

THE PROHIBITION ON ANNEXATION: LESSONS FROM CRIMEA

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I.	INTRODUCTION	748
II.	COMPLIANCE AND ENFORCEMENT	751
III.	BACKGROUND	755
	A. <i>The Events Surrounding Russian Annexation</i>	755
	B. <i>The Legal Background</i>	757
	1. <i>The Law on Annexation</i>	758
	2. <i>Factual Assessment</i>	762
	3. <i>Legal Assessment</i>	763
	4. <i>Enforcement Mechanisms in International Law</i>	768
	a. Enforcement under the U.N. Charter	769
	b. Mechanisms under Customary International Law	770
	c. Mechanisms under Special Regimes	772
	d. <i>Summary</i>	774
IV.	INTERNATIONAL REACTIONS	775
	A. <i>United Nations</i>	776
	1. <i>Security Council</i>	776
	2. <i>General Assembly</i>	777
	B. <i>Individual States</i>	782
	1. <i>The West</i>	783
	a. European States	783
	aa. European Union States	784
	bb. Other European States—Norway and Switzerland	787
	b. United States	788
	c. Canada	789
	2. <i>Pro-Russia</i>	790

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	a.	China	790
	b.	India	791
	c.	Brazil	792
	d.	Belarus	792
	e.	Central Asian States	793
	f.	Further States in Support of Russia .	793
	3.	<i>Outliers</i>	793
C.		<i>Reactions by International Organizations</i>	795
	1.	<i>Organizations with Russian Membership</i>	795
		a. Council of Europe	795
		b. G8	796
		c. Organization for Security and Co- operation in Europe (OSCE)	797
	2.	<i>Organizations without Russian Membership</i> .	797
		a. European Union	797
		b. The North Atlantic Treaty Organization (NATO)	799
		c. Organisation for Economic Co- Operation and Development (OECD)	799
		d. Organization of Islamic Cooperation	799
	D.	<i>Sanctions</i>	800
	E.	<i>Private Actors</i>	801
	F.	<i>Status Three Years After Annexation</i>	803
	G.	<i>Quantifying the Damage</i>	806
	H.	<i>Summary</i>	814
V.		COMPARISON WITH PREVIOUS CRISES	815
	A.	<i>Georgia 2008</i>	816
	B.	<i>Kuwait 1990</i>	819
	C.	<i>Panama 1989</i>	821
	D.	<i>Summary</i>	822
VI.		LESSONS TO BE DRAWN	822
VII.		CONCLUSION	830

I. INTRODUCTION

The events in Crimea, leading up to its annexation¹ by Russia, are often considered evidence of the weakness of inter-

1. An annexation is per se illegal under international law. The Russian perspective therefore does not address the events as such. For more discussion, see *infra* Section III.B.3.

national law in restricting the actions of powerful states.² Indeed, three years³ have passed since the Russian annexation of Crimea and it seems unlikely that Ukraine will regain power over the territory anytime soon.⁴ Following such an argumentation one might be tempted to proclaim that international law in general and the prohibition on annexation in particular are not law at all.⁵ Given the perceived lack of consequences, even a less radical perspective could conclude that there is a qualitative difference between what is termed international law and the law we know from domestic legal systems.

However, under closer scrutiny, the Crimean annexation is in fact an example of how international law creates obligations that international actors follow. In addition, the specific rule prohibiting annexation is emphasized and even strengthened through the international reactions.⁶ First, from a positivist⁷ perspective, actions and statements by the international legal community create state practice and *opinio juris*. Contrary to the critical view, the Crimean case evinces state behavior that supports the prohibition on annexation. Second, from a consequentialist⁸ perspective, the international backlash against Russia's actions went beyond previous reactions.

2. In regard to powerful states and international law, see Thomas M. Franck, *The Power of Legitimacy and the Legitimacy of Power: International Law in an Age of Power Disequilibrium*, 100 AM. J. INT'L L. 88, 105 (2006).

3. For some initial assessments after the first year, see Amanda Paul, *Crimea One Year after Russian Annexation*, EUR. POL'Y CTR. (Mar. 24, 2015), http://www.epc.eu/pub_details.php?cat_id=3&pub_id=5432.

4. In fact, some have argued that it might strategically be best to give up Crimea. See Michael B. Kelley, *Bremmer: The US Must Come to Terms with Russia Controlling Crimea*, BUS. INSIDER (Mar. 6, 2014), <http://www.businessinsider.com/us-response-to-crimea-crisis-2014-3?IRT>.

5. See JOHN AUSTIN, *THE PROVINCE OF JURISPRUDENCE DETERMINED* 208 (1832) (“[T]he law obtaining between nations is not positive law: for every positive law is set by a given sovereign to . . . persons in a state of subjection to its author. . . . [T]he law . . . between nations is law (improperly so called) set by general opinion.”).

6. While this paper does not attempt to ultimately prove the fate of the prohibition of annexation, which only time can tell, it does put forward that the following analysis constitutes one significant element of such a proof.

7. In the following, the term will be used to denote a perspective that focuses on the rules of international law, specifically customary rules that are formed through state practice and *opinio juris*.

8. In this discussion, the term shall mark a perspective that focuses on whether or not a violation of international law causes negative reactions.

Therefore, when assessing potential reactions to a future annexation, one would predict a very different outcome after Crimea. Moreover, international attention has largely shifted from Crimea and Eastern Ukraine to Syria and other regions, measured by both media attention as well as the focus of international efforts.⁹ However, as evidenced by continued statements stressing the illegality of the situation, the backlash has not given way to Realpolitik when it comes to the annexation of Crimea. It is especially this shift in focus that allows for a more substantive analysis on what matters legally, decoupled from actions that are taken for opportunist reasons.

In order to highlight this strengthened prohibition against annexation, the Article will begin with a brief discussion in Part II on compliance and enforcement in regard to Crimea. Thereafter, Part III will illuminate the historical and legal background of the situation. Afterwards, in Part IV, reactions to the annexation will be examined on a basis of legal and quasi-legal positions and actions by states, international organizations, and other relevant actors. Then, in Part V, these reactions will be discussed against the background of similar historic events and the international community's reaction in such cases. Thereafter, Part VI will examine which lessons can be drawn from the previous analysis. Lastly, the Article will conclude with a final assessment of the effects of the Crimean annexation on the rule prohibiting annexations. Throughout the discussion, the Article will address both of the above-mentioned perspectives. Thus, examining whether it is possible to find evidence of state practice and *opinio juris* and whether third party states answered the violation of international law.

This Article claims that the international prohibition on annexation is strengthened through the Crimean case. At the very least, the Article sets out to show how critics grossly underestimate and misunderstand the repercussions and their respective meanings.¹⁰

9. On both Syria and Crimea, see Hall Gardner, *The Russian Annexation of Crimea: Regional and Global Ramifications*, 17 EUR. POL. & SOC'Y 490 (2016) (arguing that the combined pressures of NATO, the European Union, the United States, and Arab Gulf and Turkish interests on Russia spurred Russia's efforts to annex Crimea and intervene in Syria).

10. For an assessment of the damage that Russia has suffered, see *infra* Section IV.G.

II. COMPLIANCE AND ENFORCEMENT

Eric Posner summarized the implications of international law on Russian intervention in Crimea as follows: “1. Russia’s military intervention in Ukraine violates international law. 2. No one is going to do anything about it.”¹¹

While phrased quite provocatively, the statement nevertheless expresses a common reading of international law’s impuissance in the case of Crimea. What does it matter whether international law prohibits intervention in a foreign country when a breach doesn’t cause any reaction whatsoever? After all, Russia did not, and likely will never, accept jurisdiction of the International Court of Justice (ICJ) for the issue at hand.¹²

Authors with a less pessimistic perspective on international law label this critical view as “the perfect compliance fallacy,”¹³ a critique that aims at the measurement of effectiveness through compliance.¹⁴ The counter-argument is usually based on Louis Henkin’s famous statement that “almost all nations observe almost all principles of international law and al-

11. Eric Posner, *Russia’s Military Intervention in Ukraine: International Law Implications*, ERIC POSNER (Mar. 1, 2014), <http://ericposner.com/russias-military-intervention-in-ukraine-international-law-implications/>.

12. Aspects pertaining to questions of the legality have entered other fora, however. See Peter Tzeng, Comment, *Sovereignty over Crimea: A Case for State-to-State Investment Arbitration*, 41 YALE J. INT’L L. 459 (2016). Note that Ukraine has indeed filed a case against Russia at the ICJ. See *Terrorism Financing and Racial Discrimination in Ukraine (Ukr. v. Russ.)*, Press Release (Jan. 17, 2017), <http://www.icj-cij.org/docket/files/166/19310.pdf> (describing how Ukraine instituted proceedings against Russia and requested provisional measures from the ICJ). For a response from Russian policy experts and academics, see *You’re Out of Order! Why Kiev Has No Chance to Win Its ICJ Dispute with Moscow*, SPUTNIK (Jan. 22, 2017, 7:49 PM), <https://sputniknews.com/politics/201701221049888396-ukraine-russia-legal-battle-icj-analysis/>.

13. Peter Spiro, *Ukraine, International Law, and the Perfect Compliance Fallacy*, OPINIO JURIS (Mar. 2, 2014), <http://opiniojuris.org/2014/03/02/ukraine-international-law-perfect-compliance-fallacy/>.

14. It is generally questioned what criteria are relevant to assess the effectiveness of international law and whether effectiveness is desirable in the first place. See Vijay Padmanabhan, *The Idea of Effective International Law: Continuing the Discussion*, 108 AJIL UNBOUND 91 (2016); Timothy Meyer, *How Compliance Understates Effectiveness*, 108 AJIL UNBOUND 93 (2016); Liam Murphy, *Varieties of Effectiveness: What Matters?*, 108 AJIL UNBOUND 99 (2016); Jean d’Aspremont, “Effectivity” in *International Law: Self-Empowerment Against Epistemological Claustrophobia*, 108 AJIL UNBOUND 103 (2016).

most all of their obligations almost all of the time.”¹⁵ Additionally, even domestic systems cannot always guarantee complete enforcement. In fact, it is not unheard of that powerful actors are capable of evading obligations when it comes to national systems of justice.

While such an analysis might be empirically true, it nevertheless falls short of completely rebutting the criticism. Even with a high level of compliance, many would question systems in which an actor has the possibility to deviate from the rules without any sanction whatsoever. Furthermore, while domestic legal systems have shortcomings, a difference in perspective nevertheless exists. Domestic systems may accept specific occasional cases of individuals (or corporations) evading legal responsibility due to power, influence, or financial means. A system that generally and openly accepts such a caveat for the powerful would, however, be considered unjust and one might even question the denotation as a legal system.¹⁶ In international law, this power disparity arguably exists, at least for the time being.¹⁷

While the critical view expresses a common concern with the existing system of international law, it nevertheless overstates this criticism based on a fallacious view of enforcement. It assumes that enforcement must take the form of something akin to an international police force that stops perpetrators

15. LOUIS HENKIN, *HOW NATIONS BEHAVE* 47 (2d ed. 1979).

16. *See generally* LON L. FULLER, *THE MORALITY OF LAW* (1964).

17. It should be noted that international law formally treats states as sovereign and therefore as equals. JAMES CRAWFORD, *BROWNLIE'S PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 448-449 (8th ed. 2012). This equality is retained in some international fora—for instance, the WTO. *See* Richard H. Steinberg, *In the Shadow of Law or Power? Consensus-Based Bargaining and Outcomes in the GATT/WTO*, in *INTERNATIONAL LAW AND INTERNATIONAL RELATIONS* 543, 564 (Beth A. Simmons & Richard H. Steinberg eds., 2007). Other institutional settings, however, differentiate based on financial contributions (IMF) or size (seats in European Parliament). At the center of criticism, however, is the disparity in the United Nations, which gives the five permanent members of the Security Council (China, England, France, Russia, and the United States) a veto power for Security Council resolutions; these resolutions, however, are the only procedure envisioned by the U.N. Charter for authorizing use of force against any threat to peace, breach of peace, or act of aggression. *See* U.N. CHARTER Chapter VII (titled “Action with Respect to Threats to the Peace, Breaches of the Peace and Aces of Aggression”). This allocation of power results in a situation in which some states are practically exempted from the threat of Chapter VII measures.

through the use of material force.¹⁸ Such an approach, when dealing with a system that lacks a centralized institution with a monopoly on the use of force, possesses the risk of an escalation of violence. To prevent such a situation is one of the core objects of the system of international law.¹⁹

Hence, perceiving international law as completely analogous to domestic legal systems is not only unnecessary, it might even be disadvantageous.²⁰ Following such a line of thought, the focus then naturally turns to which enforcement mechanisms international law utilizes.²¹

While international law allows for the possibility of forceful interference, this option is significantly limited through both restrictive requirements and a formal procedure.²² A more commonly found means of enforcement is through a system of nonrecognition²³ and countermeasures as encapsulated by the International Law Commission in their Articles on State Responsibility, Articles 41(2), 22, and 49–54.²⁴ In fact,

18. A first issue pertains to which forum, i.e., which court or tribunal, would be competent to deal with the issue of whether Russia or Ukraine is correct in their respective legal assessments. For a discussion of Ukraine's attempts to achieve judicial results, see Gaiane Nuridzhanyan, *Ukraine vs. Russia in International Courts and Tribunals*, EJIL: Talk! (Mar. 9, 2016), <http://www.ejiltalk.org/ukraine-versus-russia-in-international-courts-and-tribunals/>.

19. See U.N. CHARTER art. 1(1).

20. See Jeremy Waldron, *Are Sovereigns Entitled to the Benefit of the International Rule of Law?*, 22 EUR. J. INT'L L. 315 (2011).

21. For a more extensive discussion of various forms of enforcement mechanisms, see *infra* Section III.B.4.

22. Shiv Malik et al., *Ukraine Crisis: Deal Signed in Effort to End Kiev Stand-off*, GUARDIAN (Feb. 21, 2014), <http://www.theguardian.com/world/2014/feb/21/ukraine-crisis-president-claims-deal-with-opposition-after-77-killed-in-kiev>.

23. Christian Tomuschat, *International Crimes by States: An Endangered Species?*, in INTERNATIONAL LAW: THEORY AND PRACTICE: ESSAYS IN HONOUR OF ERIC SUY 253, 259 (Karel C. Wellens ed., 1998). On the resulting connection between law and politics on the international stage, see Francisca Aguayo Armijo, *La Situación de Crimea: Los Fundamentos y los Límites del Derecho Internacional* [The Situation in Crimea: The Fundamentals and Limits of International Law], 43 REVISTA CHILENA DE DERECHO 219 (2016) (Sp.).

24. For an assessment of possible countermeasures in response to the Crimean crisis, see Cynthia Barmore & Chris Miller, *Dumping Debt and Seizing Assets: Ukrainian Countermeasures for Russian Aggression*, 67 STAN. L. REV. ONLINE 67 (Dec. 1, 2014), <http://www.stanfordlawreview.org/online/dumping-debt-and-seizing-assets>.

even those international legal regimes that are widely considered to have teeth do not employ anything similar to a domestic enforcement mechanism.²⁵ The World Trade Organization (WTO) system, for instance, relies solely on granting countermeasures to Members in order to compel breaching Members to bring their inconsistent measures back into conformity with their obligations. Even the realm of international investment arbitration relies on enforcement in particular domestic systems. If such enforcement does not yield the respective amount of compensation, recourse must be had to traditional means such as diplomacy to effectuate the rights and prerogatives of stakeholders.²⁶

Hence, when dealing with enforcement at the international level, a plethora of actions can and should be regarded. This examination should not be limited to statements, because states may at certain times pay only lip-service to an international legal rule. In the end “talk is cheap.”²⁷ This does not necessarily mean that any vocal expression should be disregarded. As a matter of fact, an expression could be highly relevant to determine *opinio juris*. Addressing the consequentialist critique based on a perceived lack of enforcement power, however, requires looking beyond statements in order to find practice in support of such statements. Additionally, it must be noted that statements themselves may vary in significance. Thus, a statement made against other interests of a state can be considered more crucial than a statement in line with such interests, e.g. voicing support for a long-time ally.

However, in order to assess the magnitude of reactions to the annexation of Crimea, a brief portrayal of the factual and legal aspects surrounding the annexation is in order.

25. Chitra Subramaniam, *The WTO Has Teeth That Bite*, NEWS MINUTE (Jan. 29, 2015), <http://www.thenewsminute.com/worlds/276>.

26. See Tsai-yu Lin, *Systemic Reflections on Argentina's Non-Compliance with ICSID Arbitral Awards: A New Role of the Annulment Committee at Enforcement?*, 5 CONTEMP. ASIA ARB. J. 1 (2012).

27. Pierre-Hugues Verdier & Erik Voeten, *Precedent, Compliance, and Change in Customary International Law: An Explanatory Theory*, 108 AM. J. INT'L L. 389, 414 (2014).

III. BACKGROUND

A. *The Events Surrounding Russian Annexation*

The Crimean Crisis originated from the so-called Euromaidan protests in Ukraine which started in late 2013.²⁸ The movement demanded a closer cooperation with the European Union, which then president Viktor Yanukovich prevented. Violent response led to further protests, which ultimately resulted in the Ukrainian revolution, and overthrow of Yanukovich through impeachment on February 21, 2014.²⁹ A pro-Russian movement in Crimea developed, supported by Russia,³⁰ and quickly took control over the peninsula.³¹ The pro-Russian movement ousted some Crimean leaders in favor of the new Ukrainian government and others switched allegiance.³² These events culminated in a decision by the new Crimean parliament on March 6, 2014 to accede to Russia.³³ This decision was scheduled for referendum on March 16,

28. On the struggle beyond these recent events, see RICHARD SAKWA, *FRONTLINE UKRAINE: CRISIS IN THE BORDERLANDS* (2015).

29. Note, however, that the Ukrainian impeachment procedure was not followed. The impeachment was nevertheless recognized by most foreign powers. See Veronika Bílková, *The Use of Force by the Russian Federation in Crimea*, 75 *HEIDELBERG J. INT'L L.* 27, 41 (2015).

30. Contrary to a prior denial of the presence of troops, Vladimir Putin acknowledged the Russian involvement on April 16, 2014. See *infra* Section III.B.2.

31. The details of how control was taken suggests that such an action had long been planned. See Nagy Tünde & Claudiu Marian, *The War Which Brings in the Cold—Ukraine and Crimea—Maskirovka and Disinformatsia*, 7 *RES. & SCI. TODAY* 87 (2014).

32. *Back in the USSR?, Spying and Control in the New Crimea*, CNN (Mar. 20, 2015, 12:57 PM), <http://edition.cnn.com/2015/03/20/opinions/crimea-anniversary/>; Hanjing Yue, *Crimea's Independence from Ukraine and Incorporation into Russia: The Unlawfulness of Russia's Use of Force*, 7 *BEIJING L. REV.* 181, 182 (2016); *Five Top Military, Security Commanders Take Oath to Crimea*, *RUSS. TIMES* (Mar. 3, 2014, 2:27 PM), <https://www.rt.com/news/military-commanders-sworn-allegiance-crimea-497/>.

33. The lawfulness of the decision was doubted, however. See Per Kristian Aale & Jan T. Espedal, *Voting Fraud Secured Pro-Russian Majority in Crimean Parliament*, *AFTENPOSTEN* (Feb. 3, 2015, 4:50 PM), <http://www.aftenposten.no/verden/Voting-fraud-secured-pro-Russian-majority-in-Crimean-parliament-94104b.html>.

2014.³⁴ In a move to halt this process, the U.N. Security Council voted on a draft resolution on March 15, 2014, which declared the referendum invalid.³⁵ However, Russia vetoed the resolution and so the referendum took place as scheduled, and overwhelmingly³⁶ favored re-joining Russia. Two days later, on March 18, 2014, Russia proclaimed the reincorporation of Crimea.³⁷ In response, the U.N. General Assembly, on March 27, 2014, adopted Resolution 68/262, setting out the legal invalidity of the referendum.³⁸ Shortly thereafter, the European Union and other nations adopted the first round of sanctions.³⁹

34. On referenda in the context of self-determination, see Stephen Tierney, *Sovereignty and Crimea: How Referendum Democracy Complicates Constituent Power in Multinational Societies*, 16 GER. L.J. 523 (2015).

35. S.C. Draft Res. 2014/189 (Mar. 15, 2014).

36. The reliability of the referendum was questioned, however. See David Adesnik, *How Russia Rigged Crimean Referendum*, FORBES (Mar. 18, 2014), <http://www.forbes.com/sites/davidadesnik/2014/03/18/how-russia-rigged-crimean-referendum/#29c88fe7f63e>. In addition, it has been criticized that the ballot only offered to become part of Russia or an independent state. See *Crimea Referendum: What Does the Ballot Paper Say?*, BBC NEWS (Mar. 10, 2014), <http://www.bbc.com/news/world-europe-26514797>.

37. From a Russian perspective, this means that Crimea first seceded from Ukraine to form its own independent state. This state then concluded a treaty with Russia that led to the incorporation into Russian territory. For a discussion and an unofficial translation of the treaty, see Anatoly Pronin, *Republic of Crimea: A Two-Day State*, 3 RUSS. L.J. 133 (2015).

38. G.A. Res. 68/262, U.N. Doc. A/68/L.39 (Mar. 24, 2014).

39. Even though these events marked the full de facto integration of Crimea into Russia, the turmoil in Ukraine continued. In fact, reports of casualties continued to stream in even after the ceasefire went into effect. See Konrad Schuller, *Warum Geht das Sterben in der Ukraine Weiter?* [Why Does the Death in Ukraine Continue?], FRANKFURTER ALLGEMEINE ZEITUNG (Mar. 15, 2016), <http://www.faz.net/aktuell/politik/ausland/europa/trotz-des-waffenstillstands-warum-geht-das-sterben-in-der-ukraine-weiter-14126470.html> (Ger.). Due to the ongoing conflict, reactions intensified for some time after the Crimean annexation. However, these later reactions can be interpreted as aimed at the conflict concerning other regions in Ukraine. This Article therefore places emphasis on the actions leading up to and immediately following the annexation of Crimea. Any later events will only be analyzed to the degree that they specifically target Crimea.

B. *The Legal Background*

While the events in Crimea raise a number of international⁴⁰ legal questions, most relevant for the following analysis is whether Russia's actions amounted to a per se illegal annexation.⁴¹ Readers that are familiar with these debates and the strong reasons⁴² for concluding that Russia's actions constituted an illegal annexation should feel at liberty to turn to the depiction of international reactions in Part IV.⁴³

The legal inquiry is complicated by different claims concerning the underlying factual basis, albeit at least the presence of Russian forces can now be answered affirmatively.⁴⁴ There is little common ground for debate⁴⁵ because both sides are convinced of their respective correct assessments⁴⁶ without engaging the opposition.⁴⁷

40. See Ashley Deeks, *Russian Forces in Ukraine: A Sketch of the International Law Issues*, *LAWFARE* (Mar. 2, 2014), <https://www.lawfareblog.com/russian-forces-ukraine-sketch-international-law-issues> (discussing the U.N. Charter and other sources of international law that may or may not speak to Russia's potential justifications).

41. For an overview of some of the further debates, see Maria Issaeva, *The Case of Crimea in the Light of International Law: Its Nature and Implications*, 3 *RUSS. L.J.* 158 (2015).

42. See, e.g., Anne Peters, *Annexion der Krim War Krass Völkerrechtswidrig* [Crimea's Annexation Was Grossly Unlawful], *GIESSENER ANZEIGER* (Jan. 22, 2015), http://www.giessener-anzeiger.de/lokales/hochschule/annexion-der-krim-war-krass-voelkerrechtswidrig_14948132.htm (Ger.).

43. In addition to the annexation's legality, the discussion also focuses on the realist assessment of the underlying reasons for taking such a bold move. See Daniel Treisman, *Why Putin Took Crimea: The Gambler in the Kremlin*, *FOR. AFF.*, May–June 2016, at 46.

44. See *infra* Section III.B.2. The level of involvement is nevertheless still not fully agreed on.

45. But see Jing Lu, *Letter in Partial Response to Vladislav Tolstykh*, "Reunification of Crimea with Russia: A Russian Perspective," 14 *CHIN. J. INT'L L.* 224 (2015); Vladislav Tolstykh, *Reunification of Crimea with Russia: A Russian Perspective*, 13 *CHIN. J. INT'L L.* 879 (2014); Gary Wilson, *Crimea: Some Observations on Secession and Intervention in Partial Response to Müllerson and Tolstykh*, 14 *CHIN. J. INT'L L.* 217 (2015).

46. A pro-Russian perspective usually highlights history. For a discussion of these lines of argument, see Peter Hilpold, *International Law: Balancing International Law with Arguments Drawn from History*, 14 *CHIN. J. INT'L L.* 237 (2015).

47. Christian Marxsen et al., *Symposium: "The Incorporation of Crimea by the Russian Federation in the Light of International Law"*, 75 *HEIDELBERG J. INT'L L.* 3 (2015).

In order to address these challenges, after an introduction to the law on annexation, the following Section will sketch the factual and legal discussions in turn.

