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WHO OWNS CRIMEA? ANALYSIS OF THE CHAOTIC SITUATION IN CRIMEA

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Abstract

On the 18th of March 2014, Russia's Vladimir Putin announced in an address at Kremlin the annexation of the Crimea peninsula which has been a Ukrainian territory with a special status since 1954. Putin's annexation of the peninsula is precipitated by the ousting of a pro-Russian regime following months of unrest and the Euromaiden Revolution in Ukraine. The revolution reveals the underlying Pro-Western versus Pro-Russian cleavages existing in the very center of Ukraine's political sphere. The annexation received widespread condemnation from the international community, NATO and the EU as a contravention of international laws and violation of several treaties between Ukraine and Russia.

This study explores the historical status of the Crimean Peninsula and considers the legality of Russia's annexation of the peninsula in 2014. The study further examines Russia's motive to expand its influence to match up with NATO's huge expansion especially in the Baltic region and in some former Soviet Union countries that should be Russia's natural sphere of influence.

Despite severe economic, diplomatic and political embargoes placed on Moscow by NATO, EU and western allies, Crimea still remains under the control of the Russian Federation. Russia's comparison of its annexation of Crimea with US involvement in former Yugoslavia (Kosovo) reveals how ambiguous context of international law are being exploited to serve national interests.

Keywords: Annexation, Revolution, Autonomy, Geopolitics, Crimea

1. Contextual Framework

The study provides a pre-modern and modern historical background of Crimea then considers series of events that precipitated the annexation of Crimea by Russia. It questions, what justification(s) was presented by Moscow for its annexation of Crimea and whether such justification(s) fulfil the requirements in the provisions of international law. The paper also examined the responses of the International Community, especially the responses of the United Nations (UN), North Atlantic Treaty Organization (NATO) and the European Union (EU). It is believed that the annexation was a retaliation of Russia to NATO and EU's enlargement. NATO wanted to expand into countries that Russia once controlled under Soviet regime, thereby making the west (driven by the US) a threat to Russia's national security. Undoubtedly, Russia was also seeking a chance to expand its influence especially in the region and to maintain its status as a dominant power and this points to the fact that the annexation of Crimea presented an opportunity for Russia to compete with the West (who is broader when it comes to geopolitics); making Ukraine just a battleground in the competition.

2. Historical Background

While the 6th of March 2014 referendum adopted in Crimea received more global attention, it is important to understand that it was not the first nor second referendumm held regarding the political status of Crimea. There have been referendums held regarding the political status of Crimea in 1991 and 1994. In the year 1991, Crimea adopted a referendum where the local population were asked if the wish to reinstate the Crimean Autonomous Soviet Socialist Republic that was obliterated in 1945. Supported by Russia, Crimea's parliament declared autonomy in May 5th, 1992.

Ukrainian government responded by declaring Crimea's pronouncement of autonomy as unconstitutional and indicated its willingness to use every possible means including the use of force to stop Crimea's expedition. Following concessions to demands made by both Ukraine and Crimea, the Crimean authorities agreed to temporarily suspend the declaration of independence while the Ukrainian government conferred a greater autonomy and economic status to Crimea.

In 1994, we see Crimea continuously expanding its political status of autonomy from Ukraine by appointing ministers whose duties circumvent the ministers appointed by Kiev and creating the office of president in Crimea. In response, the Ukrainian government declared the election and office of the president invalid and unconstitutional. Crimea's parliament also enacted and operated laws that are not consistent with Ukraine's constitution and as a counter action, Kiev threatened to dissolve the Crimean parliament. The Crimean city; Sevastopol decided not to pay taxes to Kiev anymore. The Crimean parliament invalidates Ukrainian decree that subjects Crimean militias under the auspices of the Ukraine's Ministry of Home Affairs. Amidst rising tensions, the Russian federation announced its commitment to ensure the protection of ethnic Russians (which are the majority) living in Crimea through economic, political and diplomatic means but may also resort to the use of force where it deems necessary. The Crimean referendum held in 1994 required voters to choose if they are in favor of an Autonomous Republic of Crimea. It differs from the 1991 & 2014 referendums; in that it did not mention willingness to be annexed with Russia.

