

**MIGS AND MONKS IN CRIMEA: RUSSIA FLEXES
CULTURAL AND MILITARY MUSCLES, REVEALING DIRE
NEED FOR BALANCE OF *UTI POSSIDETIS* AND
INTERNATIONALLY RECOGNIZED SELF-
DETERMINATION**

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*Tens of millions of our fellow citizens
and countrymen found themselves
beyond the fringes of Russian territory.*

—President Vladimir Putin, April 25, 2005¹

*Putin, surely, is the main guarantor of
the security of the Russian world,” the
president’s spokesman, Dmitry Peskov,
said on state television last month. “And
Putin has rather unambiguously stated
that.*

—Dmitry Peskov, March 7, 2014²

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¹ Ott Ummelas, *Putin’s 21-Year Quest to Be Russian Guardian Began in Estonia*, BLOOMBERG NEWS (Apr. 14, 2014), <http://www.bloomberg.com/news/2014-04-13/putin-21-year-quest-to-be-guardian-of-russians-began-in-estonia.html>. See also Valery Sharifulin, *Peskov: Putin Is Guarantor of Russian World’s Security*, ITAR-TASS NEWS AGENCY (Mar. 7, 2014), <http://en.itar-tass.com/russia/722667>.

² *Id.* In 2005, after winning a second presidential term, Putin told the nation that the Soviet collapse in 1991 was a “genuine tragedy” for the Russian people. *Id.*

I. Introduction

Flights to Sochi's beachside airport arrive from all points north in Russia as August brings a flood of sun-starved tourists to the warm beaches of the Black Sea. Approaching planes fly south over the resort city and out across the water before turning in a low "U" to land just meters beyond the sun-glinting waves. Near the beach, onion domes rise up against the sky, their golden surfaces glistening in the sun. Worshipers file into a cathedral for the Russian Orthodox liturgy on Sunday morning, pressing close in the crowded sanctuary, lighting candles, and venerating icons in the shadow of sweeping flower-adorned walls. The rhythmic hum of a Znamenny Chant evokes Byzantine visions of the Middle Ages as the wafting incense completes the celestial transcendence. An intrepid American, visiting the church, steps outside to break the reverie and notices a constant stream of flights taking off from the airport into the clear, blue sky. The lumbering passenger jets hang over the swimming throngs on the beach as they gain altitude. But, the quieter, higher-pitched whine of the Mikoyan-i-Gurevich or "MiG" fighters really grab his attention. Two, four, six, eight . . . it is easy to lose count. The fighters bank right, engage afterburners and head with belligerent resolve toward the closest landmass to the west: Ukraine.

This fictional account of conflict between Ukraine and Russia demonstrates current Russian cultural trends and ambitions. Russia violated *uti possidetis*³ by sponsoring Crimea's secession vote from Ukraine and subsequently annexing Crimea in March of 2014.⁴ Russia's action demonstrated a warped view of self-determination⁵ and a

³ *Uti possidetis* is "the doctrine that colonial administrative boundaries will become international boundaries when a political subdivision or colony achieves independence." BLACK'S LAW DICTIONARY (8th ed. 2004). See also Steven R. Ratner, *Drawing a Better Line: Uti Possidetis and the Border of New States* 90 AM. J. INT'L L. 590, 590 (1996). "[U]ti possidetis provides that states emerging from decolonization shall presumptively inherit the colonial administrative borders that they held at the time of independence." *Id.*

⁴ David M. Herszenhorn, *Crimea Votes to Secede from Ukraine as Russian Troops Keep Watch*, N.Y. TIMES (Mar. 16, 2014), http://www.nytimes.com/2014/03/17/world/europe/crimea-ukraine-secession-vote-referendum.html?_r=1. See also Matt Smith & Alla Eshchenko, *Ukraine Cries 'Robbery' as Russia Annexes Crimea*, CNN (Mar. 18, 2014), <http://www.cnn.com/2014/03/18/world/europe/ukraine-crisis/index.html>.

⁵ "Self-determination implies the right of an identity group to self-governance, meaning sovereignty over themselves-limited or complete." Michael J. Kelly, *Political Downsizing: The Re-emergence of Self-determination, and the Movement Toward Smaller, Ethnically Homogenous States*, 47 DRAKE L. REV. 209, 220 (1999).

dangerous lack of respect for *uti possidetis*. Crimea's undeniable historical and cultural connection to Russia is not a unique circumstance; however, as dozens of groups and regions across the globe agitate for their own self-determination or sovereignty and provide at least as compelling a case to justify it. By one count, there have been over 78 "self-determination conflicts since World War II."⁶ Had the world consistently applied *uti possidetis* over the past 20 years, Russia may have been deterred from sponsoring Crimea's secession and subsequently annexing it.

This article examines the important concept of *uti possidetis* and how it can be strengthened through consistent state practice and harmonized with the preemptory norm of self-determination. Self-determination movements, tempered with *uti possidetis*, can develop peacefully, focusing on four essential elements: international recognition, compliance with domestic law, fair elections, and no outside interference. History shows how the implementation of *uti possidetis* had some success in preserving peace since World War II. Selective application of *uti possidetis* in Kosovo weakened the principle and created a perception in Russia that it could seize Crimea in March 2014. A stronger *uti possidetis* balanced with self-determination requires Crimea remain part of Ukraine, but still allows the Crimean population to work towards self-determination—without Russian interference. Increased, consistent state practice of *uti possidetis* balanced with an internationally recognized process of self-determination featuring the four above-mentioned, essential elements may have deterred Russia from sponsoring the secession of Crimea and annexing it; in the future it may prevent violence, economic hardship, and outright war in Eastern Europe and beyond.

II. Balancing *Uti Possidetis* and Self-Determination

Uti possidetis is a legal principle holding that the frontiers of newly independent states remain fixed following independence.⁷ *Uti possidetis* emerged in medieval times as a theory governing land ownership.⁸ It

⁶ Marc Weller, *Settling Self-Determination Conflicts: Recent Developments*, 20 EUR. J. INT'L L. 111, 114 (2009).

⁷ Ratner, *supra* note 3, 590–91.

⁸ Enver Hasani, *International Law under Fire Uti Possidetis Juris: From Rome to Kosovo*, 27 FLETCHER FORUM OF WORLD AFF. 85, 85 (2003).

developed into a theory determining state borders after armed conflict.⁹ It has been credited with being the precursor of the modern territorial integrity norm.¹⁰ *Uti possidetis* has evolved to become a doctrine designed to aid territory emerging from colonialism.¹¹ In this way it incorporates both self-determination and “non-interference in internal affairs” of other countries.¹² Modern *uti possidetis* mandates that colonial era “administrative borders” become the newly independent states’ borders upon de-colonization.¹³ It was applied in South America and Africa as their countries threw off colonial shackles, but needed a commonly agreed upon construct to determine borders.¹⁴

In modern times, it is taken for granted that the world is mostly divided into nation-states and these nations have fixed borders. This notion of states respecting the fixed borders of neighboring countries, though, is a relatively modern concept. Universal respect for fixed borders and the principle of “territorial integrity” began after World War II.¹⁵ The United Nations (UN) charter affirms the validity of territorial integrity.¹⁶ However, territorial integrity is not absolute. Human nature drives groups of people to seek self-determination for a variety of reasons including ethnic homogeneity.¹⁷ *Uti possidetis* evolved to address the specific circumstance of new countries emerging from colonialism or occupation. Thus, *uti possidetis* best represents a slow paradigm shift of thought from the ethno-centric preference of territorial division to a post-colonial “photograph of territory” scheme.¹⁸ Just as a photograph represents a moment in time, *uti possidetis* prefers a practical

⁹ *Uti possidetis*, INT’L L. BLOG (Jan. 22, 2012), <http://rsb-internationalawblog.blogspot.com/2012/01/term-status-quo-ante-bellum-is-latin.html>.

¹⁰ Paul R. Hensel, Michael E. Allison & Ahmed Khanani, Territorial Integrity Treaties, Uti Possidetis, and Armed Conflict over Territory, Shambaugh Conference “Building Synergies: Institutions and Cooperation in World Politics,” at the University of Iowa 7 (Oct. 13, 2006).

¹¹ Hasani *supra* note 8, at 86–87. See also Joshua Dilk, *Reevaluating Self-Determination in a Post-Colonial World*, 16 BUFF. HUM. RTS. L. REV. 289, 298–99 (2010).

¹² Hasani, *supra* note 8, at 87.

¹³ Hensel, Allison & Khanani, *supra* note 10, at 1. See also C. Lloyd Brown-John, *Self-Determination and Separation*, POL’Y OPTIONS, Sept. 1997, at 40, 42, available at <http://archive.irpp.org/po/archive/sep97/brown.pdf>. *Uti possidetis* is a tool to aide newly-born states as they struggle with their identities, definitions, and boundaries. *Id.* See also Dilk, *supra* note 11, at 298–99.

¹⁴ Brown-John, *supra* note 13.

¹⁵ Hensel, Allison & Khanani, *supra* note 10, at 4.

¹⁶ U.N. Charter art. 2, para 4.

¹⁷ Kelly, *supra* note 4, at 213.

¹⁸ Ratner, *supra* note 9, at 591.

preservation of previously delineated administrative or internal republic boundaries and looks at the moment of independence to assign the new, fixed, international boundaries. In cases of major geopolitical transformation, such as the newly independent socialist republics of the Union of Soviet Socialist Republics¹⁹ (USSR) faced in the early 1990s, a border delineation process such as *uti possidetis* provides an unbiased, proven method to achieve peaceful independence.

In an opinion issued in response to a frontier dispute between Burkina Faso and the Republic of Mali²⁰ the International Court of Justice (ICJ) delivered a forceful and practical justification for *uti possidetis*.

[*Uti possidetis*] is a general principle, which is logically connected with the phenomenon of the obtaining of independence wherever it occurs. Its obvious purpose is to prevent the independence and stability of new States being endangered by fratricidal struggles provoked by the challenging of frontiers following the withdrawal of the administering power.²¹

Succinctly put, “frontiers inherited from colonial times are deemed permanent where states have made the transition from colonial to independent status.”²² The ICJ’s analysis of *uti possidetis* provides the best rationale for dealing with persistent and otherwise unsolvable ethnic conflicts.²³ Elegantly simple, the concept is an accepted legal principle and has been applied in Africa, South America, and other places since World War II.²⁴

¹⁹ Union of Soviet Socialist Republics was founded in 1921 and dissolved in 1991. It consisted of fifteen republics: Armenia, Azerbaijan, Belorussia, Georgia, Kazakhstan, Kirghizia, Latvia, Lithuania, Moldavia, Russia, Tadzhikistan, Turkmenistan, Ukraine, and Uzbekistan. ENCYCLOPÆDIA BRITANNICA, <http://www.britannica.com/EBchecked/topic/614785/Union-of-Soviet-Socialist-Republics> (last visited June 10, 2014).

²⁰ Frontier Dispute (Burk. Faso/Mali), 1986 I.C.J. 554 (Dec. 22).

²¹ *Id.* ¶ 20, at 565.

²² Brown-John, *supra* note 13, at 42.

²³ In dicta, the ICJ in *Frontier Dispute* affirms the “exceptional importance [of *uti possidetis*] for the African continent” and highlights the employment of *uti possidetis* in “Spanish America.” *Frontier Dispute*, *supra* note 20, ¶¶ 20–21, at 565.

²⁴ Brown-John, *supra* note 13, at 42.

The concept of *uti possidetis* as a basis for determining boundaries has been affirmed in several international documents including

Most scholars note that *uti possidetis* has been relevant only three times after the de-colonization of Africa: during the dissolutions of the USSR, Czechoslovakia, and Yugoslavia in the early 1990s.²⁵ Faced with an explosion of new states in Europe when the Soviet Union dissolved, the European Commission (precursor to the European Union²⁶) used the power of diplomatic recognition to influence the reorganization of borders in the early '90s.²⁷ New members of the Commonwealth of Independent States (CIS)²⁸ agreed to the application of the *Frontier Disputes* version of *uti possidetis*.²⁹ Of the fifteen former Soviet Republics became independent countries, twelve of them constituted the CIS while the Baltic States of Lithuania, Latvia and Estonia did not join.³⁰ Regions contained within those new states such as Crimea inside

interpretations by the ICJ. In addition it has been explicitly affirmed or implicitly reiterated in: Principle 3 of the Final Act of Helsinki (1975); the Vienna Diplomatic Convention (1966); Article 62 of the Vienna Convention on the Law of Treaties (1969); and, the Vienna Convention on Succession of States (1978); Article 3 of the Charter of the Organization of African Unity; Article 20 (implied) of the African Charter of Human and Peoples' Rights (1981); Paragraph 6 of the UNGA Resolution 1514 (XV) expressly states that self-determination cannot be interpreted to impair the territorial integrity of a sovereign country.

