

The Historical, Legal, and Political Contexts of the Russian Annexation of Crimea

by Lawrence A. Howard (March 2015)

An Introduction to Current Events

The legislative action was nothing new in the short, modern history of independent Ukraine. It had been proposed as early as 2002 by the Speaker of the Crimean Parliament. On February 27, 2014, the Parliament of the Autonomous Republic of Crimea within the Ukrainian state voted to hold a referendum scheduled on March 16, posing the question to the Crimean electorate as to whether Crimea should merge with Russia.^[1] Many tumultuous events occurred over the span of time between the parliamentary decision to hold the referendum and the actual Russian annexation of Crimea on March 18 in the aftermath of an overwhelming affirmative vote, and the tumult continues.

These events caught Western governments by surprise, and it was clear from the statements and reactions of several top Western policy makers that their lack of understanding of current events was underscored by both a weak comprehension of the sweep of history that had culminated those events and their embedment in liberal, western ideological notions that constrained their abilities to objectively understand events as they unfolded.^[2] As a reaction to being caught off guard, Western governments patched together a strategy that included sharp criticisms of Russian President Vladimir Putin, and the exclusion of the Russian Federation from the subsequent G8 summit. US President Barack Obama levied punitive sanctions that focused on the personal financial accounts of Putin and some of his closest associates. Not since the days of the Cold War had there developed such a gap of political misunderstanding and distrust between Russia and the West.

Was the desire expressed by the Crimean electorate legitimate? Was annexation of Crimea by the Russian Federation legally and politically justified? Were the actions of the G7 governments appropriate? What should American foreign policy be towards Russia in light of these events? Posing reasonable answers to these questions must begin with a look at the sweep of history that culminated in the current events.

Historical Context: Kievan Rus' to the Union of Soviet Socialist Republics

Russians and Ukrainians trace their origins back to Kievan Rus', an early confederation of principalities under the Grand Prince of Kiev that was established in 882 AD and was destroyed by the Mongols four centuries later. The Golden Horde sacked Kiev in 1240, and Kievan Rus' completely disappeared as a political entity in 1283.[\[3\]](#) From circa 1253, as the Mongol invasion declined from its zenith, the principality of Volhynai-Galicia based in Lviv in Western Ukraine, an area that had once been part of Kievan Rus', struggled to break its vassalage to the Mongols and only succeeded in 1349 when Polish forces took control of the principality.[\[4\]](#) Lithuania, Poland, and the Mongols contended for power in the area, while to the north, Moscow asserted itself as the heir to Kievan Rus'. Lithuania besieged Moscow in 1368 and again in 1370, failing to capture the prize, but weakened it enough so that in 1382 the Mongols conquered Moscow (Muscovy).[\[5\]](#)

Hajji Giray, a ninth generation descendant of Gengis Khan, rose to power in 1420 in what is now Crimea as the Mongol horde devolved. He took advantage of the disintegration of the Golden Horde and in 1449 proclaimed himself to be an independent ruler of the khanate of Crimea.[\[6\]](#) Following Giray's death in 1466 his two sons vied for control, in which context the Ottoman Turks successfully intervened, creating a vassal state out of the khanate of Crimea, requiring it to support Ottoman wars and religious leadership. By 1502, the Crimean Tatars had effectively rid themselves of attempts by the remnants of the Golden Horde to reassert control, in part by forging an alliance with Ivan III, who had finally ended Muscovy's vassalage to the Mongol conquerors in 1480. The Crimean Khanate began to raid Moscow's territory circa 1507, following the death of Ivan III.[\[7\]](#)

Ivan III, or "Ivan the Great," as he liked to be called, succeeded in establishing Muscovy as a big league player in the region, contending with the Lithuanians, the Poles, the Ottomans, and what remained of the Mongols. He married a Byzantine princess and laid claim to being the successor to Constantinople as the leader of the Eastern Orthodox Church and the sovereign of all the Rus'.[\[8\]](#)

In 1569, two of Muscovy's enemies joined forces in the Union of Lublin, an agreement between Poland and Lithuania that provided for a unified state and transferred to Poland sovereignty over the former Lithuanian Ukraine, with the exception of the provinces of Polissia and Beresteyschyna.[\[9\]](#) Poland was the dominant partner in the Union of Lublin, which lasted until its dissection (1772-1795) by Hapsburg Austria, Prussia, and Russia (no longer Muscovy in the 18th century, its leader termed the "Tsar of all the Russias.")[\[10\]](#) Thus the areas of the old Kievan Rus' confederation became fully incorporated within Czarist Russia and Hapsburg Austria as a result of the 18th century partition of Poland. The first appearance of an

independent political entity called "Ukraine" based on a Ukrainian national consciousness happened only in the 20th century.

The Crimean Khanate existed as an Ottoman vassal state from 1475 to 1774, and Tatar cavalry served the Sultan well in several campaigns against the Hapsburgs, the Poles, Moscow, and Kazan and Astrakhan, two other khanates born of the Golden Horde. In 1571, only two years after the Union of Lublin, a Crimean-Turkish army succeeded in looting and burning Moscow, but then lost heavily to Ivan the Terrible's (Ivan IV) army at the decisive Battle of Molodi.[\[11\]](#) If victory had gone the other way at Molodi, world history would have changed fundamentally, because the Grand Principality of Muscovy would have come under the suzerainty of the Ottoman Empire. In reality, occupation of the city of Moscow and control of the principality forever eluded the Crimean khans and the Ottoman sultans.

Catherine the Great pressed the Russo-Turkish War (1768-1774) with the grand aim of putting her grandson on a new Eastern Orthodox throne in Constantinople. The empress had to stop well short of that goal, but the war ended with the Treaty of Küçük Kaynarca confirming the first Ottoman loss to Russia of Crimean territory, the end of Crimean vassalage to the sultan, and Russian navigation rights in the Black Sea, the Bosphorus and the Dardanelles. The war left the Crimean khanate nominally independent, but in 1776, Catherine installed a pro-Russian khan, Shahin Girey. Rule by proxy proved unsatisfactory and in 1783 Catherine annexed Crimea to Russia and henceforth pursued an aggressive colonization program to "russify" the new territory.[\[12\]](#)

Ukrainian nationalism was nascent in the 19th century. Much of the western part of what is now Ukraine was included in the Austro-Hungarian Empire, and poverty prompted emigration of almost 2 million people to Canada and the United States in what came to be known as the "Ukrainian Diaspora."[\[13\]](#) If emigration had not been possible history might have recorded rebellion forged around an emerging Ukrainian nationalism. A larger number of émigrés in eastern Ukraine moved east and north into other Russian territories; estimates based on the last Soviet census in 1989 differ as to whether 6.8 million or as many as 20 million Ukrainians lived in the USSR outside Ukraine.[\[14\]](#) On the eve of independence in 1991, the estimated population in Ukraine was 52,000,470 compared to 45,373,000 in 2013 prior to the loss of Crimea.[\[15\]](#) Emigration and a declining birth rate today characterize general Ukrainian demographics.