While most Russians hold the opinion that Crimea has always been a Russian territory, it is important to clearly point out the falsity in this claim. Early history of the region reveals that Crimea was in fact occupied by Greeks, Tauris, Goths, Huns, Bulgars, Romans, Kharzas, Mongols, Venetians, Byzantines and other ethnicities before it came under the rule and occupation of the Ottomans in 1475. The Kievan Rulen (which birthed the modern-day Ukrainian and Russian states) which came at a more recent time (around the 11th to 13th century) than the above-mentioned ethnicities, was the major occasion where Russia came in contacted with Crimea. The dominance of Russian population in Crimea is as the result of the expulsion of the Tatar and other indigenous populations of the Crimean Peninsula in 1944 by Joseph Stalin. The forced expulsion caused around 50% of the Tatar population to flee Crimea.

In the year 2010, Viktor Yanukovych won the presidential election in Ukraine and promised closer ties (both in economics and politics) to the Russian federation. President Yanukovych also promised to make Russian the second official language of Ukraine (Iakist, 2011). With these assurances, there has been a significant decline in the percentage of Crimeans wishing to join Russia as well as a decline in the percentage of those seeking autonomy in Crimea (RazumkovCenter, 2011). Yanukovych's sudden refusal to sign Ukraine- European Union Association Agreement in January 2014, which will bring EU closer to Ukraine and farther from Russia, ignited series of protests in Ukraine. President Yanukovych was seeking a more pro-Russian affiliation which ensued several protests by Ukrainians in what is referred to as 'Euromaiden'. Euromaiden was a sequence of protests by Ukrainians showing support for closer ties with the European Union leading to the ousting of Yanukovych who was inclining towards closer ties with the Russian Federation. The protests led to series of deadly clashes between protesters and the Ukrainian police. Crimea, however did not show support for the Euromaiden revolution. In the month of February of the same year, as death toll rises and tensions increased, President Yanukovych fled to Crimea and later exiled to Russia. While in absentia, Yanukovych was then accused of being responsible for the deaths of numerous Ukrainian civilians and was found guilty of treason by the Ukrainian supreme Court. The Parliament also oust him as the president and ruled for an election that would replace him as president. The series of occurrences that took place in Kiev, sparked disturbances in Crimea as well as unrest in the East of Ukraine by pro-Russian Ukrainians. Crimean authorities claimed that the toppling of Yanukovych's government by the Ukrainian parliament during the Euromaiden revolution was a 'coup' hence illegitimizing the new government that brought Oleksandr Turchynov into the office of President.

In March 2014, the parliament in Crimea announced the adoption of a decree that produced the latest and most controversial referendum in relation to the political status of Crimea. It poses a question of whether the Crimean local population wish to be annexed to Russia as a federal state or remain in Ukraine within the scope of Crimea's earlier proposed Constitution and status as the Republic of Crimea.

On March 16th 2014, the referendum was held in accordance with the adopted decree by Crimean legislative arm and the referendum indicated that over 90% of its voters wished to be annexed by Russia. Some researchers showed that many of the locals (especially the Tatars) boycotted the referendum and were opposed to the annexation (Van Katchanovski 2015).

The outcome of the so-called 'referendum' set the stage for Russia's incorporation of the Crimean Peninsula. Both Russia and Crimea used the internal conflicts in Ukraine to weaken the ability of the Ukrainian authorities to maintain control in Crimea. This referendum is largely criticized by the international community. Ukraine and the West have termed it 'referendum held at gunpoint' and did so because Pro-Russian forces were in control of Crimea (BBC News 2014). The UN General Assembly adopted a Resolution 68/262 in April 2014 on the territorial integrity of Ukraine recalling member states' obligation to refrain from the 'threat or use of force against the territorial integrity or political independence of another State, and to settle their international disputes by peaceful means'.