Id.

²⁵ Hasani, *supra* note 8, at 85.

²⁶ The European Union is a political and economic union of twenty-eight European countries. EUROPEAN UNION, http://europa.eu/index_en.htm (last visited May 31, 2014).

²⁷ Hasani, *supra* note 8, at 91.

²⁸ Azerbaijan, Armenia, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Uzbekistan and Ukraine comprise the Commonwealth of Independent States. *About Commonwealth of Independent States*, INTERSTATE STATISTICAL COMM. OF THE COMMONWEALTH OF INDEP. STATES, <http://www.cisstat.com/eng/cis.htm> (last visited May 31, 2014).

²⁹ Hasani, *supra* note 8, at 91. A variety of agreements struck in the early 1990s evidence Ukraine and Russia's, as well as the rest of the CIS countries', reliance on the principles of *uti possidetis* to create the borders of the newly independent states emerging from the ashes of the former Soviet Union. In particular, "Article 3 of the Charter of the Commonwealth of Independent States (June 22, 1993) affirms the 'inviolability of States' boundaries, recognition of existing borders and rejection of unlawful territorial acquisitions.' The Alma-Ata Agreement establishing the Commonwealth of Independent States (December 1991) includes similar provisions." *Id.*

³⁰ *Constitutional (Fundamental Law) of the Union of Soviet Socialist Republics*, BUCKNELL UNIV., <http://www.departments.bucknell.edu/russian/const/1977toc.html> (last visited May 31, 2014). See also *About Commonwealth of Independent States*, *supra* note 28.

of Ukraine, Chechnya³¹ inside of Russia, and South Ossetia and Abkhazia inside of Georgia³² seceded (or attempted to) in violation of *uti possidetis*. Otherwise, the application of *uti possidetis* proved successful across the fifteen new statelets formed from the ruins of the Soviet Union. Pundits could argue other factors such as ethnic homogeneity and optimistic exuberance, resulting from new-found freedom, suppressed conflict. Although, this failed to prevent violence in the former Yugoslavia.

The application of *uti possidetis* to the dissolving situation in Yugoslavia occurred through the Arbitration commission also known as the Badinter Commission.³³ The commission used a conservative approach, relying heavily on the *Frontier Disputes* case, with only the federal republics of Yugoslavia, such as Croatia and Serbia, “granted” the right of self-determination.³⁴ The commission recognized as newly independent states those that have “features of a federal republic” such as “possess[ing] territory, population, and a government in control of its territory and population.”³⁵ The result was smaller enclaves of homogenous peoples such as the Republic of Serbian Krajina and Kosovo receiving no such recognition as they did not possess those features in the eyes of the commission.³⁶ Tragically, war ensued. A balance of *uti possidetis* and self-determination featuring respect for domestic law, international recognition, fair referendum and no outside interference could have provided a path for stability and successful self-determination movements in the former Yugoslavia and USSR. This process discourages states from resorting to war when they disagree with it.

The right of self-determination and *uti possidetis* may appear mutually exclusive at first blush. However, *uti possidetis* does not prohibit all future self-determination movements and can co-exist with

³¹ *A Sham Referendum in Chechnya*, N.Y. TIMES (Jan. 14, 2003), <http://www.nytimes.com/2003/01/14/opinion/a-sham-referendum-in-chechnya.html>. See also *The Warlord and the Spook*, ECONOMIST (May 31, 2007), <http://www.economist.com/node/9254176>.

³² William R. Slomanson, *Legitimacy of the Kosovo, South Ossetia, and Abkhazia Secessions: Violations in Search of a Rule*, 6 MICHIGAN J. INT'L L. 1 (2009), http://www.tjisl.edu/slomansonb/2.4_Secession_Legitimacy_MiskKiev.pdf.

³³ Hasani, *supra* note 8, at 91.

³⁴ *Id.* at 92.

³⁵ *Id.*

³⁶ *Id.* The commission applied the criteria of “democracy, the rule of law, and respect for human and minority rights” to Kosovo’s application and denied it. *Id.*

self-determination in cases featuring four essential elements: international recognition, compliance with domestic law, fair elections, and no outside interference. While international law does not require compliance with domestic law for secession to be legal,³⁷ although some scholars disagree,³⁸ others say the right is limited and restricted to cases without outside interference.³⁹ In reality, seeking compliance with domestic law will reduce the likelihood of violent struggles over secession. The current Scottish movement for secession demonstrates how compliance with domestic law, an apparently fair referendum with no outside interference, can facilitate a peaceful secession.⁴⁰ Legal scholars and state practice affirm the necessity of international recognition for new states⁴¹ as recognizing a new state tends to confer legitimacy on it.⁴² Thus, state practice confirms the necessity of international recognition, the first essential factor. State practice

³⁷ *Crimea's Referendum and Secession: Why It Resembles Northern Cyprus More than Kosovo*, BLOG OF THE EUR. J. OF INT'L L. (Mar. 20, 2014), <http://www.ejiltalk.org/crimeas-referendum-and-secession-why-it-resembles-northern-cyprus-more-than-kosovo/>.

³⁸ Ron Synovitz, *Crimea: Annexation And Recognition—The Legal Battles Ahead*, RADIO FREE EUROPE, RADIO LIBERTY (March 16, 2014), <http://fb.rferl.org/content/law-arguments-crimea-annexation-referendum-ukraine-russia/25299060.html>.

³⁹ Anna Stepanowa, *International Law and the Legality of Secession in Crimea*, CAMBRIDGE J. INT'L & COMP. L. (Apr. 20, 2014), <http://cjl.org.uk/2014/04/20/international-law-legality-secession-crimea/>.

⁴⁰ Laura Smith-Spark, *After Crimea, Will Scotland Be Next to Vote on Independence?* CNN (Mar. 18, 2014), <http://www.cnn.com/2014/03/18/world/europe/scotland-independence-referendum-explainer/index.html>.

⁴¹ Chris Borgen, *From Intervention to Recognition: Russia, Crimea, and Arguments over Recognizing Secessionist Entities*, OPINIO JURIS (Mar. 18, 2014), <http://opiniojuris.org/2014/03/18/intervention-recognition-russia-crimea-arguments-recognizing-secessionist-entities/>.

States tend to view the decision to recognize or not recognize an entity as a state as a political decision, albeit one that exists within an international legal framework. That legal framework is in part the rules of statehood. The standard view in international law is that a state must have (a) a permanent population; (b) a defined territory; (c) a government; and (d) the capacity to enter relations with other states These criteria are meant to reflect the nuts and bolts of sovereignty: an ability to stand on your own feet, make decisions for yourself, and undertake international relations. Crimea seems less like a sovereign than a hothouse flower: alive due to extraordinary intervention, surviving due to conditions carefully controlled by others, and with little real say in its destiny.

Id.

⁴² *Id.*

combined with a peaceful process in Scotland, compliance with British law, a fair referendum in 2014 with no outside interference confirms the necessity of the last three essential factors in a balanced self-determination movement concerning territory first secured in earlier times under the principle of *uti possidetis*.

Self determination emanated from the enlightenment and undergirds the right of people to choose their own government.⁴³ President Wilson's Fourteen Points from the Versailles conference in 1919 provided support for minority rights and aimed to form countries along ethnically homogenous lines.⁴⁴ Self-determination remains a critical determinant of the collective freedom of a people and is a vital building block for any democratic system. The belief in the right of self-determination provides motivation for countless revolutions and fights for independence. Article I of the UN Charter lists "respect for the principles of equal rights and self-determination of peoples" among the purposes of that organization.⁴⁵ In fact, the right of self-determination can be considered *jus cogens*.⁴⁶

The world cannot entertain all uprisings of independence, regardless of how many groups across the world promote self-determination as their aspiration toward democracy. Former UN Secretary General Boutros-Boutros Ghali recognized the danger of unbridled self-determination when he stated, "if every ethnic, religious or linguistic group claimed statehood, there be no limit to fragmentation, and peace, security and

⁴³ Dilk, *supra* note 11, at 291.

⁴⁴ *Id.* at 290–92.

⁴⁵ U.N. Charter art. 1, para. 2.

⁴⁶ *Jus cogens* is "[a] mandatory or peremptory norm of general international law accepted and recognized by the international community as a norm from which no derogation is permitted. BLACK'S LAW DICTIONARY (9th ed. 2009). See also Article 53 of the Vienna Convention on the Law of Treaties, which states,

a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.

Vienna Convention on the Law of Treaties art. 35, May 23, 1969, 1155 U.N.T.S. 331. See also HENRY STEINER, PHILIP ALSTON & RYAN GOODMAN, INTERNATIONAL HUMAN RIGHTS IN CONTEXT: LAWS, POLITICS, MORALS 78 (3d ed. 2008) ("A rule cannot become a peremptory norm unless it is 'accepted and recognized [as such] by the international community of states as a whole.'").

economic well-being for all would become ever more difficult to achieve.”⁴⁷ Practical implementation of Wilson’s altruistic vision has been difficult to achieve. “Unfortunately, the problems that plagued Wilson’s interpretation of self-determination: definitional ambiguity, legislative obstinacy, haphazard application and geopolitics continue to do so today.”⁴⁸ It remains vital to distinguish situations featuring annexations or coercion of neighboring states from those ensconced in the selfless pursuit of equal status, suffrage, and opportunity for a deserving group. Self-determination must be limited to meritorious situations and administered through a process that unites the world. While not a panacea, *uti possidetis* provides a healthy limit during a time of great geopolitical transition while allowing for future self-determination with the four essential elements. Strengthening *uti possidetis* through consistent state practice may inhibit unending realignments of sovereignty and borders, and thus future violence and war. The Maidan protests, which began over Thanksgiving weekend of 2013, and subsequent ouster of Ukrainian President Yanukovich in 2014, and Russia’s reaction to both, has again brought the need for the application of *uti possidetis* to the forefront.⁴⁹

III. Prelude to a Feud: Crimean Connection to Russia and Why *Uti Possidetis* Matters to Crimea

The history of Crimea and its evolution of ethnicities, alliances, and loyalties have led to the current tension between Ukraine and Russia. Ethnic Russians comprise the majority of the peninsula providing a

⁴⁷ U.N. Secretary-General, *An Agenda for Peace: Preventive Diplomacy, Peacemaking, and Peace-Keeping: Rep. of the Secretary-General*, ¶ 17, U.N. Doc. A/47/277-S/24111 (June 17, 1992), as cited in Dilk, *supra* note 11, at 290. Dilk also states, “While every ethnic group should not be able to carve out a microstate for themselves, a right for ethnic minorities to possess alternative state options ranging from regional autonomy, federation, and only in limited situations, the ability to secede and create a new country should be systematically recognized.” *Id.* While correct, Dilk does not define the “limited situations” prescribe a process for self-determination or what allowance, (if any) should be made for domestic law.

⁴⁸ President Woodrow Wilson, Fourteen Points Address (Jan. 18, 1918), in PUBLIC PAPERS OF WOODROW WILSON 155, 155–62 (Ray Stannard Baker & William E. Dodd eds., 1927), as cited in Dilk, *supra* note 11, at 292.

⁴⁹ *From a Sea of Flags to Rivers of Blood: How Kiev’s Peaceful Protests Turned into Maidan Mayhem*, RT (Feb. 22, 2014, 5:32 AM), <http://rt.com/news/ukraine-maidan-protest-developments-982/>; see also Responding to Mr Putin, *ECONOMIST*, Mar. 22 2014, available at <http://www.economist.com/news/briefing/21599413-russia-wants-divided-ukraine-and-despite-promise-revolution-it-may-well-get>.

strong bond with Russia. Ukrainians and Tatars are significant minorities. The Black Sea Fleet headquarters city of Sevastopol takes on mythical status in the Russian psyche and binds the Russian heart to Crimea through epic battles and stalwart defensive struggles.⁵⁰ All factors combine to form a compelling bond between Crimea and Russia.

