko/#62ea0ae64251>. Yatsenyuk is believed to have enabled a close ally to misappropriate billions from Naftogaz. Brian Bonner, *Poroshenko-Yatsenyuk Going Way of Yushchenko-Tymoshenko in Corruption Fight*, Kyiv Post, 13 September 2015 (May 8, 2017), available at www.kyivpost.com/opinion/op-ed/brian-bonner-poroshenko-poroshenko-yatsenyuk-going-way-of-yushchenkotymoshenko-in-corruption-fight-397818.html?flavour=mobile. Prior to his resignation, based on allegations of leading a corrupt government, US Vice-President Joseph Biden congratulated Yatsenyuk for his accomplishments.

group, and 21 cabinet members drawn mainly Yatsenyuk's Fatherland Party, were never elected to govern Ukraine.⁹⁶

3. History (Events in Crimea in 2014)

3.1. The Crimean Peninsula, and its predominantly Russian speaking residents, were not insulated from the violent overthrow of the democratically elected Ukraine government. After the opposition took control of Kiev, the nationalists went after anyone who objected to their taking of power, including Crimean residents who had travelled to the Maidan to oppose the Euromaidan movement. The bus convoy, carrying Crimean residents back home, though escorted by police cars was led into an ambush, now called the Korsun massacre. Kondrashov's interview with drivers and passengers on the busses evidences the illegal killings, property destruction, and the appalling conduct of ultra-nationalist groups involved in the attack.⁹⁷

3.2. Roman Yakovlev, the head of the Bus Convoy and Simferopol resident, stated that the convoy of buses was blocked in the Cherkossy region.⁹⁸ Alexander Belyi, an auto-mechanic and resident of Simferopol, and Alexander Bochkeryov, deputy regiment commander of the Crimean self-defence forces, both confirmed that the convoy was blocked at both ends thereby preventing its journey to Crimea.⁹⁹ According to Bochkeryov, men armed with clubs mounted the buses and started to beat passengers, and a man armed with a gun started shooting people at point blank range. Alexei Grebnev, a bus passenger and Simferopol resident, stated that his bus driver was shot in the head while seated in the driver's seat.¹⁰⁰ The mob began to smash bus windows and throw stones. They said, "Come out or we'll burn you alive." In addition, according to Belyi, the mob forced passengers to sing the Ukrainian national anthem and shout "Glory to Ukraine," while beating passengers with clubs.¹⁰¹ Without detailing each act of criminality, seven members of the bus convoy were killed, four of the eight buses were burned, and 20 persons were missing.¹⁰²

3.3. Meanwhile, President Putin in Moscow personally conducted the rescue operation of Yanukovich and members of his entourage from southern Ukraine. In response to the outburst of extreme nationalism, President Putin decided that, if

⁹⁶ Harriet Salem, *Who Exactly is Governing Ukraine?*, The Guardian, 4 March 2014 (May 12, 2017), available at <http://www.theguardian.com/world/2014/mar/04/who-governing-ukraine-olexandr-turchynov>.

⁹⁷ Andrey Kondrashov, *supra* note 48, at 00:14:49 to 00:20:46.

⁹⁸ *Id.* at 00:14:49.

⁹⁹ *Id.* at 00:14:55 to 00:15:28.

¹⁰⁰ *Id.* at 00:16:03

¹⁰¹ *Id.* at 00:16:21 to 00:17:36.

¹⁰² *Id.* at 00:20:44 to 00:20:46.

necessary, the Russian Federation would help avoid bloodshed and armed conflict in Crimea.¹⁰³ Subsequently, Kiev declared Simferopol the “seat of enemies” of Maidan and ordered the demolition of the Lenin monument within 10 days.¹⁰⁴ The ultimatum induced the local population to take to the streets and to form self-defence forces.¹⁰⁵ Sergei Aksyonov, Head of the Republic of Crimea and Leader of the All-Ukrainian Party Russian Unity (2008–2014), held daily training sessions for Crimean self-defence units.¹⁰⁶ Aksyonov was prepared to stop anyone from taking down the monument, a symbol of stability and a challenge to authorities to control the situation.¹⁰⁷

3.4. When Aksyonov announced the “Crimean Spring,” he did not know Russia would support Crimea. Addressing the crowd with a loudspeaker, he stated “Together: we will build our Crimea! Peace to Crimea!”¹⁰⁸ President Putin had never heard of Aksyonov. When he asked the Chairman of the Crimean Parliament about him, the Chairman replied, “he’s like Che Guevara.”¹⁰⁹ On 22 February 2014, Berkut officers returned to Sevastopol and to Simferopol. In Kiev, during Maidan protests, the opposition attacked members of Berkut with fire and guns. Kiev, nevertheless, accused Berkut of sniper fire, an accusation never confirmed after years of investigation. At this time, criminal cases were opened against Berkut officers and commanders throughout Ukraine.¹¹⁰ Arsen Avokov, appointed Minister of Internal Affairs by the Verkhovna Rada, issued an order to disband Berkut, and declared that any army unit that did not obey order would be deemed an illegal armed gang.¹¹¹ Only in Crimea were Berkut treated as heroes.¹¹²

3.5. On 22 February 2014, Yuriy Abisov, Commander of the Crimean Berkut battalion, and later appointed Commander of the Special Rapid Response Unit of the Interior Ministry of the Republic of Crimea, stated, “the decision to separate from Ukraine was made on Lenin Square by Crimeans.”¹¹³ After, Abisov called a meeting of

¹⁰³ Andrey Kondrashov, *supra* note 48, at 00:21:00. Noteworthy is the absence of evidence that the Russian Federation participated in any way in the Euromaidan revolution aside from providing sanctuary for Yanukovich. During the interview with Kondrashov, President Putin expressed disapproval of Yanukovich’s management of the Kiev coup, without making any judgment.

¹⁰⁴ *Id.* at 00:21:22 to 00:21:27.

¹⁰⁵ *Id.* at 00:21:33 to 00:21:40.

¹⁰⁶ *Id.* at 00:21:45.

¹⁰⁷ *Id.* at 00:21:53.

¹⁰⁸ *Id.* at 00:22:06 to 00:22:17.

¹⁰⁹ *Id.* at 00:22:30 to 00:23:02.

¹¹⁰ *Id.* at 00:23:30 to 00:23:57. In Rovno, all Berkut, were placed under control of the Right Sector.

¹¹¹ *Id.* at 00:27:03.

¹¹² *Id.* at 00:24:17.

¹¹³ *Id.* at 00:24:25 to 00:24:29.

all Berkut officers and asked them whether they preferred to maintain allegiance to Kiev or to defend Crimea. The officers unanimously decided to fight against Kiev.¹¹⁴ After Maidan, the Crimean Berkut introduced new elements to their training regime by modifying the manner of self-protection based on experience in Kiev.¹¹⁵ In the City of Sevastopol, officers and residents alike expressed unambiguously their objection to the new Regime in Kiev.¹¹⁶ In December 2013, two months before the Snipers' Massacre on Maidan Square, Viktor Melnikov, member of the Third Rapid Response Company of Sevastopol, and Afghanistan war veteran, organised a self-defence force. Virtually all residents of Sevastopol joined the self-defence forces.¹¹⁷ As of this date, the Russian Federation had not provided any support, military or otherwise, to Crimea.