The resolution also cited a previous resolution (2625 (XXV)) adopted in 1970 which prohibits States from acquiring another State by means of threat or the use of force or engaging in any action which attempts to partially or totally disrupt the national unity and territorial independence of a State. It also reminded Moscow of the terms and obligations of Russia within the Treaty on friendship, cooperation and partnership between Ukraine and the Russian Federation. Kiev, 31 May 1997.

What possibly could be Russia's justification for the annexation of Crimea? And if there can be a justification for Russia's annexation of Crimea, what forms its legal framework?

3. Ideological divisions in Ukraine

Ukraine is politically divided between two main ideologies; on one hand, significant part of the Ukrainian population is pro-EU and focuses on pursuing closer ties with the European Union and the West while on the other hand, an approximate 20% of the population is pro-Russian seeking closer relations with Russia. Signing of the EU-Association Agreement in 2014 was pointing Ukraine towards a possible accession into the European Union. To understand why Ukraine is divided between the EU and Russia, it is important to understand the significance of Ukraine's geography and economic advantages that will be available to the side (EU or Russia) which Ukraine decides to turn to. Ukraine is at a very strategic location that attracts the interests of EU and Russia. Ukraine's flat and fertile land area makes it a major global agricultural producer especially of grains (wheat, barley and corn) (Langrell, S., Mary, S., Ciaian, P., y Paloma, S. G., Shagaida, N., Yanbykh, R., ... & Fellmann, T. 2015). Its dynamic climate makes the weather favorable for growing crops throughout the year. Ukraine is the fourth largest exporter of corn and barley, and the sixth largest exporter of wheat in the World. The EU is the second biggest importer of Ukraine's agricultural products (European Commission 2020) following Russia.

The EU's continuing expansion and influence among the eastern European countries has undoubtedly threatened the influence of Russia's Eurasian Economic Union (EAEU). The European Union and NATO's influence spread widely across Ukraine, Moldova and Georgia (who Russia thinks should be natural members of the EAEU). The European Union's Deep and Comprehensive Free Trade Agreement (DCFTA) which further buttressed Western threat and undermine Russia's long-term efforts for economic dominance in the region through the Eurasian Economic Union trade.

It is important to also note that Ukraine has been very instrumental to Russia's natural gas trade within the EU. Russian natural gas pass through Ukrainian borders to countries within and around Europe. Ukraine's desire to open its markets to the EU and to collude with U.S. companies to develop its natural gas reserves were perceived by Russia as huge threats to its economy and influence in the region.

Russia is a significant supplier of natural gas throughout the European Union and statistics show that more than 80% of this natural gas passes through Ukraine. Geographical, Ukraine stands at a very prime and strategic location for trade. Its access to the black sea also accounts for more geographical advantages. Both the EU (representing the 'West') and Russia (representing the 'East') realize the importance of trading or partnering with Ukraine due to its geographical advantages. Following several disputes between Russia and Ukraine over natural gas debts and diversions, Russia decided to diversify the transit routes of its gas into the EU. In a project called Nord Stream II, the Russian authorities are embarking on completing a pipeline that reaches Germany via Danish waters. In response to this, and for fear of increased Russian influence in the EU, the United States imposed sanctions on Germany over the Nord Stream II project. Russia also signed an intergovernmental agreement with Turkey known as Turkstream to facilitate the passage of Russian pipeline under the Black Sea into the EU.

Consequently, upon completion of the Nord Stream II project along with its Turkstream, Russia will bypass Ukraine as a transit location to the EU market. Although Russia may appear to be creating alternative routes for trade into the EU while bypassing Ukraine, it is however important to bear in mind that this does not mean a declining Moscow's interest in Ukraine.

4. Russia's Interpretation on Crimea

In a bid to justify the annexation of Crimea, both Russia and Crimea claimed the right to self-determination and succession to be sufficient enough to rationalize Russia's intervention. Russia also claims the responsibility to protect as a reason that justifies its incorporation of Crimea. However, both claims were not accepted by the international community as there was no humanitarian crisis in Crimea at the time of the annexation that could justify Russia's incorporation of Crimea.

