

Symposium: “The Incorporation of Crimea by the Russian Federation in the Light of International Law”

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The Crimean crisis may constitute a turning point in the development of international relations in Europe. Russia has incorporated parts of the territory of another sovereign state and has thereby resorted to a political strategy that was considered *passé* in Europe at the beginning of the 21st century. The crisis has caused a large division between Russia and a few allies on the one hand, and the Western states on the other hand – an end of which is not yet in sight. Tensions between Russia and all Western States have reached a level unknown since the end of the cold war. Moreover, the assessment of the events from an international law perspective mirrors the geo-political camps. Hardly any “Western” politician or scholar deems Russia’s political course justifiable and justified under the precepts of international law. Inversely, from what we can perceive from the outside, Russian politicians and scholars seem confident to be able to properly justify the incorporation of Crimea within the framework of the existing international legal order. The crisis is matched by the absence of a serious legal dialogue among international legal scholars of both camps.

This journal’s symposium builds on a conference that was held at the Max Planck Institute for Comparative Public Law and International Law on September 2-3, 2014 in Heidelberg. The objective was to break up intellectual solipsism, and to gather scholars of international law from Europe, including Russia and Ukraine, for an open exchange of arguments on the issue. It was for all we know the first academic event of this type since the outbreak of the crisis. It proved to be more difficult to realize than initially expected, because many international lawyers from Russia and from Ukraine declined our invitation for one reason or another. The first part of the conference was supposed to develop a deeper understanding of the rele-

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vant principles and rules. Only in the second part, these norms were to be applied to the case. The conference also dealt with the declaration of independence of Kosovo, to avoid the impression that the meeting sought to place one country in the dock, and because Kosovo was often cited as a precedent during the Crimea crisis, for good or bad reasons.

Presentations were given by scholars from Belarus, the Czech Republic, France, Germany, Italy, Russia, and Ukraine. Unsurprisingly, the divide mentioned above surfaced at the conference itself. A number of Western scholars were critical of the European strategy towards the association of Ukraine to the European Union and about the West's policies regarding the independence of Kosovo,¹ but nevertheless agreed that the incorporation of Crimea into the Russian Federation was manifestly illegal under international law. The Russian contributors, on the other hand, argued in favour of the legality of the incorporation of Crimea, primarily invoking the principle of the self-determination of peoples. However, their arguments relied above all on domestic law, on historical considerations, on political arguments, or on readings of international legal norms which – in our view – depart from prior scholarly consensus, not only among Western scholars but shared around the globe.

As a matter of fact and as already stated, the contemporary academic debates in Russia, Ukraine and other Eastern, Central and Western European states seem to be conducted in isolation and detached from each other. We perceive an urgent need to offer spaces for scholarly exchanges in which these academic universes meet and might refer and connect to each other. It is a truism but maybe worth repeating at this occasion that the function and purpose of international law as a global order demands a genuinely transnational academic and practical legal discourse whose participants accept that arguments are sound only if they are fit for universal application.²

¹ See *M. Hartwig*, Das Gutachten des Internationalen Gerichtshofs zur Unabhängigkeitserklärung des Kosovo – Vorgeschichte und “Urteils”kritik, *Osteuropa-Recht* 58 (2012), 11 et seq.

² The phenomenon that international legal scholars often espouse positions which can be linked to their prior education in their domestic legal system and which serve the national interest has been called “epistemic nationalism” (*A. Peters*, Die Zukunft der Völkerrechtswissenschaft: Wider den epistemischen Nationalismus, *ZaöRV/HJIL* 67 (2007), 721 et seq.). See on the necessity (and feasibility) of making arguments about international law that can be understood and replicated by individuals independent from their national background *A. Peters* (note 2), at 764 et seq. This does not imply that scholars should completely detach themselves from their education and cultural context (which would be impossible and unnecessary), as long as they make a conscious effort to internalize the “others” perspectives.

The publication of the contributions to the conference has, against this background, one primary purpose.³ It aims to document the exchange of arguments and, in doing so, bring into the Western debate the views of Russian and other Eastern European scholars. In order to serve this purpose, we did not substantively interfere with the arguments made in the written contributions but concentrated on formal editing. The papers did not undergo a peer review in a strict sense. They thus reflect the authentic position of the authors, independently from what the symposium editors would have preferred as a legal approach. Hence, the symposium is not necessarily a compilation of the best arguments in the case, but a somehow historic documentation of the arguments that international lawyers from various “schools” have in fact made. We deem this authenticity to be valuable as such, showing how international law has been used in a specific crisis. It will be up to the reader to find out where the better arguments can be identified. The fact of publication does not imply any substantive approval by the editors of the symposium and of the Heidelberg Journal of International Law.

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