1. *The Law on Annexation*

Annexation is “the forcible acquisition of territory by one State at the expense of another State.”⁴⁸ It is closely linked to the prohibition of the use of force as evidenced by Article 2(4) of the U.N. Charter, which explicitly protects the territorial integrity of states.⁴⁹ Thus, annexation does constitute a per se illegal form of the acquisition of territory. This prohibition does not only stem from the U.N. Charter,⁵⁰ but is also considered customary international law, arguably even *jus cogens*, a peremptory rule.⁵¹ The prohibition even extends to treaty-based annexations.⁵² In addition, third party states are under an obligation not to recognize the annexation as a lawful change in territory.⁵³

48. Rainer Hofmann, *Annexation*, in MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW ¶ 1 (Rüdiger Wolfrum ed., 2013).

49. Christian Marxsen, *Territorial Integrity in International Law*, 75 HEIDELBERG J. INT’L L. 7, 8 (2015).

50. Further documents referencing the prohibition include, *inter alia*, Security Council and General Assembly resolutions, most prominently the Friendly Relations declaration. See Hofmann, *supra* note 48, ¶ 16.

51. *Id.* at para. 21.

52. See Vienna Convention on the Law of Treaties art. 52 (Vienna, 23 May 1969), 1155 U.N.T.S. 331, *entered into force* 27 Jan. 1980.

53. This so-called Stimson Doctrine goes back to a 1932 declaration by Henry L. Stimson, then U.S. Secretary of State, declaring that the United States would not recognize changes in territory based on the use of force. See Thomas D. Grant, *Doctrines (Monroe, Hallstein, Brezhnev, Stimson)*, in MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW ¶¶ 8-15 (Rüdiger Wolfrum ed., 2014) [hereinafter Grant, *Doctrines*]; Martin Dawidowicz, *The Obligation of Non-Recognition of an Unlawful Situation*, in OXFORD SCHOLARLY AUTHORITIES ON INTERNATIONAL LAW 677 (James Crawford et al. eds., 2010). On Crimea, see Chris Borgen, *From Intervention to Recognition: Russia, Crimea, and Arguments over Recognizing Secessionist Entities*, OPINIO JURIS (Mar. 18, 2014), <http://opiniojuris.org/2014/03/18/intervention-recognition-russia-crimea-arguments-recognizing-secessionist-entities/>; Michael Bothe, *The Current Status of Crimea: Russian Territory, Occupied Territory or What?*, 53 MIL. L. & L. WAR REV. 99, 101 (2014); Anna Dolidze, *Ukraine Insta-Symposium: Potential Non-Recognition of Crimea*, OPINIO JURIS (Mar. 17, 2014), <http://opiniojuris.org/2014/03/17/ukraine-insta-symposium-potential-non-recognition-crimea/>. The obligation of non-recognition has been determined to create very specific actions. “These include:

However, while international law protects territorial sovereignty, this principle might also be seen as conflicting with other principles of international law, specifically self-determination, mentioned in the U.N. Charter, Articles 1(2) and 55.⁵⁴ At the core of this potential clash lies the question of whether self-determination might entail a right to secede and under which conditions such secession is possible.⁵⁵ Not surprisingly,

-
- refraining from diplomatic, consular or other relations that would imply recognition of the authority of the State unlawfully present in the territory;
 - adopting formal declarations that diplomatic relations with that State do not imply recognition of its unlawful presence;
 - terminating diplomatic and consular representation to the extent that it extends to the unlawfully occupied territory;
 - withdrawing diplomatic or consular missions or representatives from the territory;
 - ensuring that business organizations owned or controlled by the State cease all dealings with respect to businesses in the territory; and also cease further investment activities in the territory;
 - withholding financial support from any natural or judicial person of the sending State's nationality, where such support would facilitate trade or commerce with the territory; and
 - discouraging nationals or business organizations from investing or obtaining concessions in the territory and, to that end, withholding protection of such investment against claims of the lawful government of the territory.”

THOMAS D. GRANT, *AGGRESSION AGAINST UKRAINE: TERRITORY, RESPONSIBILITY, AND INTERNATIONAL LAW* 90 (2015) [hereinafter GRANT, *AGGRESSION AGAINST UKRAINE*] (citations omitted). For one specific example of how the question of non-recognition becomes relevant with respect to cultural objects, see Maria Nudelman, *Who Owns the Scythian Gold? The Legal and Moral Implications of Ukraine and Crimea's Cultural Dispute*, 38 *FORDHAM INT'L L.J.* 1261 (2015).

54. U.N. CHARTER arts. 1(2), 55. See also, e.g., Lea Brilmayer, *Secession and Self-Determination: A Territorial Interpretation*, 16 *YALE J. INT'L L.* 177, 181 (1991).

55. Daniel Thürer & Thomas Burri, *Self-Determination*, in *MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW* ¶ 35 (Rüdiger Wolfrum ed., 2008). See generally CHRISTIAN WALTER ET AL., *SELF-DETERMINATION AND SECESSION IN INTERNATIONAL LAW* (2014) (on self-determination and whether a right to secede exists under international law); *SECESSION: INTERNATIONAL LAW PERSPECTIVES* (Marcelo G. Kohen ed., 2006). Regarding the possibility of considering Crimea a case of secession, see Steven R. Fisher, *Towards "Never Again": Searching for a Right to Remedial Secession Under Extant International Law*, 22 *BUFF. HUM. RTS. L. REV.* 261 (2015–2016); Alisa Gdalina, *Crimea and the Right to Self-Determination: Questioning the Legality of Crimea's Secession from Ukraine*, 24 *CARDOZO J. INT'L & COMP. L.* 531 (2016); Majid Nikouei & Masoud Zamani, *The Secession of Crimea: Where Does International Law Stand?*,

the Russian justification for its annexation relies on the self-determination of the Crimean peoples.⁵⁶ Such a line of argument depends on the validity of the referendum, which arguably created an independent Crimean state, which then voluntarily concluded a treaty with Russia resulting in the incorporation of Crimea into Russian territory.⁵⁷ The crux of the argument thus depends on the voluntary nature of the events, combined with a situation that purportedly justifies secession.

Thus far, no precise rule has been established as to when self-determination trumps territorial sovereignty. Many states in the world face groups or territories that aim to secede. Reactions to secessionist endeavors vary. Some states allow secessionist groups to hold referenda, while other states forbid secessionist activities.⁵⁸ Views vary widely on the legal framework governing such situations.

One example in which self-determination trumped territorial sovereignty is Kosovo. This example could at first glance be considered to shed some light on the legal rules governing

85 NORDIC J. INT'L L. 37 (2016); N. Micheli Quadros, *Secession: The Contradicting Provisions of the United Nations Charter—A Direct Threat to the Current World Order*, 14 SANTA CLARA J. INT'L L. 461 (2016); Christopher R. Rossi, *Ex Injuria Jus Non Oritur, Ex Factis Jus Oritur, and the Elusive Search for Equilibrium After Ukraine*, 24 TUL. J. INT'L & COMP. L. 143 (2015); Khazar Shirmam-madov, *How Does the International Community Reconcile the Principles of Territorial Integrity and Self-Determination? The Case of Crimea*, 4 RUSS. L.J. 61 (2016); Thomas W. White, Jr., *Referendum in Crimea: Developing International Law on "Territorial Realignment" Referendums*, 38 HOUS. J. INT'L L. 843 (2016).

56. The Russian rhetoric specifically refers to Kosovo, an instance of secession resulting from self-determination that was supported by the West. See Chris Borgen, *Kosovo, South Ossetia, and Crimea: The Legal Rhetoric of Intervention, Recognition, and Annexation*, OPINIO JURIS (Apr. 2, 2014), <http://opiniojuris.org/2014/04/02/kosovo-south-ossetia-crimea-legal-rhetoric-intervention-recognition-annexation/>.

57. The Crimean state consequently ceased to exist. This line of argument usually cites the history of the Crimean peninsula and considers and terms the annexation a reunification. See, e.g., Alexander Salenko, *Legal Aspects of the Dissolution of the Soviet Union in 1991 and Its Implications for the Reunification of Crimea with Russia in 2014*, 75 HEIDELBERG J. INT'L L. 141 (2015); Vladislav Tolstykh, *Three Ideas of Self-Determination in International Law and the Reunification of Crimea with Russia*, 75 HEIDELBERG J. INT'L L. 119 (2015).

58. Recent examples include Catalonia, Scotland, and Quebec. See, e.g., Montserrat Guibernau et al., *Introduction: A Special Section on Self-Determination and the Use of Referendums: Catalonia, Quebec and Scotland*, 27 INT'L J. POL. CULT. & SOC'Y 1 (2013).

self-determination and even outside assistance, since the West used force to intervene in Kosovo. However, the West stressed that the Kosovo must be considered a special circumstance and could not be considered to create a precedent.⁵⁹ Western interference in Kosovo nonetheless at least sets a precedent for the possibility of exceptions to the prohibition on third party interference in territorial sovereignty. Additionally, the West's use of force in Kosovo supports arguments that the West only conforms to principles that suit its interests. It is therefore no surprise that Russia referred to Kosovo in justifying its intervention into Crimea.

Even without reference to Kosovo, some general criteria can be determined for when secession is justified. First, international law considers territorial sovereignty the norm.⁶⁰ Any exception must thus be seen narrowly. Hence, secession should be possible only under severe circumstances. Thus, scholars often demand grave breaches of human rights or at least harm of a certain magnitude to consider secession justified.⁶¹ This by itself does not render self-determination meaningless. Rather self-determination has both an internal, as well as an external dimension.⁶² Thus, even without granting a right to secede, the right to self-determination nonetheless has effects for a group within a state.

Second, it seems doubtful that a group allowed a high degree of self-determination internally should further receive the right to secession.⁶³ If a state grants a group autonomy from the central government, then the state cannot infringe upon to the right to self-determination to such a degree that violating territorial sovereignty is justifiable.

59. See, e.g., Jack Goldsmith, *The Precedential Value of the Kosovo Non-Precedent Precedent for Crimea*, LAWFARE (Mar. 17, 2014), <https://www.lawfareblog.com/precedential-value-kosovo-non-precedent-precedent-crimea>.

60. Marxsen, *supra* note 49, at 7–12.

61. See, e.g., Christian Marxsen, *The Crimea Crisis—An International Law Perspective*, 74 HEIDELBERG J. INT'L L. 367, 384–86 (2014).

62. Daniel Thürer & Thomas Burri, *Self-Determination*, in MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW, ¶¶ 33–39. (Rüdiger Wolfrum ed., 2008).

63. Thomas Burri, *Secession in the CIS: Causes, Consequences, and Emerging Principles*, in SELF-DETERMINATION AND SECESSION IN INTERNATIONAL LAW 138, 144–45 (Christian Walter et al. eds., 2014).

Third, the right of self-determination describes the relationship between a state and a group within the state. It follows that another state cannot use this right for its own benefits. Furthermore, secession is only possible if it is truly instigated by an internal group. Any signs that the group is under an outside influence, such as the presence of foreign forces, will shed serious doubt that the group acted in pursuance of its right of self-determination.⁶⁴

The following discussion focuses on the factual and legal questions concerning the presence of Russian forces in Crimea. If these troops instigated the takeover, then the secession was not voluntary, and is per se an illegal annexation.

2. *Factual Assessment*

Any evaluation of the Crimean situation must address the differing factual scenarios put forward by Russia.⁶⁵ There are three different versions.

At first, Russia denied any direct connection with the Crimean crisis and presented itself as an outsider that would not interfere with Ukrainian sovereignty.⁶⁶ Then, on April 16, 2014, Russia admitted⁶⁷ that its soldiers were present in Crimea at the time of the crisis, a suspicion most legal scholars based their analyses on.⁶⁸

64. Marxsen, *supra* note 49.

65. For more recent reports on Russia shaping international media, see Stefan Meister & Jana Puglierin, *Perception and Exploitation: Russia's Non-Military Influence in Europe*, DGAPKOMPAKT No. 10 (2015), <https://dgap.org/en/think-tank/publications/dgapanalyse-compact/perception-and-exploitation>; Richard W. Rahn, *The New Propaganda Wars*, WASH. TIMES (Mar. 21, 2016), <http://www.washingtontimes.com/news/2016/mar/21/richard-rahn-state-owned-global-tv-networks-are-to/>.

66. *Russia's Putin Denies Russian Troops Took Crimea*, REUTERS (Mar. 4, 2014), <http://www.reuters.com/article/ukraine-crisis-russia-crimea-idUSL6N0M122M20140304>.

67. In the following, any assessment of a statement as that of a state pertains to an official statement by a head of state or a statement officially identified as pronouncing the opinion of a state.

68. *Putin Admits Russian Forces Were Deployed to Crimea*, REUTERS (Apr. 17, 2014), <http://uk.reuters.com/article/russia-putin-crimea-idUKL6N0N921H20140417>.

Then, in honor of the impending anniversary of the annexation, excerpts of a documentary⁶⁹ were released on March 11, 2015, depicting a secret meeting of Russian officials on February 22–23, 2014, two weeks before the decision by the Crimean parliament and three weeks prior to the referendum for reincorporation.⁷⁰ The footage indicates that Putin and other Russian leaders had already then decided on Crimea's fate.

It is now uncontroversial that Russian troops were present in Crimea prior to annexation. Russia nevertheless portrays their involvement as minimal, and stresses that Russian troops did not fire a single shot throughout the events.⁷¹

3. *Legal Assessment*⁷²

The situation is *prima facie* illegal, as no state must, under normal circumstances, accept the presence of foreign forces on its territory.⁷³ Those who support the legality of the troops' presence rely on three different strands of argument: the treaties relating to the Sevastopol black sea port, an invitation voiced by Yanukovych, and humanitarian intervention/protector-

69. See *Putin Reveals Secrets of Russia's Crimea Takeover Plot*, BBC NEWS (Mar. 9, 2015), <http://www.bbc.com/news/world-europe-31796226>. For a discussion on the use of unmarked troops, see Ines Gillich, *Illegally Evading Attribution? Russia's Use of Unmarked Troops in Crimea and International Humanitarian Law*, 48 VAND. J. INT'L L. 1191 (2015).

70. *Ukraine Calls for Russian Documentary on Crimea to Be Sent to Hague Tribunal*, UKR. TODAY (Mar. 11, 2015), <http://uatoday.tv/politics/ukraine-calls-for-russian-documentary-on-crimea-to-be-sent-to-hague-tribunal-414713.html>.

71. There have been subsequent casualties on Crimean territory, however. See Shaun Walker & Ian Traynor *Putin Confirms Crimea Annexation as Ukraine Soldier Becomes First Casualty*, GUARDIAN (Mar. 18, 2014), <http://www.theguardian.com/world/2014/mar/18/putin-confirms-annexation-crimea-ukrainian-soldier-casualty>.

72. An important element not discussed *infra* is the 1994 Budapest Memorandum on Security Assurances, which set out the political independence and territorial integrity of Ukraine. See Memorandum on Security Assurances, Dec. 5, 1994, http://www.larouchepub.com/eiw/public/2014/eirv41n08-20140221/34-35_4108.pdf.

73. For a detailed discussion, see Peter M. Olson, *The Lawfulness of Russian Use of Force in Crimea*, 53 MIL. L. & L. WAR REV. 17 (2014).

tion of Russian nationals.⁷⁴ These arguments shall be addressed in turn.⁷⁵

At the outset, it should be noted that any presence of foreign military is not illegal, if there was a voluntary approval. This might take the form of a treaty governing the stationing of troops⁷⁶ or a statement inviting foreign forces.⁷⁷ Both are claimed as justification for the presence of Russian forces in Crimea.

Russia and Ukraine had existing treaties covering the use of the Sevastopol Black Sea port, including the stationing of Russian troops.⁷⁸ However, these treaties specifically limited the number of soldiers that could be present, which was far exceeded by the 2014 troop movement.⁷⁹

Supporters of Russian presence on Ukrainian territory also point to a statement by Yanukovich, the President of Ukraine. President Putin termed the statement “a direct appeal from the incumbent and . . . legitimate President of Ukraine, Mr. Yanukovich, asking us to use Armed Forces to protect the lives, freedom and health of the citizens of Ukraine.”⁸⁰ Responsive actions to an invitation to intervene do not violate the prohibition against the use of force, as long as

74. Salenko, *supra* note 57; Tolstykh, *supra* note 45; Tolstykh, *supra* note 57.

75. For a background on the Ukrainian constitution and secession, see Nikolaos A. Ioannidis, *The Constitutional Prohibition of Secession Under the Prism of International Law: The Cases of Kosovo, Crimea, and Cyprus*, 2 EDINBURGH STUDENT L. REV. 169 (2015).

76. One example of this outside the Crimean context includes the NATO treaty. See Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces, *opened for signature* Apr. 4, 1949, 34 U.N.T.S. 243, entered into force 24 Aug. 1949.

77. Georg Nolte, *Intervention by Invitation*, in MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW ¶ 23 (Rüdiger Wolfrum ed., 2010).

78. Partition Treaty on the Status and Conditions of the Black Sea Fleet, Rus.-Ukr., *opened for signature* May 28, 1997, entered into force July 12, 1999, <https://archive.is/ue0rj>.

79. Bílková, *supra* note 29, at 31.

80. *Id.* at 40. Yanukovich later admitted this statement, voicing his regrets. See Caro Kriel & Vladimir Isachenkov, *Ousted Ukrainian Ppresident Viktor Yanukovich: I Was Wrong to Invite Russia into Crimea*, SYDNEY MORNING HERALD (Apr. 3, 2014), <http://www.smh.com.au/world/ousted-ukrainian-president-viktor-yanukovich-i-was-wrong-to-invite-russia-into-crimea-20140402-zqpxa.html>.

the invitation fulfills specific criteria.⁸¹ One requirement is that the consent is given by the “highest governmental authority”⁸² and that any action taken stays within the boundaries set out by the consent. Regarding the authority of Yanukovich to voice such an invitation, it should be noted that his impeachment did not comply with the procedural requirements set out in the Ukrainian constitution.⁸³ In addition, while the constitution required approval by parliament if the president decided to admit foreign forces onto Ukraine’s territory,⁸⁴ such a lack of procedure only becomes relevant in international law if the acting state knew or ought to have known of this circumstance.⁸⁵ While it is arguable that Russia ought to have known, once the objection of unconstitutional invitation was raised, proponents of the Russian intervention nevertheless stressed the fact that Russia did not recognize the new government.⁸⁶ Regardless of the authority to invite, the actions by Russia were beyond the scope of the invitation, which according to Putin’s statement was aimed at the protection of Ukrainian citizens. Actions leading to secession of a part of the territory cannot be seen as covered by such an invitation.⁸⁷

81. Technically, use of force is considered an act against the will of a state. Hence, consent precludes a possible violation. On invitation to intervene, see generally GEORG NOLTE, EINGREIFEN AUF EINLADUNG: ZUR VÖLKERRECHTLICHEN ZULÄSSIGKEIT DES EINSATZES FREMDER TRUPPEN IM INTERNEN KONFLIKT AUF EINLADUNG DER REGIERUNG [Intervention by Invitation: On the Permissibility Under International Law of Deploying Foreign Troops in Domestic Conflicts by Governmental Invitation] (1999) (Ger.).

82. Nolte, *supra* note 77, ¶ 12. An earlier invitation by the Prime Minister of Crimea cannot be regarded as an invitation to intervene. See Bílková, *supra* note 29, at 40.

83. Bílková, *supra* note 29, at 41.

84. *See id.* at 41.

85. Int’l Law Comm’n, Draft Articles on the Responsibility of States for Internationally Wrongful Acts, U.N. Doc. A/56/10, at 73 (2001) [hereinafter Draft Articles on State Responsibility].

86. Tolstykh, *supra* note 57, at 138. It should be noted that most other states recognized the new Ukrainian government. Furthermore, an intervention cannot be justified if only the intervening state recognizes the inviting government. *See* STEFAN TALMON, RECOGNITION OF GOVERNMENTS IN INTERNATIONAL LAW 149 (1998).

87. *See* Bílková, *supra* note 29, at 42.

Lastly, Russia assumes the right to protect Russian citizens,⁸⁸ even if living abroad.⁸⁹ In its rhetoric, this legal claim often overlaps with a claim for humanitarian intervention, which in international law is not limited to one's own nationals.⁹⁰

Regarding the protection of one's nationals, while some argue that such a case would fall under the right to self-defense or might even constitute an exception to the use of force on its own,⁹¹ two circumstances countermand a successful invocation for the case at hand. First, an armed attack would at least have to be imminent.⁹² In Crimea it is doubtful whether the people of Crimea were ever truly facing harm, especially at a necessary magnitude.⁹³ Second, such a situation would allow for defensive measures only, rescuing and evacuating the at-

88. This argument is at times not limited to nationals but also includes Russian-speaking individuals. This distinction becomes less significant against the backdrop that Russia allows Russian speakers to acquire Russian citizenship under simplified rules. *See id.* at 46. This practice itself is legally problematic. *See* James A. Green, *The Annexation of Crimea: Russia, Passportisation and the Protection of Nationals Revisited*, 1 J. ON USE FORCE & INT'L L. 3 (2014). The decisive criteria for the determination of nationality and thus the character of nationality itself are implicit in any such discussion. *See* Yuri Teper, *Official Russian Identity Discourse in Light of the Annexation of Crimea: National or Imperial?*, 32 POST-SOVIET AFF. 378 (2016). *See also* AGNIA GRIGAS BEYOND CRIMEA: THE NEW RUSSIAN EMPIRE (2016) (identifying this practice as a move to recreate a Russian empire).

89. Russia has used this line of argument before—for example, regarding the territories of Abkhazia and South Ossetia, both Georgian territories which are primarily inhabited by Russian citizens. *See* Chris Borgen, *The Language of Law and the Practice of Politics: Great Powers and the Rhetoric of Self-Determination in the Cases of Kosovo and South Ossetia*, 10 CHI. J. INT'L L. 1, 17 (2009); *see also infra* Section V.A. In connection to Crimea, this argument must be considered with even more scrutiny, as it is Russia that has placed those citizens there. Considering the prohibition on moving one's own citizens into occupied territory, the actions seem highly problematic.

90. In addition, Russia is at times seemingly arguing in the direction of an intervention to support self-determination. On this, *see* Bílková, *supra* note 29, at 43.

91. *See* THOMAS FRANCK, RECOURSE TO FORCE: STATE ACTION AGAINST THREATS AND ARMED ATTACKS 96 (2002).

92. *See* GEOFFREY S. CORN ET AL., THE LAW OF ARMED CONFLICT: AN OPERATIONAL APPROACH 22 (2012) (which also discusses the viability of more far-reaching approaches).

93. *See* Chris Borgen, *Russia's Intervention in Ukraine: Legal Rhetoric and Military Tactics*, OPINIO JURIS (Mar. 2, 2014), <http://opiniojuris.org/2014/03/02/russias-intervention-ukraine-legal-rhetoric-military-tactic/>.

tacked or threatened individuals.⁹⁴ The Russian activities went beyond this limitation.⁹⁵

The concept of humanitarian intervention is still highly debated. Specifically, it is doubtful whether any such intervention can take place without approval by the U.N. Security Council.⁹⁶ Even assuming intervention is permissible without U.N. approval, similar to the protection of nationals, humanitarian intervention has a high threshold and a limited scope of action. States may thus only act in cases of large scale violations of human rights⁹⁷ if grave international crimes are committed.⁹⁸

Therefore, the presence of Russian forces on Ukrainian territory was not justified under international law. Consequently, the secession was not voluntary.⁹⁹ Even ignoring the military presence in Ukraine at the time of the referendum, the secession must meet the narrow requirements that even supporters of a far-reaching external right of self-determination set forth.¹⁰⁰ Frequently, any genuine possibility for internal self-determination excludes the possibility of external self-determination.¹⁰¹ This means that while internal self-determi-

94. FRANCK, *supra* note 91, at 96. However, for arguments made by the United States for the protection of its individuals in Panama, see *infra* Section V.B.

95. See Bílková, *supra* note 29, at 47.

96. See Geljin Molier, *Humanitarian Intervention and the Responsibility to Protect After 9/11*, 53 NETH. INT'L L. REV. 37 (2006).

97. Some commentators have stressed that Russia's activities have led to a worsened human rights situation. See Yulia Gorbunova, *Human Rights Abuses in Crimea Under Russia's Occupation*, 25 SEC. & HUM. RTS. 328 (2014).

98. Vaughan Lowe & Antonios Tzanakopoulos, *Humanitarian Intervention*, in MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW ¶ 39 (Rüdiger Wolfrum ed., 2011).

99. Yue, *supra* note 32; see also Jure Vidmar, *The Annexation of Crimea and the Boundaries of the Will of the People*, 16 GER. L.J. 365 (2015); Eur. Comm'n Democ. L. [Venice Comm'n], *Whether the Decision Taken by the Supreme Council of the Autonomous Republic of Crimea in Ukraine to Organise a Referendum on Becoming a Constituent Territory of the Russian Federation or Restoring Crimea's 1992 Constitution is Compatible with Constitutional Principles*, CDL-AD(2014)002, ¶ 22 (Mar.21, 2014), [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2014\)002-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)002-e).