President Putin claims that though the annexation of Crimea may be contrary to the laws of Ukraine that does not make it a breach of international law. To support this claim, President Putin quoted US written statement in regards to Kosovo; "Declarations of independence may, and often do violate domestic legislation. However, this does not make them violations of international law" (William W. Burke-White, 2014).

As a matter of fact, president Putin holds the view that Russia's involvement in Crimea is exactly the same as US involvement in Kosovo. He went further to claim that US involvement in Kosovo has become a precedent created in a very similar situation and that the main difference with Russia's involvement in Crimea is that there was no shot fired in the Crimean case. On the contrary, political analysts observed that while shots were fired in the Kosovo case, there was a genuine international humanitarian crisis that justified NATO's involvement in Yugoslavia and was backed a UN Security Council Resolution 1199 (UNSCR, 1998).

The reinterpretation of international law by states to suit their interest is a common practice among many member states (including US and Russia) of the UN. William W. Burke-White (2014) sees Russia's act as an exploitation of the ambiguities that exist in international law. Russia's occupation of Georgia in 2008 and the annexation of Crimea in 2014, draws the concern of the international community that Russia will expand its invasion to other Balkan states.

Apart from the misinterpretation of international law to justify its annexation of Crimea, Russia also misinterpret the premodern and postmodern history of Crimea to justify its actions. A Russian parliamentarian; Sergei Naryshkin claimed that Ukraine annexed Crimea in 1991. According to Coynash (2014), this claim is ill-founded and false as it is impossible for a country to annex its own territory (Crimea has been part of Ukraine since 1954). The very fact that before the annexation Russia pays rent to Ukraine for using Crimea as a military base counters the narrative of the claim that Crimea is part of Russia or that Ukraine annexed Crimea.

In regards to 18th March 2014 annexation of Crimea by Moscow, Daniel Treisman (2016) in his observation on why Putin took Crimea, mentioned that Russia's impulsive annexation of Crimea is due to perceived fear that Ukraine will expel Russia's Black Sea fleet from its long-lived base in Sevastopol and also for the fear that Ukraine was making efforts to become a member of NATO. Russia's Black sea fleet in Sevastopol plays a very important geostrategic role especially in giving easy access to Russia to the Mediterranean Sea through the Turkish straits (Bosporus and Dardanelles). However, the Montreux Treaty of 1936 gives Turkey significant control over the straits by subjecting the passage of Naval vessels to Turkey's discretion. Russia strongly longs to maintain dominance over the black sea and through the Mediterranean and its fleets in Sevastopol helps to maintain this longing. Russia wants its ships to have unrestrained access through the "Turkish Straits" that connects the Black Sea and the Mediterranean Sea. This access has the potential of yielding economic and military gains to the Russian federation and in the long-run enhance the spread of its influence around the middle-east and some European regions. Ukraine was drifting towards the EU and with a potential of joining NATO. Ukraine joining NATO would imply losing a significant area of influence and great defeat for Russia since its Sevastopol fleet is its major Naval base. The annexation of the Crimean Peninsula implies that Russia is no longer bound by the provisions of the 1997 agreement (Treaty on friendship, cooperation and partnership between Ukraine and the Russian Federation) that limits the size of Russian troops and military arsenals that can be present in Crimea. The annexation also implies that the Russian federation will no longer pay rent to Ukraine for using Crimea as its naval base in the Black Sea. The Black Sea region is rich in natural reserve and this implies that by annexing Crimea, Russia would benefit from the abundant hydrocarbon and other resources within Ukraine's Black Sea maritime borders.

5. Conflict Resolution Efforts

Donetsk and Luhansk oblasts (altogether known as Donbass region) are Ukrainian territories with significant ethnic Russians, the region is also engaged in a Russian-backed armed conflict against the Ukrainian government with the aim to be separated from Ukraine. Russian, German, French and Ukrainian authorities met at Minsk in February 2015 to decide on the unrest happening in the Donbas region of Ukraine. An agreement referred to as the Minsk Agreement was reached to end the fighting in eastern Ukraine (Donbas region).



