

INTRODUCTORY NOTE TO UNITED NATIONS GENERAL ASSEMBLY
RESOLUTION ON THE TERRITORIAL INTEGRITY OF UKRAINE
BY EMILY CRAWFORD*
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Introduction

On March 27, 2014, the United Nations General Assembly adopted resolution 68/262 on the territorial integrity of Ukraine.¹ The resolution was adopted in response to the March 16, 2014 referendum held in the Autonomous Republic of Crimea and city of Sevastopol, and it affirmed the territorial integrity, unity, sovereignty, and political independence of Ukraine, calling on states to desist and refrain from actions that undermine the unity and territorial integrity of Ukraine.

Background

Late in 2013, Ukraine was beset by political protests and demonstrations partially in response to the suspension of negotiations for a proposed Ukraine-European Union Association Agreement.² The protests, dubbed Euro-aidan,³ intensified following moves by the Ukrainian government to crack down on public demonstrations and to further political ties with Russia.⁴ Ukrainian President Viktor Yanukovich was eventually deposed and fled the country in February 2014.⁵ On February 27, pro-Russian militia began occupations of Crimean administrative buildings,⁶ culminating in Russian military intervention in Crimea in March/April of 2014.⁷

Russian intervention in Crimea was condemned by the United States and United Kingdom as a violation of the Budapest Memorandums on Security Assurances,⁸ a 1994 set of agreements (initially between the U.S., U.K., and Russia, later joined by China and France), which gave national security assurances to Belarus, Kazakhstan, and Ukraine, affirming their territorial integrity and political independence. Russia claimed that the Budapest Memorandum was not applicable in Crimea.⁹

The Supreme Council of Crimea voted to hold a referendum on whether Crimea should become part of Russia.¹⁰ The referendum, not authorised by Ukraine,¹¹ was held on March 16, with official, but disputed, reports placing the outcome at 96.7% of voters in Crimea and Sevastopol voting in favour of joining Russia.¹² The following day, the Supreme Council of Crimea declared its formal independence as the Republic of Crimea¹³ and formally requested the admission of Crimea and Sevastopol as federal subjects of Russia. The Treaty on Accession of the Republic of Crimea to Russia was signed on March 18, 2014 and ratified by the Federal Assembly of Russia on March 21, 2014.¹⁴

In response to the referendum, the UN Security Council was called to vote on a U.S.-sponsored resolution reaffirming the Council's commitment to Ukraine's "sovereignty, independence, unity and territorial integrity" and declaring that the referendum "can have no validity." Russia vetoed the resolution, and the resolution failed to be adopted.¹⁵ The debate then moved to the General Assembly, which on March 27, 2014 adopted resolution 68/262 on the territorial integrity of Ukraine.¹⁶

The Resolution

The resolution confirms the importance of the customary international law principle embodied in Article 2 of the UN Charter, which obliges all states to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state and the need to settle international disputes by peaceful means. Specifically in relation to the situation in Ukraine, the resolution recalls the Final Act of the Conference on Security and Cooperation in Europe,¹⁷ the Budapest Memorandum on Security Assurances,¹⁸ and other treaties and agreements between Russia and Ukraine.¹⁹ The resolution acknowledges diplomatic efforts being undertaken by both the UN Secretary-General and the Organisation for Security and Cooperation in Europe and affirms that Ukraine did not authorize the March 16 referendum. The resolution calls on all states, international organizations, and other specialized agencies not to recognize "any alteration of the status of the Autonomous Republic of Crimea and the city of Sevastopol on the basis of the above-mentioned referendum and to refrain from any action or dealing that might be interpreted as recognizing any such altered status."

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The resolution was adopted with one hundred votes in favor, eleven votes against, and fifty-eight abstentions. Among those states voting against were Armenia, Belarus, Bolivia, Cuba, the Democratic People's Republic of Korea, Nicaragua, Russia, Sudan, Syria, Venezuela, and Zimbabwe. As a General Assembly resolution, the document is non-binding. As such, its legal force is essentially limited. The resolution does not mention Russia specifically, and its use of the terminology of "Autonomous Republic of Crimea and city of Sevastopol" could indicate at least a resignation to the status quo of the newly created Russian federal units.