Emigration became a significant demographic factor in Crimea in the 19th century, too. By one account, from the time of Russian annexation in 1783 through to 1897, the Tatar population engaged in an exodus to Turkey that resulted in its percentage of the Crimean population

falling from 83% to 34%.[\[16\]](#) Population data from the time are problematic, but there seems to be a general consensus of authorities that the exodus significantly degraded the Tatar presence in Crimea. [\[17\]](#) As a result, Tatar nationalism developed some expression in diaspora during the late 19th and early 20th centuries, but was negligible in Crimea. The most significant expression of Tatar identity within Russia had less to do with a Tatar consciousness and more to do with a “modern” Muslim consciousness applied to all the Muslim and Turkic peoples within Russia, as conceived by the notable Crimean intellectual of the time, Ismail Gasprinski.[\[18\]](#)

The revolutions that shook Russia in 1917, beginning with the collapse of the Romanov dynasty in February, created an opportunity for some elitist Ukrainian nationalists in Kiev to set up the Ukrainian People’s Republic. The most significant political problem faced by these members of the intelligentsia was that “the Ukrainian people did not yet exist and could not act as a single entity.”[\[19\]](#) The western part of Ukraine saw similar developments after the Austro-Hungarian Empire collapsed in November, 1918, when the West Ukrainian People’s Republic was established by Ukrainian nationalists who, albeit more conservative than their contemporaries in Kiev, shared with them the lack of a popular base.[\[20\]](#) Both experiments were short-lived, as the Poles dominated the west and the Bolsheviks subjugated the east.

Crimea and Ukraine shared the distinction of being the locales for decisive Bolshevik victories in the Russian civil War of 1917-1920, including the Red Army’s defeat of the last big White army commanded by General Pyotr N. Wrangel in November, 1920. Thereafter, when Stalin succeeded Lenin in January 1924, he discarded the original Bolshevik anticipation that the Russian Revolution would spark Communist takeovers in other areas of Europe, (particularly war-wracked Germany), and proclaimed “Socialism in One Country.” Lenin and Stalin forged a policy on nationalities that ultimately resulted in the proclamation of the Union of Soviet Socialist Republics, consisting of three “republics,” and eleven “autonomous republics.”[\[21\]](#)

Crimea became one of the autonomous republics, an elevated status in comparison with what it had under the czars as simply another province of the Russian Empire. Lenin and Stalin’s purpose was not, however, to grant political independence of any kind to Crimea or any other of the other nationalities within Russia. Instead, their purpose was to strengthen rule from Moscow by using ethnic-based local leaders.[\[22\]](#)

Ukraine was recognized as a full, “sovereign” republic, but its inclusion in the Union of Soviet Socialist Republics abrogated any practical expression or realization of Ukraine’s sovereignty, and independence therefore eluded the Ukrainian nationalists. There were Ukrainian nationalists who actively tried to subvert Soviet control, including the

Organization of Ukrainian Nationalists (OUN), which had its greatest strength in western Ukraine. The OUN initially welcomed the Nazi invasion of the Soviet Union, but Hitler considered Ukrainians to be *untermenschen*, and his vision of *lebensraum* included a Ukraine (and Crimea) depopulated of non-German nationalities and open to German settlement.[\[23\]](#) OUN persisted in activities after the Nazi invasion was repulsed. Nikita Khrushchev later revealed in his famous secret speech of 1956 that the only reason that Stalin did not consign Ukrainians to the same forced exodus as he perpetrated on the Crimean Tatars was because the Ukrainian population was too large and there was no good place to relocate it to. Even so, “hundreds of thousands of West Ukrainians were killed or deported in the late 1940s.”[\[24\]](#)

Crimea had an even briefer taste of independence than did Ukraine in the immediate aftermath of the Russian Revolution. The Milli Firka, a socialist-oriented Muslim group, proclaimed an independent Tatar state in December, 1917, which the Bolsheviks crushed in January, 1918.[\[25\]](#)

When Stalin forced the Tatars out of Crimea, charging them with the collective guilt of collaboration with the Nazi invaders, he removed the status of Crimea as an “autonomous republic,” but the region remained part of the Russian Soviet Federated Socialist Republic. It was Nikita Khrushchev who changed Crimea’s status in 1954 on the 300th anniversary of the supposed unification of Ukraine and Russia via the Treaty of Pereiaslav by administratively moving Crimea from Russia to the Ukrainian Soviet Socialist Republic.[\[26\]](#) Khrushchev’s move did not please Russian nationalists, but in 1954 nobody in the Soviet ruling elite foresaw the collapse of the USSR, and the Crimean population was overwhelmingly either of Russian ethnicity or Russophone.[\[27\]](#)

Whatever disgruntlement Russians had at Khrushchev’s action, none of his successors reversed it. Tatar activists pressed unsuccessfully throughout the post-Stalin era for the “right to return.”[\[28\]](#) Neither Khrushchev nor his successors welcomed the Tatars back from their internal exile in Central Asia to which Stalin had consigned them until under Mikhail Gorbachev in 1989. Then, the newly established Soviet Parliament established a commission that approved the Tatars’ right to return.[\[29\]](#)

Dissolution of the USSR

New folklore in Russia includes a story about the “three blockheads,” who “tore the country apart,” the blockheads being Russian President Boris Yeltsin, Ukrainian President Leonid Kravchuk, and the Belarusan President, Stanislav Shushkevich.[\[30\]](#) Whether these three politicians were responsible for the death of the Soviet Union, or whether that union was already dead, their meeting on December 7, 1991 in the Belovezha Forest (the so-called “Forest

Coup”) put an official imprimatur on the secession of three of the most significant republics of the USSR, and established the loosely associated Commonwealth of Independent States. The meeting had no legal authority under the Soviet constitution, and although Soviet President Mikhail Gorbachev was aware of the meeting, he may have been under the impression that Boris Yeltsin would be advocating Gorbachev’s own proposal for a new Union treaty that would keep the Soviet republics united.

Kravchuk attended the meeting in the wake of a referendum in which 90% of those who voted (76% of the eligible electorate) approved the independence of Ukraine,^[31] The referendum was held on the basis of a declaration of independence by the Ukrainian Rada (parliament) immediately following the attempted August coup against Gorbachev. Belarus declared independence a day after the Ukrainian Rada acted.^[32] In fact, at the time of the “Forest Coup,” only Russia and Kazakhstan of the fifteen sovereign republics of the USSR had not declared independence.^[33]

President George H. W. Bush extended US diplomatic recognition to Ukraine and other former republics of the Soviet Union on Christmas Day, 1991, the same day that Mikhail Gorbachev resigned. Addressing the American nation, Bush stated, “Eastern Europe is free. The Soviet Union itself is no more.”^[34]

As the 1980s ended, polling in Ukraine did not indicate an overwhelming desire in the population to secede from the Soviet Union, with only 20% favoring independence.^[35] Ukrainian independence came about not because of Ukrainian nationalism and a cohesive popular consciousness and struggle leading to revolution, but because of the unexpectedly swift economic and political collapse of the USSR, the specter of Soviet revanchism as exemplified by the August 1991 coup attempt, and the political opportunism of consequential personalities.

Leonid Kravchuk, for example, was described as a “loyal hack in the (Communist) party’s agitprop department”^[36] in the forefront of efforts to stifle the development of Ukrainian nationalism. As the USSR devolved Kravchuk did an about-face between November 1990 and June 1991 to wave the banner of Ukrainian sovereignty and got himself elected President, beating out long-time nationalists. Kravchuk’s case was not unique. Throughout the fifteen constituent republics of the USSR, party hacks picked up the reins of power that had fallen loose in Gorbachev’s hands.^[37]

The lack of a strong Ukrainian national consciousness combined with the demographic elements of a large ethnic Russian community, the pervasive use of the Russian language, and the dominance of Russian culture, especially in eastern Ukraine, meant that independent Ukraine

started its “unexpected”[\[38\]](#) life with a lot of odds stacked against it.

