

What Went Wrong with Crimean Autonomy?

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Abstract

Like many other successor states of the Soviet Union Ukraine had to find a means to accommodate a Russian minority. The Crimean Peninsula was granted territorial autonomy within an otherwise unitary Ukrainian state. After already striving for this autonomy in the 1990s, the final design of the autonomy defined by the Ukrainian state and the Crimean constitution remained weak, as Kiev was anxious not to open a Pandora's box for further disintegration. The events of March 2014 showed that the autonomy was seemingly regarded as insufficient protection by the mainly Russian population of Crimea and mobilisation for integration into the Russian Federation was high. This paper argues that although without the military support of Russia the secession would not have been possible, a single focus on Russian aggression is short-sighted in explaining why the Crimean autonomy failed. Issues of a lack of power-sharing, Ukrainian state fragility and opposing identity narratives have to be considered as well.

Keywords

territorial autonomy – Crimea – self-determination – Ukraine – Russia

1 Introduction

On March 21st 2014 the Russian President Vladimir Putin signed the constitutional law on the admission of new subjects into the Russian Federation (RF) – the Republic of Crimea and the city of Sevastopol. According to this law the border of Crimea with Ukrainian territory turned into an international border. Although not recognised by most members of the international community of states, Crimea is now de facto part of Russian territory.

The treaty on the admission of Crimea into the RF claims to be an expression of the 'right of self-determination of peoples'. In his address to the Federation Council on March 18th, 2014, Putin pointed out that Russia, despite hoping for 'good-neighbourly relations with Ukraine' was not able to protect its people, who 'could not reconcile themselves with this outrageous historical injustice' of being separated from the Russian homeland. Putin addressed a problem encountered by many ethnic or linguistic minorities in the aftermath of the Soviet and Yugoslav dissolution, that suddenly, after having been dominant nations themselves, they were turned into 'diasporic communities'.² Territorial autonomy seemed like a viable strategy, by giving them 'the right to be different and to be left alone',³ without disrupting the newly formed states. But the autonomy of Crimea seemed like a Pandora's box: being a disputed project from the beginning, self-determination within the Ukrainian state did not seem enough for the Russians in Crimea.

So what went wrong with Crimean autonomy? The Western discourse on Crimea depicts a power-driven Russian president, not shying away from aggression and ruthless breaches of international law in order to satisfy his geopolitical aims. In contrast to this, this paper argues that although the events unfolding in March 2014 on the Crimean peninsula would not have been successful without Russian military support, a number of factors contributed to the instability of the autonomy arrangement from the beginning. First, the autonomy itself was weak, with insufficient guarantees in important matters like language use. Second, no power-sharing mechanisms existed, which would have given the autonomous entity a possibility not only to 'be left alone' but also to cooperate with and to integrate into the Ukrainian state. Third, Ukraine can be characterised as a weak state, with a corrupt elite, worsening economic performance, high external dependencies, decreasing state legitimacy and thus lacking the capabilities to govern Crimea. Fourth, Ukrainian identity narratives

2 J. Brubaker, 'The 'diaspora' diaspora' in *Ethnic and Racial Studies*, 2005, Vol. 28, No. 1, pp. 1–19.

3 H. Hannum, 'Territorial Autonomy: Permanent Solution or Step towards Secession?' In Wimmer et. al. (eds.), *Facing Ethnic Conflicts. Toward a new realism*. Rowman & Littlefield Publishers Inc. Lanham: Boulder, New York, 2004, pp. 274–282.

diverged increasingly. Issues like signing the free trade agreement with the European Union (EU) or joining the Eurasian Union were not only matters of economic strategy, but matters of identity. And finally, Russia further contributed to the destabilisation, by providing excessive kin-state support to the Russian community on the peninsula.

The Autonomous Republic of Crimea: A Difficult Autonomy

When the Crimean peninsula became part of the Ukrainian Soviet Republic in 1954, nothing really changed, except the internal borders within the Soviet Union. The shock for both sides came 40 years later, when the unthinkable happened: the Soviet Union had ceased to exist, Ukraine became an independent state, and more than 1.5 million Russians in Crimea were separated from 'mother Russia' by an international border. Fears of 'Ukrainization' were running high from the beginning. Autonomy in Crimea had been re-established even before Ukrainian independence in January 1991, this time as 'Russian' autonomy, after the peninsula had lost its status as an Autonomous Republic in 1944 as a consequence of the deportation of the Crimean Tatars. But autonomy did not seem to be enough from the beginning: already in 1992 Crimea declared itself independent and it took until 1998 (and many instances short of violent conflict) to adopt a Crimean constitution, which was finally accepted by the Ukrainian Parliament as it eliminated all notions of Crimean sovereignty and statehood. Political pressure from Kiev on incumbent Crimean political elites,⁴ and vanishing Russian support and the recognition of existing Ukrainian borders, after the most pressing questions concerning the Black Sea Fleet had been resolved, contributed to this. In the following years the risk of further separatist movements was regarded as remote, as the pro-Russian movement was not sufficiently unified and Russia did not seem to be interested in creating another zone of frozen conflicts in the region.⁵ But the support for secession in 2014 showed that the demands for separation had only been kept dormant and with reference to self-determination, Putin stressed that autonomy was not sufficient to protect the Russian Crimeans.