100. See Aleksandar Pavkovic & Peter Radan, *In Pursuit of Sovereignty and Self-Determination: Peoples, States and Secession in the International Order*, 3 MACQUARIE L.J. 1 (2003).

101. Proponents of the rule argue that it entails two cumulative thresholds: first, a material threshold of oppression, and second, a procedural

nation in the form of some degree of self-governance has long been accepted, a right to form an independent state has only been confirmed in situations where groups were denied any such participation in the governing processes.¹⁰² Therefore, autonomous regions, such as Crimea, which are already granted self-governance to a certain degree, fail to fulfill one important prerequisite.¹⁰³

While such a short assessment cannot do justice to all the aspects stemming from the crisis, the assessment reflects the general consensus in the literature assessing the legality of the situation.¹⁰⁴ The next Section returns to the question of enforcement mechanisms contained in international law and elaborates on their appropriateness in the current scenario.

4. *Enforcement Mechanisms in International Law*

International law differs greatly from domestic law in terms of enforcement. While domestic legal systems benefit from the state's monopoly on the use of force, international law is often characterized by the lack of any centralized form of power.¹⁰⁵ This, however, is not completely true as the U.N. Charter envisions a system in which the Security Council¹⁰⁶ authorizes enforcement, even though enforcement is not carried out by a centralized police force.¹⁰⁷ In addition to the possible

threshold of using secession as a last resort. It is highly questionable whether either would be met in the case of Crimea. See Thomas D. Grant, *Annexation of Crimea*, 109 AM. J. INT'L L. 68 (2015).

102. Chris Borgen, *Can Crimea Secede by Referendum?*, OPINIO JURIS (Mar. 6, 2014), <http://opiniojuris.org/2014/03/06/can-crimea-secede-referendum/>.

103. See also GRANT, AGGRESSION AGAINST UKRAINE, *supra* note 53, at 23–35.

104. See, e.g., Marxsen, *supra* note 49, at 12. As shown *infra*, this finding is further in line with the assessment of a majority of states.

105. See, e.g., Jack L. Goldsmith & Eric A. Posner, *A Theory of Customary International Law*, 66 U. CHI. L. REV. 1113, 1113 (1999).

106. Note, however, that the Security Council's responsibility is primary, but not exclusive. See *Certain Expenses of the United Nations*, Advisory Opinion, 1962 I.C.J. Rep. 163 (July 20).

107. As originally envisioned by Articles 43–45 of the U.N. Charter, states were to make available armed forces. However, these provisions have never been implemented. Generally, three categories of operations that have been permitted by the Security Council can be identified: first, U.N. peacekeeping operations, which fall under U.N. command and oversee a ceasefire or peace agreement; second, other operations under U.N. command, including monitoring missions as well as criminal tribunals; third, military operations, which have the authority to use force beyond self-defense and are

enforcement under the U.N. Charter, customary international law allows for some measures that states may use to respond to violations. Lastly, states are free to agree among themselves on any enforcement mechanisms that they see fit.¹⁰⁸

a. *Enforcement under the U.N. Charter*

Under the U.N. Charter, any use of force is expressly forbidden unless the Security Council authorizes the use of force to encounter a threat to the peace, breach of peace, or an act of aggression (Chapter VII) or unless a state acts in self-defense, including collective self-defense (Article 51).¹⁰⁹ The prohibition on the use of force is further considered *jus cogens* and thus no resort to armed activities is possible beyond that envisioned in the Charter. The use of force, however, is not the only measure that the Security Council may employ; in fact it should be considered the last resort. Thus, both Chapters VI (Pacific Settlements of Disputes) and Chapter VII (Actions with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression) contain various possibilities. Thus, the Security Council may enact an embargo on a state that is in threatening international peace. Even in the case of a threat to the peace, breach of the peace or acts of aggression military measures are only employed after nonmilitary measures, including sanctions, have failed.¹¹⁰ Moreover, the Security Council itself determines when the conditions for Chapter VII are fulfilled (Article 39) and states are obliged to follow the Security Council's decision.¹¹¹

However, as scholars have frequently criticized throughout the U.N.'s existence, the Security Council can easily be

under the command of one nation or alliance. *See generally* Vaughan Lowe et al., *Introduction, in THE UNITED NATIONS SECURITY COUNCIL AND WAR: THE EVOLUTION OF THOUGHT AND PRACTICE SINCE 1945*, at 1, 4–9, 22–24 (Vaughan Lowe et al. eds., 2008).

108. While this overview sees the mechanisms under the U.N. Charter from a constitutionalist perspective, i.e., as creating an order that determines and creates outer limits for states to define their enforcement mechanisms, a more classical perspective would perceive the U.N. system itself as an agreement between states on how to enforce the rules contained in the Charter.

109. *See* U.N. CHARTER arts. 2(4), 39–51.

110. U.N. CHARTER arts. 40–41; Lowe et al., *supra* note 107, at 7–8.

111. U.N. CHARTER art. 25.

deadlocked due to the existence of five veto nations (China, France, Russia, United Kingdom, United States).¹¹² As such the Security Council will likely not resolve any situation involving one of these states, or one of their close allies.

This leaves the possibility of using force as a matter of self-defense. However, it seems highly unlikely that such an approach will be fruitful against any of these states, which possess powerful militaries as well as atomic bombs. Thus, under the United Nations, any act committed by a veto power state will likely not be resolved through the mechanism envisioned by the Charter.

b. *Mechanisms under Customary International Law*

Even in the absence of an authorization by the Security Council, some measures of enforcement are allowed under customary international law.¹¹³ Sanctions under customary international law, diplomatic measures, and non-recognition are all possible means of enforcement, however, these measures are enacted by individualized states rather than a centralized authority.¹¹⁴

The International Law Commission's Articles on State Responsibility, Articles 22, and 49–54, which are widely considered as a reflection of customary international law, set out the possibilities of a countermeasure in reaction to any act that is in violation of international law.¹¹⁵ Article 22 sets out that such a countermeasure is precluded from being considered an internationally wrongful act, as long as it is in conformity with the specific provisions on countermeasures set out in Articles 49–54.¹¹⁶ Countermeasures are generally limited to the state that is suffering from an internationally wrongful act (Article

112. See, e.g., Maurice Bertrang, *The U.N. as an Organization: A Critique of its Functioning*, 6 EUR. J. INT'L L. 349 (1995); Michael J. Glennon, *Why the Security Council Failed*, FOR. AFF., May–June 2003, at 16. For this reason, some states strive to reform the system. See Yehuda Z. Blum, *Proposals for U.N. Security Council Reform*, 99 AM. J. INT'L L. 632 (2005). Note, however, that some of the proposals include expanding, rather than reducing, the veto powers.

113. Frederic L. Kirgis, *Enforcing International Law*, AM. SOC'Y INT'L L.: INSIGHTS (Jan. 22, 1996), <https://www.asil.org/insights/volume/1/issue/1/enforcing-international-law>.

114. *Id.*

115. Draft Articles on State Responsibility, *supra* note 85.

116. *Id.* at 328–55.

49(1)) and are generally limited to non-performance of international obligations (Article 49(2)).¹¹⁷ However, as stipulated in Article 54, these provisions do not exclude lawful measures by third states that are taken to ensure the cessation of the internationally wrongful act.¹¹⁸ But it is not yet fully resolved, under which circumstances sanctions by third states, which may encompass such measures as import bans, or export embargos, are lawful under Article 54.¹¹⁹ Most importantly, who determines that the conditions for such sanctions are fulfilled? Does it necessarily require a determination by the Security Council or a decision by an international court or tribunal such as the International Court of Justice? In practice, sanctions have been taken without either.

In addition to economic measures, diplomatic means are also viable. These certainly lack the same direct effect of creating losses for a given state, but they may entail some form of reputational damage that can trigger economic losses as well.¹²⁰

Lastly, as stipulated by Article 41(2) DARS, third states have a duty to refrain from recognizing as lawful any serious breach and to refrain from rendering aid or assistance in maintaining that situation.¹²¹ At first glance, this is the bluntest sword in the arsenal of countermeasures, as no active performance is required by third states and one could assume that the result is no worse than a nuisance for the violating state. However, the situation is comparable to situations under domestic law in which a person has practical control or possession of something but lacks the title for doing so, e.g. a tenant without any contract. In the domestic example, this situation would mean that Russia could not get evicted from Crimea. At

117. *Id.* at 328–33.

118. *Id.* at 349–55.

119. *Id.*

120. Jorge E. Viñuales & Dolores Bentolila, *The Use of Alternative (Non-Judicial) Means to Enforce Investment Awards Against States*, in *DIPLOMATIC AND JUDICIAL MEANS OF DISPUTE SETTLEMENT* 247 (Laurence Boisson de Chazournes et al. eds., 2012); Joseph Sinde Warioba, *Monitoring Compliance with and Enforcement of Binding Decisions of International Courts*, 5 *MAX PLANCK U.N.Y.B.* 41, 47 (2001); George W. Downs & Michael A. Jones, *Reputation, Compliance, and International Law*, 31 *J. LEGAL STUD.* S95 (2002); Alexander Thompson, *The Rational Enforcement of International Law: Solving the Sanctioner's Dilemma*, 1 *INT'L THEORY* 307, 308 (2009).

121. Draft Articles on State Responsibility, *supra* note 85, at 286–92.

the same time, it would entail that no actions could be performed that require the formal legal title. At least in some thoroughly bureaucratized nations, such a situation severely limits possibilities. For instance, both local authorities and banks often require some evidence of entitlement to allow any conduct. To give an example in the international realm, at the time of the crisis, Crimean museums had loaned 565 pieces considered Crimean treasures to a museum in Amsterdam.¹²² After the annexation, Ukraine asked the museum in Amsterdam to return the pieces to the Ukrainian central authority, rather than the Crimean lending museums, and a Dutch court obliged.¹²³ This ruling was necessitated by the Dutch obligation of non-recognition, which entailed that the Netherlands continue to consider Ukraine, rather than Russia, in a position to determine where the treasure should be returned, as Ukraine still represented Crimea internationally.

c. *Mechanisms under Special Regimes*

Lastly, states are, within certain boundaries such as human rights, able to determine among themselves enforcement mechanisms for breaches of international obligations. Such mechanisms are at times included alongside a regime of substantive obligations. Most often, regimes that include enforcement mechanisms are encountered in the realm of international economic law, as states are usually more prone to enter binding and enforceable obligations in an area which they perceive as economically beneficial to themselves directly.¹²⁴ Two such systems shall be briefly outlined. First,

122. See Nina Siegal, *Museum Pieces on Loan from Crimea Belong to Ukraine, Dutch Court Rules*, N.Y. TIMES (Dec. 14, 2016), <http://www.nytimes.com/2016/12/14/arts/design/crimea-ukraine-allard-pierson-museum-amsterdam.html>. Russia considers the ruling contrary to international law. See *Russian Ministry Says Dutch Court's Ruling on Scythian Gold Violates Int'l Law*, SPUTNIK INT'L (Dec. 14, 2016, 2:19 PM), <https://sputniknews.com/russia/201612141048541245-scythian-gold-russia/>.

123. Siegal, *supra* note 122.

124. Analysts often resort to the prisoner's dilemma to explain this situation. If everyone follows the rules, everyone benefits. Thus, compliance with rules must be enforceable. However, similar principles may apply to regimes that deal with areas such as the environment or human rights. Nonetheless, it may at least be assumed that states most often see the direct benefit of regimes when they easily translate into an increase in trade flow or investment.

under the WTO system,¹²⁵ once the Dispute Settlement Body determines, through panels and its Appellate Body, that a member state is in violation of its obligation, it is expected that any unlawful measure shall be brought back into conformity with the obligations.¹²⁶ No compensation ensues. Only if the member keeps the measure in place, or does not fully return to conformity, does the WTO allow other states to act.¹²⁷ These actions are taken in suspension of other states' own obligations, such as granting a low level of tariffs. In practice, this means that when a state x is found to be in violation of its obligations, state y will enact tariffs that are designed to create economic damages to state x, including tariffs completely unrelated to the original measure by state x. However, state x could, if it were to accept these economic damages, keep its breach of obligation in place indefinitely. Overall, this system is akin to the system envisioned by the ILC's Draft Articles: if a state violates its obligation to another state, that latter state may suspend its own obligations.¹²⁸ What makes this system stand out is first, the existence of a compulsory system of adjudication, and second, the fact that any other WTO member may resort to this system, even if it is not directly affected by the breach of obligation. Thus, a WTO member state may address a measure that distorts market conditions for bananas even if that state itself does not produce bananas.¹²⁹

A second regime of interest is the investment regime, even though technically, the so-called regime consists of a myriad of individual bilateral treaties. Nonetheless, these treaties oftentimes have similar or identical obligations and the tribu-

125. For an overview of the legality of WTO sanctions against Russia, see Felix Boor & Karsten Nowrot, *Von Wirtschaftssanktionen und Energiesicherheit: Völkerrechtliche Betrachtungen zu staatlichen Handlungsoptionen in der Ukraine-Krise* [On Economic Sanctions and Energy Security: International Legal Views on States' Options for Action in the Ukraine Crisis], 89 FRIEDENSWARTE 211 (2014) (Ger.).

126. John H. Jackson, *The WTO Dispute Settlement Understanding—Misunderstandings on the Nature of the Legal Obligation*, 91 AM. J. INT'L L. 60, 63 (1997).

127. *Id.*

128. Draft Articles on State Responsibility, *supra* note 85, at 328–33 (article 49(2)).

129. On the disputes concerning EU restrictions on banana imports, see Eliza Patterson, *The US-EU Banana Dispute*, AM. SOC'Y INT'L L.: INSIGHTS (Feb. 27, 2001), <https://www.asil.org/insights/volume/6/issue/4/us-eu-banana-dispute>.

nals that they enact to address breaches freely refer to awards by tribunals established under different regimes.¹³⁰ This system relies almost completely on private mechanisms.¹³¹ Under investment treaties private investors are given a right to bring any violation of the specific investment treaty before an international tribunal.¹³² If the tribunal determines that a violation has occurred, it will then determine the amount of damages the investor suffered.¹³³ If the violating state does not pay the award, the private investor may simply enforce the award in a national jurisdiction, where the national court most often enforces payment by seizing the violating state's assets.¹³⁴ The direct mechanisms for this enforcement differ slightly depending on the system of arbitration used and may at times encounter difficulties.¹³⁵ Nonetheless, this form of very potent enforcement may be considered as one aspect that underlies the criticism voiced against the investment regime.¹³⁶

d. *Summary*

Various means exist to address a perceived illegality. From a positivist perspective, any such measure may be used to assist in the determination of the existence of a rule. From a consequentialist perspective, the effectiveness of some measures is doubtful. However, as shown by the example of the Crimean treasure, one should neither dismiss a given strand of enforcement mechanism without assessing its actual results.

130. For more on this phenomenon, see STEPHAN SCHILL, *THE MULTILATERALIZATION OF INTERNATIONAL INVESTMENT LAW* (2009).

131. JOSÉ E. ALVAREZ, *THE PUBLIC INTERNATIONAL LAW REGIME GOVERNING INTERNATIONAL INVESTMENT* 38–47 (2011).

132. On this remarkable feature, see Jan Paulsson, *Arbitration Without Privity*, 10 ICSID REV. 232 (1995).

133. CAMPBELL McLACHLAN ET AL., *INTERNATIONAL INVESTMENT ARBITRATION: SUBSTANTIVE PRINCIPLES* 315–349 (2007).

134. Alan S. Alexandroff & Ian A. Laird, *Compliance and Enforcement*, in *THE OXFORD HANDBOOK OF INTERNATIONAL INVESTMENT LAW* 1171, 1173 (Peter T. Muchlinski et al. eds., 2008).

135. The system had to face a challenge in Argentina's attempts to avoid paying compensation. See Moshe Hirsch, *Explaining Compliance and Non-Compliance with ICSID Awards: The Argentine Case Study and a Multiple Theoretical Approach*, 19 J. INT'L ECON. L. 681 (2016).

136. Some states are thus trying to pull out of their treaties. See, e.g., Christoph Schreuer, *Denunciation of the ICSID Convention and Consent to Arbitration*, in *THE BACKLASH AGAINST INVESTMENT ARBITRATION: PERCEPTIONS AND REALITY* 353 (Michael Waibel et al. eds., 2010).

Having set out some of the various means of enforcement, the analysis now turns to an assessment of the international reactions. From a positivist stance, this analysis may further the search for *opinio juris*.¹³⁷ From a consequentialist stance, the analysis will show some of the enforcement mechanisms in application.

IV. INTERNATIONAL REACTIONS

Reactions by international actors lie at the heart of any examination of international law, both, from a positivist perspective, to establish the existence of a rule of customary international law as well as, from a consequentialist perspective, to determine what impact any existing rule will have on state action. In theory, an ideal reaction to a breach of Ukraine's sovereignty is U.N. Security Council action. However, action by the Council cannot be expected in cases where the potential perpetrator has a veto right. Nevertheless, the voting result itself might give a first hint of the acceptance of the action by third states. Similarly, actions within the U.N. General Assembly, while nonbinding, allow for a first assessment of the legality of a particular action. From a positivist perspective, any resolution might aid in the search for *opinio juris*. From a consequentialist perspective, it is relevant whether states' voting behavior is contrary to other incentives, such as a potential alliance with or dependence on one of the main actors. Therefore, not all states' voting behavior is analyzed in detail, and special regard is given to those that acted contrary to expectations.¹³⁸ The following discussion will highlight specific actors most relevant to the events or whose actions might shed further light on the workings of international law.¹³⁹ The analysis of states' actions will thus focus on activities in the context of the U.N., followed by reactions of states in their individual capacity and in other fora. Lastly, the discussion will turn to other actors' actions.

137. Additionally, if these actions would not be considered violative of international law prior to 2014, the international backlash could now be seen as *opinio juris* allowing for the determination of the existence of said rule.

138. A more thorough examination would go beyond the scope of the present paper, which can only be seen as a starting point that tries to highlight the most crucial factors for a truly comprehensive analysis.

139. See also GRANT, AGGRESSION AGAINST UKRAINE, *supra* note 53, at 64–83.

As stated, this analysis focuses on actions leading up to and immediately following the Crimean annexation, as later action might be reactions to the ongoing crisis in Eastern Ukraine (excluding Crimea). Additionally, actions leading up to the annexation were usually not directly focused on a possible annexation, but rather on territorial integrity and the invalidity of the referendum, as annexation was not a definite outcome. Furthermore, an annexation would not have been possible without a positive referendum.¹⁴⁰ Therefore, certain knowledge of the outcome of annexation might have led to stronger reactions by some states.¹⁴¹

A. *United Nations*

1. *Security Council*

On March 15, 2014, the Security Council voted on a draft resolution aimed at preventing the Crimean referendum.¹⁴² The vote took place the day before the referendum as a last-minute attempt at preventing events from running their course. This also explains why the vote did not directly address a possible annexation by Russia, as this eventual result was uncertain at the moment. However, the referendum was a prerequisite to later Russian annexation. Furthermore, the envisioned resolution stressed Ukraine's territorial integrity, which is at stake independent of the exact fate of Crimea.

The vote in the Security Council resulted in thirteen votes in favor, one abstention by China, and one vote against by Russia.¹⁴³ The result can therefore be seen as strong evidence of international rejection of the referendum.¹⁴⁴

In addition to the permanent members France, the United Kingdom, and the United States, nonpermanent members Argentina, Australia, the Chad, Chile, Jordan, Lithuania,

140. *See supra* Part III.B.3.

141. This hypothetical is based on the thought that an annexation of another country denotes a rather definite, almost irreversible, situation.

142. S.C. Draft Res. 2014/189 (Mar. 15, 2014).

143. *See* Press Release, Security Council, Security Council Fails to Adopt Text Urging Member States Not to Recognize Planned 16 March Referendum in Ukraine's Crimea Region, U.N. Press Release SC/11319 (Mar. 15, 2014); U.N. SCOR, 7138th mtg., U.N. Doc. S/PV.7138 (Mar. 15, 2014).

144. A proposal that has almost been accepted may nevertheless contribute to the formation of international law. *See* W. Michael Reisman, *The Legal Effect of Vetoed Resolutions*, 74 AM. J. INT'L L. 904, 906 (1980).

Luxembourg, Nigeria, South Korea, and Rwanda all voted in favor. This allows for a first impression of international support as the Security Council is comprised of representatives from different parts of the world. In addition, a number¹⁴⁵ of states sponsored the draft resolution, also a sign of its international support.

China was the sole abstention, and commentators remarking on China's stance stressed its dilemma.¹⁴⁶ China is among the countries with the strongest view on the prohibition of intervention by foreign states. Similarly, China is skeptical of an external right of self-determination.¹⁴⁷ At the same time, China's partnership with Russia means that it will only reluctantly take action against its neighbor. It is because of this specific situation that some commentators saw China's abstention as a victory, as a veto was certainly not out of the question.¹⁴⁸ Furthermore, one might speculate whether a vote on the eventual annexation would have led to a different result, as an annexation can be perceived as a graver outcome than an independent new state.¹⁴⁹

2. *General Assembly*

Notably, the resolution itself only refers to the referendum and not to the annexation by Russia.¹⁵⁰ It nevertheless stresses Ukraine's territorial integrity and "[c]alls upon all States . . . not to recognize any alteration of the status of the

145. Albania, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Montenegro, Netherlands, New Zealand, Norway, Poland, Portugal, Republic of Moldova, Romania, Slovakia, Slovenia, Spain, Sweden, Turkey, Ukraine, United Kingdom, and United States.

146. Mirjam Donath, *Russia Vetoes U.N. Resolution Against Crimea Referendum*, REUTERS (Mar. 15, 2014), <http://www.reuters.com/article/us-ukraine-crisis-un-idUSBREA2E0I520140315>.

147. See *China and the Principle of Self-Determination of Peoples*, 6 ST. ANTHONY'S INT'L REV. 79 (2010).

148. Donath, *supra* note 146.

149. Nonetheless, it should be noted that a resolution explicitly condemning the annexation is conspicuously absent. One explanation would be its futility in addition to a second resolution adding little value.

150. On its general significance, see Emily Crawford, *Introductory Note to United Nations General Assembly Resolution on the Territorial Integrity of Ukraine*, 53 INT'L LEGAL MATERIALS 927, 928 (2014).

Autonomous Republic of Crimea . . . and to refrain from any action or dealing that might be interpreted as recognizing any such alteration.”¹⁵¹ Moreover, the resolution was adopted March 27, 2014, before Russia acknowledged the presence of its troops in Crimea.

Prima facie, the result of Resolution 68/262 seems overwhelming: one-hundred in favor with only eleven against.¹⁵² Taking a positivist stance, one would be tempted to end the discussion at this point.¹⁵³ However, the voting procedure also included fifty-eight abstentions and twenty-four absent states.¹⁵⁴ Indeed, it has been pointed out that previous resolutions in similar situations had stronger voting results.¹⁵⁵ Additionally, voting for a nonbinding resolution might be easier than putting in place actual sanctions towards an international perpetrator.¹⁵⁶

Nevertheless, as examinations of previous votes on resolutions reveal, one can make certain assumptions regarding the voting behavior of states. Such behavior can be based on membership in a specific bloc, based one region, common ideology,¹⁵⁷ and the existence of consultation mechanisms such as caucuses,¹⁵⁸ but also on other factors such as foreign aid.¹⁵⁹

151. G.A. Res. 68/262, at 2 (Mar. 27, 2014).

152. U.N. GAOR, 80th plen. mtg. at 17, U.N. Doc. A/68/PV.80 (Mar. 27, 2014) [hereinafter GA March Meeting].

153. The question of whether and under which circumstances a General Assembly resolution may provide evidence for *opinio juris* will be returned to in *infra* Part VI.

154. GA March Meeting, *supra* note 152, at 17.

155. Alena F. Douhan, *International Organizations and Settlement of the Conflict in Ukraine*, 75 HEIDELBERG J. INT’L L. 195, 201 (2015); Ryan Goodman, *How “Overwhelming” was the U.N. General Assembly Vote on Crimea?*, JUST SECURITY (Apr. 24, 2014), <https://www.justsecurity.org/9809/overwhelming-general-assembly-vote-crimea/>.

156. Despite their nonbinding nature, General Assembly resolutions may nevertheless develop legal effects. See Richard A. Falk, *On the Quasi-Legislative Competence of the General Assembly*, 60 AM. J. INT’L L. 782 (1966).

157. For the assessment of divining state preferences from voting behavior, see Michael A. Bailey et al., *Estimating Dynamic State Preferences from United States Voting Data*, 61 J. CONFLICT RES. 430 (2015).

158. M. Margaret Ball, *Bloc Voting in the General Assembly*, 5 INT’L ORG. 3 (1951). For a criticism of the chosen criteria, see Hayward R. Alker, Jr., *Dimensions of Conflict in the General Assembly*, 58 AM. POL. SCI. REV. 642 (1964).