In 1989 when the Soviet Parliament approved the right of return to Crimea for exiled Crimean Tatars, there began a wave of expatriate Tatars coming “back” to Crimea, many of them individuals who had never lived in the Tatar homeland. Census figures indicated that in 1989, only 38,000 Tatars remained in Crimea, while in Central Asia and Siberia the Tatar population was approximately 500,000. By 1993, when the flow began to sharply drop, nearly 260,000 Tatars had returned to Crimea.[\[39\]](#) The returning expatriates encountered a bleak homecoming. There were few jobs, a shortage of housing, and deep resentment at the influx of newcomers among the population already living in Crimea, especially within the ethnic Russian community. In 1996, Vadim Petrov, the deputy head of the Crimean State Committee on Nationality Affairs reported the following statistics on Tatars living in Crimea:

- 15% were characterized as “wealthy”
- 20% “comfortable lifestyles”
- 35% “on the edge”
- 30% “in abject poverty”[\[40\]](#)

The Tatar population has its own coordinating body, the Mejlis, which had no official standing when Crimea was part of independent Ukraine, but served to advocate Tatar interests and attempted to effectively interact with the Ukrainian and Crimean governments and the Ukrainian nationalist organization, the right-of-center political party, Rukh.[\[41\]](#) The former, leader of the Mejlis from its inception in June 1991 through October 2013 is Mustafa Jemilev (Dzhemilev), a member of the Ukrainian Parliament since 1998.[\[42\]](#) In 1996 he recognized that if all Crimeans outside of Crimea returned to the Tatar homeland, they would constitute only about 17% of the Crimean population.[\[43\]](#) Whatever services the Mejlis does for the Tatars, and whatever interaction it may have with Ukrainian nationalists, the organization is committed to reinforcing Tatar consciousness and identity.[\[44\]](#)

Competing Identities and a Territory in Conflict

The Tatar desire to fight assimilation is matched in opposition by the desire of ethnic Russians and Russophile Ukrainians both within Crimea and other parts of Ukraine to retain their identity and Russian links, and not assimilate into a new Ukrainian nation. Moreover there has been a latent fear within Crimea by the majority of the population that a pro-Western government in Kiev might grant some sort of autonomous national territory status to

the Tatars.[\[45\]](#)

In addition to Crimea, the ethnic Russian and Russophile presence is dominant in the Ukrainian provinces of Donetsk and Luhansk. Donetsk at this writing is now militarily in the hands of Russian separatists, who established a “People’s Republic of Donetsk” on April 7, 2014.[\[46\]](#) During the 2004 presidential electoral controversy, a second round of voting resulted in Russophile Victor Yanukovich being declared the winner. In response, on November 27, 2004 the Ukrainian parliament declared the results of the runoff election invalid and the next day, the provincial parliament of Yanukovich’s home province, Donetsk, called for a referendum on the question of secession.[\[47\]](#) The Russian separatists who have a grip on the southern part of Luhansk have also proclaimed a republic, but have been harder pressed than the separatists in control of Donetsk to defend themselves against the Ukrainian army.[\[48\]](#) No nation state, not even the Russian Federation, has formally extended diplomatic recognition to the Donetsk and Luhansk republics.

Elections in Ukraine since 1991 demonstrate the split between Ukrainians, Russophiles, Russians, and Tatars.[\[49\]](#) Majority rule in a democratic society only works well when all contenders share an underlying agreement to disagree, and are convinced that each has the opportunity in the next election, unfettered by corrupt manipulation, to pursue its agenda in the marketplace of ideas and persuade the electorate to “throw the rascals out.” It is this agreement, for example, which is a fundamental part of the national consciousness of what makes “we the people” in the United States. The American agreement broke down in 1860 and civil war resulted. If such an agreement ever existed in Ukraine, it was weak at the outset of Ukrainian independence in 1991, and by February 2014 when the Parliament of the Autonomous Republic of Crimea called for a referendum on secession, it had frayed apart.

Legitimacy of the February 2014 Referendum in Crimea

In an attempt to resolve the 2004 Ukrainian presidential election crisis, and as a development of the “Orange Revolution,” the Ukrainian Parliament in December 2004 amended the country’s constitution, significantly curtailing presidential powers. The amendments were immediately approved by the outgoing President Kuchma, and proclaimed as law, albeit the timing and process was suspect to some critics, both internal and external to Ukraine.[\[50\]](#) Victor Yanukovich successfully reprised his run for the presidency in the election of 2010. Once he got in office, the Constitutional Court of Ukraine ruled that the 2004 amendments to the Constitution were illegitimate.[\[51\]](#)

Six days before the Crimean Parliament voted to hold a referendum on whether the autonomous

republic should merge with Russia, the Ukrainian Parliament on February 21, 2014, reversed the 2010 reestablishment of the original Constitution as part of the Ukrainian nationalist "Orange" members' fight to constrain Victor Yanukovich.[\[52\]](#) However, these yo yo politics targeting the Constitution had to do with changing from a strong presidential form of government to a strong prime ministerial form, and had nothing to do with the self determination of Crimea, Donetsk, or Luhansk. Throughout the fight about governmental form, whatever the legalities and due process of the amendments or the politics of it, the Ukrainian Constitution recognized that the people were sovereign. Chapter I, General Principles, Article 5, was not part of the amended language and reads:

Ukraine is a republic.

The people are the bearers of sovereignty and the only source of power in Ukraine. The people exercise power directly and through bodies of state power and bodies of local self-government.

The right to determine and change the constitutional order in Ukraine belongs exclusively to the people and shall not be usurped by the State, its bodies or officials.

No one shall usurp state power.[\[53\]](#)

A clear interpretation of the language in Article 5 is that "the people" are directly sovereign, the State cannot usurp the sovereignty of the people, and therefore if the people of Crimea overwhelmingly support merger with Russia, that is their legitimate right. Moreover, Chapter II Article 21 states that "Human rights and freedoms are inalienable and inviolable," and Article 22 asserts that "Human and citizens' rights and freedoms affirmed by this Constitution are not exhaustive."[\[54\]](#) Consider, in context of the language of the foregoing articles, that Ukraine is a party to the United Nations Charter, an international agreement that affirms a peoples' right to self-determination, in Chapter I, Article 1, Section 2:

To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;[\[55\]](#)

There is a strong legal case that, by its own Constitutional language, and by the language of the UN Charter to which Ukraine must adhere, Ukraine, and other interested parties, should respect the right of the people of Crimea, as overwhelmingly expressed by referendum, to be annexed by Russia. The official G-7 statement against the annexation issued a few days before

the Crimean referendum alleges that Russian annexation of Crimea would violate international law in two primary ways: intimidation of the Crimean electorate by the presence of Russian troops, and violation of provisions of the Helsinki Final Act and three other treaties that affirm Ukraine's territorial integrity, and established boundaries.^[56] President Barack Obama reiterated these ideas directly to President Vladimir Putin in a telephone call on the day of the referendum.^[57] Neither the G-7 statement nor official US objections have dealt directly with the Crimean electorate's right to self-determination except to reject the legitimacy of the referendum.