Territorial Autonomy as an Expression of Internal Self-Determination

With the inclusion of the right of self-determination in the two human rights covenants of the United Nations a possible solution to the tension between territorial integrity (Article 2(4) un Charter) and self-determination (Art. 1 ICCPR, Art. 1 ISCESR, Arts. 1 (2) and 55 un Charter) was found in the interpretation of people as 'demos'. Understood as demos, a people (as citizens of a state) has the right 'not to be governed from outside'⁶ and to 'freely determine its political status and freely pursue its economic, social and cultural development'.⁷ As long as all ethnic groups are represented within the political system of the state, the right to self-determination

4 S. Stewart, 'Autonomy as a Mechanism for Conflict Resolution? The Case of Crimea' in *Nationalism and Ethnic Politics*, Vol. 7, No. 4, 2001, pp. 113-141.

5 E. Mizrokhi, 'Russian separatism in Crimea and NATO: Ukraine's big hope, Russia's grand gamble', *Paix et sécurité internationales*, Université Laval, 2009; T. Malyarenko and D.J. Galbreath, 'Crimea: Competing Self-Determination Movements and the Politics at the Centre' in *EuropeAsia Studies*, 65, 2013, pp. 912-928.

6 J. Klabbers, 'Right to Be Taken Seriously: Self-Determination in International Law' in *Human Rights Quarterly*, Vol. 28, No. 1, 2006, pp. 186-206.

7 M. Saul, 'The Normative Status of Self-Determination in International Law: A Formula for Uncertainty in the Scope and Content of the Right?' in *Human Rights Law Review*, Vol. 11, No. 4, 2011, pp. 609-644.

is exercised by the whole people within a given state formation.⁸ To accommodate the 'ethnic' meaning of the term people in the right to self-determination, concepts of 'internal self-determination' were developed⁹ and territorial autonomy became an alternative to independence, as it guaranteed the survival of the newly created states and the stability of the international state community.¹⁰ It facilitated a compromise, representing a middle ground between the claims for separate statehood and a unitary state and allowed for the long-term resolutions of conflicts in deeply divided societies.¹¹ A number of international documents have recourse to autonomy as a means of protecting and promoting minority identities, particularly the OSCE 1990 Copenhagen Declaration and the Lund Recommendations or Recommendation 1201 of the Parliamentary Assembly of the Council of Europe.¹² But autonomy is not a legal term with a defined meaning and no right to autonomy or self-government, and no unique formula for the design of territorial autonomy exist.¹³ International instruments do not prescribe autonomous arrangements.¹⁴

Common to all definitions of autonomy is that certain state functions are entrusted to the autonomous entity. Autonomy is usually constitutionally entrenched and requires a certain material content. Based on a comparison of existing autonomy arrangements, Hannum denotes some characteristic features of full territorial autonomy: a locally elected body with some independent legislative powers concerning local matters; a locally chosen chief executive; an independent local judiciary and power-sharing arrangements between the central and local level. Autonomy is thus always a limitation on the sovereignty of the nation state.¹⁵

An Insufficient Autonomy?

When trying to give an answer to the question of why the Crimean autonomy failed, we are confronted with

8 This also gives rise to the notion that continuous consent by the governed and the representation of all groups within a state can only be guaranteed by a democratic government, defining self-determination as a right based on democracy and freedom (P. Thornberry, 'Self determination and indigenous peoples: objections and responses', in A. Pekka, M. Scheinin (eds.), *Operationalizing the Right of Indigenous Peoples to Self Determination*, Åbo Akademi University Institute for Human Rights: Turku, 2000; S. Wheatley, *Democracy, Minorities and International Law*, Cambridge: Cambridge University Press, 2005; J. Summers, *Peoples and International Law. How Nationalism and Self-Determination shape a contemporary Law of Nations*, Martinus Nijhoff Publishers: Leiden, Boston, 2000; T. Jabers, 'A Case for Kosovo? Self-Determination and Secession in the 21st Century', in *International Journal of Human Rights*, Vol. 15, No. 6, 2011, pp. 926–947.

9 M. Fabry, *Recognizing States: International Society and the Establishment of New States since 1776*, Oxford: Oxford University Press, 2010.

10 A. El Ouali, 'The Flexibility of Territoriality from Early States to Globalisation: Making States Survive Through Territorial Autonomy' in *Geopolitics*, 15, 2010, pp. 82–108.

11 Y. Ghai, 'Autonomy as a Strategy for Diffusing Conflict' in P. C. Stern and D. Druckman (eds), *International Conflict Resolution after the Cold War*, Washington D.C.: National Academy Press, 2000, pp. 483–530; D. Rothchild and C. A. Hartzell, 'Security in deeply divided societies: The role of territorial autonomy', in *Nationalism and Ethnic Politics*, 5, 1999, pp. 254–271.