However, there is some significance to the resolution, mainly due to the inclusion of the provisions in the resolution that confirm the "invalidity" of the March 16 referendum, that claim that the referendum cannot "form the basis for any alteration of the status of the Autonomous Republic of Crimea or of the city of Sevastopol," and that call on all states not to recognize "any alteration of the status of the Autonomous Republic of Crimea and the city of Sevastopol on the basis of the above-mentioned referendum." These phrases are significant in that they indicate the voting states hold grave concerns as to the legitimacy of the reported outcomes of the referendum and affirm that these states consider the referendum to be legally baseless as grounds for altering the status of Crimea and Sevastopol.²⁰

This has specific weight when one considers that the terminology used in the declaration of independence by Crimea was specifically modeled on that used in Kosovo's declaration of independence.²¹ In a statement issued on March 11, 2014, the Supreme Council of Crimea proclaimed that it was acting "with regard to the charter of the United Nations and a whole range of other international documents and taking into consideration the confirmation of the status of Kosovo by the United Nations International Court of Justice on July 22, 2010, which says that unilateral declaration of independence by a part of the country doesn't violate any international norms."²² As noted by Christian Marxsen, this is a false analogy on the part of the Crimean Supreme Council, for, as outlined by the ICJ in the Advisory Opinion on Kosovo,²³

unilateral declarations of independence can nevertheless be in violation of international law, namely where they "were, or would have been, connected with the unlawful use of force or other egregious violations of norms of general international law, in particular those of a peremptory character (*ius cogens*)" In regard to Crimea, the declaration of independence would have been impossible without Russian troops backing up the steps towards secession. Only the fact that Ukrainian forces on Crimea have been locked in their posts and that the public infrastructure has been taken over by pro-Russian forces made it possible to hold the referendum on which the declaration of independence is based. It can therefore hardly be argued that the declaration would not rely on the use of force. According to the criteria elaborated in the ICJ's advisory opinion, if that use of force was illegal, so was the declaration of independence.²⁴

Indeed, Russia's own response to the resolution suggests they recognize the potential significance behind the resolution and its terminology, with the Russian Foreign Ministry publicly condemning the resolution as a "counterproductive initiative [that] only complicates efforts to resolve the domestic political crisis in Ukraine" and accusing Western states of using the "the full force of the unspent potential of the Cold War-era propaganda machine [I]t is well-known what kind of shameless pressure, up to the point of political blackmail and economic threats, was brought to bear on a number of (U.N.) member states so they would vote 'yes.'"²⁵ Reports of "aggressive lobbying" by Russia's UN envoy against the resolution are evidence, according to some diplomats, that Russians were very concerned about the resolution and its potential impact.²⁶ Ukraine's own Ministry of Foreign Affairs has argued that the resolution will serve as "vital political guidance" for states in their own dealings with Ukraine and Russia. That Russia has sought to justify its conduct in Crimea as being in compliance with international law (or that the relevant rules are not applicable),²⁷ is also indicative of the significance of resolution 68/262.²⁸

Conclusion

In the months following the adoption of resolution 68/262, conflict in Ukraine has continued. The shooting down of the commercial airliner MH17 in July 2014 has only intensified the rhetoric and political posturing that has taken place regarding Russian involvement in Ukraine.²⁹ As such, resolution 68/262 remains an important touchstone regarding the legality of the annexation of Crimea and the city of Sevastopol and will prove significant in any future dealings with regards to Ukraine.