159. Axel Dreher et al., *Does US Aid Buy U.N. General Assembly Votes? A Disaggregated Analysis*, 136 PUB. CHOICE 139 (2008); Kul B. Rai, *Foreign Aid and*

Throughout the Cold War period, bloc voting was primarily divided amongst an East-West axis. Afterwards, a shift resulted in a division along the lines of North-South, specifically concerning questions of self-determination, with states of the global South more in favor than the global North.¹⁶⁰ Bearing this in mind, it will come as no surprise that the majority of abstaining states are situated in the South.¹⁶¹ The fact that they abstained from voting, compared to an outright rejection, might be seen as a gesture of support. The following discussion will highlight further voting behavior that might be against expected behavior.

As stated, one-hundred states voted in favor of the resolution.¹⁶² It is noteworthy that the support is not merely comprised of Western states. Even though European states¹⁶³ almost uniformly voted to accept the resolution in addition to other Western states such as the United States, Canada, Australia, and New Zealand, a number of African and Central and

Voting in the U.N. General Assembly, 1967–1976, 17 J. PEACE RES. 269 (1980); David B. Carter & Randall W. Stone, *Democracy and Multilateralism: The Case of Vote Buying in the General Assembly*, 69 INT'L ORG. 1 (2015).

160. Soo Yeon Kim & Bruce Russett, *The New Politics of Voting Alignments in the United Nations General Assembly*, 50 INT'L ORG. 629, 651 (1996).

161. GA March Meeting, *supra* note 152, at 17.

162. Albania, Andorra, Australia, Austria, Azerbaijan, Bahamas, Bahrain, Barbados, Belgium, Benin, Bhutan, Bulgaria, Cameroon, Canada, Cape Verde, Central African Republic, Chad, Chile, Colombia, Costa Rica, Croatia, Cyprus, Czech Republic, Democratic Republic of the Congo, Denmark, Dominican Republic, Estonia, Finland, France, Georgia, Germany, Greece, Guatemala, Guinea, Haiti, Honduras, Hungary, Iceland, Indonesia, Ireland, Italy, Japan, Jordan, Kiribati, Kuwait, Latvia, Liberia, Libya, Liechtenstein, Lithuania, Luxembourg, Macedonia, Madagascar, Malawi, Malaysia, Maldives, Malta, Marshall Islands, Mauritius, Mexico, Micronesia, Moldova, Monaco, Montenegro, Netherlands, New Zealand, Niger, Nigeria, Norway, Palau, Panama, Papua New Guinea, Peru, Philippines, Poland, Portugal, Qatar, Romania, Samoa, San Marino, Saudi Arabia, Seychelles, Sierra Leone, Singapore, Slovakia, Slovenia, Solomon Islands, Somalia, Spain, South Korea, Sweden, Switzerland, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Ukraine, United Kingdom, and the United States.

163. With the exception of Bosnia and Herzegovina and Serbia, which were absent, as well as Belarus and Russia, which voted against. Thus, in line with the aforementioned bloc dynamics, the entire European Union has voted in favor of the resolution. Such a behavior might not be shocking, but it is also not guaranteed. See Paul Luif, *E.U. Cohesion in the U.N. General Assembly*, in INST. SEC. STUD., OCCASIONAL PAPERS NO. 49 51 (2003), <http://www.iss.europa.eu/uploads/media/occ49.pdf>.

South American states also voted in favor of the resolution. However, Asian states, especially those adjacent to Russia, largely abstained. Asian states that supported the resolution are *inter alia* traditional allies of the United States such as South Korea, Vietnam, Thailand, and the Philippines or of Europe such as Turkey.

The group of rejecting states consists of Armenia, Belarus, Bolivia, Cuba, Nicaragua, North Korea, Russia, Sudan, Syria, Venezuela, and Zimbabwe.¹⁶⁴ This includes both the perceived perpetrator Russia, as well as “a band of largely disreputable states.”¹⁶⁵ Most significant is which states are missing from the list; out of the countries forming the Commonwealth of Independent States,¹⁶⁶ only Armenia, Russia, and Belarus rejected the resolution. However, even though politically and economically dependent on Russia, Kazakhstan¹⁶⁷ and Uzbekistan abstained, while Kyrgyzstan, Tajikistan, and Turkmenistan were absent.¹⁶⁸ Even more surprising, both Azerbaijan and Moldova voted for the resolution.¹⁶⁹ One possible explanation is that those countries contain Russian minorities as well and therefore fear that they might face a similar situation in the future.

Overall, more than 30 percent of member states of the U.N. (fifty-eight) abstained.¹⁷⁰ Even though such a number might be legally insignificant (adoption requires the majority of non-abstaining, present members, while if an “important question” such as international peace and security is considered, a two-third majority of present and voting members is

164. GA March Meeting, *supra* note 152, at 17.

165. Goodman, *supra* note 155.

166. A regional organization of former Soviet Republic states that consists of Armenia, Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, and Uzbekistan. Turkmenistan is an associated state.

167. Probably the most economically independent.

168. GA March Meeting, *supra* note 152, at 17.

169. *Id.*

170. Afghanistan, Algeria, Angola, Antigua and Barbuda, Argentina, Bangladesh, Botswana, Brazil, Brunei, Burkina Faso, Burundi, Cambodia, China, Comoros, Djibouti, Dominica, Ecuador, Egypt, El Salvador, Eritrea, Ethiopia, Fiji, Gabon, Gambia, Guyana, India, Iraq, Jamaica, Kazakhstan, Kenya, Lesotho, Mali, Mauritania, Mongolia, Mozambique, Myanmar, Namibia, Nepal, Nauru, Pakistan, Paraguay, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, São Tomé and Príncipe, Senegal, South Africa, South Sudan, Sri Lanka, Suriname, Swaziland, Tanzania, Uganda, Uruguay, Uzbekistan, Vietnam, and Zambia.

necessary¹⁷¹), politically, an abstention is still less than acceptance.¹⁷² Possible explanations for such an attitude include dilemma situations in which states would have reasons, political or legal, to vote for and against the resolution. These situations might include states that are allied with Russia but nevertheless oppose the situation or fear for their territorial sovereignty. In such a situation, an abstention allows for an out. Abstaining will neither directly affect the outcome of the vote, as the resolution had enough supporters, nor does it require directly opposing Russia.¹⁷³

Lastly, twenty-four states were absent during voting.¹⁷⁴ It is not uncommon that states are absent during votes at the General Assembly. This is often simply caused by the many obligations that delegates have during times of meetings. One should therefore be careful how much weight is given to absence.¹⁷⁵ Nevertheless, due to its political significance, Resolution 68/262 might be slightly different. Given its importance, inferences could be drawn from state action. Mostly, an absence is a way of neither voting to accept, reject, nor abstain. While legally speaking, it has the same effect as an abstention, politically, it might not. Hence, close allies of either the Western states or Russia might feel pressure to either vote in favor or against. They might even fear repercussions in case of abstentions as it deviates from their allegiance. An absence allows a state to evade such a situation. It might therefore not be surprising that the list of absent states includes Kyrgyzstan, Tajikistan, and Turkmenistan.¹⁷⁶ At least, one might argue if those

171. See U.N. CHARTER art. 18.

172. See GRANT, AGGRESSION AGAINST UKRAINE, *supra* note 53, at 70–71 (pointing out various reasons that could possibly motivate an abstention).

173. See Robert O. Keohane, *The Study of Political Influence in the General Assembly*, 21 INT'L ORG. 221, 230 (1967).

174. Belize, Bosnia and Herzegovina, Republic of the Congo, Côte d'Ivoire, Equatorial Guinea, Ghana, Grenada, Guinea-Bissau, Iran, Israel, Kyrgyzstan, Laos, Lebanon, Morocco, Oman, Serbia, Tajikistan, Timor-Leste, Tonga, Turkmenistan, Tuvalu, United Arab Emirates, Vanuatu, and Yemen.

175. See Eric Voeten, Data and Analysis of Voting in the General Assembly 4 (July 17, 2012) (unpublished manuscript), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2111149 (stressing that in 68% of cases of absence, the state will be absent in the next vote as well).

176. Similarly, Israel was absent. Arguably, while its alliance with the United States would have presented a strong reason to vote in favor the resolution, its stance regarding its own involvement in the affairs of its neighbors

states were clearly convinced of the legality of a Crimean referendum, they would have felt compelled to make their voices heard through voting, knowing that a majority of states opposed the referendum. However, the number of absent states might actually be a sign that states did not value the resolution as highly important. This might be connected with either the nonbinding nature of the resolution or a resignation to events than were possibly perceived as inevitable.

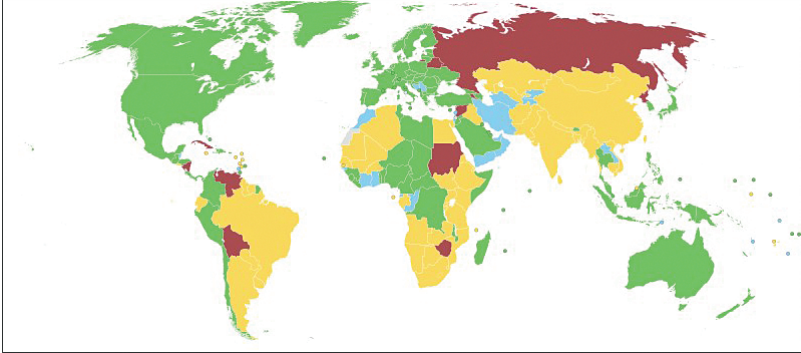


Image: Voting behavior¹⁷⁷

Green: In favor; Red: Against; Yellow: Abstention; Blue: Absent

B. *Individual States*

The discussion of states acting on an individual basis will focus on predominant actors and those whose behavior might contradict other incentives. Thus, the starting point will be perceived division between Western states on the one hand

may have presented an equally strong incentive not to vote in favor. Even an abstention could have been perceived as not supporting the U.S. cause. Absence may have been the sword to this Gordian knot. In regard to Israel's overall reaction, see *Putin's Stance on Ukraine Supported by Minority of Nations*, BLOOMBERG BUS. (Mar. 14, 2014), <http://www.bloomberg.com/infographics/2014-03-14/countries-react-to-russian-intervention-in-crimea.html> (declaring Israel as undecided "despite [its] close ties to the U.S. and many Russian-speaking immigrants"). U.S. officials expressed their anger at Israel's generally neutral stance. See Barak Ravid, *U.S. Officials Angry: Israel Doesn't Back Stance on Russia*, HAARETZ (Apr. 13, 2014), <http://www.haaretz.com/israel-news/.premium-1.585333>.

177. *U.N. Resolution Regarding the Territorial Integrity of Ukraine*, WIKIMEDIA COMMONS (Mar. 28, 2014), https://commons.wikimedia.org/wiki/File:UN_Resolution_regarding_the_territorial_integrity_of_Ukraine.svg.

and Russia and its traditional allies on the other hand. Among these allies are the states of the Commonwealth of Independent States, BRICS¹⁷⁸ states due to their economic cooperation, as well as other states that often side with Russia for ideological reasons. This however, does not preclude that a state listed as an ally may in this specific instance take an opposing stance. In fact these situations are most noteworthy in determining repercussions to the annexation.

1. *The West*

The most prominent proponents of Ukrainian unity were European states as well as the United States.¹⁷⁹ In addition, support came from Canada, Australia, New Zealand, and Japan. In a sense, this bloc dates back to the opponents of the Soviet Republic during the Cold War.¹⁸⁰

a. *European States*

Those European states that are members of the European Union primarily acted through this organization. This can be seen as a consequence of the historical background of the conflict, which emerged from talks between the European Union and Ukraine aimed at a closer cooperation. Thus, from its very outset the Ukrainian conflict was determined by the geopolitical power of the European Union and Russia. In addition, the competences of the European Union necessitate that some actions are taken under its auspices.¹⁸¹ Nevertheless, some comments on individual activities are in order.

178. Brazil, Russia, India, China, and South Africa. In addition to the other BRICS states which are discussed in more detail *infra*, South Africa abstained from voting in the General Assembly, stating that the crisis did not start because of the referendum, but had its roots in the February “coup.” Sherwin Bryce-Pease, *SA Abstains in U.N. Vote on Crimea*, SABC NEWS (Mar. 28, 2014), <http://www.sabc.co.za/news/a/fcb60c80436d360480699e6c62b42e10/SA-abstains-in-UN-vote-of-Crimea>.

179. As explicated in the analysis *infra*, both actors tended to initiate measures that were then taken up by others.

180. Note, however, that the former neutral states also voted in favor of the resolution.

181. *See, e.g.*, Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community art. 215, Dec. 13, 2007, 2007 O.J. (C 306) 1[hereinafter Treaty of Lisbon] (detailing sanctions).

aa. *European Union States*

The European Union states were from the outset divided into those that favored resolute actions, Sweden¹⁸² and Eastern Europe,¹⁸³ and those advocating for a more diplomatic approach, the United Kingdom, France, Germany, as well as southern Europe.¹⁸⁴ This discussion will focus on the latter group.

In close cooperation with both France and Germany, the United Kingdom acted at the first reports of Russian forces in Crimea, sending a “clear signal” to Putin.¹⁸⁵ As a response to the further evolution of events the United Kingdom reacted with the suspension of bilateral military cooperation, including the planned Military Technical Cooperation Agreement, the cancellation of joint military exercises, as well as stopping exportation of military and dual use goods to Russia.¹⁸⁶ At first, it nevertheless took a skeptical view of financial sanctions, which could hurt London’s financial market as well.¹⁸⁷

While France has historically not been involved with Ukraine as much as other European states,¹⁸⁸ its initial reac-

182. After the events in Crimea, Sweden even started to consider joining NATO. See Matt Ford, *After Crimea, Sweden Flirts with Joining NATO*, ATLANTIC (Mar. 12, 2014), <http://www.theatlantic.com/international/archive/2014/03/after-crimea-sweden-flirts-with-joining-nato/284362/>.

183. Eastern European states feel especially threatened by a perceived Russian expansion policy, reminiscent of previous invasions. See William Cook, *Today Crimea, Tomorrow Estonia?*, SPECTATOR (Mar. 8, 2014), <http://www.spectator.co.uk/2014/03/estonias-angst/>.

184. Anne Nietschmann, *The Political Response of Germany to the Annexation of Crimea by the Russian Federation*, REGIONAL DIALOGUE (May 10, 2014), <http://regional-dialogue.com/en/anne-nietschmann-the-political-response-of-germany-to-the-annexation-of-crimea-by-the-russian-federation/>.

185. *Ukraine Crisis: U.K. Warns Russia over Crimean Incursion*, BBC NEWS (Mar. 3, 2014), <http://www.bbc.com/news/uk-politics-26415789>.

186. William Hague, For. Sec’y, U.K., Speech Before the House of Commons on Russia’s Actions in Crimea (Mar. 18, 2014), <https://www.gov.uk/government/speeches/russias-actions-in-crimea>.

187. Bruno Waterfield & Colin Freeman, *E.U. Leaders Divided over New Sanctions to Punish Russia for Annexing Crimea*, TELEGRAPH (Mar. 20, 2014), <http://www.telegraph.co.uk/news/worldnews/europe/ukraine/10710268/EU-leaders-divided-over-new-sanctions-to-punish-Russia-for-annexing-Crimea.html>.

188. Bruno Tertrais, *France and the Ukraine Crisis: A Delicate Balancing Act*, EUR. LEADERSHIP NETWORK (Mar. 10, 2014), http://www.europeanleadershipnetwork.org/france-and-the-ukraine-crisis-a-delicate-balancing-act_1265.html.

tion was nevertheless strong condemnation.¹⁸⁹ Concerning sanctions, however, France was at first reluctant to embargo military goods, as it had concluded a contract with Russia over the exportation of two warships amounting to \$ 1.4 billion.¹⁹⁰ It therefore argued in favor of financial sanctions. In the end, however, the warship deal was cancelled, despite France having to bear immense costs.¹⁹¹

In contrast, Germany's initial stance toward the events was reserved, driven by public opinion that favored reconciliation and rapprochement.¹⁹² The reasons for this are manifold: strong business ties with Russia,¹⁹³ a general rejection of actions that could result in war,¹⁹⁴ the feeling of guilt for the German invasion of Russia during World War II, and strong

189. *West Furious as Crimea Accepted into Russia*, RUSS. TIMES (Mar. 18, 2014), <https://www.rt.com/news/putin-speech-crimea-reactions-606/> (last updated Mar. 19, 2014); *President Hollande: France Doesn't Recognize Crimea's Annexation by Russia*, KYIV POST (Mar. 19, 2014), <http://www.kyivpost.com/article/content/ukraine/president-hollande-france-doesnt-recognize-crimea-as-annexation-by-russia-339992.html>; *France Calls for Ukraine's Integrity to Be Respected as Crimea Crisis Deepens*, RFI (Mar. 1, 2014), <http://en.rfi.fr/europe/20140301-france-calls-ukraines-integrity-be-respected-crimea-crisis-deepens>.

190. Ben McPartland, *Crimea: Hollande Wants Retort to Russia*, THELOCAL.FR (Mar. 18, 2014), <http://www.thelocal.fr/20140318/france-could-cancel-war-ship-deal-with-russia>.

191. The sum France had to pay was not disclosed, but last reports indicate that it was below \$ 1.3 billion. See Sabrina Tavernise, *Canceled Deal for 2 Warships, France Agrees to Repay Russia*, N.Y. TIMES (Aug. 5, 2015), http://www.nytimes.com/2015/08/06/world/europe/france-reimburses-russia-for-warships-as-deal-becomes-casualty-of-ukraine-sanctions.html?_r=0. Cf. Thomas Barrabi, *France, Russia's Canceled Mistral Warships Deal Could Cost French Government Billions, Report Says*, INT'L BUS. TIMES (May 14, 2015), <http://www.ibtimes.com/france-russias-canceled-mistral-warships-deal-could-cost-french-government-billions-1922182> (previously estimating payments as high as \$ 5.7 billion).

192. Ben Knight, *Using Germany's Ostpolitik for Crimea Crisis*, DEUTSCHE WELLE (Mar. 27, 2014), <http://www.dw.com/en/using-germanys-ostpolitik-for-crimea-crisis/a-17521658>.

193. In fact, Germany is oftentimes favored, partly due to Putin's connections with Germany. See KAREN DAWISHA, *PUTIN'S KLEPTOCRACY: WHO OWNS RUSSIA?* (2014).

194. Germany had for a long time acted with restraint in response to similar situations. See Philipp Wittrock & Gregor Peter Schmitz, *Crimean Crisis: All Eyes on Merkel*, SPIEGEL ONLINE (Mar. 4, 2014), <http://www.spiegel.de/international/world/angela-merkel-plays-central-role-in-russia-diplomacy-over-crimea-a-956834.html>.

sympathy for Russia,¹⁹⁵ mixed with antipathy for the United States, especially in the parts of the former German Democratic Republic.¹⁹⁶ In addition, Germany is highly dependent on Russia for its energy supply.¹⁹⁷ It nonetheless condemned Russian activities.¹⁹⁸

Lastly, Hungary had for a long period of time close connections with Russia, resulting in statements of a neutral manner.¹⁹⁹ Those statements were nonetheless criticized in Hungary itself,²⁰⁰ and Hungary approved the later sanctions.²⁰¹

Overall, European states face possible negative consequences resulting from any drastic actions taken towards Russia. These specifically stem from economic ties, involving both

195. In his speech at the signing of the treaty that incorporated Crimea into Russia, Putin directly addressed the German reunification. See Natalia Meden, *Crimea Is Russia: What the Germans Think*, STRATEGIC CULT. FOUND. (Mar. 23, 2014), <http://www.strategic-culture.org/news/2014/03/23/crimea-is-russia-what-the-germans-think.html>.

196. Ralf Neukirch, *The Sympathy Problem: Is Germany a Country of Russia Apologists?*, SPIEGEL ONLINE (Mar. 31, 2014), <http://www.spiegel.de/international/germany/prominent-germans-have-understanding-for-russian-annexation-of-crimea-a-961711.html>; Rick Noack, *Why Do Nearly 40 Percent of Germans Endorse Russia's Annexation of Crimea?*, WASH. POST (Nov. 28, 2014), <https://www.washingtonpost.com/news/worldviews/wp/2014/11/28/why-do-nearly-40-percent-of-germans-endorse-russias-annexation-of-crimea/>.

197. Russia supplies the following (of total German imports, 2013): crude oil (35%), natural gas (38%), and hard coal (27%). See Anna Kwiatkowska-Drozd & Konrad Poplawski, *The German Reaction to the Russian-Ukrainian Conflict—Shock and Disbelief*, OSDOREK STUDIOW WSCHODNICH (Mar. 3, 2014), <http://www.osw.waw.pl/en/publikacje/osw-commentary/2014-04-03/german-reaction-to-russian-ukrainian-conflict-shock-and>.

198. *Krim-Krise, Merkel Wirft Putin Verletzung des Völkerrechts Vor* [Crimean Crisis, Merkel Accuses Putin of Violating International Law], SPIEGEL ONLINE (Mar. 2, 2014), <http://www.spiegel.de/politik/deutschland/krim-krise-merkel-wirft-putin-verstoss-gegen-voelkerrecht-vor-a-956514.html> (Ger.).

199. Of importance in this regard is the South Stream gas pipeline. See Gabriela Baczyńska, *Russia's Relations with Hungary Warm as Ties with West Chill*, REUTERS (Nov. 19, 2014), <http://www.reuters.com/article/us-russia-hungary-idUSKCN0J326120141119>.

200. Margit Feher, *Hungary Not Part of Russia-Ukraine Conflict, Premier Orban Says*, WALL ST. J.: EMERGING EUROPE (Mar. 3, 2014), <http://blogs.wsj.com/emerging-europe/2014/03/03/hungary-not-part-of-russia-ukraine-conflict-premier-orban-says/>.

201. See *infra* Section IV.D.

business opportunities and energy dependence.²⁰² Nonetheless, even outside of the forum of the European Union, these states have primarily acted in opposition to the Russian annexation.

bb. *Other European States—Norway and Switzerland*

Neither Norway nor Switzerland is a member of the European Union. Therefore, their actions are considered separately.

Norway strongly condemned the events.²⁰³ While condemnation might be considered contrary to Norway's incentive for good relations with its direct neighbor, condemnation bolsters international opposition against a perceived very proximate threat.²⁰⁴ In addition to the condemnation, Norway suspended diplomatic meetings with Russia and decided on restrictive measures in alignment with those by the European Union.²⁰⁵ The initial measures included sanctions against individuals encompassing both travel restrictions and asset-freezes.²⁰⁶

202. See Justin Clune, *The Natural Gas Trade Between the Russian Federation and the European Union: Power Dynamics, Legal Challenges, and a Country Caught in the Middle*, 35 NW. J. INT'L L. & BUS. 199 (2014).

203. Press Release, Gov. of Nor., Norway Condemns Russia's Annexation of Crimea (Mar. 18, 2014), https://www.regjeringen.no/en/aktuelt/condemns_russia/id753260/.

204. *Norway's Dilemma over Russia*, NEWS IN ENGLISH (Mar. 18, 2014), <http://www.newsinenglish.no/2014/03/18/norways-dilemma-over-russia/>.

205. *Norway Cancels Russia Meetings over Crimea*, THELOCAL.NO (Mar. 20, 2014), <http://www.thelocal.no/20140320/norway-cancels-russia-meetings-over-crimea-move>; Balaczs Konranyi, *Norway to Sign Up to EU Sanctions Against Russia*, REUTERS (Jul. 30, 2014, 9:30 AM), <http://www.reuters.com/article/ukraine-crisis-sanctions-norway-idUSL6N0Q54OY20140730>.

206. Norwegian Government, Press release: Norway to implement new restrictive measures against Russia, <https://www.regjeringen.no/en/aktuelt/Norway-to-implement-new-restrictive-measures-against-Russia/id765675/>. In August 2014, Norway expanded its measures to include banning Russian state-owned banks from receiving mid- and long-term loans, banning arms exports to Russia, and prohibiting supplies of equipment, technology, and assistance to the Russian oil sector. However, those actions cannot be classified solely as reactions to the Crimean crisis. See *id.*

Switzerland, as a historically neutral country, at first only condemned the annexation²⁰⁷ and issued travel restrictions.²⁰⁸ Following later developments of the Ukrainian conflict Switzerland issued sanctions mirroring the European Union, including those against financial institutions.²⁰⁹

In addition, the European Free Trade Association, of which both Norway and Switzerland are members,²¹⁰ suspended their negotiations with Russia over a free-trade agreement as a result of the annexation.²¹¹

b. *United States*

In addition to the European states, the United States is the main antagonist of Russia in the Crimean crisis.²¹² In fact,

207. *Switzerland Condemns Russia's Annexation of Crimea*, KYIV POST (Mar. 27, 2014), <http://www.kyivpost.com/article/content/ukraine/switzerland-condemns-russias-annexation-of-crimea-341051.html>.

208. *Russia Says Swiss Steps 'Counterproductive'*, SWISSINFO.CH (Mar. 28, 2014), http://www.swissinfo.ch/eng/crimea-reaction_russia-says-swiss-steps-counterproductive-/38266402.

209. *See Switzerland Steps Up Sanctions Against Russia over Ukraine*, UNIAN (Mar. 6, 2015), <http://www.unian.info/politics/1052853-switzerland-steps-up-sanctions-against-russia-over-ukraine.html>; *Switzerland Joins EU Sanctions Against Russia*, QHA (Nov. 13, 2014), <http://qha.com.ua/en/politics/switzerland-joins-eu-sanctions-against-russia/132613/>.

