

The legality of Russia's occupation of the Crimean Peninsula

شرعية الاحتلال الروسي لشبه جزيرة القرم

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Abstract:

The Russian occupation of Crimea raises a fundamental question on its legality under international law. This article addresses the question, arguing that Russia's use of armed force against Ukraine, which resulted in occupying Crimea, is illegal according to the international law rules. In this regard, while the Kremlin contends the legality of the use of armed force against Ukraine, upon various grounds, notably protecting minorities of Russian ethnicity residing in the peninsula, Ukraine argues that the military intervention violated its sovereignty and territorial integrity. This article applies the relevant international law rules of the use of armed force by states that emerged from the United Nations (UN) Charter and subsequent practice of the UN principal organs on the conflict parties' arguments, demonstrating and concluding that Russia has failed to meet the humanitarian intervention doctrine requirements.

Keywords: Territorial integrity; Sovereignty; Use of armed force; Minorities; Human rights; Ukraine; Russia.

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Introduction

Crimea is a peninsula located in the south of Ukraine. For centuries, the peninsula's strategic location in the Black Sea made it a target to many powerful forces. In recent centuries, Crimea constituted a part of various Empires, and countries' territories, including the Ottomans Empire, Russian Empire, USSR, Ukraine, and recently fell under Russia's de-facto control. In 1478, the Crimean Tatars and Ottomans signed a treaty on Crimea's authority, which recognized the peninsula's internal autonomy under the local ruler Khan.¹ Upon this agreement, Crimea remained under the Ottomans Empire's protectorate until the 18th century, when the Empire lost most of its power in Europe, encouraging other countries to claim many Ottoman territories, including Crimea. Thus, in 1783 the Russian Empire annexed the peninsula and remained under its control until 1954 when Crimea was transferred to the Ukrainian jurisdiction because of the geographic, cultural, and economic ties with Kyiv.² Since the Russian Empire annexed Crimea, the peninsula's ethnic population structure experienced significant demographic characteristic alterations due to social and political substantial factors. For instance, until 1944, the largest minority group residing in the peninsula was the Crimean Tatars. However, on 18 May 1944, J. Stalin decided to deport Crimean Tatars from Crimea to Central Asia without the right to return to their homeland upon an accusation of assisting the German Reich army during World War II.³ Therefore, large numbers of Russians moved to the abandoned dwelling of the peninsula, increasing the Russian population and became the most dominant minority.

After the dissolution of the USSR, Crimea became a part of Ukraine, which recognized the peninsula as an autonomous part, and independently decided on matters delegated to it by the Constitution and laws of Ukraine.⁴ As a result, all the national minorities residing in the peninsula became subject to Ukrainian national jurisdiction. Shortly after the establishment of Ukraine as an independent state, Russia tried to undermine the legality of the transfer of Crimea to Ukraine that took place in 1954 and attempted to reclaim the peninsula that, according to the Kremlin, has always been an integral part of Russia; however, these attempts were not successful until 2014.⁵

By the beginning of 2014, a series of an accelerated chain of events erupted in Ukraine, leading to the Ukrainian president's impeachment. Russia took advantage of the country's destabilized social and political situation by playing an active role, igniting the internal conflict, and supporting riot movements in the south and the east of the country against the national regime.⁶ In March 2014, the Kremlin issued a unilateral declaration, announcing the peninsula as a new territorial unit of the Russian Federation.⁷ President Putin repeatedly claimed that the military intervention in Ukraine and the occupation of Crimea were a vital move on various grounds, notably protecting minorities of Russian ethnicity residing in the peninsula.⁸ As a de-facto part of Russia, the Crimean Peninsula has raised tremendous legal issues

nationally and internationally, particularly regarding the legality of the occupation under the current international law rules of the use of armed force by states.

The article's primary purpose is to prove the key aspects regarding the illegality of the Russian occupation of Crimea under international law. It initially explores the legal framework of the use of armed force by states that emerged from the UN Charter and subsequent practice of UN principal organs, including the Security Council (UNSC), General Assembly (UNGA), and the International Court of Justice (ICJ).

Accordingly, this study will attempt to address the following problem: Was Russia's occupation of Crimea in 2014 legal under the current international law rules regarding the use of force that emerged from the UN charter and the subsequent practice of the UN principal organs?

In order to answer this question, it is crucial to examine the Kremlin's most dominant annexation pretext of protecting minorities of Russian ethnicity residing in the peninsula. The events surrounding the occupation are examined by demonstrating that Russia took advantage of the destabilized Ukrainian social and political situation to conduct an abrupt military intervention. This article then examines the international law legal framework of the use of force by states that emerged from the United Nations organization (UN) Charter and subsequent practice of UN organs, including the Security Council (UNSC), General Assembly (UNGA), and the International Court of Justice (ICJ), arguing that the Russian military intervention in Ukraine and the occupation of Crimea have failed to meet the humanitarian intervention doctrine requirements. To explore the argument of the research, this article will be addressed through the following outline:

1 :The Legal Framework of The Use of Armed Force Under International Law

In 1945, the international community, particularly the prevailing countries in World War II, established the UN, which was mandated, *inter alia*, to maintain international peace; to ensure states territorial integrity; to suppress acts of aggression; to legalize the use of armed force between states; to protect and promote human rights. These goals mirror two different categories of international law supreme norms regulated by international *jus cogens*.⁹ While principles of states' sovereignty and territorial integrity had been the subject of international law, long before establishing the UN, protecting and promoting human rights have been substantially included in this law after World War II. According to the UN Charter, states are banned from using force against each other's territorial integrity or political independence, with an exception to self-defence cases upon fulfilling certain conditions. The international jurisprudence established another legal avenue to use force under the doctrine of humanitarian intervention, which provided a significantly narrowed and humanitarian-driven purpose of the use of armed force by states.¹⁰

