RUSSIA & UKRAINE: INTERNATIONAL LAW AND SELF DETERMINATION

Zlimen & McGuiness, PLLC
Attorneys At Law

Patrick McGuiness
The Ukraine Conflict
How Did it Come to This?
Ukrainian Divide
The Language Divide

Russian as a native tongue in Ukraine

Source: All-Ukrainian population census 2001, State Statistics Committee of Ukraine
A Closer Look

The majority language by city, town, and village councils
Results from the Ukrainian 2001 Census

80%
Ukrainian
Russian
Romanian/Moldovan
Crimean Tatar
Hungarian
Bulgarian
Gagauz
Polish
Albanian
Chernobyl disaster area (formerly Ukrainian)
The Voting Divide
Crimea

Distribution of ethnic groups in Crimea (2001)

- Ethnic Russians: 58%
- Ukrainians: 24%
- Tatars: 12%
- Others: 6%
Be Wary of Correlations
The Politics
Spheres of Influence

Maps showing countries and regions with different shades indicating whether they joined NATO and/or the EU before or after 1992. The map includes countries such as Finland, Sweden, Poland, Russia, and others, highlighting the geopolitical landscape of Europe.
Gas Money

Key gas pipelines in Ukraine

KEY
- Gas travels into Ukraine from Russia and Belarus and leaves for Europe
- Gas fields

Source: East European Gas Analysis, National Gas Union of Ukraine
European Gas Control
Trade Agreements
Crimean Events

- Anonymous Masked Gunmen

**Ukraine by ethnic identity**
- Ukrainian: 77.8%
- Russian: 17.3%
- Other: 4.6%

**Crimea by ethnic identity**
- Russian: 58.3%
- Ukrainian: 24.3%
- Crimean Tartar: 12%
- Other: 8%

Note: Some totals may not add up due to rounding
Source: 2001 Ukraine census
Private International Law

- Private International Law, Hague Convention Topics:

  **International Protection of Children**
  - Protection of Children (1996) - [34]
  - Child Abduction (1980) - [28]
  - Adoption - Co-operation (1993) - [33]
  - Recovery of Maintenance (2007) - [38]
  - Maintenance Obligations (Applicable Law) (1973) - [24]
  - Maintenance Obligations (Enforcement) (1973) - [23]
  - Maintenance Obligations - Children (Applicable Law) (1956) - [08]
    - Maintenance Obligations - Children (Enforcement) (1958) - [09]
  - Protection of Minors (1961) - [10]
  - Adoption (1965) - [13]

- **International Protection of Adults**
  - Protection of Adults (2000) - [35]

- **Relations between (Former) Spouses**
  - Marriage (1978) - [26]
  - Divorce (1970) - [18]
  - Matrimonial Property Regimes (1978) - [25]
  - Recovery of Maintenance (2007) - [38]
  - Maintenance Obligations (Applicable Law) (1973) - [24]
  - Maintenance Obligations (Enforcement) (1973) - [23]

- **Wills, Trusts and Estates**
  - Form of Wills (1961) - [11]
  - Administration of Estates (1973) - [21]
  - Succession to Estates (1989) - [32]
  - Trusts (1985)

- **INTERNATIONAL COMMERCIAL AND FINANCE LAW**

  - **Contracts**
    - Sales (1955) - [03]
    - Transfer of Title (1958) - [04]
    - Consumer Sales - [articles adopted by the Fourteenth Session]
    - Agency (1978) - [27]
    - Sales Contracts (1986) - [31]

- **Torts**
  - Traffic Accidents (1971) - [19]
  - Products Liability (1973) - [22]

- **Securities**
  - Securities Held with Intermediaries (2006) - [36]

- **Trusts**
  - Trusts (1985) - [30]

- **Recognition of Companies**
  - Recognition of Companies (1956) - [07]
Public International Law

- Refers to relations between and among sovereign states, as well as international organizations.
- Major topics include:
  - the law of war,
  - the law of peace,
  - the law of treaties,
  - the law of state responsibility,
  - international criminal law,
  - the international protection of human rights
Sources of Public International Law

- International Conventions
- Customs
- General Principles of Law
- Scholarly Writings
Jus ad Bellum

- When it is ok to go to war.
Jus in Bello

- Conduct in War
- International Humanitarian Law
International Armed Conflicts

- Generally – War between 2 state actors
- Geneva Convention Common Article 2
- Lots of Protections triggered
The Law of Armed Conflict (LOAC)

- 4 Principles:
  - Distinction
  - Proportionality
  - Military Necessity
  - Unnecessary Suffering
Distinction
Distinction - Direct Participant in Hostilities (DPH)

- Conduct that leads to the loss of civilian protections
Proportionality

Related to Collateral Damage
Military Necessity

- Attack intended to help the military defeat of the enemy.
- Target must be a Military Objective
Unnecessary Suffering

- It is unlawful to inflict injuries or suffering beyond what is necessary to remove a combatant from the fight.
Non-International Armed Conflicts

- Acts that rise to the level of Armed Conflict, but are not between 2 state actors.
- Can be between 2 non state groups
- Can be between a recognized state and another internal organized group.
Legal Right to Use Force

- Self Defense is allowed under Customary International Law
- Also under UN Charter Article 51.
Self Defense - Necessity