At this writing, the best authority on whether a group or province within an existing state has a right under international law to self-determine it is the advisory opinion of the International Court of Justice as to the *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*.^[58] In that opinion, the court evaded the issue of whether the right of self-determination confers upon a population of an existing state the right to secede. It however found that international law did not generally prohibit declarations of independence.

Was the Western objection correctly based on the idea that the Crimean referendum was illegitimate because the electorate was under duress of Russian military intervention? The best way to answer this objection is to compare the context of the Crimean referendum with other elections that have been brought about in the context of outside military intervention. Two recent high profile instances under a Democratic US President suffice for purposes of answering this question:

- US interventions in Haiti, 1993 and 1994
- US interventions in Bosnia and Kosovo, 1995 and 1999

A Comparison with Haiti

In the case of Haiti, Jean-Bertrand Aristide, a radical former Catholic priest, was elected President in December 1990, after less than five years of military rule in Haiti that had followed in the wake of the exile of "president for life" Jean Claude Duvalier in February, 1986. Aristide's politics offended many established interests in Haiti, and a military coup ousted him in September 1991 less than a year after he took office. The administration of President George H.W. Bush had been cool to Aristide's policies, but its approach in the wake of the coup was to pressure "the de facto Haitian military regime to restore constitutional democracy." ^[59] In the waning days of his administration, Bush conducted a humanitarian

intervention in the failed state of Somalia, but saw no American interests in Haiti, humanitarian or otherwise, that warranted an intervention. He called for restoration of democracy, and worked within the Organization of American States to embargo trade with Haiti.^[60] Bush did not pursue the matter in the UN; the United States supported two General Assembly resolutions that called for the reinstatement of Aristide, but no action in the Security Council where it would have been meaningful under international law.^[61] George H.W. Bush's successor, Bill Clinton, saw the Haitian matter differently.

Almost from the day of the 1991 military coup in Haiti, some American liberals saw "that the Haitian situation could provide a good test case for the newly fashionable doctrine of "humanitarian intervention."'^[62] It took them longer, but by 1994 some Republicans also climbed on the intervention bandwagon. The support for Clinton, albeit somewhat bipartisan, was not overwhelming, and in view of the disaster that had become Clinton's in Somalia, and the impending Congressional elections of 1994, an intervention in Haiti had the potential to go very wrong for Clinton. Pulitzer Prize winner Taylor Branch reported that Clinton told him "his closest friends in the U.S. Senate advised him in person that his contemplated military intervention was worse than misguided or foolish – it was insane."^[63]

Clinton's first effort to restore Aristide came on October 11, 1993, a little less than a year before the 1994 invasion of Haiti. At the time, Clinton had used the threat of force to get the so-called "Governors Island Accord" between Aristide and the Haitian coup leader, Lieutenant General Raoul Cedras. The agreement, supported by the UN Security Council,^[64] called for the reinstatement of Aristide, and Clinton sent the *USS Harlan County*, a tank landing ship, to Port au Prince in order to prepare the way for Aristide. Onboard were the members of the newly-established UN Mission in Haiti (UNMIH). A week earlier the American intervention in Somalia had suffered the major debacle of the Battle of Mogadishu, later immortalized in the movie, *Black Hawk Down*. In that context, and the fact that one small American ship had been dispatched, Cedras reneged on the Governors Island Accord and the *Harlan County* was met with violent protestors. Clinton backed off.^[65]

The ostensible purpose of Clinton's action was to re-instate a democratically elected leader, and in the process, improve the social and economic conditions of the people of Haiti, therefore a "humanitarian" intervention. The humanitarian characterization of Clinton's approach to Haiti stands in stark contrast to the objective of President George H.W. Bush's humanitarian intervention in Somalia, which was to control the logistical levers of the distribution of relief supplies and make sure that those supplies were fairly distributed to the population that needed them. The original mission had nothing to do with removing warlords from power or nation building; that "mission creep" began with the Clinton Administration.

Neither Clinton nor Bush directly addressed the right of Somalis to self-determination; but, in the case of Bush, UN Security Council action preceded and authorized the intervention by US forces. In the case of the *Harlan County* there was no UN or OAS umbrella authorization for use of force, merely resolutions that supported and implemented the Governor's Island Agreement.

Compared with the two American "humanitarian" interventions, there is nothing remarkable or notably illegal about Russian President Vladimir Putin's annexation of Crimea.

Just as did Clinton, Putin professed to recognize the democratic vote of the population involved. The Haitian election was beset by some controversy, but the overwhelming vote in 1990 was for Aristide, just as the overwhelming vote in the Crimean plebiscite of 2014 was for joining Russia. The vote in Crimea was consistent with voting patterns already established and voter self-identification with ethnic and natural groupings, belying any validity to the Western charge that the plebiscite was taking place under the duress and intimidation of Russian troops. Assuming that reinstating a democratically elected president to power is "humanitarian" in that it gives effect to the people's right to self-determination, then Putin's action to accept the verdict of the Crimean plebiscite was no less humanitarian or subject to criticism than Clinton's attempt to reinstall Aristide.

The second part of Clinton's intervention in Haiti was more organized, and whatever the risk, it went smoothly. Four days after the *Harlan County* withdrew from Port-au-Prince, the UN Security Council, at the urging of the Clinton Administration, engaged in a traditional act of war against Haiti, *i.e.* it imposed a naval blockade, although the term "blockade" was not used in resolution 875.[\[66\]](#) It took the Clinton Administration less than a year after the *Harlan County* incident to build support in the United Nations Security Council to promulgate Resolution 940 on July 31, 1994, authorizing the establishment of a multinational force to "to use all necessary means to facilitate the departure from Haiti of the military leadership."[\[67\]](#) Clinton sent former President Jimmy Carter to Haiti as an emissary, along with Colin Powell and Sam Nunn in advance of the invasion force, and the Haitian military leaders stepped down, avoiding war.[\[68\]](#)

The invasion force, which deployed on Haiti without armed opposition on September 19, 1994, was overwhelmingly American, but there were small contingents of troops from Caribbean island nations that participated, giving the force its "multinational" character as called for in Resolution 940. Aristide returned to re-take the office of President of Haiti on October 15, 1994 after the former military rulers went into exile, and on March 31, 1995 the multinational force officially turned over its responsibilities to the United Nations Mission in Haiti

(UNMIH).

Although Aristide was the “democratically elected” President of Haiti, he had his dark side. During the chaos that culminated in his ouster, he was reportedly fond of using a “burning tire” necklace on his detractors, and was coached by American psyops specialists prior to the 1994 invasion about how to keep conciliatory language in and “incendiary” language out of his communiqués.[\[69\]](#) It would be interesting to know how (or whether) American and UN officials squared Aristide’s dark side with the preamble of Resolution 940, which stated, “gravely concerned by the significant further deterioration of the humanitarian situation in Haiti...”[\[70\]](#)

As a result of the 1994 invasion, the economic sanctions and naval blockade were lifted on Haiti, and a restored Aristide agreed to an economic package that, according to some critics on the left, devastated Haitian agriculture in favor of cheap imports from American agribusinesses.[\[71\]](#) Others have detailed the disastrous outcomes of the 1994 intervention. It is the purpose of this article to create some international legal and political bases of comparison with the later Russian annexation of Crimea rather than explore the depths of the Haitian intervention.[\[72\]](#) Those bases are:

- Equating an humanitarian purpose with respecting the democratic wishes of the local population
- Respect for a people’s right to self determination
- Forcing a result under duress of military intervention

As regards the first base of comparison, in the 1994 intervention in Haiti, liberal Democratic and other American foreign policy elite opinion and the explicit language of UN Security Council Resolution 940 assumed that restoring Aristide would improve the lives of Haitians. As regards the second base, inexplicit but implied in the intervention was the idea that people self-determine themselves through democratic voting, and therefore restoring the democratically elected Aristide was respect for the Haitians’ right of self-determination. Raul Cedras and the other Haitian officers in the Haitian military leadership certainly operated under the duress of threatened US military intervention, both in terms of signing the Governor’s Island Agreement, and accepting Aristide’s return in 1994. The *Harlan County* incident can be said to be an instance of the Haitian military calling Clinton’s bluff in the immediate wake of the American disaster in the Battle for Mogadishu.