Donbas Region, Google 2020

The authorities agreed to effect an immediate and comprehensive ceasefire in certain areas of the Donetsk and Luhansk regions as of 15th February 2015. Secondly, the agreement also requires an immediate withdrawal of specified heavy weapons at an equal distance. The Organization for Security and Cooperation in Europe (OSCE) was given the responsibility for facilitating and monitoring the ceasefire and ensure strict compliance with the removal of heavy weapons within the designated distance. The OSCE pays periodic visits to the region to ensure both sides conform to the agreement but as soon as the OSCE officials leave, the region is characterized by continuous violations of the Minsk agreement (especially at midnight)

6. Conclusion

The annexation of Crimea is considered illegal by the international community and deems Russia to be in violation of International laws and in violation of the treaties Russia had made with Ukraine. More than a 100 UN member states object to Russia's annexation of Crimea and urge Russia to withdraw in order to promote peace and to respect the sovereignty and territorial integrity of Ukraine. Despite Russia's de facto control over Crimea and Sevastopol, it is important to note that Crimea cannot under international law enter into any binding legal relations (treaties) with other countries as it is not regarded as a state. The only recognition Crimea has, is its special status as a autonomous region under Ukraine. The United Nations invoke the principle of obligatory non-recognition which outlines that states "are under an obligation not to recognize, through individual or collective acts, the purported statehood of an effective territorial entity created in violation of one or more fundamental norms of international law"

The EU, NATO, US, Canada and other Western allies imposed sanctions on Russia in three main dimensions. The first dimension of the sanction was the restriction on Russia's access to Western financial markets as well as services for certain companies within Russia's banking, energy and defence parastatals. The second dimension of the sanction is the ban on the exportation of high-tech hydrocarbon exploration and production equipment. Lastly, the Western powers placed an embargo on the exportation of military goods as well as an embargo that have both military and civilian purposes.

Although, in the recent decade, US seem to be more careful and would choose to avoid confrontations when addressing matters involving Russia (Önder Ersoy Mehmet Ali Kılıç 2020), the US sanctions against Russia and Crimea included travel bans and the freezing of some assets belonging to individuals and entities who are in connection with the government of Crimea and Russia.

Other states like Japan, Norway, Switzerland, Lithuania and Ukraine are examples of countries that have also imposed sanctions in one way or the other against Russia and the Crimean Peninsula.

In response to Western sanctions, Vladimir Putin imposed a ban on the importation of food coming from the western countries into the Russian Federation. Ironically, some analysts argued that the effects of Putin's ban is suffered harshly by Russia itself (Marxsen, Christian 2014).

While the framework and legality of the justifications presented by Russia as the rationale for the annexation is not accepted by the international community, Crimea still remains under the de facto control of Moscow and the likelihood that the administration of Crimea will one day return to Ukraine remains very and extremely thin.

Though relevant provisions of international law include the right of self-determination of peoples, it is clear that the Crimean plight would not be regarded as lawful means of gaining self-determination. The International Covenant on Political and Civil Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) provide that "All peoples have the right to self-determination. By virtue of the right they freely determine their political status and freely pursue their economic, social and cultural development."

Therefore, while Russia and few UN member states such as Syria, Zimbabwe, Nicaragua, Armenia, Syria, Sudan, Afghanistan, Cuba, Kyrgyzstan, Venezuela and North Korea recognize Crimea as a state, Crimea still remains a Ukrainian territory with special status in the perspective of the international community as more than 100 UN states reject Russia's annexation of Crimea as well as the 16th March 2014 referendum.

Ukraine's pro-EU and pro-NATO tendencies still remain of great concern to the Russian Federation who had for long time enjoyed unalloyed dominance in the Black Sea region, hence the chances that Russia will in the future relinquish its self-acclaimed autonomy in Crimea remains very pale and unlikely. The absence of a dominant neutral power that can mediate between Russia, Ukraine, EU and NATO presents the possibility that the Crimean question may drag for long time just like the Cyprus issue.

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