210. In addition to Iceland and Liechtenstein.

211. Urs Geiser, *Swiss Try Middle Road on Russia Sanctions*, SWISSINFO (Mar. 26, 2014), http://www.swissinfo.ch/eng/crimea-crisis_swiss-try-middle-road-on-russia-sanctions/38244692.

212. It remains to be seen whether President Trump will change his pre-election stance on the annexation that went so far as to recognize Crimea as a part of Russia. *See* Krishnadev Calamur, *Donald Trump's Crimean Gambit*, ATLANTIC (July 27, 2016), <http://www.theatlantic.com/news/archive/2016/07/trump-crimea/493280/>. At the time of writing, such an action seems unlikely, as even some close allies of Russia such as the BRICS-states have thus far refrained from recognition. *See* Jeremy Bender, *These are the 6 countries on board with Russia's illegal annexation of Crimea*, BUS. INSIDER (May 31, 2016), <http://www.businessinsider.de/six-countries-okay-with-russias-annexation-of-crimea-2016-5?r=US&IR=T>. Nonetheless, there are three important considerations should President Trump recognize the annexation.

First, such a development would immediately silence one of the loudest voices proclaiming the illegality of the annexation. However, this Article aims to underline that simply assessing the activities of the major players is shortsighted. Rather, it seems reasonable to assume that U.S. recognition would not change the stance of those European countries that see themselves threatened by perceived Russian expansionist policies. *See supra* Section IV.B.1.a. Rather, such a development would further increase the fear

from the very beginning of the crisis, the actions of the United States surpassed those of the EU states, partly because the United States feared fewer negative domestic repercussions as its trade with Russia only amounts to one-tenth of the European-Russian trade.²¹³ On February 28, 2014, President Obama released a statement warning Russia not to intervene in Crimea.²¹⁴ President Obama followed up with an executive order on March 6, which authorized sanctions against yet to be named individuals.²¹⁵ President Obama then issued specific sanctions on March 17 in coordination with the European Union.²¹⁶

c. *Canada*

Canada mirrored the actions of the United States and the European Union by generally denouncing Russia's actions.²¹⁷ Prime Minister Harper even compared the situation with the Nazi German occupation of the Sudetenland.²¹⁸ Canada's response included the suspension of its military cooperation

that Russia would repeat a land-grabbing activity in the future. Thus, these states would likely increase their efforts to rewind the Crimean takeover.

Second, the U.S. sanctions would likely be lifted. While certainly a relief for Russia, it must be borne in mind that Russia's trading ties are primarily with the European Union and less so with the United States. *See supra* Section IV.B.1.a.

Lastly, if President Trump did move to recognize the annexation, the struggle he would likely face both domestically and internationally would have to be assessed as a result of the perceived illegality of the situation. *See* Julian Borger & Jennifer Rankin, *John McCain: lifting Russia sanctions would be 'naïve and dangerous'*, *GUARDIAN* (Jan. 27, 2017), <https://www.theguardian.com/us-news/2017/jan/27/russia-sanctions-john-mccain-congress-trump>.

213. *Sixes and Sevens*, *ECONOMIST* (Mar. 8, 2014), <http://www.economist.com/news/briefing/21598743-europe-and-america-are-outraged-annexation-crimea-lack-strong-response-sixes>.

214. WHITE HOUSE, STATEMENT BY THE PRESIDENT ON UKRAINE (Feb. 28, 2014), <https://obamawhitehouse.archives.gov/the-press-office/2014/02/28/statement-president-ukraine>.

215. Exec. Order No. 13,660, 79 Fed. Reg. 13,493 (Mar. 6, 2014).

216. *See infra* Section IV.D.

217. *See* Brent McKenzie, *The Crisis in Crimea—"Voices" From Canada: A Qualitative Study*, 1 J. EASTERN EUR. & CENTRAL ASIAN RES., no. 2, 2014.

218. Steven Chase, *Harper Compares Russia's Crimea Moves to Third Reich Aggression*, *GLOBE & MAIL* (Mar. 4, 2014), <http://www.theglobeandmail.com/news/politics/canada-suspends-military-activities-with-russia/article17289679/>.

with Russia²¹⁹ and the expulsion of Russian military servicemen.²²⁰

2. *Pro-Russia*²²¹

a. *China*

China abstained both in the Security Council and in the General Assembly. This stance is in line with China's stance which generally calls upon all actors, without specifying any of these actors, to deescalate the situation.²²² China's approach balances its competing interests.²²³ On the one hand, China has a strong strategic partnership with Russia, mirrored by an alignment in voting behavior in the Security Council, both as its neighbor and as a BRICS-State.²²⁴ In fact, Russian activities in Crimea coincided with a stronger cooperation with China.²²⁵ On the other hand, China perceives territorial integrity as absolute.²²⁶ China has thus traditionally been opposed to any form of secession movement.

Whereas China's later statements were generally quite balanced, its statements in the U.N. Security Council prior to vot-

219. Andrea Janus, *Canada Suspends Military Activity with Russia 'Effective Immediately'*, CTV News (Mar. 4, 2014), <http://www.ctvnews.ca/politics/canada-suspends-military-activity-with-russia-effective-immediately-1.1713273>.

220. *Canada Gives Russian Military 24 Hours to Leave Country*, UKRINFROM (Mar. 7, 2014), http://www.ukrinform.net/rubric-politics/1629261-canada-gives-russian-military-24-hours-to-leave-country_318246.html.

221. Pro-Russian denotes countries that would normally be considered historic allies of Russia, not necessarily those that voted against the General Assembly resolution.

222. Zhang Lihua, *Explaining China's Position on the Crimea Referendum*, CARNEGIE-TSINGHUA CTR. GLOBAL POL'Y (Apr. 1, 2015), <http://carnegietsinghua.org/2015/04/01/explaining-china-s-position-on-crimea-referendum-pub-59600>.

223. Joshua Keating, *Who's on Team Putin?*, SLATE (Mar. 20, 2014), http://www.slate.com/blogs/the_world_/2014/03/20/the_small_group_of_countries_supporting_russia_s_position_in_ukraine_venezuela.html.

224. See Peter Ferdinand, *The Positions of Russia and China at the U.N. Security Council in the Light of Recent Crises*, EUROPEAN PARLIAMENT DIRECTOR-GENERAL FOR EXTERNAL POLICIES OF THE UNION BRIEFING PAPER (2013), [http://www.europarl.europa.eu/RegData/etudes/note/join/2013/433800/EXPOSEDE_NT\(2013\)433800_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/note/join/2013/433800/EXPOSEDE_NT(2013)433800_EN.pdf).

225. See John Biersack & Shannon O'Lear, *The Geopolitics of Russia's Annexation of Crimea: Narratives, Identity, Silences, and Energy*, 55 EURASIAN GEO. & ECON. 247 (2014).

226. Lihua, *supra* note 222.

ing were rather critical of the referendum.²²⁷ Some commentators perceive China's abstention, rather than a veto, as a strong sign of disapproval.²²⁸

b. *India*

In addition to being a BRICS-state, India has strong economic ties with Russia, which is its primary supplier of arms.²²⁹ Additionally, in the past Russia backed Indian interests in the Security Council.²³⁰ However, India did not completely endorse Russian activities but instead took a more balanced stance.²³¹ Thus, just like China, it abstained regarding the General Assembly resolution.²³² India pursued this balanced approach following the visit of the new Crimean leader to India alongside Russian diplomats. After the event leaked to Western officials, the Indian Ministry of External Affairs stated that it was not officially aware of the presence of the new Crimean leader.²³³ Any other response could have signaled official recognition of the new territorial leadership and thereby Russia's annexation of Crimea.

While India's ties to Russia might incentivize India to support Russia more directly, India is facing secessionist movements and generally condemns external interference in domestic matters.²³⁴

227. U.N. SCOR, 69th Sess., 7138th mtg. at 8, U.N. Doc. S/PV.7138 (Mar. 15, 2014).

228. *But see* GRANT, AGGRESSION AGAINST UKRAINE, *supra* note 53, at 68–70 (stressing China's ambiguous response to Crimea in comparison to its strong opposition to the independence of the Kosovo). Grant sees a possible explanation for China's behavior in a shift to "promote the emergence of precedents favorable to the re-incorporation of of [*sic*] territories said to belong to a historic legacy," and therefore to a possible expansion of China. *Id.* at 70.

229. *See* Keating, *supra* note 223.

230. Tanvi Madan, *India's Reaction to the Situation in Ukraine: Looking Beyond a Phrase*, BROOKINGS (Mar. 14, 2014, 5:30 PM), <http://www.brookings.edu/blogs/up-front/posts/2014/03/14-ukraine-india-madan>.

231. Srinivas Mazumdar, *India's Balancing Act in Crimea Crisis*, DEUTSCHE WELLE (Apr. 1, 2014), <http://www.dw.com/en/indias-balancing-act-in-crimea-crisis/a-17534847>.

232. GA March Meeting, *supra* note 152, at 17.

233. Matt Siegel & Douglas Busvine, *Ukrainian President Slams India over Crimean Leader Visit*, REUTERS (Dec. 11, 2014), <http://in.reuters.com/article/india-russia-crimea-idINKBN0JP1AN20141212>.

234. *See generally* Jean-Luc Racine, *Secessionism in Independent India: Failed Attempts, Irredentism, and Accommodation*, in SECESSIONISM AND SEPARATISM IN

c. *Brazil*

While the Brazilian abstention at the General Assembly and its initial lack of condemnation at first have caused surprise, some observers pointed to both Brazil's status as a BRICS-state, and an intent to not displease either side.²³⁵ Specifically, observers suspect that Brazil feared the loss of Russian participation at the July 2014 BRICS meeting, held in Brazil.²³⁶ After internal criticism, the Brazilian Foreign Minister nevertheless called for a solution which "respected the democratic values and the will of Ukrainians."²³⁷

d. *Belarus*

Belarus' actions were ambivalent. On the one hand, it sided with Russia in rejecting the General Assembly resolution.²³⁸ On the other hand, President Lukashenko stated his support for the territorial integrity of Ukraine.²³⁹ Even when he later acknowledged that Crimea is after the annexation de facto a part of Russia, he continued to stress Ukraine's territorial integrity.²⁴⁰ Commentators remark that while Belarus is a traditional ally of Russia, both Presidents appear to detest each other.²⁴¹

EUROPE AND ASIA 147 (Jean-Pierre Cabestan & Aleksandar Pavkovic eds., 2013).

235. OLIVER STUENKEL, NOREF, WHY BRAZIL HAS NOT CRITICISED RUSSIA OVER CRIMEA I (May 27, 2014), http://noref.no/var/ezflow_site/storage/original/application/65655a04cd21b64dbcc9c8a823a8e736.pdf.

236. Esther D. Brimmer, *Is Brazil a 'Responsible Stakeholder' or a Naysayer?*, 37 WASH. Q. 135, 139 (2014).

237. Keating, *supra* note 223.

238. GA March Meeting, *supra* note 152, at 17.

239. *Lukashenko Assures Kuchma That He Supports Ukraine's Territorial Integrity*, UKRINFORM (Mar. 5, 2014), http://www.ukrinform.net/rubric-politics/1628201-lukashenko_assures_kuchma_that_he_supports_ukraines_territorial_integrity_318142.html.

240. Alexander Lukashenko, President of the Republic of Belarus Alexander Lukashenko Answers Questions of Mass Media Representatives on 23 March 2014 (Mar. 23, 2014), http://president.gov.by/en/news_en/view/president-of-the-republic-of-belarus-alexander-lukashenko-answers-questions-of-mass-media-representatives-on-8348/.

241. Keating, *supra* note 223.

e. *Central Asian States*

Observers might expect Russia's neighbors, forming the Commonwealth of Independent States, to side with Russia due to its proximity and their economic dependence. However, except for Armenia and Belarus, none rejected the General Assembly resolution.²⁴² Furthermore, the Commonwealth states did not initially issue any other statements in support of Russia.²⁴³ This might stem from a fear that similar events could occur in their own states.²⁴⁴ This initial balanced position broke apart to a small degree when Kazakhstan issued a statement in support of Russia²⁴⁵ and Kyrgyzstan condemned the Russian activities.²⁴⁶

f. *Further States in Support of Russia*

Other states that rejected the resolution were Bolivia,²⁴⁷ Cuba, Nicaragua, North Korea, Sudan, Syria, Venezuela, and Zimbabwe.²⁴⁸ This list includes states with strong anti-U.S. sentiments, close ties to Russia, and/or a strong stance in favor of self-determination.

3. *Outliers*

While this Article cannot discuss every state and potential voting rationale, it is noteworthy that both Argentina and Rwanda voted in favor of the U.N. Security Council draft resolution, but nonetheless abstained from voting for the U.N. General Assembly resolution.²⁴⁹ Argentina objects that the in-

242. GA March Meeting, *supra* note 152, at 17.

243. See generally *Putin's Stance on Ukraine Supported by Minority of Nations*, *supra* note 176.

244. *Russian Roulette*, *ECONOMIST* (Mar. 15, 2014), <http://www.economist.com/news/asia/21599048-events-ukraine-point-up-local-rulers-frailtiesand-they-know-it-russian-roulette>.

245. Keating, *supra* note 223.

246. *Russian Roulette*, *supra* note 244.

247. While these states rejected the resolution, one should be careful in automatically assuming that they were in favor of an annexation. Bolivia's statements surrounding the resolution, for instance, were rather neutral, including that it would not take a position. GRANT, *AGGRESSION AGAINST UKRAINE*, *supra* note 53, at 71.

248. GA March Meeting, *supra* note 152, at 17.

249. U.N. Security Council, 7138th mtg. at 3, U.N. Doc. S/PV.7138 (Mar. 15, 2014); GA March Meeting, *supra* note 152, at 17.

ternational community considers the Falklands/Malvinas referendum as lawful, contrary to Crimea.²⁵⁰ As such, it already had an incentive not to vote in favor of the U.N. Security Council draft resolution. Similarly, during the U.N. Security Council meeting, Rwanda had already highlighted the importance of a national dialogue.²⁵¹

Thus, one might draw an inference from the circumstance that both states voted in favor in the U.N. Security Council resolution. However, both states changed their stance at the time of the U.N. General Assembly vote, indicating different factors at play. First, the U.N. Security Council held the vote prior to the referendum as a preventive measure. The U.N. General Assembly resolution, however, was adopted after the referendum took place. Second, a vote in the U.N. Security Council might be perceived as more significant due to the binding nature of U.N. Security Council resolutions. There have been instances in which domestic outcry has been intense after an abstention or no-vote in the General Assembly. It can be expected that such outcry is even more intense if the nation in question is only one of fifteen and particularly if it is the one state that has thwarted a given resolution.²⁵² Lastly, while the U.N. Security Council has only fifteen members, the U.N. General Assembly has 193. Thus, in the Council it may be easier to apply pressure to single states which find it more difficult to form blocs and where an individual vote might be perceived as a weightier statement of public opinion. The incentive to apply pressure on a single state is greater at this stage than in the General Assembly, where individual votes carry less weight.

250. *Malvinas/Crimea: Christina Fernandez Blasts U.K. on "Double Standard,"* MERCO PRESS (Mar. 18, 2014), <http://en.mercopress.com/2014/03/18/malvinas-crimea-cristina-fernandez-blasts-uk-on-double-standard>.

251. Press Release, Security Council, Security Council Fails to Adopt Text Urging Member States Not to Recognize Planned 16 March Referendum in Ukraine's Crimea Region, U.N. Press Release SC/11319 (Mar. 15, 2014), <http://www.un.org/press/en/2014/sc11319.doc.htm>.

252. One example can be seen in the German abstention regarding Security Council Resolution 1973 on Lybia, which has garnered both domestic as well as international criticism. For details, see Richard Rousseau, *Why Germany Abstained on U.N. Resolution 1973 on Lybia*, FOR. POL'Y J. (June 22, 2011), <http://www.foreignpolicyjournal.com/2011/06/22/why-germany-abstained-on-un-resolution-1973-on-libya/>.

C. *Reactions by International Organizations*

In addition to acting on their own behalf, states used international organizations as a vehicle and forum to approach the situation. The following discussion differentiates between those organizations with Russian membership, in which internal mechanisms were used, and those without Russian membership, which were used as a vehicle to approach Russia.

1. *Organizations with Russian Membership*

a. *Council of Europe*

Ukraine initiated an interstate complaint under Article 33 of the European Convention on Human Rights, which was created under the auspices of the Council of Europe.²⁵³ The complaint succeeded insofar as the European Court of Human Rights on March 13, 2014, granted interim measures calling on both parties to “refrain from taking any measures, in particular military actions, which might entail breaches of the Convention rights of the civilian population, including putting their life and health at risk.”²⁵⁴ However, it is questionable whether such a general statement can be effective.²⁵⁵

An arguably more harmful reaction was the decision to suspend Russia from the Parliamentary Assembly of the Council of Europe (PACE).²⁵⁶ This suspension includes voting rights, as well as representation in committees, and taking part in missions.²⁵⁷ The gravity of this measure is underlined by the

253. Press Release, Eur. Court of Human Rights, European Court of Human Rights Deals with Cases Concerning Crimea and Eastern Ukraine, ECHR 345 (2014) (Nov. 26), <http://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=003-4945099-6056223&filename=003-4945099-6056223.pdf>.

254. Press Release, Eur. Court of Human Rights, Interim Measures Granted in Inter-State Case Brought by Ukraine Against Russia, ECHR 073 (2014) (Mar. 13), http://usa.mfa.gov.ua/mediafiles/sites/usa/files/2014.03.14_ECHR.pdf.

255. See Marten Breuer, *The ECtHR—Torn Between Russia and Ukraine?*, VERFASSUNGSBLOG (Mar. 18, 2014), <http://verfassungsblog.de/egmr-zerrie-ben-im-konflikt-russland-ukraine/>.

256. *Council of Europe Assembly Suspends Russia’s Voting Rights*, EURACTIV (Apr. 11, 2014), <https://www.euractiv.com/section/europe-s-east/news/council-of-europe-assembly-suspends-russia-s-voting-rights/>.

257. The suspension had been extended and discussions were held whether it should be extended again. See *Russian Delegation to Leave PACE for*

fact that it is unprecedented in the long history of the Council of Europe, which was established in 1949. Moreover, PACE renewed this sanction²⁵⁸ despite Russia's threats to halt its cooperation with PACE for the duration of the suspension.²⁵⁹

The Council of Europe was the first forum in which Russia faced internal sanctions in response to the annexation.

b. G8

Technically, the G8 (group of eight), of which Russia is a member, is not an international organization but a governmental forum of the leading advanced economies in the world. The forum is used for matters of coordination among the members, dealing with a variety of economic and political issues. Even though the forum is not an official organization, actions agreed upon in this framework can be highly influential. For this reason, group membership is highly desirable.

In reaction to the annexation of Crimea, the other seven nations, Canada, France, Germany, Italy, Japan, the United Kingdom, and the United States, agreed, on March 24, 2014, to exclude Russia from the group. The exclusion is not permanent and the G8 stated that Russia may restore its membership based on its future actions.²⁶⁰ In addition, the G8 cancelled their planned G8 summit in Sochi, Russia in June 2014 as a direct repercussion of the annexation.²⁶¹ The group elaborated on its action in the so-called Hague Declaration,

One More Year If Sanctions Prolonged—Lawmaker, TASS (June 11, 2015), <http://tass.ru/en/russia/800260>.

258. Parliamentary Assembly of the Council of Europe, *Citing Ukraine, PACE Renews Sanctions Against Russian Delegation* (Jan. 28, 2015), <http://assembly.coe.int/nw/xml/News/News-View-en.asp?newsid=5410&lang=2>. It should be borne in mind, however, that a later renewal has been caused at least in part by the general situation in Ukraine and Russia's contributions thereto.

259. *Russia Snubs PACE*, GULF TIMES, June 4, 2014, at 21, http://img.gulf-times.com/Content/PDF/Dailynewspaper/Daily%20newspaper_2014_06_04_000000.pdf.

260. See Richard McGregor & James Fontanella-Khan, *Russia Suspended from G8, But Not Expelled*, FIN. TIMES (Mar. 24, 2014), <http://www.ft.com/cms/s/0/ef5a543e-b32b-11e3-b09d-00144feabdc0.html>.

261. Zeke J. Miller, *World Leaders Cancel G-8 Summit in Russia after Ukraine Crisis*, TIME (Mar. 24, 2014), <http://time.com/35965/world-leaders-cancel-g8-summit-in-russia-after-ukraine-crisis/>.

stressing their shared beliefs as well as the shared responsibility as a foundation.²⁶²

Membership in the forum, because of its informality, allows the other members to easily apply pressure on Russia. However, some of the functions of the G8 have been transferred to the G20, a similar group consisting of the twenty countries with the largest economies, in the wake of the financial crisis. A group of member states attempted to exclude Russia from this group as well, but the BRICS states eventually thwarted the effort.²⁶³

c. *Organization for Security and Co-operation in Europe (OSCE)*

On the other hand, member states used the OSCE as a vehicle of de-escalation, attempting to send diplomatic and observing groups into the area.²⁶⁴ While the missions overall were unsuccessful, they can be seen as evidence of how different organizations may apply (different forms and degrees of) pressure, while simultaneously providing a forum for diplomacy and pacification.

2. *Organizations without Russian Membership*

a. *European Union*

The European Union was an important actor throughout the events. This is due to both legal and political reasons. First, many competences, including the decision to impose sanctions, have been transferred to the European Union.²⁶⁵ Second, states may prefer to use the organization in order to form a common stance on matters of foreign affairs. While observers often criticize the European Union for not acting enough, the European Union consists of twenty-eight states which all have their own interests. As discussed above, some European

262. Press Release, White House, The Hague Declaration (Mar. 24, 2014), <https://obamawhitehouse.archives.gov/the-press-office/2014/03/24/hague-declaration>.

263. Zachary Keck, *Why Did BRICS Back Russia on Crimea?*, DIPLOMAT (Mar. 31, 2014), <http://thediplomat.com/2014/03/why-did-brics-back-russia-on-crimea/>.

264. *Hungarian-led OSCE Mission Attempts to Enter Crimea*, POLITICS (Mar. 7, 2014), <http://www.politics.hu/20140307/hungarian-led-osce-mission-attempts-to-enter-crimea/>.

265. Treaty of Lisbon, *supra* note 181, art. 215.

states, especially those adjacent to Russia, still remember previous Russian invasions and therefore advocated a strong position against any Russian involvement in Crimea.²⁶⁶ On the other hand, some states are highly dependent on Russia economically, and are fully aware that any sanctions taken against Russia will unavoidably hurt them as well.

Nevertheless, the European Union always strongly opposed Russian actions in their statements. This might be less surprising, once one considers the historical background of the crisis, rooted in a movement by Ukraine towards the European Union and away from Russia. In a sense, the European Union was therefore always the antagonist from a Russian perspective.²⁶⁷ Thus, the European Union immediately responded to any action by Russia. At the same time, the Russian-EU confrontation is a possible explanation for some of the deescalating responses by the European Union in the beginning of the crisis; the European Union merely felt misunderstood in regard to its intentions concerning Ukraine. Nonetheless, one of the first strong responses came from the European Parliament,²⁶⁸ which on March 13, 2014, condemned “Russia’s act of aggression in invading Crimea.”²⁶⁹ Overall, the European Union responded through various channels in different ways. Those channels include diplomatic efforts, sanctions, refusal to recognize the annexation, support of Ukraine, and researching ways to reduce its energy dependence on Russia.²⁷⁰ While the driving forces behind specific measures largely mirrored the general echo in Europe,²⁷¹ the fact that these were EU measures meant that all twenty-eight member states acted in unity.

266. See *supra* Section IV.B.1.a.

267. For a detailed and historic explanation, see generally SAKWA, *supra* note 28.

268. It should be noted that the European Parliament is often quicker and more straightforward in its actions, which is based partly on its voting structure and composition.

269. Resolution on the Invasion of Ukraine by Russia, EUR. PARL. DOC. 2014/2627(RSP) (Mar. 13, 2014), <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2014-0248+0+OC+XML+V0/EN>.

270. *Europe One Year after the Annexation of Crimea*, HEINRICH-BÖLL-STIFTUNG (Mar. 31, 2015), <https://us.boell.org/2015/03/31/europe-one-year-after-annexation-crimea>.

271. See *supra* Section IV.B.1.a.aa.

b. *The North Atlantic Treaty Organization (NATO)*

NATO, like the European Union, was seen by Russia as an antagonist in the events leading up to the situation.²⁷² It therefore comes as no surprise that NATO did not hold back in its criticism. In a statement, it condemned the “Russian Federation’s military escalation in Crimea.”²⁷³

c. *Organisation for Economic Co-Operation and Development (OECD)*

The OECD, an international forum to stimulate economic progress and world trade, suspended its negotiations with Russia on a possible accession.²⁷⁴

d. *Organization of Islamic Cooperation*

In addition, various further organizations voiced condemnation. To give one example beyond the classic Cold War-divide, the Organization of Islamic Cooperation voiced its “support for Ukraine and its territorial integrity.”²⁷⁵ This action must be seen against the background of the minority of Muslim Crimean Tatars living in Crimea, which reportedly faced persecution after the annexation.²⁷⁶

272. *See generally* SAKWA, *supra* note 28.