The international community's efforts to ban the illegal use of armed force by states successfully resulted in defining aggression through UNGA, resolution 3314¹¹, which was primarily endorsed by the International Criminal Court (ICC) at 2010

Review Conference in Kampala.¹² However, the resort to illegal use of armed force by nations and occupation of each other's territories has never stopped in the world. In particular, several states with the most advanced military capacities, driven by their unilateral interests, have attempted to revive illegal use of armed force practices using different methods and means to legalize such attempts as a camouflage of their real goals.¹³

Firstly: The self-defence as the first legal avenue of use of force under international law

Currently, there are two potential legal avenues under international law where a state is entitled to use force against another state, namely, preemptive self-defence and humanitarian intervention. Each avenue restricts the use of armed force to the threshold that meets its purpose, preventing states from exceeding the use of armed force against each other. The first legal avenue of use of armed force by states is preemptive self-defence. According to Article 51 of the UN Charter, UN members have an inherent right of individual or collective self-defence if an armed attack occurs against them. Yet, the defending state or states should immediately report the ongoing situation to the UNSC.¹⁴ In the last 40 years, another type of self-defence has emerged in international law, namely, anticipatory self-defence. Under this type of self-defence, a state may use force against another state if it encounters an imminent and unlawful armed attack or an unlawful threat of use of armed force, and there is no way to halt the attack other than the use of armed force. Also, the attack conducted in the context of anticipatory self-defence must be proportionate to the extent that it halts the imminent attack only.¹⁵ The use of anticipatory self-defence has confronted massive criticism from international law scholars due to its ambiguity and potential misuse by the world's most powerful states. In the Nicaragua case, the ICJ stated that "in the case of individual self-defence, the exercise of this right is subject to the state concerned having been the victim of an armed attack."¹⁶ The ICJ remained silent about the lawfulness of a response to the armed attack because the trial parties did not raise the issue of anticipatory self-defence. In 1993, the US attacked Iraq, using anticipatory self-defence as a legal basis to legalize its acts. However, it failed to prove the required elements that constitute anticipatory self-defence, including the immediacy of the threat, necessity, and proportionality of the attack.¹⁷ The international community, particularly UNSC members, was reluctant to deem the US act against Iraq as anticipatory self-defence because of the absence of clear justification for the attack. As a result, the US launched a unilateral attack without the international community's consent.¹⁸

Secondly: Humanitarian intervention as the second legal avenue of use of force under international law

The second legal avenue of the use of armed force by states in international law is under the doctrine of "humanitarian intervention" that has evolved to the "responsibility to protect."¹⁹ Humanitarian intervention refers to forceful and uninvited intervention by the state, states, or international organization in another

state's humanitarian domestic affairs to prevent or end human rights abuses.²⁰ Nowadays, there are two types of humanitarian intervention: (1) humanitarian intervention under the UNSC authorization and unilateral humanitarian intervention conducted by one or more states without UNSC authorization.

The international community has acknowledged the necessity to protect populations from massive humanitarian violations through the UN. In Resolution 60/1 entitled "World Summit Outcome," the UNGA adhered to take collective action, in a timely and decisive manner, through the UNSC, under the UN Charter, to prevent and end human rights violations in the world.²¹ In the following few years, the UNSC authorized the use of armed force against several states under the doctrine of responsibility to protect. For instance, on 13 March 2011, the UNSC unanimously adopted Resolution 1973, making explicit reference to the "responsibility to protect" principle following the widespread and systematic attacks against the civilian population by Libya's regime.²² In this Resolution, the UNSC authorized UN members to take "all necessary measures" to protect civilians under threat of attack in the country while excluding a foreign occupation force of any form on any parts of Libyan territory. Shortly after, acting upon this Resolution, NATO launched "Operation Odyssey Dawn" ostensibly to degrade the Libyan regime's integrated air defence system and strike its forces.²³

Contrary to the UN humanitarian intervention, in which legality is widely accepted, unilateral humanitarian intervention legality has received enormous criticism because it contradicts international law, including the UN Charter rules of non-use of armed force. According to Chapter VII of the UN Charter, the UNSC is the primary organ to maintain international peace.²⁴ Thus, UN members are not allowed to intervene in states' internal affairs without prior authorization of the UNSC.²⁵ However, some states may use unilateral humanitarian intervention to violate states' sovereignty under the pretext of preventing or ending human rights abuses. In the aftermath of the NATO humanitarian intervention in Kosovo, an emerging jurisprudence introduced different opinions to support unilateral humanitarian intervention without UNSC authorization.²⁶ The doctrine of "illegal but legitimate" argued that this humanitarian intervention finds its legitimacy in a particular humanitarian catastrophe's unique circumstances, where a delay of response to the imminent or ongoing crises may cause grave human rights abuses.²⁷ In 1999, NATO launched a bombing campaign against the Federal Republic of Yugoslavia to end the widespread and systematic human rights violations against the ethnic Albanian population.²⁸ NATO acted unilaterally and without prior authorization of the UNSC, which made its action illegal under international law.²⁹ While unilateral intervention neglected the NATO act's legal character, it was the only available solution to end the repression of Kosovo's vulnerable ethnic Albanian population. As Kofi Annan said, "there are times when the use of armed force may be legitimate to pursue peace"; thus, the inevitable use of armed force to end extreme humanitarian crises can take place regardless of its illegality. Nonetheless, looking

back on Kosovo's extraordinary circumstances, Kosovo may be an uncommon and exceptional event that NATO intervened unilaterally.³⁰

2 : The Legality of Russian Military Intervention in Ukraine: A Humanitarian Intervention or an Act of Aggression?