A. History of Crimea

The Tatars settled Crimea in the Middle Ages but Asian and European contenders fought over the territory for most of its history.⁵¹ Although Ukrainians and Russians share a common ethnic background, Crimea includes a mix of other nationalities and cultures, reflecting its long stretches of time as the homeland for the Tatar people as well as other Turkic and European peoples.⁵² The Ottomans ruled Crimea for 300 years.⁵³ Although the predecessor state (Kiev-Rus) of both Ukraine and Russia first established a foothold on Crimea by conquering an area near the present-day city of Sevastopol, no permanent Russian presence was sustained until 1783.⁵⁴ Premier Kruschev, in conjunction with the Soviet Presidium of the Central Committee (Presidium),⁵⁵ then

⁵⁰ Joshua Kucera, *Can a Russian Naval Base Remain in a Ukrainian City?*, SLATE (Feb. 26, 2009), http://www.slate.com/articles/news_and_politics/dispatches/features/2009/crimea_scene_investigation/can_a_russian_naval_base_remain_in_a_ukrainian_city.html.

⁵¹ Doris Wydra, *The Crimea Conundrum: The Tug of War Between Russian Ukraine on the Questions of Autonomy and Self-Determination*, 10 INT'L J. ON MINORITY & GROUP RTS. 111, 112 (2003).

⁵² *Id.*

⁵³ *Id.* See also Juan Valdés & Rosemary Wardley, *300 Years of Embattled Crimea History in 6 Maps*, NAT'L GEOGRAPHIC (Mar. 5, 2014), <http://news.nationalgeographic.com/news/2014/03/140305-maps-crimea-history-russia-ukraine/>.

⁵⁴ *Id.*

⁵⁵ The Presidium of the Central Committee was the successor to the Politburo, which was established in 1917 and utilized by Stalin for many years as a means of controlling the government. "The Politburo until July 1990 exercised supreme control over the Soviet government." *Politburo*, ENCYCLOPEDIA BRITANNICA, <http://www.britannica.com/EBchecked/topic/467548/Politburo> (last visited 31 May 2014). In 1952,

[m]ore stress was laid on "collective leadership" within this body after the tyrannical excesses of Stalin (d. 1953), and the Presidium was actually strong enough to remove Nikita Kruschev from the party's leadership in 1964. The old name of Politburo was revived for the body in 1966. The Politburo's membership was nominally elected by the Central Committee of the Communist Party, but in truth the Politburo was a self-perpetuating body that itself decided

transferred or “gifted” the territory to the Ukrainian Soviet Socialist Republic (UkrSSR) in 1954.⁵⁶ Russian culture now pervades the peninsula with former palaces of the Czars scattered throughout.⁵⁷

Prior to its vote for independence and annexation by Russia in March 2014—a vote many found unlawful—Crimea was a semi-autonomous, parliamentary republic with its own legislative body, the Verkhovna Rada.⁵⁸ The Verkhovna Rada operated under the authority of the president and constitution of Ukraine; however, the central government of Ukraine recognized Crimea as an autonomous republic within Ukraine, like Tatarstan within Russia.⁵⁹ This unique arrangement allowed Crimea to exercise some independence in the passage of its own laws, as well as a limited amount of self-regulation and self-determination.⁶⁰ This arrangement led to a productive co-existence with mainland Ukraine, increasing tourism and a seamless sense of a united Ukraine state from the beaches of Yalta to the northern border with Belarus.

B. Culturally Russian Crimea

One of the facts Russia cites as justification for its annexation of Crimea is the majority Russian population and Russian cultural identity throughout Crimea.⁶¹ This justification is a well-worn argument for those promoting unbridled self-determination in contravention of *uti possidetis*. However, it is important to examine how culturally “Russian” Crimea is in order to understand the Russian thought process in this matter.

which new members would be admitted and which members expelled.

Id.

⁵⁶ Krishnadev Calamur, *Crimea: A Gift to Ukraine Becomes a Political Flash Point*, NPR (Feb. 27, 2014), <http://www.npr.org/blogs/parallels/2014/02/27/283481587/crimea-a-gift-to-ukraine-becomes-a-political-flash-point>.

⁵⁷ *Crimea—Welcome to Visit Palaces of the Czars*, MY UKRAINE, <http://myukraine.info/en/tourism/crimea/Russian-czars/> (last visited May 31, 2014).

⁵⁸ Wydra, *supra* note 51, at 116.

⁵⁹ *Id.* at 128. See also Tatarstan, *The Survivor, A Better Way to Skin the Kremlin's Cat*, ECONOMIST (May 31, 2007), available at <http://www.economist.com/node/9254187>.

⁶⁰ Wydra, *supra* note 51, at 127–29.

⁶¹ Calamur, *supra* note 56.

In rough terms, ethnic Russians make up 58.5 percent of the population of Crimea, Ukrainians make up nearly 25 percent, and Crimean Tatars make up just over 12 percent.⁶² Although, under Ukrainian control, the mandated, official language of Crimea was Ukrainian, Russian remained the language used in most business, personal, and government transactions.⁶³ Many Russian pensioners, especially military retirees, live on the peninsula, where Russian Orthodoxy is strong.⁶⁴ Even before the annexation, Orthodox Christians were aligned to the Patriarch in Moscow instead of the one in Kiev by a large margin.⁶⁵ The population consistently followed Russian media, current events, and trends.⁶⁶ When Ukraine gained independence in 1991, Crimean politicians maintained strong connections with Moscow, with Russian politicians visiting and fomenting unrest to further their own ideal of Crimea as part of Russia.⁶⁷ For many years, some of the ethnic Russian population pressed for Crimea's return to Russian control.⁶⁸ However, many citizens across all three main ethnic groups desire to be free of both Russian and Ukrainian control.⁶⁹ It is obvious that many Crimeans have an affinity for Russia. The Russian affinity for and desire to own Crimea runs even deeper. One city in Crimea is so revered in Russia, it defines the Russian soul.⁷⁰

⁶² *All-Ukrainian Population Census 2001*, STATE STATISTICS COMM. OF UKRAINE <http://2001.ukrcensus.gov.ua/eng/results/general/nationality/Crimea> (last visited May 31, 2014) [hereinafter *Census*].

⁶³ Joshua Kucera, *Crime Scene Investigation, Language Wars*, SLATE (Feb. 27, 2009) http://www.slate.com/articles/news_and_politics/dispatches/features/2009/crimea_scene_investigation/language_wars.html.

⁶⁴ *Id.*; see also Gabriela Baczyńska & Alessandra Prentice, *Kiev—Loyal Orthodox Church Doubtful of Its Future in Crimea*, REUTERS (Mar. 31, 2014), <http://www.reuters.com/article/2014/03/31/us-ukraine-crisis-crimea-orthodox-idUSBREA2U1A120140331>.

⁶⁵ Kucera, *supra* note 63. See also Baczyńska & Prentice, *supra* note 64.

⁶⁶ Joshua Kucera, *Crime Scene Investigation, Crimea Is the Conspiracy—Theory Capital of Ukraine*, SLATE (Feb. 24, 2009), http://www.slate.com/articles/news_and_politics/dispatches/features/2009/crimea_scene_investigation/simferopol_is_the_conspiracy_theory_capital_of_crimea.html.

⁶⁷ Kucera, *supra* at note 50.

⁶⁸ Wydra, *supra* note 51, at 115.

⁶⁹ *Crimean Population Opposed to Becoming Part of Russia*, UNIAN (Feb. 16, 2009), <http://www.unian.net/eng/news/news-301059.html>; see also Clifford J. Levy, *Russia and Ukraine in Intensifying Standoff*, N.Y. TIMES, Aug. 28, 2009, at A4, available at <http://www.nytimes.com/2009/08/28/world/europe/28crimea.html>.

⁷⁰ *What Does Crimea Mean to Russia?*, ORIENTAL REV. (Mar. 26, 2014), <http://orientalreview.org/2014/03/26/what-does-crimea-mean-to-russia/>

C. Battles of Sevastopol

Sevastopol has a sacred place in the Russian heart. The intense, sustained struggle by Russian and Ukrainian soldiers in the Crimean War in the 1850s first romanticized the city in the Russian consciousness and appears throughout Russian literature. In particular, Leo Tolstoy wrote about the Siege of Sevastopol during the Crimean War in *Sevastopol Stories*.⁷¹ His words describing the stubbornness, hardiness, and dogged survival of the Sevastopol defenders lend a mythic aura to the city. He depicts Russian troops as “joyfully prepared to die . . . for their native land . . . [l]ong will Russia bear the imposing traces of the epic of Sevastopol, the hero of which was the Russian people.”⁷² Though Tolstoy’s pacifist views may be more familiar to Western audiences, his writings about Sevastopol have contributed to his legendary status as a Russian nationalist.⁷³ Following Hitler’s attack of the Soviet Union, the Soviet government printed 150,000 copies of *Sevastopol Stories* in an effort to raise national morale and determination.⁷⁴ Stalin awarded Sevastopol the title of Hero City for its heroic stand against German invaders in 1942–43.⁷⁵ More than merely mystical, Sevastopol also has strategic significance.

The Russian military founded Sevastopol in 1783 as a naval base.⁷⁶ Built by Russian and Ukrainian soldiers and defended during several wars, including World War II, hundreds of thousands of Ukrainian and Russian soldiers and civilians fought and died defending the city from invasion.⁷⁷ Catherine the Great established a Russian naval presence there that has lasted until the present time.⁷⁸ In 1948 Moscow designated it as a separate Soviet city, not under the rule of the Crimean Oblast in

⁷¹ LEO TOLSTOY, *THE COSSACKS AND OTHER STORIES* 221 (Paul Foote & David McDuff, trans., 2007).

⁷² *Id.*

⁷³ Walter G. Moss, *Classics Revisited: Leo Tolstoy’s Sevastopol Stories*, MICH. WAR STUD. REV. (July 2, 2008), <http://www.miwsr.com/tab-2008.asp>.

⁷⁴ *Id.* at 5.

⁷⁵ *Sevastopol: The Hero City Turns* 225, RIA NOVOSTI (Feb. 20, 2009), <http://en.ria.ru/analysis/20090220/120240104.html>.

⁷⁶ *Black Sea Fleet (BSF)*, FED’N OF AM. SCIENTISTS, <http://www.fas.org/nuke/guide/russia/agency/mf-black.htm>, (last updated Sept. 7, 2000 7:00:00 AM).

⁷⁷ Patrick Murphy, *The Effect of Industrialization and Technology on Warfare: 1854–1878*, MILITARY HISTORY ONLINE, <http://www.militaryhistoryonline.com/general/articles/effectofindustrialization.aspx> (last visited May 31, 2014).

⁷⁸ *Black Sea Fleet*, *supra* note 76.

which it resided nor under the UkrSSR.⁷⁹ This special status recognized the strategic importance of the city as the home port of the Soviet Black Sea Fleet. Until annexation by Russia in 2014, Sevastopol also served as the headquarters for the smaller, Ukrainian Black Sea fleet and continues to serve as a commercial port and as the headquarters for large companies.⁸⁰ Ukrainian independence in 1991 revealed this pressing ownership issue of the Crimean peninsula to the world.

In the mid-1990s, the newly-independent state of Ukraine and Russia squabbled over the ownership of Crimea and whether Sevastopol was a Ukrainian city.⁸¹ These disagreements faded somewhat with the signing of the Treaty of Friendship, Cooperation, and Partnership,⁸² along with the lease of the Sevastopol port facilities and division of the Black Sea Fleet in May, 1997.⁸³ However, even that treaty failed to sever the Russian connection due to the large Russian naval presence remaining in Sevastopol. Solidifying the Russian hold, thousands of Russian sailors, their dependents and retirees call it home.⁸⁴ Sevastopol's population includes over 70 percent ethnic Russians with ethnic Ukrainians and others making up the remainder.⁸⁵ Up until the annexation of Crimea by Russia, some Russian politicians never accepted a non-Russian Sevastopol.⁸⁶ Russian designs on Crimea were so intense and sustained from the 1990s that they were suspected of supplying passports to Ukrainian citizens in Crimea.⁸⁷ It is clear the Russians have considered

⁷⁹ Wydra, *supra* note 51, at 113. See also *History Confirms Itself: Sevastopol Is a Hero-City*, YOUTH RES. GROUP, NOTA BENE, http://nbenegroup.com/history/sevastopol_en.html.