- Are peaceful options used up?
- Force should be a last resort.
Self Defense - Proportionality

- States must limit force to that which is necessary to counter the threat or attack
NIAC Protections

- Common Article 3 of the Geneva Conventions
- Additional Protocol II of 1977
- The provisions of the 1954 Cultural Property Convention which relate to respect for cultural property (Article 19)
- The 1977 United Nations Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques
- The 1993 Chemical Weapons Convention
- The 1997 Landmines Treaty
In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed "hors de combat" by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

(b) taking of hostages;

(c) outrages upon personal dignity, in particular humiliating and degrading treatment;

(d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

(2) The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.
Self Determination
Right of Secession

- Ethnic Group’s desire for independence
- What about Sub-ethnic groups
- Historical Territory based claims
Annexation of Crimea

- March 21st 2014
- Occurred at culmination of military involvement in Crimea by ‘green men’

<table>
<thead>
<tr>
<th>Russia</th>
<th>Ukraine</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>21</td>
</tr>
<tr>
<td>845,000</td>
<td>129,950</td>
</tr>
<tr>
<td>Reserves 2,000,000</td>
<td>Reserves 1,000,000</td>
</tr>
<tr>
<td>Military Equipment</td>
<td></td>
</tr>
<tr>
<td>2,750+ In storage 18,000</td>
<td>1,150 In storage 1,435</td>
</tr>
<tr>
<td>1,571+</td>
<td>231</td>
</tr>
<tr>
<td>Combat Aircraft</td>
<td></td>
</tr>
<tr>
<td>392+</td>
<td>139</td>
</tr>
<tr>
<td>Combat Helicopters</td>
<td></td>
</tr>
<tr>
<td>82</td>
<td>10</td>
</tr>
<tr>
<td>Combat Vessels</td>
<td></td>
</tr>
<tr>
<td>8,969+ In storage 16,930</td>
<td>1,952</td>
</tr>
<tr>
<td>Artillery</td>
<td></td>
</tr>
</tbody>
</table>

NOTE: Figures refer to military equipment in active service.
Secession and Annexation Comparisons

- Kosovo
- Bosnia-Herzegovina
- Turkish Republic of Northern Cyprus
International Security Arrangements

- The Budapest Memorandum
- Giving up nuclear weapons in exchange for rights & protections
Black Sea Fleet Treaties

- Russian Use of Crimean Ports
- What does the annexation mean for the treaties
- What will it mean for the Ukrainian fleet?

**Russia’s Black Sea Fleet in Ukraine**
The deployment of Russia’s Black Sea Fleet in Crimea has been extended for another 25 years. Russia has the option to extend the lease by an additional five years.

<table>
<thead>
<tr>
<th>Year</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>1992</td>
<td>Beginning in 1992, the Black Sea Fleet was a joint Russian-Ukrainian fleet</td>
</tr>
<tr>
<td>1995</td>
<td>Under the 1995 and 1997 agreements, Russia’s Black Sea Fleet and the Ukrainian Navy were established, with separate naval bases on Ukrainian territory</td>
</tr>
<tr>
<td>1997</td>
<td>On May 28, 1997, a lease agreement was signed, giving Russia access to the Sevastopol base for 20 years</td>
</tr>
<tr>
<td>2010</td>
<td>Russia and Ukraine signed an agreement to station the Black Sea Fleet in Crimea for another 25 years, with the option of extending the lease for another five years</td>
</tr>
</tbody>
</table>

*An overview of Russian-Ukrainian relations regarding the Black Sea Fleet in Crimea.*

**Number of ships as of early 2010 – 167**

- **Cruisers** – 1
- **Assault landing ships** – 10
- **Escort ships** – 3
- **Small missile ships** – 9
- **Submarines** – 2
- **Anti-submarine warfare ships** – 13

**The history of the Black Sea Fleet in Ukrainian waters**

- **1995**
- **1997**
- **2010**
Russian Soldiers in Crimea

- ‘Green Men’
- With Russian Weapons
- Securing Crimea against Ukrainian Troops and interests.
Russian Soldiers in Eastern Ukraine

- Captured Russian Soldiers in Eastern Ukraine
- Were ‘lost’ according to Moscow
- What protections?
Kidnapping of Journalists

- CBS News
- NBS
- TIME
- Vice
- CNN
Malaysian Air Flight 17

Civilian Flight downed by pro-Russian forces

Likely a case of mistaken identity

Big issues for issues
MH-17

- BUK Missile System Responsible
- Russian Supplied
- Exploded approx. 65 ft. from target
Relief Convoys

- Mistrust on both sides
- Red Cross involvement to sort out the details
International Jurisdiction

- The ICC
- Ukraine Signed but didn’t ratify the Rome Statute
- Can still give ICC jurisdiction by invitation
Ukraine’s Parliament passed a resolution requesting ICC hold Yanukovych and others responsible.

ICC decides if they want to intervene.
U.N. Security Council

- Has authority
- Won’t act
- Could also request ICC action
The Future

- Cease fire just fell apart
- Russian support continues
- Sanctions are working to a degree
QUESTIONS?

Zlimen & McGuiness, PLLC
Attorneys At Law

Patrick McGuiness
pmcguiness@zmattorneys.com