12 M. Dembinska, L. Máracsz, and M. Tonk, 'Introduction to the special section: minority politics and the territoriality principle in Europe' in *Nationalities Papers*, 42, 2014, pp. 355–375; F. Palermo, 'When the Lund Recommendations are Ignored. Effective Participation of National Minorities through Territorial Autonomy' in *International Journal on Minority and Group Rights*, 16, 2009, pp. 653–663.

13 A. Légaré and M. Suksi, 'Rethinking the Forms of Autonomy at the Dawn of the 21st Century', in *International Journal on Minority and Group Rights*, Vol. 15, No. 2–3, 2008, pp. 143–144; M.A. Jovanovic, 'Territorial Autonomy in Eastern Europe – Legacies of the Past', in *Journal on Ethnopolitics and Minority Issues*, Vol. 4, 2002, pp. 1–14.

14 Venice Commission, *A General Legal Reference Framework to Facilitate the Settlement of Ethno-Political Conflicts in Europe*, cdl-inf(2000)16, 44th Plenary Session, 13–14 October 2000.

15 H.J. Heintze, *Selbstbestimmungsrecht und Minderheitenrechte im Völkerrecht: Herausforderungen an den globalen und regionalen Menschenrechtsschutz*, Nomos Verlagsgesellschaft: Baden-Baden, 1994; H. Hannum and R.B. Lillich, 'The Concept of Autonomy in International Law', in *The American Journal of International Law*, Vol. 74, No. 4, 1980, 858–889; R. Lapidot, *Autonomy: Flexible Solutions to Ethnic Conflicts*. Washington, D.C.: United States Institute of Peace Press, 1997; M. Weller and S. Wolff (eds.), *Autonomy, Self-governance and Conflict Resolution: Innovative Approaches to Institutional Design in Divided Societies*. London: Routledge, 2005.

the fact that the ‘administrative autonomy’¹⁶ granted to the peninsula was regarded as insufficient and had only succeeded in keeping dormant the demands for external self-determination until circumstances changed and viable alternatives opened up. Safeguarded in its existence by the Ukrainian constitution of 1996, the material content of the autonomy was determined by the law on the Autonomous Republic of Crimea (arc), which left only a few aspects to the self-governance of Crimean authorities. The Crimean constitution had to be approved by the Ukrainian Parliament and was adopted as ordinary law of Ukraine. The Crimean Parliament had only the authority to propose the law, but not to finally adopt it. The issues for normative regulation are exhaustively listed in Article 137 of the Ukrainian Constitution. It gave Crimea no competences concerning contentious issues like language legislation, but ensured the operation and development of the state language (Ukrainian) and national languages in the arc (Art. 138 para. 8).

The weak safeguards for Crimean autonomy became crucial, if it is accepted that the Ukrainian coup d’état of February 2014 dramatically changed the circumstances of the Russian population in Crimea. An in their eyes ‘neo-Nazi’ government assumed power in Kiev and heightened anxieties about possible forced assimilation, without remedies against it on the basis of the autonomous status. These anxieties were fuelled by the proposal of the Ukrainian Parliament to revoke the Ukrainian language law, which guaranteed the use of two official languages in regions where the size of an ethnic minority exceeded 10%. And although the law was in the end not ratified by the acting President Turchynov, the Russian population of Crimea no longer felt represented by and within the Ukrainian state. In this context the Friendly Relations Declaration (2625 (XXV) 1970) has to be read holding that the principle of the right to self-determination of peoples shall not authorize the impairment of the territorial integrity of states ‘*possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour*’. The argument was that Ukraine, after the change of government, no longer possessed a government representing the whole population, and that the weak autonomy of Crimea did not sufficiently protect the Russian people and consequently revived their right to external self-determination. Thus Putin aimed at constructing a case of ‘remedial secession’.

Two aspects have to be held against this argument (irrespective of the fact that the threat of the use of force by Russia also disqualified the process to enforce the secession). First, although it was limited, the autonomy provided Crimea with a special status within the Ukrainian state and a competence to regulate matters of local importance. Crimeans faced no repression or discrimination with regard to participation in public life in Ukraine. Additionally, in June 2013 a special commission was established in the Ukrainian Parliament to suggest legislation concerning the constitutional and legal status of Crimea, the delegation of competence and financial autonomy of Crimea. In March 2014 Ukraine proposed to further extend the autonomy regulations. It thus seems doubtful that all attempts at internal self-determination had been frustrated, an issue that was brought up by Russia against the case for the independence of Kosovo. Secondly, the issue of ‘remedial secession’ is a contentious one. On the one hand, Headley is right in stressing that while it is true that the Kosovo case is more extreme, this does not necessarily invalidate some of the Russian arguments¹³, but rather highlights that the assessment of what constitutes ‘serious breaches of human rights’ remains a political value judgement.¹⁷ Even if there were some tendencies in state practice to acknowledge that remedial secession could develop into a means of last resort in the case of serious human rights violations – and it seems that this is more an academic debate than real state practice – in the Crimean case the basic prerequisites for such an

16 O. Lucherhandt, Der Anschluss der Krim an Russland aus völkerrechtlicher Sicht, in Archiv des Völkerrechts, Vol. 52, No. 20, 2014, pp. 137–174.