3.6. On 26 February 2014, the Supreme Council of Crimea called an emergency meeting to discuss holding a referendum to determine the status of the autonomous region.¹¹⁸ According to Aksyonov, Kiev instructed leaders of the Crimean Mejlis to prevent the government from holding meetings: the goal being the seizure of the Crimean parliament.¹¹⁹ Kiev dispatched members of the Right Sector to support Mejlis. A large crowd assembled in front of the Government building in Simferopol. Members of the Right Sector waved "Bandera Flags." The first clashes began around mid-day. As the crowd pushed and shoved, one old man was trampled to death.¹²⁰ Bottles with water, sand, and a "strange powder" were thrown into crowd from areas occupied by Mejlis and the Right Sector, identified by their flags. In addition, men wearing gas masks used nerve gas and threw dust ground from fluorescent lamps into the crowd. Those covered by dust could not see. Approximately 30 people were injured and taken to the hospital. Injured Crimeans pressed back, and the crowd stormed the Parliament.¹²¹

¹¹⁴ Andrey Kondrashov, *supra* note 48, at 00:27:32 to 00:27:46.

¹¹⁵ *Id.* at 00:28:27.

¹¹⁶ Sevastopol residents always considered their status special and never doubted their allegiance to the Russian Federation. *Id.* at 35:50. In his interview with Kondrashov, President Putin stated succinctly, "For Russians, the City of Sevastopol is a city of Russian Naval Glory". *Id.* at 33:08. He also remarked, "For Russians, Crimea is a heroic part of our history." *Id.* at 00:37:21. Crimea is not a terra incognita.

¹¹⁷ *Id.* at 36:11 to 36:45.

¹¹⁸ *Id.* at 00:37:58 to 00:38:04. Paval Taron, from the 3rd Company and Afghanistan veteran, filmed the events of 26 February 2014. The following persons also witnessed the event and provided their accounts to Kondrashov: Igor Georgiyevsky, a Cossack of the Terek Cossack Host in Crimea and Sevastopol, who tried to prevent crowd from breaking into the Supreme Council; Mikhail Sheremet, Commander of the Crimean self-defence forces; and Enver Kurtamentov, Commander of the 15th Company of the Crimean self-defence forces.

¹¹⁹ *Id.* at 00:38:30 to 00:38:41.

¹²⁰ *Id.* at 00:40:28.

¹²¹ *Id.* at 00:40:51.

3.7. However, after the crowd entered the building and saw their compatriots sitting in session, the Crimean Tartars got flustered, and did not know what to do.¹²² The Mejlis leader, Mustafa Dzhemilev, stopped issuing orders by telephone.¹²³ The Right Sector did not enter the building.¹²⁴ Aksyonov, his face beaten, moved from the central door, and tried to break the fight. Using a loud speaker, he said, “Crimeans are expecting people of all nationalities to come here for holiday, to work, and to be friends.”¹²⁵ Enver Kurtamentov, Commander of the 15th Company of the Crimean self-defence forces, spoke directly to his compatriot Tartars to counter false statements made by the Mejlis leader and urged them to disband peacefully.¹²⁶ The Tartars were told that, if Crimea were returned to Russia, they would be deported to Magadan or the Urals.¹²⁷ Kurtamentov said, “your life can’t get worse because it is already as bad as it can be.”¹²⁸ The Parliament building never was seized, the protesters left without additional incident, and decided to disobey orders issued by Ukrainian authorities.¹²⁹

3.8. On 27 February 2014, the so-called “Friendship Train” departed Kiev for Crimea. Ihor Mosiychuk, a Right Sector leader, said “Crimean separatists would pay for everything.” Mosiychuk was the individual behind the “Friendship Train” initiative. The train was scheduled to arrive in Simferopol by 20:15, after which the Right Sector was to conduct a punitive operation.¹³⁰ Having notice of the operation, Mikhail Sheremet, Commander of the Crimean People’s Defence Forces, organised a militia of approximately 1,500 members, to “prevent nationalists from entering our land.”¹³¹ The militia consisted of business people, ordinary workers, and people from all walks of life.¹³² The militia carried bats, metal bars, and whatever was available,

¹²² Andrey Kondrashov, *supra* note 48, at 00:41:14.

¹²³ *Id.* at 00:41:42.

¹²⁴ *Id.* at 00:41:48.

¹²⁵ *Id.* at 00:43:31 to 00:44:00.

¹²⁶ *Id.* at 00:45:11.

¹²⁷ *Id.* at 00:42:34.

¹²⁸ *Id.* at 00:45:11. The accuracy of Kurtamentov’s statements is evidenced by conditions in the village of Mamut-Sultan, an historical territory for Tartars from the 14th to the 15th century, where Kurtamentov lived. According to interviews with residents of Mamut-Sultan, when the Tartars returned to Crimea, they returned to the Middle Ages. *Id.* at 00:45:44. There was no water, no heat, no electricity, no sewers and no roads. The State of Ukraine provided no help for more than 13 years, yet intended to use the Tartars as leverage against Russian speaking Crimeans to engender internal conflict. Kurtamentov immediately formed a multi-ethnic squadron to protect people from the Banderites. *Id.* at 00:46–51.

¹²⁹ *Id.* at 00:50:16.

¹³⁰ *Id.* at 00:50:34 to 00:50:53.

¹³¹ *Id.* at 00:51:32.

¹³² *Id.* at 00:51:55.

as they lacked firearms. They also carried tri-coloured painted steel shields forged especially for them by local blacksmiths to help protect them against gunfire, and particularly fire from Molotov cocktails.¹³³ After waiting on the train platform for three hours, Sheremet received a call that the train was about to arrive.¹³⁴ The militia used the shields to form a steel barrier.¹³⁵ When the train arrived two hours later, it was empty. Ukrainian Security Service forces alerted the Right Sector that a militia was waiting for them at the train station. Before arriving in Crimea, the Banderites stopped the train and unloaded their weapons.¹³⁶

3.9. On 27 February 2014, Samvel Martoyan, the most famous self-defence commander, former Soviet officer, and resident of Crimea, received a combat order from Aksyonov to take control of the Simferopol airport. Earlier, he had formed the 4th Company. Intending to land an assault force in Simferopol, the airport became Crimea's main threat. Armed only with shovel handles, Martoyan and his militia arrived at the Simferopol airport.¹³⁷ They encountered armed police officers standing in their way. The police, sympathetic to local self-defence forces, let Martoyan and his group proceed.¹³⁸ Martoyan's plan was to set fire to fuel barrels that his militia had placed along the runway, making it impossible to land an aircraft.¹³⁹ The militia lit the torches, and Martoyan called Aksyonov for orders to proceed. Thirty seconds later, Aksyonov informed Martoyan that Kiev had been informed that the runway had been seized and that landing was impossible.

3.10. Immediately after, Ukrainian Security Service forces, and operatives from its Crimean Division who supported the Euromaidan government, arrived on the runway and encountered Martoyan.¹⁴⁰ The Security Service forces were armed with assault rifles. The spokesperson informed Martoyan that he and his militia had entered a restricted area and that the trespass constituted a terrorist act. The Security Service forces were given orders to shoot.¹⁴¹ Martoyan heard trucks approaching; he did not know who was in the trucks.¹⁴² Martoyan instructed his men to get ready for battle. The trucks pulled up and soldiers jumped out. Martoyan realised that they were Russian soldiers, the

¹³³ Andrey Kondrashov, *supra* note 48, at 00:52:10 to 00:53:04.