Before addressing the legality of the Russian military intervention in Ukraine, seeking to determine whether it is a humanitarian intervention or an act of aggression against a sovereign state, it is essential to briefly review the events surrounding this intervention leading to the peninsula occupation. On 20 February 2014, Maidan protests in Kyiv escalated into violent clashes with government security forces.³¹ Two days after, the national parliament voted to impeach President Viktor Yanukovich from office and free a jailed opposition leader, Yulia Tymoshenko, who was in prison on charges of abuse of power embezzlement over her role in purchasing natural gas from Russia.³² This political event led to a chain of events that destabilized Ukraine profoundly, led by enormous oppositions who deemed this act as an unconstitutional change of power. One of these groups was the 'people's militia,' a local paramilitary formation created on 23 February 2014, commonly known as 'Crimean self-defence.'³³ On the same day, Russia decided to take advantage of the ongoing political and social crisis in Ukraine and "started working on the return of Crimea to the Russian Federation."³⁴ The Russian operation in Crimea began on 23 February 2014 by abruptly deploying thousands of infantry and Airborne Forces troops to the peninsula.³⁵ In the following days, Russian forces successfully seized several important buildings and public facilities in Crimea, including Crimean Parliament, Simferopol airport, Crimea city council, Sevastopol city council, and appointed a Russian citizen as a city mayor. Using massive forces and military logistics, Russia sealed Crimea off from mainland Ukraine. Within two weeks, Ukraine lost command and control on the peninsula, and shortly later, the Kremlin declared the Crimean Peninsula as part of the Russian territory. Although Russia's attack on Crimea was abrupt, it was thoroughly prepared and executed strategically with a detailed plan.³⁶

Firstly: The Russian official narrative to justify the occupation

The Kremlin contends the legality of the use of military force against Ukraine, upon various grounds³⁷, notably protecting minorities of Russian ethnicity residing in the peninsula. On 18 March 2014, President Putin gave a national speech delivering Russia's decision to annex the Crimean Peninsula. He justified the occupation as a move to protect the Russian and Russian-speaking populations from the groups of 'nationalists, neo-Nazis, anti-Semites, and Russophiles', who seized power in Ukraine and also to reclaim the peninsula that has always been an integral part of Russia. Putin's main argument was that the majority population of the peninsula are Russians, followed by Ukrainians and Crimean Tatars. He stated that "out of 2,200,000 inhabitants of the Crimean Peninsula: 1,500,000 Russians, 350,000 Ukrainians (who mainly consider Russian as their native language) and about 290,000-300,000 Crimean Tatars."³⁸

The occupation of the peninsula in 2014 was a unilateral operation conducted by Russia upon false pretexts to take ownership of Crimea after the ouster of Ukrainian President Viktor Yanukovich by pro-Western forces. Contrary to Moscow's official political narrative of protecting minorities residing in the peninsula, the reasons that induced Russia to take ownership of Crimea lay in the considerable geostrategic significance that Ukraine, particularly Crimea, represent:³⁹

First, prior to the USSR's dissolution, Russia was the primary dominance in the Black Sea, preventing other countries in the region, Turkey and NATO, from practicing military control. In 2004, NATO admitted two new members, Romania and Bulgaria, coastal Black Sea states, along with Turkey in the area. These three NATO members are strategically important in terms of military bases, which may shift the Black Sea's military power dominance in favour of NATO. Besides, 15 post-Soviet countries, including Ukraine and Georgia, have a coastline on the Black Sea that resulted in Russian loss of dominance in the Black Sea region.

Second, the peninsula's occupation strengthened Russia in the Black Sea region by stopping the joint NATO–Ukrainian naval and shore landing manoeuvres and diminished the growing Turkish influence in the area. Moreover, by controlling the vast Crimean Peninsula maritime zone, Russia obtained the de-facto right to massive underwater resources potentially worth trillions of dollars. It also deprived Ukraine from developing, using, or extracting these resources, making Ukraine more vulnerable to Kremlin's political pressure and influence. Before the occupation of the Crimean Peninsula, Ukraine successfully decreased the gas import from Russia and aimed to end importing this vital source of energy and becoming self-sufficient by 2035 through increasing domestic conventional and unconventional gas extraction, partially in the Black Sea zone.⁴⁰

Third, Moscow has realized that the strategic location of Ukraine, particularly Crimea, constitutes a crucial political factor in shifting the power in the Black Sea region. The Kremlin has sought to prevent any convergence between Kyiv and the European Union (EU) that might not serve Russia's interest and weaken its position in the region in favour of the West.⁴¹ The convergence between Ukraine and the EU ignited a conflict of interests between Russia and the EU, which negatively impacted Ukraine's territorial integrity, political independence, and economic strength. Thus, Russia endeavoured to isolate Ukraine from the EU by destabilizing the country politically and economically, hoping to demolish its efforts to converge with the EU or delay it, resulting in the Crimean Peninsula annexation.