273. Press Release, North Atl. Treaty Org., North Atlantic Council Statement on the Situation in Ukraine (Mar. 2, 2014), http://www.nato.int/cps/en/natolive/official_texts_107681.htm. Due to the date, the specific statement did not refer to the annexation yet. Later statements specifically make such reference. *See, e.g.*, Press Release, North Atl. Treaty Org., Joint Statement of the NATO-Ukraine Commission (May 13, 2015), http://www.nato.int/cps/en/natohq/official_texts_119425.htm (“More than one year has passed since Russia’s illegal and illegitimate self-declared ‘annexation’ of Crimea, which we do not, and will not, recognize, and which we call on Russia to reverse.”).

274. Press Release, Org. for Econ. Co-Operation & Dev., Statement by the OECD Regarding the Status of the Accession Process with Russia & Co-Operation with Ukraine (Mar. 13, 2014), <http://www.oecd.org/newsroom/statement-by-the-oecd-regarding-the-status-of-the-accession-process-with-russia-and-co-operation-with-ukraine.htm>.

275. *Organization of Islamic Cooperation Supports Territorial Integrity of Ukraine*, KYIV POST (Apr. 11, 2014), <http://www.kyivpost.com/article/content/ukraine/organization-of-islamic-cooperation-supports-territorial-integrity-of-ukraine-343118.html>.

276. Unrepresented Nations and Peoples Organization, *Crimean Tatars: Turkey Officially Condemns Persecution by Russia* (Feb. 2, 2015), <http://unpo.org/article/17913>.

D. *Sanctions*

Short of military interventions, sanctions are the strongest tool to compel a state to act, albeit these too can vary in degree. Both individual states as well as the European Union introduced sanctions against Russia for its activities.

The first sanctions were initiated by the United States, Canada, and the European Union. They targeted specific individuals and included both a travelling ban as well as asset freezes.²⁷⁷ Other states, including Japan,²⁷⁸ adopted similar sanctions, including suspension of talks investment and visa requirements. Australia used financial sanctions and travel bans,²⁷⁹ while Albania, Iceland, and Montenegro issued the same sanctions as the European Union.²⁸⁰ Later, sanctions were expanded and taken up by additional states. These later sanctions are not relevant here, as they resulted from both Crimea and the ongoing crisis in Eastern Ukraine.²⁸¹

While some observers have argued that the sanctions were not forceful enough,²⁸² they resulted from a concerted ef-

277. Council Decision 2014/145/CFSP of 17 March 2014, Concerning Restrictive Measures in Respect of Actions Undermining or Threatening the Territorial Integrity, Sovereignty and Independence of Ukraine, 2014 O.J. (L 78) 16 (EC).

278. Antoni Slodkowski, *Japan Imposes Sanctions on Russia over Crimea Move*, REUTERS (Mar. 17, 2014), <http://www.reuters.com/article/us-ukraine-crisis-japan-idUSBREA2H02T20140318>.

279. *Australia Imposes Sanctions on Russians after Annexation of Crimea from Ukraine*, ABC NEWS (Mar. 19, 2014), <http://www.abc.net.au/news/2014-03-19/australia-sanctions-russia-ukraine/5331826>.

280. Press Release, Eur. Union, Declaration by the High Representatives on Behalf of the European Union on the Alignment of Certain Third Countries with the Council Decision 2014/145/CFSP Concerning Restrictive Measures in Respect of Actions Undermining or Threatening the Territorial Integrity, Sovereignty and Independence of Ukraine, 8937/1/14 REV 1 (Apr. 11, 2014), http://www.consilium.europa.eu/uedocs/cms_Data/docs/press_data/en/cfsp/142174.pdf.

281. It might thus be argued that these were taken even if states had accepted the annexation.

282. Ben Wolfgang, *Mockery Greets Obama's New Sanctions Against Russian Officials after Crimean Annexation*, WASH. TIMES (Mar. 17, 2014), <http://www.washingtontimes.com/news/2014/mar/17/white-house-targets-russian-officials-others-new-s/?page=all>.

fort²⁸³ by actors with different agendas, including states concerned with taking actions that might hurt their own interests excessively, and concerned with keeping open the possibility to negotiate with Russia. Moreover, it should be noted that first analyses show that the sanctions were in fact hurtful to Russia and its economy.²⁸⁴

E. *Private Actors*

Lastly, not only states acted in response to the annexation, but also nongovernmental organization, as well as private individuals and corporations. While it is questionable how far these activities should be considered when discussing the enforcement mechanisms of international law, and while these actors are usually not considered subjects of international law,²⁸⁵ two arguments favor not disregarding them completely. First, these actors play an ever-increasing role in the international arena.²⁸⁶ Second, the rhetoric of the responses focuses on the violation of international law.²⁸⁷ Thus, while they are not considered the primary enforcement mechanism, reactions of private actors' evidence general repercussions of a perceived violation of international law. Moreover, these reactions might be severe, and specifically multinational corporations have significant economic power and influence.

283. For a general critique on such concerted efforts, see Daniel W. Drezner, *Bargaining, Enforcement, and Multilateral Sanctions: When Is Cooperation Counterproductive?*, 54 INT'L ORG. 73 (2000).

284. See Paul R. Gregory, *As the Sanctions' Noose Tightens, China Grabs Russian Energy Assets at Bargain Prices*, FORBES (Sept. 14, 2014), <http://www.forbes.com/sites/paulroderickgregory/2014/09/14/as-the-sanctions-noose-tightens-china-grabs-russian-energy-assets-at-bargain-prices/#5a36804a7b31>; Edward Hunter Christie, *Sanctions after Crimea: Have They Worked?*, NATO REV. (July 13, 2015), <http://www.nato.int/docu/Review/2015/Russia/sanctions-after-crimea-have-they-worked/EN/index.htm>. Not all commentators agree on this, however. See, e.g., Wan Wang, *Impact of Western Sanctions on Russia in the Ukraine Crisis*, J. POL'Y & L., June 2015, at 1 (acknowledging the economic impact of sanctions, but arguing that they will only provoke stronger alliances between Russia and East Asian nations). For an analysis, see *infra* Section IV.G.

285. CRAWFORD, *supra* note 17, at 4.

286. *Id.* at 121.

287. See Roy Allison, *Russian 'Deniable' Intervention in Ukraine: How and Why Russia Broke the Rules*, 90 INT'L AFF. 1255, 1258 (2014).

In regard to the Ukrainian crisis, most private individuals reacted after state sanctions and addressed Russia in general.²⁸⁸ Some actions directly targeted the peninsula of Crimea, however, as a number of companies withdrew from Crimea or stopped providing services to the region.²⁸⁹ Most importantly, both Mastercard and Visa stopped serving Crimea.²⁹⁰ This means that paying through these cards is no longer possible and businesses are prevented from wiring or receiving payments.²⁹¹ Similarly, citizens of the region may no longer use their Paypal accounts for transferring money.²⁹² These accounts are simply blocked, just as the accounts of Apple app designers and Steam customers are no longer accessible.²⁹³ Reactions are not limited to online service companies.

288. It may thus be argued that these should at least also be seen as reactions to the later developments. *See, e.g., No Russian Vodka*, INTV (Mar. 19, 2014), <http://intvua.com/news/politics/85283-no-russian-vodka.html>.

289. It should be noted, however, that some of these private sanctions are connected to the U.S. sanctions, which, at a later stage, also prohibited U.S. companies from dealing with Crimea. Thus, some of these private activities are directly influenced by state action. *See, e.g., Sergey Kozlovsky, Crimean IT Industry Wilts Under Western Sanctions*, GLOBAL VOICES (Feb. 6, 2015), <https://globalvoices.org/2015/02/06/crimea-russia-ukraine-it-sanctions/>. Moreover, in some instances, a withdrawal from Crimea might simply be considered a prudent business decision. *See McDonald's Leaves Crimea after Russian Annexation*, NEWSWEEK (Apr. 4, 2014), <http://europe.newsweek.com/mcdonalds-leaves-crimea-after-russian-annexation-244291?rm=EU>. In this specific case, the fast food chain closed its restaurants, "prompting fears of a backlash as a prominent Moscow politician called for all [its] outlets in Russia to be shut." *Id.* Nonetheless, private and corporate action has taken place, as evinced by the renewal of boycott campaigns. *See Andrius Sytas & Christian Lowe, As Leaders Dither, Citizens Impose Own Sanctions on Russia*, REUTERS (Mar. 4, 2014), <http://www.reuters.com/article/us-ukraine-crisis-neighbours-idUSBREA231CJ20140304>.

290. Pavel Marceux, *U.S. High Tech and Payment Firms Blacklist Crimea*, UKR. DIGITAL NEWS (Jan. 22, 2015), <http://www.uadn.net/2015/01/22/apple-mastercard-valve-and-visa-blacklist-crimea/>.

291. Alexey Eremenko & Carlo Angerer, *Crimea One Year after Russia Referendum Is Isolated from World*, NBCNEWS (Mar. 16, 2015, 6:18 AM), <http://www.nbcnews.com/storyline/ukraine-crisis/one-year-after-annexation-sanctions-isolate-crimea-world-n324131>.

292. *Id.*

293. Marceux, *supra* note 290.

International businesses also fled the region and even McDonald's closed its restaurants.²⁹⁴

In addition to these private actions targeting the annexed region, some actions targeted Russia. These were classic boycott campaigns against Russian goods in general²⁹⁵ or Russian vodka in particular.²⁹⁶ Additionally, it is fair to assume that the crisis influenced private actors in making decisions that concerned Russian goods, even if these actors did not completely boycott Russian goods. Similarly, observers suggested that investors' reactions to the annexation included scaling back investments made in Russia.²⁹⁷

F. *Status Three Years After Annexation*

At the time of writing, more than three years have passed since the annexation of Crimea.²⁹⁸ While thus far, it does not seem likely that Russia will return Crimea to Ukraine in the near future, the international response in the past three years helps assess whether the international community has accepted the annexation. Most importantly, the focus of international attention, at least when seen from a new Cold War perspective, has largely shifted to Syria. While any neglect of an ongoing conflict is certainly regrettable, such a shift in focus nonetheless allows one specific determination: Have states departed from their sanctions and similar measures as soon as

294. Kathy Lally, *McDonald's Closes Restaurants in Crimea*, WASH. POST (Apr. 4, 2014), https://www.washingtonpost.com/news/worldviews/wp/2014/04/04/mcdonalds-closes-restaurants-in-crimea/?utm_term=.A67a0eedaf06.

295. Sytas & Lowe, *supra* note 289.

296. Jonathan Welsh, *Crimea Fallout: Will Grassroots Boycotts of Russian Vodka Catch On?*, WALL ST. J.: SPEAKEASY BLOG (Mar. 17, 2014, 6:00 PM), <http://blogs.wsj.com/speakeasy/2014/03/17/crimea-fallout-will-grassroots-boycotts-of-russian-vodka-catch-on/>.

297. Robin Emmott, *Sanctions Impact on Russia to Be Longer Term, U.S. Says*, Reuters (Jan. 12, 2016, 8:27 AM), <http://www.reuters.com/article/us-ukraine-crisis-sanctions-idUSKCN0UQ1ML20160112>.

298. It has been pointed out how the events in Crimea have changed Russian society, insofar as the breaches of law that were undertaken to annex Crimea have now become more commonplace generally. These include harsher sentences in political processes and torture. This specific toll, that an unlawful situation might create more unlawfulness, is often overlooked and another cost that Russia has to bear. See Nikolai Klimeniouk, *Der Glamour der Macht* [The Glamour of Power], FRANKFURTER ALLGEMEINE ZEITUNG, (Mar. 21, 2016), <http://www.faz.net/aktuell/feuilleton/bilanz-der-krim-annexion-durch-russland-und-wladimir-putin-14133742.html> (Ger.).

Crimea was out of the spotlight? If so, these actions were possibly taken to please local constituencies rather than to reverse developments. If that's the case, any deterrent effect will not last. A more optimistic view sees any easing of reactions over time in connection with overall developments in the international realm, most importantly Syria. Such an optimistic view would argue that international reactions compelled Russia to cooperate in general. Therefore, Russia could be expected to act in a more lawful manner overall, even if such a success came at the expense of accepting one illegality. Such a view may have its merits, among them arguments stemming from Realpolitik. At the same time, it leaves a situation, in which a state may overcome an illegality by threatening to commit or committing even more illegal acts. Certainly, there are numerous examples of similar situations in the past where "giving in" was for the overall good. However, when assessing the strength of the rule on annexation, any major relaxation in countermeasures after a shift of focus, even if for the most laudable causes, is evidence of the weakness of this rule. Any "giving in" depicts the rule as something that may be deviated from.

Fortunately, even though discussions and reports in the media are less prevalent, the sanctions against Russia are still in force and have been expanded.²⁹⁹ Furthermore, even concerning the situation in Ukraine itself, Western states have continuously stressed that ending the annexation of Crimea remains a strict condition for any progress.³⁰⁰ This is important, as even disregarding the events in Syria, the conflict in Ukraine itself might appear prone for a compromise à la Russia gets Crimea, Ukraine keeps the Donbass.

299. Nevertheless, a critic might argue that they could be completely lifted after the crisis in East Ukraine is solved, even if Russia gets to keep Crimea.

300. See, e.g., Justin Huggler, *No Place for Putin Back in the G7, Says Merkel*, TELEGRAPH (June 5, 2015), <http://www.telegraph.co.uk/news/worldnews/europe/germany/angela-merkel/11654741/No-place-for-Putin-back-in-the-G7-says-Merkel.html>; Georgy Peremitin, *E.U. Will Not Lift Sanctions Against Russia Until Crimea is Returned to Ukraine*, RUSS. DIRECT (Feb. 9, 2016), <http://www.russia-direct.org/russian-media/eu-will-not-lift-sanctions-against-russia-until-crimea-returned-ukraine>.

Most importantly, however, only a few countries in the world have today recognized Crimea as part of Russia.³⁰¹ These include some of the states that have voted against the U.N. General Assembly resolution, Cuba,³⁰² Nicaragua,³⁰³ North Korea,³⁰⁴ Syria,³⁰⁵ and Venezuela,³⁰⁶ as well as Kyrgyzstan³⁰⁷ and Afghanistan.³⁰⁸ Overall, the situation has thus not moved far since March 2014. Even some of Russia's strategically most significant allies, India and China, have not recognized Crimea as part of Russia but have stuck to their neutral position.³⁰⁹

301. Cf. GRANT, *AGGRESSION AGAINST UKRAINE*, *supra* note 53, at 63 (stressing the importance of non-recognition in previous cases even if the effects were not "immediately felt on the ground in any considerable way").

302. Anastasiya Byrka, *Visiting Russia, Fidel Castro's Son Scoffs at U.S. Sanctions over Russia*, *MOSCOW TIMES* (Apr. 1, 2014), <http://www.themoscowtimes.com/news/article/visiting-russia-fidel-castros-son-scoffs-at-us-sanctions-over-crimea/497144.html>.

303. *Nicaragua Recognizes Crimea as Part of Russia*, *KYIV POST* (Mar. 27, 2014), <http://www.kyivpost.com/article/content/ukraine/nicaragua-recognizes-crimea-as-part-of-russia-341102.html>.

304. *North Korea Considers Crimea's Annexation by Russia absolutely justified*, *MIRROR WEEKLY* (Dec. 30, 2014), http://mw.ua/WORLD/north-korea-considers-crimea-s-annexation-by-russia-absolutely-justified-820_.html.

305. Matthew Rosenberg, *Breaking with the West, Afghan Leader Supports Russia's Annexation of Crimea*, *N.Y. TIMES* (Mar. 23, 2014), <http://www.nytimes.com/2014/03/24/world/asia/breaking-with-the-west-afghan-leader-supports-russias-annexation-of-crimea.html>.

306. *Id.*

307. *Kyrgyzstan Says Crimea Referendum 'Legitimate'*, *RADIOFREEEUROPE* (March 20, 2014), <http://www.rferl.org/a/kyrgyzstan-recognition-crimea-referendum-ukraine-russia/25304439.html>.

308. While it might seem surprising that the U.S.-backed country has recognized Crimea, commentators have highlighted the historical background. Many Afghans believe that they have been deprived of a part of their territory by Britain. Additionally, Afghanistan might need new allies, as the United States is withdrawing its forces from the country. See Rosenberg, *supra* note 305. In addition, Abkhazia has recognized Crimea as part of Russia. However, Abkhazia itself is only recognized by few states, including Russia. See *Abkhazia President Hails Russia-Crimea Reunion*, *VOICE OF RUSS.* (Apr. 15, 2014), http://sputniknews.com/voiceofrussia/news/2014_04_15/Abkhazian-president-hails-Russia-Crimea-reunion-8588/.

309. According to Robin Geiß, further examples show that this situation is unlikely to change, even in the long-term. See Robin Geiß, *Russia's Annexation of Crimea: The Mills of International Law Grind Slowly but They Do Grind*, 91 *INT'L L. STUD.* 425 (2015).

G. *Quantifying the Damage*

While a positivist perspective would find activity as such sufficient, a consequentialist mindset would inquire about the actual damage suffered due to international reactions. Thus, the following Section will attempt such an analysis. Nevertheless, in order to achieve any significant results, some simplifications are necessary. Most importantly, as the current study concerns itself with only one aspect of the Ukrainian crisis, namely the events leading up to and immediately following the annexation of Crimea. Thus, any sanction taken thereafter would normally have to be ignored, as later sanctions could be attributed to later events in the Ukrainian crisis.³¹⁰ However, such an analysis is virtually impossible as the sanctions that are now in force must be considered a unitary set of measures, i.e. they cannot be dissected as some being a result of Crimea, some purely of later events. One might therefore argue, that had Russia stopped right after Crimea, a lower level of overall sanctions would result and therefore also a lower amount of damage. There is one factor mitigating such an argument, however. Namely, while later sanctions were taken in consideration of later events as well as the annexation, they still mostly expanded the measures already in place because of Crimea. Moreover, it seems unlikely that without the annexation such measures would have been taken at all. This is because the activities in Eastern Ukraine are only indirectly attributable to Russia. The accusation in that case is merely the support of separatist groups in the region. It seems unlikely that mere support, continuously denied by Russia, would have prompted sanctions. After all, Russia's support of the Assad regime in Syria has not even lead to a discussion of whether sanctions against Russia are appropriate.³¹¹ Sanctions against Russia are thus only feasible because Russia is perceived as the direct perpetrator rather than a somewhat involved bystander in the cir-

310. For a timeline of the sanctions, see *Timeline—E.U. Restrictive Measures in Response to the Crisis in Ukraine*, EUR, COUNCIL [hereinafter EU Restrictive Measures], <http://www.consilium.europa.eu/en/policies/sanctions/ukraine-crisis/history-ukraine-crisis/>.

311. A cynic could also attribute this to different involvement in matters occurring in the West compared to the rest of the world. While such a trend can certainly not be denied, Syria seems to be an exception in some regards, at least also because the West directly feels repercussions through the waves of refugees caused by the conflict.

cumstances surrounding Crimea. Thus, the bulk of the damages which occurred through the sanctions will be considered a result of the annexation.³¹² Nonetheless, some further issues remain that complicate an assessment of the damage caused by the sanctions.

First, the Russian economy is highly dependent on the international energy market. However, oil prices have declined ever since 2014.³¹³ This, by itself, caused severe damage to the Russian economy.³¹⁴ Any assessment of the damages caused by the sanctions would therefore have to establish a distinction between losses caused by the oil price drop and those caused by sanctions.³¹⁵

312. The measures can generally be grouped into three categories: travel bans, restriction to access to Western financial markets and services, and export embargos. Additionally, Russia has imposed a ban on food imports from Western nations. For an overview, see E.U. Restrictive Measures, *supra* note 310. On the legality, see Mergen Doraev, *The “Memory Effect” of Economic Sanctions Against Russia: Opposing Approaches to the Legality of Unilateral Sanctions Clash Again*, 37 U. PA. J. INT’L L. 355 (2015); David Fennelly, *Cape Town Convention and International Sanctions: The Case of European Union Sanctions Against Russia*, 4 CAPE TOWN CONVENTION J. 83 (2015).

313. This led to a deal by the Organization of the Petroleum Exporting Countries (OPEC) to cut down on their production. Most importantly, Russia, which is not a member of OPEC, has agreed to also cut its supply. See *OPEC Reaches a Deal to Cut Production*, ECONOMIST (Dec. 3, 2016), <http://www.economist.com/news/finance-and-economics/21711088-oil-prices-surge-saudi-arabia-and-iran-sign-deal-opecs-meeting>.

314. Yelena Tuzova & Faryal Qayum, *Global Oil Glut and Sanctions: The Impact on Putin’s Russia*, 90 ENERGY POL’Y 140 (2016). Daniel Gros and Federica Mustilli argue that the sanctions play no role in addition to the recession. See Daniel Gros & Federica Mustilli, *The Effects of Sanctions and Counter-Sanctions on EU-Russian Trade Flows*, CEPS COMMENTARY (July 5, 2016), <https://www.ceps.eu/publications/effects-sanctions-and-counter-sanctions-eu-russian-trade-flows>; Daniel Gros & Federica Mustilli, *The Economic Impact of Sanctions Against Russia: Much Ado About Very Little*, CEPS COMMENTARY (Oct. 23, 2015), <https://www.ceps.eu/publications/economic-impact-sanctions-against-russia-much-ado-about-very-little>. However, many commentators have pointed out that Russia itself has started to acknowledge the impact of the sanctions. See Lilia Shevtsova, *The Sanctions on Russia: How Hard Do They Bite?*, THE AMERICAN INTEREST (Apr. 4, 2016), <http://www.the-american-interest.com/2016/04/04/the-sanctions-on-russia-how-hard-do-they-bite/>; Stanislav Tkachenko, *Decoding Russia’s Messages About the Impact of Western Sanctions*, RUSS. DIRECT (July 5, 2016), <http://www.russia-direct.org/opinion/decoding-russias-messages-about-impact-western-sanctions>.

315. Note, however, that these factors produce not only additive, but sometimes also multiplicative effects. For instance, one issue that is often

Second, not all damages resulting from the sanctions are economic. For example, a sanction in the form of an import ban of a certain product *x* would directly result in damages to that industry due to a lower demand for exports of product *x*.³¹⁶ However, such a ban on product *x* could further result in a decrease in sales of product *y* that is not the subject of any sanctions. This may have different causes, e.g. that the demand in product *x* has created an infrastructure that also allows the transportation and supply of product *y*. In any case, the losses of those companies producing product *y* are less obviously perceived as a result of the import ban on product *x*.

Furthermore, a focus solely on the damages caused by sanctions would be insufficient. Rather, an analysis should further account for reputational damage incurred from the international reactions. These reputational damages might cause further economic damages. For instance, if consumers start avoiding Russian goods, such activity might have the same consequences as a direct embargo. Similarly, if a state is excluded from specific fora that shape international development, that state will miss opportunities to influence relevant economic decisions. The problem, however, is quantifying such damages. Any attempt at an assessment would largely rely on counterfactuals dealing with Russia's role in current international politics had it not been for the annexation. Such a counterfactual would be subject to so many possible differences that any realistic assessment is at least beyond the scope of this Article, if not impossible overall.³¹⁷

blamed for Russia's recession is mismanagement. Due to being cut off from the international market, Russian firms are increasingly reliant on the domestic financial sector and thus are hit much harder by mismanagement. See Olga Pak & Gavin Lee Kretschmar, *Western Sanctions—Only Half of the Challenge to Russia's Economic Union*, 38 RES. INT'L BUS. & FIN. 577 (2016).

316. Note that the sanctions on Russia are in fact export embargos, rather than important bans. Nonetheless, similar effects can accrue. See Matthieu Crozet & Julian Hinz, *Collateral Damage: The Impact of Russia Sanctions on Sanctioning Countries' Exports* (CEPII, Working Paper No. 2016-16, 2016), http://www.cepii.fr/PDF_PUB/wp/2016/wp2016-16.pdf (explaining that the major loss in export losses is actually encountered by products that are not targeted by sanctions).

317. For instance, many assume that Russian cyber activity has influenced both the Brexit vote as well as the election in the United States. Would Russia have done so had the West not reacted so negatively towards the Crimean annexation? Would that then have led to a negative Brexit vote as well as to a

In order to attempt a quantification of the damages, the overall damages will be represented as a number δ , equaling the sum of reputational damages r and the direct damages incurred by the sanctions s . Thus:

$$\delta = r + s$$

In order to assess s , studies usually start with the lower GDP growth rate that Russia faced following the annexation of Crimea. This loss amounted to 3.7% in the year 2015.³¹⁸ This loss came alongside a severe devaluation of the Russian Ruble, which had lost up to 50% of its value against the U.S. dollar,³¹⁹ and the corresponding increase in the first months of 2015 of 2.3 million person earning annual salaries below the poverty line.³²⁰ Most Russians reported that they were nonetheless able to afford food. However, many indicated they would have to cut luxury goods due to the crisis.