¹³⁴ *Id.* at 00:53:58.

¹³⁵ *Id.* at 00:54:00.

¹³⁶ *Id.* at 00:54:36 to 00:55:15.

¹³⁷ *Id.* at 00:57:23 to 00:58:30.

¹³⁸ *Id.* at 00:58:42.

¹³⁹ *Id.* at 00:59:10.

¹⁴⁰ *Id.* at 1:00:06 to 1:00:15.

¹⁴¹ *Id.* at 1:00:06.

¹⁴² *Id.* at 1:01:24–45.

“polite little green men.”¹⁴³ Commandos from the Black Sea Fleet’s Marine Force arrived from Sevastopol.¹⁴⁴ The Ukrainian Security Service disappeared. The Russian soldiers seized strategic positions and established control over the airport.¹⁴⁵ The seizure of the Simferopol airport was the first Russian armed intervention in Crimea.

3.11. President Putin argued that he had to ensure that the Crimean Parliament could operate, convene, meet, and carry out activities prescribed by law.¹⁴⁶ President Putin openly admitted that Russian intelligence was following unsecured communications within Ukraine and that Russia was aware of the institutional structure of military units on ground and Kiev commanders.¹⁴⁷ Vladimir Konstantinov, Head of the State Council of the Republic of Crimea, stated that security was important, so Russian protection was needed and welcomed.¹⁴⁸ Sergei Shoigu, Minister of Defence of the Russian Federation, stated, “soldiers never went to fight but to defend and protect.”¹⁴⁹

3.12. On 27 February 2014, Russian SWAT teams then secured government buildings in Simferopol.¹⁵⁰ Deputies of Parliament voted (68 out of 69) to change completely the members of the Ministry. The MPs elected Sergei Aksyonov as Head of Government and Temirgalyev as first Prime Minister.¹⁵¹ Konstantinov reported that members of Parliament also voted in favour of holding a referendum to decide the future of the Autonomous Republic of Crimea.¹⁵² On 1 March 2014, the Ministers of Cabinet decided to take all military on territory of Crimea, under their jurisdiction, and asked for Russian support as peace mission.¹⁵³ On the same date, Aksyonov asked Putin to provide help to maintain peace on territory of Crimea. Shortly after, Russian military in Sevastopol blocked Ukrainian military vessels from leaving their appointed

¹⁴³ Andrey Kondrashov, *supra* note 48, at 1:02:18 to 1:03:01.

¹⁴⁴ *Id.* at 1:03:25.

¹⁴⁵ *Id.* at 1:03:30. Deputy general director, acting as press secretary, reported that airport was working as usual. No strangers within the airport; soldiers were outside the airport, and not interfering with any traffic. They were present outside and never entered the airport. They left at evening. Крымская правда, 1 марта 2014 г. [Crimean Truth, 1 March 2014], speaking of event 27–28 February. Noteworthy is that airport personnel and passengers noticed nothing unusual and the airport operated as usual. *Id.* at 1:03:39.

¹⁴⁶ Andrey Kondrashov, *supra* note 48, at 1:08:36, and noting that Crimea’s Parliament was legal. *Id.* at 1:09:01.

¹⁴⁷ *Id.* at 1:36:37.

¹⁴⁸ *Id.* at 1:10:54.

¹⁴⁹ *Id.* at 1:12.

¹⁵⁰ *Id.* at 1:08:20 [the operation taking thirty minutes].

¹⁵¹ Крымская газета, 1 марта 2014 г., № 38 (19463), с. 1 [The Crimean Newspaper, 1 March 2014, No. 38 (19463), p. 1].

¹⁵² Andrey Kondrashov, *supra* note 48, at 1:10:11–22.

¹⁵³ Крым взят. Под охрану, Крымская правда, 4 марта 2014 г., с. 1 [The Crimea is Taken. Under Guard, Crimean Truth, 4 March 2014, p. 1].

ports in the same area.¹⁵⁴ On 4 March 2014, Aksyonov reported that Russian military were present in Crimea to protect Crimean people; the Russian soldiers blocked the Ukrainian military base near Simferopol, to prevent Ukraine military from entering Crimean territory. These Ukrainian military units were given the option to go back to Ukraine, or to join Russian forces. Starting 2 March 2014, 5,086 Ukraine soldiers present in different bases opted to protect Crimean population.¹⁵⁵

3.13. Russian military forces acted in conjunction with local self-defence forces, Berkut fighters, Cossacks, and myriad volunteer groups committed to preventing Kiev from taking Crimea by assault. For example, the Cossack Kuban Host provided 450 members to help Berkut fighters to seal the border with Ukraine. The Cossacks and Berkut dug trenches and erected barriers to defend the Perekop Peninsula, and the Changar and Turetsky passes.¹⁵⁶ In response, the Right Sector asked Kiev to send reinforcements; troops and multiple rocket launchers were sent to the border.¹⁵⁷ Only then did Putin deploy weapon systems at the border to counteract any action taken by Kiev.¹⁵⁸ Alexander Ovcharenko, Deputy Commander of Berkut Special Police Forces, noted that when Kiev failed to pierce the border, Kiev adopted a new tactic: organise deliveries of equipment to create a Maidan-like event in Crimea.¹⁵⁹ Thus, on 10 March 2014, a Ukrainian military truck, carrying automatic weapons and ammunition, attempted to break through the Turetsky pass, but was stopped by Oleg Gorshkov, a Berkut soldier, who drove his car into the truck.¹⁶⁰

3.14. On 11 March 2014, the Crimean Government made a Declaration of Independence, dependent on outcome of the referendum.¹⁶¹ The Crimean parliament adopted the Declaration of Independence of the Autonomous Republic of Crimea and Sevastopol by 78 votes to 81.¹⁶² The Declaration provided that if, the requisite number of votes are obtained, that the Republic of Crimea and the City of Sevastopol, would

¹⁵⁴ The Crimea is Taken, *supra* note 153.

¹⁵⁵ *Id.*

¹⁵⁶ Andrey Kondrashov, *supra* note 48, at 1:15:29–51 when the Kuban Cossacks arrived to support Berkut soldiers.

¹⁵⁷ *Id.* at 1:19:47.

¹⁵⁸ *Id.* at 1:20:30.

¹⁵⁹ *Id.* at 1:22:04.

¹⁶⁰ *Id.* at 1:22:42 to 1:23:05.

¹⁶¹ Декларация о независимости АРК и г. Севастополя, Константинов В. – председатель Верховной Рады АРК; Дойников Ю. – председатель Севастопольского городского совета, Крымские известия [газета Верховного Совета АРК], 12 марта 2014 г., № 45 (5456) [The Declaration of Independence of the ARC (Autonomous Republic of Crimea) and the city of Sevastopol, V. Konstantynov – Crimean Parliament Speaker (Chairman of the Supreme Council of ARC); Y. Doinikov – Sevastopol City Legislature Speaker (Chairman of the Sevastopol City Council), Crimean Izvestia [newspaper of the Supreme Council of the ARC], 12 March 2014, No. 45 (5456)].