⁸⁰ *Ukrainian Warships Voluntarily Leave Sevastopol: Sources*, RT (Mar. 2, 2014), <http://rt.com/news/ukrainian-warships-leave-sevastopol-476/>.

⁸¹ Kataryna Wolczuk, *Catching Up with 'Europe'? Constitutional Debates on the Territorial-Administrative Model in Independent Ukraine*, 12 REGIONAL & FED. STUD. 65, 71 (2002). See also Anka Feldhusen, *Geography and the Boundaries of Confidence: The "Russia Factor" in Ukrainian Foreign Policy*, 23 FLETCHER F. WORLD AFF. 199, 121–22 (1999).

⁸² Spencer Kimball, *Bound by Treaty, Russia, Ukraine, Crimea*, DW (March 3, 2014), <http://www.dw.de/bound-by-treaty-russia-ukraine-and-crimea/a-17487632>. "Under Article 2 [of the Treaty], the neighbors agreed to 'respect each other's territorial integrity, and confirm the inviolability of the borders existing between them.'" *Id.*

⁸³ Feldhusen, *supra* note 81, at 123.

⁸⁴ *Black Sea Fleet*, *supra* note 76.

⁸⁵ *Census*, *supra* note 62.

⁸⁶ Kucera, *supra* note 50.

⁸⁷ Adrian Blomfield, *Russia Distributing Passports in the Crimea*, TELEGRAPH (Aug. 17, 2008), <http://www.telegraph.co.uk/news/worldnews/europe/ukraine/2575421/Russia-distributing-passports-in-the-Crimea.html>.

the Crimea question since the dissolution of the USSR. The unique nature of Sevastopol remained a rallying cry for those agitating for Crimea's return to Russia until its annexation in 2014.

Close cultural connections bound Crimea, Sevastopol, and Russia together for centuries. However, in the long view of history and territorial horse-trading, such a connection is not exceptional. Deep, unique, human connections, won in blood, sweat and tears, overlap most parts of Europe and elsewhere in the world. Weighing one group's claim against another's based on wars, number of lost souls, and broken destinies is impossible and leads to intractable disputes. The depth of the Russian attachment to Crimea best illustrates the need for a stronger principle of *uti possidetis* to discourage outside interference by Russia in Ukrainian affairs. Ukraine and Russia both have strong connections to Crimea. However, under the legal principle of *uti possidetis*, Crimea belongs to Ukraine.

IV. Legal Basis for Crimea as Part of Ukraine

Ukraine can claim under *uti possidetis* that Crimea is part of its sovereign territory. For this assertion to be valid, Ukraine must demonstrate that Crimea was part of Ukraine before the dissolution of the Soviet Union. In 1954, Crimea was transferred by Khrushchev from the Russian Soviet Federative Socialist Republic (RSFSR)⁸⁸ to the UkrSSR.⁸⁹ Thus, Crimea was a part of Ukraine when the USSR dissolved. To lawfully secede in 2014, Crimea should have sought international recognition for its independence, complied with Ukrainian law, held fair elections, and resisted outside influence from Russia. Instead, Crimea's secession violated Ukrainian law,⁹⁰ and was only recognized by Russia, Afghanistan, Syria, and Venezuela.⁹¹ Russia's troop presence and support of the snap referendum on secession make

⁸⁸ *Constitutional (Fundamental Law) of the Union of Soviet Socialist Republics*, *supra* note 30.

⁸⁹ Wydra, *supra* note 51, at 113.

⁹⁰ *Id.*

⁹¹ *Putin Signs Order to Recognize Crimea as a Sovereign Independent State*, RT (Mar. 17, 2014), <http://rt.com/news/russia-recognize-crimea-independence-410/>. See also Matthew Rosenberg, *Breaking with the West, Afghan Leader Supports Russia's Annexation of Crimea*, N.Y. TIMES (Mar. 23, 2014), http://www.nytimes.com/2014/03/24/world/asia/breaking-with-the-west-afghan-leader-supports-russias-annexation-of-crimea.html?ref=asia&_r=0.

the results questionable.⁹² A stronger rule of *uti possidetis* may have discouraged Russia from sponsoring Crimea's secession in 2014. An examination of Krushchev's gift of Crimea to Ukraine, Ukrainian statehood, and domestic law all demonstrate the applicability of *uti possidetis* to Crimea.

A. The Gift

Ukraine is a recognized, constitutional state that exercised control and dominion over Crimea until its secession in March 2014.⁹³ From the time of its independence until the present, Ukraine and its boundaries (including Crimea) have comported with the legal definition of a sovereign state.⁹⁴ While Crimea enjoyed more autonomy than other regions within Ukraine, Ukrainian law limited that autonomy, subordinating it to the supremacy of the Ukrainian government.⁹⁵ Ukrainian law places the Ukrainian president and court system over semi-autonomous Crimea.⁹⁶ Dependence on funding supplied by the government of Ukraine solidified that hierarchy.⁹⁷ This structure again supports the classic notion of Ukraine being one state, encompassing all of its Oblasts and semi-autonomous regions.⁹⁸

⁹² Borgen, *supra* note 41.

⁹³ Wydra, *supra* note 51, at 111, 113.

⁹⁴ *Black's Law Dictionary* defines "state" as "the political system of a body of people who are politically organized; the system of rules by which jurisdiction and authority are exercised over such a body of people. BLACK'S LAW DICTIONARY (8th ed. 2004). The Montevideo Convention offers four characteristics of statehood generally accepted in international law. Article 1 of the convention defines the state as possessing the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with the other states. Int'l Conference of Am. States, Convention on Rights and Duties of States, Dec. 26, 1933, 49 Stat. 3097, 165 U.N.T.S. 3802.

⁹⁵ *Id.* at 118–20.

⁹⁶ Wydra, *supra* note 51, at 124–26.

⁹⁷ David M. Herszenhorn, *Dependence on Russia Is Likely to Leave Region's Economy in a Precarious State*, N.Y. TIMES (Mar. 18, 2014), <http://www.nytimes.com/2014/03/19/world/europe/crimea-economy.html>.

⁹⁸ Wolczuk, *supra* note 81, at 84. An Oblast is an administrative region. Oblasts have little self-rule authority and are ruled by the central government. They have a status lower than that of a "semi-autonomous region."

Soviet *oblasti* were purely territorial-administrative units and did not correspond to historical regions . . . between 1954 and 1991, the UkrSSR comprised 25 *oblasti* and two cities of 'republican subordination' (Kiev and Sevastopol). *Oblasti* were further divided

The transfer of Crimea from the RSFSR to the UkrSSR was not a random, spontaneous act. Prior to 1954, Crimea was an Oblast within the RSFSR.⁹⁹ The transfer of Crimea to Ukraine moved the Oblast from one Soviet Republic to the other. While symbolic at the time, it inserted Crimea in Ukraine, where it found itself upon Ukraine's independence in 1991. While Crimea enjoyed a brief period of semi-autonomous status while part of the RSFSR, it had been relegated back to Oblast status well before the transfer.¹⁰⁰ This particular fact weakens any argument that the transfer was an effort to give Crimea independence or broader recognition of autonomy.

A popular view is that Krushev, acting alone, gave Crimea to Ukraine in 1954.¹⁰¹ Russian politicians and historians attempting to invalidate the transfer largely ignore the fact that the Presidium gave unanimous consent to Krushev's transfer decree.¹⁰² The Presidium

into districts (*raion*), cities (which were further divided into *raiony*), and rural settlements. Each unit was represented by a council of people's deputies.

Id. at 66, 68.

⁹⁹ The hierarchy of the Soviet Union consisted of four levels. At the first level were the different Soviet Socialist Republics or "SSRs." These "republics" had the right to secede, according to the 1977 constitution. Within that group, Russia was the first among equals and added the word "federated" into its designation. Ukraine was a soviet republic throughout its entire stint in the USSR. Below the Soviet Republics were Autonomous Republics, which were "constituent" parts of the Republic. *Constitutional (Fundamental Law) of the Union of Soviet Socialist Republics*, *supra* note 30.

¹⁰⁰ Gwendolyn Sasse, *Die Krim—Regionale Autonomie in der Ukraine I* [Crimea—Regional Autonomy of the Ukraine], 31 *BERICHTE DES BUNDESINSTITUT FÜR OSTWISSENSCHAFTLICHE UND INTERNATIONALE STUDIEN*, 1998 [REPORTS OF THE FEDERAL INSTITUTE FOR EAST EUROPEAN AND INTERNATIONAL STUDIES], at 8, *available at* <http://nbn-resolving.de/urn:nbn:de:0168-ssoar-43615>.

¹⁰¹ Wydra, *supra* note 51, at 115.

¹⁰² Volodymyr G. Butkevych, *Who Has a Right to Crimea*, INFOUKES (1992), <http://www.infoukes.com/history/crimea/page-03.html> (last visited May 31, 2014). Butkevych examined the relevant documents, speeches and materials in Russian in his research on the Russian-Crimean-Ukrainian relationship. His analysis of Crimea from the revolution to 1954 is from a Ukrainian perspective, with occasional negative views of Bolshevik policy. Nonetheless, his examinations of the various rulings of the relevant parliamentary bodies in 1954 are detailed and reveal a painstaking chronology of the events up through the transfer.

The territory of the Crimean Peninsula was transferred to Ukraine in accordance with the USSR Constitution of 1936. Article 49 of that document outlined the powers of the USSR Supreme Soviet, among which no mention was made regarding the transfer of

formally passed an act ordering the transfer of Crimea, detailing separate reasons and justifications for the transfer.¹⁰³ It is important to note that the Presidium is a separate institution from the office of the president.¹⁰⁴ The transfer is misunderstood as a solitary act by Krushev.¹⁰⁵ In reality, the Soviet leadership collectively transferred Crimea to Ukraine as Ukraine and Crimea had developed cultural, economic, and political ties from the turn of the 20th century through World War II. These ties continued to strengthen until it became apparent that a Ukrainian Crimea made practical sense.¹⁰⁶

In justifying the transfer, legislative history cites such examples as the close linkage with the economy of the UkrSSR and the basic geographic fact that Crimea is “a natural extension of the southern Ukrainian steppes.”¹⁰⁷ Historians note that the transfer also commemorated the 300th anniversary of the Pereyaslav Treaty.¹⁰⁸ This

territory. However, Article 14, subsection “(d)” stated that “ratification of any border changes between Union republics” is a prerogative of the Union of Soviet Socialist Republics. Furthermore, Article 31 included the following clause: “*The Supreme Soviet of the USSR cedes the implementation of all rights granted the Union of Soviet Socialist Republics, in accordance with Article 14 of the Constitution, insofar as they are not explicitly included in the powers granted by the Constitution, to the responsibility of the subordinate organs of the USSR Supreme Soviet, the USSR Supreme Soviet Presidium, the USSR Council of Ministers and all USSR ministries.* . . . Therefore, such an act could only have been legally carried out by the USSR Supreme Soviet Noteworthy is the fact that since the Presidia of both the Russian and Ukrainian Supreme Soviets adopted these resolutions, this created a certain “agreement in principle” between the two republics. In terms of international law, this in turn made the resolutions a legally binding set of documents, since they were adopted by authoritative organs mandated to enact them.

Id. (emphasis added).