In assessing damages caused directly by the sanctions, analyses usually focus not on the economy as such, but focus on the effects on trade flows in goods targeted by the sanctions. These analyses show a decline in trade amounting to \$3.2 billion per month.³²¹ In terms of loss in growth rate, studies show that the sanctions led to, on average, a loss of 1.97% of quarter-to-quarter growth.³²²

While the sanctions thus have a noticeable effect, it is only of limited gravity. This ties directly back to those commenta-

win for Hillary Clinton? In such a scenario, Russia's role on the international plane would likely be completely different to Russia's role in a world in which Britain is no longer part of the European Union and Donald Trump is the U.S. President.

318. Joel Lewin, *Russian GDP Contracted 3.7% in 2015*, FIN. TIMES (Jan. 25, 2016), <https://www.ft.com/content/81b0b40f-e1d2-35cf-8b52-02d6e245daf5>; Alec Luhn, *Russia's GDP Falls 3.7% as Sanctions and Low Oil Price Take Effect*, GUARDIAN (Jan. 25, 2016, 6:20 PM), <https://www.theguardian.com/world/2016/jan/25/russias-gdp-falls-37-as-sanctions-and-low-oil-price-take-effect>.

319. Christian Dreger et al., *Between the Hammer and the Anvil: The Impact of Economic Sanctions and Oil Prices on Russia's Ruble*, 44 J. COMP. ECON. 295, 295 (2016).

320. Luhn, *supra* note 318.

321. Crozet & Hinz, *supra* note 316, at 46.

322. Konstantin A. Kholodilin & Aleksei Aleksei Netšunajev, *Crimea and Punishment: The Impact of Sanctions on Russian and European Economies* (DIW Berlin, Discussion Paper No. 1569, 2016), https://www.diw.de/documents/publikationen/73/diw_01.c.530645.de/dp1569.pdf.

tors demanding a more rigid and punishing regime. However, while more punishing sanctions are certainly conceivable, it is questionable whether they would also be desirable. First, any loss in trade for Russia is likewise felt by its former trade partners in the West.³²³ Second, while some sanctions are largely capable of targeting specific persons or organizations,³²⁴ many result in the suffering of the population at large. These results are problematic from a human rights perspective and could also backfire by causing an increase in anti-Western sentiment that would harden the public opposition to any deal regarding Crimea.³²⁵ Moreover, the strategy adopted by the West is that of applying long-term pressure rather than causing immediate and severe economic damages capable of crippling Russia, partly due to the fear that such activity might incite further military aggression.³²⁶

Nonetheless, the consequentialist criticism may be addressed by stressing that first, the amount of damage caused by the sanctions is negligible and second, the overall damage not

323. Studies indicate that Western states have thus far been able to cope with these damages. See Christie, *supra* note 284; MARCIN SZCZEPAŃSKI, EUR. PARL. BRIEFING, ECONOMIC IMPACT ON THE E.U. OF SANCTIONS OVER UKRAINE CONFLICT, (Oct. 2015), [http://www.europarl.europa.eu/RegData/etudes/BRIE/2015/569020/EPRS_BRI\(2015\)569020_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2015/569020/EPRS_BRI(2015)569020_EN.pdf). Nonetheless, it should be pointed out that this burden is distributed highly unevenly, with Europe bearing the bulk of it (76.7%) compared to, for instance, the United States (0.4%). Even within Europe, distribution is uneven, with Germany facing most of the damage (27%), compared to France (5.6%) and the United Kingdom (4.1%). See Crozet & Hinz, *supra* note 316, at 23.

324. For these so-called smart sanctions, see Daniel W. Drezner, *Targeted Sanctions in a World of Global Finance*, 41 J. INT'L INTERACTIONS 755 (2015). Regarding their effectiveness, compare Emma Ashford, *Not-So-Smart Sanctions: The Failure of Western Restrictions Against Russia*, FOR. AFF., Jan.–Feb. 2016, at 114, with Emma Gilligan, *Smart Sanctions Against Russia: Human Rights, Magnitsky and the Ukrainian Crisis*, 24 DEMOKRATIZATSIIA: J. POST-SOVIET DEMOCRATIZATION 257 (2016).

325. Cf. Viljar Veebel & Raul Markus, *Lessons from the EU-Russia Sanctions 2014–2015*, 8 BALTIC J. L. & POL. 165, 188 (2015); Michael Birnbaum, *Russia's anti-American fever goes beyond the Soviet era's*, WASH. POST (Mar. 8, 2015), https://www.washingtonpost.com/world/europe/russias-anti-us-sentiment-now-is-even-worse-than-it-was-in-soviet-union/2015/03/08/b7d534c4-c357-11e4-a188-8e4971d37a8d_story.html?utm_term=.A7c0a6e556f9.

326. Emmott, *supra* note 297; Andrew Rettman, *Sanctions to Have Little Impact on Russia in 2016*, U.S. SAYS, EUOBSERVER (Jan. 13, 2016), <https://euobserver.com/foreign/131812>; for the European stance, see *supra* Part IV.B.1.a.

only encompasses the direct damage incurred through the sanctions, s , but the total damages, δ , that further include reputational damages r .

Considering the overall damages δ allows an assessment of whether Russia gained or lost by annexing Crimea, a question important to both strict realists and consequentialists.

The following formula may be used to assess Russia's net benefit:

$$b = e + m + n - \delta$$

In this equation b signifies the benefit that is gathered through the annexation.

Variable e indicates the economic advantage gained by controlling Crimea. However, the region has suffered immensely due to both the Russian annexation and thereafter sanctions pertaining to the region. Many companies have since left. Thus, Russia must support the region with funds for the foreseeable future.³²⁷ Hence the value for e is currently negative.³²⁸

Variable m represents the military advantage gained by having the Sevastopol base and thus a base in the Black Sea. Russia would likely have lost its base if it had not taken action.³²⁹ If so, Russia would certainly have lost a large amount of influence on states in the region. The current prime example is Syria, which would be significantly harder to support without access to the Black Sea. At least for Russia as it currently perceives itself, as a nation of power and influence, the military advantage should certainly not be underestimated.

Variable n represents national/domestic support, assumedly a main incentive for the annexation. Russian public opinion has long considered Crimea a lost Russian territory.³³⁰ Additionally, the annexation is domestically considered a strike against the continuing proliferation of NATO and West-

327. See *Crimea's Annexation: Two Years On*, ECONOMIST: INTELLIGENCE UNIT (May 5, 2016), <http://country.eiu.com/article.aspx?articleid=694194053>.

328. See Ann Mette Sander Nielsen, *The Unprofitable Business of Crimean Annexation*, CIPE DEV.: BLOG (Dec. 3, 2015), <http://www.cipe.org/blog/2015/12/03/the-unprofitable-business-of-crimean-annexation/>.

329. At least Russia makes this assumption, and even though the contracts dealing with the base were running for a long period of time, pro-West Ukrainian officials have frequently voiced their intention to exit these deals.

330. SAKWA, *supra* note 28, at 100–01.

ern interests in general. In order to fully acknowledge this aspect, one needs to understand that the Russian population has for some time now encountered the West and specifically NATO as a force that continuously encroaches on Russian interests under the pretense of spreading democracy and liberty.³³¹ While some would certainly dismiss such sentiment as founded in propaganda, one should bear in mind that this sense of dread is hard to set aside as completely unfounded. For instance, when discussing German reunification, NATO promised not to station troops in the territory of the former German Democratic Republic (East Germany).³³² Any such promise seems ludicrous, however, considering that NATO has now grown far beyond East Germany and is virtually at the Russian border. This should certainly not indicate that Putin himself fears a Western military invasion. Similarly, even if NATO tried to take control of more and more territory in Central and Eastern Europe to threaten Russia, an annexation of Ukrainian territory is still not legal. However, it should help showcase why, domestically, annexation had wide-spread support and thus created political gains for Russia's rulers.

Certainly, for most values in the equation it is only possible to make rough estimates. Furthermore, guesses will vary significantly based on political ideas and assumptions made. However, the above equation nonetheless should help to underline some aspects that are of particular importance for a consequentialist mindset. Even if one were to assume δ as low, it is still a value that needs to be offset by positive gains. Economic advantages are rarely gained in modern times through the annexation of territory, as such an act usually entails a heavy toll on the local industry. The military gain can be more easily ascertained, depending on a state's reliance on its military presence. However, in this instance, Crimea is most likely an outlier as Russia already had a significant military presence in place.

331. *Id.* at 28–29.

332. In fact, it had been promised—albeit not legally binding—that NATO would not expand east. See Uwe Kleßmann et al., *NATO's Eastward Expansion: Did the West Break Its Promise to Moscow?*, SPIEGEL ONLINE (Nov. 26, 2009), <http://www.spiegel.de/international/world/nato-s-eastward-expansion-did-the-west-break-its-promise-to-moscow-a-663315.html>.

The domestic support gained through the annexation was certainly significant in the case of Crimea and many would argue this by itself would often motivate politicians to ignore international law. However, it is difficult to fully estimate public opinion, especially long-term gains. When a leader's decision results in hard times for a state's population, one may assume that the population will be more open to accept such results if the measure is deemed lawful as compared to any unlawful measure.

Thus, time is an important element in assessing Russia's net benefit. Likewise, different parts of the equation will be affected differently. Most likely only the military advantage gained by annexing Crimea will remain the same in the long-term. The domestic support gained will most likely decrease over time.³³³ The economic advantage would most likely increase over time as new firms might settle in Crimea or new sources of income might emerge. However, any benefit gained would most likely be limited as long as the sanctions continue. This is also true regarding the direct damages contained in the equation. However, the reputational damages would most likely decrease over time as states rearrange their stance towards Russia; as some states have arguably done due to the Syrian crisis.³³⁴

Lastly, as this equation shows, from a realist or consequentialist perspective, an annexation or any other breach of international law may be lucrative. However, one might argue that under certain circumstances crime can be lucrative in a domestic legal system as well. Specifically, situations will be lucrative in cases in which a low sentence would be offset by a high reward or simply by a low risk of detection. Nonetheless, just as in domestic law, a repeated violation will entail a higher sentence, hence an increase in δ .

333. Likewise, within countries sanctioning Russia domestic support for sanctions will also likely decrease, as it is similarly influenced by sentiment. See Michal Onderco, *Public Support for Coercive Diplomacy: Exploring Public Opinion Data from Ten European Countries*, 56 EUR. J. POL. RES. (forthcoming 2017).

334. Moreover, the sanctions regime might lead to shifts in relations, rather than eventual normalization. See William P. Frank, *How Will the 2014 Western Economic Sanctions Against Russia Impact Its Relationship in the BRICS Alliance?*, 14 J. INT'L BUS. RES. 21 (2015).

H. Summary

A focus on Russia and the West reveals the conflicting interests that actors needed to balance. After the Cold War, most Western states formed economic and political ties to Russia and therefore might hurt themselves by taking a strong stance on the issue.³³⁵ Nonetheless, actions were taken.³³⁶ Similarly, some states that would have been expected to side with Russia on the issue broke rank. From a consequentialist perspective, it is thus noteworthy that at least some states acted against and despite those other interests.

The responses further reveal that even without militarily intervention, and with sanctions that could have been harsher, Russia has not come out of the crisis unharmed.³³⁷ States applied pressure through various means, some economic, some political.³³⁸ Surely, Russia has not lost all its friends and compared to many smaller states, might be able to shake off the pressure more easily. However, the reputational damage should not be ignored.³³⁹ Both state and private actors have cut some ties to Russia, because they perceive Russia as not playing by the rules.³⁴⁰ This leads to isolation; the first signs are the suspension of G8 membership and of voting rights in PACE, the suspension and termination of negotiations on a variety of treaties, as well as the boycott campaigns by individu-

335. For an assessment of how far the current crisis might entail a return to such a state, see Eric Engle, *A New Cold War? Cold Peace, Russia, Ukraine, and NATO*, 59 ST. LOUIS L.J. 97 (2015).

336. Furthermore, not every action would be prudent or legal. For instance, while around seventy percent of Crimea's electricity comes from Ukraine, few would argue for turning off electricity to pressure the inhabitants to change their minds. See generally *Crimea Power Cut: Ukraine Police Investigate 'Explosion'*, BBC NEWS (Dec. 31, 2015), <http://www.bbc.com/news/world-europe-35204304>.

337. See *supra* Section IV.G.

338. See *supra* Sections IV.A–F.

339. For instance, a survey by the Pew Research Center revealed that Putin was held in low regard internationally after the incidents in Ukraine. See Bruce Stokes, *Russia, Putin Held in Low Regard Around the World*, PEW RESEARCH CTR. (Aug. 5, 2015), <http://www.pewglobal.org/2015/08/05/russia-putin-held-in-low-regard-around-the-world/>.

340. See *supra* Sections IV.A–F.

als.³⁴¹ It remains to be seen how hurtful this situation will be in the long-term, especially since Russia, as a powerful state, can absorb more of these costs than other nations. Thus, even though the sanctions might not directly force Russia to change its actions, other states facing the same sanctions might make different choices. Less powerful states might focus their observations on the magnitude of costs Russia incurred rather than on whether Russia gave in to international pressure.³⁴²

V. COMPARISON WITH PREVIOUS CRISES

A pure positivist perspective could find plenty of relevant data to start its assessment concerning the prohibition against annexation. This is because such a view mainly exists in a vacuum. What matters is whether states act out of a sense of obligation. When addressing a consequentialist perspective, some further background information will aid in the assessment. Most importantly, have there been previous instances that share similarities to the Crimean annexation and the entailing international reactions?

Sadly, even considering only conflicts after World War II, there is still an abundance of conflicts to choose from. Any decision to highlight a particular precedent may incite the criticism of cherry-picking examples that best fit the chosen line of argument. It is thus no surprise that Putin has repeatedly referred to the example of Kosovo when justifying the event in Crimea.³⁴³ The example shows that international crises tend to have similarities and dissimilarities, thus limiting the useful-

341. On future relations between Russia and the West, see Mauro Mantovani & Daniel Rickenbacher, *Crimea Going East—A Clash of Great Power Strategies*, 53 MIL. L. & L. WAR REV. 45 (2014).

342. Additionally, a cost-benefit analysis would include what exactly Russia has gained through its actions. At least some argue that this is rather small, even less than it de facto had before 2014. See Anatol Lieven, *Don't Fear the Russians*, N.Y. TIMES (Mar. 17, 2016), <http://www.nytimes.com/2016/03/18/opinion/dont-fear-the-russians.html>.

343. For observers, ramifications are often connected to the character of Putin himself. See, e.g., Gideon Rose, *Putin's Russia*, FOR. AFF., May–June 2016, at x. For a discussion of the similarities and differences, see Gaiane Nuridzhanian, *Crimea Secession Claims, Right to Self-Determination and the Kosovo Precedent*, INT'L L. OBSERVER (Mar. 20, 2014, 10:09 AM), <http://www.internationalallawobserver.eu/2014/03/20/guest-post-crimea-secession-claims-right-to-self-determination-and-the-kosovo-precedent/>. For a discussion regarding the “special circumstances” argument, see Christopher R.

ness of past crises in examining the consequences of the Crimean annexation. Nonetheless, it would be negligent to address the Ukrainian crisis but disregard the similar events in Georgia. Both states border Russia and had been part of the Soviet Union, both involved Russia sending troops into another country's territory, both stemmed from a perceived conflict between NATO and the European Union on one side and Russia on the other, and Russia justified both interventions by granting protection to Russian minorities.³⁴⁴ The international community's stronger response to Crimea could therefore be seen as purely politically motivated. After all, Ukraine was simply closer to Europe. However, a deeper analysis reveals other potential explanations that support the findings that the step of officially integrating Crimea has evoked the harsher reactions.

Two additional examples are relevant. First, the annexation of Kuwait is the poster-child for illegal annexation and how states dealt with it. While there is one significant distinguishing factor between Crimea and Kuwait, namely that Kuwait is an example of the envisioned enforcement mechanism through U.N. Security Council resolution at work; the two situations nonetheless share a strong negative international reaction to annexations, despite other possible third party interests.

The last example depicts how scholars have evaluated reactions of states, especially of those with other interests, in order to determine the illegality of a situation, thus refining and strengthening the underlying rules. However, this case does not deal with annexation. The specific case, Panama, does not involve the political West reacting to some perceived aggression from the outside, but rather featured a Western state whose actions were under scrutiny.

A. *Georgia 2008*

Similar to the events in Ukraine in 2013–2014, the Georgian crisis erupted after Georgia sought to intensify its connections to Western institutions, especially NATO.³⁴⁵ This

Rossi, *Impaled on Morton's Fork: Kosovo, Crimea, and the Sui Generis Circumstance*, 30 EMORY INT'L L. REV. 353 (2016).

344. GRIGAS, *supra* note 88, at 94.

345. *Id.*

prompted Russia to establish direct relations with Abkhazia and South Ossetia, two regions of Georgia with strong separatist movements.³⁴⁶ The events culminated in the 2008 Russo-Georgian War, lasting from August 7, 2008 to August 12, 2008. As a result of the conflict, Russian military, as of 2017, occupies the two territories in Georgia, in violation of the ceasefire agreement of August 12, 2008.³⁴⁷

In reaction to this occupation, several states and international organizations have issued statements and adopted resolutions condemning the occupation.³⁴⁸ In addition, so far only four member states of the United Nations have officially recognized the territories as independent states:³⁴⁹ Russia, Nicaragua, Venezuela, and Nauru.

Most significant, however, is the qualitative difference in responses. No action has been taken by the U.N. Security Council or the U.N. General Assembly. Moreover, international reaction was virtually limited to statements.³⁵⁰ None of the measures are as severe as those taken in response to Crimea.

Possible motivations for this qualitative difference might shed light on Crimea and the prohibition of annexation. Four possibilities might inform third states and their reactions.

First, European states in particular might perceive any action in Ukraine as more threatening due to its proximity. Nevertheless, it was not only Europe that acted regarding Ukraine.

346. For similarities with further “frozen” crises in former Soviet territories, see Anton Bebler, *Crimea and the Russian-Ukrainian Conflict*, 15 *ROM. J. EUR. AFF.* 35 (2015); Jeffrey Mankoff, *Russia’s Latest Land Grab: How Putin Won Crimea and Lost Ukraine*, *FOR. AFF.*, May–June 2014, at 60.

347. C. J. Chivers, *Russia Keeps Troops in Georgia, Defying Deal*, *N.Y. TIMES* (Apr. 2, 2009), <http://www.nytimes.com/2009/04/03/world/europe/03georgia.html>.

348. See MATTHEW HAPPOLD, *INTERNATIONAL LAW IN A MULTIPOLAR WORLD* 256 (2012); *Official Statements on Russia-Georgia Conflict*, *SCH. OF RUSS. & ASIAN STUDIES* (Sept. 11, 2008), http://www.sras.org/statements_on_russia_georgia_conflict_2.

349. Vanatu and Tuvalu initially recognized independence but later withdrew their recognition. Oliver Bullough, *This Tiny Pacific Island Just Gave Russia a Big Bruise*, *NEW REPUBLIC* (Apr. 2, 2014), <https://newrepublic.com/article/117238/tuvalu-bruises-russia-establishing-diplomatic-ties-georgia>.

350. *2008 Georgia Russia Conflict Fast Facts*, *CNN* (Mar. 31, 2016, 3:07 PM), <http://edition.cnn.com/2014/03/13/world/europe/2008-georgia-russia-conflict/>.

While one possible argument might revolve around Europe initiating the stance against Russian action which other states then felt the need to follow, any such argument may not be fully satisfactory. While, it is questionable how strong international reaction would have been without a strong European stance, actions by the international community are frequently initiated by a smaller number of states. In any case, it seems significant that third states felt compelled to follow the European lead.

Second, the timing of the Georgian situation might be relevant. The war erupted quickly and lasted only for five days.³⁵¹ Concerted action is difficult in such a short time frame, however, that doesn't account for the limited reaction to the ensuing occupation of the two Georgian regions. In the case of Crimea, both the U.N. General Assembly resolution, as well as all sanctions, took place after Russia had firmly established control in Crimea, at which time fighting in the region had ceased.

Third, it was unclear for a long time whether Russia was truly the aggressor. Accounts in the media were often in conflict with each other.³⁵² In fact, a fact-finding mission was required to shed further light on the exact circumstances of the crisis.³⁵³ While the international community criticized Russia as well as the outcome of the situation, events had at that point in time stabilized. Thus, the political momentum for more severe actions might simply have faded. In Crimea, on the other hand, media reports of Russian troops in Ukrainian territory were consistent from the outset, and Putin afterwards acknowledged their presence.³⁵⁴

Fourth, the Georgian crisis lacked the formal separation of the two territories, whereas the Crimean crisis led to official

351. *Id.*

352. See Ingo Mannteufel, *Opinion: A Ruso-Georgian Media War in South Ossetia*, DEUTSCHE WELLE (Aug. 9, 2008), <http://www.dw.com/en/opinion-a-ruso-georgian-media-war-in-south-ossetia/a-3549832>. For Ukraine, see Anthony Loewenstein, *Ukraine: Western Media Coverage's Bias Should Be Held into Account*, GUARDIAN (Mar. 11, 2014, 11:10 PM), <https://www.theguardian.com/commentisfree/2014/mar/12/ukraine-western-media-coverages-bias-should-be-held-into-account>.

353. See 1–3 REPORT OF THE INDEPENDENT INTERNATIONAL FACT-FINDING MISSION ON THE CONFLICT IN GEORGIA (Sept. 2009).

354. See *supra* Section III.B.2.

annexation of the area. While Russia might be in control of both areas and has recognized both territories as independent states, there is arguably a difference in perception. A disputed region might still resolve the conflict internally. Considering the lack of knowledge as to whether the inhabitants of these regions were properly represented in the Georgian federal government, the international community may have perceived an internal solution as more appropriate. The Georgian situation differs in two ways from a formal annexation by another state. First, an annexation has an element of finality. If one country officially annexes territory of another state, it cannot be assumed that such territory will be handed back in the long-term. Second, an annexation always involves another state. While one may not know which side is right in an internal crisis, as soon as another state annexes territory, the situation changes in quality.³⁵⁵ It then becomes openly visible that one state has taken territory that used to belong to another country. Many would assume that in the realm of states, the *status quo ante* was correct and any change is arguably considered as illegal,³⁵⁶ in which case the international reaction to the Crimean crisis evidences a strong stance against annexation.

B. *Kuwait 1990*

After Iraq invaded Kuwait in 1990, it formally annexed its territory on August 8.³⁵⁷ The U.N. Security Council immediately passed a resolution declaring the annexation void.³⁵⁸ In addition, states unanimously condemned the situation.³⁵⁹ This unanimous reaction, which also included sanctions, bears sig-

355. For the argument that the normative condemnation of annexation could even support an argument for secession, see Amandine Catala, *Secession and Annexation: The Case of Crimea*, 16 GER. L.J. 581 (2015).

356. See GRANT, AGGRESSION AGAINST UKRAINE, *supra* note 53, at 76–77 (stressing the importance of “a settled legal frontier” when comparing Ukraine to colonial interventions).

357. JOSEPH KOSTINER, CONFLICT AND COOPERATION IN THE GULF REGION 257 (2009).

358. S.C. Res. 662, ¶ 1 (Aug. 9, 1990).

359. Paul Lewis, *Confrontation in the Gulf: U.N. Council Declares Void Iraqi Annexation of Kuwait*, N.Y. TIMES (Aug. 10, 1990), <http://www.nytimes.com/1990/08/10/world/confrontation-in-the-gulf-un-council-declares-void-iraqi-annexation-of-kuwait.html>.

nificance.³⁶⁰ China, which had provided weapons to Iraq prior to the war, voted in favor of the U.N. Security Council resolution.³⁶¹ Similarly, even former close allies of Iraq, among them India and France, acted in concert with the rest of the international community.³⁶²

It is important to ask that the reaction towards Iraq was stronger than the reaction to Crimea, resulting in military measures that ultimately ended the occupation.³⁶³ However, it cannot be expected that state reactions will always be the same. Regard must be taken to risks associated with any actions taken. This is especially true when facing a nuclear power. As such, Kuwait may be understood as in line with the lesson that third states will act to end annexation even if such response contradicts other incentives. Taking a consequentialist perspective, Crimea nonetheless has stronger repercussions overall. This is because from a consequentialist perspective any action is more noteworthy if it is taken against other interests or against more important states. As such, opposing Saddam Hussein in 1990 would, at least for most states, carry less actual or potential risk of negative consequences than opposing Putin in 2014. First, fewer states had direct connections to Iraq than have now to Russia. This includes trade, but also common political agendas. Second, Iraq was not perceived as a threat beyond its own region.

360. See *World Acts Against Iraqi Invasion of Kuwait: Fact Sheet on Economic and Political Action Against Iraq Worldwide*, GLOBALSECURITY (Aug. 16, 1990), <http://www.globalsecurity.org/wmd/library/news/iraq/1990/900816-151051.htm>; Simon Tisdall & David Hirst, *Superpowers Unite on Iraq*, GUARDIAN (Aug. 3, 1990), <http://www.theguardian.com/world/1990/aug/03/iraq.davidhirst>.