¹⁶² An English translation of the text is available at <http://www.voltairenet.org/article182723.html>.

become an independent multinational State.¹⁶³ The Declaration further provided that the Republic of Crimea, an independent State, then would request that the Russian Federation, by means of an international treaty, integrate the Republic of Crimea as a constituent part of the Russian Federation.¹⁶⁴ Art. 137 of Ukrainian Constitution enabled Ukraine to stop the decision of Crimean government by issuing a formal order and petitioning the Constitutional Court to determine whether Crimean decisions were consistent with Constitution. These procedures never were followed and no order ever issued.¹⁶⁵

3.15. On 16 March 2014, Crimea held the referendum. The total number of persons who voted comprised 1,274,096, or 83.10% of those eligible to vote. 1,233,002 voters, or 96.77% of eligible voters voted “Yes” to become part of the Russian Federation.¹⁶⁶ 31,997 (2.51% out of total votes) elected to revise the Constitution of the Republic of Crimea and remain as part of Ukraine. Improperly completed voting ballots amounted to 9097 (0.72%). On 18 March 2014, the “Treaty between the Russian Federation and the Republic of Crimea on the Acceptance of the Republic of Crimea into the Russian Federation and on the Creation of New Federative Entities within the Russian Federation” was signed thereby incorporating Crimea and the City of Sevastopol into the Russian Federation.¹⁶⁷

3.16. On 27 March 2014, the United Nations General Assembly adopted a non-binding Resolution affirming the General Assembly’s commitment to the territorial integrity of Ukraine within its internationally recognised borders and underscored the invalidity of the 2014 Crimean referendum.¹⁶⁸ The non-binding resolution was supported by 100 United Nation Member States; eleven States voted against the Resolution; 58 States abstained; and 24 States were absent and did not vote.

¹⁶³ Постановление Верховной Рады АРК о Декларации о независимости АРК и г. Севастополя, Крымские известия [газета Верховного Совета АРК], 12 марта 2014 г., № 45 (5456), с. 6 [Decree of the Supreme Council of the ARC on the Declaration of Independence of the ARC and the city of Sevastopol, Crimean Izvestia [newspaper of the Supreme Council of the ARC], 12 March 2014, No. 45 (5456), p. 6].

¹⁶⁴ *Id.* Art. 3.

¹⁶⁵ И.о. Президента Украины Александр Турчинов [O. Turchynov, Acting President of Ukraine].

¹⁶⁶ Крымские известия [газета Верховного Совета АРК], 18 марта 2014 г., № 49 (5460) [Crimean Izvestia [newspaper of the Supreme Council of the ARC], 18 March 2014, No. 49 (5460)].

¹⁶⁷ Договор между Российской Федерацией и Республикой Крым о принятии в Российскую Федерацию Республики Крым и образовании в составе Российской Федерации новых субъектов, Крымские известия [газета Верховного Совета АРК], 19 марта 2014 г., № 50 (5461), с. 2 [Treaty between the Russian Federation and the Republic of Crimea on the Acceptance of the Republic of Crimea into the Russian Federation and on the Creation of New Federative Entities within the Russian Federation, Crimean Izvestia [newspaper of the Supreme Council of the ARC], 19 March 2014, No. 50 (5461), p. 2] (Jun. 27, 2017), available at <http://www.kremlin.ru/events/president/news/20605>.

¹⁶⁸ Resolution adopted by the General Assembly on 27 March 2014, A/RES/68/262 (Jun. 27, 2017), available at http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/68/262.

4. Part Two: Factual Conclusions Drawn and the Poverty of Public International Law

4.1. In 1991, the Republic of Crimea and the City of Sevastopol declared political independence from Ukraine and elected to form an Autonomous Soviet Socialist Republic (ASSR) as a subject of the USSR.¹⁶⁹ The declaration contained no reference to being part of Ukraine, a Republic of the USSR, as Ukraine had not yet seceded from the USSR. During 1991, three Republics of the USSR: the Russian, Belorussian, and Ukrainian Republics, took it upon themselves, to disintegrate the Soviet Union, contrary to the federal law of the USSR. The Crimean declaration of independence conformed to the planned reform of the USSR and was recognised as legitimate by President Mikhail Gorbachev. Subsequently, in December 1991, Ukraine declared itself a Sovereign State distinct from the USSR.

4.2. The inconsistent Crimean and Ukrainian declarations never have been squared. The Crimean declaration severed ties with Ukraine, as the declaration unquestionably implied a preference to remain part of the Soviet Union. However, without articulating legal grounds, Ukraine swept the ASSR into its territorial compass, without the consent of the Crimean government and population. Subsequently, in 1992, the Republic of Crimea adopted its Constitution. Art. 1 states: the “Republic of Crimea is a legal, democratic, secular *state* in part of Ukraine” (authors’ emphasis). The Constitution provided that all agreements defining the legal relationship between Crimea and Ukraine were to be embodied in international treaties, with Crimea having the authority to enter treaties with Third party states. While the concept of a “State within a State,” arguably the product of historical vestige, requires reconciliation, nevertheless, the 1992 Constitution established Crimea as a State independent from Ukraine.

4.3. In international law, the requirements of statehood are set out in Art. 1 of the so-called Montevideo Convention of 1933.¹⁷⁰ A State should possess the following attributes: (a) a permanent population, (b) a defined territory, (c) government, and (d) a capacity to enter relations with other states. In international law, the function of “recognition,” divided into two schools of thought, is a controversial issue in international law and does not require a digression from the present discussion. In 1992, the Republic of Crimea possessed the attributes of a state as defined by the Montevideo Convention of 1933, as confirmed by the 1992 Constitution. The dissolution of the USSR in 1991, the declaration of independence of the Republic of Crimea in 1991, and its 1992 Constitution establishing Crimea as a State were separate events that cannot be conflated.

¹⁶⁹ Importantly, the Russian Federation is the successor State of the USSR.

¹⁷⁰ Convention on Rights and Duties of States Adopted by the Seventh International Conference of American States, 26 December 1933, (1936) 165 LTNS 21031.

4.4. Consequently, when Ukraine declared its independence from the USSR in late 1991, the inclusion in its territory of the Republic of Crimea comprised an arbitrary decision made by then Ukraine President Kravchuk. It follows that Ukraine incorporated (“annexed”) the Republic of Crimea in 1991 by coercion leading to the conclusion that since 1991, Ukraine has unlawfully occupied the Republic of Crimea. In 1994, Crimeans elected Yuriy Meshkov, a strongly pro-Russian candidate, as their president. A second referendum was held in 1994 whereby 78.4% of those who voted supported greater autonomy from Ukraine; 82.8% supported allowing dual Russian-Ukrainian citizenship; and 77.9% favoured giving Crimean presidential decrees the force of law.¹⁷¹ The 1992 Constitution provided legal grounds for the election, the office of President, and holding of the Referendum.

4.5. In response, in March 1995, the Ukrainian parliament unilaterally abolished the office of President of Crimea and terminated the 1992 Constitution. The Crimean parliament was forced to draft a new Constitution, which the Ukrainian parliament ratified in 1998. The new constitution destroyed the autonomy of the Republic of Crimea, making all critical decisions taken by the Crimean parliament subject to approval of the Ukrainian parliament. No principle of municipal or public international law justified the unilateral decision of President Kuchma to “throw out” the 1992 Constitution of the Republic of Crimea, abolish the Crimean office of President, and coerce the Crimean parliament to draft a constitution to subordinate the Peninsula to Ukraine control. Therefore, the 1992 Constitution retained its validity until the Crimean reunification with the Russian Federation.