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ The transfer was made by a “decree issued February 19, 1954 of the Presidium of the Supreme Soviet of the USSR.” Additionally, the Soviet government gave multiple addresses to the people to explain the transfer. *The Transfer of the Crimea to the Ukraine*, INT’L COMMITTEE FOR CRIMEA (2005), <http://iccrimea.org/historical/crimeatransfer.html> (citing Unsigned Article, 1 BULL. INST. FOR STUDY OF HIST. & CULTURE OF USSR (Munich), Apr. 1954, at 30–33).

treaty marked an important point in Ukrainian and Russian cultural and political unification.¹⁰⁹ The treaty's long-term effects included exchanging the then Polish cultural, political, and military domination of Ukraine for Russian domination and creating sustained cultural and linguistic ties between much of Ukraine and Russia, which have lasted to this day.¹¹⁰ It is possible the Kremlin made the transfer for political purposes including even beyond the Pereyaslav Treaty commemoration.¹¹¹ The transfer, while culturally significant, was legally inconsequential at the time. It amounted to little more than an internal, administrative restructuring, with no impact on international relations or state-to-state recognition. When the USSR dissolved in 1991, complications from the Russian perspective arose as Crimea found itself firmly within Ukrainian territory. Crimea's status was clear under *uti possidetis*: it was part of Ukraine. However, Crimeans voted in 2014 to secede.¹¹² This illegal secession and the resulting unrest and harm to Ukraine illustrates the type of unbridled self-determination characterized by UN General Secretary Ghali as dangerous and risky to world security. As a self-determination movement arose in Crimea, a region where *uti possidetis* applies, the movement should respect domestic law.

B. Ukraine Constitution

The secession of Ukraine violated the Ukrainian constitution and should be considered a violation of the principle of *uti possidetis*. Critical to the discussion is the fundamental fact that Ukraine is an independent, sovereign state, exhibiting characteristics of sovereignty to include "popular legitimacy . . . discernible territory and population, and . . . international recognition."¹¹³ Although a republic within the Soviet Union,¹¹⁴ Ukraine voted to become independent in 1991¹¹⁵ and was accepted as a member of the United Nations shortly thereafter.¹¹⁶ The

¹⁰⁹ Sasse, *supra* note 100, at 8.

¹¹⁰ Treaty of Pereyaslav, ENGLISHINFO, <http://english.turkcebilgi.com/Treaty+of+Pereyaslav> (last visited May 31, 2014).

¹¹¹ Sasse, *supra* note 100, at 8.

¹¹² Herszenhorn, *supra* note 4.

¹¹³ Kelly, *supra* note 4, at 245.

¹¹⁴ ENCYCLOPAEDIA BRITANNICA, *supra* note 20.

¹¹⁵ *Declaration of State Sovereignty of Ukraine*, VERKHOVNA RADA OF UKRAINE, http://static.rada.gov.ua/site/postanova_eng/Declaration_of_State_Sovereignty_of_Ukraine_rev1.htm (last visited May 31, 2014).

¹¹⁶ *UN Member States: On the Record*, U.N., <http://www.un.org/depts/dhl/unms/cms.shtml#uMemStates> (last visited June 15, 2014).

USSR recognized its own dissolution on 25 December 1991.¹¹⁷ After years of internal debate and outside meddling from Russia, Ukraine ratified a constitution in 1996.¹¹⁸ Article 133 of the constitution affirms that the “Autonomous Republic of Crimea is an inseparable constituent part of Ukraine.”¹¹⁹ Article 2 states that the “sovereignty of Ukraine extends throughout its entire territory.”¹²⁰ Ukrainian law allows secession of individual regions if the remaining regions affirmatively vote to allow it.¹²¹ These provisions intertwine Crimea into Ukraine with enough latitude for Crimea to exercise heightened control over its own destiny.

Domestic law must be respected at this juncture as no right to or prohibition of secession exists in international law.¹²² This gap in international law, combined with inconsistent state practice of *uti possidetis*, empowered Russia to manufacture a “self-determination” referendum in Crimea in 2014 that on its face appeared legitimate.¹²³ However, it was little more than a step to conjure legitimacy for the future annexation of Crimea by Russia. The ability for regions to violate domestic law in pursuit of self-determination facilitates destabilizing conflicts such as the current Ukraine-Russia conflict. An in-depth discussion of the applicability of *uti possidetis* to Crimea is necessary to complete the discussion.

C. *Uti Possidetis* Applied to Crimea

Applying *uti possidetis* analysis to the Ukraine’s borders upon independence in 1991 provides a compelling case for Crimea belonging to Ukraine. Under the “photograph of territory” theory, on the date of Ukraine’s independence, 25 December 1991,¹²⁴ the territory of the

¹¹⁷ 1991: *End of the Soviet Union*, SEVENTEEN MOMENTS IN SOVIET HISTORY, <http://www.soviethistory.org/index.php?page=subject&SubjectID=1991end&Year=1991> (last visited May 31, 2014).

¹¹⁸ Wydra, *supra* note 51, at 124.

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ Noah Feldman, *Crimea’s Democracy Trampled Its Constitution*, BLOOMBERGVIEW (Mar. 20, 2014), <http://www.bloombergview.com/articles/2014-03-20/crimea-s-democracy-trampled-its-constitution>.

¹²² Stepanowa, *supra* note 39.

¹²³ Herszenhorn, *supra* note 4.

¹²⁴ 1991: *End of the Soviet Union*, *supra* note 115. Ukraine voted for independence from the Soviet Union on December 1, 1991. A week later, Ukraine, Russia, and Belarus agreed to terminate the Soviet Union and replace it with the Commonwealth of

UkrSSR, which included Crimea, converted to the present-day country of Ukraine. While the dissolution of the USSR resulted not from decolonialization, but from a major geopolitical transition, it would still be envisaged by the ICJ as qualifying for *uti possidetis* applicability.¹²⁵ Both de-colonialization in Africa and the USSR-breakup featured larger political entities fragmenting into multiple smaller statelets. The resulting statelets were based on previously delineated, internal, administrative borders which were adhered to upon independence.

In this sense, a balance between *uti possidetis* and self-determination, strengthened by state practice, could discourage the sprouting of innumerable, unending territorial disputes provoked by unbridled self-determination. Moreover, *uti possidetis* does not restrict carefully scripted self-determination movements featuring international recognition, compliance with domestic law, fair elections, and freedom from outside interference (e.g., the movement in Scotland).¹²⁶ An unbalanced world with one concept dominating the other in the world consciousness risks continuing conflict as groups attempt to pattern their struggle for self-determination against previous secession movements based on “unique” factors in an effort to avoid working through a process featuring the four essential factors. A world practicing inconsistent application of *uti possidetis* has a reduced ability to encourage countries to this peaceful (but usually lengthy) process when self-determination movements arise.

V. Kosovo Secession Precedent

Selective application of *uti possidetis* by the international community creates a perception of bias and favoritism, promotes self-interest, and weakens this critical principle. Selective application would allow self-determination movements of ethnic Tatars of Western Russia to form a sovereign Tatarstan or the ethnic Albanians to form a sovereign Kosovo. It could support ethnicities in the restive Caucuses to secede from Russia—or equally be used to deny their secession. The case of Kosovo

Independent States. On December 21, the presidents of all the other republics with the exception of Georgia (already embroiled in civil war) and the three Baltic states declared their willingness to enter the Commonwealth. Finally, on December 25, Gorbachev announced his acceptance of the dissolution of the Soviet Union and his resignation as its president. *Id.*

¹²⁵ Frontier Dispute (Burk. Faso/Mali), 1986 I.C.J. ¶ 11, at 565 (Dec. 22).

¹²⁶ Smith-Spark, *supra* note 40.

stands out as example of selective application that turned out to be particularly galling to the Russians.

The U.S. and Western allies encouraged, provided for, and recognized Kosovo's independence in 2008.¹²⁷ The decision went against the decisions of the Badinter commission, the ICJ in *Frontier Disputes*, the European Union's precedent with the former USSR and Yugoslavia, and many other cases. The Kosovo recognition¹²⁸ demonstrated to Russia, China, and other observers that the countries espousing "Rule of Law" morality and philosophy will violate their own philosophy when it suits their policy self-interest. The West attempted to dissuade others from using Kosovo as precedent, claiming it was a unique case.¹²⁹ However, that did not hinder Russia's negative reaction to Kosovo's secession in 2007, when it implied that there would be repercussions.¹³⁰ Several months later, war erupted between Georgian and Russian forces over the secession of the provinces of Abkhazia and South Ossetia from Georgia.¹³¹ The West's stance on Kosovo weakened the West's objection to Russia's actions in Georgia and Crimea and demonstrates the consequences of selective application of *uti possidetis*.

The ICJ issued a non-binding advisory opinion that Kosovo's secession did not violate international law.¹³² The court's advisory opinion noted the various declarations of independence and secessions issued in the years after World War II and could not identify a rule either prohibiting secession or granting it.¹³³ While significant, this ruling

¹²⁷ Jeff Israely, *Why Kosovo Divides Europe*, TIME (Feb. 19, 2008), <http://content.time.com/time/world/article/0,8599,1714413,00.html>.

¹²⁸ Kosovo has been recognized by 108 countries as of February 12, 2014. *Who Recognized Kosova as an Independent State?*, KOSOVO THANKS YOU, <http://www.kosovothanksyou.com/> (last visited May 30, 2014).

¹²⁹ Kosovo declared independence on February 17, 2008, based on assurances from the United States and other Western European nations that it would be recognized and defended. The United States and European Union (EU) felt that "Kosovo constituted a *sui generis* case that does not call into question the territorial integrity principles of the UN Charter." Elitsa Vucheva, *EU Fudges Kosovo Independence Recognition*, EUOBSERVER (Feb. 2, 2008), <http://euobserver.com/9/25684>.

¹³⁰ Jacques Martin, *Russia Threatens to Use Force Over Kosovo*, EUROPEAN UNION TIMES (Feb. 24, 2008), <http://www.eutimes.net/2008/02/russia-threatens-to-use-force-over-kosovo>.

¹³¹ Slomanson, *supra* note 32, at 5.

¹³² Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, 2010 I.C.J. 403 (July 22).

¹³³ *Id.* at 436.

offers no prescription for a peaceful independence process once independence is declared. Some scholars supported the Kosovo intervention based on the “responsibility to protect” theory, preventing further massacre,¹³⁴ though the West still debates standards of if, when, and how this responsibility attaches.¹³⁵ Conversely, some legal scholars objected to the intervention (leading to secession) based on a lack of UN approval.¹³⁶ Do competing standards of international law exist? On one

In no case, however, does the practice of States as a whole suggest that the act of promulgating the declaration was regarded as contrary to international law. On the contrary, State practice during this period points clearly to the conclusion that international law contained no prohibition of declarations of independence. During the second half of the twentieth century, the international law of self-determination developed in such a way as to create a right to independence for the peoples of non-self-governing territories and peoples subject to alien subjugation, domination and exploitation A great many new States have come into existence as a result of the exercise of this right. There were, however, also instances of declarations of independence outside this context. The practice of States in these latter cases does not point to the emergence in international law of a new rule prohibiting the making of a declaration of independence in such cases.

Id.

¹³⁴ W. Michael Reisman, *Acting Before Victims Become Victims: Preventing and Arresting Mass Murder*, 40 CASE W. RES. J. INT’L L. 57, 68 (2008).

Secretary General Kofi Annan created a High Level Panel (HLP) in 2004 to prepare a report on ‘our State Responsibility.’ The report stated: We endorse the emerging norm that there is a collective international responsibility to protect, exercisable by the Security Council authorizing military intervention as a last resort, in the event of genocide and other large-scale killing, ethnic cleansing or serious violations of international humanitarian law which sovereign Governments have proved powerless or unwilling to prevent.

Id. at 68 (citing U.N. Secretary-General, Note dated Dec. 2, 2004 from the Secretary-General addressed to General Assembly, U.N. Doc. No. A/59/565, ¶ 203 (requesting a High-level Panel on Threats, Challenges and Change titled “A More Secure World: Our Shared Responsibility”). See also *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. & Herz. v. Serb. & Montenegro)*, Judgment, 2007 I.C.J. 43.

¹³⁵ Gareth Evans & Mohamed Sahnoun, *The Responsibility to Protect, Revisiting Humanitarian Intervention*, FOREIGN AFF. (2002), available at <http://www.foreignaffairs.com/articles/58437/gareth-evans-and-mohamed-sahnoun/the-responsibility-to-protect>.

¹³⁶ Reisman, *supra* note 134, at 68–69.

hand, UN Security Council action and/or self-defense is imperative before military action but on the other hand, member states may have a duty to act without either.¹³⁷ In some cases, failure to act might be construed as complicity.¹³⁸ This uncertainty allows Russia to wrap favorable pieces of law around its policy decisions as justification for its actions in Chechnya, Georgia, and, especially, Crimea.