Secondly: Act of Aggression: The violation of the Ukrainian sovereignty and territorial integrity

Evolving from the crimes against peace, the definition and scope of aggression substantially emerged after World War II, before the massive loss of souls and infrastructure. The allied forces decided to establish two international military tribunals located in Tokyo and

Nuremberg that were mandated to prosecute and punish major criminals of the Axis alliance for committing war crimes, crimes against humanity, and crimes against peace.⁴² At the beginning of 1950, UNGA members initiated an extensive discussion regarding the need to define aggression. In 1952, the UNGA issued Resolution N688 on the "Question of Defining Aggression," deciding to establish a special committee to draft a definition of aggression.⁴³ On 14 December 1974, UNGA adopted Resolution 3314 on the "Definition of Aggression." Article 1 paragraph 1 states the following:

"Aggression is the use of armed force by a state against the sovereignty, territorial integrity or political independence of another state, or in any other manner inconsistent with the Charter of the United Nations, as set out in this Definition."

The definition enshrined in the UNGA 3314 Resolution received contradicting reactions from the UN principle organs and international bodies. In this regard, this definition was largely ignored by the UNSC, which did not reference it in the resolutions that the Council issued concerning the illegal use of armed force by states.⁴⁴ In contrast, the UNGA definition of aggression was primarily endorsed by the ICC at the 2010 Review Conference in Kampala. Nevertheless, the ICC definition of the crime of aggression does not apply to Russia because it is not a state party to the Rome Statute of the ICC. As a result, Russia is not under ICC jurisdiction. By applying the definition adopted in Resolution 3314 on the Russian occupation of Crimea, the Crimean situation's examination leads to strong reasoning that the Russian military operation in Ukraine qualifies as an act of aggression. The Russian military intervention was directed against the territorial integrity of Ukraine, which the international community and Russia itself recognized Crimea as a part of the Ukrainian territory. On 27 March 2014, UNGA adopted Resolution 68/262 entitled "Territorial Integrity of Ukraine".⁴⁵ This Resolution affirmed the international community's commitment to Ukraine's sovereignty, political independence, unity, and territorial integrity within its internationally recognized borders.

Moreover, according to Article 2 of the Budapest memorandum signed on 05 December 1994,⁴⁶ the United States of America, Great Britain, and the Russian Federation committed to fully respect Ukrainian independence, sovereignty, and territorial integrity in correspondence with the UN Charter.⁴⁷ Article 4 requires the states parties to alert the Security Council if a signatory party to the non-proliferation treaty, i.e., Ukraine, is under attack. Lastly, Article 6 requires that the memorandum parties shall meet instantly to discuss and dissolve any arising situation, raising a question concerning these commitments. Yet, in his famous occupation speech in 2014, Putin argued that Russia had recognized Crimea as part of Ukraine, but there were no negotiations on the border's delimitation. Upon this and several other grounds, Russia decided to launch an advanced well-planned military aggressive attack against Ukraine, taking advantage of the revolution of dignity and the Crimean Peninsula's destabilized situation. This operation aimed to destabilize Ukraine as an independent state and deprive the country of an essential territory located in a

strategic geographic location with vast natural resources. Russia used its military superiority to occupy the peninsula illegally and took advantage of Ukraine's insufficient military capacity to repel the aggressive military attack that resulted in the de-facto occupation of the Crimean Peninsula.

The Russian pretext of protecting minorities of Russian ethnicity residing in Crimea to justify the military intervention does not negate the operation's aggressive nature. Using such pretexts to justify the use of armed force against other states is not a new Russian practice.⁴⁸ The Ukrainian government rejected Russian claims that the peninsula residents faced human rights violations and contended the illegality of Crimea's occupation, emphasizing that Russia's armed intervention was pre-planned before 2014 on various grounds. In 2013, Russia issued a fundamental document entitled "Concept of the Foreign Policy of the Russian Federation,"⁴⁹ which is deemed a systemic description of the Russian Federation's foreign policy's basic principles, priorities, goals, and objectives. Article 4, paragraph (d) states that Russia will commit to promote good-neighbourly relations with adjoining states and help overcome existing and prevent potential tensions and conflicts in regions adjacent to the Russian Federation. Chapter IV, entitled "Regional Priorities," lists several regional priorities that must be taken to ensure the country's security; protect and strengthen its sovereignty and territorial integrity; and secure its high standing in the international community as one of the influential and competitive poles of the modern world. Among these priorities was building up relations with Ukraine as a strategical partner within the Commonwealth of Independent States (CIS) and contributing to its extended integration processes. The timing of this document's issuance and its geopolitical language demonstrates, among other things, that Russia was keen on increasing convergence with Ukraine. The rationale behind this move was to prevent potential convergence between Ukraine and the West, including EU and NATO, which Russia deems as strategic adversaries, threatening its regional superiority in the Black Sea region. Following the eruption of the Revolution of Dignity, Russia conducted large-scale military manoeuvres on its eastern borders with Ukraine to ensure the Winter Olympic Games' security in Sochi (January-February 2014). This military force constituted more than 37,000 soldiers, which had a significant role in invading and occupying Crimea. In January 2014, the Ukrainian Intelligence Service recorded suspicious Russian military activities on the borders with Ukraine, particularly Crimea. Followed by Ukraine's President Viktor Yanukovich's flee to Russia on 22 February, some high-ranked officials fled the country, including the Minister of Internal Affairs and the Minister of Defence, leaving the country without governmental leadership. At the same time, Russia secretly started deploying military troops in Crimea, violating the Russian-Ukrainian bilateral agreement and contradicting its public announced new peaceful foreign policy toward its neighboring countries issued in 2013.⁵⁰ However, Russia's policy practice demonstrates a long-term pattern⁵¹ of using various means and methods against pre-Soviet countries, including Georgia, Ukraine, Moldavia, and Armenia,

preventing them from achieving any substantial convergence with the EU and NATO on the economic, political, and military levels.⁵² The defensive imperialism that characterized the current Russian foreign policy provides a green card to the Kremlin to pursue its unilateral interest by expanding Russia's territory (the occupation of Crimea) and its sphere of influence (continued involvement in eastern Ukraine). A. Makowski described this situation as follows "the West cannot foresee and predict what the Kremlin's next move will be. Instead, Russia perfectly knows what the West will not do. It must be admitted that this state of affairs creates a dangerous asymmetry".⁵³ In Georgia and Ukraine, Moscow has shown its willingness to resort to the use of open-armed force. In contrast, the West has proved that it is unable to defend countries that have been trying to join the West orbit or at least protect the international law rules of maintaining peace and preserving states sovereignty in the European region.