17 J. Headley, ‘Is Russia Out of Step with European Norms? Assessing Russia’s Relationship to European Identity, Values and Norms Through the Issue of Self-Determination’, in Europe-Asia Studies, Vol. 64, No. 3, 2012, pp. 427–447.

option are lacking: as Ukraine did not finally block discussions on strengthening and further safeguarding Russian autonomy in Crimea, the breaking up of the Ukrainian state can hardly be seen as a 'means of last resort'; and clearly there is nothing like a 'preliminary' remedial secession, as Putin tries to argue, in the avoidance of possible future forced assimilation.

The Crimean autonomy was weak. After the confrontations between Simferopol and Kiev in the 1990s Ukraine was anxious to keep control over Crimean affairs in order to avoid further secessionist tendencies. But the dissatisfaction with territorial autonomy does not sufficiently explain the mobilisation of the Crimean population in favour of integration into the RF. Further factors have to be considered in order to understand why a Pandora's box for further demands for self-determination could not be appeased by the granting of territorial autonomy to Crimea.

When Pandora's Box is Opened: Factors Contributing to the Failing of Crimean Autonomy

Discussions in literature suggest that territorial autonomy may indeed be a source of conflict, tending to develop into partition rather than cohabitation.¹⁸ But what exactly contributes to the frustration of the goal to turn territorial autonomy arrangements into a feasible and sustainable solution for the cohabitation of different groups within a given state and the alleviation of claims of external self-determination?¹⁹ Akermark stresses that the timing of the creation of such arrangements, the nature of the dispute, the design of political institutions, the arrangements of the negotiations and the role of external actors are decisive for the success of autonomy arrangements.²⁰ I would like to put the focus in a similar manner on issues of power-sharing, state fragility, identity narratives and the role of kin-states.

Insufficient Power-Sharing

To mitigate fears that the granting of autonomy will inevitably lead to disintegration, cooperative mechanisms are needed to bring the different communities together to decide about 'matters of the state'. The different interests should be able to participate in the decision-making and policy-making of the political centre²¹ so as to bolster identification with the decisions taken there and to increase the acceptance of implementation at the local level. While territorial autonomy provides a means for specific groups to decide on issues of special concern to them, incentives for all groups to contribute to the general affairs of the state enhance identification with the state and further integration. Autonomy 'should be treated as a relational concept',²² as autonomies should not be isolated or purely self-relying, but institutions and processes for cooperation between the different levels of the state are crucial. Especially if territories are highly significant for a state, power-sharing becomes crucial, including guaranteed representation in the executive or legislative branches of

18 S. Cornell, 'Autonomy as a Source of Conflict: Caucasian Conflicts in Theoretical Perspective', *World Politics*, 54, 2002, pp. 245–276; J. Snyder, 'Managing Ethnopolitics in Eastern Europe' in J. Stein (eds.), *The Politics of National Minority Participation in Post-communist Europe*, New York: East-West Institute, 169–186; M. Dembinska, L. Máracsz, and M. Tonk, 'Introduction to the special section: minority politics and the territoriality principle in Europe' in *Nationalities Papers*, 42, 2014, pp. 355–375; S. Stewart, 'Autonomy as a Mechanism for Conflict Resolution? The Case of Crimea' in *Nationalism and Ethnic Politics*, Vol. 7, No. 4, 2001, pp. 113–141

19 S. Wolff, 'Conflict Management in Divided Societies: The Many Uses of Territorial Self Governance', in *International Journal on Minority and Group Rights*, Vol. 20, 2013, pp. 27–50.

20 S.S. Akermark, 'Internal Self-Determination and the Role of Territorial Autonomy as a Tool for the Resolution of Ethno-Political Disputes', in *International Journal on Minority and Group Rights*, Vol. 20, 2013, pp. 5–25.

21 D. Rothchild and C. A. Hartzell, 'Security in deeply divided societies: The role of territorial autonomy', in *Nationalism and Ethnic Politics*, 5, 1999, pp. 254–271.