ENDNOTES

- 1 G.A. Res. 68/262, U.N. Doc. A/RES/68/262 (Mar. 27, 2014) [hereinafter Res. 68/262], available at http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/68/262.
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- 3 Carmen Fishwick, 'We Were So Naive and Optimistic': Ukraine Euromaidan Protesters Tell Us What's Changed For Them, THE GUARDIAN (Mar. 4, 2014, 3:11 PM), <http://www.theguardian.com/world/2014/mar/04/ukraine-crisis-protesters-kiev-euromaidan-independence-square>.
- 4 Shaun Walker, *Ukraine's Former PM Rallies Protesters after Yanukovich Flees Kiev*, THE GUARDIAN (Feb. 23, 2014, 7:00 PM), <http://www.theguardian.com/world/2014/feb/22/ukraine-president-yanukovich-flees-kiev>.
- 5 *Id.*
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- 9 Statement by the Russian Ministry of Foreign Affairs Regarding Accusations of Russia's Violation of its Obligations under the Budapest Memorandum of 5 December 1994 (Apr. 1, 2014), http://mid.ru/BDOMP/Brp_4.nsf/arh/B173CC77483EDEB944257CAF004E64C1?OpenDocument.
- 10 *See Crimean Supreme Council Backs Referendum's Rescheduling for Mar. 30*, KYIV POST (Mar. 3, 2014, 2:05 PM), <http://www.kyivpost.com/content/ukraine/crimean-supreme-council-backs-referendums-rescheduling-for-mar-30-338225.html>.
- 11 *See* G.A. Res. 68/262, *supra* note 1, which notes "that the referendum held in the Autonomous Republic of Crimea and the City of Sevastopol on 16 March 2014 was not authorised by Ukraine."
- 12 Ilya Somin, *Russian Government Agency Reveals Fraudulent Nature of the Crimean Referendum Results*, THE WASHINGTON POST (May 6, 2014), <http://www.washingtonpost.com/news/volokh-conspiracy/wp/2014/05/06/russian-government-agency-reveals-fraudulent-nature-of-the-crimean-referendum-results/>.
- 13 *Executive Order on Recognising Republic of Crimea*, PRESIDENT OF RUSSIA (Mar. 17, 2014, 10:30 PM), <http://eng.kremlin.ru/news/6884>.
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- 17 Organization for Security and Co-operation in Europe [OSCE], *Conference on Security and Co-operation in Europe: Final Act of Helsinki* (Aug. 1, 1975), available at <http://www.osce.org/mc/39501?download=true>.
- 18 Budapest Memorandum, *supra* note 8.
- 19 The Treaty on Friendship, Cooperation and Partnership between Ukraine and the Russian Federation, Ukraine-Russ., May 31, 1997, U.N. Doc. A/52/174, annex I; Alma-Ata Declaration, Dec. 21, 1991, 31 I.L.M. 147 (1992).
- 20 Those States who voted for the resolution include 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. *See* UNITED NATIONS BIBLIOGRAPHIC INFORMATION SYSTEM, <http://unbisnet.un.org:8080/ipac20/ipac.jsp?profile=voting&index=.VM&term=ares68262> (last visited Oct. 22, 2014) for the voting record.
- 21 *See* Christian Marxsen, *Crimea's Declaration of Independence*, EJIL: TALK! (Mar. 18, 2014), <http://www.ejiltalk.org/crimeas-declaration-of-independence/>.
- 22 Парламент Крыма принял Декларацию о независимости АРК и г. Севастополя [Crimean Parliament Adopted the Declaration of Independence of the ARC and Sevastopol], Государственный Совет Республики Крым [The State Council of the Republic of Crimea] (Mar. 11, 2014), http://www.rada.crimea.ua/news/11_03_2014_1. *See also* *Statement by the Russian Ministry of Foreign Affairs Regarding the Adoption of the Declaration of Independence of the Autonomous Republic of Crimea and Sevastopol*, THE MINISTRY OF FOREIGN AFFAIRS OF THE RUSSIAN FEDERATION (Mar. 11, 2014), http://www.mid.ru/bdomp/brp_4.nsf/e78a48070f128a7b43256999005bcbb3/4751d80fe6f93d0344257c990062a08a!OpenDocument.
- 23 Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo (Request for Advisory Opinion), 2010 I.C.J. 403 (July 22).