4.6. Consequently, the Republic of Crimea and the City of Sevastopol did not *secede* from Ukraine in 2014. Rather, the Republic of Crimea regained its independence as a State that had come into existence in 1991–1992. The decision by the Crimean government, supported overwhelmingly by the results of the 2014 referendum, to request “annexation” by the Russian Federation was lawful. Moreover, in 2014, the new regime in Kiev never followed constitutional procedures under Art. 131 of the Ukraine Constitution to oppose the breaking away of part of its territory (Crimea). Since formal opposition is a condition precedent to prohibit unilateral secession,¹⁷² then the Republic of Crimea had the right of unilateral secession. Further, it is questionable whether the new regime had legal authority to act as an instrumentality of the State.¹⁷³

4.7. Consistent with this interpretation, the Russian Federation did not “invade” the Crimean Peninsula in 2014. The Russian Federation had the right under the

¹⁷¹ See The Crimean Referendums of 1991 and 1994, for a detailed explanation of these events (May 18, 2017), available at <http://culturedarm.com/the-crimean-referendums-of-1991-and-1994/>.

¹⁷² Plochy 2014, at 334.

¹⁷³ The new Regime was committed to eliminate opponents of Maidan ideology, evoking earlier calls of “cleansing” conducted by Stepan Bandera and the successors of the OUN.

1997 Partition Treaty to maintain troops in the territory of Crimea and the City of Sevastopol, subject to restrictions set forth in the Treaty. In response to the unlawful overthrow of the Yanukovich regime, and the installation of a non-elected regime comprising ultra-nationalists, with the external support of the United States, the population of Crimea formed self-styled militias to fight against subjugation by Kiev and to realise the goal of a twenty-three year Crimean struggle to liberate itself from Ukraine. The self-organised militia, Berkut officers committed to Crimean independence, the Kuban Cossack Host, and informal opposition groups, took the first steps to fend off efforts by the Right Sector and other military arms of far right political parties to occupy Crimea. Illustrative of acts by local militia to fight Kiev extremists, by whatever means necessary, is the "Friendship Train" incident.

4.8. First efforts to secure the Simferopol airport from military aircraft arriving from Kiev to assault Simferopol were taken by Samvel Martoyan's 4th Company on 27 February 2014. Members of his company were armed with shovel handles, and were over-matched by the well-armed Ukrainian Security Service that confronted Martoyan and his militia on the runway of the Simferopol airport. It was on this date, and with the consent of the Crimean parliament, that the Russian military made its first appearance outside military bases to prevent Kiev from delivering weapons to Crimea. The claims of unlawful "invasion" rest upon faulty factual premises. The Russian federation did not violate the "sanctity" of the territory of Ukraine, because, since 1991 the Republic of Crimea was an independent State.¹⁷⁴ The Russian Federation provided military support to Crimea to permit the population of Crimea to exercise political and civil rights in an orderly manner, absent a threat from foreign and armed Ukraine forces present in Crimea, and to avoid a civil war. While the State of Ukraine survived the US supported coup d'état, the Ukraine government, the sole instrumentality through which a State can act, lacked any authority to act as an instrumentality of the State. In this bizarre twist of events, the Russian Federation acted proportionately, under an invitation from Crimea, to protect ethnic Russians and other nationals residing in Crimea, and to avoid a War.

4.9. "Interventions aimed at restoring the legitimate government upon invitation have to be distinguished from interventions whose aim is regime change – that is, overthrowing the government in place."¹⁷⁵ The ICJ decision in the *Nicaragua* case, "that there is no general right of states to intervene in support of an internal opposition in another state, even if this opposition is deemed to pursue a politically or morally valuable cause," may be distinguished on the ground that the Crimean conflict in 2014 was international in character.¹⁷⁶

¹⁷⁴ International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, November 2001, Supplement No. 10 (A/56/10), chp.IV.E.1, Art. 25 outlining the justification of "Necessity."

¹⁷⁵ Mehrdad Payandeh, *The United Nations, Military Intervention, and Regime Change in Libya*, 52(2) Virginia Journal of International Law 355, 362 (2012).

¹⁷⁶ *Id.* at 362–363.

4.10. The extant literature fails to address the legal significance of these facts: (1) the 1991 declaration by the Republic of Crimea and the City of Sevastopol to become an Autonomous Soviet Socialist Republic (ASSR) under the then existing USSR headed by President Gorbachev and Ukraine's arbitrary incorporation of Crimea into the new State of Ukraine; (2) the 1992 Constitution of the Republic of Crimea whereby Crimea declared itself a State; (3) the 1995 unilateral termination of the 1992 Constitution by Ukraine and abolition of the Crimean office of President; (4) the adoption of the 1998 Constitution, the product of Coercion exercised by Ukraine against Crimea, effectively subjugating Crimea to Ukraine; (5) the legal effect of the coup d'état, with the demonstrable external support of the United States, and the installation of a non-elected interim government comprising far right-wing nationalists, upon the rights of self-determination and secession of the Crimean population,¹⁷⁷ and (6) the complex history of Crimea and, since 1991 its fierce struggle for independence from Ukraine.¹⁷⁸ Prior to evaluating the legality of Crimea's "secession" and "annexation" under public international law, the preceding and fundamental questions must be addressed.

5. The Poverty of Public International Law

5.1. The aim of the Crimean referendum in 2014 was not to become a "State" *per se*, but to join the Russian Federation, an already existing State, with international legal personality, a member of the United Nations, and a State holding the status of a "Great Power." Crimea wanted to switch "Masters." However, public international law does not provide a procedure to achieve this objective, as demonstrated by the *Åland Islands* case. Therefore, Crimea had to go through the formality of a Two-Day State.¹⁷⁹ The extant literature fails to address this precise question and produces uninspiring but endless and futile legal analysis.

¹⁷⁷ The new Regime was committed to eliminate opponents of Maidan ideology, evoking earlier calls of "cleansing" conducted by Stepan Bandera and the successors of the OUN.

¹⁷⁸ E.g., Simone F. van den Driest, *Crimea's Separation from Ukraine: An Analysis of the Right to Self-Determination and (Remedial) Secession in International Law*, 62(3) Netherlands International Law Review 329 (2015) [arguably one of the best articles of its kind and finding the Crimean "secession" illegal on the grounds of the Russian military invasion]; Theodore Christakis, *Les conflits de sécession en Crimée et dans l'Est de l'Ukraine et le droit international*, 3 Journal du Droit International 23 (2014) [finding also that the Crimean secession was illegal but arguing that it must be accepted as a *fait accompli*]; Hassan Kouzehgar & Mohsen Vaseqi, *Annexation of Crimea to Russia: Contrast between Right to Self-Determination and Territorial Integrity Preservation in International Law*, 5(4) International Journal of Asian Social Science 189 (2015) [finding that the Russian military invasion invalidated any right to secession]. Numerous articles may be found on the 2014 events in Crimea, but the aforementioned illustrate the conventional argument and employ virtually identical legal sources.