Thirdly : The humanitarian intervention doctrine and the occupation of Crimea

The Russian military intervention in Ukraine was based on different official political narratives, including protecting minorities of Russian ethnicity residing in the peninsula and ending the humanitarian deteriorated situation in it. Russia attempted to establish the impression that Ukraine committed massive human rights violations against the peninsula's residents, a narrative that Ukraine repeatedly rejected, emphasizing that the Ukrainian law recognizes the rights of all local minorities, in particular in Crimea, where many ethnic minorities reside. In this regard, the peninsula has always been a multicultural, multi-ethnic region that during the recent past centuries was inhabited by more than 125 nationalities, primarily Russians, Ukrainians, Crimean Tatars, Armenians, Greeks, Alans, Krymchaks, Turks, Karaims, Italians, Jews, and other races. According to the Ukrainian Census of 2001, Russians comprised the majority (58.5 percent) of the population in Crimea, followed by Ukrainians (24.4 percent), Crimean Tatars (12.1 percent), and (5 percent) divided between Belarussian, Tatars, Armenians, Jews and other ethnic groups.⁵⁴

After its establishment as an independent country, Ukraine took tangible steps to promote the minority groups' identity and rights by adopting new laws and policies that grant fundamental rights and enhancing institutional capacities and attention. Before the members of NATO, the Ukrainian president, Volodymyr Zelensky, stated, "regarding the protection of the rights of national minorities, we assured allies that Ukraine is complying with all the Venice recommendations. Commission on the education law." On 20 March 2014, the Ukrainian parliament issued Resolution No. 1140-VII, "On the Verkhovna Rada of Ukraine's statement on Guaranteeing the Rights of the Crimean Tatar People as a Part of the Ukrainian state." According to Article 1 of the Resolution, Ukraine acknowledges the Crimean Tatars as an indigenous people of the peninsula, recognizing them as a national minority, and guarantees the preservation and development of ethnic, cultural, linguistic, and religious identity. Article 2 recognizes the inalienable right to self-determination of the Crimean Tatar as a part of the sovereign and independent Ukrainian state.

Although this Resolution was issued for political reasons, it was an essential legal instrument that drew Crimean Tatars' legal rights and freedom as part of the Ukrainian population.⁵⁵

Upon Resolution No. 1140-VII, the Ukrainian parliament assigned the government to draft new laws regulating the legal status of the Crimean Tatars in consultation with the Crimean Tatar People's Majlis, and in close cooperation with the UN, the Organization for Security and Cooperation in Europe, the Council of Europe following international law and human rights standards and national minorities and indigenous peoples. However, the government did not draft any relevant legislation because of the unsolved issue between the government and Crimean Tatars representatives concerning the peninsula's autonomy extent and status, which remained controversial and raised conflicting points of view. After the occupation of 2014, Russia rejected all the Crimean Tatars' demands of obtaining national-territorial autonomy and instead suggested recognizing and promoting their national-cultural autonomy. Therefore, this substantial issue remains unresolved yet, which may ignite more conflicts and cause additional destabilization in the peninsula.

On 17 April 2014, Ukraine adopted Law No. 1223-VII, "On Restoration of the Rights of Persons, Deported on Ethnic Grounds." According to Article 3 of the law, national minorities include groups of Ukrainian citizens who are not Ukrainians by nationality and demonstrate a sense of national self-awareness and community. Following this law's terms, Crimean Tatars deem a national minority in Ukraine because they occupy a specific territory and share a related language, culture, religion, and history that distinguish them from other minority groups of the population. Unfortunately, while these fundamental legislations and decisions grant additional recognition to the Crimean Tatars, they were not enforced because the peninsula has been under Russia's de facto jurisdiction.⁵⁶

Amid the occupation of Crimea, Crimean Tatars announced the revival of the Crimean Tatar national movement, which became the national liberation movement or a Crimean Tatar resistance movement.⁵⁷ The old-new movement has rejected Russia de-facto occupation based on various grounds, *inter alia*, that Crimean Tatars will never accept the occupation of Crimea; the alerting rates of human rights violations, intimidation, harassment, kidnapping, unjustified detention, ethnic and religious discrimination, restriction of the rights and freedoms of Crimean Tatars; the Exilement of the Mejlis members and other most active participants in the Crimean Tatar national liberation movement; The cultural and linguistic discrimination; Recognition of the Mejlis as an illegal and extremist organization for its humanitarian activities and openly expressing its opposition to the Russian government policies.⁵⁸