22 S.S. Akermark, 'Internal Self-Determination and the Role of Territorial Autonomy as a Tool for the Resolution of Ethno-Political Disputes', in *International Journal on Minority and Group Rights*, Vol. 20, 2013, pp. 5–25.

the central government, consensual decision-making, or consultation mechanisms. No central power-sharing mechanisms existed between Kiev and Simferopol.²³ It has been argued that the small size of Crimea in relation to the overall population of Ukraine effectively hindered any meaningful arrangements of power-sharing mechanisms, and Crimeans, like all others, participated in general elections.²⁴ Still it contributes to the overall assessment that the arc held 'no greater powers than any regional authority in Ukraine'.²⁵ Two peculiarities of the previous Ukrainian Constitution (1978, revised 1991) were not included in the Ukrainian Constitution of 1996: the right of legislative initiative on the Ukrainian level for the Crimean Parliament (previously in Article 103) and the right of the head of the Crimean government to take part in decisions of the Ukrainian Cabinet of Ministers (Article 116). These mechanisms had added a bi-directional quality to the Crimean autonomy, as members of the governing bodies of the ARC were able to take part in the work of the state organs.²⁶

Thus while autonomy grants self-governance, consociational mechanisms of power-sharing are necessary to 'provide incentives for potentially secessionist minorities to remain engaged in an existing polity'²⁷ and Ukraine clearly lacked these incentives for further integration and identification.

A Weak Ukrainian State

The capacity of the state is a critical element in the interactions between collectives, as a state's inability to implement rules and exert leadership results in conflicts.²⁸ Fragile statehood is generally associated with institutions 'lacking the capacity, accountability or legitimacy to mediate relations between citizens and the state and make them vulnerable to violence'.²⁹ State institutions are unable to deliver services, to control corruption and to provide sufficient accountability. It is associated with bad governance, the informalisation and privatization of the state, leading to patrimonialism. Krasner and Risse distinguish 'limited statehood' from fragile or failed states, as in limited states central authorities lack territorial or sectoral capacities to implement and enforce rules and decisions, thus they do not hold full domestic sovereignty.³⁰ Limited or fragile statehood is regarded as a constant threat to regional stability. Pervasive corruption, poverty and low levels of economic growth aggravate the situation.³¹ The Fragile State Index 2014 (Ukraine ranks 113th out of 175 states) shows that the main weaknesses of Ukraine lie in the legitimacy of the state, human rights and rule of law, the security apparatus and factionalized elites. The Corruption Perception Index compiled by Transparency International again lists Ukraine as the most corrupt European country. According to the Bertelsmann Transformation Index

23 S. Wolff, 'Conflict Management in Divided Societies: The Many Uses of Territorial Self Governance', in *International Journal on Minority and Group Rights*, Vol. 20, 2013, pp. 27–50.

24 L.D. Anderson, *Federal Solutions to Ethnic Problems: Accommodating Diversity*, Exeter Studies in Ethno-Politics, Abingdon: Routledge, 2013.

25 B. Bowring, 'The Crimean autonomy: innovation or anomaly?' in M. Weller and S. Wolff (eds.), *Autonomy, Self-governance and Conflict Resolution: Innovative approaches to institutional design in divided societies*, Abingdon: Routledge, 2005, pp. 75–97.

26 D. Wydra, *Autonomie auf der Halbinsel Krim. Eine völkerund verfassungsrechtliche Analyse*. Vienna: Braumüller Verlag, 2008.

27 J. McGarry, 'Assymetrical autonomy and conflict regulation: As Response to Adeney, Conversi, Hechter and Rezvani', in *Ethnopolitics*, Vol. 6, 2007, pp. 133–136.

28 D. Rothchild and C. A. Hartzell, 'Security in deeply divided societies: The role of territorial autonomy', in *Nationalism and Ethnic Politics*, 5, 1999, pp. 254–271

29 Conflict, Security, and Development, The World Bank, World Development Report 2011.

30 S. Krasner and T. Risse, 'External Actors, State-Building, and Service Provision in Areas of Limited Statehood: Introduction', in *Governance*, Vol. 27, No. 4, 2014, pp. 545–567.

31 S. von Steinsdorff, 'Incomplete state building – incomplete democracy? How to interpret internal political development in the post-Soviet de facto states', in *Communist and PostCommunist Studies*, Vol. 45, No. 1–2, 2012, pp. 201–206; E. Osaghae, 'Fragile States' in *Development in Practice*, Vol. 17, No. 4–5, 2007, pp. 691–699.

2014 nepotism and the circumvention of Parliament on important decisions were the main characteristics of the Yanukovich regime. Economic development in Ukraine remained weak after the economic crisis had hit the economy hard. In general the economy is still dependent on heavy industries and most exports go to Russia (about 38%). Especially the strong energy dependency on Russia makes the country vulnerable to external pressures, as no domestic gas market has developed and the investment climate for the development of Ukraine's own gas reserves is insufficient.³² Ukraine was therefore regarded as being too weak, both economically and politically, to survive as an independent buffer between Russia and the EU.³³ Especially on Crimean territory the Ukrainian state capacities were weak and Ukraine increasingly lacked the appropriate leverage for implementing its policies in Crimea.³⁴ Crimea has been characterized as a trading point for illegal trafficking, tax evasion and illicit business, with weak local governance and high levels of corruption, all factors hampering effective Ukrainian state control over the Crimean political structures and economy. Varettoni highlights how local and Russian elites aimed at keeping rent distribution corrupt and ripe for the elite, and Kiev tolerated this to avoid further conflicts.³⁵ This environment not only provided a gateway for Russian businessmen to increase their influence, but also hampered transparent privatization, the formalization of property rights or the implementation of the rule of law in order to strengthen state institutions and to anchor Crimea as an integral part of Ukraine.³⁶

State fragility alone does not explain disruptive tendencies, because although a country may be corrupt with elites exploiting state structures, it might still be 'governed well enough' to be stable.³⁷ Nevertheless, it creates an environment where the state loses legitimacy in areas with already low loyalty and allows for external actors to exploit its weaknesses.