¹⁷⁹ The phrase "Two-Day State" is borrowed from Anatoly Pronin, *Republic of Crimea: A Two-Day State*, 3(1) Russian Law Journal 133 (2015) (taking issue with the legal recognition of Crimea as a State, and incorporation of that State into another State in a single agreement and arguing that Crimea never fit

5.2. Public international law reposes primarily upon monopoly of State power. Secession is not tolerated for no more complex a reason than that States oppose it. However, since World War II, in raw numbers, the number of states quadrupled from 45 to 195.¹⁸⁰ In addition, there were 55 violent revolutions, 54 non-violent regime changes, and in the last 60 years alone 227 military coups occurred.¹⁸¹ The “right of self-determination,” exercised by former colonies or non-self-governing territories and peoples, accounts for the proliferation of many, but not all, new states. Doctrines, such as “remedial secession,” have introduced further complexity into the relationship between States and subordinate units seeking independence. Efforts to impose coherence upon public international law have produced tortured legal analyses as demonstrated by decisions such as the ICJ *Advisory Opinion in Kosovo*¹⁸² and the Canadian Supreme Court opinion in *Reference re Secession of Quebec*.¹⁸³

5.3. The Canadian Supreme Court parsed the question of whether a hypothetical secession of the Province of Quebec would violate the Canadian constitution. Adopting a broad reading of the Canadian Constitution, the Court observed that “a clear majority vote in Quebec on a clear question in favour of secession would confer democratic legitimacy on the secession initiative which all of the other participants in Confederation would have to recognize.”¹⁸⁴ In other words, the terms of secession would be subject to negotiations with all other provinces. The Court’s remark, “Although there is no right, under the Constitution or at international law, to unilateral secession, the possibility of an unconstitutional declaration of secession leading to a *de facto* secession is not ruled out” is *obiter dictum* and does

the requirements of a State). Like most scholars, Mr. Pronin’s analysis is limited to facts of March 2014. As argued, the legal status of Crimea as a State (or not) requires an extensive examination of facts and the application of relevant municipal and international law to produce a compelling outcome.

¹⁸⁰ According to the Correlates of War System Membership Data (from 1911 through 2011) (Jun. 2, 2017), available at correlatesofwar.org.

¹⁸¹ The time period surveyed for revolutions and regime changes was 1900–2006 and for military coups, 1950–2010 (Jun. 2, 2017), available at www.prio.no/CSCW/Datasets/; www.systemicpeace.org/polity/polity4.htm.

¹⁸² Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, I.C.J. Rep. 2010, p. 403 (ICJ Kosovo Decision).

¹⁸³ *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217, in which the Canadian Supreme Court was asked to give an advisory opinion on three questions: (1) Under the Constitution of Canada, can the National Assembly, legislature or government of Quebec effect the secession of Quebec from Canada unilaterally?; (2) Does international law give the National Assembly, legislature or government of Quebec the right to effect the secession of Quebec from Canada unilaterally? In this regard, is there a right to self-determination under international law that would give the National Assembly, legislature or government of Quebec the right to effect the secession of Quebec from Canada unilaterally?; and (3) In the event of a conflict between domestic and international law on the right of the National Assembly, legislature or government of Quebec to effect the secession of Quebec from Canada unilaterally, which would take precedence in Canada?

¹⁸⁴ *Id.* at 220.

not formulate a general principle of international law to follow.¹⁸⁵ The question raised is: why a decision of a municipal Court in Canada is invoked to evaluate the secession in the Republic of Crimea.

5.4. The ICJ Advisory Opinion in *Kosovo* is equally non-dispositive. The UN General Assembly referred the following question to the ICJ: "Is the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo in accordance with international law?"¹⁸⁶ The ICJ found that "State practice during this period points clearly to the conclusion that international law contained no prohibition of declarations of independence."¹⁸⁷ However, although Kosovo declared itself a State, and certain States recognized Kosovo as a State, the ICJ refused to address the question of statehood. The ICJ expressly observed that the question referred, "does not ask about the legal consequences of that declaration. In particular, it does not ask whether or not Kosovo has achieved statehood."¹⁸⁸ Likewise, the ICJ skirted the question of "whether, outside the context of non-self-governing territories and peoples subject to alien subjugation, domination and exploitation, the international law of self-determination confers upon part of the population of an existing State a right to separate from that State," and equally refused to address the issue of "remedial secession."¹⁸⁹

5.5. The individual cases often cited by the paradigmatic argument do not provide guidance as to the right of secession and cannot distinguish away the Crimean incident. The "stock inventory" cited is: the Åland Islands, Bangladesh, and Kosovo (a client State of the US/EU and non-member of the UN).¹⁹⁰ The cases

¹⁸⁵ *Reference re Secession of Quebec*, *supra* note 183, at 223.

¹⁸⁶ ICJ *Kosovo* Decision, *supra* note 182, at 407.

¹⁸⁷ *Id.* at 436.

¹⁸⁸ *Id.* at 423.

¹⁸⁹ *Id.* at 438.

¹⁹⁰ The *Åland Islands* case took place in 1921 involving a legal dispute between Sweden and Finland and concerning whether the population of the Åland Islands, an archipelago in the Baltic Sea, had the right to secede from Finland and integrate with Sweden. *Åland Islands Case*, (1920) L.N.O.J. Spec. Supp. No. 3. While the Committee of Rapporteurs rejected the existence of an absolute right to unilateral secession, the Committee left open the option of secession in the presence of oppression. Bangladesh, formally known as East Pakistan, declared independence from Pakistan in 1971, after the government of Islamabad refused to recognise the results of the 1970 election whereby the Bengali Awami League pressed for greater autonomy for East Pakistan. In the context of an armed conflict, the Awami League proclaimed the independence of East Pakistan. India intervened to fight Pakistani forces that committed violations of human rights. In early 1974, Pakistan recognised the State of Bangladesh. Notes, Lawrence S. Eastwood Jr., *Secession: State Practice and International Law After the Dissolution of the Soviet Union and Yugoslavia*, 3 *Duke Journal of Comparative & International Law* 299, 310 (1993). In 1998, the Provisional Institutions of Self-Government of Kosovo declared independence from Serbia. The declaration followed an armed conflict with Serbia, the intervention of NATO, and a complex UN supervision of an interim government for Kosovo. The declaration of independence followed a finding by the UN Special Envoy that a negotiated agreement between Kosovo and Serbia to resolve differences was impossible.

share the common ground of a subordinate territory controlled by a malevolent master: an internationally recognized State. Although the minority populations in the cases of Bangladesh and Kosovo suffered atrocities, it would be perverse to order a population, such as the population of Crimea, to undergo wrongs of an equivalent nature before the right of secession comes into existence, although the authors maintain that “secession” was unnecessary as the Republic of Crimea was a state.

5.6. Public international law purportedly obliges States not to interfere in the internal matters of other States.¹⁹¹ However, State practice, at least as measured by the behavior of the United States, is that this fundamental obligation is honoured more in the breach than in the observance. It cannot seriously be argued that the United States had a right to support the overthrow of the Yanukovich government.

5.7. Pronouncing that Crimea’s unilateral secession from Ukraine was illegal under international law implies that the Crimean/Russian reunification must be unwound, returning the Republic of Crimea to Ukraine.¹⁹² This argument thus leads to the following result: the population of Crimea, contrary to its will, is to be nailed to a cross of misery, despair, and economic inefficiency, as evidenced by 23 years of misrule under Ukraine. Calls to “give back” Crimea to Ukraine are ambiguous: what exactly is to be given back: the territory of the peninsula, the territory plus its living population, or the territory minus the population and exhumation of the dead. If a strict application of public international law requires a repatriation of Crimea to Ukraine, then public international law fails to fulfil its ultimate objective of international peace and the vindication of individual rights. Additional support for this conclusion is found in the arguably perverse requirement that a population must await atrocity to invoke the right of remedial secession.