Moreover, the illegal occupation of Crimea has caused a large scale of serious human rights violations against the local residents. The occupied areas have become a territory of fear, terror, and crimes. More than two million residents of Crimea and Donbas have forcibly abandoned the peninsula.⁵⁹ Thousands of individuals have been subject to arbitrary arrests, detentions, and prosecutions in an attempt to silence

voices claiming fundamental rights and independence of Crimea.⁶⁰ Numerous rights and freedoms have been restrained, including freedom of expression, religion, belief, association, and movement.⁶¹ As Russian de facto authorities have restricted the peninsula entrance, Ukrainian citizens were required to submit requests to enter or leave Crimea territory. Moreover, Russia has imposed Russian citizenship on the peninsula residents and recruited many of them into the Russian Federation Armed Forces as a part of the involuntary draft (conscription).⁶²

Internationally, a number of high-ranked Ukrainian officials, including the President of Ukraine, the Minister of Foreign Affairs, the Crimean Tatars Mustafa Džemilev, the chairman of the Mejlis Refat Chubarov, and officials delegated by the Ukrainian parliament are seeking international collaboration to end the human rights deteriorated situation. However, the process is taking a very long time, which is not in favour of the residents facing constant violations against them. The local initiative keeps the Crimean Tatars community together by organizing various cultural activities, including celebrations of national holidays, memorial days, community gatherings, and providing moral and legal support to the political detainees' families.⁶³

In comparing the minority situation in the peninsula before and after the Russian occupation, it is essential to say that the realities of minorities in Ukraine raise numerous issues, including identity and ethnic relations. The historical, geopolitical, national, and cultural contexts that have shaped Ukraine added a tense complexity to minority groups' identity and rights. Despite the minority groups' strong relations to and social and cultural ties with their ethnic countries, some national minorities continued to face unfair treatment. For instance, Crimean Tatars received inadequate recognition; their demands were mostly ignored and deliberately deprived of state financial support. However, Crimean Tatars and other national minority groups were not under massive human rights violations that required a humanitarian intervention to end the ongoing violation. The occupation of 2014 deteriorated the rights of most of the national minorities residing in the peninsula, except minorities of Russian ethnicity, which even before the occupation were granted more rights and freedoms in comparison with other minority groups. The Russian-de facto authorities committed gross human rights violations against Crimean Tatars based on security and political pretexts. Non-Governmental Organizations (NGOs) working in Ukraine have reported many arrests, disappearances, and Crimean Tatars' killings. On 19 December 2016, UNGA adopted Resolution 71/205 entitled "Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol (Ukraine)." In this Resolution, UNGA condemned the temporary occupation of part of Ukraine's territory (the Autonomous Republic of Crimea and the city of Sevastopol) by Russia, the imposition of the Russian legal system in Crimea, and human rights violations abuses against the peninsula residents.

It is a fact that many national minority groups in Ukraine have been partially deprived of practicing and enjoying fundamental rights. However, the social and

cultural conditions experienced by minorities cannot justify Russia's illegal occupation of Crimea. In addition, the UN practice of humanitarian interventions shows that the UNSC has authorized such interventions a few times only in states where local authorities conducted gross and systematic violation of human rights against the civilians, including massive commitment of international crimes such as arbitrary detentions, enforced disappearances, torture, and summary executions. As to the Russian military intervention in Ukraine, it was a unilateral act that never was authorized by the UNSC. Moreover, the international community represented in the UN opposed the occupation of Crimea. It rejected all the Russian claims regarding the occupation and proved that the national minorities in Ukraine were not in imminent danger that required urgent protection

Conclusion

Since the Soviet Union's dissolution in 1991, Russia has tried to regain its power and greatness as one of the influential and competitive poles of the modern world, in particular in the post-Soviet region, using various means and methods, including the direct illegal occupation of the post-Soviet countries territories, regardless to its implications on international law and the international community. Contrary to the Kremlin claims, the occupation of Crimea represents neither reunification nor a humanitarian intervention, but rather a revival of the USSR's old illegal practices to control post-Soviet states. The Russian occupation of Crimea demonstrates Kremlin's ambition to restore a peninsula that once was part of the Russian Soviet Federative Socialist Republic (RSFSR), which later became an official part of the Ukrainian territory and was entitled to all the protection the international law provides to sovereign states.

The use of minority protection as a pretext to attack and invade states' territories is a cruel practice. What the international community has witnessed in Crimea can happen again in many parts of the world, as minorities of Russian ethnicity reside in many post-Soviet countries and Eastern Europe. The use of human rights protection (even when these rights are truly and massively violated) to justify unilateral military intervention is unacceptable under international law. As a general rule, the human rights interventions end by protecting civilians and stopping the local authorities' gross and systematic violation of human rights. The intervening state or states must not conduct operations to occupy any parts of the targeted country. In the Crimean scenario, although the Kremlin stated on many occasions that it was concerned about the Russian minorities' situation in Crimea, Kremlin's formal narrative was not accurate. Russia committed many human rights violations against the peninsula's residents, depriving them of their fundamental rights, which deteriorated the peninsula's human rights situation. As part of the Ukrainian population, Crimean inhabitants, particularly minorities, were not under imminent and systematic violation of human rights, which demonstrates that the minorities' protection pretext was merely a last resort card to justify the aggression act against Ukraine. Russia was primarily moved by geopolitical reasons to conduct the military intervention,

including restoring control on the Black Sea region, depriving Ukraine of the right to use the natural resources in the peninsula, and ending the convergence between Ukraine and the EU on the economic and political levels. A few weeks after the attack on the peninsula, Russia officially declared Crimea as a new territorial part of the Russian Federation, indicating Russia's real intentions to intervene in Ukraine.