Conflicts of 'Imagined Communities'

A further aspect has to be taken into consideration when answering the question of what went wrong with Crimean autonomy. The possibility to create the 'imagined community'³⁸ of a state results from a common language, a common media structure and the construction of common reference points in history. Nation-building and the formation of national identity is thus a political product by giving meaning to a specific territory, as well as to the relationships between ethnic groups, while also making claims for state-structuring power. These systems of meaning are formed not only by language, but also through social and political practices.³⁹ Like other post-Communist states Ukraine had to confront the challenges of building a state and

32 B. Smith and D. Harari, Ukraine, Crimea and Russia, House of Commons Research Paper 14/16, 2014; S. Charap and K. Darden, 'Russia and Ukraine' in *Survival. Global Politics and Strategy*, Vol. 56, No. 2, 2014, pp. 7–14.

33 L. Freedman, 'Ukraine and the Art of Crisis Management', in *Survival, Global Politics and Strategy*, Vol. 56, No. 3, 2014, pp. 7–42.

34 M.A. Jovanovic, 'Territorial Autonomy in Eastern Europe – Legacies of the Past', in *Journal on Ethnopolitics and Minority Issues*, Vol. 4, 2002, pp. 1–14.

35 W. Varettoni, 'Crimea's Overlook Instability', in *The Washington Quarterly*, Vol. 34, No. 3, 2011, pp. 87–99.

36 S. Wolff, 'Conflict Management in Divided Societies: The Many Uses of Territorial Self-Governance', in *International Journal on Minority and Group Rights*, Vol. 20, 2013, pp. 27–50.

37 S. Kaplan, 'Identifying Truly Fragile States', in *The Washington Quarterly*, Vol. 37, No. 1, 2014, 49–63.

38 B. Anderson, *Imagined Communities: Reflections on the Origins and Spread of Nationalism*, London: Verso, 2005.

39 R. Cinpoes, 'From National Identity to European Identity', in *Journal of Identity and Migration Studies*, Vol. 2, No. 1, 2008, pp. 3–14; S. Hall, 'The Question of Cultural Identity', in S. Hall, D. Held, D. Hubert, and K. Thompson (eds.), *Modernity: An Introduction to Modern Societies*, Massachusetts: Blackwell Publishers, 1996, pp. 595–634.; R. Wodak, *The Discursive Construction of National Identity. Second Edition (revised and updated)*, Edinburgh University Press, 2009; D. Howarth, *Discourse Theory*, in D. Marsh and G. Stoker (eds.), *Theory and Methods in Political Science*, London: Macmillan Press, 1995, pp. 115–133.

consolidating national authority, while at the same time struggling with ethnic and regional mobilization.⁴⁰ And seemingly the project failed. In an opinion poll in mid-February 2014 41% of the respondents opted for Ukraine and Russia to become a single state.⁴¹ Clearly the question of how Ukrainian identities are segmented is not easy to answer, as ethnic and cultural cleavages interweave with economic and regional differences.⁴² Wilson recognizes a variety of local identities, where the identity of the krymskii narod (the Crimean people) is defined by the myth of historical exceptionalism and geographical semi-isolation.⁴³ Eastern Slavic and national Ukrainian identity narratives often diametrically oppose each other. While the Eastern Slavic history builds on common historic roots between Russia and Ukraine since the Kievan Rus, the ethnic Ukrainian narrative regards the Kievan Rus as the homeland of the Ukrainian nation alone and stresses the colonial character of the Russian empire.⁴⁴ And while Stepan Bandera is a national hero, fighting for Ukrainian independence, for national Ukrainians, for many Eastern Ukrainians it was a shock when the European Parliament put communism on a par with fascism, after having sacrificed so many lives to fight fascism in the Second World War.⁴⁵ This has implications for domestic policy (a preference for the Ukrainian language and history vs. the equal treatment of the Ukrainian & Russian languages and history) and for foreign policy (Western orientation vs. Eurasian orientation).⁴⁶ According to a survey published in December 2013, 37% of Ukrainians were in favour of joining the EU, while 33% opted for joining the Eurasian Union. Although this seems like an even distribution, regional differences are telling. While only 5% in the Western parts of Ukraine supported integration into the Russian-led Customs Union, 62% of respondents in the South were in favour of joining the Eurasian Union. This makes it easy to understand why the events in the 'Euromaidan', the ousting of President Yanukovich by allegedly nationalist and fascist powers and the proposed changes to the language law were regarded as anathema to Russian-Crimean identity and were interpreted as a humiliation. This interpretation of the events was fuelled by Russian (media) discourses. Putin stressed that the 'rise of reactionary, nationalist and anti-Semitic forces' threatened the lives of Russian speakers, taking up this element of humiliation (*unizhenija*) experienced by the fall of the Soviet empire. Steps had thus to be taken to avoid further humiliation following the impression that Russia is surrounded by enemies and expressed in the threat that with a pro-Western Ukrainian government NATO vessels could end up in the 'city of Russian navy glory, Sevastopol'.⁴⁷