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- 24 Marxsen, *supra* note 21, at ¶ 81 (quoting the ICJ Advisory Opinion on Kosovo). See also Jure Vidmar, *Crimea's Referendum and Secession: Why it Resembles Northern Cyprus More than Kosovo*, EJIL: TALK! (Mar. 20, 2014), <http://www.ejiltalk.org/crimeas-referendum-and-secession-why-it-resembles-northern-cyprus-more-than-kosovo/>.
- 25 *Russia Criticizes U.N. Resolution Condemning Crimea's Secession*, REUTERS (Mar. 28, 2014, 5:15 PM), <http://www.reuters.com/article/2014/03/28/us-ukraine-crisis-un-russia-idUSBREA2R0DA20140328>.
- 26 *Id.*
- 27 See Nico Krisch, *Crimea and the Limits of International Law*, EJIL: TALK! (Mar. 10, 2014), <http://www.ejiltalk.org/crimea-and-the-limits-of-international-law/>.
- 28 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/>.
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UNITED NATIONS GENERAL ASSEMBLY RESOLUTION ON
THE TERRITORIAL INTEGRITY OF UKRAINE*

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A/RES/68/262



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[without reference to a Main Committee (A/68/L.39 and Add.1)]

68/262. Territorial integrity of Ukraine

The General Assembly,

Reaffirming the paramount importance of the Charter of the United Nations in the promotion of the rule of law among nations,

Recalling the obligations of all States under Article 2 of the Charter to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, and to settle their international disputes by peaceful means,

Recalling also its resolution 2625 (XXV) of 24 October 1970, in which it approved the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, and reaffirming the principles contained therein that the territory of a State shall not be the object of acquisition by another State resulting from the threat or use of force, and that any attempt aimed at the partial or total disruption of the national unity and territorial integrity of a State or country or at its political independence is incompatible with the purposes and principles of the Charter,

Recalling further the Final Act of the Conference on Security and Cooperation in Europe, signed in Helsinki on 1 August 1975, the Memorandum on Security Assurances in Connection with Ukraine's Accession to the Treaty on the Non-Proliferation of Nuclear Weapons (Budapest Memorandum) of 5 December 1994,¹ the Treaty on Friendship, Cooperation and Partnership between Ukraine and the Russian Federation of 31 May 1997² and the Alma-Ata Declaration of 21 December 1991,

Stressing the importance of maintaining the inclusive political dialogue in Ukraine that reflects the diversity of its society and includes representation from all parts of Ukraine,

Welcoming the continued efforts by the Secretary-General and the Organization for Security and Cooperation in Europe and other international and regional organizations to support de-escalation of the situation with respect to Ukraine,

Noting that the referendum held in the Autonomous Republic of Crimea and the city of Sevastopol on 16 March 2014 was not authorized by Ukraine,

1. *Affirms* its commitment to the sovereignty, political independence, unity and territorial integrity of Ukraine within its internationally recognized borders;

* This text was reproduced and reformatted from the text available at the United Nations website (visited October 17, 2014), http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/68/262.

2. *Calls upon* all States to desist and refrain from actions aimed at the partial or total disruption of the national unity and territorial integrity of Ukraine, including any attempts to modify Ukraine's borders through the threat or use of force or other unlawful means;
3. *Urges* all parties to pursue immediately the peaceful resolution of the situation with respect to Ukraine through direct political dialogue, to exercise restraint, to refrain from unilateral actions and inflammatory rhetoric that may increase tensions and to engage fully with international mediation efforts;
4. *Welcomes* the efforts of the United Nations, the Organization for Security and Cooperation in Europe and other international and regional organizations to assist Ukraine in protecting the rights of all persons in Ukraine, including the rights of persons belonging to minorities;
5. *Underscores* that the referendum held in the Autonomous Republic of Crimea and the city of Sevastopol on 16 March 2014, having no validity, cannot form the basis for any alteration of the status of the Autonomous Republic of Crimea or of the city of Sevastopol;
6. *Calls upon* all States, international organizations and specialized agencies not to recognize any alteration of the status of the Autonomous Republic of Crimea and the city of Sevastopol on the basis of the above-mentioned referendum and to refrain from any action or dealing that might be interpreted as recognizing any such altered status.

*80th plenary meeting
27 March 2014*

ENDNOTES

1 A/49/765, annex I.

2 A/52/174, annex I.