Following the restoration of Aristide, and prior to the presidential elections in 1996, parliamentary and municipal elections were held in Haiti on June 25, 1995. There were many international observers, including Robert A. Pastor from the Carter Center, who reported that although the UN troops provided a "reasonably secure environment," the elections were a mess:

Of 13 elections that I have observed, the June 25th Haitian elections were the most disastrous technically with the most insecure count. I personally witnessed the tainting of about one-third of all ballots in Port-au-Prince. The best that could be said of the irregularities is that they did not appear to be a part of a centralized or coordinated effort. Indeed, it is probably more accurate to state that Haiti's problem was that no one seemed to be in control.[\[73\]](#)

If one of the humanitarian purposes of the intervention in Haiti was to respect the democratic wishes of the local population, the only comfort that can be derived from the outcome is that Haiti had elections, as disastrous as they might be.

The situation in Haiti took place in America's back yard, long highlighted by the Monroe Doctrine as within America's direct sphere of influence. In fact, the original American invasion of Haiti was ordered in 1915 by then-President Woodrow Wilson to stave off potential European intervention to collect debts. There is no little irony that Bill Clinton, a neo-Wilsonian idealist, presided over the 1993 and 1994 interventions. With respect to Haiti, Crimea shares Haiti's geopolitical characteristic of being located within the direct sphere of influence of one of the world's major powers.

A Comparison with Interventions in Bosnia and Kosovo

American intervention in the crumbling state of Yugoslavia was a different matter, the territory being located in the belly of Europe, and outside the boundaries of any member of the North Atlantic Treaty Organization (NATO). In fact a good case can be made that the political linkage with Russia is more direct than to any interest of the United States. Yugoslavian ethnic politics has always been a matter of concern to modern Russian rulers, the Russians generally supporting Serbians as a fellow Slavic people. Russia's historic stance is part of the explanation of Russia's alliance with Britain and France against the Central Powers in World War I. Moreover, Yugoslavia, while styling itself as "nonaligned," had been ruled by the Communist Party as part of the Eastern Bloc from the beginning of the Cold War, another link to Russian interests.

Some of the earliest NATO airstrikes against Bosnian Serbs in August 1995 were justified as enforcing a "no-fly" zone over all of Bosnia-Herzegovina that had been established by UN

Security Council Resolution 781;[\[74\]](#) but, continued American and NATO intervention in the former Yugoslavia, in particular the bombing campaign in Kosovo, "Operation Allied Force" that began in March, 1999, was not directly sanctioned by the United Nations Security Council. The intervention is also the first time that NATO acted outside the original scope of the regional defense treaty, *i.e.* no member nation faced invasion from an aggressor. NATO's action in Yugoslavia is now a precedent that can be used by the Obama Administration in Ukraine, another European country not a member of the organization, and not tied to the United States by any formal alliance.

The role of international law in the American and allied calculus on how to justify the interventions in Bosnia and Kosovo can be summed up in a famous story about Secretary of State Madeline Albright related in a well-respected contemporary textbook of international law:

During the debate over whether NATO should take action against Serbia, when British Foreign Secretary Robin Cook told U.S. Secretary of State Madeline Albright that he had "problems with our lawyers" over using force against Yugoslavia without UN Security Council approval, Secretary Albright reportedly responded, "Get new lawyers."[\[75\]](#)

The multiple military interventions 1995-1999 faced tough criticism and opposition from Russia, and Russia's status as a permanent member of the Security Council ruled out obtaining the kind of authorization from that body that the Clinton Administration and NATO would have required to conduct Operation Allied Force. Another permanent member of the Security Council, China, also criticized NATO intervention in the former Yugoslavia, as did many other countries. The official reality of a moral necessity to intervene against the evil Serbs was in fact primarily Anglo-German, and not overwhelmingly shared by many countries.[\[76\]](#)

President George H.W. Bush did not consider Yugoslavia of critical importance and viewed it as a regional problem that Europe should handle with the primary goal of keeping any infighting from going beyond Yugoslavia.[\[77\]](#) Until 1991, American policy towards Yugoslavia was to work to keep it intact; but that policy failed with the Croatian and Slovenian declarations of independence.

American policy against secessionist moves changed sharply, but informally in February, 1992, when, according to several accounts, the last US Ambassador to the former Yugoslavia, Warren Zimmerman, torpedoed an agreement between Bosnian Muslims, Serbs, and Croats to decentralize Bosnia. The agreement would have, in effect, created decentralized "cantons" that gave Serbs, in areas that were not contiguous, approximately 44 percent of Bosnian territory as the price for keeping Bosnia intact within what was left of Yugoslavia. Ambassador Zimmerman saw this

so-called "Lisbon Plan" as a Serbian power grab and influenced the Muslim representative at Lisbon to renege on his signature of the agreement.[\[78\]](#) The consequence was to reinforce the activities of the Serbian secessionist movement within Bosnia, and to thereafter directly align the United States against Serbia as the villain.

Secretary of State Lawrence Eagleburger called for Serbian President Slobodan Milosevic to be brought to trial for war crimes in the waning days of the administration of President George H.W. Bush.[\[79\]](#) Meanwhile, in October 1991, out-going UN Secretary General Javier Perez de Cuellar appointed the former Carter Administration Secretary of State, Cyrus Vance, as his personal envoy for Yugoslavia to try and negotiate a peaceful settlement that all parties in Yugoslavia could accept. Ultimately, Vance's mission culminated in the organization of a UN peace-keeping operation, the UN Protective Force in Yugoslavia (UNPROFOR), fully authorized by UN Security Council Resolution 794 on April 7, 1992.[\[80\]](#) A small group of 900 Russian soldiers became part of UNPROFOR in 1993, amidst "intense domestic debate."[\[81\]](#)

Incoming in January 1993, the Clinton Administration accelerated the aggressive new American stance, and gave it humanitarian definition by beginning to cast its policies in moralistic terms as reports came of Serbian forces engaging in "ethnic cleansing," rape by Serbian troops and other atrocities. Clinton's anti-Serbian policy manifested a hard edge, beginning in April, 1994 with the first NATO air strikes by two American F-16Cs against Serbian forces that were about to overcome the Bosnian town of Gorazde.[\[82\]](#) The town had protected status under UNPROFOR rules of engagement, and Article 5 of Resolution 749 called upon all parties to particularly refrain from violence "in any area where the Force is to be based or deployed."[\[83\]](#)