5.8. If a principal goal of public international law is to mitigate human suffering, the question arises: what should the Russian Federation have done in response to developments in Kiev and Crimea. The paradigmatic argument answers: “do nothing.” However, the inaction of the Russian Federation most likely would have resulted in a civil war in the Republic of Crimea. As President Putin observed, “the Republic of

¹⁹¹ UN Charter, Art. 2(4), providing “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.”

¹⁹² The authors take umbrage at scholars or jurists ensconced in prestigious universities or law firms, in the European Union and elsewhere, dictating how residents of Crimea should live. These individuals have no idea of the collapsing infrastructure, destruction of seaports and industrial enterprises, and provision of minimal and unreliable public services provided by Ukraine. In addition, during the 23 years of Ukraine rule, the peninsula was pillaged, not a Hryvna invested in transportation, housing, education and hospitals. Rather, Kiev oligarchs started building, contrary to any conceivably rational zoning regulation, preposterous mansions. Not to mention the negative effects of US/EU sanctions that prevent the authors from obtaining books and other information while present in Crimea.

Crimea is not a *terra incognita*." In addition, Crimea is located proximate to the territory of the Russian Federation and falls within its domain of national interest.¹⁹³

6. Part Three: Constructing a Pragmatic Argument for Crimean Independence

6.1. The redrawn border of the Republic of Crimea and the City of Sevastopol is consistent with history, politics, and economic analysis. In 1991, the borders of the Republic of Crimea were redrawn by exogenous variables, an unfavourable development under the economic analysis of law, resulting in a heterogeneous population in Ukraine destined for internal and irreconcilable conflict.¹⁹⁴ Aside from theoretical constructs of economic optimisation, Ukraine single-handedly destroyed the economic potential of Crimea: (1) closure and deterioration of seaports, (2) closure and deterioration of industrial enterprises, (3) failure to invest in essential infrastructure such as roads, rail other methods of transportation, and (4) appropriation of public assets of any value.¹⁹⁵ With exceptions of post-2014 Russian investment, Crimea today looks like Crimea in 1991. Taken together, these factors minimise the relevance of law requiring a rescission of the 2014 reunification of Crimea and the Russian Federation. When the quality of human life is at stake, the dead hand of the law is best buried.

6.2. The history of Crimea's connection with Russia dates back over two hundred years to the time of Catherine the Great.¹⁹⁶ In 1991, after the dubious gifting of Crimea to Ukraine in 1954, "more than 67 percent of the population consisted of ethnic Russians, who dominated Crimean politics and culture."¹⁹⁷ In addition, "There were

¹⁹³ The Ministry of Foreign Affairs of the Russian Federation, National Security Concept of the Russian Federation, 10 January 2000, Part III. Threats to the Russian Federation's national security, stating in pertinent part: "Internationally, threats to Russian national security are manifested in attempts by other states to counteract its strengthening as one of the centers of influence in a multipolar world, to hinder realization of its national interests and to weaken its positions in Europe, the Middle East, Transcaucasia, Central Asia and the Asia-Pacific Region." See also Foreign Policy Concept of the Russian Federation (approved by President of the Russian Federation Vladimir Putin on 30 November 2016), (Jun. 3, 2017), available at http://www.mid.ru/en/foreign_policy/official_documents/-/asset_publisher/CptlCk86BZ29/content/id/2542248, setting forth a comprehensive foreign policy for the Russian Federation and including a commitment to protect the rights of Russian citizens living abroad.

¹⁹⁴ Enrico Spolaore, *National Borders, Conflict and Peace* (June 2010), at 773 (Jun. 3, 2017), available at <http://socsci-dev.ss.uci.edu/~mrgarfin/OUP/papers/Spolaore.pdf>. The paper is also published by the National Bureau of Economic Research and is available at <http://www.nber.org/papers/w15560>.

¹⁹⁵ Jon Hellevig, *The Hidden Story of Crimea's Economic Success*, *Russia Insider*, 23 March 2016 (Jun. 4, 2017), available at <http://russia-insider.com/en/business/hidden-story-crimeas-economic-success/ri13539>.

¹⁹⁶ Sam Lord, *Ukraine Has No Legitimate Claim to Crimea*, *It's a Political World*, 11 March 2014 (Jun. 3, 2017), available at <https://itsapoliticalworld.wordpress.com/2014/03/13/ukraine-has-no-legitimate-claim-to-crimea>.

¹⁹⁷ Plochy 2014, at 281.

no Ukrainian language schools in Crimea; few ethnic Ukrainians used the Ukrainian language in everyday life, and only half claimed Ukrainian as their native tongue – an indication that their Ukrainian identity was anything but strong.¹⁹⁸ “The entire history of the peninsula from the breakup of the Soviet Union to the [2014] has been one of its residents demonstrating time and time again that they are not a natural part of Ukraine and do not feel at home there.”¹⁹⁹ On 17 March 1995, the Verkhovna Rada abolished the May 1992 Constitution of the Republic of Crimea. In 1998, Ukraine finally achieved its goal of effacing Crimean independence, with the adoption of the 23 December 1998 Constitution of the Autonomous Republic of Ukraine.

6.3. The destabilised government of Ukraine during 2013–2014 implicated the national security interests of the Russian Federation. Under its national security policy, the Russian Federation has the right to curtail spill-over effects of regime crises proximate to its border. Without Russian Federation support, conditions in the Republic of Crimea likely were to deteriorate into an internal conflict, like that in the Donbas. In addition, the Russian Federation has reserved the right to protect nationals abroad. Arguably, these policies are derivative of the right of self-defence that is an exception to the prescription in Art. 2 of the United Nations Charter. If the United States may invoke threats to America’s “national interest,” based on events in Ukraine, to support sanctions against the Republic of Crimea, then it logically follows that the Russian Federation had every right to ensure that the population of Crimea could exercise its right of choice of sovereign through a referendum.

6.4. Support for the reunification of Crimea with the Russian Federation is found in the “economic analysis” of public international law. “[N]ational borders are not taken as given, but are the endogenous outcomes of decisions by agents who interact with each other while pursuing their goals under constraint.”²⁰⁰ “Borders are not a fixed, given feature of the geographical landscape, but human-made institutions, affected by decisions and interactions of individuals and groups, and can be analyzed as part of the growing field of political economy.” In addition, “A central role for states is the supply of public goods to their citizens: a legal and justice system, security and crime prevention, public health... and protection against catastrophic events.”²⁰¹ Defence and security are historically the most important public goods provided by governments.

6.5. Economies of scale reduce the cost of providing public goods: bigger is cheaper.²⁰² Unlike private goods, public goods do not compete in the market,

¹⁹⁸ Plochy 2014, at 281.

¹⁹⁹ Lord, *supra* note 196, at 2.

²⁰⁰ Spolaore, *supra* note 194, at 764.

²⁰¹ *Id.* at 765.