The Russian acts in Ukraine violated fundamental international and bilateral treaties that Russia is part of, including the UN Charter and the Budapest memorandum. Yet, seven years after the illegal occupation, the peninsula remains under Russia's de-facto control, which has not been reluctant to violate local human rights, particularly those demanding Crimea independence and opposing Russia's policy. The current international law contains substantial gaps allowing powerful states like Russia to violate other states' sovereignty and territorial integrity without deterrence. The occupation of Crimea has brought into view notable limitations in the structure of the international law rules of maintaining international peace and protecting human rights. The UNSC's efforts to dissolve the Crimea situation have not been successful in ending the illegal occupation due to the veto power raising a fundamental question regarding this organ's efficiency in situations where UNSC permanent members or their allies conduct illegal use of armed force acts against other states.

Margins:

¹ I. Davydov, *The Crimean Tatars and Their Influence on the 'Triangle of Conflict' - Russia-Crimea-Ukraine*, Approved for public release, 13-15, 2008.

² Minorities at Risk Project, *Chronology for Crimean Russians in Ukraine*, (2004).

³ Fisher, WA. *The Crimean Tatars*, Hoover Institution Press, Stanford 1978.

⁴ Constitution of Ukraine, June 18, 1996, art. 11.

⁵ Zadorozhny. *Annexation of Crimea - an international crime*. Kyiv 2015. p. 82-107.

⁶ R. Slyvka and I Zakutynska (2020) How Do State and Military Borders Divide the Urban Spaces of Donbas? Cases of Milove/Chertkovo and Zolote. in: Mihaylov V (ed.) *Spatial Conflicts and Divisions in Post-socialist Cities*. Springer.

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⁸ Putin V (2014, 18 March) Presidential Speech. <http://en.kremlin.ru/events/president/news/20603>.

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¹² UNTS (2010) Amendments on the crime of aggression to the Rome Statute of the International Criminal Court Kampala,

¹³ Omelicheva M (2016) Critical Geopolitics on Russian Foreign Policy: Uncovering the Imagery of Moscow's International Relations. *International Politics* 53(6): 708–726.

- ¹⁴ UN Charter (1945). <https://www.un.org/en/sections/un-charter/un-charter-full-text>.
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- ¹⁶ Judgment (1986). Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. the US). ICJ. Rep. 14, 103. Romano JA (1999) Combating Terrorism and Weapons of Mass Destruction: Reviving the Doctrine of a State of Necessity, 87 GEO. LJ 63:1036-38.
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- ¹⁸ Ibid.
- ¹⁹ UNGA (2005) Res. 60/1. World Summit Outcome 139.
- ²⁰ Bertschinger A (2016) Humanitarian Intervention: An Inevitable Concept. Thesis.
- ²¹ Ibid.
- ²² UNSC (1973) Security Council Resolution 1973. UN Doc. S/RES/1973.
- ²³ UNSC, *supra* note 22.
- ²⁴ UN Charter art. 39. "The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security." However, the UNSC practice shows that this power has been relatively little-used due to the "Veto Rule," which allows any of the Five permanent members (China, France, Russia, the United Kingdom, and the United States) to veto any substantive resolution (UN Charter 1945).
- ²⁵ UN Charter, *supra* note 14.
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- ²⁷ Ibid.
- ²⁸ D. Wippman (2001) Kosovo and the Limits of International Law. 25 Fordham Int'l LJ 129-131.
- ²⁹ Ibid.
- ³⁰ Ibid.
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- ³⁸ R. Allison (2014) Russian 'Deniable' Intervention in Ukraine: How and Why Russia Broke the Rules. International Affairs 90(6): 1255–1297. doi:10.1111/1468-2346.12170. Dolgov A (2014) Russia Sees Need to Protect Russian Speakers in the NATO Baltic States. The Moscow Times.

<https://www.themoscowtimes.com/2014/09/16/russia-sees-need-to-protect-russian-speakers-in-nato-baltic-states-a39450>.

³⁹ V. Mykhnenko (2020) Causes and Consequences of the War in Eastern Ukraine: An Economic Geography Perspective. *Europe-Asia Studies* 72(3): 528-560.

<https://doi.org/10.1080/09668136.2019.1684447>. Kanet RE (2019) Russian strategic culture, domestic politics and Cold War 2.0. *European Politics and Society* 20(2).

⁴⁰ F. Umbach (2014) The energy dimensions of Russia's annexation of Crimea.

www.nato.int/docu/review/articles/2014/05/27/the-energy-dimensions-of-russias-annexation-of-crimea/index.html.

⁴¹ Freedman L (2014) Ukraine and the Art of Limited War, *Survival*, 56:6, 7-38.

<https://doi.org/10.1080/00396338.2014.985432>. According to Freedman (2014): "Putin viewed the break-up of the Soviet Union as a retrograde step which created opportunities for Russia's adversaries that they did not hesitate to exploit. Against this backdrop, Moscow came to consider the overall political orientation of Ukraine, whether it looked to the East or the West, as a vital interest. This issue came to the fore during the course of 2013 as Russia put pressure on Ukraine not to sign an association agreement with the European Union, and so become the latest stage in the West's expansion into the former Soviet space".

⁴² United Nations (2003) Historical review of developments relating to aggression. New York: United Nations. Sayapin S (2014). The Crime of Aggression in International Criminal Law: Historical Development, Comparative Analysis, and Present State, 38-72. DOI: 10.1007/978-90-6704-927-6.

⁴³ UNGA (1952) Res. 688. Question of defining aggression.

⁴⁴ UNSC (1984) Resolution 546. UN Doc. S/RES/546. UNSC (1985) Resolution 568. UN Doc. S/RES/568.