Those who support the West's decision to intervene and sponsor Kosovo's secession argue that the conflict was intractable with no other solutions available. UN Special Envoy Martti Ahtisaari proposed a

As strange as it may seem, many international lawyers take issue with the lawfulness of the few effective efforts to stop ongoing mass murders. Consider the reaction to NATO's action to stop the mass killing that occurred in Kosovo in 1999. NATO bombed Serbia into submission without the authorization of the Security Council prescribed by the U.N. Charter. Kosovo is currently under United Nations supervision. What is fascinating about this one case of relatively rapid international action to stop mass killing is that it aroused great disquiet and even criticism of many of the international legal custodians of the world community . . . The Kosovo Report, which was prepared on the initiative of the Prime Minister of Sweden in 2000, also stated that NATO's intervention was illegal because of the lack of prior approval by the Security Council but, in a way comically disrespectful of international law, conceded that "the intervention was justified because all diplomatic avenues had been exhausted and because the intervention had the effect of liberating the majority population of Kosovo from a long period of oppression under Serbian rule.

Major Jeremy A. Haugh, *Beyond R2P: A Proposed Test for Legalizing Unilateral Armed Humanitarian Intervention*, 221 MIL. L. REV. (forthcoming Fall 2014). *Id.* See also CONOR FOLEY, *THE THIN BLUE LINE: HOW HUMANITARIANISM WENT TO WAR* 150–59 (Verso 2008).

¹³⁷ Reisman, *supra* note 134, at 69.

The failure to prevent is a violation of the obligation on parties to the Genocide Convention, but it does not necessarily constitute a crime of complicity, which "always requires that positive action has been taken to furnish aid or assistance to the perpetrators of the genocide while a violation of the obligation to prevent results from mere failure to adopt and implement suitable measures to prevent genocide from being committed." Yet in some circumstances, a failure to prevent *can* be construed as complicity.

Id. (citation omitted). Haugh, *supra* note 136.

¹³⁸ *Id.*

settlement in an attempt to resolve the conflict.¹³⁹ The proposal acknowledged several unique ethnic aspects of the Kosovars and that no other solution for Serbs and Kosovars seemed possible.¹⁴⁰ Serbia rejected the settlement¹⁴¹ creating a frozen state of affairs similar to dozens of frozen conflicts world-wide. Kosovo enjoyed the luxury of heavy NATO and EU involvement,¹⁴² a privilege few other conflicts have had in the past 20 years. Because of NATO and EU protection, Kosovo's parliament—its own legitimacy questionable—voted for independence.¹⁴³ That independence continues to be secured by outsiders in an ongoing, artificial stasis. Such ad hoc solutions create precedent despite the uniqueness of the Kosovo situation claimed by the

¹³⁹ *Summary of the Comprehensive Proposal for the Kosovo Status Settlement*, BUREAU OF EUROPEAN & ASIAN AFF., U.S. DEP'T OF STATE (Jan. 20, 2009), <http://www.state.gov/p/eur/rls/fs/101244.htm>.

In April 2007, UN Special Envoy Martti Ahtisaari submitted to the UN Security Council his Comprehensive Proposal for the Kosovo Status Settlement (the "Ahtisaari Plan"). The Ahtisaari Plan includes a main text with 15 articles that set forth its general principles, as well as 12 annexes that elaborate upon them. The Ahtisaari Plan is primarily focused on protecting the rights, identity and culture of Kosovo's non-Albanian communities, including establishing a framework for their active participation in public life. Special Envoy Ahtisaari also proposed that Kosovo become independent, subject to a period of international supervision. On February 17, 2008, the Kosovo Assembly declared the independence of Kosovo in line with the Ahtisaari recommendations. In its declaration of independence, Kosovo made a binding commitment to implement fully the Ahtisaari Plan and welcomed a period of international supervision. Kosovo has already begun to approve new legislation as envisioned in the Ahtisaari Plan, develop a constitution that enshrines the Ahtisaari principles and take other measures to implement fully the Ahtisaari Plan's provisions.

Id. The full text of the Ahtisaari Plan can be found at <http://www.unosek.org/unosek/en/statusproposal.html>.

¹⁴⁰ *Id.*

¹⁴¹ *Belgrade Rejects Ahtisaari's Plan for Kosovo*, RT (Feb. 15, 2007), <http://rt.com/news/belgrade-rejects-ahtisaaris-plan-for-kosovo/>.

¹⁴² Israely, *supra* note 127.

¹⁴³ *Kosovo Parliament Declares Independence from Serbia*, DW (Feb. 2, 2008), <http://www.dw.de/kosovo-parliament-declares-independence-from-serbia/a-3131964-1>.

West.¹⁴⁴ The Russians noted this precedent and asserted protection of ethnic Russians as a pretext for their initial incursion into Crimea.¹⁴⁵

Uti possidetis has been applied world-wide and can only be ignored with consequences. Comparing the merits of one country's claim over a strip of land confronts powerful walls of emotion. As an example, Russia's strong connections to Crimea pale in comparison to those of Jewish and Palestinian peoples to ancient Palestine. The Kosovo secession ignored the Badinter Commission's plan for the division of Yugoslavia in accordance with principles of *uti possidetis*. The Kosovo solution avoided further near-term bloodshed in Kosovo but spawned Russia's seizures of Georgian and Ukrainian territory. Within months of Kosovo's independence declaration and subsequent diplomatic recognition by much of Europe and the United States, Russia and Georgia fought a brief but costly war over the separatist province of South Ossetia.¹⁴⁶ Those arguing Kosovo's claim to secession was *sui generis* fail to realize that each case is compelling in its own, unique, historical way, and each group agitating for self-determination can cite historical wrongs in need of resolution. To claim one group has a greater need, a unique need, or right to self-determination without regard for *uti possidetis* displays a dangerous shortsightedness and lack of historical awareness.

VI. Russian Ambition Beyond Crimea

In the years since the break-up of the USSR, Ukraine's historical westward leanings coupled with a centuries-old quagmire of cultural, linguistic, ethnic, and historical influences combined with NATO's¹⁴⁷ eastward expansion to result in a tug-of-war between the West and Russia. In the dynamic 1990s, the West invested in the region but put more energy into expanding NATO and EU borders eastward up to the

¹⁴⁴ Vucheva, *supra* note 129.

¹⁴⁵ Roman Kupchinsky, *Sub-Rosa Warfare in the Crimea*, EURASIA DAILY MONITOR, (July 24, 2008), [http://www.jamestown.org/single/?no_cache=1&tx_ttnews\[tt_news\]=33833](http://www.jamestown.org/single/?no_cache=1&tx_ttnews[tt_news]=33833).

¹⁴⁶ Slomanson, *supra* note 32, at 7.

¹⁴⁷ The North Atlantic Treaty Organization (NATO) is a "political and military alliance" established in 1949 that consists of 28 independent member countries. *What Is NATO?*, NATO, <http://www.nato.int/nato-welcome/> (last visited May 31, 2014).

border of Russia than drawing Russia into a strong, lasting partnership. The West's influence on Ukraine's destiny has irked Russia.¹⁴⁸

Russia views NATO expansion as a threat.¹⁴⁹ As NATO inches eastward, the Russians react to what they perceive to be a movement to gain and maintain key leverage against them by pushing back in rhetoric against U.S. actions in Kosovo, Iran, and Syria and with military incursions into Georgia and Ukraine.

Russia's revanchist tendencies have risen apace with its economic clout since the dawn of the millennium.¹⁵⁰ Russia characterizes this effort as influencing its near-abroad, encompassing the entire, former Soviet Union—Crimea constitutes just part of this effort.¹⁵¹ It is worth noting that no right to “control spheres of influence over other sovereign states” exists in international law.¹⁵² The reasons for this revanchism are murky and shifting at times. Discussions of Russian revanchism are in vogue, focusing on the recovery of the former Soviet empire. A closer look reveals a more complex reality involving a reinvented neo-nationalism increasingly dominating Russian culture. The result: a more outward-focused Russia that sees itself as exceptional and serving as a moral beacon for the world.

A. Russian Revanchism

Part of Russia's re-emergence on the world stage includes a healthy strain of revanchism.¹⁵³ Russia continues to exercise more influence and

¹⁴⁸ *Ukraine Fears It May Be the Next Target for Russia*, REUTERS (Aug. 21, 2008), <http://www.reuters.com/article/2008/08/21/us-georgia-ossetia-ukraine-idUSLL4020080821>.

¹⁴⁹ Edward Walker, Commentary: *NATO Expansion Stoked Russian Paranoia*, FREE LANCE-STAR (Mar. 6, 2014), <http://www.freelancestar.com/2014-03-06/articles/30865/commentary-nato-expansion-stoked-russian-paranoia/>.

¹⁵⁰ *Russia Could Claim Crimea If Ukraine Joins NATO—MP*, RIA NOVOSTI (Apr. 9, 2008), <http://en.rian.ru/world/20080409/104227945.html>.

¹⁵¹ Ken Aldred & Martin A. Smith, *Imperial Ambition or Humanitarian Concern? Russia and Its 'Near Abroad'*, J. HUMANITARIAN ASSISTANCE (July 4, 1997), <http://sites.tufts.edu/jha/archives/115>.

¹⁵² Chris Borgen, *Kosovo, South Ossetia, and Crimea: The Legal Rhetoric of Intervention, Recognition, and Annexation*, OPINIO JURIS (Apr. 2, 2014), <http://opiniojuris.org/2014/04/02/kosovo-south-ossetia-crimea-legal-rhetoric-intervention-recognition-annexation/>.

¹⁵³ Revanchism: “a usually political policy designed to recover lost territory or status.” MERRIAM-WEBSTERS ONLINE DICTIONARY, <http://www.merriam-webster.com/dictionary/>

control in the former Soviet Republics.¹⁵⁴ Though many Russian citizens live in the former Republics, culture and language tie many of them back to Russia.¹⁵⁵ A few former Republics share historic trade and political relationships.¹⁵⁶ Ties and relationships are one thing but control and heavy influence on another country's destiny better describes Russia's style. It is important to understand Russia's historic obsession with its "near abroad." This fixation stems not from arrogance or desire from Empire so much as it is a paranoia left over from successive invasions by various enemies-at-the-gate such as the Vikings, Mongols, Tatars, and Huns. The Tatar invasion probably had the most lasting effect on the Russian view of the world.

Before the Tatar invasion in 1237, Russia maintained close ties to Europe.¹⁵⁷ When a new Muscovy finally overthrew the Tartars 250 years later, Russia had drifted away from European culture.¹⁵⁸ "It [Russia] historically protected itself with its depth."¹⁵⁹ Ukraine provided that depth and a "buffer to the West."¹⁶⁰ Russia still stings from its loss of empire, including Ukraine, in the early '90s, leading to a heightened Russian obsession with its "near abroad."¹⁶¹ This obsession stems from centuries of invasion and near annihilation from both Europeans and Asians alike. Russia was ringed with non-Russian, yet still-Soviet

revanchism (last visited May 22, 2014).

¹⁵⁴ *Russian Leaders Talk Big, But Army and Economy Are Weak*, McCLATCHY NEWSPAPERS (Sept. 11, 2008), <http://www.mcclatchydc.com/world/v-print/story/52313.html>.

¹⁵⁵ Andrei Kortunov, *RUSSIA and the "NEAR ABROAD": Looking for a Model Relationship*, NAT'L DEF. UNIV. PRESS (Jan. 24, 2003), <http://www.ndu.edu/inss/books/books-1999/USRussianPartnershipJuly99/usrp7.html>.

¹⁵⁶ *Id.*

¹⁵⁷ Anil Çicek, *The Rise of Russian Nationalism-Footsteps of the Slavophiles?: Understanding the Dynamics of Nationalism as a State Policy in Russia*, INT'L J. RUSSIAN STUD. 3 (2012), available at http://www.ijors.net/issue5_2_2012/articles/cicek.html.

¹⁵⁸ *Id.*

¹⁵⁹ James Traub, *Burning Bridges and the Smell of Fresh Blood*, FOREIGN POL'Y (Mar. 21, 2014), http://www.foreignpolicy.com/articles/2014/03/21/burning_bridges_fresh_blood_ukraine_putin.