361. Robert Benjamin, *Beijing neutral but many Chinese applaud gulf war*, BALTIMORE SUN (Feb. 12, 1991), http://articles.baltimoresun.com/1991-02-12/news/1991043071_1_gulf-war-chinese-china.

362. See *World Acts Against Iraqi Invasion of Kuwait*, *supra* note 360; Tisdall & Hirst, *supra* note 360.

363. See David Fairhall et al., *Allied Planes Bomb Iraq: Kuwait's Liberation Has Begun, Says U.S.*, GUARDIAN (Jan. 17, 1991), <http://www.theguardian.com/world/1991/jan/17/iraq.davidfairhall>.

C. Panama 1989

After a perceived coup, the United States decided to invade Panama.³⁶⁴ Among the justifications given by the United States were the protection of its own citizens, thirty-five thousand U.S. citizens were living in Panama, and the protection of the neutrality of the Panama Canal, which was regulated by the Torrijos-Carter Treaty.³⁶⁵ In addition, the United States relied on an invitation to intervene by the person they perceived as the rightful president.³⁶⁶ Nonetheless, the international community recognized the invasion as illegal. The U.N. Security Council members vetoed a draft resolution.³⁶⁷ The U.N. General Assembly, however, adopted a resolution that condemned the invasion, with seventy-five in favor, twenty against, and forty abstentions.³⁶⁸ Additionally, the Organization of American States deplored the invasion in a resolution.³⁶⁹

While the situation contains a number of similarities to the Crimean annexation, the final result differed as Panama was not annexed. The Panamanian example is therefore silent on the law of annexation. It nonetheless supports the above analysis that state action shapes the perception of a conflict under international law. It is important to note, while not all Western states condemned the U.S. actions, some, including Austria, Finland, Spain, and Sweden, voted for the U.N. Gen-

364. On the long and multi-faceted background, see Eytan Gilboa, *The Panama Invasion Revisited: Lessons for the Use of Force in the Post Cold War Era*, 110 POL. SCI. Q. 539 (1995).

365. *A Transcript of President Bush's Address on the Decision to Use Force in Panama*, N.Y. TIMES (Dec. 21, 1989), <http://www.nytimes.com/1989/12/21/world/fighting-panama-president-transcript-bush-s-address-decision-use-force-panama.html>.

366. ABRAHAM D. SOFAER, *THE BEST DEFENSE? LEGITIMACY & PREVENTIVE FORCE* 38 (2010). In this regard, the argumentation was similar to the one used by Putin in regard to Crimea. See *The Yanukovich Letter: Is Ukraine Really Becoming the U.S. in Panama?*, DOCUMENT EXPLOITATION (Mar. 4, 2014), <http://www.docexblog.com/2014/03/the-yanukovich-letter-is-russia-in.html>.

367. S.C. Res. 21048 (Dec. 22, 1989) (vetoed by the United States, the United Kingdom, and France).

368. G.A. Res. 44/240 (Dec. 29, 1989).

369. James Brooke, *U.S. Denounced by Nations Touchy About Intervention*, N.Y. TIMES (Dec. 21, 1989), <http://www.nytimes.com/1989/12/21/world/fighting-panama-latin-america-us-denounced-nations-touchy-about-intervention.html>.

eral Assembly resolution despite their alliance with the United States.³⁷⁰ This circumstance is considered strong evidence for the widely agreed upon determination that U.S. actions were contrary to international law.³⁷¹ Overall, the Panamanian example therefore evidences a situation in which a breach of international law, alongside opposition of friendly states, helped to shape and enhance specific norms of international law.

D. Summary

While the examples taken cannot be considered comprehensive, they may nonetheless give some indication how states may act in the face of a serious violation of international law, such as an annexation. Most significantly, states may condemn these violations, even when committed by their allies. Moreover, such state action can be considered as one factor for the determination of legality. Lastly, even the Georgian crisis of 2008 might be seen to support such a conclusion in the sense that state action may be influenced by the blatant and permanent nature of the violation.

VI. LESSONS TO BE DRAWN

Bearing in mind the international reactions to Crimea, as well as previous examples, this part will assess the lessons drawn from the Ukrainian crisis for the prohibition on annexation, both from a positivist and a consequentialist perspective.

370. See Paul Lewis, *After Noriega: United Nations; Deal is Reached at U.N. on Panama Seat as Invasion is Condemned* N.Y. TIMES (Dec. 30, 1989), <http://www.nytimes.com/1989/12/30/world/after-noriega-united-nations-deal-reached-un-panama-seat-invasion-condemned.html>.

371. See Charles Maechling Jr., *Washington's Illegal Invasion*, 79 FOR. POL'Y. 113 (1990); Ved P. Nanda, *The Validity of United States Intervention in Panama Under International Law*, 84 AM. J. INT'L L. 494, 502 (1990); John Quigley, *The Legality of the United States Invasion of Panama*, 15 YALE J. INT'L L. 276, 314 (1990). But see Anthony D'Amato, *The Invasion of Panama Was a Lawful Response to Tyranny*, 84 AM. J. INT'L L. 516 (1990). On the possible role as a lawmaker, see Ruth Wedgwood, *The Use of Armed Force in International Affairs: Self-Defense and the Panama Invasion*, 29 COLUM. J. TRANSNAT'L L. 609, 628 (1991).

For a positivist, determining a rule of customary international law depends on assessing state practice and *opinio juris*, that the practice is accepted as legally obliged.³⁷²

In the realm of annexation, state practice is difficult to observe, as the rule by definition prohibits an activity, namely to annex foreign territory. However, this fortunately rarely happens. Especially this absence of state practice is relevant in this specific regard, and can be seen as overwhelming. Russia's activities can be seen as an outlier, and might simply constitute a violation. It should be noted, that third states' reactions themselves will not qualify as state practice, but may rather qualify as evidence of *opinio juris*.³⁷³ As such, the Crimean example does not provide much in the sense of state practice, as it does not change the fact that the overwhelming majority of states have not annexed foreign territory recently. The question that is fundamental in this regard is, however, whether the states refrain from annexing territory because of a sense of legal obligation, required for *opinio juris*, or because of some other reason.

In considering whether there is *opinio juris*, it is tempting to examine the U.N. General Assembly resolution, take note of the large number of states in favor, the small number against, and conclude that a sense of legal obligation must be affirmed. Such a conclusion is highly problematic. First, it is not a given that a resolution equals *opinio juris*. Specifically, as resolutions are nonbinding, it seems questionable how they can determine what states consider binding. Indeed, the ICJ hints at such an understanding in its case law.³⁷⁴ However, more recent decisions point in a different direction, that U.N. General Assembly resolutions may provide evidence of *opinio juris*, al-

372. Also termed "accepted as law," see Michael Wood (Special Rapporteur on identification of customary international law), *Third Report on Identification of Customary International Law*, ¶ 6, U.N. Doc. A/CN.4/682 (Mar. 27, 2015).

373. This, however, depends on the rule one is to ascertain. If State A carries out action x, then State B's negative reaction y could be relevant state practice for a rule that action x must be answered by y.

374. See *North Sea Continental Shelf Cases* (Ger.-Den.; Ger.-Neth.), Judgment, 1969 I.C.J. Rep. 3 (Feb. 20).

though this certainly depends on the circumstances of the specific resolution.³⁷⁵

Second, the circumstances surrounding the resolution seem especially problematic in the Crimean example. Considering that the prohibition on annexation is of such a fundamental character, why wasn't the decision unanimous or at least close to that? Why did so many states abstain? Of course, these abstentions aren't evidence of a decline in the prohibition on annexation. First, states that abstained gave various reasons, none of which involved declaring the annexation was lawful.³⁷⁶ Second, the resolution dealt with the referendum, not annexation. Overall, these deliberations should call for caution, even in cases in which only small number of states opposed a specific resolution.

While it can therefore be doubted whether Resolution 68/262 can serve to identify *opinio juris*, at least by itself, the individual reactions by states, such as sanctions, can be taken into account. Statements of condemnation and sanctions evince that states perceive an annexation as contrary to customary international law and further show that they perceive the situation in Crimea to fall into the category of an annexation. Thus, it can be deduced, that the inactivity of most states stems from a sense of legal obligation pertaining to a prohibition on annexation. Second, third states' actions show that Crimea is perceived as an annexation. Thus, Crimea sheds light on both the existence, as well as the content, of the prohibition on annexation.

Lastly, Russia's behavior should not completely be disregarded. Most importantly, in its legal determinations, it agrees with the Western analysis that an annexation is contrary to customary international law. However, it differs in whether the case of Crimea constitutes an annexation. The differences regard the assessment of facts, as well as in application of the prohibition, not in its existence.

Therefore, even taking into account Russia, the existence of the prohibition on annexation can, from a positivist perspective, hardly be doubted. Such an outcome cannot be considered surprising. After all, the prohibition protects territorial

375. Onuma Yasuaki, *Is the International Court of Justice an Emperor Without Clothes?*, 8 INT'L L. THEORY 3, 19–20 (2002).

376. See *supra* Section IV.A.2.

integrity, a cornerstone of public international law. The significance of the Crimean example should nonetheless not be ignored. First, the analysis shows that even a breach of international law can support the existence of rule rather than shed doubt on it. Furthermore, in some cases, particularly those in which the rule at stake is a prohibition, breaches will result in more data than compliance. This is because a consequentialist may argue that compliance has a number of reasons, none of them evidencing any support in the rule itself. However, a breach that entails a sharp international reaction will show evidence that third states believe in the validity of the rule and their obligation to protect it. Second, the assessment of positivist results from Crimea shows both opportunities as well as pitfalls of determining customary international law and especially *opinio juris*. The analysis highlights the difficulties such an analysis entails, even when it appears states concur on the existence of a rule.

Beyond these positivistic aspects, the above analysis carries to light some consequentialist insights, primarily addressing some of the criticisms of international law. In order to fully understand the consequentialist results, a short depiction of such criticism is in order. A plethora of individual critiques of international law exist and differ in their particular approaches.³⁷⁷ While not all of these approaches can be addressed in this analysis, two strands of criticism are highlighted here in order to address possible general ramifications of a consequentialist perspective on Crimea.

The first view, an extreme realist stance, would deny international law any significance at all,³⁷⁸ based on a lack of enforceability.³⁷⁹ The second, more sophisticated critique,

377. See Jack L. Goldsmith & Eric A. Posner, *The New International Law Scholarship*, 34 GA. J. INT'L & COMP. L. 463, 482 (2006); Harlan Grant Cohen, *Finding International Law: Rethinking the Doctrine of Sources*, 93 IOWA L. REV. 65 (2007); see also ANTHONY ANGHIE, *IMPERIALISM, SOVEREIGNTY AND THE MAKING OF INTERNATIONAL LAW* (2004) (describing the third-world approaches to international law critique of international law as imperialistic); B.S. Chimni, *The Past, Present and Future of International Law: A Critical Third World Approach*, 8 MELB. J. INT'L L. 499 (2007).

378. As such, this view can be seen as one extreme on a spectrum; the opposing end forms the view that international norms clearly motivate state behavior. See Harold Hongju Koh, *Why Do Nations Obey International Law?*, 106 YALE L.J., 2599, 2659 (1997).

379. AUSTIN, *supra* note 5, at 201.

merely assumes that states, as rational actors, are motivated by self-interest,³⁸⁰ rather than by a motivation to abide by norms.³⁸¹ These critiques are sometimes connected. To give an example from domestic law, jaywalking, the first view would question a prohibition on jaywalking because the prohibition is not enforced. The second view would rather question the motivation of those that do not jaywalk, proposing alternative explanations for such behavior, such as safety-concerns, rather than abiding by the law.³⁸²

Turning now to the outcomes of the above analysis, a consequentialist perspective on Crimea casts doubt on the first strand of critique of international law. Violating the prohibition on annexation resulted in repercussions. These were not of a military nature and certainly could have been stronger, but to set aside the reactions as inconsequential misconstrues the facts. Proponents of such a view would certainly stress that nothing has swayed Russia to alter its course of action. This is an important point, but nonetheless should not be confused with no enforcement at all. In most legal systems, civil suits will only result in the obligation to pay monetary sums. Such costs can more easily be absorbed by a wealthy actor. This, however, does not mean that the relevant norms in a domestic legal system are ineffective. Overall, this common criticism has difficulties addressing the repercussions that follow violations of international law.³⁸³

The second strand of criticism is more difficult to encounter as it focuses on the motivation of actors, rather than their actions. As such, the same action can often be analyzed as a

380. See Goldsmith & Posner *supra* note 105; JACK L. GOLDSMITH & ERIC A. POSNER, *THE LIMITS OF INTERNATIONAL LAW* (2005).

381. For the sake of the following discussion, it will be assumed that the following norms are not among the interests that motivate state behavior. That this often is the case will be addressed below.

382. This specific example is lacking insofar as safety is also the motivating factor behind the law prohibiting jaywalking. A more extreme example would pit abiding the law against some completely unrelated form of self-interest.

383. This is not to say that all violations entail an equal enforcement. Indeed, the decentralized form of enforcement leads to weaker and stronger reactions in particular cases. This can certainly be considered problematic, but one can once again find similarities in domestic systems. For instance, in legal systems that grant prosecutorial discretion, not every violation of the law will be pursued equally.

result of an actor abiding by the law, or as an actor following its self-interest. Various analyses progressed this debate and while this Article can certainly not solve all remaining questions, some lessons can be drawn from Crimea.

Many realist analyses of state action are based on rational choice and game theory.³⁸⁴ In such an analysis, focal points,³⁸⁵ actions by an actor that lead to reactions by others,³⁸⁶ are relevant.³⁸⁷ The annexation of Crimea is such a focal point, which led to severe reactions. Thus, state actors might be punishing other actors for defecting from an agreed upon behavior, not annexing territory. The strong reaction makes it less likely that such behavior will occur again in the future, by any actor. Thus, the conclusion may be drawn that the prohibition on annexation has been strengthened as a result from Crimea. Such a result is independent of whether or not the states were motivated by bringing a defecting actor back into compliance with the law or by self-interest.

Second, the above analysis has taken into account various motivations of actors. Every state has many, sometimes conflicting, motivations in such a scenario. Even most European states were aware of the harm that would come from acting against Russia.³⁸⁸ One might assume that any of these different self-interests rather than norm-compliance have been the key factor in state action, and proving the opposite is virtually impossible. On the other hand, however, many states opposed Russia's actions in Crimea, even though many had opposing

384. For a specific application of such a theoretical background to the Crimean crisis, see Bernadette Sangmeister, *The (In-)Effectiveness of International Law, A Critical Analysis of the Rational Choice Theory in the Light of the Ukrainian Crisis 2014*, at 5 (2014) (unpublished B.L. research paper, Victoria University of Wellington, New Zealand), <http://researcharchive.vuw.ac.nz/xmlui/bitstream/handle/10063/3541/thesis.pdf?sequence=2>.

385. See Andrew C. Blandford, *Reputational Costs Beyond Treaty Exclusion: International Law Violations as Security Threat Focal Points*, 10 WASH. U. GLOBAL STUD. L. REV. 669 (2011).

386. For the example pertaining to specific regimes, see Gabriella Blum, *Bilateralism, Multilateralism, and the Architecture of International Law*, 49 HARV. J. INT'L L. 323, 354–55 (2008); Anu Bradford, *When the WTO Works, and How It Fails*, 51 VA. J. INT'L L. 1, 14 (2010).

387. Not all models are necessarily about reactions towards others. Situations might exist in which state action would be taken regardless of how other states act. See Goldsmith & Posner, *supra* note 105, at 1124.

388. See *supra* Part IV.B.1.a.

interests.³⁸⁹ The large number of states opposing Russia's actions make it more likely that at least some states acted because of norm-compliance. At least, it appears to be an indicator that preventing annexation is in the self-interest of most states. This by itself could be seen as an indicator of the strength of the rule.

Third, even in a system in which actors are purely motivated by their self-interest, international law still serves as the language of such a system. Thus, terms as legal or illegal are used as a symbol to the other actors for which route of actions they should take.³⁹⁰ In addition, it should be noted that all discussions were held in the language of law.³⁹¹ While the West criticized Russia for its violations, Russia justified any action taken as in conformity with international law.³⁹² From this perspective, the issue was never in how far a prohibition on annexation existed or whether a violation of it was to be sanctioned, but whether the actions taken were a violation at all.³⁹³ Furthermore, in the beginning, Russia also denied some of the factual allegations brought forward. Thus, from a Russian perspective, the defense was two-pronged. First, activities were denied. Second, those activities were described as fully conforming with international law. Both strategies indicate the perceived strength of the prohibition on annexation. The denial of any involvement, however, evidences how far the prohibition against annexation has been internalized. No actor has argued that either an annexation would never be illegal or that it would not be illegal in this specific case. Rather, Russia has gone out of its way to showcase its actions as merely supporting the right to self-determination of the Crimean people and emphasizing that its actions were in fact not an annexation. While a critic may rightfully note, that such a play on words is not uncommon in a political world, it nonetheless

389. See *supra* Part IV.B.

390. Verdier & Voeten, *supra* note 27, at 390.

391. See Chris Borgen, *The Crimea, Compliance, and the Constraint of International Law*, OPINIO JURIS (Mar. 3, 2014), <http://opiniojuris.org/2014/03/03/crimea-compliance-constraint-international-law/>.

392. See Chris Borgen, *Law, Rhetoric, Strategy: Russia and Self-Determination Before and After Crimea*, 91 INT'L L. STUD. 216 (2015).

393. This perspective underlines an assumption that the Georgian crisis was not perceived as a blatant violation. See *supra* Part V.A.

must be stressed that some expressions such as annexation are off-limits.

Fourth, scholars point to the distinction between following norms because of their utility and following them because of an inherent sense of appropriateness is difficult to maintain.³⁹⁴ In many situations, an actor will have both incentives. Especially in international law, in which norms result from the behavior of the actors, norms most often exist because of self-interests.

Overall, law-conformity may simply be a self-interest among many other interests. In this regard, it should be noted that many rules of international can be considered self-enforcing.³⁹⁵ In this sense, a state will act in conformity with its obligations, as it wishes other states to do the same. Otherwise, a state may set out a precedent that others might follow in the future, thereby leading to the erosion of the rule at hand.³⁹⁶ While it seems doubtful whether the Russian annexation of Crimea will lead to the prohibition on annexation fading out of existence, in the sense that states will soon start invading each other to acquire territory, more than the pure existence of the rule might be at stake. Once again, Russia has depicted its actions as in conformity with international law. The relevant question is therefore not whether an annexation is legal, it certainly is not, but whether and how far actions taken by Russia were an annexation in the first place. Recalling Russian justifications, the issue can be termed as: “Did the right to self-determination justify intervention into Crimea?”³⁹⁷ or even: “Is there a right of reunification of unjustly separated regions?” Both of these questions may seem far-fetched as the Russian arguments go well beyond previous argumentations based on

394. See James Fearon & Alexander Wendt, *Rationalism v. Constructivism: A Skeptical View*, in *HANDBOOK OF INTERNATIONAL RELATIONS* 52, 61–62 (Walter Carlsnaes et al. eds., 2002).

395. Kirgis, *supra* note 113.

396. Verdier & Voeten, *supra* note 27, at 433.

397. See Yuval Shany, *Does International Law Grant the People of Crimea and Donetsk a Right to Secede? Revisiting Self-Determination in Light of the 2014 Events in Ukraine*, 21 *BROWN J. WORLD AFF.* 233 (2014) (pointing out how low a threshold for succession would be if the Russian description were to be followed. In this sense, such a shift would fundamentally alter some rules, even if not formally); see also Simone F. van den Driest, *From Kosovo to Crimea and Beyond: On Territorial Integrity, Unilateral Secession and Legal Neutrality in International Law*, 22 *INT’L J. MINORITY & GROUP RTS.* 467 (2015).

self-determination and a right to reunification contradicts the principle of *uti possidetis*.³⁹⁸ Nonetheless, it seems noteworthy that both concepts have played a role in the discussions.³⁹⁹ Issues regarding self-determination were key factors for some states.⁴⁰⁰ Similarly, Putin has made explicit reference to the German reunification and thereby acquired at least some support in Germany.⁴⁰¹ Afghanistan, as well, may have been persuaded by this line of argumentation.⁴⁰² Moreover, it might even be argued that the case of Kosovo, which itself was phrased in terms of legality, only opened up the possibility of a further erosion of once firm principles.⁴⁰³ It is therefore up for debate specifically how international law has compelled states to react to Russia. However, even theories of international law based on states as rational actors might not necessarily deny that law may have played some role in the ongoing events.

VII. CONCLUSION

On the surface, international reactions to Crimea appear insignificant. Russia is still in control of the region without any sincere attempts to push it out with force. At the same time, the sanctions taken are sometimes criticized as too lax.

However, closer scrutiny reveals that international reactions are in fact significant. It is true that no military action has been taken, but any such demand is based on a flawed understanding of how the international system should be enforced. Additionally, while there is indeed room for stricter sanctions. Those that were taken must be measured against the interdependence of acting states and Russia, as well as the desire for a political solution.

398. Justin A. Evison, *Migs and Monks in Crimea: Russia Flexes Cultural and Military Muscles, Revealing Dire Need for Balance of Uti Possidetis and Internationally Recognized Self-Determination*, 220 MIL. L. REV. 90, 92–93 (2014).

399. On self-determination, see William W. Burke-White, *Crimea and the International Legal Order*, 56 SURVIVAL: GLOBAL POL. & STRATEGY 65 (2014).

400. See, e.g., *supra* Part IV.B.3 (on Argentina).

401. See *supra* Part IV.B.1.a.aa.

402. See *supra* Part IV.F.

403. Evison, *supra* note 398, at 91; see also Goldsmith, *supra* note 59.

The sanctions that were taken, some enacted after the Crimean annexation, were felt by Russia.⁴⁰⁴ Crimea itself is far from prosperous;⁴⁰⁵ international reaction and sanctions damaged both the Russian economy, as well as Russia's reputation. In addition, actions such as excluding Russia from the G8 might have long-term implications.

Most importantly, however, reactions to Crimea are significant in revealing that states' actions do not always fall in line with their otherwise existing interests. Surely, some states will support their allies throughout the whole process. Some, however, will act in ways that might seem contradictory, considering their economic or political dependence on the primary actors.

One explanation for this seemingly contradictory behavior lies in the legal effects created by the prohibition on annexation. Independent of their affiliations, states were compelled to act in accordance with their international obligations, whether directly or as a means to serve other interests. This does not necessarily lead to the expectation that every state was to strongly oppose Russian actions and install sanctions. Sometimes small amounts of disobedience might be sufficient. In fact, any amount of action that is taken in response to a violation of international law bears legal significance.

First, seen from a positivist perspective, an analysis of the situation suggests that the prohibition of annexation is still strongly in place. While it is true that most would not doubt the existence of such a rule, it should be noted that determining international law largely depends on state action. Any such action therefore helps to illuminate the exact content of a rule. Reactions towards Crimea thus produce evidence of *opinio juris*. Especially in an area that is mostly dominated by

404. Mike Dolan, *Sanctions Hurt Russia, but Still Far from Changing Minds*, REUTERS (Feb. 4, 2015), <http://www.reuters.com/article/us-investment-russia-sanctions-analysis-idUSKBN0L80W720150204>.

405. Stanislav Ivanov et al., *Impacts of the Entry of the Autonomous Republic of Crimea into the Russian Federation on Its Tourism Industry: An Exploratory Study*, 54 TOURISM MGMT. 162 (2016); Lucy Ash, *Tourism Takes a Nosedive in Crimea*, BBC NEWS (Aug. 8, 2014), <http://www.bbc.com/news/magazine-28688478>. In addition, the inhabitants are confronted with issues arising from a sudden shift and overlap in jurisdiction. See Anton Molchanov, *Crimea: Ukraine and Russian Parallel Insolvency Proceedings*, 10 INSOLVENCY & RESTRUCTURING INT'L 32 (2016).

inaction, fortunately states rarely annex each other's territory any longer, such reactions are significant to reassure the existence of the rule and define it. It should be noted that Russia has referred to international precedent in justification of its measures, especially Kosovo. A strong backlash itself can constitute evidence of the illegality of a given action and therefore might help to distinguish current from past cases.

Second, seen from a consequentialist perspective, one might argue that at least the prohibition of annexation was strengthened by the events surrounding Crimea. If one were to assess whether a U.N. veto power could take any action whatsoever without having to fear repercussions, the result of such an assessment would likely be different before and after Crimea. Bearing in mind previous examples, such as Georgia, a 2013 perspective was bound to be more pessimistic. In 2017, however, any state might reconsider whether expected repercussions are worth a desired annexation. In fact, it may be argued that Russia underestimated the international reaction when deciding to take action. This does not mean that the annexation of further territory is rendered impossible. Further, this also does not indicate that Russia will not be able to maintain the annexation for a long period of time. In this sense, international law is still imperfect. However, it is neither absolutely powerless nor nonexistent. Similarly, it appears questionable whether a system that enforces international law through warfare would be preferable.

Lastly, the reactions to Crimea might greatly influence those states that do not have veto rights in the U.N. Security Council or are backed by a veto power. For those states, the fact that the international community stood up against Russian annexation of Crimea will create a weighty deterrence, preventing any similar actions.