Lacking common narratives and constructing other regions or ethnic groups of the state virtually as the 'other', the 'enemy', strengthened the disruptive tendencies and at some point territorial autonomy no longer seemed to be sufficient protection against a perceived hostile environment.

40 J. Hughes and G. Sasse, *Ethnicity and Territory in the Former Soviet Union. Regions in Conflict*, London, Portland: Frank Cass., 2002.

41 J. Biersack and S. O'Leary, 'The geopolitics of Russia's annexation of Crimea: narratives, identity, silences, and energy', *Eurasian Geography and Economics*, 55(3), 2014, pp. 247–269.

42 S. Shulman Stephen, 'Cultural comparisons and the consequences for nationhood in Ukraine', in *Communist and Post-Communist Studies*, Vol. 39, 2006, pp. 247–263.

43 A. Wilson, 'Elements of a theory of Ukrainian ethno-national identities' in *Nations and Nationalism*, Vol. 8, No. 2, 2002, pp. 31–54.

44 V. Kolossov, 'Ethnic and political identities and territorialities in the post-Soviet space' in *GeoJournal*, Vol. 48, No. 2, 1999, pp. 71–81.

45 P. Stegny, 'Russia's foreign policy: searching for a new paradigm', in K. Liik (ed.), *Russia's "Pivot" to Eurasia*, European Council on Foreign Relations, May 2014, pp. 43–47.

46 D. Wydra, 'Inventing the Ukrainian Nation – Identity Building between Dichotomies', in J.D. Iglesias, S. Weinblum, N. Stojanovic (eds.), *New Nation-States and National Minorities*, Essex: ECPR Press, 2013, pp. 59–78.

47 E. Karigiannis, 'The Russian Interventions in South Ossetia and Crimea Compared: Military Performance, Legitimacy and Goals' in *Contemporary Security Policy*, Vol. 35, No. 3, 2014, pp. 400–420; F. Hansen, 'Framing yourself into a corner: Russia, Crimea, and the minimal action space', in *European Security*, Vol. 24, No. 1, 2015, pp. 141–158.

Excessive Kin-State Support

A crucial role in ethno-political disputes is held by 'kin-states'. An intrusive or provocative stance by kin-states, exaggerating their support for and involvement in minority concerns, is a recipe for tense and aggravating relations, potentially turning into inter-state disputes.⁴⁸ And while the protection of minorities is of concern for the international community, it cannot be the exclusive task of one 'protecting' country. Russia, like other European states, already enacted a law on compatriots abroad in 1999. Addressing similar European laws the Venice Commission of the Council of Europe endorsed the role of kin-states, but at the same time stressed that the principles of territorial sovereignty, *pacta sunt servanda*, friendly good-neighbourly relations and respect for human rights and fundamental freedoms, including the prohibition of discrimination, have to be respected.⁴⁹ Clearly the prohibition of the use of force is obligatory for kin-states. Confrontational strategies pursued by a kin-state (like the provision of finances, arms, safe havens or the threat of the use of force) can play a triggering role for secessionist movements.⁵⁰

The declaration of independence and the quick integration into the RF would of course have been impossible without Russian troops backing thesecession and thus protecting its interests in the near abroad.⁵¹ But right from the beginnings of Ukrainian independence Russia more or less overtly backed secessionist tendencies in Crimea, despite having signed several agreements recognizing the state borders of Ukraine.⁵² Although the former president of the RF Boris Yeltsin had argued on several occasions that the question of Crimea was an internal Ukrainian matter, the separatists on Crimea and the then Crimean President Yurij Meshkov had been supported by various groups in the Russian Parliament.⁵³ The Minorities at Risk Assessment in 2006 came to the conclusion that although Crimean Russians exhibited four factors that encourage rebellion (persistent protests, territorial concentration, high levels of group organization and cohesion within a state of regime instability), at this time this was alleviated by the fact that they were not subject to state repression and Russia's government did not pursue the goal of Crimean annexation.⁵⁴ But the general goals of Russian foreign policy since the beginning of the second term of Putin's presidency have changed dramatically, now aiming at creating a bloc of countries to enhance its economic and geopolitical power.⁵⁵ The Coloured Revolutions have been regarded as a serious threat to the Russian position in the region and Russia openly supported separatism in countries like Ukraine and Georgia, by using 'smart power', combining military threats and soft power

48 S.S. Akermark, 'Internal Self-Determination and the Role of Territorial Autonomy as a Tool for the Resolution of Ethno-Political Disputes', in *International Journal on Minority and Group Rights*, Vol. 20, 2013, pp. 5–25.