²⁰² *Economic Analysis of International Law* (E. Kontorovich & F. Parisi (eds.), Cheltenham: Edward Elgar, 2016); Enrico Spolaore, *The Economics of Political Borders*, CESifo Working Paper Series No. 3854 (June 2012), Ch. 1, at 13 (Jun. 3, 2017), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2094955.

allowing each citizen to consume public goods without reducing consumption by other citizens. Even when the population increases and the total costs of publicly provided services increases, the average cost still decreases because fixed costs are independent of population size. Public goods are cheaper when more taxpayers pay for them. Empirical studies demonstrate that government spending on public goods as a share of GDP decreases as a function of increasing population. Hence, "smaller countries tend to have proportionally larger governments."²⁰³

6.6. A negative correlation exists between heterogeneous populations and national borders.²⁰⁴ An artificial state is one whose "political borders do not coincide with a division of nationalities desired by the people on the ground."²⁰⁵ Artificial states may result from splitting a single ethnic group into two distinct states, or by incorporating a distinctly different group into an existing single state. "Consider the long-term effects of the 'scramble for Africa' by colonial powers. They find that partitioned ethnic groups have suffered significantly longer and more devastating civil wars."²⁰⁶ When borders are drawn to incorporate heterogeneous populations with different languages, religion, culture, and habits, "disagreements over the fundamental characteristics of the State are likely to emerge and render reconciliation more difficult. In short, heterogeneity increases political costs."²⁰⁷

6.7. Since 1954, the border of Crimea was drawn by political fiat, an ultimately inexplicable gifting of the peninsula to the State of Ukraine. After the collapse of the USSR, the State of Ukraine exerted control over Crimea, contrary to the democratic preferences of Crimean residents, to vindicate its self-interests, and to exploit assets located on the peninsula. The "coerced annexation" of the Republic of Crimea raised the political costs of border redrawing, as the population of Crimea introduced a significantly high level of heterogeneity into the larger Ukrainian community. Following the logic of economic analysis, this degree of heterogeneity led exactly to what the economic model forecasts: dissension about political leadership and denial of individual preferences. Moreover, the Republic of Crimea did not receive "public goods" equivalent to those provided in Ukraine *per se*. Under Ukrainian rule, the population of Crimea was deprived of reliable provision of public goods, such as water, electricity, and gas required to heat private and commercial properties. The industrial infrastructure of Crimea was dismantled to enrich Ukraine oligarchs, raising the spectre of "rents." Ordinary people were left to survive in conditions equivalent to those existing in the pre-industrial revolution period.

²⁰³ *Spolaore, supra* note 202, at 13.

²⁰⁴ *Id.* at 17.

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ *Id.*

6.8. Heterogeneity costs are associated with the likelihood of civil conflict over domestic politics, including disagreement about borders, leading to separatist wars. Assume the following analytical model.²⁰⁸ People in different regions have different preferences over types of public goods. One region is dominant and the other region is subordinate. When each region chooses its preferred type of government, everyone's utility from government services is $g_i = g^*$, where "g" denotes government, "i" denotes an independent government, and "g*" denotes equality between utility and preferences. In contrast, if the "dominant region" imposes a political union upon the subordinate region, then everyone in the "dominant region" gets his/her first-best utility from government services "g*," but citizens in the subordinate region obtain a lower utility $g_u = g^* - h < g_i$, where the parameter $h > 0$ captures heterogeneity costs. Symmetrically, a union where the "subordinate region" selects its preferred type of government, then everyone in the "subordinate region" receives utility g^* , while citizens in the dominant region receive utility $g^* - h$.

6.9. The tenuous ties between Kiev and Simferopol were unsustainable under the economic analysis model. The border of Ukraine incorporating the Republic of Crimea was artificially drawn, leading to the creation of an artificial state, subject to destabilisation due to heterogeneity costs. In addition, the two regions had preferences for different governments, demonstrably true in historical context. Since Ukraine forced its government policies upon the "subordinate region" of the Republic of Crimea, citizens in Crimea received public goods bearing the costs of "h," and suffered a denial of their preferred type of government.

6.10. When transfers and compensation are unavailable, differences are settled by armed conflict. The probability of breakup is " π " where " π " = $W_s / W_s + W_d$, where "W" denotes military capacity or "weapons" and, for our purposes, "s" denotes the "subordinate" region and "d" denotes the dominant region. If " W_s " increases relative to " W_d ," then the citizens of " W_s " win the conflict and withdraw from the political union formed by the dominant region. In the case of Crimea, the self-defence forces operating on the territory of Crimea enjoyed a strategic advantage due to the overthrow of the democratically elected government and the installation of a new regime, whose military forces consisted not only of traditional troops but also of paramilitary arms of diverse political groups, raising problems of coordination and deployment. The Republic of Crimea also had the advantage of being a peninsula permitting the border to be sealed, preventing Kiev from using military ground transportation. When the Russian Federation intervened, the matter was settled: " W_s " increased exponentially relative to " W_d " thereby sustaining the break-up of Crimea from Ukraine. In the case of Crimea, the armed conflict was hypothetical.

²⁰⁸ Spolaore, *supra* note 202, at 30. The analytical model drawn here is modelled upon the illustration of Prof. Spolaore. Modifications are made to fit the Crimean case.

6.11. The “economic analysis” model leads to the conclusion that the Republic of Crimea is best suited to governance under the Russian Federation. The Russian Federation has the capacity to provide “public goods” to Crimea without incurring substantial expense, while, at the same time, the Republic of Crimea receives public goods of a superior quality at the same or lower cost than under the sovereignty of the State of Ukraine. Second, integration of the Republic of Crimea into the Russian Federation reduces to zero, the costs posed by heterogeneity. The Republic of Crimea always was Russian in its language, culture, and history. By contrast, the Republic of Crimea never fit the State of Ukraine. Rather, since its independence from the USSR, Ukraine has had an “unstable political system,” “irrational and impulsive leadership” and “citizens that do not enjoy stable expectations.”

6.12. Setting aside analytical models, the Republic of Crimea is better off under Russian Federation governance, as measured against Pareto optimization. The Russian Federation has invested billions of dollars into infrastructural improvements in Crimea: On 27 March 2014, the Russian Federation immediately started paying pensions and increasing the value of payments; started to lay fibre optic cables to provide improved telephone and internet service;²⁰⁹ rebuilt the main road between Kerch and Simferopol stretching approximately 100 kilometres (prior to re-pavement, one needed an all-terrain vehicle to navigate the potholes and uneven roadway). In addition, the Russian Federation has planned to develop alternate routes between Kerch and Simferopol, parallel to the existing main highway. The Russian Federation also has begun construction of bridges across the Kerch Strait to connect the Russian mainland to the peninsula at costs exceeding billions of dollars. In 2016, China committed to invest 120 billion in the Crimean Peninsula.²¹⁰

Conclusion

The comprehensive factual restatement of the history of the Republic of Crimea has corrected misrepresentations of fact permeating the media and scholarly analysis of the 2014 reunification of Crimea with the Russian Federation. Legal conclusions found in the extant literature rest on faulty factual premises. Public international law lacks a complete set of rules to deal with the Crimean case. Moreover, under rational choice theory, the Republic of Crimea belongs with the Russian Federation. In any event, the Republic of Crimea and the City of Sevastopol will never be returned to Ukraine. The Crimean population has expressed its preferences for government under the Russian Federation, and these preferences prime abstract legal rules.

²⁰⁹ Керченский рабочий, 27 марта 2014 г., с. 1–2 [Kerch Worker, 27 March 2014, p. 1–2].

²¹⁰ *China to Invest \$120bn in Crimean Peninsula*, China Go Abroad, 19 April 2016 (Jul. 23, 2017), available at http://www.chinagoabroad.com/en/recent_transaction/20313.

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