¹⁶⁰ *Id.*

¹⁶¹ Aldred & Smith, *supra* note 149. Russia defines its "near abroad" as the fourteen countries around it which constituted the former Soviet Union. The term "near abroad" has a geographic meaning, describing the surrounding countries, but has a starker "political" meaning. The term evokes Russian "rights" to interfere in internal affairs of the former Soviet republics and to justify influencing the former republics regarding the treatment of "ethnic Russian brethren civilians." William Safire, *ON LANGUAGE: The Near Abroad*, N.Y. TIMES (May 22, 1994), <http://www.nytimes.com/1994/05/22/magazine/on-language-the-near-abroad.html>.

republics on its outskirts such as the Baltics on the western flank and Kazakhstan and other republics on the Asian Steppe in the east. This buffer zone offered some protection from hostile neighbors until the Iron Curtain's demise in the early 1990s.

Russia has viewed the disintegration of the Soviet Union as a humiliating injury.¹⁶² Not only were "buffers" such as Ukraine detached, the expansion of NATO to the Russian border poured salt into this wound. This stung for two reasons: One, the historic fear of enemies-at-the-gates has been rekindled; second, the humiliation has been reinforced, especially rankling current Russian leadership who emerged from the USSR and still espouse many of its values.¹⁶³ Former republics such as Kazakhstan and Belarus declared independence but remained part of the looser Commonwealth of Independent States. The former republics of Latvia, Lithuania, and Estonia joined NATO and became openly hostile toward Russia.¹⁶⁴ The Warsaw Pact¹⁶⁵—Russia's previous counterbalance to NATO—dissolved with the USSR. Then NATO moved into the vacuum created by the Warsaw Pact's absence, even rebuffing Russian overtures to join it.¹⁶⁶ Prestige declined not only outside Russia's borders but internally as well.

The Russian population wavered due to declining health, a high accident rate, and alcoholism.¹⁶⁷ Living standards dropped from previous Soviet levels.¹⁶⁸ Russia fought two financially and

¹⁶² David J. Kramer, *Resetting U.S.-Russian Relations: It Takes Two*, 31 WASH. Q. 61 (2010), available at <http://csis.org/files/publication/twq10januarykramer.pdf>.

¹⁶³ Alexei Bayer, *Putin Fails Big as a Strategist*, MOSCOW TIMES (May 11, 2014), <http://www.themoscowtimes.com/opinion/article/putin-fails-big-as-a-strategist/499911.html>.

¹⁶⁴ Rick Rozoff, *Baltic Sea: Flash Point for NATO-Russia Conflict*, MEDIA MONITORS NETWORK (Feb. 27, 2009), <http://usa.mediamonitors.net/content/view/full/60200>.

¹⁶⁵ The Warsaw Pact is the common term for the Treaty of Friendship, Co-operation and Mutual Assistance between Albania, Bulgaria, Hungary, East Germany, Poland, Romania, the Union of Soviet Socialist Republics, and Czechoslovakia, signed on May 1, 1955. *Modern History Sourcebook: The Warsaw Pact, 1955*, MODERN HISTORY SOURCEBOOK, <http://www.fordham.edu/halsall/mod/1955warsawpact.html> (last visited June 10, 2014).

¹⁶⁶ Marc Bennetts, *Russia's Vladimir Putin Keeps Westerners Guessing on His Strategies, Intentions*, WASH. TIMES (Apr. 13, 2014), <http://www.washingtontimes.com/news/2014/apr/13/russias-vladimir-putin-keeps-westerners-guessing-o/?page=3>.

¹⁶⁷ *The Incredible Shrinking People*, ECONOMIST (Nov. 27, 2008), <http://www.economist.com/node/12627956>.

¹⁶⁸ Mark Adomanis, *The Intelligence Squared Debate: Masha Gessen Has Some Really Strange Ideas About the 1990's*, FORBES (May 24, 2013), <http://www.forbes.com/>

psychologically draining wars over a decade to pacify the Caucasus.¹⁶⁹ But things in Russia began to improve at the turn of the millennium.

Russia's economy is resurging.¹⁷⁰ Growth is high¹⁷¹ and personal incomes are rising.¹⁷² Gone are the "wild west" early years of Russian capitalism. While open markets, private ownership of business, and accumulation of wealth are still allowed, Russia's authoritarian government strictly controls businesses, national and local politics and—indirectly—the whole economy.¹⁷³ Given Russia's renewed weight in the world, the government is trying to re-assert itself, as evidenced by its August 2008 war with Georgia, push-back on Iran sanctions, opposition to the missile shield in Poland, and manipulation of oil supplies for Ukraine and Europe. Economic growth may explain Russia's new-found confidence and ability to invade Georgia in 2008, push back at the West over policy issues, and annex Crimea; however, two other factors have propelled Russia's motivation to accomplish these actions: revanchism and a weak principle of *uti possidetis*.

Crimea was first on the list of Russian desires. Russia was never keen on Crimea belonging to Ukraine after the dissolution of the USSR.¹⁷⁴ Referring to the eastern provinces of Ukraine, President Vladimir Putin has lamented the loss of "historically Russian territory" to Ukraine.¹⁷⁵ Many Russians long imagined Crimea would be reunited with Russia one day.¹⁷⁶ After all, Crimea represented the jewel of Ukraine containing the beloved Sevastopol and a warm water port. All that was needed was an opportunity.

sites/markadomanis/2013/05/24/the-intelligence-squared-debate-masha-gessen-has-some-really-strange-ideas-about-the-1990s/.

¹⁶⁹ *The Warlord and the Spook*, *supra* note 31.

¹⁷⁰ Kim Iskyan, *On a Roll*, BAY LEDGER (Sept. 30, 2005), http://www.blz.com/news/2008/04/23/Roll_7721.html.

¹⁷¹ *Russia's Economy*, ECONOMIST (Dec. 22, 2011), <http://www.economist.com/blogs/graphicdetail/2011/12/focus-1>.

¹⁷² *Richer Russians*, ECONOMIST (Mar. 12, 2012), <http://www.economist.com/blogs/graphicdetail/2012/03/daily-chart-0>.

¹⁷³ *Sochi or Bust: The Conspicuous Dazzle of the Games Masks a Country, and a President, in Deepening Trouble*, ECONOMIST (Feb. 1, 2014), <http://www.economist.com/news/briefing/21595428-conspicuous-dazzle-games-masks-country-and-president-deepening-trouble-sochi>.

¹⁷⁴ Wydra, *supra* note 51, at 115.

¹⁷⁵ Traub, *supra* note 159.

¹⁷⁶ Wydra, *supra* note 51, at 115.

The West was caught off guard by the fast-paced events of 2014 that resulted in Russia's annexation of Crimea. It might appear obvious that Russia annexed Crimea in March of 2014 due to instability in Ukraine after the overthrow of Yanukovich. In retrospect, plenty of warning signs existed that Russia was biding its time until an opportunity for annexation arose. The Russian government appeared to be "passport stuffing" by issuing thousands of Russian passports to ethnic Russian inhabitants of Crimea.¹⁷⁷ Russia's "passport imperialism" has been going on since the late 1990s.¹⁷⁸ Prominent figures within a Russian nationalist movement have agitated for years for the return of Crimea to Russia¹⁷⁹ and there were reports of Russian spy activity in Crimea in the mid 2000s by Russians suspected of initiating efforts toward Crimean secession.¹⁸⁰ Russian agents used similar practices in South Ossetia before Russia's invasion in 2008 as a pretext to defend the Russian "citizens in the breakaway province."¹⁸¹ Russia had set the stage for a takeover. Several years ago, the looming trigger for annexation seemed to be over natural gas shipments and payments. Ukraine and Russia have butted heads over oil and gas payments and shipments through Ukraine to Europe since 2005.¹⁸² Russia halted or reduced gas shipments through Ukraine over the course of several winters, threatening the energy supplies of Western European countries as well as Ukraine.¹⁸³ Before one of these crises could mushroom again and lead to a fight over Crimea, the 2014 instability in Ukraine erupted, and Russia sent Special Forces into Ukraine under the guise of protecting ethnic Russians,¹⁸⁴ sponsored secession,¹⁸⁵ and annexed Crimea.¹⁸⁶

¹⁷⁷ Peter Fedynsky, *Crimea—Potential Russian-Ukrainian Flashpoint*, VOA (Nov. 7, 2008), <http://www.wvenglish.com/en/voa/stan/2008/11/2008110928434.htm>.

¹⁷⁸ *Russia's Passport Imperialism*, SOUFAN GROUP (Mar. 25, 2014), <http://soufangroup.com/tsg-intelbrief-russias-passport-imperialism/>.

¹⁷⁹ Leon Aron, *Russia's Next Target Could Be Ukraine*, WALL ST. J. (Sept. 10, 2008), http://online.wsj.com/article/SB122100831438617621.html?mod=opinion_main_commentaries.

¹⁸⁰ Kupchinsky, *supra* note 145.

¹⁸¹ *Id.*

¹⁸² *Ukraine Wants Change in Russia Oil Transit Deal*, EU BUS. (Dec. 28, 2009), <http://www.eubusiness.com/news-eu/energy-oil-ukraine.231>; *see also Ukraine Takes Extra Russian Gas*, BBC (Jan. 24, 2006), <http://news.bbc.co.uk/2/hi/europe/4642684.stm>; *Russia-Ukraine Gas Dispute Remains Unsettled*, RIA NOVOSTI (Dec. 20, 2005), <http://en.rian.ru/russia/20051220/42586383.html>.

¹⁸³ *Id.*

¹⁸⁴ Nick Cumming-Bruce, *At U.N., Russia Points to Ultranationalist Threats in Ukraine*, N.Y. TIMES (Mar. 3, 2014), http://www.nytimes.com/2014/03/04/world/europe/ukraine-joined-nations.html?_r=0.

¹⁸⁵ Herszenhorn, *supra* note 4.

While it is natural for governments to protect their nationals¹⁸⁷ at home and abroad, the Russian government uses their nationals as a pretext for action in foreign lands. In Georgia in 2008, the Russians cited protection of their nationals as justification for their incursion into South Ossetia.¹⁸⁸ The same pretext was used in Crimea.¹⁸⁹ Scant evidence existed in either location that their nationals were threatened.¹⁹⁰ Russia has issued similar warnings about ethnic Russians (who are not Russian nationals) in the Baltics as well.¹⁹¹ Russia seeks to regain influence over its neighbors under the guise of protecting whom they call ethnic Russians to promote its own world vision.

B. Neo-Nationalism and Russian Ambition

Russia's actions can be best understood as a uniquely Russian strain of neo-nationalism with distinct anti-Westernism. Some Russians view the West as "spiritually and culturally bankrupt."¹⁹² Also troublesome for U.S.-Russian relations, "Putin . . . perceives the West . . . as a decadent, anti-religious and ignorant society."¹⁹³ Skewed perspectives of the West cross the governmental spectrum. One Russian children's rights official recently stated, "The West is a terrible garbage dump, even though it smells of various delicious things."¹⁹⁴ These thoughts are not new or original in Russia. Famous writers such as Pushkin and

¹⁸⁶ Smith & Eshchenko, *supra* note 4.

¹⁸⁷ "A member of a nation . . . [a] person owing permanent allegiance to and under the protection of a state." BLACK'S LAW DICTIONARY (9th ed. 2009).

¹⁸⁸ Calamur, *supra* note 56.

¹⁸⁹ Cumming-Bruce, *supra* note 184.

¹⁹⁰ Mark Kersten, *Does Russia Have a 'Responsibility to Protect' Ukraine? Don't Buy It*, GLOBE & MAIL (Mar. 4, 2014), <http://www.theglobeandmail.com/globe-debate/does-russia-have-a-responsibility-to-protect-ukraine-dont-buy-it/article17271450/>. See also Editorial, *Russian Aggression*, WASH. TIMES (Aug. 11, 2008), <http://www.washingtontimes.com/news/2008/aug/11/russian-aggression/>. See Slomanson, *supra* note 32, at 5 (asserting that Georgia fired the first shots of the war in South Ossetia and Russia may have been justified in asserting humanitarian intervention).

¹⁹¹ Molly K. McKew & Gregory A. Maniatis, *Putin's Global Ambitions Could Destabilize Europe*, WASH. POST (Mar. 18, 2014), http://www.washingtonpost.com/opinions/putins-global-ambitions-could-destabilize-europe/2014/03/18/69abb2a2-aec5-11e3-9627-c65021d6d572_story.html. See also Ummelas, *supra* note 1.