⁴⁵ UNGA (2014) Res. 68/262. Territorial Integrity of Ukraine.

⁴⁶ The Budapest Memorandum on Security Assurances refers to three identical political agreements signed at the OSCE conference in Budapest, Hungary, on 5 December 1994 to provide security assurances by its signatories relating to the accession of Belarus, Kazakhstan, and Ukraine to the Treaty on the Non-Proliferation of Nuclear Weapons. The memorandum was originally signed by three nuclear powers: the Russian Federation, the United Kingdom, and the United States. China and France gave somewhat weaker individual assurances in separate documents (Council on Foreign Relations 1994).

⁴⁷ Council on Foreign Relations (1994) Memorandum on security assurances in connection with Ukraine's accession to the treaty on the Non-Proliferation of Nuclear Weapons, known as "Budapest Memorandum" and "Budapest Memorandums on Security Assurances, 1994". <https://www.pircenter.org/media/content/files/12/13943175580.pdf>.

⁴⁸ In the last century, Russia and USSR have launched several aggression wars against other countries under the pretext of protecting minorities of Soviet or Russian ethnicities residing in these countries. For instance, in September 1939, the USSR attacked Poland using the protection of minorities as a pretext for the invasion (Walker & Bowcott 2016). The acts of Soviet dictator Joseph Stalin and Russian President Vladimir Putin share several similarities. Both invasions were launched without a prior declaration of war to create a false impression that the operation has a humanitarian character. Both operations used the pretext of minorities of Soviet or Russian ethnicity to justify the attack. USSR and Russia unilaterally violated international treaties that mandated them not to use force against the parties' states' territorial integrity. For instance, in 1932, USSR and Poland signed what is known as the "Soviet-Polish Non-Aggression Pact," agreeing to renounce violence in bilateral relations, resolve their problems through negotiations, and forgo any armed conflict or alliances aimed at the other side. The USSR unilaterally broke this pact on 17 September

1939. In the Russian Ukrainian scenario, Russia violated the Budapest memorandum of 1994. See, Dz. U. RP (1932).

⁴⁹ Concept of the Foreign Policy of the Russian Federation (2013). The Ministry of Foreign Affairs of the Russian Federation. https://www.mid.ru/en/foreign_policy/official_documents/-/asset_publisher/CptICkB6BZ29/content/id/122186.

⁵⁰ O. Kovalenko (2017) How we lost Crimea. Evidence of the first persons of Ukraine. www.pravda.com.ua/cdn/graphics/2017/04/jak_my_vtrachaly_krym_svidchennja_pershyh_osib_ukrainy.

⁵¹ The USSR's invasion of Poland occurred 77 years ago, when all of the most current fundamental international law rules and bodies did not exist, including the explicit non-use of armed force rule and the UN, and the UNSC as a world peacekeeper. Nonetheless, this malicious aggressive act found its way out currently from the same country, embracing the same political approach as its ancestor did. The attacks on Moldova, Azerbaijan, Georgia, and Ukraine, mirror a constant Russian policy and foreign practice to illegally occupy parts of post-Soviet states' territories and destabilize them, preventing them from collaborating with countries that Russia deem as adversary states and organizations. As this article's purpose is not a critical geopolitical evaluation of the Russian ideology toward the post-Soviet states, these remarks may suffice to illustrate a substantial legal argument on the illegality of the Crimean occupation under international law.

⁵² Makowski A (2014) O co my walczymy? [What are we fighting for?] Kwartalnik Bellona, Kobylka.

⁵³ Ibid.

⁵⁴ Ukrainian Population Census (2001). <http://2001.ukrcensus.gov.ua/publications>.

⁵⁵ Resolution No. 1140-VII, (2014, 20 March). On the Verkhovna Rada of Ukraine's statement on Guaranteeing the Rights of the Crimean Tatar People as a Part of the Ukrainian state. <http://zakon3.rada.gov.ua/laws/show/1140-vii>.

⁵⁶ Law 1223-VII (2014) On the restoration of the rights of persons deported on ethnic grounds, Official Gazette of Ukraine. <http://base.spinform.ru/spisdoc.fwx>.

⁵⁷ Voytyuk O. (2018) Crimean Tatars. Tatarzy krymscy. Sytuacja narodu w warunkach zmieniających się państwowości [The situation of the nation in the conditions of changing statehood]. Instytut Badań nad Dziedzictwem Kulturowym Europy, Białystok.

⁵⁸ O. Voytyuk . (2018) Crimean Tatars. Tatarzy krymscy. Sytuacja narodu w warunkach zmieniających się państwowości [The situation of the nation in the conditions of changing statehood]. Instytut Badań nad Dziedzictwem Kulturowym Europy, Białystok.

⁵⁹ MENAFN (2020) Social Policy Ministry: Over 1,000 IDPs Registered in Ukraine Over Past Week. 10 March. <https://menafn.com/1099830130/Social-Policy-Ministry-Over-1000-IDPs-registered-in-Ukraine-over-past-week>.

⁶⁰ Ibid.

⁶¹ Charron A (2020) Indigeneity, Displacement, and Regional Place Attachment Among IDPS From Crimea. *Geographical Review*. <https://doi.org/10.1080/00167428.2020.1780128>. Coynash H and Charron A (2019) Russian-occupied Crimea and the state of exception: repression, persecution, and human rights violations, *Eurasian Geography and Economics*, 60(1): 28-53. <https://doi.org/10.1080/15387216.2019.1625279>.

⁶² Ibid.

⁶³ Voytyuk, *supra* note 57.