The strikes at Gorazde were called in by British Lieutenant-General Sir Michael Rose, commander of local UN Peace-keeping forces stationed in the Muslim village. Over a year later, beginning in August 1995, air strikes against Serbian forces in Bosnia were ostensibly for purposes of enforcing the UN-established no-fly zone and protected enclaves; but, the American-led NATO strikes benefitted Bosnian forces by crippling Serbian positions on the ground.[\[84\]](#) As a direct result of NATO demonstrating its muscle and Serbian forces losing ground, the parties all agreed to meet at Wright-Patterson Air Force Base and produced the so-called Dayton Agreement, signed in December 1995. It resolved the issue of Bosnia and established an independent state, the Republic of Bosnia and Herzegovina.[\[85\]](#)

Elections were then held in September 1996 for the Bosnian Parliament, monitored and certified by the Organization of Security and Cooperation in Europe (OSCE). Despite the fact that there was reported fraud, and despite the presence of foreign troops in Bosnia, the elections were

hailed as progress. A retired American diplomat, Robert H. Frowick, led the OSCE mission in Bosnia and was candid in admitting that the elections were not free and democratic, but rather “provided the mechanism to help overcome the centrifugal forces unleashed by the war.”[\[86\]](#)

President Boris Yeltsin of Russia severely criticized the 1995 NATO attacks.[\[87\]](#) There was no issue of a Russian veto in the UN Security Council because the air strikes were formally authorized by NATO and its member states, not by the United Nations. The Dayton Agreement, in its Annex 1A, Agreement on the Military Aspects of the Peace Settlement, invited the United Nations Security Council to “to adopt a resolution by which it will authorize Member States or regional organizations and arrangements to establish a multinational military Implementation Force,”[\[88\]](#) and the Clinton Administration approached Russia for its support, using the carrot that Russian troops should be among the so-called Implementation Force (IFOR).

The Russian Federation participated in IFOR because of a combination of reasons, the broadest being that in the wake of the Cold War and the 1991 August coup failure, there was a sentiment in Russia and an attempt in the new Yeltsin government to become “part of the family” and demonstrate its support of the same democratic values embraced in the West.[\[89\]](#) Another important factor was that Russia wanted NATO to change its character from that of a military alliance directed against Russia into a multilateral political organization of which Russia would be a major partner. The first step in this approach to remaking NATO had actually occurred in Gorbachev’s final year during the negotiations on the reunification of Germany when Russia was given assurance that the NATO military alliance would not expand “one inch to the east.”[\[90\]](#)

The Warsaw Pact, by mutual agreement of its member states, dissolved on March 31, 1991, prior to the August coup.[\[91\]](#) Filling the void, and in Russian eyes seemingly offering promise of NATO’s transformation into an inclusive political organization, NATO established on December 20, 1991 the North Atlantic Cooperation Council (NACC), of which all members of the Commonwealth of Independent States (CIS) became members by March, 1992. Demonstrating the pace of transformation in East-West relations, the Soviet delegate at the meeting at which the NACC was established announced that the Union of Soviet Socialist Republics was in the process of dissolution and he was now therefore representing the Russian Federation.[\[92\]](#)

Within two years of the establishment of NACC, the Clinton Administration gave fodder to both the skeptics within Russia, such as the nationalists and the Communists, who were wary or outright derisive of the idea that Russia could become a partner of the West, and to the so-called “Atlanticists” who thought there was the possibility of a Russian-Western partnership. Anthony Lake, President Clinton’s National Security Advisor, gave a major foreign

policy address on September 21, 1993, at the Johns Hopkins University School of Advanced International Studies, in which he linked NATO's military role with a new era of expansion of market economies as compared with the old era of containment. For the Russian nationalists and Communists, Lake's remarks were a signal that NATO would expand right up to Russian borders. For the Atlanticists, the comments dovetailed with the idea that Russia could become part of the family of market economies by being an equal partner in a transformed NATO. Lake had stated:

The military problem involves NATO. For half a century NATO has proved itself the most effective military alliance in human history. If NATO is to remain an anchor for European and Atlantic stability, as the President believes it must, its members must commit themselves to updating NATO's role in this new era. Unless NATO is willing over time to assume a broader role, then it will lose public support, and all our nations will lose a vital bond of transatlantic and European security. That is why, at the NATO summit that the President has called for this January, we will seek to update NATO so that there continues behind the enlargement of market democracies an essential collective security.[\[93\]](#)

The January 1994 NATO summit resulted in the announcement of a new "Partnership for Peace" (PFP) program that, according to the official communique of NATO heads of state, would "transform the relationship between NATO and participating states."[\[94\]](#) The PFP held out the clear hope to former Warsaw Pact states such as Poland that at some point they could become full partners; but, at the same time the PFP did not expand NATO membership east of Germany. Some of the foreign policy elite within the United States and in NATO countries considered the PFP to be a brilliant piece of diplomacy, balancing contending interests. However, it also provided fodder for disgruntlement because, in the balance, it did not clearly give any of the contending interests exactly what was wanted.[\[95\]](#) Moreover, the Declaration of NATO Heads of State in January 1994 did not refrain from criticizing Russian use of force:

The situation in Southern Caucasus continues to be of special concern. We condemn the use of force for territorial gains. Respect for the territorial integrity, independence and sovereignty of Armenia, Azerbaijan and Georgia is essential to the establishment of peace, stability and cooperation in the region. We call upon all states to join international efforts under the aegis of the United Nations and the CSCE aimed at solving existing problems.[\[96\]](#)

Any impartial third party, having recourse to an objective comparison of the NATO admonishment

of Russian activities in the southern Caucasus with NATO's involvement in the former Yugoslavia, could be pardoned for wondering whether a double standard was being employed. As a result, the Yeltsin government, in the context of hot debate at home, looked askance at NATO involvement in Yugoslavia, but overcame domestic opposition, swallowed its skepticism, and participated in IFOR as it had earlier participated in UNPROFOR.[\[97\]](#)

A Russian might ask, what benefit did the Russian Federation derive from Russia's participation in peacekeeping operations? Did the Russian Federation realize the broad transformation of NATO into a political and inclusive organization in which Russia participated as a full and equal partner? In hindsight from the temporal perspective of this writing in September, 2014, the respective answers to those questions is "none," and "no."

The NATO-Russian Founding Act of May 27, 1997[\[98\]](#) ostensibly advanced Russian hopes of the transformation of NATO and the inclusion of Russia as an equal partner, but within two years of that Act, Czechoslovakia, Hungary, and Poland became the first former Warsaw Pact countries to be welcomed into NATO as full members, violating the 1990 assurances given to Gorbachev that NATO would not move an inch to the east past the borders of a newly united Germany. In 1999, also within two years of the Founding Act, NATO began an 11-week series of air strikes in Kosovo, March 24, 1999 to June 10, 1999; this time there was no pretense that it was supporting UN zones or enclaves, and the action was completely without authorization by the Security Council. Resolution 1244, which was passed by the Council on June 10, 1999, set in place the political structure for an autonomous Kosovo, and did not speak to NATO's military intervention.[\[99\]](#)

President Putin ended Russian participation in peacekeeping operations in Bosnia and Kosovo in the summer of 2003, saying that the peacekeeping mission had been accomplished, but criticized the pro-Albanian, anti-Serb bias of NATO operations. At its peak, Russian involvement numbered 4,200 troops, split between Bosnia (1,200) and Kosovo (2000).[\[100\]](#) Part of Putin's view that NATO operations were biased was expressed in an address that he made to Russian troops in KFOR on June 17, 2001, noting Russian opposition to the elections scheduled to take place in Kosovo on November 17, 2001. The elections had been scheduled by the UN Secretariat in the person of Hans Haekkerup, Special Representative of the Secretary-General in Kosovo, not by the Security Council, and Putin said:

The document has been passed over the heads of the UN Security Council and contrary to our persistent recommendations to have it discussed at the Security Council and approved by relevant resolutions. We have repeatedly expressed our opposition to the holding of the general elections in Kosovo scheduled for November 17 this year. With more than

300,000 non-Albanian citizens expelled from the province their outcome may be practically annulled. In practice, it would lead to legalisation of ethnic cleansing. Let me stress that Russia does not object to elections in general. We favour elections. But we favour fair elections with the participation of all the groups of the population living in this area.[\[101\]](#)

The results of the elections in November were not yet in, when “just hours after polls closed,” Western sources, described by the BBC as the “international community,” hailed them as a great success.[\[102\]](#) Within seven years of the November 2001 elections, on February 17 2008, the autonomous government that the UN had put in place in Kosovo declared its independence from Serbia, giving credence to Russian criticisms that the Albanian majority was working to develop a mono-ethnic state out of Kosovo. One day later, the administration of President George W. Bush recognized Kosovo as an independent state.[\[103\]](#)

As the Russians became disillusioned with the West, the resultant actions and policies fed back into a NATO perception that the West could not embrace Russia as a full partner, that as the Russian economy grew and the country gained more muscle as an oil producer, Russia began to increasingly employ big power politics that confronted the West with one kind of trouble or another. The wisdom ran that while Russia was no longer the overarching adversary that it had been during the Cold War, it could not be considered a strategic partner.[\[104\]](#)

Since April 1, 2014, the following message from NATO foreign ministers continues to appear on the website of the NATO-Russia Council that grew out of the 1997 Founding Act and was established in 2002. It brings the world full-circle from the days of the early dreams of cooperation between the West and a new Russia:

“...We have decided to suspend all practical civilian and military cooperation between NATO and Russia. Our political dialogue in the NATO-Russia Council can continue, as necessary, at the Ambassadorial level and above, to allow us to exchange views, first and foremost on this crisis. We will review NATO’s relations with Russia at our next meeting in June...”[\[105\]](#)

A main issue of contention in Ukrainian-Russian relations was whether Ukraine would be led into the European Union and NATO membership by a pro-Western regime. Based on the historical track record, the Atlanticists have long been discredited and no longer have influence in the regime led by Vladimir Putin. If Putin once held pro-Western views,[\[106\]](#) the current view from Moscow is that the alignment of Ukraine is a very real national security threat with a potential of bringing NATO and therefore US forces up against Russia’s borders in an area that

has always been of great strategic concern and over which much Russian blood has been shed. Ukraine's alignment may have been an issue defused if the political transformation of NATO longed for by the Atlanticists had occurred, but that hope is now only a "what if" that can be debated by historians and played with by novelists.

The Russian view of Ukraine's potential membership in the EU and NATO has been given content by the recent rhetoric of President Barack Obama. Ukraine is not a member of either organization, nor does it have a bilateral military alliance with any Western power, including the United States. Yet, readers of a popular American newspaper, *USA Today*, were treated to a bold headline recently, "Can Russia be Stopped? NATO will protect allies, Obama says."[\[107\]](#) One assumes that the White House knows better than the editors of *USA Today* which countries are America's allies, but the clear connection drawn is that Russia is invading Ukraine, and if successful, may invade other countries, some who are full members of NATO. This is neither close to the truth of the situation, nor helpful in establishing a realistic dialog that could bring a workable political settlement to benefit most parties.

Conclusions

The Final Act of the 1975 Helsinki Accords states unequivocally, in Part (a) Declaration on Principles Guiding Relations between Participating States, Section IV Territorial Integrity of States, that parties to the Act must respect each other's boundaries:

The participating States will respect the territorial integrity of each of the participating States.

Accordingly, they will refrain from any action inconsistent with the purposes and principles of the Charter of the United Nations against the territorial integrity, political independence or the unity of any participating State, and in particular from any such action constituting a threat or use of force.

The participating States will likewise refrain from making each other's territory the object of military occupation or other direct or indirect measures of force in contravention of international law, or the object of acquisition by means of such measures or the threat of them. No such occupation or acquisition will be recognized as legal.[\[108\]](#)

Did NATO violate the Helsinki Accord in its interventions in Bosnia and Kosovo? There may be some doubt regarding Bosnia, because NATO actions can be interpreted to support extant UN Security Council resolutions asking members to support UN enclaves and the no-fly zone. There

is little doubt that NATO violated the Helsinki Accords when it came to Kosovo, since it acted without an authorizing Security Council resolution. The summary effect of all US and NATO policy in Yugoslavia, after Ambassador Zimmerman torpedoed the Lisbon Plan in February 1992, was to degrade and destroy the territorial integrity of Yugoslavia, and then Serbia. The quick time recognition by the United States of Kosovo's independence within 24 hours of that secessionist move doesn't support the spirit of the Helsinki Final Act, and conjures up the similarly quick recognition of the new state of Panama by the administration of Theodore Roosevelt. Is it any less unseemly that Russia should accept the verdict of the Crimean voters rendered on March 16, 2014 by annexing Crimea two days later on March 18?

How are the Russian interventions in Crimea and in Luhansk and Donetsk in favor of Russian separatists, any different under international law than American and NATO intervention in favor of Bosnia and Kosovo? In Russian eyes, there is no valid distinction. Each side is pursuing its vital security interests and cloaking those exercises in political realism with the same or similar international legal justifications. Compared on three basic criteria, equating an humanitarian purpose with respecting democratic wishes, respecting the right of a people's self-determination, and forcing (or guiding) a political result under duress of military intervention, the NATO interventions in Bosnia and Kosovo wear no white hats compared to Russian behavior in annexing Crimea, or even in supporting Russian separatists in Donetsk and Luhansk.

A modern nation state has two basic components, a population that has enough basic commonalities so that its individuals think of themselves collectively as "we," and a state apparatus to which the "we" is aligned. "Democratic," in the sense of "we, the people," does not apply to a group that might geographically be within the boundaries of the state but for whatever reasons, rejects the national consciousness and the principles upon which it is based. Therefore providing a security environment in which elections take place that will only ensure the rule of one national group over others is hardly humanitarian. In such a situation, thought should be given to self-determination of the disparate national groupings. The fact that such disparity often reflects a complicated situation, as it does in Crimea, Ukraine, and Yugoslavia, doesn't make elections, like the November 2001 elections in Kosovo, any more humanitarian or democratic.

States do not like secessionist movements. Since World War II, and despite the language of the United Nations Charter, Chapter I, Article I, Section 2, states almost always violently oppose secessions and the declarations on which they are based. There may be respect for the self-determination of existing states; but, except on a selective basis, there is no respect for the self-determination of peoples who do not yet have states. Such behavior by states always

has to be understood in its political context, and if seemingly applicable legal rules deviate too far from that context, then the law is somebody's idea of what ought to be but in reality has little to do with what is. It usually takes military power to impose the "ought" onto what is extant.