¹⁹² *Pan-Slavism*, ENCYCLOPÆDIA BRITANNICA, <http://www.britannica.com/EBchecked/topic/440678/Pan-Slavism> (last visited May 31, 2014).

¹⁹³ Vladislav Inozemtsev, *Russia Pivoted East Centuries Ago*, MOSCOW TIMES (May 27, 2014), <http://www.themoscowtimes.com/article/500990.html>.

¹⁹⁴ Anna Dolgov, *Russian Children's Rights Official Calls for Iron Curtain*, MOSCOW TIMES (May 16, 2014), <http://www.themoscowtimes.com/article/500283.htm>.

Dostoevsky described the West as “morally corrupt,” even “decadent . . . materialist, egotistical.”¹⁹⁵ Russia partially defines itself by being different than the West, forging its own way in culture and international law.

Due to geopolitical realities in Eurasia, Russia detached from Europe at times throughout its history, developing a different world-view that has impacted its understanding of international law.¹⁹⁶ Russia desired to be considered “a normal, European, ‘civilized’ country” and followed European law not for the law’s intrinsic value, rather, to achieve European acceptance.¹⁹⁷ While drawing closer to the West, Russia fought several wars against Catholic Lithuania-Poland and cultivated “mistrust” toward the West in legal relationships as well as moral and religious values.¹⁹⁸ In the middle ages, Western Europe developed the theory of division between the “divine and secular power.”¹⁹⁹ Inheriting Byzantine traits through Orthodoxy, Russia did not match the West’s division theory, instead maintaining a divine sense and respect of their rulers, which continues to exist today.²⁰⁰ Thus, the law could be subjugated to the ruler or to the concept of “Kyvian Rus” itself.²⁰¹

¹⁹⁵ Çicek, *supra* note 157, at 3.

¹⁹⁶ Lauri Mälksoo, *The History of International Legal Theory in Russia: A Civilizational Dialogue with Europe*, 19 EUR. J. INT’L L. 211, 214–15 (2008).

The Russian theory of international law has moved from proving that “we too are civilized” in the early 18th century via the admiration of and aspiration towards Western European civilization in the 18th and 19th centuries to the break with the West and the affirmation of Russia’s own civilizational primacy in the 20th century.

Id. at 216.

¹⁹⁷ *Id.* at 217.

¹⁹⁸ *Id.* at 218–19.

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ *Id.* See also *The 1,025th Anniversary of the Baptism of Kyivan Rus*, ECONOMIST (Jul. 30, 2013), <http://www.economist.com/blogs/easternapproaches/2013/07/ukraine-and-russia> [hereinafter *Kyvian Rus*]. “Kyvian Rus” denotes the “mythical birthplace of the Russian nation,” the cradle of Russian civilization. Both Russians and Ukrainians look to Kyiv or Kiev as the source of their common, Orthodox faith. *Id.* See also Philip Wythe, *Crisis in Ukraine Affects Communities in America*, DAILY TARGUM (Apr. 22, 2014), http://www.dailytargum.com/opinion/columnists/philip_wythe/crisis-in-ukraine-affects-communities-in-america/article_f0bc3ac2-c9bf-11e3-9e1e-001a4bcf6878.html. “The Russian Orthodox patriarch of Moscow, Patriarch Kirill, buffered messages of Christian spirituality with calls for, ‘an end to the designs of those who want to destroy holy Russia’ during Moscow’s Resurrection Matins services.” *Id.* (citation omitted).

Modern Russian nationalism promotes centralization of power and the preeminence of the Church and State as one united entity to protect Russia.²⁰²

It is no surprise that the law can place second to the needs of the state. Thus, Russian society is more apt to accept or even celebrate the government's decision to annex Crimea. Ultimately, the government and the populace prioritize the historical connection between Russia and Crimea much more than adhering to *uti possidetis* or international law. While a sense of a gulf between Western and Russian legal theories may exist, international law is persuasive to the Russians and has been cited throughout the Crimean conflict in 2014.²⁰³ Additionally, it is worth noting Putin also desires a "pragmatic" working relationship with the West.²⁰⁴ Thus, it is not inconceivable that a stronger (through state practice), consistently-applied *uti possidetis* could have influenced the Russian government to seek a more peaceful, internationally supported self-determination process in Crimea than it did.

Across the Russian vastness, there is a revival of a sense of a unique Russian destiny in the world. "Russian exceptionalism" revived in the last two decades, coinciding with a perceived cultural and moral weakness in the West.²⁰⁵ The first part of this destiny is protection of Russian people. One of Putin's stated goals is the protection of Russian people outside of Russia.²⁰⁶ This protection is both physical and spiritual as he "protects" Russians by calling for an "Orthodox morality" opposing western values.²⁰⁷ Furthermore, Russian people instinctively view the Russian Orthodox Church as a bulwark and protector of "Russian values."²⁰⁸ The Church protects "Russian values against foreign and domestic threats."²⁰⁹ While the closeness of Russians to the Orthodox Church may seem surprising, in spite of the atheistic nature of communism, the Russian Orthodox Church has been a part of Russian heritage for a thousand years.²¹⁰

²⁰² *Id.*

²⁰³ Borgen, *supra* note 152.

²⁰⁴ Çicek, *supra* note 157, at 9.

²⁰⁵ McKew & Maniatis, *supra* note 191.

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ Çicek, *supra* note 157, at 2.

²⁰⁹ *Id.*

²¹⁰ *Kyivan Rus*, *supra* note 199.

In difficult times, Russian people have turned to a few key characteristics of the Russian heritage to rally their people. Typically, these have been Orthodox Christianity and peasant life at their heart.²¹¹ Influential Russian writers intertwine Orthodox Christianity into Russian history and view it as the worldwide protectorate.²¹² Some view the Russian Orthodox Church as favoring the Putin Regime in the Ukraine Crisis although both Russia and Ukraine are both Eastern Orthodox.²¹³ Putin shrewdly capitalizes on this linkage and has used it throughout his presidency. The difficulty lies in knowing how he will behave next in his quest to protect ethnic Russians outside Russia.

This protectorate will not take a fortress or empire form. It is an ideological protection, supported by surgical military and economic force. Putin certainly takes the long view of world affairs.²¹⁴ Putin waited fifteen years after the initial U.S. action in Serbia to take Crimea. However, this seizure was opportunistic rather than part of a larger scheme. “Putin has no overall strategy. He has a mission: to save Russia and the Russians.”²¹⁵ Russia will use its heightened economic clout as leverage to pursue its interests abroad. The interests are varied but involve several themes: promotion of Russian values and protection of Russian speakers, traditions, values, and morality. Whether the Russian government will simply issue official statements from spokesmen, initiate covert actions, or engage in outright armed conflict is dependent on several factors. Specific Russian activity in promoting its interests is impossible to predict. It depends on uncontrollable factors, one of which seems to be the internal activities of countries on its borders containing large amounts of ethnic Russians and Russian speakers.²¹⁶ Russia’s actions in Crimea and eastern Ukraine have demonstrated that Ukraine is critical to Russian interests. Russia will unquestionably use the leverage it now has to influence Ukraine.

²¹¹ Robert Steuckers, *Foundations of Russian Nationalism*, EURO-RUS (July 20, 2010), http://www.eurorus.org/index.php?option=com_content&view=article&id=6604%3Afoundations-of-russian-nationalism&catid=3%3Aanalysis&Itemid=92&lang=en.

²¹² *Id.*

²¹³ Tom Heneghan, *In Ukraine, Religious Tensions Contribute to Worsening Political Divide, Russian Orthodox Official Says*, HUFFINGTON POST (May 19, 2014), http://www.huffingtonpost.com/2014/05/19/ukraine-religious-tension_n_5352267.html.

²¹⁴ McKew & Maniatis, *supra* note 189.

²¹⁵ Bennetts, *supra* note 166.

²¹⁶ Christian Caryl, *Rescue Me! Vladimir Putin Is Justifying His Grab for Crimea with the Need to Protect the “Russian-Speaking Population” in Ukraine. But Why Stop There?* FOREIGN POL’Y (Mar. 2, 2014), http://www.foreignpolicy.com/articles/2014/03/02/rescue_me.

Natural gas can still be used as a weapon for Russia to dominate Ukraine. Once new pipelines bypassing Ukraine are built, Ukraine could be put completely under the energy mercy of Russia. Russia could then manipulate the Ukrainian government, influencing laws, business, contracts, and language. Russia, though, has interests beyond Ukraine.

The Estonian city of Narva presents a vignette for a potential future conflict. Some have speculated a potential Russian action could involve this city,²¹⁷ as nearly all of the city's population is ethnic Russian.²¹⁸ Estonia and Russia have clashed in the past over discrimination against the Russian minority in the country.²¹⁹ The Russian population in Narva could request support or protection from Russia against perceived wrongs inflicted on it by the Estonian government. Russia could insert unmarked forces into the town to isolate it from the rest of Estonia. Such interference inside another country's borders degrades respect for national sovereignty, creating instability and a propensity for violent confrontation. The world suffers as a result. Aside from outright war, a strong principle of *uti possidetis* balanced with self-determination featuring the four essential elements of international recognition, compliance with domestic law, fair elections, and no outside interference can influence Russia's international policy. While not a panacea, this formula promises more success than the fragmented state of *uti possidetis* and self-determination at present.

VII. Conclusion

As the Russian MiGs approached the southeastern part of the Crimean peninsula, several Ukrainian MiGs from Kirovs'ke Air Base in Eastern Crimea flew out to intercept them. The two formations joined forces and flew together south over the Black Sea to participate in Trident-Sickle 2014—a joint Russian/Ukraine/NATO exercise. This fictitious ending to the ominous beginning of this article shows an ideal, peaceful outcome of a seemingly tense situation.

²¹⁷ Michael Ben-Gad, *The Tiny Estonian Town That Could Spell the End of NATO*, THE WEEK (Mar. 27, 2014), <http://theweek.com/article/index/258840/the-tiny-estonian-town-that-could-spell-the-end-of-nato>.

²¹⁸ *Id.*

²¹⁹ Scott Shackelford, *From Nuclear War to Net War: Analogizing Cyber Attacks in International Law*, 27 BERKELEY J. INT'L L. 192, 193 (2009).

The principle of *uti possidetis*, in spite of the Kosovo precedent as well as the Crimean connection to Russia, provides a solid legal case for a Ukrainian Crimea. A resurgent and revanchist Russia may elevate its interests over the law as it interacts with its neighbors and the West. A neo-nationalist Russia may not directly attack when it deems its interests are threatened. It may employ more sophisticated, less obvious interference in neighboring countries' affairs. This interference could affect others' sovereignty, internal affairs, oil, gas, transport embargoes, and even involve conventional attacks.

The West should embrace opportunities to draw Russia into a closer partnership and emphasize commonalities. The Crimea issue must be a part of the dialogue between the West and Russia. The U.S. must publicly support this issue in dialogue with Russia about Crimea given the history of Crimea and its complex relationship with its neighbors. The transfer to Ukraine and the intricacies of the case must be mastered by the West as they engage Russia so Russia perceives the West's solid legal case for Crimea belonging to Ukraine.

The United States and NATO should ensure proper planning takes place and policy is implemented to deal with a potential attack on NATO allies. The Russian government interprets dithering and equivocations as weakness. Additionally, Russia will take and pocket any unilateral concessions from the United States. If reciprocation is desired, it should be guaranteed when concessions are made. The United States and NATO must engage Russia from a position of strength but also cooperation; NATO dithered over the extension of membership action plans to Georgia and Ukraine in the spring of 2008. This lack of support gave Russia the signal that their push into Georgia would not be met with Western military resistance. The West cannot afford to let this happen in Ukraine.

The starkest lesson learned as Russia removed Crimea from Ukraine's grasp is the impunity with which Russia took it. Short of war, nothing would have stopped Russia's involvement in the secession and annexation into Russia. Had *uti possidetis*, balanced with self-determination featuring the four essential elements, existed as international state practice, Russia may have been dissuaded from supporting Crimea's secession and instead may have worked through the international community to achieve international recognition, compliance with domestic law, a fair referendum, and no outside interference. Through state practice and support from international institutions, a

vision of a stronger *uti possidetis* balanced with self-determination can become reality.