49 Report on the Preferential Treatment of National Minorities by their Kin-State, adopted by the Venice Commission at its 48th Plenary Meeting, CDL-INF (2001)019-e, (Venice, 19–20 October 2001).

50 S. Wolff, *Disputed Territories: The Transnational Dynamics of Ethnic Conflict Settlement*, New York and Oxford: Berghahn, 2003.

51 E. Crawford, United Nations General Assembly Resolution on the Territorial Integrity of Ukraine, in *International Legal Materials*, Vol. 53, No. 5, 2014, pp. 927–932; J. Biersack and S. O'Leary, The geopolitics of Russia's annexation of Crimea: narratives, identity, silences, and energy, *Eurasian Geography and Economics*, 55(3), 2014, pp. 247–269.

52 Russia has acknowledged the borders of Ukraine in several agreements: the November Agreement of 1990 (Dogovor miž Ukraïns'koju Radjanskoju Socialistyč noju Respulikuju i Rosijs'koju Radjans'koju Federatyvnoju Socialistyč noju Respublikoju, VVR 1990, N 49, st. 637), Art. 6; the Budapest Memorandum (Memorandum pro garantii bezpeky uzv'jazky zpriedinennjam Ukraïny do dogovory pro nerozpovsudžennja jadernoi zbroi, 5.12.1994), Para 1; Dogovir pro družbu, spivrobitnycnvo i partnerstvo miž Ukraïnoju i Rosijs'koju Federacieju, 31.5.1997.

53 E. Mizrokhi, Russian 'separatism' in Crimea and NATO: Ukraine's big hope, Russia's grand gamble, *Paix et sécurité internationales*, Université Laval, 2009D. Wydra, *Autonomie auf der Halbinsel Krim. Eine völkerund verfassungsrechtliche Analyse*. Vienna: Braumüller Verlag, 2008.

54 Minorities at Risk, Assessment for Crimean Russians in Ukraine 2006, available at: <http://www.cidcm.umd.edu/mar/assessment.asp?groupId=36905>.

55 D. Trenin, Drivers of Russia's foreign policy, K. Liik (ed.), *Russia's "Pivot" to Eurasia*, European Council on Foreign Relations, May 2014, pp. 36–42.

operations.⁵⁶ The Russian press and television dominated Crimea and the local population was always strongly attracted to Russian politics.⁵⁷ But Russia also financially and morally supported pro-Russian groups in Crimea, for example the youth organizations Nashi and the Eurasian Youth movement.⁵⁸ Waves of ‘passportization’ – promoting the practice of Ukrainian citizens acquiring Russian citizenship – further strengthened the Russian influence on the peninsula. The final move to annex the peninsula was mainly justified with the need to protect ‘compatriots’ (Russian speakers and Russian passport holders) and not only ‘ethnic Russians’.⁵⁹ With the ‘little green man’ – unmarked members of the Russian Armed Forces occupying Crimean government buildings – Russia by far exceeded any acceptable level of kin-state support. By exploiting the weaknesses of the Ukrainian state (politically and militarily) and by mobilizing narratives of an oppressed and endangered Russian people held hostage without protection within a state, whose central institutions have been captured by fascist illegitimate forces, Russia finally annexed Crimea.

4 Conclusion


De facto Ukraine lost a territory which was never really Ukrainian from the beginning. Territorial autonomy in the case of Crimea failed because Russians in Crimea did not feel sufficiently protected by a weak autonomy in a weak state, especially after the change of government in Ukraine in February 2014. These separatist tendencies were fuelled and in the end the separation was militarily enforced by Russia in breach of international law. The Civil War in Eastern Ukraine highlights that the problems are far from resolved and the country remains deeply divided.

56 J.S. Nye, Jr., *Soft power: the means to success in world politics*. New York: Public Affairs, 2008; L. Roslycky, *Russia’s smart power in Crimea: sowing the seeds of trust*, in *Southeast European and Black Sea Studies*, Vol. 11, No. 3, 2011, pp. 299–316.

57 W. Varettoni, ‘Crimea’s Overlooked Instability’, in *The Washington Quarterly*, Vol. 34, No. 3, 2011, pp. 87–99.

58 M.A. Jovanovic, ‘Territorial Autonomy in Eastern Europe – Legacies of the Past’, in *Journal on Ethnopolitics and Minority Issues*, Vol. 4, 2002, pp. 1–14.

59 J. Mankoff, ‘Russia’s Latest Land Grab’ in *Foreign Affairs*, Vol. 93, No. 3, 2014, pp. 60–68.



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