The Final Act at Helsinki took place during the height of the Cold War and one of its great aims was to prevent the Cold War from becoming hot by getting all involved to agree to respect European boundaries as they existed at the time. At the time, in that context, respect for territorial integrity was in the interests of the parties involved. It is indeed ironic, and demonstrative of the passage of history, to compare the map of Europe in 1975 with the map of Europe today. Reference to the Final Act of Helsinki, in operable legal application of the territorial integrity of its original parties, is as obsolete in 2014 as is reference to the terms of the Versailles Treaty or the Covenant of the League of Nations.

With notable exceptions throughout history, international law has generally reflected the interests of its subjects. That is why international law has been a durable, evolving, and effective system. The exceptions are when idealists try to change law to reflect not the interests of its subjects but rather what the idealists think *ought* to be their interests, e.g. by imposing the concept of collective security or building a liberal democratic nation out of context. In such circumstances, the law of unintended consequences goes into effect, sometimes severely.

In the cases of Haiti, Bosnia, and Kosovo outside forces were present with the explicit rationale that their presence provided the environment in which the elections could take place. Absent the outside forces, there would either be no elections or ones that were suspect. Subjective reviews of the elections were that they were successful; objective views render the verdict that they were highly flawed. In Crimea, well-structured elections had already taken place in the autonomous republic since Ukrainian independence in 1991. The voting patterns in the referendum were not divergent from established voting patterns in previous elections. Russian forces apparently did not initiate, participate in, monitor, nor certify the March 2014 referendum that had been approved and conducted by the legitimate Crimean Parliament. Did Crimea need the presence of Carter Center monitors to verify the electorate's overwhelming desire to join Russia?

Recommendations

In his recent *Foreign Policy* essay, John Mearsheimer recommended that the West publically rule out NATO's expansion into both Georgia and Ukraine, and fashion a joint economic rescue plan

for Ukraine with the Russians. [109] While a good start on getting the Russians' attention that the West is serious about resolving the situation in a balanced and equitable way, the United States and its European allies need to go a few steps farther.

From 1990 to 2003, even later, Russia reached out to the West, willing to become one of the "family of nations" that embraced a market economy and implemented democratic values. Under Gorbachev, Yeltsin, and then Putin/Medvedev, the *quid pro quo* for which the Russians asked was that NATO transform itself into a multinational political organization in which Russia was welcomed as a full and equal partner. The West never gave the Russian outreach a serious response, and instead of a partner, the "new Russia" became a troublesome player in an increasingly dangerous international system.

It is time that the West sat down with the Russians and gave serious attention to the Russian outreach.

The Russian Federation could and should be an important ally in context of a chaotic world in which Islamic radicalism threatens, China is a rapidly rising superpower, nuclear proliferation continues, and criminal cartels control significant populations. The Russian Federation could be a lucrative trading partner and market for Western goods, and Russia could find receptive markets in the West. Together, the Russians and the West could improve global energy security by rationally developing a divergent portfolio of accessible, reliable sources of energy.

As to the current crisis in Ukraine and the annexation of Crimea, it would be a beginning step in realizing a new partnership with the Russian Federation if Western leaders sat down with Putin and worked out a grand accommodation that gave local populations like those in Donetsk and Luhansk ways to self-determine themselves, and then, taking a cue from the Helsinki Final Act, update European security in a new accord. The grand accommodation should include the voluntary and peaceful relocation of minority populations to areas wherein they can comfortably share in the national consciousness of the polity. If the referendum in Crimea was redone, and the Carter Center was there to watch, the outcome would be the same as it was last March 16.

Ukrainian timeline:

- **882–1240** Kievan Rus', a loose confederation under the Grand Prince of Kiev, destroyed by the Mongol invasion of the "Golden Horde" that began in the 1239. The Mongols

sacked Kiev in 1240. Kievan Rus' completely disappeared in 1283.

- **1239-1246** zenith of the Mongol invasion; the Volhynia-Galicia principality, a major remnant of Kievan Rus', becomes a vassal state of Batu Khan
- **1253-1349** Volhynai-Galicia principality, based in Lviv in West Ukraine, strives to free itself from vassalage to the Mongols;
- **1323** Volhynia passed into the control of the Lithuanian prince Liubartas while Polish Prince Boleslaw Yuri II assumed the Galician throne.
- **1349** Poland conquers Volhynai-Galicia and ends vassalage to the Mongols.
- **1382** Moscow is captured by the Mongols after being besieged by Lithuanian armies in 1368 and 1370
- **1449** Tatar Khanate of Crimea; Hajji Giray, a ninth generation descendant of Gengis Khan rose to power in 1420. He took advantage of the disintegration of Golden Horde and in 1449 proclaimed himself to be an independent ruler.
- **1480** The 'Tatar yoke' was thrown off by Ivan III of Moscow, and Moscow laid claim to being the "sovereigns of all Rus'," as well as the successor to the eastern Orthodox leadership once held by Constantinople and Byzantium.
- **1569** The Union of Lublin; this agreement between Poland and Lithuania provided for a unified state out of Poland and Lithuania, and transferred to Polish sovereignty the former Lithuanian Ukraine, with the exception of the provinces of Polissia and Beresteyschyna.
- **1654** Treaty of Pereiaslav – Muscovy and the Cossack Hetmanate orally agreed to an acknowledgement by the Hetmanate of the overlordship of the Russian monarch based on vague promises of military support. In 1954 the Soviet Union recognized the agreement as the original basis of unification of Ukraine and Russia. The actual agreement and its significance is controversial among scholars.
- **1776** Russian troops installed Shahin Girey, a puppet ruler, in Crimea, which was nominally independent.
- **1783** Empress Catherine the Great annexed Crimea
- **1921** Crimea becomes an autonomous republic within the Russian Soviet Federated Socialist Republic.

- **1944** Stalin accused the Crimean Tatars of collaboration with the Nazi invaders and deported the mass of the Tatar population to Central Asia. "Most of the new in-migrants" would be Russian." Reference: Wilson, Andrew. The Ukrainians: Unexpected Nation. New Haven: Yale University Press, 2000, p. 151
- **1954** Nikita Khrushchev orders that Crimea be transferred from the Russian SFSR incorporated into the Ukrainian Soviet Socialist Republic.
- **1991** Following the failed coup against Soviet President Gorbachev in August, 1981, the Ukrainian parliament declared independence, and put a referendum to the Ukrainian electorate. The voters approved with 90.3% of an 84% turnout of eligible voters. Crimea's vote was 54% for independence of Ukraine. A meeting between Boris Yeltsin, Leonid Kravchuk, and Belarusian leader Stanislau Shushkevich confirmed Ukrainian and Belarusian independence.
- **February 2010** Victor Yanukovich, a Russophile, won the Ukrainian presidential election.
- **November 2013** President Yanukovich rejected an economic agreement with the European Union and instead opted for a deal with the Russian Federation. Opposition arose in the streets and reached a level of civil chaos short of outright war.
- **February 21** Yanukovich reached a deal allowing Yanukovich to remain in office until the next elections but the rebels did not keep to the agreement and forced Yanukovich to flee for his life the very next day.
- **February 27, 2014** In response to what appeared to be a pro-Western takeover of the government in Kiev, the Parliament of the Autonomous Republic of Crimea within Ukraine voted to hold a referendum to determine whether or not to merge with Russia.
- **March 16, 2014** The secessionist referendum passed in an overwhelming affirmative vote for Crimea to secede from Ukraine and join Russia.
- **March 18, 2014** President Vladimir Putin accepted the result of the Crimean referendum and recommended to the Russian Parliament that Crimea join the Russian Federation.

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